

**AUTOMATED PEOPLE MOVER
LANDSIDE ACCESS MODERNIZATION PROGRAM
AT
LOS ANGELES INTERNATIONAL AIRPORT**



DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN AGREEMENT

BETWEEN

CITY OF LOS ANGELES

and

[_____]

DATED AS OF [____], 2018

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LIST OF EXHIBITS

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2A-2	Equal Benefits Ordinance Compliance Affidavits
2A-3	Key Personnel Statement of Availability
2A-4	Contractor Responsibility Program Questionnaire and Pledge of Compliance
2A-5	Early Works Agreement Rate Schedule
2A-6	Architectural Appeal of the APM Fixed Facilities Commitments (including Final Submittal Package with Scorable Design Concepts)
2A-7	Vehicle Aesthetics Commitments
2A-8	Project Safety and Security Commitments

- 2A-9 User Experience Commitments
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- 2B Alternative Technical Concepts
- Exhibit 3 Initial Designation of Authorized Representatives
- Exhibit 4 Payment Mechanism
 - 4A Milestone Payment Mechanism
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 - 4C Noncompliance Occurrence Tables
- Exhibit 5 Finance Documents
 - 5A List of Initial Financing Documents
 - 5B Form of Direct Agreement
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- Exhibit 6 Payment and Performance Security
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- Exhibit 7 Insurance Requirements
- Exhibit 8 LAWA-Provided Approvals
- Exhibit 9 LAWA Change Procedures and Directive Letters
- Exhibit 10 Interface Obligations
 - 10A Interface Obligations – Automated People Mover and Intermodal Transportation Facility West
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- Exhibit 17 Project Neutral List
- Exhibit 18 Section 3.6 Invoice

DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN AGREEMENT

AUTOMATED PEOPLE MOVER PROJECT

This Design-Build-Finance-Operate-Maintain Agreement (the “**Agreement**”) is made and entered into this [] day of [], 2018 (the “**Effective Date**”), by and between the City of Los Angeles (“**City**”), a municipal corporation, acting by order of and through its Board of Airport Commissioners, and [], a [] (“**Developer**”), with reference to the following facts:

A. City's Department of Airports, by action of its Board of Airport Commissioners, approved and authorized the issuance of a Request for Proposals (as amended, the “**RFP**”) for the Project at Los Angeles International Airport (the “**Airport**”).

B. City's Department of Airports, known as Los Angeles World Airports (“**LAWA**”), is responsible for the management and administration of this Agreement on behalf of the City.

C. LAWA wishes to procure a developer to design, build, finance, operate and maintain the Project using a project delivery system authorized under Section 371(b) of the City Charter and Ordinance No. 183585 (the “**Ordinance**”).

D. On July 28, 2017, LAWA issued the RFP to the shortlisted proposers.

E. On [], 2017, Developer submitted a technical proposal and on [], 2017, Developer submitted a financial proposal to LAWA in response to the RFP offering to design, build, finance, operate and maintain the Project.

F. On [], 2018, LAWA determined that Developer offered the “Lowest Ultimate Cost” to the City, as contemplated in the Ordinance, for the Project.

G. Developer is engaged in the business of providing design, preconstruction, construction, financing, operation and maintenance services of the type sought by LAWA.

H. The Board of Airport Commissioners has authorized the Work for the Project, as specified in the Contract Documents.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS; CONTRACT DOCUMENTS; ORDER OF PRECEDENCE; OTHER DOCUMENTS

1.1 Definitions

Definitions for certain acronyms, abbreviations and terms used in this Agreement and the other Contract Documents are contained in Exhibit 1 (Abbreviations and Definitions).

1.2 Contract Documents; Rules to Reconcile Conflicting Provisions

1.2.1 The term "Contract Documents" shall mean the documents listed in this Section 1.2. Each of the Contract Documents is an essential part of the agreement between the Parties. The Contract Documents are intended to be complementary and to be read together as a complete agreement.

1.2.2 Subject to Sections 1.2.3 and 1.2.4, in the event of any conflict, ambiguity or inconsistency within the Contract Documents, the order of precedence, from highest to lowest, shall be as follows:

1. this Agreement, including all Exhibits and the Financial Model, except Exhibit 2A (Proposal Commitments) and Exhibit 2B (Alternative Technical Concepts);
2. Exhibit 2B (Alternative Technical Concepts);
3. Technical Provisions, Part 1 (Scope of Work);
4. Technical Provisions, Part 2A (Design & Construction General Requirements), Part 2B (Design & Construction Technical Requirements), Part 2C (APM System Testing, Certification & Operational Readiness), and Part 3 (APM System Operations & Maintenance Requirements);
5. Technical Provisions, Part 5 (Contract Drawings/Engineering Data);
6. Technical Provisions, Part 4 (Standards and Specifications); and
7. Developer's Proposal commitments identified in Exhibit 2A (Proposal Commitments); provided that if LAWA determines, in its sole discretion, that the Proposal Commitments or Proposal contain a provision that is more beneficial to LAWA than is specified elsewhere in the Contract Documents, then that provision shall take precedence.

Change Orders, Deviations and other amendments will have the priority just above the document that is being amended.

1.2.3 In the event of any conflict, ambiguity or inconsistency within the Contract Documents, the following rules of interpretation shall apply.

1.2.4 If the Contract Documents contain differing provisions on the same subject matter and within the same order of precedence pursuant to Section 1.2.2, the provisions that provide greater detail or establish a higher quality, manner or method of performing the Work, exceed Good Industry Practice or use more stringent standards shall prevail.

1.2.4.1 Additional details in a lower priority Contract Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Contract Document.

1.2.4.2 If the Contract Documents contain differing provisions on the same subject matter that cannot be reconciled by applying the rules in Section 1.2.3.1 or 1.2.3.2, then the provisions contained in the document of higher order of precedence shall prevail over the provisions contained in the document of lower order of precedence, unless LAWA, in its discretion, approves or directs otherwise in writing.

1.2.4.3 In the event of an irreconcilable conflict between specific provisions of the Contract Documents and any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a manual or publication within a lower priority Contract Document, the specific provision of the higher priority Contract Document shall prevail over said standards or other provisions established by reference, to the extent of the irreconcilable conflict.

1.2.4.4 In the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project, established by reference to a manual or publication within a Contract Document or set of Contract Documents with the same order of priority, the standard, criterion, requirement, condition, procedure, specification or other provision offering the higher quality, manner or method or performing will apply unless LAWA, in its discretion, approves or directs otherwise in writing.

1.2.4.5 In the event of a conflict among the standards, criteria, requirements, conditions, procedures, specifications or other provisions of the Technical Provisions and those established by reference to a manual or publication, the Technical Provisions shall prevail.

1.2.4.6 In all other respects, in the event of a conflict, ambiguity or inconsistency within the Contract Documents, general rules concerning construction of contracts in the State shall be applicable.

1.2.5 This Section 1.2 shall not apply to provisions in the Technical Provisions that are erroneous, create a potentially Unsafe Condition, or may be inconsistent with Good Industry Practice or applicable Law. Instead, such provisions shall be reconciled under Section 7.2.3.

1.3 Conflicts, Ambiguities or Inconsistency in Developer's Management Plans

In the event of any conflict between the Developer's Project Management Plan or O&M Management Plan and any of the Contract Documents, or if any provisions in Developer's Project Management Plan or O&M Management Plan are in conflict, ambiguous or inconsistent, Developer shall modify the Project Management Plan or O&M Management Plan, as applicable, to be consistent with the Contract Documents or cure the ambiguity or inconsistency in a manner satisfactory to LAWA.

1.4 Reference Documents

1.4.1 LAWA has provided the Reference Documents to Developer. Reference Documents are for information only, and are not mandatory or binding on Developer, except to the extent that the Contract Documents incorporate specific provisions of the Reference Documents by reference.

1.4.2 LAWA does not represent, warrant or guarantee the accuracy or completeness of the Reference Documents or the information contained in the Reference Documents or that such information is in conformity with the requirements of the Contract Documents, Governmental Approvals or Laws. LAWA shall not be responsible or liable in any respect for any causes of action, claims or Losses by any Developer-Related Entity by reason of any use of information, opinions or recommendations contained in, any conclusions Developer may draw from, or any action or forbearance in reliance on, the Reference Documents, except to the extent that the Contract Documents incorporate specific provisions of the Reference Documents by reference.

ARTICLE 2. NATURE OF AGREEMENT; TERM

2.1 Nature of Agreement

LAWA hereby grants to Developer the exclusive right, and Developer accepts the obligation and agrees, during the Term, to design, build, finance, operate and maintain the Project, including supply of the APM Operating System, performance of Renewal Work and handback of the Project at the end of the Term, and performance of all other activities relating to the foregoing not specifically retained by LAWA for the Project.

2.2 Right of Entry

Subject to Section 7.5 (Acquisition of Real Property), Developer-Related Entities shall have the right to enter onto the Site during the Term to carry out Developer's obligations under this Agreement. After the Termination Date, Developer-Related Entities may enter onto the Site to perform post-termination obligations either based on the right of entry granted in Section 17.6.3 (Relinquishment and Possession of Project) or on a separate right of entry provided by LAWA in writing. Developer shall comply with, and shall ensure that Developer-Related Entities comply with, all agreements, easements, rights of entry, covenants, conditions, restrictions and other instruments under which LAWA has received or will receive title or rights of entry or rights of access to the Site.

2.3 Term

This Agreement shall take effect on the Effective Date, and shall remain in effect until 30 years after the Financial Close Date, subject to the right of the Parties to terminate this Agreement earlier in accordance with the terms of this Agreement.

2.4 Title

2.4.1 General

The Parties acknowledge and agree that:

- (a) Developer is not the legal or equitable owner or lessee of the Site or the Project for any purpose;
- (b) Developer's rights under this Agreement are derived solely from its status as an independent contractor under this Agreement, and not as tenant, lessee, easement holder, optionee, lienor, mortgagee, purchaser or owner of any other interest in real property; and
- (c) The payments to be received by Developer under this Agreement are for services to be performed by Developer, and are not payments in the nature of rent, fees with respect to real property, or purchase price of real property.

2.4.2 Possessory Interest Tax

LAWA hereby advises Developer, in accordance with California Revenue and Taxation Code section 107.6, that, notwithstanding Section 2.4.1, any possessory interest created by this Agreement may be subject to property taxation, and that Developer may be subject to payment

of property taxes levied on such possessory interest. In the event that the County of Los Angeles seeks to impose a possessory interest tax on all, or any portion, of Developer's interest under this Agreement, the Site or the Project improvements (provided that the foregoing shall not include any interest that Developer may acquire under Section 7.5.3 (Temporary Interests in Property), then:

- (a) Developer shall notify LAWA and deliver copies of all documentation relating thereto as soon as practicable but not later than 3 Business Days following receipt of any such document;
- (b) Developer shall contest any such imposition if and as directed by LAWA, shall take all appeals available under applicable Law, and shall not pay any such tax. Developer shall cooperate and consult regularly with LAWA, and follow LAWA's directions, concerning tax protest and litigation strategy in any such circumstance;
- (c) LAWA reserves the right to directly make a payment of the tax liability on behalf of the Developer while continuing with the ongoing property tax appeal or litigation, as applicable. If a final, unappealable decision is made imposing the tax (or at any earlier stage, in LAWA's sole discretion), LAWA will pay any unpaid amount of the tax liability directly to the County of Los Angeles upon 60 days' written notice of same from Developer, unless the tax liability is assessed as a result of Developer's failure to comply with Developer's obligations under Sections 2.4.2 (a) or (b);
- (d) Developer shall submit to LAWA an invoice (in a format acceptable to LAWA) on a monthly basis in arrears for all reasonable costs and expenses incurred by Developer in opposing the imposition of any such possessory interest tax, together with detailed, supporting documentation evidencing same. Within 30 days of receipt of such invoice and supporting documentation, subject to Section 11.3 (Disputed Amounts), LAWA will reimburse Developer for such invoiced amount; and
- (e) LAWA reserves the right to direct Developer to assign to the City any appeals rights available under applicable Law in order for City to directly assume the property tax appeal or litigation. Any such assignment shall be effected through an agent's authorization or similar document acceptable to both Developer and the City.

2.4.3 Passage of Title

Title to all Vehicles, materials, equipment, tools and supplies furnished under the Contract Documents for incorporation into the Project or that are required for operation or maintenance of the Project shall pass to LAWA, free and clear of all liens or other charges of any kind or nature, upon incorporation into the Project or, for items that will not be incorporated into the Project, delivery to the Site.

2.4.4 Intellectual Property

Except for Developer Intellectual Property, title to any Intellectual Property to the extent made, conceived, prepared or reduced to practice as part of the Work, incorporated into the Project,

including any improvements, modifications, enhancements or derivative works to or of the LAWA Intellectual Property shall vest in LAWA at the earliest of creation, conception, preparation or reduction to practice.

2.4.5 Documents of Title

Developer shall furnish or execute all necessary documents of title within 90 days of receiving a written request from LAWA.

2.4.6 Care, Custody and Control Responsibilities

Passage of title to LAWA shall not affect Developer's care, custody and control responsibilities. Developer shall be responsible for care, custody and control of all components of the Project, including all materials, equipment, tools and supplies described in [Section 2.4.3](#), until the Termination Date, except Developer shall be responsible for care, custody and control of all elements of the Project that will be owned by Utility Owners or Authorities Having Jurisdiction until acceptance of such elements by the relevant Third Party.

2.5 Limitation on Developer's Rights

Notwithstanding anything to the contrary in the Contract Documents, Developer has no power or authority to make any commitments on LAWA's behalf or to execute agreements in the name of or on behalf of LAWA. Developer shall not enter into any agreement with any Governmental Entity, Utility Owner, property owner or other Third Party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or the Work that in any way purports to obligate LAWA, or states or implies that LAWA has an obligation, to the Third Party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the end of the Term, unless LAWA otherwise approves.

ARTICLE 3. FINANCIAL CLOSE

3.1 Requirements for Financial Close

3.1.1 Obligation to Achieve Financial Close

Subject to the Parties' respective rights to terminate this Agreement before Financial Close pursuant to Sections 3.6 (No-Fault Termination) and 3.7 (Developer's Failure to Achieve Financial Close), Developer shall endeavor to achieve Financial Close by the Expected Financial Close Date, but in any case shall achieve Financial Close by no later than the Financial Close Deadline.

3.1.2 Date of Financial Close

Subject to Section 3.4.2(a), Developer shall determine the date of Financial Close (the "**Scheduled Financial Close Date**"), which shall be no later than the Financial Close Deadline, and provide at least 30 days' prior notice to LAWA, of the date.

3.2 Financial Close Requirements and Deliverables

3.2.1 Delivery of Financing Agreements and Other Documents

3.2.1.1 Not later than 15 days before the Scheduled Financial Close Date (or Delayed Financial Close Date, as applicable), Developer shall deliver to LAWA, for LAWA's review and comment, substantially final drafts of the Initial Financing Documents, Direct Agreement and Equity Members Funding Agreements, together with a list of Key Contracts. LAWA will review the list of Key Contracts and may request, and Developer shall promptly provide to LAWA, substantially final drafts the Key Contracts.

3.2.1.2 LAWA shall provide any comments it may have on the documents provided by Developer pursuant to Section 3.2.1.1, or notify Developer that it has no comments no later than 10 days before the Scheduled Financial Close Date (or Delayed Financial Close Date, as applicable), which comments shall be based on whether the terms and conditions of such documents comply with the applicable provisions of this Agreement.

3.2.2 LAWA Deliverables

To support the Developer's achievement of Financial Close, LAWA shall:

- (a) on or before 20 days before the Scheduled Financial Close Date and in connection with the issuance of any bonds (including PABs):
 - (i) provide and authorize Developer to include, in the preliminary and final official statement for PABs or any other capital markets issuance with respect to the Project, LAWA's most recent audited financial statements together with economic information with respect to LAWA, and provide such documents and information as required to comply with disclosure requirements under applicable Laws;
 - (ii) agree to customary continuing disclosure as reasonably acceptable to LAWA and the underwriter of any Project Debt; and

- (iii) provide customary certificates and opinions as reasonably requested by Developer;
- (b) on or before three Business Days prior to the Scheduled Financial Close Date, deliver each of the following items to Developer:
 - (i) an executed legal opinion of the City's (in-house or external) counsel substantially in the form attached hereto as Exhibit 5D (Form of Opinion from LAWA's Legal Counsel); and
 - (ii) an executed certificate updating, as of the date of Financial Close, LAWA's representations and warranties set forth in Section 19.2 (LAWA Representations and Warranties);
- (c) take any required authorizing actions in a reasonably timely manner; and
- (d) use reasonable efforts to assist Developer in any Governmental Approvals as necessary for Financial Close.

3.2.3 Base Interest Rate Fluctuation and Credit Spread Risk Mitigation

3.2.3.1 If Developer has complied with the submittal requirements under Section 7.4 (Selection of Base Interest Rate(s)) of the ITP, LAWA will adjust the Base MaxAP to offset 100% of the impact of fluctuations (increases and decreases) in the Base Interest Rates used in Developer's Financial Proposal that have occurred during the Bank Debt Rate Protection Period and/or the Bond Rate Protection Period, as applicable.

3.2.3.2 If Developer has complied with the submittal requirements under Section 7.6 (Credit Spread Risk Mitigation) of the ITP, LAWA will adjust the Base MaxAP to offset a portion of the impact of fluctuations (increases and decreases) in the credit spreads for any Bond Financing proposed in the Financial Proposal that have occurred during the Bond Rate Protection Period. Subject to the limitations described in Section 7.6 of the ITP and set forth in Exhibit 5F (Base MaxAP Adjustment for Base Interest Rate Fluctuation and Credit Spread Risk Mitigation), the credit spread risk sharing between LAWA and Developer will be implemented on an 85:15 basis, with LAWA assuming 85% of the credit spread fluctuation risk (relative to the Baseline Credit Spreads) and Developer assuming 15% (the "**Credit Spread Risk Mitigation**"). LAWA will not provide Credit Spread Risk Mitigation with respect to private placements (except offerings under Rule 144A and Regulation S of the Securities Act of 1933), Bank Debt or any other debt facilities for which committed credit spreads or margins are available.

3.2.3.3 Adjustments to the Base MaxAP and Original Equity IRR related to Base Interest Rates fluctuations and Credit Spread Risk Mitigation, as applicable, shall be implemented in accordance with Exhibit 5F (Base MaxAP Adjustment for Base Interest Rate Fluctuation and Credit Spread Risk Mitigation).

3.2.4 Conditions Precedent to Financial Close

3.2.4.1 Financial Close will occur upon Developer's satisfaction of each of the following conditions:

- (a) Developer has delivered to LAWA, in form and substance similar to the drafts submitted to LAWA pursuant to Section 3.2.1.1 and including any changes made pursuant to LAWA's comments under Section 3.2.1.2, fully executed versions of:
 - (i) Initial Financing Documents;
 - (ii) Direct Agreement (except signature on behalf of LAWA);
 - (iii) Equity Members Funding Agreements; and
 - (iv) Key Contracts, together with an updated list of Key Contracts.
- (b) Developer has delivered a certification signed by its chief financial officer or equivalent officer, certifying to the following:
 - (i) Developer has satisfied all conditions precedent to the effectiveness of commitments of the Lenders under the Initial Financing Documents or to utilization by Developer of initial disbursements of Project Debt proceeds or such conditions have been waived if not satisfied, as applicable;
 - (ii) each of the documents delivered by Developer to LAWA pursuant to Section 3.2.4.1(a) is a true, complete and accurate copy of the original;
 - (iii) all representations and warranties of Developer under the Contract Documents remain true as of the Financial Close Date, except for any representation or warranty made as of a specified date, in which case such representation or warranty shall be true as of the specified date and Developer shall notify LAWA if any such representation is not true and correct as of the Financial Close Date; and
 - (iv) Developer has performed and complied with all covenants and obligations of Developer under the Contract Documents to have been performed or complied with as of the Financial Close Date.
- (c) Developer has delivered to LAWA, on or before one Business Day prior to the date of Financial Close, an interim Financial Model Update consistent with Section 4.7 (Financial Model and Financial Model Updates) that incorporates any proposed amendments to the Base Case Financial Model agreed to by the Parties on or before such date, including those agreed to pursuant to any preliminary calculations under Section 3.2.3 (Base Interest Rate Fluctuation and Credit Spread Risk Mitigation), together with the related Financial Modeling Data;
- (d) the Financial Model delivered pursuant to Section 3.2.4.1(c) reflects, to LAWA's reasonable satisfaction, for the period commencing on the Financial Close Date and ending on the Passenger Service Availability Date, a private capital investment comprised of Committed Investments and Project Debt greater than or equal to an aggregate amount of \$1,000,000,000;

- (e) Developer has delivered to LAWA one or more legal opinion(s) of Developer's (in-house or external) counsel substantially in the form attached hereto as Exhibit 5E (Form of Opinion from Developer's Legal Counsel); and
- (f) each Payment Bond and Performance Bond required under Section 10.2 (Payment and Performance Security) has been obtained, meets the requirements of Section 10.2 and is in full force and effect, and Developer has delivered to LAWA originals or copies, as required, of each Payment Bond and Performance Bond.

3.3 Post-Financial Close Requirements and Deliverables

3.3.1 Developer shall deliver to LAWA, on or before two Business Days following Financial Close, each of the items required under Section 4.7.4 (Replacement of Financial Model) replacing the Base Case Financial Model with a Financial Model Update that reflects all changes agreed by the Parties as of the date of Financial Close, as well as:

- (a) a Financial Model Update that includes any final revisions to the interim Financial Model Update (if any) delivered under Section 3.2.4.1(c) to incorporate the Base Interest Rates and credit spreads applicable on the date of Financial Close under the Initial Financing Agreements and any other agreed upon revisions;
- (b) a model audit report related to the proposed Financial Model Update in accordance with Section 4.7.5 (Financial Model Audits); and
- (c) a form of written amendment that (i) effects the replacement of the Financial Model in effect with the proposed Financial Model Update and (ii) addresses all other related amendments to this Agreement required as a result of the amended Financial Model, including any amendments to the definitions of Base MaxAP, Equity IRR and Key Ratios, as applicable.

3.3.2 Upon the satisfaction of each of the conditions precedent to Financial Close set forth in Section 3.2.4 (Conditions Precedent to Financial Close), and the delivery and mutual approval of the Financial Model Update and documents required by Section 3.3.1, LAWA and Developer shall enter into the amendment.

3.3.3 At Financial Close Developer shall, in accordance with Article 4 (Actions Upon Achievement of Financial Close) of the Early Works Agreement, reimburse LAWA for all amounts paid by LAWA to Developer pursuant to Article 5 (Compensation for Early Works) of the Early Works Agreement.

3.3.4 Developer shall establish and fund an account at Financial Close in the amount of \$50 million to be used by Developer, in accordance with Section 11.7, (Utility Adjustments Performed by Utility Owner) (the "**Utility Owners' Costs Account**").

3.3.5 LAWA shall return to Developer the Financial Close Security within two Business Days of reaching Financial Close.

3.4 Potential Adverse Events and Mitigation

3.4.1 The Parties acknowledge that:

- (a) due solely to the actions of the City or LAWA, the Effective Date may occur after the Financial Close Deadline; or
- (b) during the period between the Effective Date and the Scheduled Financial Close Date any one or more of the following adverse events may occur:
 - (i) an Affordability Event, with the understanding that an Affordability Event occurring before the Effective Date shall be deemed to occur the day after the Effective Date;
 - (ii) a determination by LAWA that one or more of the LAWA-Provided Approvals will not be obtained before the Scheduled Financial Close Date;
 - (iii) a LAWA-Provided Approval is invalidated;
 - (iv) a temporary restraining order, injunction or other form of legal order by a court prohibiting or that would have the effect of prohibiting prosecution of the Work and delaying the Critical Path;
 - (v) the occurrence and duration for over 30 days of exceptional circumstances in the financial markets in Europe, the United States of America, Japan/Asia Pacific and/or Canada that (A) results in material and substantial cessation of lending activity in national or relevant international capital or interbank markets; and (B) adversely affects access by Developer to such markets preventing Financial Close;
 - (vi) the occurrence of any event(s), development(s) or circumstance(s), including any material adverse change or the continuation or worsening of existing circumstance(s) or any combination thereof, that, in LAWA's opinion determined in LAWA's reasonable discretion, has (have) adversely affected or could adversely affect the international or national aviation market(s) and passenger volume at LAX; or
 - (vii) LAWA:
 - (A) provides substantial comments on the documents provided by Developer pursuant to Section 3.2.1.1 after the deadline specified in Section 3.2.1.2; or
 - (B) fails to, or notifies Developer that it is unable to, deliver any of the items described in Section 3.2.2 (LAWA Deliverables) by the deadline stated therein,

and such delay or failure is the sole cause for Developer's failure or inability to satisfy any of its obligations under Section 3.2.4.1 by the Financial Close Deadline or Delayed Financial Close Date, as applicable.

3.4.2 LAWA will promptly notify Developer if LAWA determines that an event described in Section 3.4.1 has occurred (“**Adverse Event Notice**”). LAWA may indicate in the Adverse Event Notice the potential impact of the event on the schedule for Financial Close. LAWA may elect, in its sole discretion, to consult and work with Developer to mitigate the actual or anticipated impacts of the occurrence of such event(s). LAWA will notify Developer of LAWA’s decision to either take mitigation actions, or to not take mitigation actions, within 15 days of the Adverse Event Notice. If LAWA elects mitigation, the Parties will negotiate in good faith to mutually agree on the actual mitigation actions to be undertaken by each Party. LAWA anticipates that the Parties may take one or more of the following actions to mitigate the impacts and for Developer to be able to achieve Financial Close:

- (a) LAWA may agree to delay Financial Close to a date not later than 120 days after the Scheduled Financial Close Date (the “**Delayed Financial Close Date**”), in which case, if the Delayed Financial Close Date is after the last day of the original Proposal Validity Period, then:
 - (i) Developer shall extend the validity of its Financial Close Security to the Delayed Financial Close Date;
 - (ii) LAWA shall compensate Developer for the cost of extending the validity of its Financial Close Security to the Delayed Financial Close Date within 45 days after receiving Developer’s request and supporting documentation for such payment;
 - (iii) Developer shall be entitled to:
 - (A) escalate its D&C Contract Amount to adjust for escalation of labor, materials and equipment costs, if any, based on the change in: (1) the average of the CCI published each month during the 12 months preceding the Scheduled Financial Close Date; and (2) the average of the CCI published each month during the 12 month period preceding the Financial Close Date; and
 - (B) receive any additional compensation that would be required to ensure that Developer would be in a “no better and no worse” condition, as described in Section 4.7.3.2; and
 - (iv) Developer shall prepare a Financial Model Update in accordance with Section 4.7.2 (Updates to the Financial Model);
- (b) LAWA may change the amount or timing of any Milestone Payment, provided that Developer shall be entitled to recoup from LAWA the reasonably incurred costs associated with such process, as agreed to by LAWA, acting reasonably;
- (c) LAWA may increase the Base MaxAP by an amount required to mitigate the relevant adverse event, including by an amount greater than 10%;
- (d) Developer may:
 - (i) conduct negotiations with any or all of Developer’s existing Lenders to increase, renew or extend their commitments, as applicable, provided

that, any material deviations from the terms and conditions of the original commitments in Developer's Financial Proposal may be accepted by Developer only with LAWA's approval; or

- (ii) conduct a timely, competitive process to obtain new financing commitments (a "**Project Debt Competition**") to supplement or replace any of the original financing commitments in Developer's Financial Proposal; in which case, any such negotiations or Project Debt Competition (A) shall be transparent and open to LAWA and its advisors and (B) shall have the key objective of obtaining debt financing for the Project at the lowest-cost commercially available (given the terms and conditions of the Contract Document) and on terms and conditions otherwise reasonably acceptable to Developer and LAWA;
- (e) upon the occurrence of an Affordability Event, Developer may elect to assume the cost and expense of that portion of the increase in the Base MaxAP that exceeds 10% of the Base MaxAP; and/or
- (f) either Party may take any other action mutually agreed upon by LAWA and Developer.

3.4.3 The Parties acknowledge that the objective of the mitigation actions described in Section 3.4.2 or otherwise proposed by LAWA, is to create circumstances allowing Financial Close to be achieved on terms that at a minimum will:

- (a) place Developer in a "no better and no worse" condition, as described in Section 4.7.3.2; and
- (b) allow Developer to satisfy its obligation to obtain all financing required for the Project on terms and conditions substantially similar to those in its Financial Proposal.

3.5 Permitted Excuses from Achieving Financial Close

3.5.1 Developer's obligation to achieve Financial Close by the Financial Close Deadline shall be excused if one more events described in Section 3.4.1 has occurred, provided that:

- (a) LAWA notifies Developer that it will not take any action described under Section 3.4.2;
- (b) the Parties undertake one or more actions under Section 3.4.2, but the effect of such actions does not leave Developer in a "no better and no worse" condition, as described in Section 4.7.3.2;
- (c) Developer has made good faith efforts to take the action described under Section 3.4.2(d) and Developer has diligently and timely conducted negotiations with existing Lenders and/or the Project Debt Competition but was unable to obtain sufficient financing to satisfy its obligations under this Agreement on terms and with conditions reasonably acceptable to the Parties; or

- (d) Developer has negotiated in good faith with LAWA to mutually agree on mitigation actions, but the Parties fail to agree on any action under Section 3.4.2.

3.5.2 Developer has no obligation to reach Financial Close during the period between delivery of an Adverse Event Notice and agreement of the Parties on the mitigation actions to be undertaken by each Party to achieve Financial Close.

3.6 No-Fault Termination

3.6.1 LAWA may terminate this Agreement pursuant to this Section 3.6.1 prior to Financial Close if LAWA determines in its sole discretion that termination is in LAWA's best interest.

3.6.2 Either Party may terminate this Agreement, without fault or penalty, upon 15 days prior notice to the other Party, if Financial Close is not achieved by the Financial Close Deadline or Delayed Financial Close Date, as applicable, and such failure is excused pursuant to Section 3.5 (Permitted Excuses from Achieving Financial Close).

3.6.3 With respect to a termination under Section 3.6.1 or Section 3.6.2:

- (a) LAWA shall return the Financial Close Security within two Business Days after termination; and
- (b) Developer shall be entitled to Termination Compensation of \$2,500,000. Such payment shall be the exclusive compensation payable by LAWA to Developer under this Agreement for a termination under Section 3.6.1 or Section 3.6.2.

3.6.4 Payment of Termination Compensation in accordance with Section 3.6.3(b) is conditioned upon LAWA's receipt from Developer, within 30 days of termination of the Agreement under Section 3.6.1 or Section 3.6.2, of an invoice requesting payment in the form set forth in Exhibit 18 (Section 3.6 Invoice). Such Termination Compensation shall be due and payable no later than 60 days following LAWA's receipt of such invoice.

3.6.5 Payment of Termination Compensation in accordance with Section 3.6.3(b) is in consideration for all work product (including, subject to the terms of Section 21.4 (Intellectual Property), any Intellectual Property) produced by Developer related to the Project, including (a) all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, plans, specifications and other graphic and visual aids generated or developed by or on behalf of Developer during the Project procurement process, including proposed Alternative Technical Concepts, aesthetic design concepts, interim design submittals, and other items communicated or submitted by or on behalf of Developer to LAWA during the Project procurement process or in connection with the Technical Proposal, and (b) all design, planning, materials, equipment, tools, supplies and other Work developed in connection with the Contract Documents.

3.7 Developer's Failure to Achieve Financial Close

3.7.1 If Financial Close is not achieved by the Financial Close Deadline or the Delayed Financial Close Date, as applicable, then, unless such failure is excused under Section 3.5 (Permitted Excuses from Achieving Financial Close), LAWA shall have the right to:

- (a) terminate this Agreement in its entirety by written notice to Developer with immediate effect; and/or
- (b) draw and retain the full amount of the Financial Close Security as LAWA's sole remedy against Developer under this Agreement for Developer's failure to achieve Financial Close; provided that, nothing herein shall prejudice any rights or remedies LAWA may have for other actions or breaches caused by Developer under this Agreement or the Early Works Agreement, if any.

3.7.2 LAWA's right to draw upon the Financial Close Security is not intended to constitute a penalty, but is intended to be, and shall constitute, liquidated damages to compensate LAWA for the cost of foregoing alternative opportunities and for other costs incurred by LAWA in reliance upon Developer's agreement to enter into the transactions contemplated hereby.

ARTICLE 4. DEVELOPER FINANCING; LENDERS' RIGHTS; REFINANCING; PRIVATE CAPITAL INVESTMENTS; FINANCIAL MODEL

4.1 Developer Right and Responsibility to Finance

4.1.1 Developer is solely responsible for obtaining and repaying, at its own cost and risk and without recourse to the City or LAWA, all financing necessary for the Work that is the Developer's responsibility under the Contract Documents. Developer shall take all appropriate action to obtain the Project Debt and Committed Investment as described in the Financial Proposal on or before the Financial Close Deadline. If the Financial Proposal includes PABs or any other tax-exempt financing, Developer bears all risks relating to securing a Conduit Issuer, receiving the necessary approvals and compliance with applicable federal requirements.

4.1.2 Developer may grant security interests in or assign the entire Developer's Interest (but not a portion of such interest) to Lenders for purposes of securing the Project Debt, subject to the terms of the Contract Documents. Developer shall not pledge or encumber the Developer's Interest, or any portion of such interest, to secure any indebtedness of any Person other than (a) Developer, (b) any special purpose entity that owns Developer but no other assets and has purposes and powers limited to the Project and Work, (c) a special purpose entity subsidiary owned by either Developer or an entity described in clause (b) of this Section 4.1.2, or (d) a Conduit Issuer.

4.1.3 Except as otherwise provided in Section 3.2.3 (Base Interest Rate Fluctuation and Credit Spread Risk Mitigation), Developer bears all risk of any changes in the interest rate, payment provisions, collateral requirements, financing charges, breakage charges or the other terms of Project Debt and Committed Investment.

4.1.4 Notwithstanding the foreclosure or other enforcement of any security interest created by a Security Document, Developer shall remain liable to LAWA for the payment of all sums owing to LAWA under this Agreement and the performance and observance of all of Developer's covenants and obligations under the Contract Documents.

4.2 No City or LAWA Responsibility for Project Debt

4.2.1 All Project Debt or other obligations issued or incurred by a Developer-Related Entity in connection with this Agreement or the Project shall be issued or incurred only in the name of a Developer-Related Entity. Except as otherwise expressly provided in this Agreement, neither the City nor LAWA shall have any obligation to pay debt service on any Project Debt or any other debt issued or incurred by a Developer-Related Entity. Neither the City nor LAWA shall have any obligation to join in, execute or guarantee any note or other evidence of indebtedness of a Developer-Related Entity, any other Financing Agreement or any Security Document (other than the Direct Agreement). Project Debt does not constitute indebtedness, or a pledge of the faith and credit, of LAWA, the City or any department of the City. The Lenders, individually or collectively, have no right to have taxes levied or compel appropriations by the Board of Airport Commissioners, the Los Angeles City Council, or any department of the City for the payment of any or all of the amount of such principal of, premium, if any, and interest on Project Debt.

4.2.2 Except for a violation by LAWA of its express obligations to Lenders in any Direct Agreement, no Lender is entitled to seek any damages or other amounts from the City or LAWA or any other agency, instrumentality or department of the City, whether for Project Debt or any other amount.

4.2.3 Section 4.2.2 does not affect LAWA's liability to Developer under Article 17 (Termination) for Termination Compensation that is measured in whole or in part by reference to outstanding Project Debt.

4.2.4 LAWA shall have no obligation to any Lender under the Contract Documents, except to the extent of any express obligations of LAWA to Lenders under any Direct Agreement or in any other instrument or agreement signed by LAWA in favor of such Lender or Collateral Agent. This Section 4.2.4 does not preclude Lender enforcement of this Agreement against LAWA where the Lender has succeeded to the Developer's Interest, whether by way of assignment or subrogation.

4.3 Lenders' Rights

4.3.1 This Agreement is exclusively for the benefit of LAWA and Developer, and shall not provide any Lender with any remedy, claim, liability, reimbursement, cause of action or other right, except for the rights of any Lender as provided in any Direct Agreement.

4.3.2 The rights of LAWA under Article 16 (Default; Remedies) and Article 17 (Termination) are subject to the terms of any Direct Agreement.

4.4 Refinancing

4.4.1 Right of Refinancing

LAWA's prior written approval is required for all Refinancings other than Exempt Refinancings and Rescue Refinancings. LAWA shall have no obligations or liabilities in connection with any Refinancing other than its obligations relating to Lender's rights in any Direct Agreement. If the Refinancing is with a new Lender, the new Lender may be added to an existing Direct Agreement or LAWA shall enter into a new Direct Agreement with the new Lender, if such Lender so elects.

4.4.2 Notice of Refinancing

4.4.2.1 At least 90 days before the proposed date for closing any proposed Refinancing (except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing), Developer shall submit to LAWA a summary of the proposed Refinancing, together with a schedule setting forth the various activities, each with schedule durations, to be accomplished from commencement through the close of the proposed Refinancing.

4.4.2.2 At least 45 days before the proposed date for closing any Refinancing (except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing), Developer shall:

- (a) provide draft proposed Financing Agreements and Security Documents (or term sheets therefor, if drafts are not then available), available Refinancing Data, and any other submittals required by Exhibit 5C (Calculation of Refinancing Gain); and
- (b) if applicable, provide notice to LAWA setting out the facts to support the basis for characterization of the transaction as an Exempt Refinancing or Rescue Refinancing.

4.4.2.3 Within 15 days after receipt of the materials required under Section 4.4.2.2, LAWA will provide notice to Developer of LAWA's determinations regarding the following:

- (a) whether the proposed Refinancing is an Exempt Refinancing or Rescue Refinancing;
- (b) if the proposed Refinancing is neither an Exempt Refinancing or Rescue Refinancing, whether to approve or disapprove the proposed Refinancing; and
- (c) if LAWA will approve the proposed Refinancing, whether the Refinancing Gain requirements apply.

4.4.2.4 LAWA's failure to deliver to Developer notice of the determinations and selection within the time period set forth in Section 4.4.2.3 shall not prejudice LAWA's right to disapprove the proposed Refinancing, to receive any portion of Refinancing Gain, or its selection of the means for payment of such portion.

4.4.2.5 At least seven days before the proposed date for closing the Refinancing, Developer shall deliver to LAWA substantially final drafts of the proposed Financing Agreements and Security Documents, together with updated versions of the Refinancing Data.

4.4.2.6 Within five Business Days after close of the Refinancing, Developer shall deliver to LAWA copies of all signed Financing Agreements and Security Documents in connection with the Refinancing, and the final Refinancing Data.

4.4.2.7 Within 10 Business Days after close of the Refinancing, LAWA and Developer shall meet and confer to agree upon the final calculation of the Refinancing Gain in accordance with Section 4.5 (Refinancing Gain). Once the final calculation is made, Developer shall pay LAWA its portion of the Refinancing Gain in accordance with LAWA's selected method of payment. If there is any dispute regarding the amount owing, Developer shall pay the undisputed amount to LAWA and the amount in dispute shall be subject to resolution under the Dispute Resolution Procedures.

4.4.3 Refinancing Limitations, Requirements and Conditions

4.4.3.1 If LAWA renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering a consent and estoppel certificate under any Direct Agreement, then concurrently with close of the Refinancing, and as a condition precedent to Developer's right to close the Refinancing, Developer shall reimburse LAWA all of LAWA's Recoverable Costs incurred in connection with the Refinancing. LAWA will deliver to Developer a written invoice and demand before the scheduled date of closing. If for any reason the Refinancing does not close, Developer shall reimburse LAWA's Recoverable Costs in connection with the proposed Refinancing within 10 days after LAWA delivers to Developer a written invoice and demand for such costs.

4.4.3.2 Developer shall bear all risks for any Refinancing that negatively affects its Equity IRR, Key Ratios or financial performance.

4.5 Refinancing Gain

4.5.1 LAWA shall be entitled to receive 50% of any Refinancing Gain attributable to any Refinancing other than an Exempt Refinancing. The Refinancing Gain amount shall be, calculated in accordance with Exhibit 5C (Calculation of Refinancing Gain).

4.5.2 Commencing at least 40 days before the proposed date for closing any Refinancing (except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing), the Parties will negotiate in good faith to determine the method by which LAWA will receive its portion of the Refinancing Gain, if applicable, which includes one or a combination of the following methods:

- (a) a single payment on or about the date of the Refinancing in an amount less than or equal to any Distribution made on or about the date of Refinancing; or
- (b) a credit or payment by Developer to LAWA that effectively reduces the Availability Payments over the remainder of the Term.

4.6 Private Capital Investment Requirements

Throughout the period between the date of Financial Close and the Passenger Service Availability Date, Developer shall maintain a private capital investment in the Project comprised of Committed Investments and drawn and undrawn committed Project Debt that equal an aggregate amount of not less than \$1,000,000,000.

4.7 Financial Model and Financial Model Updates

4.7.1 Relevant Events

4.7.1.1 Relevant Event means any of the following events:

- (a) the implementation at Financial Close of the Base Interest Rate fluctuation and Credit Spread Risk Mitigation process pursuant to Section 3.2.3 (Base Interest Rate Fluctuation and Credit Spread Risk Mitigation);
- (b) the implementation of any mitigation actions set forth in Section 3.4.2;
- (c) a Compensation Event for which LAWA owes (i) Incremental Costs or (ii) Delayed Payment Compensation pursuant to Sections 14.1.4 (Incremental Costs) and 14.1.5 (Delayed Payment Compensation), respectively, which LAWA has elected to pay as an adjustment to the Availability Payments over the Term;
- (d) an event for which LAWA is entitled to compensation from Developer pursuant to Section 16.2 (LAWA Remedies for Developer Default);
- (e) a Refinancing resulting in a Refinancing Gain to which LAWA is entitled to a share pursuant to Section 4.5 (Refinancing Gain); and

- (f) any amendments to the Contract Documents that the Parties agree has a material effect on the Financial Model, including any amendments agreed to by the Parties between the Financial Proposal Due Date and Financial Close.

4.7.1.2 Whenever a Relevant Event occurs (except as otherwise provided in this Agreement or where the Parties mutually agree otherwise), the financial consequence shall be determined in accordance with this Section 4.7.

4.7.2 Updates to the Financial Model

4.7.2.1 In connection with any Relevant Event that entitles either Party to the payment of any amount, Developer may, in consultation with LAWA, prepare an updated Financial Model in accordance with this Section 4.7.2 (each, a “**Financial Model Update**”) to reflect the financial impacts of such Relevant Event and calculate the amount due to either Party as a result of the Relevant Event. Developer may address more than one Relevant Event within a single Financial Model Update, provided that LAWA may request interim versions of a Financial Model Update that address the impact of only a single Relevant Event. No Financial Model Update shall have any effect on the rights and obligations of the Parties under this Agreement until both Parties have agreed in writing to accept it as an amendment to this Agreement pursuant to Section 4.7.4 (Replacement of Financial Model).

4.7.2.2 A Financial Model Update:

- (a) may incorporate only the following revisions:
 - (i) changes to Developer’s cash revenues and expenses that arise directly from the Relevant Event; and
 - (ii) consequential changes to the Project Debt draw down schedule, funding and release of reserves, financing costs, debt service schedule and amounts, Equity Investment draw down schedule and Developer’s Distributions schedule and amounts.
- (b) may not:
 - (i) incorporate other information or assumptions based on Developer’s actual Project Financial Performance, except as permitted by Exhibit 5C (Calculation of Refinancing Gain) for a Financial Model Update related to a Refinancing, or
 - (ii) generally update projections through the end of the Term based on current market conditions.

4.7.2.3 Developer may amend the logic or formulae incorporated in a Financial Model Update to the extent necessary to permit adjustments to the Financial Model in accordance with this Section 4.7. However, if any amendment is to be made to the logic or formulae in a Financial Model Update, the Key Ratios in the Financial Model Update must be maintained at levels that are neither lower nor higher than the Key Ratios existing in the Financial Model then in effect, and the difference in the Equity IRR after and immediately before making such amendment may not be greater than one basis point (being 0.01%) or as may be agreed upon by the Parties.

4.7.2.4 Developer shall provide LAWA with access, on an Open Book Basis, to the set of updated and revised assumptions and other data that comprise or are included in any Financial Model Update. Developer shall also provide a reconciliation and explanation of all the adjustments applied in the Financial Model Update. LAWA may challenge the validity, accuracy or reasonableness of any Financial Model Update or any portion thereof and may require Developer to correct any detected errors in the Financial Model Update or Financial Model, as applicable.

4.7.3 No Better and No Worse

4.7.3.1 Where the Developer is entitled to adjustments to the payments between the Parties relating to mitigating actions under Section 3.4.2 and/or Compensation Event(s) under Sections 14.1.5 and 14.3.2, the proposed adjustments shall be calculated by solving the Financial Model Update so that the Developer is left in a “no better and no worse” financial position under the Financial Model Update relative to its financial position under the Financial Model then in effect under this Agreement.

4.7.3.2 For the purposes of this Agreement, Developer shall be deemed to be in a “no better and no worse” financial position based on the following:

- (a) the Key Ratios set forth in the Financial Model Update are equal to the Key Ratios set forth in the Financial Model then in effect;
- (b) the Equity IRR set forth in the Financial Model Update is substantially equal to the Equity IRR set forth in the Financial Model then in effect (i.e., the difference, if any, is not greater than one basis point (being 0.01%); and
- (c) the Relevant Event does not result in a material adverse or beneficial effect on Developer's ability to comply with and perform its obligations and exercise its rights under the Contract Documents and the Financing Documents.

4.7.4 Replacement of Financial Model

4.7.4.1 Following mutual agreement by Developer and LAWA on interim versions of a Financial Model Update, Developer shall deliver to LAWA, in form and substance reasonably acceptable to LAWA:

- (a) the final version of the Financial Model Update and the related amended Financial Modeling Data, in the same form as the versions delivered pursuant to Section 3.3 (Post-Financial Close Requirements and Deliverables) or in such other form as may be agreed upon by the Parties;
- (b) an updated model audit report related to such Financial Model Update in accordance with Section 4.7.5 (Financial Model Audits); and
- (c) a form of written amendment that (i) effects the replacement of the then current Financial Model then in effect with the proposed Financial Model Update and (ii) addresses all other amendments to this Agreement that may be required as a result of the Relevant Event and the amended Financial Model, including any required amendments to the definitions of Base MaxAP, Equity IRR and Key Ratios.

4.7.4.2 Upon approval by LAWA of the materials provided under Section 4.7.4.1 and execution of the written amendment by the Parties, the Financial Model Update shall become the Financial Model for the purposes of this Agreement until further amended, as applicable. Each Financial Model in effect under this Agreement shall be assigned an exclusive identification number, using chronological sequencing.

4.7.5 Financial Model Audits

4.7.5.1 Any model audit report delivered to LAWA pursuant to Sections 3.3 (Post-Financial Close Requirements and Deliverables) and 4.7 (Financial Model and Financial Model Updates) shall be prepared by an independent audit firm with a nationally recognized reputation. The cost of a model audit report shall be paid solely by LAWA if it is prepared in connection with a Financial Model Update related to a Relevant Event described in Section 4.7.1.1(c) or 4.7.1.1(f) when an amendment is proposed only by LAWA. The cost of any other model audit report required hereunder shall be paid solely by Developer.

4.7.5.2 Developer shall bear the entire risk of any errors in or omissions contained in the Financial Model and shall not be entitled to any compensation or other relief from LAWA in relation to any loss or damage that it suffers as a result of such error or omission.

4.8 Escrow of Financial Model and Cost and Pricing Data

4.8.1 LAWA and Developer shall jointly deposit the Base Case Financial Model and Cost and Pricing Data into an escrow to be established at a commercial business located within 10 miles of LAX or another location approved by LAWA, and on terms and conditions reasonably acceptable to both Parties.

4.8.2 The Parties shall deposit the Base Case Financial Model into escrow within 10 days after the Effective Date. Replacement Financial Models shall be deposited within 10 days after the Parties have executed and delivered, in accordance with Section 4.7.4 (Replacement of Financial Model), the amendment through which a revised Financial Model is deemed effective and a part of this Agreement. The Base Case Financial Model and any Financial Model adopted by the Parties after the Effective Date shall be submitted in macro-enabled excel format by email, on electronic storage media, or by such other method and medium as the Parties may agree in writing, and shall be clearly marked with Developer's name, date of submittal, contract number, identification number and the words, "Financial Model for Escrow".

4.8.3 The Parties shall deposit the Cost and Pricing Data submitted to LAWA pursuant to Section 7.10 (Cost and Pricing Data) of the ITP into escrow within 10 days after the Effective Date. The Cost and Pricing Data shall be submitted in the same format as the original submittal, with all materials clearly marked with Developer's name, date of submittal, contract number, identification number and the words, "Cost and Pricing Data for Escrow." Concurrently with approval of each Change Order or other amendment to the Contract Documents, Developer shall deposit one copy of all documentary information used by Developer in connection with pricing for the Change Order or other amendment, including quotations from Contractors.

4.8.4 Developer represents and warrants that:

- (a) the material initially delivered into escrow constitutes the Base Case Financial Model and Cost and Pricing Data provided in connection with the Proposal and

pursuant to Section 7.10 (Cost and Pricing Data) of the ITP, an authorized officer of Developer has personally examined the contents of the electronic file and/or electronic storage media, as applicable, and they are complete and meet the requirements of Section 7.10 of the ITP and Appendix D (Financial Proposal Requirements and Submittal Instructions) to the ITP; and

- (b) the Cost and Pricing Data constitutes all of the information used by Developer in determining the cost of the D&C Work, O&M Work and Renewal Work in preparation of the Proposal and, unless LAWA agrees or directs otherwise, Developer shall not use any other Proposal preparation information in any request for a Change Order.

4.8.5 Whenever Developer makes an additional deposit of any replacement Financial Models or Cost and Pricing Data into escrow, Developer shall certify to LAWA in writing at the time of deposit that: (a) the material deposited into escrow constitutes the true replacement Financial Models or Cost and Pricing Data, as applicable; (b) an authorized officer of Developer has personally examined the contents of the deposit; and (c) the deposit is complete.

4.8.6 LAWA may conduct a review of the Cost and Pricing Data in accordance with the procedure set forth in Section 4.8.9 to determine whether it is complete. In the event LAWA determines that any Cost and Pricing Data is missing, LAWA may request that Developer submit the missing data and Developer shall provide such Cost and Pricing Data within three Business Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary information, and added to the escrowed Cost and Pricing Data. Developer shall have no right to add documents to the Cost and Pricing Data except as otherwise provided in this Section 4.8.

4.8.7 If LAWA elects not to be a signatory party to the escrow agreement establishing the escrow, then LAWA shall be a named, intended third-party beneficiary of the escrow agreement and the 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 the escrow agreement, or waive any provision thereof, without LAWA's prior written approval in its sole discretion. The escrow agreement shall include provision for resignation or termination of the escrow agent and appointment of a successor escrow agent. Provisions in the escrow agreement for access to the escrowed materials shall be consistent with this Section 4.8.

4.8.8 Each of LAWA and Developer shall have the right to examine, through one or more designated representatives, any and all components of the escrowed material at any time during the escrow agent's normal business hours. The Party undertaking an examination need not have or state a specific reason to examine such material. Without limiting the foregoing, the Parties recognize that examination of the escrowed material may assist in the negotiation or determination of MaxAP adjustments, compensation, damages, extensions of time, Change Orders, LAWA Changes and Refinancing Gain calculations, or may assist in the potential resolution or settlement of Claims or Disputes.

4.8.9 LAWA will notify Developer in writing at least two Business Days in advance of LAWA's examination of escrowed material, and shall allow Developer to be present at the examination. LAWA may make or retain copies of escrowed material, subject to terms reasonably necessary to protect the confidentiality and proprietary nature of the contents, as may be agreed upon by the Parties and subject to applicable Laws.

4.8.10 The escrowed material is, and shall remain, the property of Developer or its Contractors.

4.8.11 Developer agrees that the Financial Model and Cost and Pricing Data are not part of the Contract Documents and that nothing in the Financial Model or Cost and Pricing Data shall change or modify the Contract Documents.

4.8.12 Either Party may introduce escrowed material into evidence in accordance with the Dispute Resolution Procedures. The Parties shall promptly abide by any request from the court or other dispute resolver to receive, review and utilize the Financial Model and Cost and Pricing Data to assist the dispute resolver in its deliberations.

4.8.13 The 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 retrieve and/or discard materials therein from time to time.

4.8.14 Developer shall be responsible for the escrow agent's fees and costs. Developer shall not be entitled to any additional payment for compilation of materials to be deposited into escrow or any other Developer expenses for complying with this Section 4.8.

ARTICLE 5. SUBMITTALS; MANAGEMENT SYSTEMS AND OVERSIGHT

5.1 Submittal Review Terms and Procedures

5.1.1 Terms and Procedures

Developer shall comply with the terms and procedures for Submittals review set forth in Exhibit 11 (Submittals Review Process).

5.1.2 Conflicting Provisions

Exhibit 11 (Submittals Review Process) sets forth uniform terms and procedures for Submittals. In the event of any conflict between the provisions of Exhibit 11 and any other provisions of the Contract Documents, Project Management Plan or O&M Management Plan concerning procedures with respect to submission, review, comment, approval, consent, determination, decision or other actions with respect to Submittals, Exhibit 11 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes Exhibit 11.

5.1.3 Limitations on Developer's Right to Rely

5.1.3.1 No action or failure to take action by or on behalf of LAWA relating to Oversight (including review and approval of the Project Management Plan) or other act or omission of LAWA or the Independent Engineer shall:

- (a) constitute an approval or acceptance by LAWA of Developer's performance of its obligations in accordance with the Contract Documents;
- (b) alter, waive, diminish or otherwise prejudice any rights, remedies or powers that LAWA has under the Contract Documents or otherwise;
- (c) limit Developer's obligation to perform the Work in accordance with the Contract Documents; or
- (d) affect Developer's liabilities and obligations to fulfill the requirements of the Contract Documents (including its indemnity obligations).

5.1.3.2 Developer acknowledges and agrees that review, comment, exception, objection, rejection, approval, disapproval, acceptance, concurrence, certification or failure to conduct any such activity by LAWA:

- (a) is solely for the benefit and protection of LAWA;
- (b) does not relieve Developer of its responsibility for the selection and the competent performance of all Developer-Related Entities;
- (c) does not relieve Developer from compliance with the requirements of the Contract Documents or create or impose upon LAWA any duty or obligation toward Developer to cause it to fulfill the requirements of the Contract Documents;

- (d) shall not be deemed or construed as any kind of warranty, express or implied, by LAWA;
- (e) may not be relied upon by Developer or used as evidence in determining whether Developer has fulfilled the requirements of the Contract Documents;
- (f) shall not relieve Developer from liability for, and responsibility to replace, Nonconforming Work (including Work based on Design Documents to the extent that they include a change, deviation, modification, alteration or exception from the Technical Provisions not approved as a Deviation) and to cure Developer Defaults;
- (g) shall not be deemed or construed as any assumption of risk by LAWA as to design, construction, equipping, supply, operations, maintenance, performance or quality of the Project or performance of the Work; and
- (h) may not be asserted by Developer against LAWA as a legal or equitable defense to, or as a waiver of or relief from, Developer's obligation to fulfill the requirements of the Contract Documents.

5.1.3.3 Notwithstanding the provisions of Sections 5.1.3.1 and 5.1.3.2, Developer shall be entitled to rely on LAWA's written approval of specific Deviations under Section 12.4 (Deviations).

5.1.3.4 LAWA's approval of design documents for construction as described in the Contract Documents shall constitute approval of the design by LAWA for purposes of Government Code section 830.6, but shall not be deemed to relieve Developer of liability for the design.

5.2 Project Management Plan; O&M Management Plan

5.2.1 Developer shall develop the Project Management Plan and its component parts, plans and other documentation in accordance with the requirements in Part 2A, Section 1.1 (Project Management Plan (PMP)) of the Technical Provisions and Good Industry Practice including those requirements applicable to Quality Assurance and Quality Control.

5.2.2 Developer shall develop the O&M Management Plan and its management plans, manuals, policies and procedures in accordance with the requirements in Part 2C, Section 3.1.1 (APM System Operations and Maintenance Management Plan) of the Technical Provisions and Good Industry Practice including those for Quality Assurance and Quality Control.

5.2.3 Developer shall submit to LAWA, in accordance with the procedures and timeline described in the Technical Provisions, each component part, plan and other documentation of the Project Management Plan and O&M Management Plan, and any proposed changes or additions to or revisions of any such component part, plan or other documentation.

5.2.4 Developer shall not commence any aspect of the D&C Work before approval of the relevant component parts, plans and other documentation of the Project Management Plan applicable to such D&C Work. Developer shall not commence any aspect of the O&M Work before approval of the relevant component parts, plans and other documentation of the O&M Management Plan applicable to such O&M Work.

5.2.5 If any part, plan or other documentation of the Project Management Plan or O&M Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document, then all such referenced or incorporated materials shall be submitted to LAWA for review, marked to identify relevant provisions; provided that, for any such documents which are publicly available, Developer may provide a statement regarding how to obtain a copy, and detailed information regarding relevant provisions, in lieu of submitting a copy.

5.2.6 Developer shall monitor the Work and prescribe times for internal audits of the Project Management Plan and O&M Management Plan, and shall carry out such internal audits at the times prescribed.

5.2.7 Developer shall cause all Contractors to comply with applicable requirements of the Project Management Plan and O&M Management Plan.

5.3 Quality Assurance, Quality Control, Generally

Developer is responsible for all Quality Assurance and Quality Control activities (including self-monitoring activities) necessary to manage the Project. Developer shall undertake all aspects of Quality Assurance and Quality Control for the Project and the Work in accordance with the Project Management Plan, the O&M Management Plan, the Technical Provisions, other applicable provisions of the Contract Documents, Good Industry Practice and applicable Law.

5.4 Oversight, Inspection and Testing

5.4.1 LAWA shall have the right at all times to conduct Oversight as provided in this Section 5.4 and Part 2A, Section 4.4 (Quality Oversight) of the Technical Provisions. Such Oversight may include assessments regarding compliance with the Contract Documents, Project Management Plan, the O&M Management Plan and requirements of applicable Governmental Entities and applicable Law. LAWA may designate any Person or Persons to carry out any Oversight on LAWA's behalf.

5.4.2 LAWA's Oversight rights include, at LAWA's option, the following:

- (a) monitoring and auditing Developer and its Books and Records to determine compliance with requirements of the Contract Documents, the Project Management Plan and O&M Management Plan, including (i) audit review of compliance with quality procedures and processes under Developer's Design Quality Plan, Developer's Construction Quality Plan and O&M Quality Management Plan, and (ii) audit review of Design Documents, Construction Documents, field work plans, land surveys, mapping, other data collection tasks, other Submittals and other Books and Records;
- (b) conducting audits of all design and pre-design activities for the Project as needed to ascertain and evaluate Developer's design quality and safety control processes, including (i) review of engineering calculations, engineering reports, and findings, (ii) review of the work of Developer's environmental compliance personnel with the Environmental Compliance Plan, and (iii) review of certifications that Developer's Quality Control checks of final Construction Documents have been performed and documented, and that the Construction Documents conform to the requirements of the Contract Documents;

- (c) conducting audits of all construction-related activities for the Project as needed to audit Developer's construction quality and safety control processes, including (i) auditing the services of Developer's accredited laboratories and associated testing devices and equipment, (ii) reviewing Developer's construction quality procedures, including conducting field monitoring and inspections as needed for audit purposes of construction activities, materials, and system components, as indicated in the Contract Documents, (iii) auditing Developer's records of materials, materials tests, materials certifications, and performance tests for Project systems, (iv) reviewing and investigating Project progress, Project quality, Deviations, Defects, and repair and replacement of Nonconforming Work, and (v) conducting field monitoring and inspections;
- (d) conducting inspection and testing of materials or software, including witnessing factory tests, off-site lab tests, and first article inspection of manufactured items to verify Developer's compliance with testing frequencies and requirements, including (i) performance and acceptance testing, in the Contract Documents, the Project Management Plan and O&M Management Plan, (ii) the accuracy of the tests, inspections and audits performed in accordance with Developer's Design Quality Plan and Developer's Construction Quality Plan, and (iii) compliance of materials incorporated into the Project with the applicable requirements, conditions and standards of the Contract Documents, Governmental Approvals, the Project Management Plan, the O&M Management Plan, O&M Quality Management Plan and applicable Law;
- (e) accompanying Developer on physical inspections associated with Developer's Performance Inspections, conducting its own performance inspections, assessing and scoring Developer's O&M Records, and assessing and rating the condition of elements;
- (f) attending and witnessing Developer's other on-site and off-site tests and inspections, including system start-up and acceptance tests and inspections, subject to the obligation to observe all applicable Safety Standards and requirements;
- (g) reviewing Developer's certification of Record Documents and surveys;
- (h) investigating, analyzing and reporting on Safety Compliance and performance of Safety Compliance Orders; and
- (i) monitoring and auditing Developer's detection, reporting, response times and time to respond to and rectify breaches and failures for which Noncompliance Points may be assessed in accordance with Article 15 (Deductions and Noncompliance Points) and Exhibit 4 (Payment Mechanism).

5.4.3 LAWA also has the right, but not the obligation, to conduct "over-the-shoulder" reviews of Design Documents and other Submittals.

5.4.4 Nothing in the Contract Documents shall preclude, and Developer shall not interfere with, any review, inspection or oversight of Submittals or of Work that any Authority Having Jurisdiction may desire to conduct in accordance with its agreements with LAWA or applicable Law.

5.5 Testing and Test Results

5.5.1 All tests shall be carried out in accordance with Part 2A, Section 4.1.9 (Inspection and Testing) of the Technical Provisions, this Section 5.5 and all other applicable provisions of and the Contract Documents.

5.5.2 Developer shall develop a test recording system that permits ready retrieval of all test readings and shall provide information relating to tests proposed, test methodology and Test Reports to LAWA on request.

5.5.3 LAWA may attend and witness any tests and verifications to be conducted with respect to the Project. Developer shall provide to LAWA all test results and reports (which shall be provided in electronic format in accordance with the Technical Provisions) within 10 Business Days after Developer or its Contractor receives them. With respect to continuous testing operations (such as concrete quality, structural concrete strengths, aggregate quality, compaction tests and material quality), Developer shall provide to LAWA at regular intervals (at least weekly unless otherwise agreed) test summary sheets and statistical analyses indicating strength and quality trends.

5.5.4 Developer shall give LAWA timely advance notice (not less than 10 Business Days) of the date and specific location of such tests.

5.5.5 LAWA's Authorized Representative and any other designee may attend any test and will give advance notice (not less than one Business Day) of their intent to attend the test. Any materials or plant that fail(s) such tests shall be rejected.

5.5.6 Developer acknowledges that, where Developer's Work impacts a Utility or an element subject to the jurisdiction of an Authority Having Jurisdiction, then the affected Utility Owner or Authority Having Jurisdiction, as applicable, will have the same rights as LAWA under this Section 5.5, subject to the same obligations that apply to LAWA under Section 6.7.1.4.

5.6 Meetings

5.6.1 Developer shall conduct regular progress meetings with LAWA, in accordance with Part 2A, Section 2.0 (Project Meetings) of the Technical Provisions, during the course of design and construction, including any design and construction occurring during the O&M Period, and during the performance of the O&M Work. At LAWA's request, Developer shall require the Engineer of Record and Contractors responsible for or affected by such Work to attend the progress meetings. Developer shall provide LAWA and LAWA's designated representatives with notice and an agenda for such meetings at least five Business Days in advance of each meeting. LAWA and its designated representatives are authorized to attend all such meetings and are permitted to raise any questions, concerns or opinions without restriction.

5.6.2 The Parties shall hold any other meetings, at such times, frequency and locations, as applicable, stated in the Technical Provisions.

5.6.3 LAWA and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve issues relating to the Work.

5.6.4 Developer shall schedule all meetings with LAWA at a date, time and place reasonably convenient to both Parties and, except in the case of urgency, shall provide LAWA with notice and a meeting agenda at least five Business Days in advance of each meeting.

5.7 Reporting

5.7.1 Relating to the Work

5.7.1.1 Developer shall submit all reports relating to the Work in the form, with the content and within the time required under the Contract Documents.

5.7.1.2 Developer shall make available to LAWA information relating to the status of the Work, including non-proprietary information relating to the design, engineering and construction, estoppel certificates, and such other matters as LAWA may reasonably request in accordance with the Technical Provisions.

5.7.2 Financial Reporting

5.7.2.1 On the first anniversary of the Effective Date and on every subsequent anniversary thereof during the Term, Developer shall deliver to LAWA certified copies of (a) Developer's most recent annual audited financial statements and (b) any other reporting and notifications provided to Lenders regarding material events (including any draws on Developer's debt service reserve account) under the Financing Documents.

5.7.2.2 From the Effective Date until the Final Completion Date, Developer shall deliver to LAWA, on a monthly basis, certified copies of (i) Developer's draw requests to Lenders (including corresponding payment applications by the APM Fixed Facilities Contractor, the APM Fixed Facilities Designer and the APM Operating System Supplier to Developer), and (ii) the LTA's reports, which shall clearly state the D&C Percentage as of the date of the report, and the invoices approved by the LTA in connection with the foregoing, in each case within two Business Days following delivery or receipt, as applicable, by Developer of the relevant documentation.

5.7.2.3 During the Operating Period Developer shall, concurrently with delivery to any Lender and at least annually, deliver to LAWA a budget for O&M Work for the upcoming year, actual costs incurred in performance of the O&M Work during the preceding year, together with any updates required by or delivered to any Lender.

5.8 Independent Engineer

5.8.1 The Parties shall select an Independent Engineer to:

- (a) verify in accordance with Section 7.10 (Passenger Service Availability and Final Completion) whether the conditions to Passenger Service Availability and Final Completion have been met;
- (b) make a recommendation regarding the Handback Reserve Amount in accordance with Section 8.6.2 (Handback Renewal Work Plan and Handback Reserve Account); and

- (c) verify in accordance with Section 8.6 (Handback) whether the Handback Requirements have been met.

5.8.2 Following Financial Close, Developer shall, in consultation with LAWA, establish the schedule and process for the selection of an Independent Engineer for purposes of the Independent Engineer roles contemplated in Section 7.10 (Passenger Service Availability and Final Completion). Developer shall be responsible for developing the solicitation package and draft contract terms, subject to approval by LAWA and shall set the solicitation schedule with the goal of selecting the Independent Engineer at least 12 months before the date on which Developer expects to achieve Passenger Service Availability.

5.8.3 At least 72 months prior to the expiry of the Term, Developer shall, in consultation with LAWA, establish the schedule and process for the selection of an Independent Engineer for purposes of the Independent Engineer roles contemplated in Sections 8.6.2 (Handback Renewal Work Plan and Handback Reserve Amount) and 8.6.4 (Handback Assessment). Developer shall be responsible for developing the solicitation package and draft contract terms, subject to approval by LAWA, and shall set the solicitation schedule with the goal of selecting the Independent Engineer at least 62 months before the expiry of the Term.

5.8.4 The solicitations required by Sections 5.8.2 and 5.8.3 shall include issuance of a request for competitive proposals from a list of firms approved by LAWA, review of proposals by Developer and LAWA, a joint determination regarding which firm is the best qualified to provide Independent Engineer services, and negotiation of a fair and reasonable price for performance of such services. If negotiations fail with the highest ranked firm, the Parties may elect to terminate negotiations and proceed with the next highest ranked firm. This process shall be followed until a firm is selected. If the Parties fail to reach agreement regarding selection of the Independent Engineer, or regarding acceptable terms of the agreement with the Independent Engineer, the Dispute shall be subject to resolution under the Dispute Resolution Procedures.

5.8.5 The Independent Engineer will be appointed jointly by the Parties and will act independently from and not as an agent of either Party. Each of LAWA's advisors and advisors of a Developer-Related Entity or Lender is deemed to have an organizational conflict of interest and therefore is not eligible to respond to the solicitation.

5.8.6 Developer shall be responsible for: (i) all costs of conducting the Independent Engineer solicitation contemplated by Section 5.8.2 (but has no obligation to reimburse LAWA for LAWA's costs relating to the solicitation); and (ii) all amounts payable under the terms of the agreement with the Independent Engineer for the Independent Engineer role contemplated in Section 7.10 (Passenger Service Availability and Final Completion).

5.8.7 LAWA shall be responsible for: (i) all costs of conducting the Independent Engineer solicitation contemplated by Section 5.8.3 (but has no obligation to reimburse LAWA for LAWA's costs relating to the solicitation); and (ii) all amounts payable under the terms of the agreement with the Independent Engineer for the Independent Engineer role contemplated in Sections 8.6.2 (Handback Renewal Work Plan and Handback Reserve Amount) and 8.6.4 (Handback Assessment).

ARTICLE 6. GENERAL DEVELOPER OBLIGATIONS; ALTERNATIVE TECHNICAL CONCEPTS

6.1 Preliminary Planning and Engineering Activities

Developer, through appropriately qualified and licensed design professionals, as identified in the Project Management Plan, shall furnish or cause to be furnished all preliminary planning and engineering activities appropriate for design and development of the Project in accordance with the Contract Documents and Good Industry Practice.

6.2 Site Conditions

6.2.1 Developer acknowledges and agrees that:

- (a) it has investigated and satisfied itself as to the conditions affecting the D&C Work, including those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather or similar physical conditions at the Site, the conformation and conditions of the ground, and the character of equipment and facilities needed in connection with the D&C Work;
- (b) it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including the results of exploratory work and other information provided to Developer by LAWA; and
- (c) any failure by Developer to acquaint itself with the available information relating to the conditions affecting the D&C Work will not relieve Developer from responsibility for estimating properly the difficulty or cost of successfully performing the D&C Work;

6.2.2 During the progress of the Work, if Developer encounters any Hazardous Materials or other Site conditions that may entitle Developer to claim that a Relief Event has occurred, then Developer shall notify LAWA of the specific condition promptly before it is disturbed, or as soon as practicable afterwards, and before the affected Work continues. LAWA shall promptly investigate such conditions.

6.3 Governmental Approvals

6.3.1 LAWA-Provided Approvals

6.3.1.1 LAWA is responsible for obtaining the LAWA-Provided Approvals, as specified in Exhibit 8 (LAWA-Provided Approvals). As of the Effective Date, all LAWA-Provided Approvals, other than [_____], have been issued, and Developer acknowledges receipt of those LAWA-Provided Approvals that have been issued as of the Effective Date. LAWA is responsible for costs of litigation relating to the LAWA-Provided Approvals.

6.3.1.2 Developer shall provide support to LAWA and undertake additional efforts as specified in Section 6.3.7.1 with respect to any modifications, renewals and extensions of the LAWA-Provided Approvals, including those required as the result of Developer's design and Relief Events.

6.3.2 Governmental Approvals other than LAWA-Provided Approvals

6.3.2.1 Developer shall obtain all Governmental Approvals required for the Project and the Work, other than the LAWA-Provided Approvals, and shall bear the risk of any delay in obtaining such approvals, except as provided in Section 6.3.4.1, as well as the risk of conditions imposed on performance of the Work by such approvals. Developer shall conduct all necessary environmental studies and prepare all necessary environmental documents in compliance with applicable Environmental Laws as needed to obtain Governmental Approvals other than the LAWA-Provided Approvals, and shall obtain all necessary modifications, renewals and extensions thereof.

6.3.2.2 In addition to all other costs associated with obtaining Governmental Approvals, other than LAWA-Provided Approvals, Developer shall:

- (a) with respect to permits for the Work required from the Los Angeles Department of Building and Safety in connection with buildings (any structure), electrical, fire, grading, HVAC, plumbing, and signage on non-public property, pay expedited permit fees, which may be estimated at <https://www.ladbs.org/services/pay-fees/permit-fee-calculator>; and
- (b) with respect to permits for the Work required from the Los Angeles Department of Public Works, pay any sewerage facilities charges as generally described at <http://eng.lacity.org/permits>.

6.3.2.3 Developer is not responsible for design review and construction inspection permitting costs specific to permits required for the Work from the Los Angeles Department of Public Works to the extent that such costs are included in the annual work plans developed by LAWA and the City pursuant to the City Agreement.

6.3.3 Copies to LAWA

Concurrently with submitting any application for a Governmental Approval to a Governmental Entity (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), Developer shall submit a copy of same, together with any supporting studies, analyses and data, to LAWA. Developer shall deliver to LAWA true and complete copies of all new or amended Governmental Approvals, other than the LAWA-Provided Approvals.

6.3.4 Certain Risks Relating to Governmental Approvals

6.3.4.1 Except to the extent required as a result of (i) a LAWA Change, or (ii) a Compensation Event as described under clause (s) or (t) of the definition of Compensation Event, Developer shall not be entitled to any Incremental Costs, Delayed Payment Compensation, time extensions or any other relief associated with securing Governmental Approvals.

6.3.4.2 As between LAWA and Developer, Developer shall bear all risk arising out of, relating to or resulting from:

- (a) any differences between Developer's design for any portion of the Project and the design that served as the basis for the application for a Governmental Approval but excluding any differences due to a LAWA Change;
- (b) any differences between the means and methods (including temporary works) Developer chooses for performance of the Work and those stated in, referred to or contemplated in any LAWA-Provided Approval;
- (c) any change in the Project alignment due to Developer's design, except to the extent that the change in alignment was directly attributable to a Relief Event; and
- (d) cost of litigation associated with Governmental Approvals, other than the LAWA-Provided Approvals, to the extent that the litigation relates to Developer's design or means and methods.

6.3.5 Changes to Governmental Approvals

If Developer wishes to obtain, modify, renew or extend any Governmental Approvals, Developer shall first comply with, and obtain any consent or waiver required in accordance with, then-existing agreements between LAWA and other Governmental Entities.

6.3.6 LAWA Assistance with Governmental Approvals

6.3.6.1 Developer may, by notice to LAWA, request LAWA's reasonable assistance and cooperation in obtaining modifying, renewing or extending any Governmental Approvals (including any modification, renewal or extension of an existing Governmental Approval required as the result of Developer's design or construction methods). Upon receipt of such a notice and agreement of the Parties regarding the scope of assistance to be provided as described in Section 6.3.6.2, LAWA will reasonably assist and cooperate with Developer in seeking to obtain the Governmental Approvals including:

- (a) joining in conferences and meetings with the Governmental Entities with jurisdiction;
- (b) providing Developer data, information and documents available to LAWA relevant to the application for the Governmental Approvals;
- (c) coordinating and working with elected and other public officials as necessary and appropriate;
- (d) assisting with evaluation and definition of solutions;
- (e) if necessary, acting as the lead agency and directly coordinating with such Governmental Entities; and
- (f) otherwise working with Developer to facilitate issuance of such Governmental Approvals.

6.3.6.2 LAWA and Developer shall work jointly to establish a scope of work and budget for LAWA's Recoverable Costs related to the assistance and cooperation LAWA agrees to provide

in connection with modifications to LAWA-Provided Approvals under Section 6.3.6.1. Subject to an agreed upon scope of work and budget and to any rights of Developer in the case of a Relief Event, Developer shall fully reimburse LAWA for LAWA's Recoverable Costs incurred in providing such assistance and cooperation, including those incurred to conduct further or supplemental environmental studies.

6.3.6.3 Assistance provided by LAWA under Section 6.3.6.1 shall not include any obligation to:

- (a) take a position which LAWA believes to be inconsistent with the Contract Documents, the Project Management Plan or O&M Management Plan, applicable Law, Governmental Approval(s), the requirements of Good Industry Practice, or LAWA policy;
- (b) take a position that is not usual and customary for LAWA to take in addressing similar circumstances affecting its own projects (except for usual and customary arrangements that are incompatible with the Project's public-private contracting methodology); or
- (c) refrain from concurring with a position taken by a Governmental Entity if LAWA believes that position to be proper.

6.3.7 Governmental Approvals in LAWA's Name

6.3.7.1 Certain Governmental Approvals are required to be applied for or issued in LAWA's name and/or require LAWA to directly coordinate with such Governmental Entities in connection with obtaining Governmental Approvals. With respect to such approvals, LAWA will assist and cooperate with Developer following receipt of a request under Section 6.3.6.1, and the Parties shall proceed in accordance with Section 6.3.6.2. Developer shall provide all necessary support and efforts to apply for and obtain the Governmental Approval including: (a) conducting necessary field investigations, (b) preparing mitigation analyses and studies and plans, (c) preparing surveys and required reports, applications and other documents in form approved by LAWA, and (d) joint coordination and joint discussions and attendance at meetings with the applicable Governmental Entity.

6.3.7.2 Developer shall be solely responsible for obtaining all Governmental Approvals required in connection with, and for compliance with applicable Laws with respect to, Temporary Areas.

6.4 Compliance with Laws

6.4.1 Applicable Laws

6.4.1.1 Developer shall comply with, and require that all Contractors comply with, all applicable Laws.

6.4.1.2 All provisions required by applicable Laws to be included in this Agreement are incorporated by reference in this Agreement.

6.4.2 Accessibility Compliance

6.4.2.1 Without limiting the generality of Section 6.4.1.1, Developer shall comply with, and require that all Contractors comply with, all applicable Accessibility Laws.

6.4.2.2 Developer is solely responsible for ensuring that the Project is designed, constructed and operated to provide full and equal access to individuals with disabilities.

6.4.3 Environmental Compliance

6.4.3.1 Without limiting the generality of Section 6.4.1.1, Developer shall comply with, and require that all Contractors comply with, all Environmental Laws.

6.5 Compliance with Approvals

Throughout the Term and the course of the Work, Developer shall:

- (a) comply with all conditions and requirements imposed by all Governmental Approvals, except, with respect to Environmental Approvals only, those obligations, commitments and responsibilities of LAWA that (i) specifically do not relate to the Project or (ii) are expressly excluded from Developer's scope of Work under Part 2A, Section 7.8 (Final Environmental Impact Report) of the Technical Provisions;
- (b) undertake all actions required by, or necessary to maintain in full force and effect all Governmental Approvals to be obtained by Developer.

6.6 Communication and Public Outreach

6.6.1.1 Developer shall prepare and implement LAWA's communication and public outreach plan developed pursuant to Part 2A, Section 26.2 (Communication and Public Outreach Plan) of the Technical Provisions and as provided in Exhibit 2A-19 (Communication and Public Outreach Plan).

6.6.1.2 Developer is prohibited from making any public announcement or disclosure with respect to the Project, whether for publication in the press, radio, television or any other medium, unless Developer has obtained LAWA's prior written approval.

6.7 Coordination, Cooperation and Access

6.7.1.1 Developer shall coordinate and cooperate with LAWA, the Independent Engineer, Utility Owners and Governmental Entities with jurisdiction in matters relating to the Work, including facilitating their review, inspection and Oversight of the Work, as applicable. Developer shall coordinate and cooperate with other contractors that may be carrying out work within the Site or in the land adjoining or near the Site.

6.7.1.2 Developer shall provide LAWA, LAWA's representatives and the Independent Engineer with:

- (a) safe and unrestricted access to the Project at all times; and

- (b) safe access during normal business hours to Developer's Project offices, operations buildings, Temporary Areas (including the APM Operating System assembly facility and production facilities).

6.7.1.3 LAWA shall provide written notice to Developer at least one Business Day in advance of visits to the APM Operating System assembly facility and production facilities under Section 6.7.1.2.

6.7.1.4 Notwithstanding anything to the contrary in this Agreement, whenever LAWA or its representatives are present on the Site (including the APM Operating System assembly facility) and production facilities, including while conducting Oversight, they will abide by the applicable Contractor's reasonable, non-discriminatory safety policies and practices and will take appropriate measures to avoid unreasonable interference with normal construction activity or normal operation and maintenance activity.

6.7.1.5 Developer shall not interfere with the work of or cause any delay to any other contractors that may be carrying out work within the Site or in the land adjoining or near the Site and will allow them reasonable access to the Site, provided that Developer shall not be in breach of this Section 6.7.1.5 for any temporary interruption to the work of any such contractors that (i) has been agreed to in advance in accordance with (A) CALM program procedures; (B) City Taskforce procedures, or (C) other procedures agreed to by Developer, such contractor and any relevant Third Party; or (ii) is reasonably necessary in accordance with Law and Good Industry Practice to respond to emergencies creating an immediate and serious threat to public health, safety, security or the Environment.

6.7.1.6 Developer shall (a) receive and address all complaints and claims from members of the public or Users relating to Developer's performance of the Work; and (b) pay any related compensation.

6.8 Interfacing Projects

6.8.1 Developer shall identify and coordinate design and construction activities with any other on-going projects that interface with Project, including the Related Projects and Enabling Projects identified at Part 2A, Section 21.0 (Enabling Related and Concurrent Projects) of the Technical Provisions.

6.8.2 Developer shall integrate the Project with each Related Project and each Enabling Project in a proper manner and in accordance with the Contract Documents, and shall sequence the Work so as to mitigate interference with the operations of other contractors engaged on Related Projects or Enabling Projects.

6.8.3 LAWA agrees to include provisions substantially similar in substance to those set forth in Exhibit 10 (Interface Obligations) in its agreement with each Related Project and Enabling Project contractor.

6.9 Cooperation Agreements

6.9.1 Developer shall comply with and observe the Cooperation Agreements throughout performance of the Work. In addition, except as otherwise expressly provided in Exhibit 12B (Modifications to Developer's Obligations regarding Cooperation Agreements), Developer shall assume, and perform or cause to be performed:

- (a) all obligations described in the Cooperation Agreements as obligations of LAWA's contractors; and
- (b) on behalf of LAWA, LAWA's obligations and liabilities under the Cooperation Agreements, excluding any liabilities of LAWA that accrued before the Effective Date pursuant to any indemnities to Third Parties under the Cooperation Agreements, provided that the foregoing shall not relieve Developer from its responsibilities and liabilities relating to the Early Works under the Early Works Agreement.

6.9.2 At Developer's request from time to time, LAWA will provide reasonable assistance to Developer in obtaining cooperation and coordination from the parties to the Cooperation Agreements and in enforcing rights, remedies and warranties that Developer may have against any such parties. Such assistance may include LAWA's participation in meetings and discussions. In no event shall LAWA be required to bring any legal action or proceeding against any such party.

6.9.3 Developer shall provide LAWA at least two Business Days' notice in writing regarding meetings with any party to a Cooperation Agreement, including information regarding topics to be discussed.

6.10 Safety Compliance

6.10.1 LAWA may from time to time issue Safety Compliance Orders to Developer with respect to the Project to implement Safety Compliance.

6.10.2 Promptly upon LAWA becoming aware of any circumstance or information relating to the Project that in LAWA's reasonable judgment is likely to result in a Safety Compliance Order, LAWA will notify Developer regarding the issue. Except in the case of an Emergency, LAWA will consult with Developer before issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts, and the availability of Developer resources to fund the Safety Compliance work.

6.10.3 Developer shall implement each Safety Compliance Order as expeditiously as reasonably possible following its issuance. Developer shall diligently prosecute the work necessary to achieve such Safety Compliance until completion.

6.11 Law Enforcement, Security and Incident Response

6.11.1 Law Enforcement Services

6.11.1.1 Developer acknowledges and agrees that the Airport Police and other law enforcement agencies are empowered to enforce all applicable Laws and to enter the Project, and that any person engaged by LAWA to provide law enforcement services has the authority to enter the Project (including Vehicles, Stations and Project facilities), at any and all times to carry out their duties. Developer shall ensure that the Airport Police and other law enforcement agencies have necessary access to the Project to carry out their duties, power and jurisdiction.

6.11.1.2 LAWA shall not have any liability or obligation to Developer arising out of, relating to or resulting from the failure of the Airport Police or any other law enforcement agency to provide services, or any of their, or their respective agents' or employees', acts, omissions, negligence

or misconduct in providing services. The general indemnity in Section 10.5.1 (General Indemnity) shall not apply to the extent that a claim, cause of action, suit, legal or administrative proceeding or any other occurrence, loss or damage of the type listed in Section 10.5.1 is directly attributable to actions of a law enforcement agency designated by LAWA to provide services for the Project, and is not due to any fault of any Developer-Related Entity.

6.11.1.3 As reasonably requested by Developer from time to time, LAWA will set up meetings with Developer and representatives of relevant law enforcement agencies to discuss law enforcement issues affecting the Project.

6.11.2 Security and Incident Response

6.11.2.1 Developer is responsible for the security of the Project and safety of the workers and public within the D&C Limits during the performance of the D&C Work. During the O&M Period, Developer is responsible for protecting the APM System from damage and providing safe operation of the APM System.

6.11.2.2 Developer shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and other comparable agencies, and shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services.

6.11.2.3 Developer shall perform or otherwise take all measures identified in the Safety and Security Plan, as approved by LAWA. Developer shall perform and comply with the provisions of Part 2A, Section 8.0 (APM System Safety Certification) and Part 3, Section 3.1.5 (Notification, Investigation, and Reporting of Accidents and Incidents and Security Breaches) of the Technical Provisions concerning Incident Response, safety and security.

6.11.3 Additional Services

Developer may engage one or more security firms, at Developer's cost, to provide services for the Project following receipt of written approval from LAWA.

6.12 Alternative Technical Concepts

6.12.1 Developer acknowledges and agrees that:

- (a) it has sole responsibility for obtaining, and shall use good faith efforts to obtain, any Third Party approvals required to implement Alternative Technical Concepts; and
- (b) if any condition in LAWA's pre-approval of an Alternative Technical Concept has not been met as of the Effective Date, Developer shall (i) ensure that such condition is satisfied before implementing the Alternative Technical Concept and (ii) use its good faith efforts to satisfy such condition.

6.12.2 If Developer cannot obtain any approval required to implement Alternative Technical Concepts, fails to satisfy any such condition, or fails in any other way to implement the approved Alternative Technical Concept:

- (a) Developer shall provide notice to LAWA's Authorized Representative and shall comply with the corresponding baseline requirements (unmodified by the Alternative Technical Concept) at its cost, without any additional compensation, time extension or other basis for any Claim; and
- (b) to the extent an Alternative Technical Concept represented additional Work or higher quality materials from what is otherwise required by the Contract Documents and resulted in a total net increase in amounts payable by LAWA under the Contract Documents (accounting both for costs incurred during the D&C Period and the O&M Period), LAWA shall be entitled to a credit for the net present value of the reduced cost (using the Developer's weighted average cost of debt projected in the Financial Model at Financial Close as the discount rate and calculated as of the Scheduled Financial Close Date) to Developer of reverting to the baseline requirements of the Contract Documents, including reduced costs relating to financing and equity investment.

6.12.3 Developer acknowledges and agrees that, to the extent that Developer uses any Unsuccessful Proposer's Work Product submitted by any other proposer provided to Developer by LAWA, Developer does so at its sole risk, except to the extent otherwise provided by LAWA in writing, and such use shall in no way confer or be deemed to confer liability upon LAWA or the unsuccessful proposer.

6.12.4 Notwithstanding anything herein to the contrary, if implementation of an Alternative Technical Concept will require additional real property, Developer shall be responsible for paying for such real property and for any other costs, delays or other impacts related to such real property, without the right to a Change Order, irrespective of whether such costs, delays or other impacts result from an event that would otherwise constitute a Relief Event.

6.13 Warranties

6.13.1 Warranties for Non-O&M Facilities

6.13.1.1 Developer warrants each Non-O&M Facility against Non-O&M Facilities Defects during the period commencing on Non-O&M Facility Occupancy Readiness of the Non-O&M Facility and ending two years thereafter (each, a "**Non-O&M Facilities Warranty Period**"). Developer shall perform, at Developer's sole cost and expense, Non-O&M Facilities Warranty Work for any Non-O&M Facilities Defect:

- (a) with respect to which LAWA delivers written notice to Developer within the applicable Non-O&M Facilities Warranty Period; or
- (b) of which Developer otherwise has actual knowledge before the expiry of the applicable Non-O&M Facilities Warranty Period.

6.13.1.2 Developer shall commence the applicable Non-O&M Facilities Warranty Work within 14 days of written notice of the relevant Non-O&M Facilities Defect from LAWA or Developer's actual knowledge thereof, whichever is earlier; or such shorter period as may be designated by LAWA for emergency repairs. Developer shall thereafter diligently complete the Non-O&M Facilities Warranty Work as soon as reasonably practicable and promptly notify LAWA in writing of completion of same.

6.13.1.3 If Developer fails to commence or pursue with diligence and complete the Non-O&M Facilities Warranty Work as required, LAWA may, in its sole discretion, perform the Non-O&M Facilities Warranty Work upon written notice to Developer, and Developer shall reimburse LAWA within seven days after any written demand from LAWA for all costs and expenses incurred by LAWA in connection with the performance of the Non-O&M Facilities Warranty Work, including any related reasonable attorneys' and consultants' fees and expenses.

6.13.1.4 In the event of an emergency constituting an immediate hazard to health or safety of Users or LAWA property due to a Non-O&M Facilities Defect, LAWA may undertake, at Developer's sole cost and expense and without prior notice, all work necessary to correct such hazardous condition(s).

6.13.1.5 Before expiry of the applicable Non-O&M Facilities Warranty Period, Developer shall execute and deliver to LAWA a written assignment, in form and substance reasonably acceptable to LAWA, of all Developer's and Contractors' right, title and interest in and to all warranties, and to the extent assignable, claims and causes of action held by Developer or its Contractors against Third Parties, concerning the Non-O&M Facilities or the Non-O&M Facilities Work.

6.13.2 Contractor Warranties and Guaranties

6.13.2.1 Developer shall obtain from all Contractors representations, warranties, guarantees and obligations in accordance with Good Industry Practice for work of similar scope and scale, with respect to design, materials, workmanship, equipment, tools and supplies furnished by all such Contractors and Suppliers, which shall extend not only to Developer but also to LAWA and any Utility Owner or Authority Having Jurisdiction for whom Work is being performed. The warranties from Key Contractors shall be for such periods as specified in the Technical Provisions or, if not specified, a period of not less than one year from the date of the applicable Certificate of Non-O&M Facility Occupancy Readiness or the Certificate of Passenger Service Availability, as applicable. All representations, warranties, guarantees and obligations of Key Contractors: (a) shall be written so as to survive all LAWA and any Third Party inspections, tests and approvals; and (b) shall provide that upon expiration or any earlier termination of this Agreement before the expiration of such representations, warranties, guarantees and obligations they shall automatically be for the benefit of and enforceable by LAWA and its successors and assigns, and any Utility Owner or Authority Having Jurisdiction for whom Work is being performed, subject to the rights of the Lenders as provided in any Direct Agreement.

6.13.2.2 To the extent that any Contractor warranty or guaranty is voided after termination of this Agreement by reason of Developer's negligence or failure to comply with the requirements of the Contract Documents in incorporating material or equipment into the Project, Developer shall correct any defects which would otherwise have been covered by such warranty.

6.13.2.3 Contractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law, and shall not limit Developer's liability or responsibility imposed by the Contract Documents or applicable Law with respect to the Work, including liability for design defects, construction defects, strict liability, breach, negligence, willful misconduct or fraud.

6.13.2.4 Developer shall include provisions in Contracts for Renewal Work during the last two years of the Term ensuring that warranties and guaranties under such Contracts inure to the benefit of both LAWA and Developer. In addition, Developer hereby assigns to LAWA all such

warranties and guaranties, as well as Developer's rights under the relevant Contracts, effective as of the end of the Term.

6.13.3 Warranties for Utility Owners and Authorities Having Jurisdiction

Developer shall provide, or obtain and ensure performance under as if Developer provided, warranties and guaranties, for all Work performed for Utility Owners and Authorities Having Jurisdiction, for a minimum of one year after the date of acceptance of such work by the Utility Owner or Authority Having Jurisdiction, as applicable or such longer term as provided in any agreement with the Utility Owner or Authority Having Jurisdiction, for the benefit (with rights of enforcement) of such Utility Owner or Authority Having Jurisdiction. LAWA shall have, and shall be identified as a third party beneficiary of the right to enforce, all such warranties and guaranties of such work. Upon acceptance of such work by the Utility Owner or Authority Having Jurisdiction, as applicable, and delivery of an assignment of the relevant warranty and guaranty rights to the Developer shall be relieved of responsibility for maintenance of such work. Developer shall also provide to the applicable Utility Owner or Authority Having Jurisdiction any warranties or guaranties required under the Cooperation Agreements, with LAWA identified as a third party beneficiary of the right to enforce all such warranties and guaranties of such Work.

ARTICLE 7. DESIGN AND CONSTRUCTION

7.1 General Obligations of Developer Concerning D&C Work

7.1.1 Developer shall:

- (a) expeditiously and diligently progress performance of the D&C Work with the goal of achieving Passenger Service Availability by the applicable Passenger Service Availability Deadline;
- (b) carry out or do all things necessary to perform the D&C Work and design and construct the Project in accordance with the Contract Documents and Good Industry Practice;
- (c) ensure that the APM System is fit for its intended function and uses and meets the requirements of the Contract Documents;
- (d) provide maintenance and other services as described in Section 7.11 (Responsibility for Loss or Damage);
- (e) ensure adequate materials, equipment and resources are available to ensure compliance with the requirements of the Contract Documents under normal conditions and reasonably anticipated abnormal conditions;
- (f) ensure all materials and equipment are of good quality and new unless otherwise expressly stated;
- (g) ensure the Project shall be free of defects, including design defects, errors and omissions;
- (h) ensure the Site is kept in a neat and clean condition at all times;
- (i) cooperate with LAWA and Authorities Having Jurisdiction in all matters relating to the D&C Work, including their review, inspection and oversight of D&C Work;
- (j) remove and replace Nonconforming Work and/or materials, whether discovered or rejected by LAWA or Developer, or otherwise remedy such Nonconforming Work and/or materials in an acceptable manner and in accordance with the requirements of the Contract Documents; and
- (k) assume direct and indirect costs for all Utility services required to perform and complete the D&C Work in accordance with the requirements of the Contract Documents.

7.2 Performance, Design and Construction Standards

7.2.1 Developer shall construct and equip the Project in accordance with the Release for Construction Documents, taking into account the D&C Limits and other constraints affecting the Project.

7.2.2 The Project design and construction shall be subject to certification in accordance with the procedures contained in the approved Developer's Design Quality Plan and Developer's Construction Quality Plan.

7.2.3 Developer shall use reasonable efforts to identify and provide notice to LAWA of any specifications or other provisions in the Technical Provisions that are erroneous, create a potentially Unsafe Condition, or may be inconsistent with Good Industry Practice or applicable Law. Such notice must include a request for LAWA approval of a Deviation or changes to the provision that Developer believes are necessary to render it correct, safe and consistent with Good Industry Practice and applicable Law. If Developer commences or continues any D&C Work affected by the change after the need for the change was known, or should have been known through the exercise of reasonable care, Developer shall bear any additional costs and time associated with redoing the D&C Work already performed.

7.2.4 References in the Technical Provisions to Standards and Specifications relating to the D&C Work shall mean the most recent editions in effect as of the Setting Date, unless expressly provided otherwise.

7.2.5 After the Setting Date, LAWA may modify relevant provisions of the Technical Provisions to incorporate any changed, added or replaced Standards and Specifications applicable to the D&C Work by delivering a LAWA Change to Developer.

7.3 Design Implementation

Developer, through appropriately qualified professional engineers and architects registered and licensed in the State and identified in Developer's Project Management Plan, shall furnish designs, plans and specifications in accordance with the Contract Documents. Developer shall cause the Engineer(s) of Record for the Project to sign and seal all Final Design Documents.

7.4 Schedule, Deadlines, Notices to Proceed and Commencement of Work

7.4.1 Project Schedule

7.4.1.1 Developer represents that, subject to the occurrence of Relief Event Delay, the Initial Project Schedule represents a practical schedule for Developer to complete performance of the Work through Final Completion and is consistent with the Contract Deadlines. Developer shall use the Initial Project Schedule as a foundation to prepare a Baseline Schedule for LAWA's review, comment and approval in accordance with Part 2A, Section 3.1 (Project Schedule) of the Technical Provisions. Upon LAWA's approval, the Baseline Schedule shall become the Project Schedule. The Parties shall use the Project Schedule, as approved by LAWA, for planning and monitoring the progress of the D&C Work. The Project Schedule shall include the Passenger Service Availability Deadline.

7.4.1.2 Developer acknowledges and agrees that the Contract Deadlines provide reasonable and adequate time to perform the Work required within the Contract Deadlines, subject only to Developer's rights to obtain time extensions under Article 14 (Compensation and Other Relief for Relief Events).

7.4.2 Float

All Float contained in the Project Schedule, as shown in the Baseline Schedule or as generated during the course of the Work, shall be available to both LAWA and Developer, and shall not be considered as time for exclusive use or benefit of either LAWA or Developer. Developer shall cause all Contracts with the APM Fixed Facilities Contractor, the APM Operating System Supplier and each Prime Contractor to acknowledge Float to be available to LAWA as well as Developer as needed to absorb delay caused by Relief Events or other events, achieve interim completion dates and achieve Contract Deadlines. All Float shall be identified as such in the Project Schedule on each affected schedule path. LAWA shall have the right to examine the identification of (or failure to identify) Float on the Project Schedule in determining whether to approve the Project Schedule. Once identified, Developer shall monitor, account for and maintain Float in accordance with critical path methodology.

7.4.3 Commencement of Non-Construction Work

Except as provided in Section 7.4.5 (Work Before NTP 1), Developer shall not commence any Work until LAWA has issued NTP 1 authorizing commencement of non-Construction Work. LAWA shall promptly issue NTP 1 when all of the conditions set forth in Exhibit 15A (Conditions to NTP 1) have been satisfied.

7.4.4 Commencement of Construction Work

Developer shall not commence any portion of the Construction Work until LAWA has issued NTP 2 authorizing commencement of the applicable portion Construction Work. LAWA shall promptly issue NTP 2 when all of the conditions set forth in Exhibit 15B (Conditions to NTP 2) have been satisfied.

7.4.5 Work Before NTP 1

7.4.5.1 Except as provided in Section 7.4.5.2 and as may be provided pursuant to the Early Works Agreement between Developer and LAWA, Developer shall not perform any Work prior to NTP 1.

7.4.5.2 Before NTP 1, Developer shall perform all Work required to achieve Financial Close, and otherwise undertake all efforts to satisfy the conditions set forth in Exhibit 15A (Conditions to NTP 1). If Financial Close fails to occur, LAWA shall have no obligation to reimburse Developer for any of its costs incurred relating to this Agreement, other than payments allowed under Section 3.6 (No-Fault Termination).

7.5 Acquisition of Real Property

7.5.1 Project ROW Property Acquisition

7.5.1.1 The Project shall be situated entirely within the D&C Limits. LAWA will provide Developer with rights of access to the Project ROW properties identified within the D&C Limits in Part 5 (Contract Drawings/Engineering Data) of the Technical Provisions by the dates specified in Part 2A, Section 20.1 (ROW Conveyance) of the Technical Provisions (the “**Property Acquisition Schedule**”).

7.5.1.2 If LAWA determines that it is necessary to acquire other real property interests to add to the Project ROW (a) as a result of a Relief Event during the D&C Period, or (b) because LAWA has determined, in its sole discretion, that the acquisition is appropriate and in the best interest of the Project, then LAWA will add such real property interests to the Property Acquisition Schedule and such real property interests will not be treated as Additional Properties.

7.5.2 Additional Acquisitions

7.5.2.1 If Developer identifies any property that is not subject to Section 7.5.1.2 but that Developer seeks to add to the Project ROW to accommodate Developer's particular design or for Developer's convenience in performing the Work, then Developer may submit to LAWA a request for acquisition of additional property interests and related documentation in accordance with Part 2A, Section 20.2 (ROW Management, Maintenance and Demolition) of the Technical Provisions. In such event, Developer shall prepare and submit to LAWA for review and approval new or revised surveys, legal descriptions, draft ROW plats, design and other appropriate documentation of basis of acquisition and justification of acquisition. Developer's request shall include an analysis identifying alternative approaches that could be adopted to avoid the need for the acquisition, including use of retaining walls and other design modifications. Following delivery of a request under this Section 7.5.2.1:

- (a) LAWA will review the request and supporting documentation and will determine whether the proposed acquisition appears to be appropriate for the Project, whether any additional information or documentation is necessary for the acquisition, and the anticipated schedule for the acquisition;
- (b) upon agreement between LAWA and Developer regarding the acquisition of any additional property, Developer shall support the acquisition in accordance with Part 2A, Section 20.2 of the Technical Provisions; and
- (c) prior to acquisition of any additional property interests under this Section 7.5, Developer shall provide to LAWA any additional documentation required by LAWA for the acquisition.

7.5.2.2 If LAWA chooses to acquire property proposed for acquisition by Developer pursuant to Section 7.5.2.1 ("**Additional Properties**"), LAWA will proceed with the acquisition and add such real property interests to the Property Acquisition Schedule, subject to this Section 7.5. In all other situations, LAWA has no obligation to approve any request for acquisition.

7.5.2.3 Developer shall be responsible for the cost to acquire Additional Properties, together with all costs and expenses incurred by LAWA in connection with acquiring Additional Properties. In paying all such costs and expenses, Developer is not acquiring, and shall not be deemed to be acquiring, any interest in real property for Developer. Such costs and expenses may include:

- (a) the cost of acquisition services, relocation services and associated document preparation costs;
- (b) the cost of relocation assistance in accordance with applicable Law;

- (c) the cost of condemnation proceedings handled by the Office of the City Attorney, including attorneys' and expert witness fees, and all fees and expenses for production of exhibits, transcripts, photos and other documents and materials;
- (d) the acquisition price of the Additional Properties and associated costs, settlements, offers of judgment, court awards or judgments, including pre-judgment and post-judgment interest, costs, attorney's fees, claims for loss of business goodwill and any other consideration for the Additional Properties;
- (e) the cost of permanent or temporary acquisition of leases, easements, rights of entry, licenses and other interests in real property, including for drainage, temporary work space, Temporary Areas, and any other convenience of Developer;
- (f) the cost of permitting; and
- (g) closing costs in accordance with LAWA policies.

7.5.2.4 LAWA will submit statements to Developer regarding Recoverable Costs relating to acquisition of Additional Properties, not more often than monthly. Developer shall reimburse LAWA within 30 days of receipt of an invoice. In addition to any other remedy, LAWA shall have the right to curtail or suspend acquisition activities if Developer for any reason fails to pay any such invoice in full when due. LAWA will resume acquisition activities promptly after delinquent amounts are paid in full with interest.

7.5.2.5 Developer shall bear all risk of delays related to acquisition of Additional Properties.

7.5.3 Temporary Interests in Property

7.5.3.1 Developer shall be solely responsible for acquisition of any temporary interests in property that Developer determines is necessary, desirable or advisable to obtain in connection with the Project or the Work. Developer shall pay directly the cost to acquire, maintain, operate, and/or dispose of all such property interests. If the property is within the limits of any real property scheduled for acquisition by LAWA or is intended to be used for permanent improvements, or if Developer intends to request LAWA to acquire such real property, Developer shall coordinate with LAWA and shall not negotiate with the owner(s) of such interests except with express permission of LAWA and in compliance with applicable Law.

7.5.3.2 LAWA shall have no obligation to acquire temporary interests in property. Developer shall solely bear the risk of any delays and cost impacts related to acquisition of temporary interests, regardless of whether LAWA agrees to undertake any such acquisition.

7.5.3.3 Developer shall promptly notify LAWA regarding all temporary interests in property that it or any of its Contractors acquires in the vicinity of the Project.

7.5.4 Property Acquisitions and Scheduling Work

7.5.4.1 Developer's Project Schedule shall not provide for any Work to be done on any property before the availability date in the Property Acquisition Schedule. In developing its

schedule, Developer shall reasonably minimize dependence on the property acquisition process.

7.5.4.2 Concurrently with the initial review of the Project Schedule, Developer and LAWA shall meet to discuss:

- (a) Developer's access requirements associated with planned activities and the extent to which delay in access to property listed in the Property Acquisition Schedule is likely to affect a Critical Path;
- (b) what efforts (if any) could reasonably be undertaken by the Parties to accelerate acquisition of any critical real property interests;
- (c) whether schedule delays may be avoided by providing access to property subject to conditions or restrictions;
- (d) whether any changes should be made to the Property Acquisition Schedule or Project Schedule; and
- (e) whether anticipated covenants, conditions and restrictions affecting access will affect Developer's ability to perform Work as scheduled, and how to mitigate any such problems.

7.5.4.3 In certain cases, LAWA may be able to avoid or mitigate schedule delays by providing access to property listed in the Property Acquisition Schedule subject to restrictions, in which case LAWA will notify Developer of the restrictions and Developer shall ensure that all requirements are met.

7.5.4.4 If LAWA agrees, based on a request from Developer, to seek to accelerate acquisition of any property interests, such agreement shall have no effect on the scheduled access date listed in the Property Acquisition Schedule for the purpose of determining whether a LAWA-Caused Event has occurred.

7.5.4.5 Developer shall coordinate with LAWA regarding:

- (a) completion of Project design and identification of final ROW requirements and construction impacts;
- (b) any adjustments to the Project Schedule necessary to reflect updates to the Property Acquisition Schedule; and
- (c) any design features that may impact properties for which no property acquisition is contemplated, with the goal of avoiding damages to properties not previously identified and addressed.

7.6 Utility Adjustments

7.6.1 Developer's General Responsibilities

7.6.1.1 Developer shall:

- (a) coordinate with each Utility Owner that has a Utility within the Site or which will be affected in any way by the Project and coordinate and cause all Utility Adjustments necessary for the timely construction, operation and maintenance of the Project to be completed in accordance with the Project Schedule and the requirements of the Contract Documents;
- (b) make all reasonable efforts to design around existing Utilities, minimizing impacts;
- (c) conduct reasonable site investigation and exploration before commencement of Construction Work in any particular area to correctly identify all Utilities in the area and include in the design all identified utilities to ensure that Utility services are not mistakenly disrupted by the Construction Work;
- (d) submit to LAWA utility relocation plans identifying each Utility Adjustment, together with the timelines for obtaining Utility Owner approval and completing each Utility Adjustment ("**Utility Relocation Plans**"), as follows:
 - (i) for those portions of the Site to which Developer has been granted access before NTP 1 under the Early Works Agreement , plans must be submitted as a condition precedent to NTP 1;
 - (ii) for those portions of the Site to which Developer is granted access subsequent to NTP 1, plans must be submitted within 180 days of Developer's access to the property in accordance with Section 7.5 (Acquisition of Real Property);
- (e) develop Project Execution Plan(s) (PEP) in accordance with Part 2A, Section 25.3 (Project Execution Plan) of the Technical Provisions showing existing and proposed Utility locations (including a composite utility plan) and their relationship to the proposed construction; provide each Project Execution Plan to the applicable Utility Owner; and determine work responsibility for each Utility Adjustment with the applicable Utility Owner;
- (f) for Utility Adjustments involving the City, Los Angeles County or LA Metro, comply with Developer's obligations relating to the applicable Cooperation Agreement, as specified in Section 6.9 (Cooperation Agreements);
- (g) obtain necessary permits for each Utility Adjustment;
- (h) obtain Utility Owner pre-approval of Contractors and/or Suppliers performing certain Utility Work if required by Utility Owner;
- (i) before commencing Construction Work on a particular Utility Adjustment, obtain the relevant Utility Owner's approval regarding the work to be performed, in

accordance with the requirements of Part 2A, Section 25.0 (Utility Coordination) of the Technical Provisions and Good Industry Practice;

- (j) if a Utility Owner performs all or any part of the Utility Adjustments work, coordinate, monitor, and otherwise undertake the necessary efforts to cause such Utility Owner to perform such work timely, in coordination with the Work, and in compliance with the Contract Documents; provided Developer shall perform the required Utility Adjustments work to the extent that the Utility Owner fails to so perform; and
- (k) keep LAWA informed of any issues with work by Utility Owners that may affect the Project.

7.6.2 LAWA's Commitment

LAWA agrees to, as reasonably requested by Developer, engage in discussions with a Utility Owner to encourage Utility Owner's prompt attention to Utility Adjustments and proper performance of any Utility Adjustment work to be performed by the Utility Owner.

7.6.3 Requirements

Each Utility Adjustment (whether performed by Developer or by the Utility Owner) shall comply with applicable Utility Standards and other requirements in any applicable Cooperation Agreement, as well as requirements of the Technical Provisions, the other Contract Documents and applicable Law. Developer is solely responsible for making arrangements with Utility Owners to limit applicability of changes to Utility Standards made after the Setting Date.

7.6.4 Costs of Utility Work

7.6.4.1 Developer shall be responsible for the following Utility Work costs:

- (a) all costs of Utility Work performed by Developer-Related Entities;
- (b) all payments owing to Utility Owners for Utility Work performed by Utility Owners not to exceed \$50 million, with any payments owing to Utility Owners for Utility Work performed by Utility Owners in excess that amount to be addressed as a LAWA Change;
- (c) all costs of Incidental Utility Work; and
- (d) all costs of materials furnished by Utility Owners.

7.6.4.2 LAWA shall not be responsible for Utility Work costs except as specifically provided in the Contract Documents.

7.6.5 Betterments

7.6.5.1 Utility Betterments may be added to the Work pursuant to this Section 7.6.5.

7.6.5.2 If a Utility Owner requests that LAWA permit Developer to perform work relating to Betterments as a part of the Work, at the Utility Owner's expense, and if LAWA's Authorized

Representative approves any such request, Developer shall perform such work, with the right to receive additional payment by direct payment from the Utility Owner.

7.6.5.3 LAWA will approve the addition of a Betterment to the scope of the Work only if: (a) the Utility Owner has agreed to the addition of such Betterment to the Work; (b) such Betterment is compatible with the Project and will not delay the Critical Path; (c) it is feasible to separate the cost/pricing for the Betterment work from that for any related Utility Work being furnished or performed by Developer; (d) the Utility Owner has agreed to reimburse LAWA or pay Developer directly for all the costs of the Betterment; and (e) the Utility Owner has agreed to the method of pricing such Work. Developer shall provide LAWA with such information, analyses and certificates as may be requested by LAWA in connection with its review of the Betterment.

7.6.5.4 If a private Utility Owner requires Betterments as a condition to cooperating with Developer to advance a Utility Adjustment, and such request will delay the Utility Adjustment and add cost to the Project, Developer shall promptly notify LAWA. LAWA will engage in discussions with Utility Owner to accelerate resolution of the matter. If LAWA directs Developer to perform any Betterments, such work will be addressed as a LAWA Change.

7.6.6 Assignment of Rights Against Utility Owners

If Developer establishes that it has a good faith claim based on wrongful actions or inactions of a Utility Owner pertaining to a Utility within the Site or otherwise affected by the Project, upon receipt of a written request from Developer, LAWA may assign to Developer LAWA's rights of recovery, as such may exist, under any existing agreement between LAWA and the Utility Owner or under any utility permit.

7.6.7 Applications for Utility Permits

7.6.7.1 Developer acknowledges that, for reasons unrelated to a Utility Adjustment, Utility Owners may apply to an Authority Having Jurisdiction for utility permits to install new Utilities that would conflict with the Project, or to modify, upgrade, relocate or expand existing Utilities within the Site, and that in such event, the Authority Having Jurisdiction may request LAWA's input in connection with the permitting decision. Developer agrees to:

- (a) Assist LAWA in providing comments regarding such permit applications;
- (b) Make available upon request the most recent Project design information and/or Record Documents, as applicable, to the applicants;
- (c) Assist each applicant with information regarding the location of other proposed and existing Utilities; and
- (d) Use commercially reasonable efforts to coordinate work schedules with such applicants as appropriate to avoid interference, if possible, with the Work by applicants' activities.

7.6.8 Utility Adjustment Delays

7.6.8.1 To be eligible for any relief pursuant to clause (r) (Delay relating to Utilities not subject to a Cooperation Agreement) and clause (t) (Delay relating to Utilities subject to a Cooperation

Agreement) of the definition of Compensation Event, Developer must, in addition to complying with the requirements set forth in Article 13 (Relief Event Process), establish that:

- (a) the subject Utility Adjustment is necessary to accommodate the Project;
- (b) Developer:
 - (i) submitted a Utility Relocation Plan to LAWA that included the subject Utility Adjustment, and LAWA approved the Utility Relocation Plan;
 - (ii) provided a Project Execution Plan to the Utility Owner for the subject Utility Adjustment;
 - (iii) submitted any necessary applications or other submittals to the Utility Owner in accordance with the requirements of the Utility Owner and such applications were fully complete and adequate;
 - (iv) complied with its obligations to cooperate and coordinate with the Utility Owner in accordance with the Contract Documents;
 - (v) furnished the Utility Owner and LAWA with sufficient advance notice regarding the potential impact of the Delay; and
 - (vi) pursued all commercially reasonable options to avoid the Delay.

7.7 Hazardous Materials Management, Risk Allocation and Payment

7.7.1 Hazardous Materials Management

7.7.1.1 Except as otherwise provided in this Section 7.7.1, Developer shall, as part of the Work, perform, or cause to be performed, all Hazardous Materials Management required in connection with the Project in accordance with applicable Law, Governmental Approvals, the approved Environmental Protection Program, and all applicable provisions of the Contract Documents.

7.7.1.2 Developer shall have the following duties to identify, avoid, minimize and mitigate adverse monetary and non-monetary impacts to the Project and to LAWA relating to Hazardous Materials:

- (a) Developer shall adopt design and construction techniques for the Project, using Good Industry Practice, that avoid, to the maximum extent practicable, the need for Hazardous Materials Management;
- (b) when performing Hazardous Materials Management, Developer shall use Good Industry Practice, including design modifications and construction techniques, to minimize costs (including long-term costs) of Hazardous Materials Management; and
- (c) Developer shall use appropriately trained personnel to conduct Hazardous Materials Management activities.

7.7.1.3 Developer shall promptly provide notice to LAWA of any Hazardous Materials encountered in connection with the Project, the Site or the Work that require (a) reporting or notice to any Governmental Entity and/or (b) taking any response action (e.g., evaluating and addressing the circumstances and location of the Hazardous Materials) under applicable Law, Governmental Approvals, the approved Environmental Protection Program and the Contract Documents, as applicable. A notice provided under this Section 7.7.1.3 shall advise LAWA of any obligation to notify Governmental Entities under applicable Law. Developer shall make all such reports, or deliver all such notices, to any Governmental Entity with respect to Hazardous Materials encountered in connection with the Project, the Site or the Work, providing concurrent notice and copies of such reports and notices to LAWA.

7.7.1.4 Developer shall manage all Pre-Existing Hazardous Materials encountered in connection with the Project, in compliance with applicable Law, subject to the following:

- (a) to the extent circumstances warrant off-site disposal of any Pre-Existing Hazardous Materials, Developer shall manage and dispose of such materials in accordance with the Environmental and Hazardous Materials Response Plan. Developer (i) shall ensure that each destination facility to which any Hazardous Materials will be transported is properly licensed under applicable Law to receive the specific Hazardous Materials to be transported to that facility; (ii) may not dispose of Hazardous Materials at Superfund Sites; and (iii) shall prepare for LAWA's review and signature the manifests and related forms required for transportation and disposal of the Hazardous Materials and provide such documentation to LAWA at least 10 days before the expected date of transport. Developer will not be designated as the generator on the transport manifest for Pre-Existing Hazardous Materials;
- (b) to the extent circumstances warrant managing and/or remediating any Pre-Existing Hazardous Materials in place or otherwise on-site, Developer shall take all appropriate actions in accordance with the Environmental Protection Program (including specifically the Environmental and Hazardous Materials Response Plan component) and applicable Law;
- (c) as between LAWA and Developer, notwithstanding the obligations assumed by Developer under Section 7.7.1.4(a) or (b), to the extent permitted by applicable Law, LAWA accepts legal responsibility for any Losses incurred by either Party arising out of, relating to or resulting from the proper management (including off-site disposal) of Hazardous Materials under Section 7.7.1.4(a) or (b), including Losses incurred due to any impacts to nearby property. LAWA shall have no liability for Third Party claims under this Section 7.7.1.4(c) to the extent that such Losses were the result of any Developer Release or the negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity;
- (d) as between LAWA and Developer, Developer accepts legal responsibility for Third Party claims arising out of, relating to, or resulting from any Developer Release and any Losses relating to Developer Releases or any improper performance of off-site disposal or remediation or management in place of Pre-Existing Hazardous Materials by any Developer-Related Entity;

- (e) as between Developer and LAWA, and in addition to those obligations listed in Section 7.7.1.4(d) as Developer's responsibility, without abrogating any of Developer's rights under this Agreement, and to the extent permitted by and consistent with applicable Law, Developer accepts legal responsibility for any Losses, including those of Third Parties, with respect to (i) Developer Releases of Hazardous Materials and (ii) Hazardous Materials discovered or released into, onto or under Additional Properties or Temporary Areas. However, this shall not preclude or limit any rights or remedies that Developer may have against Third Parties, including prior owners, lessees, licensees and occupants of the Additional Properties or Temporary Areas;
- (f) to the maximum extent permitted by and consistent with applicable Law, Developer shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, legal or administrative proceedings or Losses arising out of, relating to or resulting from the off-site disposal of Hazardous Materials for which Developer accepts or is imputed legal responsibility under Section 7.7.1.4(c) through 7.7.1.4(e); and
- (g) nothing in this Section 7.7.1.4 shall preclude or limit any rights or remedies that LAWA or Developer may have against Third Parties, including (with respect to LAWA) prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Site and (with respect to Developer) prior owners, lessees, licensees and occupants of Additional Properties), or shall abrogate any of LAWA's rights under this Agreement and at law;

7.7.1.5 If Developer fails to undertake the Hazardous Materials Management required under this Section 7.7.1 within a reasonable time after discovery of Hazardous Materials, taking into consideration the nature and extent of the contamination and action required and the potential impact upon Developer's schedule for use of and operations on the Site, LAWA may notify Developer that LAWA will undertake the Hazardous Materials Management. Following provision of a notice under this Section 7.7.1.5:

- (a) LAWA may itself undertake Hazardous Materials Management actions or procure a contractor to perform such work, in which case LAWA will do so in accordance with all applicable Environmental Laws;
- (b) Developer shall reimburse LAWA on a current basis, within 10 days of request, for the reasonable costs that LAWA incurs in carrying out such Hazardous Materials Management actions (including costs incurred by virtue of fines, penalties or other assessments against LAWA or the Project by Governmental Entities due to Developer's delay or failure to undertake the Hazardous Materials Management), so long as LAWA has performed in accordance with Section 7.7.1.5(a); and
- (c) LAWA shall have no liability or responsibility to Developer arising out of, relating to or resulting from LAWA's Hazardous Materials Management actions and such actions shall not constitute a Relief Event or other basis for a Claim.

7.7.2 Additional Hazardous Materials Obligations of Developer

7.7.2.1 Developer shall avoid exacerbating Hazardous Materials (including Pre-Existing Hazardous Materials as well as new Releases) in, on, under or migrating from the Site. For purposes of determining liability, as between LAWA and Developer, under Sections 7.7.1.4(a) and 7.7.1.4(b), Developer shall only be liable for exacerbation of Hazardous Materials arising out of or relating to the negligent (including grossly negligent), reckless, willful or intentional acts or omissions by any Developer-Related Entity.

7.7.2.2 Developer shall take all reasonable efforts to ensure that no act or omission of any Developer-Related Entity will result in an unlawful Release of Hazardous Materials to or into wastewater, storm or sanitary sewer systems, surface water, air, soils or groundwater in, on, under or migrating from the Site.

7.8 Public Art

7.8.1 Developer shall:

- (a) promptly upon request by LAWA, provide LAWA with such Project information as LAWA may require to calculate the art assessment for LAMP pursuant to the City's Public Percent for Art Program;
- (b) act in a manner consistent with, and shall not hinder or compromise, LAWA's commitments and objectives under the Public Percent for Art Program; and
- (c) coordinate with LAWA to accommodate art within the Project and comply with the requirements set forth in Part 2A, Section 28.0 (Art Program) of the Technical Provisions.

7.8.2 In addition to the requirements set forth in Section 7.8.1, Developer shall, upon request by LAWA, perform art accommodation and installation services ("**Art Accommodation and Installation Work**"), and LAWA shall compensate Developer for any such services as provided in Section 11.8 (LAWA Allowances).

7.9 Non-O&M Facility Occupancy Readiness and Final Acceptance

7.9.1 Non-O&M Facilities

Developer may, at its election, achieve Non-O&M Facility Occupancy Readiness and Non-O&M Facility Final Acceptance with respect to any Non-O&M Facility before Passenger Service Availability in accordance with this Section 7.9.

7.9.2 Non-O&M Facility Occupancy Readiness

7.9.2.1 The conditions to Non-O&M Facility Occupancy Readiness with respect to a Non-O&M Facility are set forth in Exhibit 15C (Conditions to Non-O&M Facility Occupancy Readiness).

7.9.2.2 Approximately 60 days before the date on which Developer expects to achieve Non-O&M Facility Occupancy Readiness with respect to any Non-O&M Facility, Developer shall provide to LAWA its anticipated schedule to achieve Non-O&M Facility Occupancy Readiness.

Developer shall promptly advise LAWA if at any time Developer determines that its anticipated schedule to achieve Non-O&M Facility Occupancy Readiness will change.

7.9.2.3 When Developer determines that it has satisfied all conditions to Non-O&M Facility Occupancy Readiness, it shall provide a certification to LAWA, in a form reasonably acceptable to LAWA, stating the date that Developer determined that it satisfied all the conditions in Exhibit 15C (Conditions to Non-O&M Facility Occupancy Readiness).

7.9.2.4 During the 20-day period following receipt of such certification:

- (a) Developer and LAWA shall meet and confer to facilitate LAWA's determination of whether Developer has met the conditions for Non-O&M Facility Occupancy Readiness;
- (b) LAWA will conduct an inspection of the Non-O&M Facility, review the applicable Final Design Documents, Construction Documents and other Submittals and conduct such other investigations as may be necessary to evaluate whether Non-O&M Facility Occupancy Readiness has been achieved; and
- (c) Developer shall prepare a Non-O&M Facilities Punch List of Non-O&M Facility Work to be completed as a condition precedent to achievement of Non-O&M Facility Final Acceptance, obtain approval from applicable Utility Owners and Authorities Having Jurisdiction of any Non-O&M Facilities Punch List items relating to Work affecting Utilities and elements subject to the jurisdiction of an Authority Having Jurisdiction, and obtain LAWA's acceptance of the Non-O&M Facilities Punch List. The Non-O&M Facilities Punch List shall not include any items that adversely affect the safety, use or operability of the Non-O&M Facility.

7.9.2.5 Within the 20-day period, LAWA will either (a) issue a Certificate of Non-O&M Facility Occupancy Readiness for the Non-O&M Facility, effective as of the date that the conditions to Non-O&M Facility Occupancy Readiness were satisfied, or (b) notify Developer and LAWA that additional conditions must be met before the certificate will be issued. If LAWA provides notice under Section 7.9.2.5(b), then Developer shall take appropriate steps to satisfy the remaining conditions and provide notice under Section 7.9.2.3 once the conditions have been satisfied.

7.9.3 Non-O&M Facility Final Acceptance

7.9.3.1 Promptly after achieving Non-O&M Facility Occupancy Readiness with respect to a Non-O&M Facility, Developer shall perform all remaining Work to achieve Non-O&M Facility Final Acceptance.

7.9.3.2 The conditions to Non-O&M Facility Final Acceptance are set forth in Exhibit 15D (Conditions to Non-O&M Facility Final Acceptance).

7.9.3.3 When Developer determines that it has satisfied all conditions to Non-O&M Facility Final Acceptance, it shall provide a certification to LAWA, in a form reasonably acceptable to LAWA, stating the date that Developer determined that it satisfied all the conditions in Exhibit 15D (Conditions to Non-O&M Facility Final Acceptance).

7.9.3.4 During the 20-day period following receipt of such certification:

- (a) Developer and LAWA shall meet and confer to facilitate LAWA's determination of whether Developer has met the conditions for Non-O&M Facility Final Acceptance; and
- (b) LAWA will conduct an inspection of the Non-O&M Facility, review the Non-O&M Facilities Punch List items, review the applicable As-Built Documents and other Submittals and conduct such other investigations as may be necessary to evaluate whether Non-O&M Facility Final Acceptance has been achieved.

7.9.3.5 Within the 20-day period, LAWA will either (a) issue a Certificate of Non-O&M Facility Final Acceptance with respect to the Non-O&M Facility, effective as of the date that the conditions to Non-O&M Facility Final Acceptance were satisfied, or (b) notify Developer in writing that additional conditions must be met before the certificate will be issued. If LAWA provides notice under Section 7.9.3.5(b), then Developer shall take appropriate steps to satisfy the remaining conditions and provide notice under Section 7.9.3.3 once the conditions have been satisfied.

7.9.3.6 As of the date of the Certificate of Non-O&M Facility Final Acceptance with respect to a Non-O&M Facility, the Non-O&M Facility shall be excluded from the D&C Limits.

7.10 Passenger Service Availability and Final Completion

7.10.1 Passenger Service Availability Deadline

Developer shall exercise its best efforts to achieve Passenger Service Availability on or before the Passenger Service Availability Deadline. Failure to achieve Passenger Service Availability by the Long Stop Date is a Developer Default under Section 16.1.1(c).

7.10.2 Passenger Service Availability

7.10.2.1 The conditions to Passenger Service Availability are set forth in Exhibit 15E (Conditions to Passenger Service Availability).

7.10.2.2 Approximately six months before the date on which Developer expects to achieve Passenger Service Availability, Developer shall provide to LAWA and the Independent Engineer its anticipated schedule to achieve Passenger Service Availability. Developer shall promptly advise LAWA and the Independent Engineer if at any time Developer determines that its anticipated schedule to achieve Passenger Service Availability will change. Such notice shall not excuse Developer from meeting the requirements in Part 2C, Section 4.5 (APM Operating System Verification) of the Technical Provisions. Developer shall provide an updated schedule to LAWA and the Independent Engineer 21 days before the date Developer expects to achieve Passenger Service Availability.

7.10.2.3 Developer's schedule shall include, at a minimum:

- (a) dates when Developer will submit all remaining documentation required by Part 2A, Section 8.0 (APM System Safety Certification) of the Technical Provisions;

- (b) dates when Developer will submit all remaining evidence required by Part 2C, Section 4.5 (APM Operating System Verification) of the Technical Provisions with respect to Operational Readiness; and
- (c) dates when Developer will complete all remaining Work required for System Demonstration.

7.10.2.4 When Developer determines that it has satisfied all conditions to Passenger Service Availability, it shall deliver to LAWA and the Independent Engineer a certification, in a form reasonably acceptable to LAWA, stating the date that Developer determined it satisfied all conditions in Exhibit 15E (Conditions to Passenger Service Availability).

7.10.2.5 During the 14-day period following the receipt of such certification:

- (a) Developer, the Independent Engineer and LAWA shall meet and confer to facilitate the Independent Engineer's determination of whether Developer has met the conditions for Passenger Service Availability;
- (b) the Independent Engineer will conduct an inspection of the Project, review the applicable Final Design Documents, Construction Documents and other Submittals and conduct such other investigations as may be necessary to evaluate whether Passenger Service Availability has been achieved;
- (c) Developer shall prepare an APM System Punch List of D&C Work to be completed as a condition precedent to achievement of Final Completion, obtain approval from Utility Owners and Authorities Having Jurisdiction of any APM System Punch List items affecting Utilities and elements subject to the jurisdiction of an Authority Having Jurisdiction and obtain LAWA's acceptance of the APM System Punch List. The APM System Punch List shall not include any items that adversely affect the safety, use or operability of the Project; and
- (d) The Independent Engineer shall (i) deliver a report of findings and recommendations to LAWA and Developer stating in the Independent Engineer's opinion whether the conditions to Passenger Service Availability have been satisfied or (ii) provide notice to Developer stating the reasons why the conditions to Passenger Service Availability have not been achieved.

7.10.2.6 Within 10 Business Days after LAWA's receipt of a report given by the Independent Engineer under Section 7.10.2.5(d)(i) stating that the conditions to Passenger Service Availability have been satisfied, LAWA will either:

- (a) notify Developer and the Independent Engineer that LAWA concurs with the Independent Engineer's determination that the conditions to Passenger Service Availability have been met; or
- (b) notify Developer and the Independent Engineer regarding the reasons why LAWA believes the conditions to Passenger Service Availability have not been satisfied.

7.10.2.7 Following receipt of notice from LAWA under Section 7.10.2.6, or following expiration of the 10 Business Days period if LAWA fails to provide such notice, the Independent Engineer may:

- (a) issue a Certificate of Passenger Service Availability, effective as of the date that the conditions to Passenger Service Availability were satisfied; or
- (b) notify Developer and LAWA in writing that additional conditions must be met before the certificate will be issued.

7.10.2.8 If the Independent Engineer provides notice under Section 7.10.2.5(d)(ii), then Developer shall take appropriate steps to satisfy the remaining conditions and provide notice under Section 7.10.2.4 once the conditions have been satisfied.

7.10.3 Final Completion

7.10.3.1 Promptly after achieving Passenger Service Availability, Developer shall perform all remaining D&C Work to achieve Final Completion.

7.10.3.2 The conditions to Final Completion are set forth in Exhibit 15F (Conditions to Final Completion).

7.10.3.3 When Developer determines that it has satisfied all conditions to Final Completion, it shall provide a certification to LAWA and the Independent Engineer, in a form reasonably acceptable to LAWA, stating the date that Developer determined that it satisfied all the conditions in Exhibit 15F (Conditions to Final Completion).

7.10.3.4 During the 14-day period following receipt of such certification:

- (a) Developer, the Independent Engineer and LAWA shall meet and confer to facilitate the Independent Engineer's determination of whether Developer has met the conditions for Final Completion;
- (b) the Independent Engineer will conduct an inspection of the Project, review the APM System Punch List items, review the As-Built Documents and other Submittals, and conduct such other investigations as may be necessary to evaluate whether Final Completion has been achieved; and
- (c) the Independent Engineer shall (i) deliver a report of findings and recommendations to LAWA and Developer stating in the Independent Engineer's opinion whether the conditions to Final Completion have been satisfied; or (ii) provide notice to Developer stating the reasons why the conditions to Final Completion have not been achieved.

7.10.3.5 Within 10 Business Days after LAWA's receipt of a report from the Independent Engineer pursuant to Section 7.10.3.4(c)(i) stating that the conditions to Final Completion have been satisfied, LAWA will either:

- (a) notify Developer and the Independent Engineer that LAWA concurs with the Independent Engineer's determination that the conditions to Final Completion have been met; or

- (b) notify Developer and the Independent Engineer regarding the reasons why LAWA believes the conditions to Final Completion have not been satisfied.

7.10.3.6 Following receipt of notice from LAWA under Section 7.10.3.5, or following expiration of the 10 Business Days period if LAWA fails to provide such notice, the Independent Engineer may:

- (a) issue a Certificate of Final Completion, effective as of the date that the conditions to Final Completion were satisfied; or
- (b) notify Developer and LAWA in writing that additional conditions must be met before the certificate will be issued.

7.10.3.7 If the Independent Engineer provides notice under Section 7.10.3.4(c)(ii), then Developer shall take appropriate steps to satisfy the remaining conditions and provide notice under Section 7.10.3.3 once the conditions have been satisfied.

7.11 Responsibility for Loss or Damage

7.11.1 The D&C Work includes having full charge and care of the Site and the D&C Work (including bearing risk of loss and damage to the D&C Work and Site), except to the extent that LAWA or Third Parties have accepted elements of the D&C Work and assumed responsibility for maintenance of such elements.

7.11.2 Developer shall take every reasonable precaution against Loss or damage to any part of the Project from any cause, whether arising from the performance or nonperformance of the D&C Work.

7.11.3 For so long as Developer bears the risk of loss and damage to D&C Work under Section 7.11.1, Developer shall repair, restore and replace Losses or damages to such D&C Work occasioned by any cause. Developer shall ensure that such work is performed in accordance with the Contract Documents and applicable Law.

7.11.4 Developer shall repair, restore and replace any Losses or damages to LAWA property other than the D&C Work caused by any Developer-Related Entity.

7.12 Nonconforming Work

7.12.1 Obligation to Replace Nonconforming Work

Developer shall perform all Work in conformity with the Contract Documents. If Developer has not performed the Work in conformity with the Contract Documents, then, in addition to any other remedies available to LAWA, LAWA may direct Developer to, and Developer shall, remove and replace or otherwise remedy the Nonconforming Work, without entitlement to make a Claim in connection with such Work.

7.12.2 Remedial Plan for Nonconforming Work

7.12.2.1 Promptly after Nonconforming Work is identified but no later than 10 Business Days after Developer first obtains knowledge of such Nonconforming Work, Developer shall submit a remedial plan to LAWA, for review and approval, describing the error or defect giving rise to the

Nonconforming Work and describing Developer's planned remedial action. Such proposal shall address APM System integrity, aesthetics, operational impact, maintainability, the effect on the Project Schedule and other relevant issues.

7.12.2.2 If LAWA determines that a proposed plan of correction may infringe upon APM System integrity, operations or maintainability, then LAWA may elect to perform a technical assessment of Developer's proposal. LAWA shall notify Developer promptly upon determining that an assessment is required, and shall take reasonable efforts to expedite the assessment. Should LAWA elect to perform any such technical assessment, (a) if so requested by LAWA, Developer shall not proceed with the remedial plan until LAWA has conducted its technical assessment and provided prior approval of the remedial plan and (b) Developer shall not be entitled to make any Claim in connection with the technical assessment or reasonable delay in the remedial plan pending LAWA's approval.

7.12.3 LAWA's Remedies

LAWA shall have the right and authority to cause Nonconforming Work to be removed, replaced or otherwise remedied and to withhold or deduct the costs from any monies due or that become due to Developer under the Contract Documents upon (a) any failure of Developer to provide a proposed remedial plan as described in Section 7.12.2.1 and obtain LAWA's approval thereof, promptly following discovery of (but no later than 10 Business Days after Developer first obtains knowledge of) the Nonconforming Work, or (b) any failure of Developer to comply with LAWA's direction under this Agreement relating to any safety issue, including Safety Compliance Orders.

ARTICLE 8. OPERATIONS AND MAINTENANCE

8.1 General

8.1.1 General Obligations

8.1.1.1 Developer is responsible for performance of O&M Work in accordance with requirements specified in the Contract Documents, including Part 3 (APM System Operations & Maintenance Requirements) of the Technical Provisions.

8.1.1.2 Developer shall ensure that:

- (a) all O&M Work is performed in accordance with all applicable Laws, Governmental Approvals and Good Industry Practice, as it may evolve over time;
- (b) the APM System remains safe, fit for use for the intended functions, meets the requirements of the Contract Documents, remains free of defects and meets the minimum performance standards for operations as specified in the Technical Provisions throughout the O&M Period;
- (c) (i) all materials and equipment furnished during the O&M Period are of good quality and new and (ii) all APM Operating System components and related consumables obtained as part of the O&M Work and supplied during the O&M Period are of good quality and new and fit for their intended purpose;
- (d) all O&M Work is performed in accordance with the LAWA-approved plans required in Part 2C, Sections 3.1, 3.2 and 3.3 of the Technical Provisions; and
- (e) the O&M Work meets all other requirements of the Contract Documents.

8.1.1.3 Developer shall monitor compliance of the O&M Work with the requirements of Contract Documents and notify LAWA if any noncompliance occurs.

8.1.1.4 The O&M Period Noncompliance Occurrence Table sets forth certain minimum performance requirements related to the O&M Work. Developer's failure to comply with such requirements shall entitle LAWA to the rights and remedies under the Contract Documents, including the assessment of Noncompliance Points, Deductions and termination for Developer Default.

8.1.1.5 Developer shall cooperate with LAWA (and Authorities Having Jurisdiction as applicable) in all matters relating to the O&M Work and required availability of the APM System, including any Oversight with respect to operation and maintenance of the Project.

8.1.1.6 Developer shall obtain, maintain, repair and replace elements of the APM System as appropriate throughout the duration of the O&M Period, including maintenance, repair and replacement of consumable and life-expired items and rehabilitation or overhaul of the APM Operating System.

8.1.1.7 Developer shall develop the Project to accommodate future anticipated Technology Enhancements in keeping with Good Industry Practice. Developer shall implement or

incorporate Technology Enhancements for the APM System throughout the duration of the O&M Period, at no cost to LAWA, to the extent such enhancements are (a) scheduled in the Asset Management Plan, or (b) needed to correct Defects in the Work.

8.1.1.8 Developer shall assume direct and indirect costs for all Utility services relating to the operation and maintenance throughout the Term of the APM Operating System and APM Fixed Facilities in accordance with the Contract Documents.

8.1.2 Changes in Standards and Specifications

8.1.2.1 The Parties anticipate that, from time to time, the Standards and Specifications will be changed, added or replaced, which may be implemented through revisions to existing standards and specifications or through new standards and specifications.

8.1.2.2 Any Renewal Work required to be performed by Developer in accordance with its Asset Management Plan shall be performed in compliance with the then current Standards and Specifications. LAWA may, through a LAWA Change, require Developer to comply with updated Standards and Specifications prior to the date set forth in Developer's Renewal Work Schedule for Renewal Work affected by the updated Standards and Specifications.

8.1.3 Hazardous Materials Management

The provisions of Section 7.7.1 (Hazardous Materials Management) concerning Hazardous Materials Management shall apply throughout the O&M Period except to the extent that such provisions are specific to the original construction of the Project.

8.1.4 Utility Accommodation

8.1.4.1 Developer acknowledges that from time to time during the course of the O&M Period, Utility Owners will apply for additional utility permits to install new Utilities that may cross or longitudinally occupy the O&M Limits, or to modify, repair, upgrade, relocate or expand existing Utilities within the O&M Limits. In such circumstances, the provisions of Section 7.6.7 (Applications for Utility Permits) shall apply.

8.1.4.2 Throughout the O&M Period, Developer shall monitor Utilities and Utility Owners within the O&M Limits for compliance with applicable utility permits, easements, and applicable Law, and shall use diligent efforts to obtain the cooperation of each Utility Owner having Utilities within the O&M Limits. Developer shall promptly notify LAWA if (a) Developer believes that any Utility Owner is not complying with the terms of a utility permit, easement, or applicable Law affecting a Utility within the O&M Limits, or (b) any other dispute arises between Developer and a Utility Owner with respect to a Utility within the O&M Limits, despite Developer having exercised its diligent efforts to obtain the Utility Owner's cooperation. If Developer, despite diligent efforts, is unable to resolve any dispute with a Utility Owner, Developer may request LAWA to provide reasonable assistance. Following delivery of such a request the Parties shall consult regarding measures to be undertaken.

8.2 Developer Inspection, Testing and Reporting

8.2.1 Developer shall carry out Inspections and tests in accordance with the Technical Provisions, Project Management Plan, O&M Management Plan and Section 5.5 (Testing and Test Results). Developer shall use the results of such inspections and tests to develop and

update the Asset Management Plan, to maintain asset condition and service levels, and to develop programs of maintenance and Renewal Work to minimize the effect of O&M Work on Users and other members of the public.

8.2.2 Developer shall submit all reports relating to the O&M Work, including the O&M annual reports, in the form, with the content and within the time required under the Contract Documents.

8.2.3 The inspections and reports described above are in addition to maintenance of the Noncompliance Occurrence and Noncompliance Event database and related reports under Section 15.3.1 (Noncompliance Database).

8.3 Responsibility for Loss or Damage

8.3.1 The O&M Work includes having full charge and care of those portions of the Project within the O&M Limits from the Passenger Service Availability Date through the end of the Term.

8.3.2 Developer shall take reasonable precautions against loss or damage to the APM System and other improvements and assets within the O&M Limits due to any cause.

8.3.3 Developer shall repair, restore and replace all Losses or damages to the APM System. Developer shall ensure that such work is performed in accordance with the Contract Documents and applicable Law.

8.3.4 If any repair, restoration or replacement of the Project is required due to Vandalism, Developer shall be responsible for the first \$250,000 of costs incurred in the aggregate per calendar year (the “**Annual Vandalism Deductible**”) to perform such repair, restoration or replacement, except the Annual Vandalism Deductible shall not apply and Developer shall be solely responsible for all costs incurred to perform any repair, restoration or replacement of the M&SF and the TPSS.

8.3.5 Developer shall repair, restore and replace any Losses or damages to LAWA property other than the APM System caused by any Developer-Related Entity.

8.4 Renewal Work; Asset Management Plan

8.4.1 Performance of Renewal Work

8.4.1.1 Developer shall diligently perform Renewal Work as and when necessary to comply with the Contract Documents, to achieve full design life for each asset, supporting reliable and quality service operations and availability. Developer shall use the Asset Management Plan, as updated from time to time, as the principal guide for scheduling and performing Renewal Work; provided that Developer may perform Renewal Work not identified in Asset Management Plan as necessary to maintain compliance with the Contract Documents, subject to scheduling the performance of such Renewal Work at times agreed to by LAWA.

8.4.1.2 If at any time LAWA determines that Developer has failed to perform the Renewal Work in accordance with the then current Asset Management Plan and applicable Technical Provisions, LAWA may give written notice thereof to Developer. If Developer has failed to complete the Renewal Work within 30 days after LAWA delivers such notice, then LAWA shall

have the right to perform and complete such Renewal Work at the expense and for the account of Developer, and to deduct from payments otherwise payable to Developer by LAWA under this Agreement to pay the costs of such action. The foregoing remedy is in addition to any other remedies available to LAWA under the Contract Documents on account of such failure, including the assessment of Noncompliance Points, and LAWA's right to intervene immediately and without notice to address Safety Compliance.

8.4.1.3 Developer may, by notice to LAWA, object to any demand by LAWA under Section 8.4.1.2 on the grounds that Developer has completed the Renewal Work specified in LAWA's demand or that such Renewal Work is not then required, which notice shall give details of the grounds for objection. Promptly after the delivery of any such notice, the Parties will endeavor to reach agreement as to any matters referred to in the notice. Either Party may refer the matter at any time for resolution in accordance with the Dispute Resolution Procedures.

8.4.2 Asset Management Plan

Within 90 days before the beginning of the first full calendar year of the O&M Period, Developer shall prepare and submit to LAWA for review and approval an Asset Management Plan prepared in accordance with Part 2A, Section 10.1.1 (Asset Management Plan) of the Technical Provisions. No later than 90 days before the beginning of each subsequent calendar year, Developer shall update the Asset Management Plan and submit the updated plan together with Developer's proposed budget for Renewal Work to LAWA.

8.5 Coordination of Operations and Maintenance Responsibilities

At Developer's request from time to time, LAWA will assist Developer in seeking the cooperation and coordination of any Authority Having Jurisdiction with respect to Developer's operation and maintenance activities. The objectives of such assistance will be to minimize disruptions to Passenger Service and traffic and ensure that all operation and maintenance activities are carried out in accordance with then-current maintenance standards and then-current traffic management standards, practices and procedures of such Authorities Having Jurisdiction.

8.6 Handback

8.6.1 Handback Condition

8.6.1.1 Developer shall diligently perform and complete all Renewal Work required to be performed and completed before the Termination Date, based on the required adjustments and changes to the Asset Management Plan resulting from the inspections and analysis under the Handback Requirements. Upon the Termination Date, Developer shall surrender the Project, including any Upgrades, to LAWA, in the condition and meeting all of the requirements of the Handback Requirements.

8.6.1.2 In the event of early termination of this Agreement, Developer shall only be required to comply with the requirements of this Section 8.6 to the extent that any Renewal Work was scheduled to have been performed before the Early Termination Date.

8.6.2 Handback Renewal Work Plan and Handback Reserve Amount

8.6.2.1 No later than five years and three months before the end of the Term, Developer shall:

- (a) deliver to LAWA for LAWA's review and acceptance the Handback Renewal Work Plan prepared in accordance with Part 2A, Section 29.0 (Handback Renewal Work Plan) of the Technical Provisions, and provide of copy of such plan to the Independent Engineer; and
- (b) deliver to LAWA and the Independent Engineer Developer's calculation of the Handback Reserve Amount and related report in accordance with Section 8.6.2.2.

8.6.2.2 Developer shall calculate the Handback Reserve Amount and prepare a report that:

- (a) specifies Developer's estimate of the Handback Reserve Amount;
- (b) details how Developer's estimated Handback Reserve Amount was calculated; and
- (c) sets out Developer's calculation of the required amount to be deposited into the Handback Requirements Reserve Account for the next commencing Handback Year, calculated in accordance with Section 8.7.2.2.

8.6.2.3 Within 15 days of receipt of each report described in Section 8.6.2.2, the Independent Engineer will review the report, conduct its own inspections of the condition of the Project relative to the Handback Requirements and provide a report to Developer and LAWA setting forth the Independent Engineer's determination of the Handback Reserve Amount, including supporting materials.

8.6.2.4 No later than 3 months before the beginning of each subsequent year, Developer shall update the Handback Renewal Work Plan, calculate the Handback Reserve Amount, prepare a report in accordance with Section 8.6.2.2 and provide the update and report to LAWA and the Independent Engineer. Following delivery of the update and report, the Parties shall meet to discuss whether any changes should be made to the scope or schedule for performance of the Handback Renewal Work or to the Handback Renewal Amount.

8.6.3 Annual Handback Inspections and Report

The Parties shall conduct inspections of the Project at the times and according to the terms and procedures specified in the Handback Requirements, for the purposes of:

- (a) determining and verifying the condition of all elements and their Residual Lives;
- (b) adjusting, to the extent necessary based on inspection and analysis, element Useful Lives, ages, Residual Lives, Handback Reserve Amount and timing of Handback Renewal Work;
- (c) revising and updating the Asset Management Plan to incorporate such adjustments; and
- (d) determining the Handback Renewal Work required to be performed and completed before the Termination Date, based on the Handback Requirements for Residual Life at the conclusion of the Term, the foregoing adjustments and the foregoing changes to the Asset Management Plan.

8.6.4 Handback Assessment

8.6.4.1 When Developer determines that it has satisfied the Handback Requirements, it shall provide a certification to the Independent Engineer and LAWA, in a form reasonably acceptable to LAWA, stating the date that Developer determined that it satisfied the Handback Requirements.

8.6.4.2 During the 20-day period following receipt of such certification:

- (a) Developer, the Independent Engineer and LAWA shall meet and confer to facilitate LAWA's determination of whether Developer has met the Handback Requirements;
- (b) the Independent Engineer will conduct a final inspection of the Project, review the Handback Renewal Work Plan and any other relevant Submittals and conduct such other investigations as may be necessary to evaluate whether the Handback Requirements have been met; and
- (c) the Independent Engineer shall (i) deliver a report of findings and recommendations to LAWA and Developer stating in the Independent Engineer's opinion whether Developer has met the Handback Requirements; or (ii) provide notice to Developer stating the reasons why the Handback Requirements have not been met.

8.6.4.3 Within 10 Business Days and after LAWA's receipt of a report given by the Independent Engineer under Section 8.6.4.2(c)(i) stating that the Handback Requirements have been met, LAWA will either:

- (a) notify Developer that it concurs with the Independent Engineer's determination that the Handback Requirements have been met; or
- (b) notify Developer regarding the reasons why LAWA believes the Handback Requirements have not been met.

8.6.4.4 If LAWA provides notice under Section 8.6.4.3(b), then Developer shall take appropriate steps to satisfy the remaining conditions and provide a certification under Section 8.6.4.1 once the conditions have been satisfied.

8.6.5 LAWA Right to Self-Perform and Recover Costs

8.6.5.1 If LAWA determines that the Project does not comply with any Handback Requirement, or Handback Renewal Work is not timely or properly performed, then, in addition to LAWA's rights under the Contract Documents, Developer shall be liable for LAWA's Recoverable Costs incurred in bringing the Project into compliance with such Handback Requirement(s). In recovering such amounts, LAWA may (a) reduce any Availability Payment then due and owing from LAWA to Developer, (b) invoice Developer for such amount, as a lump sum payment, (c) set off such amount against any other amount then due and owing from LAWA to Developer, (d) draw against funds withheld under this Section 8.6 or against the letter of credit described in Section 8.7.5 (Handback Requirements Letters of Credit), (e) require funds in the reserve account described in Section 8.7 (Handback Requirements Reserve Account) to be used to pay for required Renewal Work, or (f) any combination of (a) through (e).

8.7 Handback Requirements Reserve Account

8.7.1 Establishment

8.7.1.1 Beginning five full years before the expected end of the Term, Developer shall establish a reserve account (the “**Handback Requirements Reserve Account**”) exclusively available for the uses set forth in Section 8.7.3 (Use of Handback Requirements Reserve Account). Developer shall provide to LAWA the details regarding the account, including the name, address and contact information for the depository institution and the account number, and shall notify LAWA regarding any change made from time to time to any such details and the effective date of such change immediately upon or prior to such change taking effect. City shall have a first priority perfected security interest in the Handback Requirements Reserve Account, and the right to receive monthly account statements directly from the depository institution. Developer shall deliver such notices to the depository institution and execute such documents as may be required to establish and perfect City’s interest in the Handback Requirements Reserve Account under the Uniform Commercial Code as adopted in the State.

8.7.1.2 In lieu of Developer establishing the Handback Requirements Reserve Account, Developer may deliver to LAWA Handback Requirements Letters of Credit on the terms and conditions set forth in Sections 8.7.5 (Handback Requirements Letters of Credit) and Section 10.3 (Letters of Credit).

8.7.2 Funding

8.7.2.1 Beginning on the first Handback Year and for each subsequent Handback Year, no later than five Business Days following the first day of such Handback Year, Developer shall deposit to the Handback Requirements Reserve Account amounts determined in accordance with this Section 8.7.2.

8.7.2.2 The amount Developer is required to deposit to the Handback Requirements Reserve Account for each Handback Year shall be calculated as follows:

- (a) if, as of the date of calculation, the MaxAPs projected to be paid to Developer, during the period commencing on such date and ending upon the expiry of the Term, is greater than or equal to two times the Handback Reserve Amount calculated on such date in accordance with Section 8.6.2 (Handback Renewal Work Plan and Handback Reserve Amount), then Developer shall deposit to the Handback Requirements Reserve Account an amount sufficient to ensure that the Handback Requirements Reserve Account balance is equal to the percentage of the Handback Reserve Amount as set forth below for the applicable Handback Year:

Handback Year	Percentage of Handback Reserve Amount
First Handback Year	25%
Second Handback Year	50%
Third Handback Year	75%
Fourth Handback Year	100%
Fifth Handback Year	100%

- (b) if, as of the date of calculation, the MaxAPs projected to be paid to Developer during the period commencing on such date and ending upon the expiry of the Term are less than two times the Handback Reserve Amount calculated on such date in accordance with Section 8.6.2 (Handback Renewal Work Plan and Handback Reserve Amount), then Developer shall deposit to the Handback Requirements Reserve Account an amount sufficient to ensure that the Handback Requirements Reserve Account balance is equal to 100% of the Handback Renewal Amount calculated on such date.

8.7.2.3 If Developer disputes, in good faith, any Handback Reserve Amount as determined in accordance with Section 8.6.2 (Handback Renewal Work Plan and Handback Reserve Amount), Developer shall fund the undisputed portion of the Handback Reserve Amount pending resolution of the Dispute in accordance with Article 18 (Dispute Resolution Procedures).

8.7.2.4 If the Handback Reserve Amount has not been determined before the commencement of a Handback Year, Developer shall deposit in the Handback Requirements Reserve Account an amount equal to the amount deposited by Developer for the prior Handback Year.

8.7.2.5 Funds held in the Handback Requirements Reserve Account may be invested and reinvested only in securities, obligations, bonds, funds, instruments or other investments listed under California Government Code section 16430 ("**Eligible Investments**"). Eligible Investments in the Handback Requirements Reserve Account must mature during the Term, and the principal of such Eligible Investments must be available for withdrawal at any time during the Term without penalty.

8.7.2.6 If Developer fails to make the deposits required pursuant to this Section 8.7.2, when due, LAWA shall be entitled to deduct the amount required to be deposited from the Monthly Disbursements due to Developer and shall deposit such amount to the Handback Requirements Reserve Account on behalf of Developer.

8.7.2.7 If, after recalculation of the Handback Reserve Amount following any of the annual inspections provided for in Section 8.6.3 (Annual Handback Inspections and Report), the amount on deposit in the Handback Requirements Reserve Account exceeds the percentage of the Handback Reserve Amount required to be on deposit in the Handback Requirements Reserve Account in accordance with Section 8.7.2.2 on such calculation date, Developer shall be entitled to draw any surplus amount and no further deposits shall be made until the next inspection and determination of the Handback Reserve Amount.

8.7.3 Use of Handback Requirements Reserve Account

8.7.3.1 Developer shall be entitled to draw funds from the Handback Requirements Reserve Account in such amounts and at such times as needed only to pay for the Handback Renewal Work as required by the Handback Renewal Work Plan. Amounts in the Handback Requirements Reserve Account can only be used for the purposes described in this Section 8.7.3.1 and are not available as security for repayment of Project Debt or making Distributions. The use of amounts in the Handback Requirements Reserve Account by Developer for any purpose other than as permitted in this Section 8.7.3.1 shall be a Developer Default.

8.7.3.2 Before drawing funds from the Handback Requirements Reserve Account, Developer shall give written notice to LAWA of the amount to be drawn and the purpose for which funds will be used. LAWA shall have 10 days from the date of the receipt of such notice to disapprove the draw from the Handback Requirements Reserve Account. LAWA may disapprove the draw only if the requested amount and/or purposes for which the funds will be used do not comply with the Handback Renewal Work Plan. If LAWA fails to disapprove the draw within the 10 day period following receipt of notice, Developer shall be entitled to draw funds in the manner described in the notice to LAWA.

8.7.4 Disbursement of Handback Requirements Reserve Account on Completion of Handback Renewal Work or Earlier Termination

8.7.4.1 Following completion of the Handback Renewal Work, any remaining Handback Requirements Reserve Balance shall be drawn and retained by Developer.

8.7.4.2 If this Agreement is terminated for any reason before the completion of the Handback Renewal Work, any remaining Handback Requirements Reserve Balance shall be drawn and retained by LAWA.

8.7.5 Handback Requirements Letters of Credit

8.7.5.1 In lieu of establishing the Handback Requirements Reserve Account, Developer may deliver to LAWA one or more letters of credit (each, a “**Handback Requirements Letter of Credit**”), on the terms and conditions set forth in this [Section 8.7.5](#) and [Section 10.3](#) (Letters of Credit). The Handback Requirements Letter of Credit shall name City as the sole beneficiary and shall not provide for any other dual or multiple beneficiaries. Developer shall execute, and shall cause the financial institution issuing the Handback Requirements Letter of Credit to execute, such documents as may be required to establish and perfect City’s interest in the Handback Requirements Letter of Credit under the Uniform Commercial Code as adopted in the State, which interest shall be a first priority security interest as provided in [Section 8.7.1.1](#). If the Handback Requirements Reserve Account has been previously established, Developer at any time thereafter may substitute one or more Handback Requirements Letters of Credit for all or any portion of the amounts required to be on deposit in the Handback Requirements Reserve Account, on the terms and conditions set forth in this [Section 8.7.5](#).

8.7.5.2 Upon receipt of the required substitute Handback Requirements Letter of Credit, LAWA shall authorize the release to Developer of amounts in the Handback Requirements Reserve Account equal to the face amount of the substitute Handback Requirements Letter of Credit. If the face amount of all Handback Requirements Letters of Credit is less than the total amount required to be funded to the Handback Requirements Reserve Account before expiration of the Handback Requirements Letter of Credit, Developer shall be obligated to pay, when due, the shortfall into the Handback Requirements Reserve Account. Alternatively, Developer may deliver a Handback Requirements Letter of Credit with a face amount equal to at least the total amount required to be funded to the Handback Requirements Reserve Account during the period up to the expiration of the Handback Requirements Letter of Credit, or may deliver additional Handback Requirements Letters of Credit or cause the existing Handback Requirements Letter of Credit to be amended to cover the shortfall before deposits of the shortfall to the Handback Requirements Reserve Account are due.

8.7.5.3 City shall have the right to draw on the Handback Requirements Letter of Credit, without prior notice to Developer, for the reasons set forth in Sections 10.3.1.3(b) and (c) and Section 8.7.4.2.

8.7.5.4 Except when drawing upon the Handback Requirements Letter of Credit in accordance with Section 8.7.4.2, City shall deposit the proceeds from drawing on the Handback Requirements Letter of Credit into the Handback Requirements Reserve Account.

ARTICLE 9. CONTRACTING AND LABOR PRACTICES

9.1 Disclosure of Contracts and Contractors

9.1.1 The provisions of this Section 9.1 apply with respect to (a) Prime Contracts and lower tier Contracts entered into by Prime Contractors, excluding personal services contracts and contracts with Suppliers other than Key Contractors, and (b) Contracts with Affiliates, regardless of the nature or tier of the Contract. With respect to each such Contract, Developer shall notify LAWA's Authorized Representative of the proposed Contractor and proposed scope of work to be performed by the Contractor, at least 10 days in advance of execution and delivery of the Contract.

9.1.2 Each notice under Section 9.1.1 shall identify the Work to be performed under the Contract and the proposed dollar value of the Contract. If the Contract includes Construction Work, the notice shall include assurance that the prevailing wage for labor, as specified in the Contract Documents, shall apply to labor performed on all work sublet, assigned, or otherwise disposed of in any way.

9.1.3 Each of the Contracts listed in the notice under Section 9.1.1 may be executed and delivered 10 days after the notice provided to LAWA unless Section 9.3 (Key Contracts; Contractor Qualifications) or 9.7 (Contract with Affiliates) applies.

9.1.4 Developer shall provide LAWA with a list of all Contracts and the Contractors thereunder with each Monthly Report required during the D&C Period and each APM System monthly report required during the O&M Period. Developer shall allow LAWA ready access to all Contracts and records regarding Contracts and shall deliver to LAWA, (i) within 10 days after execution, copies of all Key Contracts, guarantees thereof and amendments and supplements to Key Contracts and guarantees thereof, and (ii) within 10 days after receipt of a request from LAWA, copies of all other Contracts (including amendments and supplements) as may be requested.

9.2 Responsibility for Work, Contractors and Employees

9.2.1 Developer shall be entitled to enter into one or more Contracts with Contractors to perform portions of the Work.

9.2.2 The retention of Contractors by Developer does not relieve Developer of its responsibilities under this Agreement or for the quality of the Work or materials or services provided by it.

9.2.3 Each Contract shall include (a) terms sufficient to ensure both the acknowledgement of and compliance by the Contractor with the applicable requirements of the Contract Documents and to ensure that LAWA has the ability to exercise its rights specified in the Contract Documents, (b) those terms that are specifically required by the Contract Documents to be included in such Contract, and (c) all applicable Laws.

9.2.4 Developer shall require each Contractor to familiarize itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals.

9.2.5 Nothing in this Agreement will create any contractual relationship between LAWA and any Contractor. No Contract entered into by or under Developer shall impose any obligation or

liability upon any Indemnified Party to any Contractor or any of its employees. Developer shall include, or cause to be included, a provision in all Contracts acknowledging the same.

9.2.6 Developer shall supervise and be fully responsible for the actions, omissions, negligence, willful misconduct, fraud, bad faith or breach of applicable Law or contract by any Developer-Related Entity or by any member or employee of any Developer-Related Entity while performing Work under this Agreement or while on the Site, as though Developer directly employed all such individuals.

9.2.7 If LAWA has reasonable cause to disapprove of an employee of any Developer-Related Entity, Developer shall remove such employee within 10 Business Days after receipt of written notice from LAWA of such disapproval.

9.3 Key Contracts; Contractor Qualifications

9.3.1 Key Contract Approvals, Amendments and Termination; Use of and Change in Key Contractors

9.3.1.1 Developer shall provide LAWA, for LAWA's review and comment, draft copies of (a) any Key Contracts not executed before the Effective Date and (b) proposed material amendments to Key Contracts (regardless of whether the Key Contract to be amended was executed before the Effective Date). Such drafts shall be provided at least 30 days before execution of a Key Contract or an amendment to a Key Contract, as applicable. Any proposed amendment to required terms described in Section 9.3.2 (Key Contract Provisions) shall be considered a material amendment.

9.3.1.2 Except as otherwise approved by LAWA, Developer shall retain, employ and utilize the firms and organizations identified as Major Participants in the Technical Proposal to fill the applicable Key Contractor roles.

9.3.1.3 Developer shall not terminate or permit termination of any Key Contract or permit any substitution, replacement or assignment of any Key Contractor, except with LAWA's prior approval; provided, however, that LAWA's prior approval is not required in the event of (a) any termination of this Agreement where LAWA elects not to assume Developer's future obligations under such Key Contract (or the APM Operating System Supplier's or the APM Operating System O&M Provider's future obligations under the APM Operating System Contract, if applicable), (b) any suspension, debarment, disqualification or removal (distinguished from ineligibility due to lack of financial qualifications) of the Key Contractor, or (c) any agreement for voluntary exclusion of the Key Contractor, from bidding, proposing or contracting with any federal, State or local department or agency. LAWA agrees to act reasonably with respect to approval of a replacement in the case of material uncured default by the Key Contractor under the Key Contract.

9.3.2 Key Contract Provisions

9.3.2.1 Each Key Contract shall comply with the requirements set forth in Exhibit 14 (Key Contract Provisions).

9.3.2.2 Developer shall enter into a new APM Operating System Contract in the circumstances described in clause (t) of Exhibit 14 (Key Contract Provisions).

9.4 Prompt Payment to Contractors

Developer shall comply, and shall cause each Contractor to comply, with the provisions of Business and Professions Code section 7108.5, California Civil Code sections 8122-8138, and any other applicable Law relating to prompt payment of contractors and/or subcontractors and waivers and releases by them of stop payment notices and payment bond rights.

9.5 Key Personnel

Developer shall:

- (a) retain, employ and utilize the individuals specifically listed in Exhibit 2A-3 (Key Personnel Statement of Availability), and retain, employ and utilize individuals qualified for the positions described in Part 2A, Section 1.5 (Key Personnel) of the Technical Provisions to fill Key Personnel positions for the relevant period; Developer acknowledges that if LAWA reasonably determines that an individual is not qualified for a Key Personnel position, Developer shall at LAWA's request replace that individual with one that meets the required qualifications;
- (b) not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by LAWA under Section 9.5(c);
- (c) provide notice to LAWA of any proposed replacement for any Key Personnel position. LAWA shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position and shall act reasonably in approving or disapproving use of such individual in such position before the commencement of any Work by such individual;
- (d) cause each Key Person to dedicate the full amount of time necessary for the proper prosecution and performance of the Work, as more specifically described in Part 2A, Section 1.5 (Key Personnel) of the Technical Provisions;
- (e) commit each Key Person to the Project in accordance with Part 2A, Section 1.5 (Key Personnel) of the Technical Provisions;
- (f) provide LAWA with office and cell phone numbers and email addresses for each Key Person. LAWA may contact any Key Personnel 24 hours per day, seven days per week;
- (g) ensure that the Project Manager identified in the Technical Proposal or otherwise approved by LAWA (a) will have full responsibility for the prosecution of the D&C Work, (b) will act as agent and be a single point of contact in all matters relating to the D&C Work on behalf of Developer at least until Final Completion, (c) will be present (or ensure that his or her approved designee is present) at the construction site at all times that Construction Work is performed, and (d) will be available to respond promptly to LAWA; and
- (h) ensure that the Quality Program Manager identified in the Technical Proposal or otherwise approved by LAWA (a) will have full responsibility for quality assurance and quality control with respect to D&C Work until Final Completion,

(b) is present (or his or her approved designee is present) at the construction site at all times that Construction Work is performed, and (c) will be available to respond promptly to LAWA.

9.6 Inclusivity

9.6.1 Design Work and Construction Work Subcontracting

9.6.1.1 Developer shall utilize as Contractors in performance of the Design Work the services of firms certified as Small Business Enterprise, Local Business Enterprise, Local Small Business Enterprise or Local-State Disabled Veteran Business Enterprise firms at the following minimum participation levels, which are presented as a percentage of Developer’s cost of the Design Work:

SBE	22%
LBE	8%
LSBE (subset of LBE)	3%
DVBE	3%

9.6.1.2 Developer shall utilize as Contractors in performance of the Construction Work the services of firms certified as Small Business Enterprise, Local Business Enterprise, Local Small Business Enterprise or Local-State Disabled Veteran Business Enterprise firms at the following minimum participation levels, which are presented as a percentage of Developer’s cost for the Construction Work:

SBE	18%
LBE	7%
LSBE (subset of LBE)	3%
DVBE	3%

9.6.1.3 Annually until Final Completion, within 60 days following the anniversary of the Effective Date each year, LAWA will assess Developer's utilization during the preceding year of SBE, LBE, LSBE and DVBE firms in performance of Design Work and Construction Work. If Developer fails to achieve at least 96% of the participation levels specified in Developer's Inclusivity Plan for SBE, LBE, LSBE and DVBE firms for the then applicable year, then LAWA shall provide written notice to Developer, and Developer shall:

- (a) within 30 days of receipt of notice from LAWA, submit to LAWA a remedial plan setting forth Developer's specific actions to (i) within 90 days of submitting the remedial plan, bring the SBE, LBE, LSBE and DVBE participation levels up to the levels specified in Developer's Inclusivity Plan for the then current year; and (ii) achieve by Final Completion higher of (A) the minimum participation levels for Design Work and Construction Work set forth in Sections 9.6.1.1 and 9.6.1.2, respectively, and (B) the participation levels for SBE, LBE, LSBE and DVBE firms for Design Work and Construction Work specified in Developer's Inclusivity Plan; and
- (b) within one week of submitting the remedial plan and weekly thereafter until Developer has:
 - (i) achieved the participation levels specified in Developer's Inclusivity Plan for the applicable time period; and
 - (ii) demonstrated to LAWA's satisfaction that Developer can reasonably achieve by Final Completion the higher of (A) the minimum participation levels for Design Work and Construction Work set forth in Sections 9.6.1.1 and 9.6.1.2, respectively, and (B) the participation levels for SBE, LBE, LSBE and DVBE firms for Design Work and Construction Work specified in Developer's Inclusivity Plan,

submit to LAWA weekly progress and activity reports, including a statement of Developer's current expectation of when Developer will be in compliance with the applicable participation levels and all contingencies to which these expectations are subject.

9.6.1.4 Before payment of Milestone Payment 6, LAWA will, in accordance with Section 2 of Exhibit 4A (Milestone Payment Mechanism), assess whether Developer has met the minimum participation levels set forth in Sections 9.6.1.1 and 9.6.1.2.

9.6.2 O&M Work Subcontracting

9.6.2.1 Developer shall utilize as Subcontractors in performance of the O&M Work the services of firms certified as Small Business Enterprise, Local Business Enterprise, Local Small Business Enterprise or Local-State Disabled Veteran Business Enterprise firms at the following minimum annual participation levels, which are presented as a percentage of Developer's cost of the O&M Work (excluding costs of Renewal Work on Vehicles performed outside the County of Los Angeles, and excluding Utilities consumption costs, insurance premiums and financing costs) for the applicable period:

- (a) during the period commencing on the Passenger Service Availability Date and ending on the day before the fifth anniversary of the Passenger Service Availability Date:

SBE	17%
LBE	10%
LSBE (subset of LBE)	5%
DVBE	3%

and

- (b) for the period commencing on the fifth anniversary of the Passenger Service Availability Date and ending on the Termination Date, at the minimum annual participation levels determined in accordance with Section 9.6.2.2.

9.6.2.2 Every five years during the Term (commencing initially on the fifth anniversary of the Passenger Service Availability Date) (each an “**O&M Inclusivity Period**”), an adjustment will be made in accordance with this Section 9.6.2.2 to the minimum annual participation levels for SBEs, LBEs, LSBEs and DVBEs in the performance of O&M Work (the “**O&M Inclusivity Adjustment**”) as follows:

- (a) LAWA will determine each O&M Inclusivity Adjustment;
- (b) in determining an O&M Inclusivity Adjustment, LAWA:
- (i) shall take into account the market availability of SBEs, LBEs, LSBEs and DVBEs as indicated by publicly available databases used by LAWA for assessing market availability of such firms; and
 - (ii) may also take into account:
 - (A) the anticipated scope of O&M Work for the next five year period as set forth in the APM System Maintenance Plan and Part 3 (APM System Operations & Maintenance Requirements) of the Technical Provision;
 - (B) other comparable projects expected to be active during the next five year period that will have an impact on utilization of SBEs, LBEs, LSBEs and DVBEs in the City;
- (c) LAWA will make its determination of each O&M Inclusivity Adjustment, and will provide notice to Developer of such adjustment, no later than 12 months before the conclusion of the then current O&M Inclusivity Period; and
- (d) the O&M Inclusivity Adjustment for any O&M Inclusivity Period cannot result in a change to the minimum annual participation levels for any SBE, LBE, LSBE or DVBE category of more than 33% of the minimum annual participation

requirements for such category for the immediately preceding O&M Inclusivity Period.

9.6.2.3 Annually, within 60 days after the beginning of each Operating Year, LAWA will assess whether Developer has met the minimum annual participation levels set forth in Section 9.6.2.1 or determined in accordance with Section 9.6.2.2, as applicable.

9.6.3 Inclusivity Subcontracting Provisions that Apply Throughout the Term

9.6.3.1 Developer agrees to strictly comply with LAWA's Small Business Enterprise Program and Local Business, Local Small Business and Local-State Disabled Veterans Business Enterprise Program.

9.6.3.2 By the 15th day of each month during the Term, Developer shall submit a report to LAWA, in a form provided by LAWA, listing the SBE, LBE, LSBE, and DVBE Subcontractors utilized during the previous calendar month.

9.6.3.3 LAWA will not process or pay a Developer invoice unless Developer has submitted all reports required pursuant to Section 5.7.2 (Financial Reporting), Section 9.6.3.2 and Part 2A, Section 3.3.2 (Monthly Reports) of the Technical Provisions, required to be submitted on or before the date of the invoice.

9.6.3.4 In addition to LAWA's rights and remedies set forth this Agreement, Developer's failure to comply with any requirement of LAWA's Small Business Enterprise Program and Local Business, Local Small Business and Local-State Disabled Veterans Business Enterprise Program shall subject Developer to any remedies, including "penalties", that may be assessed by LAWA pursuant to the rules and regulations of such programs.

9.6.3.5 In making assessments of Developer's utilization of SBE, LBE, LSBE and DVBE firms pursuant to Sections 9.6.1.3, 9.6.1.4 and 9.6.2.3, LAWA shall:

- (a) where a Contractor is certified in more than one of the SBE, LBE, LSBE and DVBE categories, include such Contractor in the calculation of participation levels for each category for which it is certified; and
- (b) include in the calculation of participation levels Contractors certified as SBE, LBE, LSBE or DVBE firms at all tiers.

9.7 Contracts with Affiliates

9.7.1 Affiliates may perform Work only if:

- (a) Developer or a Contractor executes a written Contract with the Affiliate which:
 - (i) complies with all applicable provisions of the Contract Documents, including this Article 9, is consistent with Good Industry Practice, and is in form and substance substantially similar to Contracts then being used by Developer or Affiliates for similar Work or services with unaffiliated contractors;

- (ii) sets forth the scope of Work and all the pricing, terms respecting the scope of Work;
 - (iii) contains pricing, scheduling and other terms no less favorable to Developer than those that Developer could reasonably obtain in an arms'-length, competitive transaction with an unaffiliated Contractor. Developer shall bear the burden of proving that the same are no less favorable to Developer; and
- (b) The Work to be performed by the Affiliate is not Work that any Contract Document, the Project Management Plan or O&M Management Plan indicates is to be performed by an independent or unaffiliated party.

9.7.2 Before Developer or a Contractor enters into a written Contract (including supplements and amendments) with an Affiliate, Developer shall submit a true and complete copy of the proposed Contract to LAWA for comment. LAWA shall have 20 days after receipt to deliver its comments to Developer. If the Contract with the Affiliate is a Key Contract, it shall be subject to LAWA's approval as provided in Section 9.3.1 (Key Contract Approvals, Amendments and Termination; Use of and Change in Key Contractors).

9.7.3 Developer shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope. Advance payments in violation of this provision shall be excluded from the calculation of Termination Compensation.

9.8 Labor Standards

9.8.1 In performing the Work, Developer shall comply, and require all Contractors to comply, with all applicable federal and State labor, occupational safety and health Laws and orders, including payment of prevailing wages.

9.8.2 By the 15th day of each month during the Term, Developer shall submit to LAWA certified payroll records for all employees of Developer and Contractors at all tiers for the preceding calendar month.

9.8.3 In the event a prevailing wage law violation is discovered, LAWA will not process or pay Developer's invoices, as requested by the Bureau of Contract Administration, until the violation is resolved. LAWA's payment of Developer's invoices may be withheld contingent upon an affirmative labor compliance declaration from the Bureau of Contract Administration.

9.8.4 Developer shall require Contractors who have not previously done so to attend the Bureau of Contract Administration contractor assistance seminar within 30 days of commencing Construction Work. The contractor assistance seminar provides contractors with training on prevailing wages, certified payrolls and apprenticeship requirements on public works projects.

9.8.5 All individuals performing the Work shall be qualified, experienced, competent and skilled in the performance of the portion of the Work assigned and related obligations of Developer in accordance with the Contract Documents and any applicable minimum levels in the Technical Provisions.

9.8.6 If any individual employed by Developer or any Contractor lacks required qualifications, skill, competence, experience, licensing, certification, registration, permit, approval, bond or insurance or is not performing the Work in a proper, safe and skillful manner, then Developer shall, or shall cause such Contractor to, remove such individual, and such individual shall not be re-employed on the Work.

9.8.7 If, after notice and reasonable opportunity to cure, Developer fails to take action as required by Section 9.8.6, or if Developer fails to ensure that qualified, skilled, experienced, competent, licensed, certified, registered, permitted and approved personnel are furnished for the proper performance of the Work, then LAWA may suspend the affected portion of the Work by delivering to Developer notice of such suspension. Such suspension shall in no way relieve Developer of any obligation contained in the Contract Documents.

9.9 Project Labor Agreement, Local Workers and Workforce Development Requirements for Construction Work

9.9.1 All Construction Work under this Agreement is subject to the Los Angeles Department of Airports Construction Project Labor Agreement, as amended (the “PLA”), available at http://www.lawa.org/welcome_lawa.aspx?id=2398. Developer shall comply with the terms of the PLA; however, the PLA shall not be construed as superseding California Labor Code requirements nor any applicable federal, State and local Laws. Developer acknowledges that there may have been changes in Laws since the date of the PLA. Developer is responsible for understanding current applicable Laws affecting labor.

9.9.2 Developer shall maximize the employment of Local Workers in performance of Construction Work and shall work within the framework of the PLA hiring and referral provisions, as well as the guidelines of the applicable union/joint-labor management apprenticeship program. At a minimum, Developer shall ensure that at least 30% of all hours worked in performance of Construction Work in each year are performed by Local Workers and shall hire a minimum of 100 apprenticeship positions during the D&C Period through collaboration with LAWA and its partners in workforce development, including the HireLAX Apprenticeship Readiness Program, local community colleges, community-based organizations and the workforce development programs of LAWA, the City and other local agencies.

9.10 O&M Work Labor Neutrality, Local Workers and Workforce Development Requirements

9.10.1 Developer shall remain neutral in employee or labor organization efforts to organize workers performing O&M Work for union representation or collective bargaining.

9.10.2 Developer shall maximize the employment of Local Workers and Disadvantaged Workers in performance of O&M Work and at a minimum shall ensure that at least 50% of all hours worked in performance of O&M Work in each year are performed by Local Workers and at least 7% of all hours worked in performance of O&M Work in each year are performed by Disadvantaged Workers,

9.10.3 Annually, within 60 days following the anniversary of the Passenger Service Availability Date each year, LAWA will assess whether Developer has met the Local Workers and Disadvantaged Workers requirements set forth Section 9.10.2.

9.10.4 In making assessments of Developer's utilization of Local Workers and Disadvantaged Workers pursuant to Section 9.10.3, LAWA shall include in the calculation Local Workers and Disadvantaged Workers employed by Developer and Contractors at all tiers.

9.11 Deductions and Noncompliance Points Relating to Inclusivity, Local Worker and Workforce Development

If Developer fails to meet certain requirements set forth in this Article 9, LAWA may, without limiting LAWA's other rights and remedies under this Agreement, assess Deductions and Noncompliance Points as provided in Exhibit 4 (Payment Mechanism).

9.12 Ethical Standards

9.12.1 Developer or its representatives shall not make, nor cause to be made, any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to (a) LAWA representatives, employees, or their relatives, or (b) representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with this Project.

9.12.2 Developer employees (or their relatives), agents, or subcontractors shall not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from any other contractors or from any LAWA employee, agent, representative.

9.12.3 Developer agrees to notify a designated LAWA representative within 48 hours of any instance where Developer becomes aware of a failure to comply with the provisions of this Section 9.12.

ARTICLE 10. INSURANCE; PAYMENT AND PERFORMANCE SECURITY; INDEMNITY

10.1 Insurance

10.1.1 Insurance Policies and Coverage

Developer shall procure and maintain, or cause to be procured or maintained, the Insurance Policies identified in this Section 10.1 and in Exhibit 7 (Insurance Requirements) strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in Exhibit 7 (Insurance Requirements) and in this Section 10.1.

10.1.2 General Insurance Requirements

10.1.2.1 Insurers

All insurance required hereunder shall be procured from insurers that at the time coverage commences are authorized to do business in the State and have a current policyholder's management and financial size category rating of not less than A-VII according to A.M. Best's Financial Strength Rating and Financial Size Category, except as otherwise provided in Exhibit 7 (Insurance Requirements) or approved in writing by LAWA in its reasonable discretion.

10.1.2.2 Deductibles; Self-Insured Retentions; Claims Exceeding Policy Limits

Except to the extent expressly provided otherwise in the Contract Documents, Developer shall be responsible for paying all insurance deductibles, and LAWA shall have no liability for deductibles, self-insured retentions or claim amounts exceeding the required policy limits. In the event that any required insurance coverage involves a self-insured retention: (a) the entity responsible for the self-insured retention shall have an authorized representative issue a letter to LAWA, at the same time the Insurance Policy is to be procured, stating that it shall protect and defend City to the same extent as if an insurer provided coverage for City; and (b) Developer shall ensure that the relevant Insurance Policy expressly permits (but does not obligate) LAWA, or a designee of LAWA, to pay the self-insured retention to satisfy any policy condition requiring payment of the self-insured retention for coverage to apply. If the entity responsible for the self-insured retention does not pay the self-insured retention amount when due, then LAWA may, but is not obligated to, pay the self-insured retention amount on behalf of such entity, and Developer shall indemnify LAWA for such amount and any other Losses incurred by LAWA in connection with the entity's failure to pay the self-insured retention amount when due.

10.1.2.3 Primary Coverage

Each policy shall provide that the coverage afforded under the policy is primary and noncontributory with respect to any other insurance available to all named and City Additional Insureds. None of the Insurance Policies shall limit the primary and noncontributory provision to only those Insurance Policies on which City Additional Insureds are named insureds.

10.1.2.4 Verification of Coverage

- (a) When Developer is required by the Contract Documents to initially obtain or cause to be obtained an Insurance Policy, and thereafter not less than ten days

before the expiration date of each Insurance Policy, Developer shall deliver to LAWA a written binder of insurance in a form reasonably acceptable to LAWA. Each required binder must be an original, state the identity of all insurers, named insureds and additional insureds, state the type and limits of coverage, deductibles, waiver of subrogation and termination provisions of the policy, list and describe all applicable endorsements, and include as attachments copies of all additional insured endorsements, and be signed by an authorized representative of the insurance company shown on the certificate, including its licensed agent or broker. Each required binder must be personally and manually signed by a representative or agent of the insurance company shown on the binder with a statement that he/she is an authorized representative or agent of such insurance company and is authorized to bind it to the coverage, limits, endorsements and termination provisions shown on the binder. The binder must state the signer's company affiliation, title and phone number, and, include a provision that coverage cannot be canceled, voided, suspended, lapsed or modified or reduced in coverage except after 60 days' (or for nonpayment of premium, 10 days') prior written notice has been given to LAWA.

- (b) In addition, as soon as they become available, Developer shall deliver to LAWA (a) a true and complete copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy and all endorsements thereto and (b) satisfactory evidence of payment of the premium therefor.
- (c) If Developer has not provided LAWA with the foregoing proof of coverage and payment within 10 days after receipt of written request therefor, LAWA may, upon five days written notice to Developer, in addition to any other available remedy, without obligation and without further inquiry as to whether such insurance is actually in force, obtain such an Insurance Policy; and Developer shall reimburse LAWA for the cost thereof upon demand. In addition, LAWA shall have the right, without obligation or liability, to suspend all or any portion of Work, during any time that such proofs of coverage, in compliance with this Section 10.1, have not been provided.

10.1.2.5 Controlled Insurance Program

For insurance required as a condition precedent to NTP 1 and NTP 2, a controlled insurance program ("**CIP**") is acceptable to satisfy all insurance requirements, provided that it otherwise meets the requirements described in Exhibit 7 (Insurance Requirements) and this Section 10.1.

10.1.2.6 Project-Specific Insurance

All insurance coverage required to be provided by Developer, APM Fixed Facilities Contractor, APM Fixed Facilities Designer, APM Operating System Supplier, APM Fixed Facilities O&M Provider, and APM Operating System O&M Provider shall apply specifically and exclusively for the Project and extend to all aspects of the Work, with coverage limits dedicated solely to the Project, except as otherwise specified in Exhibit 7 (Insurance Requirements). Use of other insurance programs is acceptable, provided that coverage under such programs provides dedicated Project-specific limits and identified premiums and meets all requirements described in Exhibit 7 and this Section 10.1.

10.1.2.7 Waivers of Subrogation

LAWA and Developer waive all rights against each other, against each of their respective agents, employees and Project consultants, and against Contractors and their respective members, directors, officers, employees, subcontractors and agents for any claims to the extent covered and paid by insurance obtained pursuant to this Section 10.1, except such rights as they may have to the proceeds of such insurance. Developer shall require all Contractors to provide similar waivers in writing, each in favor of all other parties specified above. Each policy for which Developer or any Contractor is required to provide coverage for the City Additional Insureds shall include a waiver of any right of subrogation against the City Additional Insureds.

10.1.2.8 No Recourse

Except as may be inclusive within the MaxAP or as expressly provided otherwise in this Agreement, there shall be no recourse against City for payment of premiums or other amounts with respect to the insurance Developer is required to provide hereunder.

10.1.2.9 Support of Indemnifications

The insurance coverage Developer is required to provide hereunder shall support but is not intended to limit Developer's indemnification obligations under the Contract Documents.

10.1.2.10 Adjustments in Coverage Amounts

- (a) At least once every two years during the Term (commencing initially on the Passenger Service Availability Date), LAWA and Developer shall review and adjust, as appropriate, the per occurrence and aggregate limits for the Insurance Policies that have stated dollar amounts set forth in Exhibit 7 (Insurance Requirements).
- (b) In determining adjustments, Developer and LAWA shall take into account (i) claims and loss experience for the Project, (ii) the condition of the Project, (iii) the Safety Compliance and Noncompliance Points record for the Project, and (iv) best practices in the insurance industry.
- (c) If a LAWA Change to increase required limits of Insurance Policies results in a net increase in applicable insurance premiums, Developer shall be entitled to the amount of such net increase, provided that to the extent such adjustments are made to reflect Developer's performance on the Project (including for reasons described in Section 10.1.2.10(b)(i), (ii) or (iii)), Developer shall not be entitled to any compensation.

10.1.2.11 Insurance Premium Benchmarking

Except as otherwise provided in Section 10.1.2.12 (Inadequacy and Unavailability of Required Coverage) and this Section 10.1.2.11, Developer shall bear the full risk of any insurance premium increases from the Financial Proposal Due Date until the Passenger Service Availability Date (or, if Insurance Policies required for the O&M Work are already in force at the Passenger Service Availability Date, until the expiration of those policies), and shall not be entitled to any claim for relief for such increases.

During the O&M Period, LAWA will allocate the risk or benefit of increases and decreases in insurance premiums through an insurance benchmarking process as set forth in this Section 10.1.2.11. In no event shall LAWA participate in any insurance premium risk associated with additional or extended coverages beyond those required under Exhibit 7 (Insurance Requirements), or changes in premiums that are not the result of market-wide factors. The benchmarking process will occur as follows:

- (a) For the purposes of the benchmarking process, the “**Starting Insurance Benchmarking Premiums**” shall equal the actual premiums for the initial annual policy term for each of the Required Minimum Insurance Policies, except as provided in Section 10.1.2.11(g).
- (b) 90 days before the third anniversary of the commencement date for the initial policies for the Required Minimum Insurance Policies and every three years thereafter during the O&M Period (each, a “**Benchmarking Date**”), Developer shall submit a report (“**Insurance Review Report**”) to LAWA that includes the following elements:
 - (i) Firm current quotes from three established and recognized insurance providers for the Required Minimum Insurance Policies. The quotes shall represent the current and fair market cost of providing the Required Minimum Insurance Policies.
 - (ii) Copies of the premium invoices for the actual insurance policies obtained by Developer for the O&M Work for the prior three years (“**Actual Insurance Policies**”).
 - (iii) A comprehensive written explanation of any effect that a Developer-Related Entity’s loss experience has had on the premiums for the Required Minimum Insurance Policies and the Actual Insurance Policies. The explanation shall include: (i) an assessment by Developer’s independent insurance broker addressing industry trends in premiums for the Required Minimum Insurance Policies and analysis (if applicable) of any Project-specific reasons for the increase in premiums; and (ii) detailed analysis of any claims (paid or reserved) since the last report period, with claim date(s), description of incident(s), claims amount(s), and the level of deductibles provided.
- (c) LAWA may independently assess the accuracy of the information in the Insurance Review Report and retains the right to perform its own independent insurance review, which may include retaining advisors, obtaining independent quotes for the Required Minimum Insurance Policies or performing its own assessment as to the impact of claims history on renewal costs.
- (d) The Starting Insurance Benchmarking Premiums shall be used in the benchmarking process for the remainder of the Term in accordance with the following procedures:
 - (i) On each Benchmarking Date, Developer shall provide the Insurance Review Report, with the information specified in Section 10.1.2.11(b). LAWA shall determine the change in premium costs on a coverage-by-

coverage basis for the Required Minimum Insurance Policies calculated based on the information obtained from the initial Insurance Review Report or, if LAWA deems appropriate in its reasonable discretion, from information obtained pursuant to Section 10.1.2.11(c).

- (ii) LAWA will use the Starting Insurance Benchmarking Premiums to measure changes in premium costs at each Benchmarking Date for each of the Required Minimum Insurance Policies. The Starting Insurance Benchmarking Premiums shall be adjusted based on the percentage change in CPI (“**Escalated Benchmark Insurance Premiums**”) from the Passenger Service Availability Date. Broker’s/agent’s fees and/or commissions will not be considered as part of the benchmarking exercise described in this Section 10.1.2.11, shall be identified and excluded from premiums, and are the exclusive responsibility of Developer.
 - (iii) The subsequent Insurance Review Reports shall be used to establish the renewal premiums for the Required Minimum Insurance Policies for purposes of the benchmarking process described in this Section 10.1.2.11. In no event shall premium increases that are caused by Project-specific losses, changes in deductibles or matters within the control of Developer or any Developer-Related Entity be subject to the benchmarking exercise or risk sharing described in this Section 10.1.2.11. Developer may voluntarily choose to procure an insurance package which exceeds the Required Minimum Insurance Policies (with, for example, higher deductibles or coverage amounts, less exclusions, etc.), in which case Developer and LAWA recognize that: (i) the actual variations in Developer’s insurance premiums may not necessarily reflect the variations in the minimum insurance requirements and (ii) LAWA will disregard the actual insurance package and will rely upon the analysis from the Insurance Review Report and its own independent analysis of the effect on the minimum insurance requirements. However, any insurance beyond the Required Minimum Insurance Policies shall not be subject to the insurance benchmarking process and the MaxAP adjustment described in Section 10.1.2.11(e).
 - (iv) If LAWA elects to retain its own insurance advisor to analyze the extent of eligible premium increases, Developer shall cooperate in good faith with any reasonable requests for additional information from LAWA’s insurance advisor. No later than 30 days after Developer’s submission of the Insurance Review Report, LAWA shall make its determination of the eligible premium increases subject to the risk-allocation described in Section 10.1.2.11(e).
- (e) As of a Benchmarking Date:
- (i) if the aggregate annual insurance premiums for the Actual Insurance Policies, after adjustment for any changes in coverage and deductibles and as such premiums may be adjusted pursuant to Section 10.1.2.11(d)(iii) (the “**Actual Insurance Premiums**”) exceed 120% of the aggregate Escalated Benchmark Insurance Premiums, then LAWA shall, within 30 days of the Benchmarking Date and on each 12 month

anniversary thereof until the next benchmarking period, make a lump sum payment to Developer in an amount equal to 85% of the Actual Insurance Premiums that are in excess of 120% of the aggregate Escalated Benchmark Insurance Premiums; and

- (ii) if the Actual Insurance Premiums are less than 80% of the aggregate Escalated Benchmark Insurance Premiums, then LAWA shall, during each 12 month period commencing on the Benchmarking Date until the next benchmarking period, reduce the payments owed to Developer in an amount equal to 85% of the amount by which Actual Insurance Premiums are lower than 80% of the aggregate Escalated Benchmark Insurance Premiums.
- (f) Any payments or reductions in payments to Developer pursuant to Section 10.1.2.11(e)(i) and (ii) shall be subject to a pro-rata adjustment for any period of less than 12 months.
- (g) At the second Benchmarking Date, the Starting Insurance Benchmarking Premiums shall be reset based on the average of the actual premiums for each of the Required Minimum Insurance Policies over the preceding 3 years. The Starting Insurance Benchmarking Premiums, as reset, shall be deemed the Starting Insurance Benchmarking Premiums for the purposes of this Section 10.1.2.11 and used for all subsequent benchmarking contemplated by this Section 10.1.2.11 (i.e., for the third Benchmarking Date and beyond).
- (h) Developer shall maintain copies of the Actual Insurance Policies and the Insurance Review Reports and make these documents available upon LAWA's request for the Term plus 10 years.

10.1.2.12 Inadequacy and Unavailability of Required Coverages

If Developer demonstrates to LAWA's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to procure the required insurance coverages, and if despite such diligent efforts and through no fault of Developer any of such coverages (or any of the required terms of such coverages, including policy limits) become completely unavailable or unavailable at Commercially Reasonable Insurance Rates from insurers meeting the financial requirements set forth in Section 10.1.2.1 (Insurers), LAWA will consider in good faith alternative insurance packages and programs that provide coverage as comparable to that contemplated in this Section 10.1 as is possible under then-existing insurance market conditions. LAWA will be entitled to a credit for any insurance premium savings resulting from the modification or elimination of the insurance requirements, and LAWA will act as the insurer of last resort to cover the exposures that would have been covered by the unavailable insurance policy or portion thereof.

In the alternative and in LAWA's sole discretion, if the Actual Insurance Premiums exceed 200% of the Escalated Benchmark Insurance Premiums on any Benchmarking Date, LAWA may terminate this Agreement pursuant to Section 17.2.6 (Termination for Insurance Unavailability), with the Termination Compensation owed to Developer being calculated pursuant to Section 17.2.8 (Termination Compensation for Extended Delay Events and Insurance Unavailability). If the required insurance coverage is available in the market, LAWA's decision to approve or

disapprove a variance from the requirements of this Section 10.1 shall be final and not subject to the Dispute Resolution Procedures.

10.1.2.13 Defense Costs

Unless otherwise agreed to in writing by LAWA, defense costs shall not erode the limits of coverage of any of the Insurance Policies, except that defense costs may be included within the limits of coverage of professional liability, contractor's pollution liability and pollution legal liability policies.

10.1.2.14 Contesting Denial of Coverage

If any Insurer under an Insurance Policy described in Sections 10.1.1 and 10.1.3 denies coverage with respect to any claims reported to such Insurer, Developer and LAWA shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of City or the denial is the result of Developer's failure to comply with an insurance requirement, then Developer shall bear all costs of contesting the denial of coverage.

10.1.3 Lender Insurance Requirements

If, under the terms of any Financing Agreement or Security Document, Developer is obligated to, and does, carry insurance coverage with higher limits, lower deductibles or self-insured retentions, or broader coverage than required under this Agreement, Developer's provision of such insurance shall satisfy the applicable requirements of this Agreement provided such policy meets all the other applicable requirements of this Section 10.1 and Exhibit 7 (Insurance Requirements). If Developer carries insurance coverage in addition to that required under this Agreement, then Developer shall include the City Additional Insureds as additional insureds thereunder and shall provide to LAWA the proofs of coverage and copy of the policy as described in Section 10.1.2.4 (Verification of Coverage). If, however, Developer demonstrates to LAWA that inclusion of such City Additional Insureds as additional insureds will increase the premium, LAWA shall elect either to pay the increase in premium or forego additional insured status.

10.1.4 Prosecution of Claims

10.1.4.1 Unless otherwise directed by LAWA in writing with respect to LAWA's insurance claims, Developer shall be responsible for reporting and processing all potential claims by LAWA or Developer against the Insurance Policies required to be provided by Developer under the Contract Documents. Developer agrees to report timely to the insurer(s) under such policies any and all matters which may give rise to an insurance claim by Developer or LAWA and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such policies, whether for defense or indemnity or both. Developer shall enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Developer shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

10.1.4.2 Developer shall immediately notify LAWA, and thereafter keep LAWA fully informed, of any incident, potential claim, claim or other matter of which Developer becomes aware that involves or could conceivably involve either LAWA or City Additional Insureds as a defendant.

LAWA agrees to promptly notify Developer of LAWA's incidents, potential claims, and matters which may give rise to a LAWA insurance claim, to tender to the insurer LAWA's defense of the claim (if applicable) under such Insurance Policies, and to cooperate with Developer as necessary for Developer to fulfill its duties hereunder.

10.1.4.3 If, in any instance, Developer has not performed its obligations respecting insurance coverage set forth in this Agreement, or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining Developer's liability and the limits thereon or determining reductions in compensation due from LAWA to Developer on account of available insurance, Developer shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Developer performed such obligations. Nothing in this Section 10.1.4 or elsewhere in this Section 10.1 shall be construed to treat Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set forth in this Section 10.1.

10.1.4.4 In the event that an Insurer providing any of the Insurance Policies required by this Agreement becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, including the State Department of Insurance, Developer shall exercise best efforts to promptly and at its own cost and expense secure alternative coverage in compliance with the insurance requirements contained in this Section 10.1 so as to avoid any lapse in insurance coverage.

10.1.4.5 If, in any instance, Developer has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by LAWA, then LAWA may report the claim directly to the insurer and thereafter seek coverage under the relevant policy.

10.1.5 Application of Insurance Proceeds

All insurance proceeds received for physical property damage to the Project under any Insurance Policies required under Exhibit 7 (Insurance Requirements) shall be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the Project with respect to which such proceeds were received.

10.1.6 Property Damage Caused By Earthquake and Terrorism

10.1.6.1 LAWA shall, as of the Effective Date and continuing throughout the Term, pay for the Extra Work costs to repair or replace tangible property damage to the Project caused by Earthquake or Terrorism. However, LAWA shall not be responsible for tangible property damage to any tools, machinery, equipment, protective fencing, job trailers or other items used in the performance of the Work but not intended for permanent installation into the Project that is caused by Earthquake or Terrorism.

10.1.6.2 If tangible property damage to the Project is caused by Earthquake or Terrorism, Developer shall, within 5 days of such occurrence, submit to LAWA written notice thereof. Within 20 days of such notice, or such extended period of time as the parties agree is reasonable under the circumstances, Developer shall submit complete written and photographic documentation supporting its Claim, and provide detailed quantification of the damages caused thereby. Such written documentation shall include detailed identification of the tangible property

damage, the scope of necessary repair work, the proposed approach to performing the necessary repair work, and the projected costs of repair together with a supporting cost-loaded repair schedule. LAWA shall within 20 days, or such extended period of time as the Parties agree is reasonable under the circumstances, evaluate the documentation supplied by Developer and provide its provisional determination of the cost to repair the tangible property damage to the Project. Developer shall comply with any LAWA request for explanation, elaboration or additional information reasonably necessary to facilitate LAWA's analysis.

10.2 Payment and Performance Security

10.2.1 Design and Construction Security Requirements

Developer shall, as a condition precedent to Financial Close, obtain or cause to be obtained and deliver to LAWA:

- (a) one or more Payment Bonds with an aggregate value equal to the sum of Milestone Payments 1 through 5; and
- (b) one or more Performance Bonds with an aggregate value equal to the sum of Milestone Payments 1 through 5.

10.2.1.1 Each Payment Bond shall be substantially in the form of Exhibit 6B (Form of Payment Bond), issued by Eligible Sureties, and otherwise to the reasonable satisfaction of LAWA. Each Payment Bond shall include a multiple obligee rider in the form of Exhibit 6D (Form of Multiple Obligee Rider for Payment Bond), which shall name City as an additional obligee and may also name the Collateral Agent as an additional obligee. Developer may elect to procure the Payment Bond directly rather than rely upon its APM Fixed Facilities Contractor and other Prime Contractors to do so as contemplated by the forms contained in Exhibit 6 (Payment and Performance Security). If Developer makes this election, City need not be named as an additional obligee under a multiple obligee rider, and the language of the bond form shall be adjusted to reflect the election, but only as necessary to replace references to the Design-Build Contractors and other Prime Contractors with Developer and to replace references to Developer with City.

10.2.1.2 Each Performance Bond shall be substantially in the form of Exhibit 6C (Form of Performance Bond), issued by Eligible Sureties, and otherwise to the reasonable satisfaction of LAWA. Each Performance Bond shall include a multiple obligee rider in the form of Exhibit 6D (Form of Multiple Obligee Rider for Performance Bond), which shall name City as an additional obligee and may also name the Collateral Agent as an additional obligee. Developer may elect to procure the Performance Bond directly rather than rely upon its APM Fixed Facilities Contractor and Prime Contractors to do so as contemplated by the forms contained in Exhibit 6 (Payment and Performance Security). If Developer makes this election, City need not be named as an additional obligee under a multiple obligee rider, and the language of the bond form shall be adjusted to reflect the election, but only as necessary to replace references to the APM Fixed Facilities Contractor and Prime Contractors with Developer and to replace references to Developer with City.

10.2.2 Operations and Maintenance Security

10.2.2.1 If Developer obtains security for payment and/or performance from any APM Fixed Facilities O&M Provider or APM Operating System O&M Provider, then Developer shall obtain

the following from the issuer, maker or guarantor, as applicable, of such payment and/or performance security for delivery to LAWA:

- (a) a certified copy of the payment and/or performance security;
- (b) in the case of a letter of credit, documentation naming City as a transferee beneficiary and providing for transfer of such facility to City in certain circumstances, on the same terms as permitted with respect to letters of credit under Section 10.3.1 (General Provisions);
- (c) in the case of a bond, a dual-obligee rider naming City an additional obligee under the bond, on the same terms as permitted with respect to bonds under Section 10.2.1 (Design and Construction Security Requirements); and
- (d) in the case of a guaranty, the documentation stated in Section 10.4 (Guarantees).

10.2.2.2 The documentation required under Section 10.2.2.1 shall be provided by Developer to LAWA within 10 days after issuance of the payment and/or performance security.

10.3 Letters of Credit

10.3.1 General Provisions

Wherever in the Contract Documents Developer has the option or obligation to deliver to LAWA a letter of credit, in addition to any specific requirements relating to a particular letter of credit, the following provisions shall apply.

10.3.1.1 Except to the extent expressly provided otherwise in the Contract Documents, the letter of credit shall:

- (a) be a direct pay, standby letter of credit;
- (b) be issued by a financial institution that is not an Affiliate, has a credit rating for long-term, unsecured debt of at least "A-" (or its equivalent) from one of the Rating Agencies, and has an office in Los Angeles, California, San Francisco, California, Chicago, Illinois, or New York, New York at which the letter of credit can be presented for payment. If the issuer's long-term, unsecured debt rating is downgraded such that the issuer no longer meets the ratings standard set forth above, Developer shall provide a replacement letter of credit issued by a financial institution meeting such standard within 30 days after the downgrade;
- (c) be payable on demand, conditioned only on written presentment from a beneficiary thereof to the issuer of a sight draft drawn on the letter of credit and a certificate stating that the beneficiary has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to such beneficiary, without requirement to present the original letter of credit;
- (d) be in place for the entire period of time for which the letter of credit is providing security;

- (e) allow for multiple draws;
- (f) name LAWA as sole beneficiary, provided that a letter of credit provided by Developer in accordance with Section 10.2.2.1(b) may also include the Collateral Agent as beneficiary; and
- (g) be consistent with the requirements of this Section 10.3.

10.3.1.2 Except to the extent expressly provided otherwise in the Contract Documents, if Developer has failed to pay or perform when due the duty, obligation or liability under the Contract Documents for which the letter of credit is held, City has the right, subject to any rights of Lenders under the Direct Agreement, to draw on the letter of credit as and when provided in Section 16.2.6 (Performance Bond). If City makes such a draw on the letter of credit, LAWA shall use and apply the proceeds as provided in this Agreement for such letter of credit.

10.3.1.3 Except to the extent expressly provided otherwise in the Contract Documents and the Direct Agreement, City has the right to draw on the letter of credit, without prior notice to Developer, if (a) Developer has failed to pay or perform when due the duty, obligation, or liability under this Agreement for which the letter of credit is held; (b) for any reason Developer fails to deliver to LAWA a new or replacement letter of credit, on the same terms, at least 30 days before such expiration date, unless the applicable terms of the Contract Documents expressly provide that no further letter of credit is required with respect to such duty, obligation or liability, or (c) the financial institution issuing the letter of credit fails to meet the requirements in Section 10.3.1.1(b) and Developer fails to provide a substitute letter of credit issued by a qualified financial institution within 30 days before its expiration date. If City makes such a draw on the letter of credit, City shall be entitled to draw on the full face amount of the letter of credit and shall retain such amount as cash security to secure the obligations under the letter of credit, without payment of interest to Developer.

10.3.1.4 Except to the extent expressly provided otherwise in the Contract Documents and the Direct Agreement, a draw on letters of credit shall not be conditioned on prior resort to Developer or any other security of Developer. For all draws conditioned on prior notice from LAWA to Developer, no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. LAWA will use and apply draws on letters of credit (or cash security held from draws on letters of credit) toward satisfying the relevant obligation of Developer (or, if applicable, any other Person for which the letter of credit is performance security). Subject to City's rights under Sections 10.3.1.2 and 10.3.1.3, if City receives proceeds of a draw in excess of the relevant obligation, City will promptly refund the excess to Developer (or such other Person) after all relevant obligations are satisfied in full.

10.3.1.5 Except to the extent expressly provided otherwise in the Contract Documents, Developer's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from LAWA a refund of the proceeds which are misapplied, and subject to Section 16.4.3 (Developer Right to Suspend), reimbursement of the reasonable costs Developer incurs as a result of such misapplication; provided that at the time of such refund Developer increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Developer acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Developer injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Developer covenants (a) not to request or instruct the issuer of any letter of credit to refrain from paying

any sight draft drawn under the letter of credit and (b) not to commence or pursue any legal proceeding seeking, and Developer irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

10.3.1.6 Developer shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with LAWA's presentment of sight drafts and drawing against letters of credit or replacements thereof.

10.3.1.7 If LAWA makes a permitted assignment of its rights and interests under this Agreement, then Developer shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Developer.

10.3.1.8 LAWA acknowledges that if the letter of credit is performance security for a Person other than Developer (e.g., a Key Contractor), LAWA's draw may only be based on the underlying obligations of such Person.

10.4 Guarantees

10.4.1 If Developer, any Key Contractor, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, then either (a) Developer shall cause such Person to (i) expressly include LAWA as a guaranteed party under such guaranty, with the same protections and rights of notice, enforcement and collection as are available to any other guaranteed party, and (ii) deliver to LAWA a duplicate original of such guaranty, which guaranty shall provide that the rights and protections of LAWA shall not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of payment and performance to another guaranteed party; or (b) Developer shall deliver to LAWA, concurrently with the issuance of such guaranty, a duplicate original of such guaranty and such other documents reasonably satisfactory to LAWA permitting LAWA, subject to the rights of the Collateral Agent under any Direct Agreement, to become the transferee beneficiary under such guaranty under the circumstances described in Section 10.4.2, and to enforce it, including enforcing the guaranty in favor of LAWA or the Project, or both, which transfer documents shall include a certified copy of the guaranty and a present, executed transfer and assignment of the beneficiary rights from Developer or Collateral Agent, as applicable, to LAWA; and the guaranty shall expressly authorize such transfer without condition and permit draw without presentation of the original guaranty.

10.4.2 LAWA's rights as a transfer beneficiary are exercisable if, subject to Section 10.4.3 and the Direct Agreement, LAWA determines that (a) a Key Contractor has breached or failed to perform any obligations under its Contract, (b) such breach has caused a Developer Default and the applicable cure period has expired without full and complete cure and (c) Developer or the Collateral Agent has failed to call upon or otherwise enforce such guaranty for the purpose of causing the performance of such obligations by or on behalf of the Contractor within 10 days after LAWA delivers notice of such breach or expected breach to Developer and the Collateral Agent and the Cure Period (as defined in the Direct Agreement) has expired.

10.4.3 So long as Developer or a Lender is diligently pursuing remedies under a guaranty, LAWA agrees to forbear from (a) exercising remedies under any such guaranty that names LAWA as a direct beneficiary, and (b) exercising its right to become a beneficiary under

Section 10.4.1(b); provided, however, that if the Developer Default giving rise to exercise remedies under any such guaranty remains uncured at the end of the applicable cure period in Section 16.1.2 (Cure Periods), LAWA's obligation to forbear from exercising remedies as a guaranteed party shall cease. The foregoing shall not obviate any agreement by LAWA to forbear from exercising its rights and remedies contained in a Direct Agreement.

10.5 Indemnities

10.5.1 General Indemnity

10.5.1.1 Subject to Section 10.5.3 (Limitations on Indemnification Obligations), Developer shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, investigations, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any Third Party, to the extent caused by:

- (a) any act, omission, neglect or misconduct by any Developer-Related Entity in the manner or method of executing said Work satisfactorily or due to the failure to perform the Work, including (i) any neglect in safeguarding the Work, (ii) use of unacceptable materials in performance of the Work or other Defect in the Work, (iii) faulty, inadequate or improper temporary drainage during construction, (iv) the use, misuse, storage or handling of explosives in performance of the Work, or (v) other breach, alleged breach or violation of Developer's obligations under the Contract Documents or any Contract;
- (b) the failure or alleged failure by any Developer-Related Entity to comply with the Governmental Approvals or any applicable Laws relating to the performance of the Work;
- (c) the actual or alleged negligence, willful misconduct or breach of contract of any Developer-Related Entity in or associated with performance of the Work
- (d) any Developer-Related Entity's performance of, or failure to perform, any obligation under the Cooperation Agreements;
- (e) any and all stop payment notices and/or liens filed by a Contractor in connection with the Work, including all reasonable expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop payment notice or lien, provided that LAWA is not in default in payments owing to Developer with respect to such Work;
- (f) any Developer-Related Entity's breach of or failure to perform an obligation that LAWA owes to a Third Party, including Governmental Entities, under Law or under any agreement between LAWA and a Third Party, where performance of the obligation is delegated to Developer under the Contract Documents, or the acts or omissions of any Developer-Related Entity which render LAWA unable to perform or abide by an obligation that LAWA owes to a Third Party, including Governmental Entities, under any agreement between LAWA and a Third Party, provided the agreement was previously disclosed or known to Developer;

- (g) any alleged infringement or other allegedly improper appropriation or use of Intellectual Property in performance of the Work, or arising out of, relating to or resulting from any use in connection with the Project of methods, processes, designs, information or other items furnished or communicated to LAWA or another Indemnified Party under the Contract Documents; provided that this indemnity shall not apply to any infringement resulting from LAWA's failure to comply with specific written instructions regarding use provided to LAWA by Developer that are consistent with Developer's obligations to convey and license such Intellectual Property under this Agreement;
- (h) any actual or threatened Release of Hazardous Materials by any Developer-Related Entity and liabilities resulting therefrom;
- (i) the fraud, bad faith, willful misconduct, negligence or violation of Law or contract by any Developer-Related Entity in connection with Developer's performance of real property acquisition services under the Contract Documents;
- (j) any fines or penalties imposed on LAWA by any Authority Having Jurisdiction arising out of, relating to or resulting from Developer's breach of or failure to comply with applicable requirements of the Contract Documents;
- (k) any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Developer-Related Entity with respect to any payment for the Work made to or earned by such Developer-Related Entity under the Contract Documents; or
- (l) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Developer-Related Entity to comply with Good Industry Practice, requirements of the Contract Documents, the Project Management Plan or O&M Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Work, (ii) the intentional misconduct or negligence of any Developer-Related Entity in connection with the performance of the Work, or (iii) unauthorized physical entry onto or encroachment upon another's property by any Developer-Related Entity in connection with the performance of the Work.

10.5.1.2 Developer's responsibilities pursuant to this Section 10.5.1 include both the obligation to (a) defend the Indemnified Parties from and against any and all claims, causes of action, suits, investigations, legal or administrative proceedings, demands and Losses, and (b) indemnify the Indemnified Parties when liability is sustained pursuant to the Dispute Resolution Procedures or through judicial proceedings, or is, mutually agreed upon by the Parties.

10.5.1.3 Developer's responsibilities pursuant to this Section 10.5.1 are in addition to any right that LAWA may have under the terms of the Agreement to assess Noncompliance Points and/or Deductions with respect to the same event or circumstance giving rise to a Third Party claim, cause of action, suit, legal or administrative proceeding.

10.5.2 Design Defects

10.5.2.1 Developer agrees that, because the Contract Drawings and Reference Documents are subject to review and modification by Developer, (a) it is appropriate for Developer to assume liability for errors, omissions, inconsistencies and other defects in the completed Project even though they may be related to errors, omissions, inconsistencies and other defects in the Contract Drawings and Reference Documents, and (b) such documents shall not be deemed “design furnished” by LAWA or any of the other Indemnified Parties, as the term “design furnished” is used in Civil Code section 2782. Developer hereby waives the benefit (if any) of Civil Code section 2782 and agrees that this Section 10.5.2 constitutes an agreement governed by Civil Code section 2782.5.

10.5.2.2 Subject to Section 10.5.3 (Limitations on Indemnification Obligations), Developer shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the Contract Drawings or Reference Documents.

10.5.2.3 Subject to Developer’s obligations under Section 7.2.3, to the extent that errors, omissions, inconsistencies and other defects exist in the Contract Drawings and must be corrected, such correction shall be treated as a LAWA Change.

10.5.3 Limitations on Indemnification Obligations

10.5.3.1 Subject to Section 23.8 and the releases and disclaimers herein, including all the provisions set forth in Section 5.1.3 (Limitations on Developer’s Right to Rely), Developer’s indemnity obligations shall not extend to any claim, cause of action, suit, investigation, legal or administrative proceeding, demand or Loss to the extent caused by:

- (a) the active negligence, reckless or willful misconduct, bad faith or fraud of such Indemnified Party;
- (b) a Relief Event, subject to Developer’s obligations as provided for in this Agreement; or
- (c) LAWA’s breach of any of its obligations under the Contract Documents.

10.5.3.2 With respect to Work performed by a design professional as defined in California Civil Code section 2782.8, such indemnities shall apply only to the extent permitted by section 2782.8 as of the Effective Date.

10.5.3.3 Claims by Employees

In claims by an employee of a Developer-Related Entity, the indemnification obligation under this Section 10.5 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for a Developer-Related Entity under workmen’s compensation, disability benefit or other employee benefits laws; provided that this provision shall not be construed as a waiver in favor of any employee by Developer or any Contractor of any limitation of liability afforded by such laws.

10.5.4 Developer's Defense

In Developer's defense of Indemnified Parties under this Section 10.5, negotiation, compromise, and settlement of any action, LAWA shall, without prejudice to the rights of any Indemnified Parties to be indemnified by Developer, retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals there from, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

10.6 Indemnities by Contractors

Developer shall ensure that each Contract includes indemnity provisions appropriate to the scope of the Work to be performed by the Contractor, naming the Indemnified Parties as indemnitees.

10.7 Notice of Claims by Third Parties

10.7.1 If any Indemnified Party receives notice of a claim, cause of action, suit, legal or administrative proceeding covered by the indemnities in Section 10.5 (Indemnities), or otherwise has actual knowledge of such a claim, cause of action, suit, legal or administrative proceeding that it believes is within the scope of the indemnities under Section 10.5, as soon as practicable after receipt of the claim, cause of action, suit, legal or administrative proceeding, LAWA shall:

- (a) inform Developer in writing of the claim, cause of action, suit, legal or administrative proceeding, and
- (b) send to Developer a copy of all relevant written materials LAWA has received asserting such claim, cause of action suit, legal or administrative proceeding.

10.7.2 As soon as is practicable after Developer receives notice of a claim, cause of action, suit, legal or administrative proceeding covered by the indemnities in Section 10.5 (Indemnities), Developer shall promptly notify LAWA in writing and, unless subject to evidentiary privilege, promptly furnish to LAWA copies of all factual reports and factual portions of any other reports given to Developer's insurance carrier or carriers.

ARTICLE 11. PAYMENTS TO DEVELOPER

11.1 Milestone Payments

Subject to any limitations and exceptions expressly provided in this Agreement, LAWA will pay Milestone Payments to Developer during the D&C Period in accordance with Exhibit 4A (Milestone Payment Mechanism).

11.2 Availability Payments

11.2.1 Subject to any limitations and exceptions expressly provided in this Agreement, LAWA will pay Availability Payments to Developer during the O&M Period in accordance with Exhibit 4B (Availability Payment Mechanism).

11.2.2 Subject to any limitations and exceptions expressly provided in this Agreement, LAWA shall pay Developer each Monthly Disbursement within 30 days after receipt of a properly submitted invoice for such payment in accordance with Part C of Exhibit 4B (Availability Payment Mechanism).

11.2.3 Notwithstanding anything herein to the contrary, even if Developer has achieved Passenger Service Availability, LAWA has no obligation to commence paying Availability Payments before September 30, 2022.

11.2.4 Developer acknowledges and agrees that any Availability Payment or portion thereof not received by Developer as a result of a delay in achieving Passenger Service Availability for which Developer is not entitled to compensation under this Agreement represents the liquidated amount of delay damages suffered by LAWA due to such delay.

11.3 Disputed Amounts

11.3.1 LAWA shall have the right to dispute, in good faith, any amount specified in a Milestone Payment Request, an invoice submitted under Section 11.2 (Availability Payments), or any other invoice submitted by Developer under this Agreement. LAWA shall pay all undisputed amounts for which payment is requested and that are not subject to withholding.

11.3.2 Developer and LAWA shall use reasonable efforts to resolve any invoice dispute within 30 days after the dispute arises.

11.4 Payment Due Date; Interest on Late Payments and Overpayments

11.4.1 If a Party fails to pay any undisputed amount due and owing from such Party to the other Party under this Agreement (in the case of any amount due and owing from LAWA to Developer, subject to receipt by LAWA of an acceptable invoice from Developer for such amount), the owing Party shall pay to the other Party interest on such amount at the Late Payment Rate from the due date thereof until the date of payment.

11.4.2 If any invoice is disputed and an amount is determined to be due under the Dispute Resolution Procedures, payment of the disputed amount shall be made within 30 days following resolution of the dispute, together with interest at the Late Payment Rate on the amount owing from the date that the payment was originally due (based on the agreement of the parties or the decision of the dispute resolver) until the date of payment.

11.4.3 If as a result of any inaccuracy in an invoice any overpayment is made by LAWA to Developer then, in addition to the adjustments provided in Section 11.2 (Availability Payments), LAWA shall be entitled to deduct or receive as a payment from Developer interest on such amount at the Late Payment Rate, starting on the date of LAWA's payment of the invoice to the date the overpayment is deducted or paid. LAWA's right to deduct or receive payment of interest is without prejudice to any other rights LAWA may have under this Agreement.

11.5 Taxes

Developer shall pay all applicable Taxes before the due date (or delinquency date if applicable). Developer is solely responsible for and has no right to make any Claim due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes. In the event that an exemption from applicable sales or use taxes becomes available for the Project, LAWA shall have no obligation to reimburse Developer for any such taxes, and LAWA shall be entitled to an upfront payment from Developer or a reduction in payments made by LAWA, as agreed upon by the Parties, equal to the amount actually saved following the date such exemption becomes available.

11.6 Other Adjustments; Full Compensation

Developer acknowledges and agrees:

- (a) the Milestone Payments and Availability Payments calculated in accordance with this Article 11 and Exhibit 4 (Payment Mechanism) are subject to adjustment to reflect previous over-payments and/or under-payments, any interest payable in respect of any amounts owed, and any other amount due and payable from Developer to LAWA or from LAWA to Developer under the Agreement, including amounts determined in accordance with Section 4.5.1 (regarding Refinancing Gain), Section 6.12.2(b) (regarding Alternative Technical Concepts), Section 7.12.3 (LAWA's Remedies), Section 8.4.1.2 (regarding performance of Renewal Work), Section 8.6.5 (LAWA Right to Self-Perform and Recover Costs), Section 10.1.2.11(e) (regarding Insurance Premium Benchmarking), Section 11.4.3 (regarding Payment Due Date; Interest on Late Payments and Overpayments), Section 11.5 (Taxes), Section 11.7.2 (regarding balance of Utility Owners' Costs Account), Section 14.1.5(g) (regarding Delayed Payment Compensation), Sections 16.2.5.2, 16.2.5.4 and 16.2.5.6 (regarding Damages), Section 1.4(f) of Exhibit 16B, Sections 1.3(g) and 2.3 of Exhibit 16C; and
- (b) that the payments provided for in this Article 11 constitute full compensation for performance of all the Work, subject only to Developer's rights under Articles 12, 13, 14 and 17.

11.7 Utility Adjustments Performed by Utility Owners

11.7.1 Developer shall only use the funds in the Utility Owners' Costs Account when Developer has provided a certification to LAWA, in a form reasonably acceptable to LAWA, stating that Developer has satisfied the following conditions:

- (a) Developer has demonstrated to LAWA that a Utility Owner wishes to perform Utility Work indicated as Utility Owner's responsibility in Table 25.1 (Utility Matrix) of Part 2A of the Technical Provisions;
- (b) Developer has in good faith negotiated with the Utility Owner the scope and costs for such Utility Work;
- (c) Developer has submitted to LAWA a detailed description of the Utility Work and the Utility Owner's price for the work;
- (d) Developer has obtained LAWA's prior approval, in writing, of the scope of work and Utility Owner's price to perform the work; and
- (e) Developer has demonstrated that the funds drawn from the Utility Owners' Costs Account will be paid to the Utility Owner for performance of the work at the price approved by LAWA.

11.7.2 If, as of Final Completion, the Utility Owners' Costs Account has not been fully expended, LAWA may recover the remaining balance by: (a) reducing Milestone Payment 6 and/or any Availability Payment due and owing from LAWA to Developer; (b) invoicing Developer for such amount, as a lump sum payment; and/or (c) setting off such amount against any other amount due and owing from LAWA to Developer.

11.8 LAWA Allowances

11.8.1 General

11.8.1.1 LAWA has established the following allowances from which LAWA will make payments to Developer, in accordance with this Section 11.8, for Developer's performance of the following types of Work:

- (a) Non-O&M Facilities Streetscape, Landscape and Public Realm Work (the "**Streetscape, Landscape and Public Realm Allowance**");
- (b) Hazardous Materials Management Work (the "**Hazmat Allowance**"); and
- (c) Art Accommodation and Installation Work (the "**Art Accommodation Allowance**"),

(collectively, the "**LAWA Allowances**").

11.8.1.2 Change Orders are not required for purposes of invoicing LAWA for payment from the LAWA Allowances.

11.8.2 Streetscape, Landscape and Public Realm Allowance Work

11.8.2.1 LAWA will provide task orders to Developer Streetscape, Landscape and Public Realm Allowance Work. Developer shall submit to LAWA a detailed, itemized cost estimate for the scope of work identified in each task order and obtain LAWA's approval of the estimate before commencing such work. The costs of Streetscape, Landscape and Public Realm

Allowance Work shall be determined in accordance with Exhibit 13 (Base Incremental Costs and Permitted Markup).

11.8.2.2 Upon completion Streetscape, Landscape and Public Realm Allowance Work in accordance with an approved task order and estimate, Developer shall submit an invoice, in a format acceptable to LAWA, for payment for such Work from the Streetscape, Landscape and Public Realm Allowance. LAWA will make payment to Developer within 30 days of LAWA's receipt of Developer's final invoice for the full scope of Streetscape, Landscape and Public Realm Allowance Work, provided such Work has been completed to LAWA's satisfaction.

11.8.3 Hazardous Materials Management Work

11.8.3.1 Developer shall perform Hazardous Materials Management Work in accordance with the requirements set forth in Section 7.7.1 (Hazardous Materials Management).

11.8.3.2 LAWA shall make payments to Developer for Hazardous Materials Management Work based on actual quantities and the unit prices set forth in Exhibit 2A-17 (Hazardous Material Remediation Pricing Sheet). LAWA will pay Developer for 75% of a completed quantity upon Developer's written concurrence with the Contractor's certification (as applicable) that the contaminated materials have been removed and the work was completed in accordance with applicable Laws and provisions of the Agreement. Requests for payment for Hazardous Materials Management Work shall also include: (a) the cross-sectional survey results and calculated volume determination; (b) confirming documentation for the number of gallons removed and remediated; and (c) confirming documentation for the number of cubic feet removed and remediated, as applicable. LAWA will pay Developer the remainder for a completed quantity after receipt by LAWA of a certified statement from the disposal facility, signed by an official thereof, that the contaminated materials have been accepted and disposed of in accordance with all applicable Laws.

11.8.4 Art Accommodation and Installation Work

11.8.4.1 Developer shall perform Art Accommodation and Installation Work as directed by LAWA.

11.8.4.2 LAWA will provide task orders to Developer for Art Accommodation and Installation Work. Developer shall submit to LAWA a detailed, itemized cost estimate for the scope of work identified in each task order and obtain LAWA's approval of the estimate before commencing such work. The costs of Art Accommodation and Installation Work shall be determined in accordance with Exhibit 13 (Base Incremental Costs and Permitted Markup).

11.8.4.3 Upon completion of Art Accommodation and Installation Work in accordance with an approved task order and estimate, Developer shall submit an invoice, in a format acceptable to LAWA, for payment for such Work from the Art Accommodation Allowance. LAWA will make payment to Developer within 30 days of LAWA's receipt of Developer's final invoice for the full scope of Art Accommodation and Installation Work, provided such Work has been completed to LAWA's satisfaction.

ARTICLE 12. LAWA CHANGE PROCESS; DIRECTIVE LETTERS; DEVIATIONS

12.1 LAWA Changes

12.1.1 LAWA Right to Require Changes to the Work

12.1.1.1 Subject to Section 12.1.2 (Restrictions on LAWA Changes) and in accordance with the procedure set forth in Section 1 of Exhibit 9 (LAWA Change Procedures and Directive Letters), LAWA may at any time make changes to the Work, including additions or reductions in the scope of the D&C Work or O&M Work, or changes to the requirements applicable to the Work, as it may direct in its sole discretion (each, a “**LAWA Change**”).

12.1.1.2 Notwithstanding Section 12.1.1.1, LAWA direction to Developer under Part 3, Section 4.1.1 (Special Services) of the Technical Provisions shall not constitute a LAWA Change to the extent that such direction does not extend the scheduled annual Vehicle-miles operated by more than one percent.

12.1.1.3 No LAWA Change shall constitute a breach of the Contract Documents, invalidate the Contract Documents, or release any Surety from any liability arising out of the Contract Documents or the Payment Bond or Performance Bond. Developer agrees to perform the Work, as altered or changed by any LAWA Change, as if it had been a part of the original Agreement.

12.1.1.4 Developer shall not be entitled to any additional compensation, time extension or other relief in connection with a LAWA Change except to the extent granted in accordance with the applicable provisions of Articles 12 or 14.

12.1.2 Restrictions on LAWA Changes

Developer shall not be required to implement any LAWA Change to the extent the LAWA Change would:

- (a) result in a breach of Law or breach of any conditions of a Governmental Approval or revocation of any Governmental Approval;
- (b) require a new Governmental Approval which would not be reasonably obtainable;
- (c) render any Insurance Policy void or voidable;
- (d) materially and adversely affect the health and safety of any person; or
- (e) materially and adversely affect the risk allocation and payment regime under this Agreement.

12.2 Developer Change Requests

12.2.1 By submittal of a request (a “**Developer Change Request**”) using a form approved by LAWA, Developer may request LAWA to approve:

- (a) changes to the requirements of the Technical Provisions;
- (b) changes to Exhibit 2 (Proposal Commitments; Alternative Technical Concepts);
or
- (c) adjustments to the D&C Limits.

12.2.2 The Developer Change Request shall state Developer's detailed estimate of net impacts (positive and negative) on costs and schedule attributable to the requested change, the effect (if any) of the requested change on Developer's performance of obligations under the Contract Documents and any other information related to carrying out the requested change. If the requested change, combined with previous requested changes, evidences a delay equal to 10% or more of the Project Schedule, and if LAWA so requests, Developer shall provide evidence that consent of the Lender and Sureties for the request has either been obtained or is not required, either by providing written consent from the Lender and Sureties or a certification from Developer that such consent is not required.

12.2.3 LAWA may accept or reject any Developer Change Request proposed by Developer for any reason or for no reason in LAWA's sole discretion. If LAWA is prepared to accept a Developer Change Request, the Parties shall engage in good faith negotiations to reach agreement on the terms of a Change Order.

12.3 Directive Letter

12.3.1 LAWA may, at any time, in its sole discretion, issue a Directive Letter to Developer in accordance with Section 2 of Exhibit 9 (LAWA Change Procedures and Directive Letters).

12.4 Deviations

12.4.1 Developer may, in accordance with this Section 12.4, request LAWA approval of certain minor changes to the Technical Provisions that do not impact schedule or costs ("**Deviations**"). Deviations may be approved by LAWA on a "no-cost" basis, and in such event shall not require a Change Order. Any other change in the requirements of the Contract Documents shall require a Change Order.

12.4.2 Developer may apply for LAWA approval of proposed Deviations by submitting a written request to LAWA that:

- (a) specifically identifies and labels the proposed Deviation;
- (b) identifies the specific language within the Contract Documents to which the Deviation applies;
- (c) provides proposed revised language and specifies the exact circumstances and/or limitations in seeking the Deviation; and
- (d) identifies how the Deviation sought constitutes sound and safe practices consistent with Good Industry Practice and achieves LAWA's applicable Safety Standards and criteria and does not jeopardize the quality, integrity, life-cycle performance, service performance or extreme event performance of the Project.

12.4.3 Upon receipt of a request under Section 12.4.2, LAWA may approve or reject the request. No request for a Deviation shall be deemed approved or be effective unless and until notice is provided to Developer in writing and signed by LAWA's Authorized Representative.

12.4.4 LAWA's failure to issue written approval of a Deviation within 15 Business Days after receipt of an application from Developer shall be deemed a disapproval of such application.

12.4.5 Except with respect to Deviation requests under Section 7.2.3, LAWA's disapproval of a requested Deviation shall be final without any right to appeal under the Dispute Resolution Procedures.

12.4.6 LAWA may elect to process the application as a Developer Change Request under Section 12.2 (Developer Change Requests) rather than as an application for a Deviation.

ARTICLE 13. RELIEF EVENT PROCESS

13.1 Relief Event Claims

13.1.1 General

If a Relief Event occurs, subject to the limitations and exclusions provided in this Agreement, Developer may, in accordance the process set forth in this Article 13, seek additional compensation, time extension and/or other relief based on the entitlements for specific Relief Events set forth in Article 14 (Compensation and Other Relief for Relief Events). Time is of the essence in Developer's delivery of (a) Relief Event Notices and updates thereto; and (b) Relief Event Claims and updates thereto.

13.1.2 Relief Event Notice

13.1.2.1 As a condition precedent to LAWA's granting of any type of relief to Developer in connection with the occurrence of a Relief Event, Developer shall give written notice ("**Relief Event Notice**") of the occurrence of the Relief Event to LAWA as soon as practicable, and in any event within 30 days of the date Developer has knowledge (including knowledge of any Contractor) that the Relief Event has caused or is likely to cause an entitlement under this Agreement (or should have been discovered in the exercise of reasonable prudence).

13.1.2.2 The Relief Event Notice shall set forth, to the maximum extent of the information then available:

- (a) a description of the Relief Event and its cause;
- (b) the date on which the Relief Event began and its estimated duration;
- (c) if the Relief Event will likely impact the D&C Work, Developer's preliminary good faith estimate of any impacts on the Critical Path directly attributable to the Relief Event and the basis for such estimates;
- (d) a summary of the consequences of the Relief Event and the expected impact on the performance of Developer's obligations under the Contract Documents;
- (e) the actions Developer has taken and will take to mitigate the impact of the Relief Event on the Project, as required under Section 14.1.6.3 (Burden of Proof and Duty to Mitigate Consequences of any Relief Event);
- (f) the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance; and
- (g) the nature and scope of Developer's potential entitlement to additional compensation, time extension and any other relief under this Agreement and the basis under this Agreement for entitlement to relief.

13.1.2.3 If a single Relief Event is a continuing cause of delay or interference, only one Relief Event Notice is necessary.

13.1.2.4 Developer shall submit the Relief Event Notice on a standardized form approved by LAWA. Developer shall assign an exclusive identification number for each Relief Event Notice, using chronological sequencing. The exclusive identification number shall be used on each of the following corresponding documents: (i) Relief Event Claim; and (ii) supplemental notices and submissions pertaining to the Relief Event Notice.

13.1.3 Mandatory Claim Records

Developer shall keep daily records of all labor, material and equipment costs incurred for operations affected by the Relief Event. Developer shall identify in such daily records each operation and specific location affected by the Relief Event. LAWA may also keep records of all labor, material and equipment used on the operations affected by the Relief Event. Developer shall provide to LAWA a copy of Developer's daily records on a weekly basis and shall be entitled to receive a copy of LAWA's daily records, if any, upon written request. Copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

13.1.4 Updates and Supplemental Information

Developer shall provide LAWA with monthly updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Relief Event and the matters described in Section 13.1.2.2. Without limiting the foregoing, Developer shall notify LAWA as soon as the Relief Event has ceased and when performance of its affected obligations can be resumed. LAWA may, at any time following receipt of a Relief Event Notice, request from Developer any further information that LAWA may reasonably require, and Developer shall provide such information to LAWA within a reasonable period after such request.

13.1.5 Relief Event Claim

13.1.5.1 As soon as practicable and in any event within 30 days after submittal of a Relief Event Notice, Developer shall submit to LAWA a formal claim ("**Relief Event Claim**") for any Compensation Amount for Compensation Events and for any extension of time and any other requested relief relating to the Relief Event. Developer shall submit the Relief Event Claim on a standardized form approved by LAWA and shall include the following information, to the maximum extent then available:

- (a) full details of the Relief Event, including its nature, the date of its occurrence, its duration (if the Relief Event and its effects have ceased) or estimated duration (if the Relief Event and its effects have not ceased), affected locations, and items of Work affected. Impacts to the O&M Work, if any, shall be stated by Operating Year;
- (b) identification of all pertinent information and documents relating to the Relief Event and the name of the person or persons making such material oral communications;
- (c) identification of the particular provisions of this Agreement that are claimed to entitle Developer to the Compensation Amount, extension of time or other relief sought, and a statement that sets forth the reasons why such provisions entitle Developer to such relief;

- (d) if a request for an extension of time, combined with previous extension requests, evidences a delay equal to 10% or more of the Project Schedule, and if LAWA so requests, evidence that consent of the Lender and Sureties for the requested extension of time has either been obtained or is not required, either by providing written consent from the Lender and Sureties or a certification from Developer that such consent is not required;
- (e) where a request for an extension of time is made, a time impact analysis that identifies Critical Path impacts (with activity numbers, durations, predecessor and successor activities, resources, costs and reasons why Float is not available), illustrates the effect of schedule changes or disruptions on the Contract Deadlines and complies with the requirements of Part 2A, Section 3.2 (Schedule Requirements) of the Technical Provisions. In connection with its time impact analysis, the Relief Event Claim shall include:
 - (i) a Project Schedule update comparing the proposed new schedule to the Project Schedule or most recent update to the Project Schedule, as appropriate. The Project Schedule update shall demonstrate to LAWA's reasonable satisfaction that the event or circumstance (A) is the sole and direct cause of a delay to the Critical Path and such delay is not concurrent with any delay that is not caused by a Relief Event, and (B) could not have reasonably been avoided by re-sequencing of the Work or other reasonable alternatives;
 - (ii) information regarding the estimated costs of accelerating the schedule to reduce or avoid delay to the extent practicable, as well as information regarding the Compensation Amount, if any, payable by LAWA if the schedule is not accelerated; and
 - (iii) analysis of potential re-sequencing, re-scheduling and other work-around measures and a comparison of the estimated costs of the work-around to the resulting estimated savings in the Compensation Amount, as applicable. Developer shall cooperate with LAWA to identify the re-sequencing, re-scheduling and other work-around measures that will maximize mitigation of costs to LAWA taking into account the cost of potential re-sequencing, re-scheduling and other work-around measures;
- (f) a detailed, itemized estimate of any Compensation Amounts claimed for Compensation Events, subject to the following:
 - (i) any Incremental Costs claimed shall be broken down into the Incremental Costs categories identified in Exhibit 13 (Base Incremental Costs and Permitted Markup);
 - (ii) for Requests for Change Order for Relief Events for Compensation Events submitted during the O&M Period, separate estimates for capital costs, operations and maintenance costs and any other allowable costs shall be provided, broken down into the Incremental Costs categories identified in Exhibit 13;

- (iii) any Delay Costs claimed shall be broken down into a list of all extra costs actually incurred, including an explanation as to how those extra costs relate to the delay and how they are being calculated and measured, identification of all Project employees for whom costs are being compiled, and identification of all manufacturer's numbers of all items of equipment for which costs are being compiled; and
- (iv) for Requests for Change Orders for Relief Events for Compensation Events submitted during the D&C Period, estimates of any Delayed Payment Compensation claimed for any MP Delay Period and any AP Delay Period shall be provided;
- (g) where relief is sought under Section 14.1.1 (Defense to Certain Obligations), a description of the effect of the Relief Event on Developer's ability to perform any of its obligations under the Contract Documents that would otherwise result in accrual of Noncompliance Point(s), assessment of Deductions, or occurrence of a Developer Default, including details of the relevant obligations, the effect on each such obligation, the likely duration of that effect and the specific relief sought;
- (h) Relief Event Claims for Relief Events described in clauses (b) and (c) of the definition of Compensation Event shall be accompanied by a statement signed by a qualified professional:
 - (i) describing the investigations undertaken by Developer to determine Site conditions;
 - (ii) setting forth all relevant assumptions made by Developer with respect to the condition of the Site;
 - (iii) justifying the basis for such assumptions and explaining exactly how the existing conditions differ from those assumptions; and
 - (iv) stating the efforts undertaken by Developer to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs;
- (i) an explanation of the measures that Developer has previously taken to prevent, and proposes to undertake to prevent or mitigate, the consequences of the Relief Event, as required under Section 14.1.6.3 (Burden of Proof and Duty to Mitigate Consequences of any Relief Event);
- (j) the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance; and
- (k) such other supporting documentation as may reasonably be required by LAWA.

13.1.5.2 Developer is responsible for the following costs relating to any Relief Event Claim involving Hazardous Materials:

- (a) costs incurred or extensions of time for investigation and characterization of Hazardous Materials;
- (b) costs incurred or extensions of time with respect to any discovery of Hazardous Materials within Additional Properties or Temporary Areas;
- (c) costs incurred or extensions of time with respect to any discovery of Hazardous Materials if LAWA is not afforded the opportunity to inspect the area before Developer takes any action that would inhibit LAWA's ability to ascertain, based on a site inspection, the nature and extent of the materials, except for Developer's emergency actions necessary to stabilize and contain a sudden release or otherwise required by Law to immediately address the emergency;
- (d) costs incurred associated with discovery and management of Known Hazardous Materials;
- (e) extensions of time for delays associated with discovery and management of Known Hazardous Materials;
- (f) with respect to Work for which unit prices are provided in Exhibit 2A-17 (Hazardous Material Remediation Pricing Sheet): (i) costs of performing such Work that exceed the unit prices, and (ii) costs of performing Work that is reasonably related to the unit priced Work but is not included in the unit price scope description in Exhibit 2A-17.

13.1.5.3 If all of the information described above cannot reasonably be ascertained or furnished within such 30-day period, Developer shall: (a) within such 30-day period, provide LAWA with a specific schedule indicating when Developer expects to provide further details and supporting documentation; and (b) provide LAWA with further details and supporting documentation as soon as possible after it receives such information or in accordance with the schedule provided to LAWA. LAWA may ask Developer to provide any further information that LAWA may reasonably require relating to any request for compensation, time extension or other relief, and Developer shall provide such information within 10 days after such request or shall respond within 10 days explaining why the requested information is not available.

13.1.5.4 Developer shall certify the Relief Event Claim to be accurate, truthful and complete. Information submitted subsequent to submittal of the certified Relief Event Claim will not be considered. A certified Relief Event Claim will not be considered if it does not have the same nature, scope (except for reductions) and circumstances, and basis of claim, as those specified in the Relief Event Notice and in any updates submitted in accordance with Section 13.1.4 (Updates and Supplemental Information).

13.1.5.5 For Relief Event Claims relating to events described in clauses (b) through (j) of the definition of Compensation Event, or relating to Force Majeure Events, Developer shall be deemed to have waived the right to make a Claim with respect to the Relief Event to the extent that LAWA is not afforded the opportunity to make such inspection or investigation except in

circumstances where emergency action is necessary and precludes such prior inspection or investigation.

13.1.5.6 Neither the fact that Developer submits to LAWA a Relief Event Claim, nor the fact that LAWA orally discusses the Work in connection with a Relief Event Claim, shall in any way be construed as an agreement by LAWA that a Relief Event has occurred or that the method of computing any compensation or extension of time, as applicable, is appropriate.

13.1.6 Delay in Notification

Failure to submit a timely and properly documented Relief Event Notice, Relief Event Claim or any other required information shall constitute waiver by Developer of the right to make any claim for additional compensation, extension time or other relief with respect to the Relief Event.

13.1.7 LAWA Response to Relief Event Claim

Within 45 days after receipt of a Relief Event Claim submitted in full in accordance with Section 13.1.5 (Relief Event Claim), LAWA shall issue a written determination as to the extent, if any, to which it concurs with Developer's request (including reasons). LAWA's failure to respond to full and final documentation of a Relief Event Claim within such 45-day period shall constitute LAWA's rejection of such Relief Event Claim.

13.1.8 Agreement or Dispute

13.1.8.1 The agreement of the Parties as to the specific compensation, time extension and/or other relief to be given Developer on account of a Relief Event shall be evidenced by a written amendment to the Agreement, duly executed by both Parties, and shall include all pertinent information, references, arguments, and data to support the claim, including updated analyses, descriptions, actual amounts and impacts (including, with respect to any request for an extension of time, information required under Section 13.1.5.1(e), updated to reflect actual amounts and impacts), and any other documentation covering the same scope of information as required for the request for specific relief.

13.1.8.2 In the event the Parties are unable to agree as to the specific compensation, time extension and/or other relief to be given Developer on account of a Relief Event, LAWA shall pay or grant, as applicable, any undisputed portion of compensation, time extension and/or other relief, and either Party may refer the matter to the Dispute Resolution Procedures. If LAWA rejects the Relief Event Claim, Developer may refer the matter to the Dispute Resolution Procedures.

13.1.8.3 If LAWA or Developer determines, after engaging in good faith negotiations, that continuation of such negotiations is not likely to resolve the matters in dispute, then, except as otherwise provided in Sections 13.1.6 (Delay in Notification), either Party may initiate the Dispute Resolution Procedures.

13.2 Relief Events During Early Works

For purposes of this Article 13, any Relief Event that affected performance of the Early Works shall be deemed to have occurred under this Agreement, and Developer shall be entitled to submit a corresponding Relief Event Claim under this Article 13, subject to the limitations and exceptions expressly provided in this Agreement, provided that Developer shall have complied

with the requirements of Sections 13.1.2 through 13.1.4 with respect to the Relief Event. For purposes of Relief Events affecting performance of the Early Works:

- (a) the corresponding Relief Event Claim under Section 13.1.5 (Relief Event Claim) shall be delivered by Developer to LAWA within 30 days following the Effective Date;
- (b) references to "Submittals" in clause (f) of the definition of LAWA-Caused Event shall be deemed to include all Submittals required to be delivered by Developer to LAWA under the Early Works Agreement; and
- (c) clause (g) of the definition of LAWA-Caused Event shall be deemed to include any failure by LAWA to perform or observe any of its material covenants or obligations under the Early Works Agreement.

ARTICLE 14. COMPENSATION AND OTHER RELIEF FOR RELIEF EVENTS

14.1 Entitlement to Relief

If a Relief Event occurs, subject to the requirements of Articles 12, 13 and 14 and any limitations and exceptions expressly provided in this Agreement, Developer may be entitled to the following types of relief:

- (a) defense to certain obligations, as described in Section 14.1.1 (Defense to Certain Obligations);
- (b) extension of Contract Deadlines, as described in Section 14.1.3 (Extension of Contract Deadlines);
- (c) Incremental Costs, as described in Section 14.1.4 (Incremental Costs); and
- (d) Delayed Payment Compensation, as described in Section 14.1.5 (Delayed Payment Compensation).

14.1.1 Defense to Certain Obligations

14.1.1.1 Subject to the provisions of this Article 14 and any limitations and exceptions expressly provided in this Agreement, if a Relief Event occurs and for so long as the Relief Event is continuing:

- (a) Except as provided in Section 14.1.1.2, Developer shall be entitled to:
 - (i) relief from accrual of Noncompliance Points;
 - (ii) relief from Developer Default; and
 - (iii) relief from assessment of Deductions,provided that such relief shall apply only to the extent that the Relief Event would otherwise have caused such accrual, Developer Default or assessment, as the case may be; and
- (b) to the extent that Developer is unable to comply with the Contract Documents, applicable Laws or Governmental Approvals as a direct result of the Relief Event, Developer shall be excused from such compliance.

14.1.1.2 In the event of an Earthquake with a magnitude up to and including the ODE level, Developer shall be entitled to relief from accrual of Noncompliance Points and from the assessment of Deductions with respect to the APM Operating System only to the extent permitted under Section 11.3.6.2(D)(4) of Part 2B of the Technical Provisions.

14.1.2 Relief Event During O&M Period

14.1.2.1 If a Relief Event occurs during the O&M Period, the Base Operating MaxAP portion of the Availability Payment shall be reduced during the period when Developer is entitled to relief

under Section 14.1.1 (Defense to Certain Obligations) to align with the percentage of O&M Work actually performed relative to the scope of O&M Work required to be performed had the Relief Event not occurred.

14.1.2.2 If Developer demonstrates to LAWA's reasonable satisfaction that the actual reduction in Developer's O&M costs of performing the O&M Work is other than as set out in Section 14.1.2.1, then the reduction in the Base Operating MaxAP portion of the Availability Payment shall be the actual reduction in costs as demonstrated to LAWA's reasonable satisfaction.

14.1.3 Extension of Contract Deadlines

Subject to the provisions of this Article 14 and any limitations and exceptions expressly provided in this Agreement, if a Relief Event Delay occurs during the D&C Period, Developer is entitled to an extension of:

- (a) the Passenger Service Availability Deadline, solely to the extent that the Relief Event Delay delays achievement of Passenger Service Availability beyond the then current Passenger Service Availability Deadline; and
- (b) the Long Stop Date commensurate with the extension of the Passenger Service Availability Deadline pursuant to Section 14.1.3(a).

14.1.4 Incremental Costs

Subject to the provisions of this Article 14 and any limitations and exceptions expressly provided in this Agreement, if a Compensation Event occurs, Developer is entitled to the Incremental Costs incurred by Developer as determined in accordance with Exhibit 13 (Base Incremental Costs and Permitted Markup).

14.1.5 Delayed Payment Compensation

Subject to the provisions of this Article 14 and any limitations and exceptions expressly provided in this Agreement, if, during the D&C Period, a Compensation Event results in a Relief Event Delay, Developer is entitled to Delayed Payment Compensation as follows:

- (a) to the extent that the Relief Event Delay prevents Developer from satisfying (A) the Minimum D&C Percentage condition precedent to any of Milestone Payments 1 through 5, or (B) the Final Completion condition precedent to Milestone Payment 6, in each case as set forth in Exhibit 4A (Milestone Payment Mechanism), the Parties shall determine, in accordance with Article 13 (Relief Event Process), the aggregate number of days beyond the applicable Scheduled Milestone Payment Date that the applicable Milestone Payment will be delayed as a direct result of the occurrence and subsistence of such Compensation Event (the "**MP Delay Period**");
- (b) to the extent that any Financing Costs are incurred by Developer during the duration of the MP Delay Period, LAWA will, commencing on the applicable Scheduled Milestone Payment Date, pay to Developer an amount equal to such Financing Costs no later than the date Developer would have otherwise received the relevant Milestone Payment(s);

- (c) to the extent that, due to the Relief Event Delay, the Passenger Service Availability Date has not occurred by the Baseline Passenger Service Availability Date, the Parties shall determine, in accordance with Article 13 (Relief Event Process), the aggregate number of days beyond the Baseline Passenger Service Availability Date that Passenger Service Availability will be delayed as a direct result of the occurrence and subsistence of such Compensation Event (the “**AP Delay Period**”);
- (d) to the extent that any Financing Costs are incurred by Developer during the duration of the AP Delay Period, LAWA will, commencing on the Baseline Passenger Service Availability Date, pay to Developer an amount equal to such Financing Costs no later than the date Developer would have received the relevant Availability Payment(s);
- (e) no later than 30 days after the Final Completion Date, Developer shall prepare a Financial Model Update in accordance with Section 4.7 (Financial Model and Financial Model Updates) to determine:
 - (i) whether as a result of the Compensation Event(s) and any related MP Delay Period or AP Delay Period, and taking into account the payments made to Developer by LAWA pursuant to Section 14.1.5(b) and (d), the extent to which Developer was left in a better or worse financial position as described in Section 4.7.3 (No Better and No Worse); and;
 - (ii) the amount, if any, that either Developer would need to pay LAWA or that LAWA would need to pay Developer to ensure that Developer would be in a position that was no better and no worse, as described in Section 4.7.3 (No Better and No Worse);
- (f) to the extent that the Financial Model Update demonstrates that Developer was left in a worse position notwithstanding the payments made to Developer by LAWA pursuant to Section 14.1.5(b) and (d), LAWA shall, within 30 days of executing the amendment relating to such Financial Model Update in accordance with Section 4.7.5 (Financial Model Audits), either make a lump-sum payment to Developer or adjust the Availability Payments to Developer, in either case in an amount equal to that which would result in Developer being left in a no better and no worse position as described in Section 4.7.3 (No Better and No Worse);
- (g) to the extent that the Financial Model Update demonstrates that Developer was left in a better position as a result of the payments made to Developer by LAWA pursuant to Section 14.1.5(b) and (d), Developer shall determine whether to make a lump-sum payment to LAWA or reduce the Availability Payments to Developer, in either case in an amount equal to that which would result in Developer being left in a no better and no worse position as described in Section 4.7.3 (No Better and No Worse), and LAWA and Developer shall execute the amendment relating to such Financial Model Update in accordance with Section 4.7.5 (Financial Model Audits); the aggregate amount of the Financing Costs paid pursuant to Section 14.1.5(b) and (d) and the adjustments made in the Financial Model pursuant to Sections 14.1.5(f) and 14.1.5(g) are referred to herein as the “**Delayed Payment Compensation**”; and

- (h) for purposes of this Section 14.1.5, “**Financing Costs**” means the amounts reflected in the Financial Model as projected for payment to Lenders, or reserved for future debt service, by Developer during an MP Delay Period or AP Delay Period, as applicable, but only to the extent that such amounts are paid or reserved from the Milestone Payment or Availability Payment proceeds that were projected to be received by Developer during such period(s). Financing Costs excludes any costs of financing that may be payable as, and included within the definition of, Incremental Costs.

14.1.6 Additional Conditions and Limitations

14.1.6.1 General Limitations

Developer:

- (a) is not entitled to any kind of relief whatsoever from a Relief Event to the extent that the Relief Event or consequences of the Relief Event arose out of (i) any breach of contract by a Developer-Related Entity, (ii) any act or omission by a Developer-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (iii) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Developer-Related Entity;
- (b) is not entitled to any kind of relief whatsoever from a Relief Event to the extent that the Relief Event or consequences of the Relief Event could reasonably have been avoided by any Developer-Related Entity;
- (c) may not claim that any Relief Event relieves Developer from compliance with any Safety Compliance Order; and
- (d) is not entitled to compensation for any Delay Costs in connection with Earthquake or Terrorism.

14.1.6.2 Reduced Relief for Delay in Investigating Site Conditions

- (a) Developer shall not be entitled to any extension of Contract Deadlines under Section 14.1.3 (Extension of Contract Deadlines) or to Delayed Payment Compensation under Section 14.1.5 (Delayed Payment Compensation) for Compensation Events under clause (e) (Pre-Existing Hazardous Materials) or clause (f) (unidentified or misidentified underground utilities) of the definition of Compensation Event, unless Developer has conducted, in accordance with Good Industry Practice and the standards set forth in Section 14.1.6.2(b), an investigation of site conditions within 180 days of the later of the Effective Date and Developer’s access to property in accordance with Section 7.5 (Acquisition of Real Property).
- (b) The site investigation standards for purposes of Section 14.1.6.2(a) are: (i) for subsurface utility exploration, the Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data (ASCE Publication 38-02); and (ii) for geotechnical exploration, the AASHTO LRFD Bridge Design Specification, the Caltrans Geotechnical Manual and the FHWA Publication NHI-01-031,

Subsurface Investigations – Geotechnical Site Characterization, Reference Manual of the Site.

14.1.6.3 Burden of Proof and Duty to Mitigate Consequences of any Relief Event

- (a) Developer bears the burden of proving: (i) the occurrence of a Relief Event and entitlement to any Compensation Amount, extension of time or other relief for such event; and (ii) Developer's compliance with its mitigation obligations under this Section 14.1.6.3.
- (b) Developer shall take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice. Any compensation, time extension or other relief to which Developer is entitled under this Article 14 shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by Developer.
- (c) Without limiting the effect of Section 14.1.6.3(b), Developer shall not be entitled to make any request for compensation or a time extension for Relief Event Delays that could have been reasonably avoided through re-sequencing and re-scheduling of the Work and/or other work-around measures (subject to the understanding that the costs of such workaround measures are allowable if justified by equal or greater savings in Compensation Amounts otherwise payable by LAWA).

14.1.6.4 Sole Entitlement

The Compensation Amounts, time extensions and any other relief granted in accordance with this Article 14 represent Developer's sole and exclusive right to compensation, time extension or any other relief for any adverse financial, schedule or other effects of any Relief Event that may occur during the Term. Developer is not entitled to the relief provided for in this Article 14 or otherwise for any event that is not specifically identified in the definition of Relief Event. Developer unconditionally and irrevocably waives the right to any claim for any additional monetary compensation, time extension and/or any other relief with respect to the occurrence of any Relief Events, except to the extent granted in accordance with Articles 12, 13 and 14.

14.1.6.5 Waiver

As a condition precedent to LAWA's obligation to pay any compensation, grant an extension of time or provide any other relief, Developer shall execute a full, unconditional, irrevocable waiver and release, in favor of and in a form reasonably acceptable to LAWA, of any other Claims, Losses or rights to relief arising out of such Relief Event that is not the subject of a Dispute.

14.2 Insurance

Any entitlement of Developer to compensation with respect to a Relief Event shall be net of:

- (a) all insurance proceeds received by any Developer-Related Entity pursuant to any Insurance Policy;
- (b) any amounts which Developer is deemed to have self-insured; and

- (c) any other insurance proceeds received by any Developer-Related Entity in connection with the Relief Event.

14.3 Method of Payment of Compensation for Compensation Events

14.3.1 Except as provided in Section 14.1.5 (Delayed Payment Compensation), any additional compensation due for a Compensation Event shall be in the form of: (a) periodic payments over the Term; (b) an adjustment to Availability Payments over the Term; (c) progress or other payments invoiced as Work is completed; (d) an up-front lump sum payment; or (e) any combination of the above, as determined by LAWA in its sole discretion. If LAWA elects to compensate Developer by periodic payments over the Term or by an adjustment to the Availability Payments over the Term, and Developer demonstrates to LAWA's reasonable satisfaction that Developer has made good faith efforts to finance its cash flow based on such payment method but is unable to do so, LAWA shall compensate Developer through progress or other payments invoiced as Work is completed or by an up-front lump sum payment, at LAWA's election in its sole discretion.

14.3.2 If LAWA chooses to adjust the Availability Payment to compensate Developer for any additional compensation due for a Compensation Event, the proposed adjustments to payments between the Parties shall be calculated such that the Developer is a no better and no worse position in accordance with Section 4.7.3 (No Better and No Worse).

14.3.3 LAWA shall provide Developer with prompt written notice of the method chosen for paying Developer for the amounts owed under this Article 14. If LAWA elects to pay for such amounts by periodic payments, progress payments, milestone payments or a lump sum payment, Developer shall submit an invoice, in a format acceptable to LAWA, for the amount of each such payment, and LAWA will make payment of all undisputed amounts to Developer within 30 days of receipt of a proper invoice.

14.4 Open Book Basis

Developer shall share with LAWA all data, documents and information, and shall conduct all discussions and negotiations, pertaining to a claimed Relief Event on an Open Book Basis.

14.5 Force Majeure Events

14.5.1 Effect of Force Majeure on Obligations

If a Force Majeure Event occurs, Developer will be excused from certain of its obligations in accordance with Section 14.1.1 (Defense to Certain Obligations). During the occurrence and continuance of any Force Majeure Event, LAWA shall be excused from performing those of its obligations to the extent that LAWA is prevented from carrying out such obligations by that Force Majeure Event. Notwithstanding the foregoing, the occurrence or continuance of any Force Majeure Event shall not excuse any Party from performing its payment obligations contemplated under the Contract Documents (except as may be specifically limited in this Agreement).

14.5.2 Notification and Consultation

Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including

the date of its commencement, evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect. As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable efforts to agree on the effects of and appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.

14.5.3 Resolution

If the effects of the Force Majeure Event are continuing and the Parties are not able to agree to terms for the continued performance of this Agreement within 180 consecutive days after the date of the commencement of the Force Majeure Event, then either Party may terminate this Agreement in accordance with Section 17.2 (Termination for Extended Delay Events or Insurance Unavailability).

14.6 Excavations

Information regarding site conditions included in the Technical Provisions and Reference Documents (including any information, reports, or studies about site conditions, geotechnical conditions, Utilities or structure and bridge design, and any interpretations, extrapolations, analyses and recommendations contained therein) shall not be considered "indicated" therein as such term is used in Public Contract Code section 7104. To the maximum extent permitted by Law, Developer knowingly, unconditionally, irrevocably and specifically waives each and every right and benefit of Public Contract Code section 7104 to the extent that it may be inconsistent with any provision of the Contract Documents. Developer acknowledges and agrees that this waiver and the risk allocations set forth in the Contract Documents are material consideration for LAWA to award and enter into this Agreement with Developer.

ARTICLE 15. DEDUCTIONS AND NONCOMPLIANCE POINTS

15.1 Noncompliance Occurrences and Events

15.1.1 Exhibit 4C (Noncompliance Occurrence Tables) identifies certain Developer breaches or failures in performance of obligations under the Contract Documents (each, a “**Noncompliance Occurrence**”). Developer’s failure to meet minimum performance requirements specified in Table 2 (O&M Period Noncompliance Occurrences) of Exhibit 4C are not Noncompliance Occurrences if the sole and direct cause of such failure is the result of:

- (a) with respect to the performance of the APM Operating System, an exclusion described in Part 2B Section 11.3.6.2(D) of the Technical Provisions; and
- (b) with respect to the performance of the Stations, an exclusion described in Part 3 Sections 3.2.1.1(AA), (BB), (CC), (DD) or (EE) of the Technical Provisions.

15.1.2 A Noncompliance Occurrence becomes a “**Noncompliance Event**” if:

- (a) Developer has not rectified such occurrence within the applicable Rectification Period (if any); or
- (b) following the expiration of a Rectification Period, Developer has not rectified such occurrence within any further Interval of Recurrence.

15.1.3 A Noncompliance Event will result in either or both:

- (a) the assessment of Noncompliance Points in accordance with Section 15.4 (Assessment of Noncompliance Points); and
- (b) the assessment of Noncompliance Deductions in accordance with Exhibit 4 (Payment Mechanism),

in each case as indicated in the Noncompliance Occurrence Tables.

15.2 Noncompliance Deductions and Unavailability Deductions

15.2.1 In accordance with Exhibit 4 (Payment Mechanism), LAWA may:

- (a) assess Noncompliance Deductions upon the occurrence of certain Noncompliance Events; and
- (b) assess Unavailability Deductions based on reduced APM OS Availability in accordance with Exhibit 4 (Payment Mechanism).

15.2.2 Developer acknowledges that any monetary deductions assessed in accordance with this Agreement, including any D&C Period Noncompliance Deductions, O&M Period Noncompliance Deductions and Unavailability Deductions, are reasonable liquidated damages under the circumstances existing at the Effective Date, to compensate LAWA for:

- (a) LAWA’s increased costs of administering the Contract Documents, including any obligations to pay or reimburse Governmental Entities with regulatory

jurisdiction over the Project for their increased costs of monitoring and enforcing Developer's compliance with applicable Governmental Approvals;

- (b) LAWA's increased costs of providing transportation for Users to and from the CTA airline terminals, the CTA airport parking garages, the ITFs, Metro facilities and the ConRAC;
- (c) LAWA's potential loss of fees and airline revenues due to the reduction in the availability and quality of the Project having an adverse effect on the experience of Users and their desire to use the APM System, the ITFs, the ConRAC or LAX generally; and
- (d) potential harm to the credibility and reputation of LAWA and/or the LAMP with Users and potential Users, stakeholders, policy makers and with the general public.

15.2.3 Developer further acknowledges that such increased costs and loss of revenue, credibility and reputation, would be difficult and impracticable to measure and prove, because, among other things, the costs of administering the Contract Documents prior to increases in the level thereof will be variable and extremely difficult to quantify and the variety of factors that influence use of and demand for the APM System, the ITFs, the ConRAC or LAX generally make it difficult to sort out causation and quantify the precise revenue loss attributable to the matters that will trigger these liquidated damages.

15.2.4 Except for other remedies expressly provided in this Agreement, including LAWA's right to assess Noncompliance Points and to be indemnified for Third Party claims, any monetary deduction assessed in accordance with this Agreement shall constitute LAWA's sole remedy in respect of LAWA's damages arising from the delay, breach or failure, as applicable, for which such monetary deduction is assessed.

15.3 Noncompliance Occurrence Reporting, Notification and Cure Process

15.3.1 Noncompliance Database

15.3.1.1 Developer shall establish and maintain an electronic database for recording and tracking Noncompliance Occurrences and Noncompliance Events (the "**Noncompliance Database**"). The format and design of the database shall be subject to LAWA's approval. At a minimum, the database shall:

- (a) include a description of each Noncompliance Occurrence in reasonable detail;
- (b) provide for automatic notification to LAWA of the entry of a Noncompliance Occurrence in the Noncompliance Database;
- (c) identify the location of the Noncompliance Occurrence (if applicable);
- (d) identify the date and time of each Noncompliance Occurrence;
- (e) identify the applicable Rectification Period and Interval of Recurrence of the Noncompliance Occurrence, if any, stated in the Noncompliance Occurrence Table;

- (f) indicate date and time of Rectification for any Noncompliance Occurrence;
- (g) indicate when a Noncompliance Event has developed; and
- (h) record the number of assessed Noncompliance Points, the date of each assessment, and the date when each Noncompliance Event is cured.

15.3.1.2 Developer shall provide LAWA with full access to the Noncompliance Database at all times, including the ability to enter Noncompliance Occurrences into the Noncompliance Database as provided in Section 15.3.2 (Notification Initiated by LAWA).

15.3.1.3 Notification Initiated by Developer

As an integral part of Developer's self-monitoring obligations, Developer shall record in the Noncompliance Database, in real time and upon discovery, the occurrence of any Noncompliance Occurrence specified in the Noncompliance Occurrence Tables.

15.3.2 Notification Initiated by LAWA

If LAWA believes a Noncompliance Occurrence has occurred that Developer has not recorded in the Noncompliance Database, LAWA may enter the Noncompliance Occurrence into the Noncompliance Database or deliver to Developer a Notice of Determination as provided in Section 15.3.3.2 via the Noncompliance Database, and delivery shall be deemed given upon proper entry of the information into the Noncompliance Database.

15.3.3 Performance Reports

15.3.3.1 Developer shall include in each Monthly Performance Measurement Report required under Section 3.3.1 of Part 2A of the Technical Provisions and in each Monthly Performance Monitoring Report required under Section 2.2.5.4.3 of Part 3 of the Technical Provisions, a report of all Noncompliance Occurrences and Noncompliance Events that occurred during the preceding Month, which reports shall include the same detailed information required to be recorded in the Noncompliance Database. Developer shall correct any inaccuracies in reporting of Noncompliance Occurrences, Noncompliance Events and Noncompliance Points, within 10 Business Days of LAWA's notification to Developer of such inaccuracies.

15.3.3.2 Within a reasonable time after receiving the Monthly Performance Monitoring Report or Monthly Performance Measurement Report, as applicable, LAWA will deliver to Developer a notice setting forth for each Noncompliance Occurrence LAWA's determination whether the Noncompliance Occurrence was responded to or rectified (as applicable) during the applicable Rectification Period or Interval of Recurrence (if any), LAWA's determination whether a Noncompliance Event occurred, and the Noncompliance Points and Noncompliance Deductions to be assessed with respect to such Noncompliance Event (a "**Notice of Determination**").

15.3.4 Rectification Periods and Interval of Recurrence

15.3.4.1 Developer shall rectify each Noncompliance Occurrence by the end of the Rectification Period (if any) for each such Noncompliance Occurrence.

15.3.4.2 For each Noncompliance Occurrence identified, Developer's Rectification Period with respect to the Noncompliance Occurrence shall be deemed to start on the date and time

Developer first obtained knowledge or should have first reasonably known of (exercising reasonable prudence) the Noncompliance Occurrence. For this purpose, if the notice of the Noncompliance Occurrence is initiated by LAWA, Developer shall be deemed to first obtain knowledge of the Noncompliance Occurrence not later than the date of delivery of the notice to Developer.

15.3.5 Notification of Rectification

15.3.5.1 When Developer determines that its Rectification of a Noncompliance Occurrence has been completed, Developer shall make an entry in the Noncompliance Database that:

- (a) identifies the Noncompliance Occurrence;
- (b) states that Developer has completed Rectification; and
- (c) briefly describes the applicable Rectification, including any modifications to the Project Management Plan or O&M Management Plan to prevent future similar Noncompliance Occurrences.

15.3.5.2 Developer shall include the same information in the next monthly Performance Measurement Report.

15.3.5.3 LAWA may, via written notice of rejection, reject any Developer notice of completed Rectification if it determines that Developer has not rectified the Noncompliance Occurrence and shall, upon making this determination, deliver a written notice of rejection to Developer.

15.4 Assessment of Noncompliance Points

15.4.1 Noncompliance Points are a system to measure Developer performance levels during the design, construction and operations and maintenance phases of the Project. LAWA may assess Noncompliance Points in accordance with this Section 15.4 and Exhibit 4C (Noncompliance Occurrence Tables) upon the occurrence of Noncompliance Events.

15.4.2 If at any time the Noncompliance Database, a Monthly Performance Measurement Report or a Monthly Performance Monitoring Report indicates, or LAWA is notified or otherwise becomes aware of, a Noncompliance Event, or LAWA provides Developer with a Notice of Determination, then, without prejudice to any other right or remedy available to LAWA, LAWA may assess Noncompliance Points, subject to the following terms and conditions:

- (a) except as provided in Section 15.4.2(b), LAWA may assess Noncompliance Points at each of the following times: (i) immediately for any Noncompliance Event for which no Rectification Period is specified in Exhibit 4C (Noncompliance Occurrence Tables); (ii) the end of the Rectification Period (if any) if Developer has not rectified the Noncompliance Event; and (iii) the end of each Interval of Recurrence if Developer has not rectified the Noncompliance Event;
- (b) if LAWA initiated notice of a Noncompliance Occurrence that becomes a Noncompliance Event entitling LAWA to assess Noncompliance Points, and to the extent LAWA has determined to assess Noncompliance Points, LAWA may allocate the applicable Noncompliance Points at the commencement of the

applicable Rectification Period and Interval of Recurrence periods. If LAWA and Developer deliver concurrent written notices of the same Noncompliance Occurrence, or concurrently seek to enter the details of the Noncompliance Occurrence into the Noncompliance Database, Developer's notice shall prevail;

- (c) the number of points listed in Exhibit 4C (Noncompliance Occurrence Tables) for any particular Noncompliance Event is the maximum number of Noncompliance Points that may be assessed for each event or circumstance that is a Noncompliance Event, except as provided in Section 15.4.3. LAWA may, in its sole discretion, assess less than the maximum;
- (d) no points shall be assessed for Noncompliance Events that occur during the first 90 days following the Passenger Service Availability Date, except to the extent that a Noncompliance Event relates to Developer's failure to meet any requirement specified in line items 62 through 80 of Table 2 in Exhibit 4C (Noncompliance Occurrence Tables), for which Noncompliance Points shall be assessed at no more that 50% of the maximum number of Noncompliance Points applicable to the Noncompliance Event;
- (e) to the extent that a particular breach or failure of obligation under the Contract Documents may constitute more than one Noncompliance Occurrence, such breach or failure shall be deemed to be solely the event or Noncompliance Occurrence to which the greatest number of Noncompliance Points applies;
- (f) if a Noncompliance Event continues beyond its relevant Rectification Period, if any, each subsequent Interval of Recurrence, shall be treated as a new and separate Noncompliance Event, without necessity for further notice, for the purpose of assessing Noncompliance Points; and
- (g) 100% of the Noncompliance Points assessed during the D&C Period in connection with failures to achieve inclusivity requirements, and 50% of the balance of Noncompliance Points assessed during the D&C Period, may be carried forward and used by LAWA to calculate, after the Passenger Service Availability Date, accumulated Noncompliance Points for the purposes specified in Sections 15.5.1(a) and (b), 15.5.6 (a) and (b), and 16.1.1(r) and (s).

15.4.3 LAWA may assess twice the number of Noncompliance Points determined in accordance with Section 15.4.2 with respect to any period for which the event resulting in the assessment of Noncompliance Points occurs on a Critical Day.

15.4.4 Regardless of the continuing assessment of Noncompliance Points under this Section 15.4, LAWA may exercise its step-in rights under Section 16.2.4 (LAWA Step-in Rights) and, if applicable, its Work suspension rights under Section 16.2.7 (Suspension of Work), after expiration of the initial Rectification Period or Interval of Recurrence available to Developer.

15.5 Increased Oversight of the Project and the Work; Warning Notice

15.5.1 In addition to other remedies available under this Agreement, LAWA shall, by notice to Developer, be entitled to change the type and/or increase the level of LAWA's Oversight of the Project and the Work, in such manner and to such level as LAWA determines if at any time:

- (a) over the course of 12 consecutive Months (determined on a rolling basis), Developer has accumulated 200 or more Noncompliance Points;
- (b) over the course of 36 consecutive Months (determined on a rolling basis), Developer has accumulated 550 or more Noncompliance Points;
- (c) a Persistent Unavailability Event has occurred in the prior Month;
- (d) an APM Operating System Shutdown lasting 24 hours or more has occurred; or
- (e) Developer fails to submit a remedial plan in accordance with Section 7.12.2.1 or Section 9.6.1.3.

15.5.2 If LAWA changes the type or increases the level of its Oversight under Section 15.5.1, then Developer shall pay and reimburse LAWA, within 30 days after receipt of written demand and reasonable supporting documentation, all reasonable increased costs and fees LAWA incurs in connection with such action, including LAWA's Recoverable Costs.

15.5.3 Developer's obligation to pay and reimburse LAWA for increased Oversight costs relating to the circumstances described under Sections 15.5.1(a), 15.5.1(b) and 15.5.1(e) shall apply to all changes in the type or increases in the level of LAWA's Oversight occurring until Developer has:

- (a) fully and completely cured the breaches and failures gave rise to increased Oversight and any other then-existing Developer Defaults;
- (b) diligently pursued cure of all other Noncompliance Occurrences; and
- (c) reduced the number of Noncompliance Points below the thresholds identified in Sections 15.5.1(a) and 15.5.1(b).

15.5.4 Developer's obligation to pay and reimburse LAWA for increased Oversight costs relating to the circumstances described under Sections 15.5.1(c) and 15.5.1(d) shall apply to all changes in the type or increases in the level of LAWA's Oversight occurring until all of the following conditions are met: (a) Developer achieves 99.5% APM Operating System Availability in a month, (b) no Persistent Unavailability Event has occurred in the prior six Months, or (c) no APM Operating System Shutdown lasting 24 hours or more has occurred in the prior six Months.

15.5.5 LAWA may, at its sole discretion and at its own expense, increase its level of Oversight at any time.

15.5.6 LAWA may provide written notice to Developer if at any time:

- (a) over the course of 12 consecutive Months (determined on a rolling basis), Developer has accumulated 300 or more Noncompliance Points;
- (b) over the course of 36 consecutive Months (determined on a rolling basis), Developer has accumulated 825 or more Noncompliance Points;
- (c) two Persistent Unavailability Events have occurred in the prior 12 Months; or

- (d) an APM Operating System Shutdown lasting 48 hours or more has occurred.

15.6 Amendment of O&M Period Noncompliance Occurrence Table

15.6.1 The O&M Period Noncompliance Occurrence Table contains a representational, but not exhaustive, list of Noncompliance Occurrences possible during the O&M Period under the Contract Documents. Subject to Sections 15.6.2 and 15.6.3, LAWA may:

- (a) replace Noncompliance Occurrences in the O&M Period Noncompliance Occurrence Table by removing a Noncompliance Occurrence and adding in its place an alternate Noncompliance Occurrence identified in accordance with Section 15.6.2(a); and
- (b) establish the category applicable to, and set a reasonable “Minimum Performance Requirement,” “Rectification Period” and “Interval of Recurrence” for, each alternate Noncompliance Occurrence.

15.6.2 LAWA’s right to revise the O&M Period Noncompliance Occurrence Table is subject to the following restrictions:

- (a) any existing contractual obligation of Developer may become an alternate Noncompliance Occurrence if:
 - (i) Developer has failed to comply with that contractual obligation at least twice;
 - (ii) LAWA provided notice to Developer within 15 days of Developer’s second failure to comply and such notice identifies the contractual obligation and the instances of Developer’s failure to comply, and indicates that LAWA will add that contractual obligation to the O&M Period Noncompliance Occurrence Table if Developer at any time again fails to comply with the specified contractual obligation; and
 - (iii) Developer fails a third time to comply with the contractual obligation specified in the notice;
- (b) the number of Noncompliance Points and the amount of the Deduction assessable for each alternate Noncompliance Occurrence must equal the Noncompliance Points and the amount of the Deduction assessable for the Noncompliance Occurrence being replaced by the alternate; and
- (c) the replacement of Noncompliance Occurrences with alternate Noncompliance Occurrences may not result in an increase to the maximum aggregate Noncompliance Points assessable pursuant to the Noncompliance Points system.

15.6.3 Changes to the O&M Period Noncompliance Occurrence Table made in accordance with this Section 15.6 will be applied prospectively, starting three days after delivery to Developer of the revised table or such later date stated in the notice delivering any revised table.

ARTICLE 16. DEFAULT; REMEDIES

16.1 Default by Developer; Cure Periods

16.1.1 Developer Default

Developer shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a “**Developer Default**”):

- (a) Developer fails to satisfy the conditions set forth in Section 7.4.3 (Commencement of Non-Construction Work) within 30 days after LAWA’s issuance of NTP 1, to begin the D&C Work within 10 days following LAWA’s issuance of NTP 2, or to diligently prosecute the Work to completion in accordance with the Contract Documents;
- (b) Developer abandons all or a material part of the Project, which abandonment is deemed to occur if (i) Developer demonstrates through statements, acts or omissions an intent not to continue, for any reason other than a Relief Event that materially impairs Developer’s ability to continue, to design, construct, operate or maintain all or a material part of the Project or (ii) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event) on the Project is performed for a continuous period of more than 45 days unless due to Developer’s compliance with a LAWA suspension order issued under this Agreement;
- (c) Developer fails to achieve Passenger Service Availability by the Long Stop Date;
- (d) Developer (i) fails to make any payment owing to LAWA under the Contract Documents when due, or (ii) fails to deposit other funds into any custodial account, trust account or other reserve or account in the amount and within the time period required by the Contract Documents;
- (e) (i) any representation or warranty in the Contract Documents made by Developer is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made, or (ii) any certificate, schedule, report, instrument or other document delivered by or on behalf of Developer, any Equity Member, Controlling Affiliate of Developer, Prime Contractor or APM Operating System Supplier to LAWA as part of the Proposal or under the Contract Documents is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;
- (f) Developer fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the Contract Documents for the benefit of relevant parties, or Developer fails to comply with any requirement of the Contract Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, retain self-insured retentions, co-insurance or any other such amounts as and when due;

- (g) (i) Developer makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Contract Documents, the Project or Developer's Interest in violation of the limitations on assignment or transfer under this Agreement, (ii) there occurs an Equity Transfer or a Change of Control not permitted under this Agreement, or (iii) any other violation of the limitations on assignment or transfer under this Agreement occurs;
- (h) Developer fails to timely observe or perform, or cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the Contract Documents, including failure to pay for or perform the Design Work, Construction Work, O&M Work or any portion thereof in accordance with the Contract Documents in any material respect, provided that any failure that constitutes a Noncompliance Event or Noncompliance Occurrence is not considered a default under this clause (h) although such failure may become a Developer Default in accordance with clause (r) or (s) below;
- (i) Developer, any Equity Member, any Controlling Affiliate of Developer, any Prime Contractor, any APM Operating System Supplier, or any of their respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, has been convicted in a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in California Public Contract Code section 1101, with any public entity, as defined in California Public Contract Code section 1100, provided that, if the conviction relates to an Equity Member, a Controlling Affiliate of Developer, a Prime Contractor, an APM Operating System Supplier, or any of their or Developer's respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, (A) such Person is involved in the Project at the time of such conviction and (B) Developer fails to remove such Person from the Project;
- (j) Developer fails to comply with LAWA's order to suspend Work issued in accordance with Sections 9.8.7, 10.1.2.4(c), 16.2.3.4(d) or 16.2.7 within the time reasonably allowed in such order;
- (k) Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to Developer or Developer's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;
- (l) an involuntary case is commenced against Developer seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such Developer or Developer's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law; seeking the appointment of a trustee, receiver, liquidator, custodian

- or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by it in good faith or shall remain undismissed and unstayed for a period of 60 days;
- (m) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Developer or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law, this Agreement or any of the other Contract Documents, is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute;
 - (n) any voluntary or involuntary case or other act or event described in clause (k) or (l) shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (i) any Equity Member, partner or joint venture member of Developer (unless said Person has fully met all financial obligations owing to Developer in the form of a Committed Investment, and payments or transfers of money or property previously made to or for the benefit of Developer are not subject to sections 544, 547, 548, or 550 of the Bankruptcy Code or any similar applicable state or federal law respecting the avoidance or recovery of preferences or fraudulent transfers, including any applicable enactment of the Uniform Fraudulent Transfer Act), (ii) any Equity Member, partner or joint venture member of Developer for whom transfer of ownership or management authority would constitute a Change of Control;
 - (o) Developer draws against any custodial account, trust account, allowance or other reserve or account in violation of the Contract Documents or makes a false or materially misleading representation in connection with a draw against any such account, allowance or reserve;
 - (p) Developer fails to comply with applicable Governmental Approvals or Laws in any material respect;
 - (q) any use of the Project by any Developer-Related Entity that violates requirements of applicable Governmental Approvals or Laws or otherwise is not permitted under the Contract Documents;
 - (r) Developer receives a total of 400 or more Noncompliance Points over the course of 12 consecutive Months (determined on a rolling basis);
 - (s) Developer receives a total of 1100 or more Noncompliance Points over the course of 36 consecutive Months (determined on a rolling basis);
 - (t) three or more Persistent Unavailability Events have occurred in the prior 12 months; or
 - (u) an APM Operating System Shutdown lasting 96 hours or more has occurred.

16.1.2 Cure Periods

The following list identifies Developer's rights to receive notice and opportunity to cure before LAWA may exercise its right to terminate this Agreement or enforce its Performance Bond in accordance to Section 16.2.6, and identifies other Developer Defaults that are not subject to cure:

- (a) respecting a Developer Default under Section 16.1.1(a), Section 16.1.1(b), 16.1.1(d), 16.1.1(f), 16.1.1(g), 16.1.1(o), 16.1.1(p) or 16.1.1(q), a cure period of 30 days after LAWA delivers to Developer Notice of Developer Default; provided that LAWA may effect cure, at Developer's expense, if a Developer Default under Section 16.1.1(f) continues beyond five days after such notice is delivered;
- (b) respecting a Developer Default under Section 16.1.1(e), 16.1.1(h) or 16.1.1(i), a cure period of 30 days after LAWA delivers to Developer Notice of Developer Default; provided that:
 - (i) if the nature of such Developer Default is such that the cure cannot with diligence be completed within such time period and Developer has commenced meaningful steps to cure immediately after receiving the default notice, Developer shall have such additional period of time, up to a maximum cure period of 150 days, as is reasonably necessary to diligently effect cure; and
 - (ii) as to Section 16.1.1(e), cure will be regarded as complete when the adverse effects of the breach are cured.
- (c) respecting a Developer Default under Section 16.1.1(k), 16.1.1(l) or 16.1.1(m), no cure period is allowed, and, except for any notices to Lenders contemplated under any executed Direct Agreement, there shall be no right to notice of such Developer Default;
- (d) respecting a Developer Default under Section 16.1.1(c), 16.1.1(j) or 16.1.1(r) through 16.1.1(u), no cure period is allowed; and
- (e) respecting a Developer Default under Section 16.1.1(n), a period of 10 days from the date of Developer Default to commence diligent efforts to cure, and 30 days to effect cure of such default by (a) providing a letter of credit or payment to LAWA or the Collateral Agent for the benefit of the Project, in the amount of the Equity Member's financial obligation for Equity Member's Committed Investment and Equity Member Debt to or for the benefit of Developer; or (b) providing a replacement Equity Member satisfactory to LAWA.

16.1.3 Default Relating to Noncompliance Events with Deduction Remedy

Notwithstanding anything to the contrary in this Article 16, if a Noncompliance Event occurs for which LAWA is entitled to assess Deductions under Exhibit 4B (Availability Payment Mechanism), LAWA will not declare a default with respect to such Noncompliance Event; provided that this limitation shall not affect:

- (a) LAWA's right to declare a default under Section 16.1.1(r) or 16.1.1(s) even though LAWA has the right to make Deductions relating to the same Noncompliance Events for which Noncompliance Points are assessed; or
- (b) LAWA's right to declare a default for any other Developer Default for which LAWA is not entitled to Deductions under Exhibit 4B (Availability Payment Mechanism).

16.2 LAWA Remedies for Developer Default

16.2.1 Termination

In the event of a Developer Default, LAWA may terminate this Agreement as provided in Section 17.3 (Termination for Developer Default).

16.2.2 Immediate LAWA Entry and Cure of Wrongful Use

Without notice and without awaiting lapse of the period to cure, in the event of any Developer Default under Section 16.1.1(q) (wrongful use of Project), LAWA may enter and take control of the relevant portion of the Project to restore the permitted uses and reopen and continue operations for the benefit of the public, until such breach is cured or LAWA terminates this Agreement. Developer shall pay to LAWA on demand LAWA's Recoverable Costs in connection with such action, which payment will be reimbursed by LAWA if a determination is ultimately made that no Developer Default occurred, promptly following such a determination. So long as LAWA undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a Developer Default, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose LAWA to any liability to Developer, other than the reimbursement obligation described above, and shall not entitle Developer to any other remedy except if LAWA's action constitutes gross negligence, recklessness or willful misconduct. Developer acknowledges that LAWA has a high priority, paramount public interest in maintaining the authorized uses of the Project and continuous access to the Project. LAWA's good faith determination that such action is needed shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. LAWA will promptly relinquish control and possession of the relevant portion of the Project to Developer once LAWA determines that such Developer Default has been cured.

16.2.3 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance

16.2.3.1 If at any time Developer or its Surety fails to meet any Safety Standard or timely perform Safety Compliance or if LAWA and Developer cannot reach an agreement regarding the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time acceptable to LAWA, LAWA may undertake or direct Developer to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by LAWA or with the Safety Compliance Order. If at any time a condition or deficiency of the Project violates any Law respecting health, safety or right of use and access, including the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 et seq., and regulations of the United States Occupational Safety and Health Administration (OSHA), LAWA may take any immediate corrective actions required.

16.2.3.2 Subject to Section 16.2.3.3, to the extent that any work done under Section 16.2.3.1 is undertaken by LAWA and is reasonably necessary to comply with Safety Standards, perform

validly issued Safety Compliance Orders or correct a violation of Law respecting health, safety or right of use and access, Developer shall pay to LAWA on demand the costs of such work including LAWA's Recoverable Costs in connection with such work. In such event, LAWA (whether it undertakes the work or has directed Developer to undertake the work) shall have no obligation or liability to compensate Developer for any Losses Developer suffers or incurs arising from, resulting to or resulting from such work.

16.2.3.3 To the extent that LAWA requires Developer to perform Work under Section 16.2.3.1 that is not reasonably necessary to comply with Safety Standards, perform validly issued Safety Compliance Orders or correct a violation of Law respecting health, safety or right of use and access, such requirement shall be considered a LAWA Change, and Developer's obligation to pay LAWA's Recoverable Costs shall not include LAWA's costs relating to the LAWA Change.

16.2.3.4 Notwithstanding anything to the contrary contained in this Agreement and without limiting LAWA's other rights and remedies under this Agreement, LAWA shall have the rights and remedies specified in this Section 16.2.3.4 if, in the good faith judgment of LAWA:

- (a) Developer has failed to meet any Safety Standards or perform Safety Compliance and the failure results in an Emergency or danger to persons or property;
- (b) Developer is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger.

In such event, LAWA may without notice and without awaiting lapse of the period to cure any breach:

- (c) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Developer shall pay to LAWA on demand the cost of such action, including LAWA's Recoverable Costs, which payment will be reimbursed by LAWA if a determination is ultimately made that Developer did not fail to meet applicable Safety Standards or to perform Safety Compliance; or
- (d) suspend Construction Work and/or close or cause to be closed any and all portions of Project affected by the Emergency or danger.

16.2.3.5 So long as LAWA undertakes any action under Section 16.2.3.4 in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose LAWA to any liability to Developer, other than the reimbursement obligation described in Section 16.2.3.4, and shall not entitle Developer to any other remedy, except if LAWA's action was undertaken in bad faith or constitutes gross negligence, recklessness or willful misconduct.

16.2.3.6 Developer acknowledges that LAWA has a high priority, paramount public interest in protecting public and worker safety at the Project and adjacent areas. LAWA's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by LAWA, LAWA will allow the Construction Work to continue or such portions of the Project to reopen, as applicable.

16.2.4 LAWA Step-in Rights

16.2.4.1 In accordance with this Section 16.2.4, but subject to the terms of any Direct Agreement, if Developer has not fully and completely cured a Developer Default by the expiration of any cure period, LAWA may pay and perform all or any portion of Developer's obligations (a) under the Contract Documents that are the subject of such Developer Default and (b) under any other then-existing breaches or failures to perform for which Developer received prior notice from LAWA but has not commenced or does not continue diligent efforts to cure.

16.2.4.2 LAWA may, to the extent reasonably required for or incident to curing Developer Default or such other breaches or failures to perform:

- (a) perform or attempt to perform, or cause to be performed, such Work;
- (b) employ security guards and other safeguards to protect the Project;
- (c) spend such sums as LAWA deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such Work, without obligation or liability to Developer or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment;
- (d) in accordance with Section 16.2.6 (Performance Bond), draw on and use proceeds from the Performance Bond and any other available security or source of funds available to Developer for the purposes set forth in this Section 16.2.4.2 including amounts held in an operating account, to the extent such instruments provide recourse to pay such sums, provided LAWA's right to access amounts held in an operating account shall not include a security interest in such funds nor shall the exercise of such right by LAWA interfere with the right of the Lenders, if any, under the Security Documents and the Direct Agreement to access such funds;
- (e) execute all applications, certificates and other documents as may be required;
- (f) make decisions respecting, assume control over and continue Work as may be reasonably required;
- (g) modify or terminate any contractual arrangements in Developer's Contracts in LAWA's discretion, without liability for termination fees, costs or other charges in accordance with the terms of those Contracts, including the requirements for each Contract listed in Section 9.3.2 (Key Contract Provisions);
- (h) meet with, coordinate with, direct and instruct Contractors and Suppliers, process invoices and applications for payment from Contractors and Suppliers, pay Contractors and Suppliers, and resolve claims of Contractors and Suppliers;
- (i) take any and all other actions it may consider necessary to effect cure and perform the Work; and

(j) prosecute and defend any action or proceeding incident to the Work.

16.2.4.3 Developer shall reimburse LAWA on demand for its Recoverable Costs incurred in connection with the performance of any act or work authorized by this Section 16.2.4.

16.2.4.4 In addition to its continuing ownership of the Site and rights to have access to the Site throughout the Term, including the rights described in Section 6.7 (Coordination, Cooperation and Access), LAWA and its Authorized Representatives, contractors, subcontractors, vendors and employees shall have the right to enter onto all Temporary Areas, exercisable at any time or times without notice, for the purpose of carrying out LAWA's step-in rights under Section 16.2.2 (Immediate LAWA Entry and Cure of Wrongful Use) and this Section 16.2.4. Developer grants LAWA a perpetual, non-rescindable right of entry onto the Temporary Areas for such purpose.

16.2.4.5 If LAWA exercises any right to pay or perform under this Section 16.2.4, it nevertheless shall have no liability to Developer for the sufficiency, adequacy or quality of any such payment or performance, or for any effect of such payment or performance on the Work or the Project, unless caused by the gross negligence, recklessness or willful misconduct of LAWA. LAWA and its Authorized Representatives, contractors, subcontractors, vendors and employees shall have no liability to Developer for any inconvenience or disturbance arising out of any entry onto the Site or Temporary Areas as contemplated by Section 16.2.2 (Immediate LAWA Entry and Cure of Wrongful Use) or this Section 16.2.4, provided that the foregoing shall not absolve any Person of liability as a matter of law for its gross negligence, recklessness or willful misconduct.

16.2.4.6 LAWA's rights under this Section 16.2.4 (but not LAWA's rights under Section 16.2.2 (Immediate LAWA Entry and Cure of Wrongful Use) regarding LAWA's immediate right of entry and right to cure wrongful use of the Project) are subject to the right of any Surety to assume performance and completion of all bonded work under a Performance Bond.

16.2.4.7 In the case of a Developer Default, LAWA's rights under this Section 16.2.4 are subject to Lender rights to cure under any Direct Agreement between LAWA and such Lender. Subject to the terms of the Direct Agreement, LAWA may nevertheless continue exercise of its step-in rights until, under the terms of any such Direct Agreement then in effect, the Lender obtains possession and control and notifies LAWA that it stands ready to commence good faith, diligent curative action. In the case of any other Developer Default, LAWA's rights under this Section 16.2.4 are subject to the exercise of step-in rights or other cure rights (not involving step-in) by the Collateral Agent under the Direct Agreement (pursuant to Security Documents), provided that the Collateral Agent (a) delivers to LAWA notice of the Collateral Agent's decision to exercise step-in rights, and commences the good faith, diligent exercise of such step-in rights, within the applicable cure period, and (b) continues such good faith, diligent exercise of remedies until Developer Default is fully and completely cured, in each case, subject to Collateral Agent's decision to cure in lieu of stepping in with respect to certain Developer Defaults, under the terms and subject to the conditions of the Direct Agreement.

16.2.4.8 If LAWA takes action described in this Section 16.2.4 and it is later finally determined that LAWA lacked the right to do so because there did not occur a Developer Default or because Developer had previously fully cured the default in accordance with this Agreement, then LAWA's action shall be treated as a LAWA Change.

16.2.5 Damages; Offset

16.2.5.1 Except as limited by LAWA's agreement to liquidate certain damages as specified in this Agreement, and subject to the limitations in Section 16.6 (Limitation on Consequential Damages), LAWA shall be entitled to recover any and all damages available at law on account of the occurrence of a Developer Default. Developer shall owe any such damages that accrue after the occurrence of Developer Default regardless of when Notice of Developer Default is given or whether Developer Default is subsequently cured.

16.2.5.2 In the case of a termination for Developer Default, LAWA may deduct and offset any damages owing to it under the Contract Documents from and against any amounts LAWA may owe to Developer. If the amount of damages owing to LAWA is not liquidated or known with certainty at the time a payment is due from LAWA to Developer with respect to such termination for a Developer Default, LAWA may deduct and offset the amount it reasonably estimates will be due, subject to LAWA's obligation to adjust such deduction or offset when the amount of damages owing to LAWA is liquidated or becomes known with certainty.

16.2.5.3 Damages owed to LAWA under this Section 16.2.5 shall bear interest at the Late Payment Rate from and after the date any amount becomes due to LAWA until the date paid.

16.2.5.4 LAWA may deduct and offset any damages, or other amounts, owing to it under the Contract Documents from and against any amounts LAWA may owe to Developer.

16.2.5.5 Without limiting Section 16.2.5.4:

- (a) the amount of any damages attributable to Developer may be deducted or offset from periodic payments owing by LAWA under Section 11.1 (Milestone Payments) (including damages attributable to any Developer Default that concerns the D&C Work and is the subject of a notice delivered to Developer before the date such payments are owing), subject to Section 2.4 of Exhibit 4A (Milestone Payment Mechanism); and
- (b) the amount of any damages attributable to Developer may be deducted or offset from the Availability Payments (including damages attributable to any Developer Default), provided that in certain cases damages are liquidated by the Deductions under Exhibit 4B (Availability Payment Mechanism).

16.2.5.6 If the amount of damages owing to LAWA from Developer is not liquidated or known with certainty at the time the payment is due, LAWA may deduct and offset up to 105% of the amount it reasonably estimates will be due, in which case the Parties shall adjust such deduction or offset when the amount of damages owing to LAWA becomes known with certainty, with interest at the Late Payment Rate payable by LAWA on excess amounts withheld and interest at the same rate payable by Developer on any shortfall.

16.2.5.7 LAWA's right of offset includes all amounts paid by LAWA to satisfy, discharge and defend against any claim of lien, stop notice, equitable lien or any other demand for payment or security made or filed with LAWA, LAWA's property or the Project by any Person claiming that any Developer-Related Entity has failed to perform its contractual obligations or to make payment for any obligation incurred for or in connection with the Work, provided that no such offset shall be made if Developer has filed surety bonds fully releasing LAWA and LAWA's property from such claim or lien under applicable Law.

16.2.6 Performance Bond

16.2.6.1 Subject to Sections 16.2.6.2 and 16.2.6.4, upon the occurrence of a Developer Default and expiration, without full and complete cure, of the applicable cure period, if any, under Section 16.1.2 (Cure Periods), without waiving or releasing Developer from any obligations or limiting other remedies that may be available to City, City may make demand upon and enforce any Performance Bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to City under this Agreement with respect to such Developer Default in any order. City will apply the proceeds of any such action to the satisfaction of Developer's obligations under this Agreement, including payment of amounts due to LAWA.

16.2.6.2 If City is an additional obligee under a Performance Bond, or is a transferee beneficiary under any letter of credit or guaranty, then City will forbear from exercising remedies as additional obligee or transferee beneficiary so long as Developer or the Collateral Agent commences the good faith, diligent exercise of remedies within 10 days after LAWA delivers notice to Developer and the Collateral Agent of LAWA's intent to make a claim under such security, letter of credit or guaranty and subsequently continues such good faith, diligent exercise of remedies until the default is cured.

16.2.6.3 Section 16.2.6.2 shall not apply where access to a bond, letter of credit, guaranty or other payment or performance security is for the purpose of satisfying damages owing to LAWA, in which case LAWA shall be entitled to make demand, draw, enforce and collect regardless of whether Developer Default is subsequently cured.

16.2.6.4 LAWA will notify Developer at the same time or promptly after City takes any action to make demand upon, draw on, enforce or collect any Performance Bond.

16.2.7 Suspension of Work

16.2.7.1 Subject to the rights of the Lenders as provided in the Direct Agreement, in addition to any other right to suspend the Work under the Contract Documents, LAWA may suspend all or part of the Work by notice to Developer if Developer failure to cure and correct, within the applicable cure period available to Developer (if any), the following:

- (a) failure to perform the Work in compliance with the Contract Documents, where such failure is not substantially cured within 15 days after LAWA delivers notice thereof to Developer;
- (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 paleontological and cultural (including archaeological and historic) resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);
- (c) performance of Design Work before achieving all conditions in Section 7.4.3 (Commencement of Non-Construction Work), or performance of Construction Work before all conditions precedent to commencement of Construction Work have been met;

- (d) discovery of Nonconforming Work not corrected within 15 days after LAWA delivers notice of such Nonconforming Work to Developer or, if correction will require more than 15 days, failure of Developer to deliver to LAWA, within 15 days of said notice, a plan acceptable to LAWA for correction of the Nonconforming Work or to diligently execute and complete such plan;
- (e) Developer has failed to pay in full when due sums owing any Contractor or Supplier for services, materials or equipment, except only for retainage provided in the relevant Contract and amounts in dispute;
- (f) failure to provide proof of required insurance coverage under Section 10.1.2.4 (Verification of Coverage) (which suspension is also available in the case of such failure following a request rather than Notice of Developer Default in accordance with Section 10.1.2.4);
- (g) failure to deliver or maintain Payment Bonds or Performance Bonds;
- (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 in accordance with Section 16.2.3 (Remedies for Failure to Meet Safety Standards or Perform Safety Compliance) (and in any such case the order of suspension may be issued without awaiting any cure period);
- (i) failure to carry out and comply with Directive Letters, where such failure is not substantially cured within 15 days after LAWA delivers notice thereof to Developer; and
- (j) for the reasons specified in Sections 9.8.7, 10.1.2.4(c) and 16.2.3.4(d).

16.2.7.2 In addition to the protections from liability under Section 16.2.3.4, LAWA shall have no liability to Developer, and Developer shall have no right to make any Claim against LAWA, due to any suspension under Section 16.2.7.1.

16.2.7.3 LAWA shall have the right and authority to order suspension of Work, in whole or in part, for reasons other than those in Section 16.2.7.1. If LAWA purports to order suspension of Work under Section 16.2.7.1 but it is finally determined under the Dispute Resolution Procedures that no grounds under Section 16.2.7.1 exist for such suspension, then it shall be deemed a suspension under this Section 16.2.7.3.

16.2.7.4 Developer shall promptly comply with any such suspension order, even if Developer disputes the grounds for suspension. Developer shall promptly recommence the Work upon receipt of notice from LAWA directing Developer to resume work. LAWA 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.

16.2.7.5 In case of suspension of work for any cause, Developer shall be responsible for the Project and shall take such precautions as may be necessary to prevent loss or damage to the materials, equipment and Work, provide for normal drainage and shall erect any necessary temporary structures, signs, or other facilities at Developer's expense.

16.2.8 Other Rights and Remedies

LAWA shall also be entitled to exercise any other rights and remedies available under this Agreement, or available at law.

16.2.9 Cumulative, Non-Exclusive Remedies

Subject to the exception specified in Section 16.1.1(h) regarding failures that constitute a Noncompliance Event or Noncompliance Occurrence not being considered defaults under Section 16.1.1(h), each right of LAWA under this Agreement shall be cumulative and shall be in addition to every other right provided under this Agreement or at law, and the exercise or beginning of the exercise by LAWA of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by LAWA of any or all other such rights or remedies.

16.3 Default by LAWA; Cure Periods

16.3.1 LAWA Default

LAWA shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a “**LAWA Default**”):

- (a) LAWA fails to make any payment due to Developer under this Agreement when due, provided that such payment is not subject to a Dispute;
- (b) LAWA ceases to be authorized to make any payment to Developer under this Agreement; or
- (c) any representation or warranty made by LAWA under Section 19.2 (LAWA Representations and Warranties) is false, misleading or inaccurate in any material respect when made or omits material information when made.

16.3.2 Cure Periods

LAWA shall have the following cure periods to cure LAWA Defaults:

16.3.2.1 Respecting a LAWA Default under Sections 16.3.1(a) or (b), a period of 45 days after Developer delivers to LAWA notice of the LAWA Default; and

16.3.2.2 Respecting a LAWA Default under Section 16.3.1(c) a period of 90 days after Developer delivers to LAWA notice of the LAWA Default; provided that:

- (a) if the LAWA Default is of such a nature that the cure cannot with diligence be completed within such time period and LAWA has commenced meaningful steps to cure promptly after receiving the default notice, LAWA shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure; and
- (b) cure will be regarded as complete when the adverse effects of the breach are cured.

16.4 Developer Remedies for LAWA Breach

16.4.1 Termination

Refer to Section 17.4 (Developer Rights to Terminate) for provisions regarding Developer's right to terminate for LAWA Default.

16.4.2 Interest on Late Payment

If LAWA fails to make payments that are due and owing to Developer under this Agreement, then Developer shall be entitled to interest in accordance with Section 11.4 (Payment Due Date; Interest on Late Payments and Overpayments).

16.4.3 Developer Right to Suspend

Developer may suspend Work based on LAWA's failure to pay undisputed amounts owing to Developer of \$1,000,000 or more, subject to the following:

- (a) Developer shall provide LAWA with notice regarding its intent to suspend at least 30 days before implementing the suspension, and may implement the suspension only if the breach remains uncured as of the suspension date; and
- (b) a suspension by Developer under this Section 16.4.3 shall be deemed to be a suspension of work order issued by LAWA for its convenience under Section 16.2.7.3. The suspension order shall be deemed lifted upon Developer's receipt of payment in full of all undisputed amounts owing.

16.4.4 Limitations on Remedies

16.4.4.1 Developer shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against LAWA, except for (a) any sustainable action for relief available in mandamus, (b) any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of Developer Intellectual Property in violation of the licenses granted, or to specifically enforce LAWA's duty of confidentiality, under Section 21.4 (Intellectual Property), (c) declaratory relief under the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the Contract Documents, or (d) declaratory relief under the Dispute Resolution Procedures declaring specific terms that shall bind the Parties.

16.4.4.2 If LAWA 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, Developer's sole remedies against LAWA shall be compensation and extensions of time, each to the extent provided in Articles 13 and 14. Developer shall have no right to suspend Work.

16.4.5 Remedies at Law and in Equity

16.4.6 Subject to Section 16.4.4 (Limitations on Remedies) and except as specifically provided otherwise in this Agreement, upon breach of this Agreement by LAWA, Developer may exercise any remedies available at law or in equity.

16.5 No Duplicative Payment

Notwithstanding any other provisions of this Agreement to the contrary, neither Party shall be entitled to recover compensation or make a claim under this Agreement with respect to any loss that it has incurred to the extent that it has already been compensated with respect to that loss under this Agreement or otherwise.

16.6 Limitation on Consequential Damages

16.6.1 Subject to Section 16.6.2, to the maximum extent allowed by Law, neither Party shall be liable to the other for punitive damages or indirect, incidental or consequential damages relating to this Agreement. This limitation shall apply to actions brought under any theory of law, including actions in tort (including negligence) as well as in contract.

16.6.2 The foregoing limitation shall not apply to or limit LAWA's right of recovery respecting the following:

- (a) Losses to the extent covered by (i) the proceeds of insurance required to be carried under Section 10.1 (Insurance), (ii) 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 under Section 10.1, or (iii) an obligation for Developer to self-insure the Loss as provided in Section 10.1.4.3;
- (b) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence on the part of any Developer-Related Entity;
- (c) Losses arising out of Releases of Hazardous Materials by any Developer-Related Entity;
- (d) Developer's indemnities set forth in this Agreement, to the extent any such remedies relate to claims, causes of action or Losses asserted by or awarded to Third Parties;
- (e) Developer's obligation to pay liquidated damages in accordance with the Contract Documents, including any Deductions from Milestone Payments and Availability Payments; and
- (f) amounts Developer may owe or be obligated to reimburse to LAWA under the express provisions of the Contract Documents, including LAWA's Recoverable Costs, interest, late charges, fees, transaction fees and charges, penalties and similar charges, but excluding Developer's indemnities set forth in this Agreement other than as provided in clause (d) above.

ARTICLE 17. TERMINATION

17.1 Termination for Convenience; Condemnation

17.1.1 LAWA may terminate this Agreement in whole, but not in part, if LAWA determines in its sole discretion that termination is in LAWA's best interest (a "**Termination for Convenience**").

17.1.2 LAWA may exercise a Termination for Convenience by delivering to Developer a notice of Termination for Convenience specifying the election to terminate and its effective date, which shall not be earlier than 30 days after the date of delivery of such notice.

17.1.3 In the event of a Termination for Convenience, LAWA shall pay compensation to Developer (or to the Collateral Agent as provided in the Direct Agreement) in an amount (without double counting) equal to:

- (a) (i) all amounts shown in the Financial Model as payable by Developer to Equity Members from the Early Termination Date, either as Distributions on Committed Investments or as payments of interest or repayments of principal made by Developer in respect of Equity Members Funding Agreements, each amount discounted back at the Equity IRR from the date on which it is shown to be payable in the Financial Model to the Early Termination Date, minus (ii) Deferred Equity Amounts as at the Early Termination Date; plus
- (b) Lenders' Liabilities; plus
- (c) Developer Employee and Contractor Breakage Costs; minus
- (d) Account Balances; minus
- (e) Insurance Proceeds; minus
- (f) any D&C Period Deductions to the extent not deducted in full from Milestone Payments.

17.1.4 If:

- (a) LAWA confiscates, sequesters, condemns or appropriates the Developer's Interest or any material part thereof; or
- (b) as a direct result of a City Ordinance Developer is unable to perform all or substantially all of its obligations under the Contract Documents for a period of 180 consecutive days or more,

compensation payable to Developer with respect to such action shall be determined on the same basis as a Termination for Convenience.

17.2 Termination for Extended Delay Events or Insurance Unavailability

17.2.1 Notice of Conditional Election to Terminate – Extended Delay Events

Either Party may deliver to the other Party notice of its conditional election to terminate this Agreement (“**Notice of Conditional Termination**”) if a Force Majeure Event, a Qualifying Change in Law (other than City ordinances), or an event as described clause (h) (earthquake or tidal wave that cause physical damage to the Project;) or (i) (Terrorism) of the definition of Compensation Events (for purposes of this Section 17.2, each an “**Extended Delay Event**”) has occurred and:

- (a) (i) the Notice of Conditional Termination is delivered before the Passenger Service Availability Date; (ii) as a direct result of the Extended Delay Event Developer is unable to perform all or substantially all of its obligations under the Contract Documents for a period of 180 consecutive days or more; and (iii) such inability to perform its obligations is not attributable to a concurrent non-Extended Delay Event; or
- (b) (i) the Notice of Conditional Termination is delivered on or after the Passenger Service Availability Date; (ii) as a direct result of the Extended Delay Event all or substantially all of the Project has become and remains inoperable for a period of 180 consecutive days or more; and (iii) such suspension of operations is not attributable to another concurrent non-Extended Delay Event; and
- (c) Developer could not have mitigated or cured such result through the exercise of diligent efforts; and
- (d) such result is continuing at the time of delivery of the written notice; and
- (e) the written notice sets forth in reasonable detail a description of the Extended Delay Event, a description of the direct result and its duration, and a statement that the notifying Party’s intends to terminate this Agreement.

17.2.2 No Right to Termination Election

Notwithstanding the foregoing, if following the occurrence of any Extended Delay Event that results in damage or partial destruction of the Project:

- (a) the conditions listed in Section 17.2.1 are satisfied;
- (b) insurance proceeds are available to fund work required to remedy the effects of the Extended Delay Event; and
- (c) the Parties agree to a restoration plan in respect of such work required to remedy the effect of the Extended Delay Event,

then neither Party shall have the right to elect to terminate this Agreement pursuant to Section 17.2.1.

17.2.3 Developer Options Upon LAWA Notice

17.2.3.1 If LAWA delivers a Notice of Conditional Termination, Developer shall have the option either to accept such notice or to continue this Agreement in effect by delivering to LAWA notice of Developer's choice not later than 30 days after LAWA delivers its notice. If Developer does not deliver such notice within such 30 day period, then Developer shall be deemed to have accepted LAWA's election to terminate this Agreement.

17.2.3.2 If Developer delivers timely notice under Section 17.2.3.1 choosing to continue this Agreement in effect, then:

- (a) LAWA shall have no obligation to compensate Developer for any costs of restoration, repair or replacement arising out of the Extended Delay Event and incurred after the date on which LAWA gives written notice of conditional election to terminate under this Section 17.2, except as provided in Section 17.2.3.2(b);
- (b) if the Extended Delay Event occurred before the Passenger Service Availability Date and resulted in a Relief Event Delay, Developer shall be entitled to an extension of the applicable deadlines in accordance with Section 14.1.3 (Extension of Contract Deadlines); and
- (c) this Agreement shall continue in full force and effect and LAWA's election to terminate shall not take effect.

17.2.4 LAWA Options Upon Developer Notice

17.2.4.1 If Developer delivers a Notice of Conditional Termination, including an estimate (with supporting documentation) of the compensation that would be paid or reimbursed to Developer under Section 17.2.4.2, LAWA shall have the option either: (a) to accept such notice; or (b) to continue this Agreement in effect if LAWA in its reasonable discretion determines that the Project can be completed or re-opened, as applicable, on a commercially reasonable basis. LAWA shall exercise such option by delivering to Developer written notice of LAWA's choice not later than 30 days after Developer delivers its Notice of Conditional Termination. If LAWA does not deliver such written notice within such 30-day period, then it shall be conclusively deemed to have accepted Developer's election to terminate this Agreement.

17.2.4.2 If LAWA delivers timely written notice under Section 17.2.4.1 choosing to continue this Agreement in effect, then:

- (a) subject to Section 14.1.6.3 (Burden of Proof and Duty to Mitigate Consequences of any Relief Event), LAWA shall be obligated to pay or reimburse Developer an amount equal to (without double-counting):
 - (i) the Incremental Costs directly caused by the Extended Delay Event which are incurred after the date Developer delivers its written notice of conditional election to terminate; plus
 - (i) if the Notice of Conditional Termination is delivered before the Passenger Service Availability Date, an amount equal to the amount of

compensation described in Section 14.1.5 (Delayed Payment Compensation).

- (b) Developer's rights under Section 14.1.1 (Defense to Certain Obligations) shall continue to apply to the Relief Event until the damages produced by such Extended Delay Event are compensated as provided in this Agreement and the restoration works are completed; and
- (c) this Agreement shall continue in full force and effect and Developer's election to terminate shall not take effect for the period specified in LAWA's written notice under this Section 17.2.4 or such longer period as may be mutually agreed to in writing by the Parties.

17.2.5 No Waiver

No election by Developer under Section 17.2.3 (Developer Options Upon LAWA Notice) or by LAWA under Section 17.2.4 (LAWA Options Upon Developer Notice) to continue this Agreement in effect shall prejudice or waive such Party's right to thereafter, at any time, give a notice of conditional election to terminate with respect to the same or any other Extended Delay Event.

17.2.6 Termination for Insurance Unavailability

If it becomes apparent that insurance required under the Contract Documents is not available as a result of Insurance Unavailability, LAWA may deliver to Developer notice of its election to terminate this Agreement for Insurance Unavailability and its effective date, which shall not be earlier than 30 days after the date of delivery of such notice. Such notice shall include reasonable details regarding the affected coverages and associated risks, as well as the estimated cost of premiums if Commercially Reasonable Insurance Rates are not available. In the event of a termination for Insurance Unavailability, LAWA shall pay compensation to Developer (or to the Collateral Agent as provided in the Direct Agreement) calculated in accordance with Section 17.2.8 (Termination Compensation for Extended Delay Events and Insurance Unavailability).

17.2.7 Concurrent Notices

If LAWA and Developer deliver concurrent Notices of Conditional Termination under this Section 17.2, 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 before actual receipt of the notice shall have no effect on determining whether concurrent notice has occurred.

17.2.8 Termination Compensation for Extended Delay Events and Insurance Unavailability

If either Party accepts, or is deemed to accept, the other Party's conditional election to terminate under Section 17.2.3 or Section 17.2.4, as applicable, then this Agreement shall be deemed terminated on an Early Termination Date that is 60 days after the date of acceptance or deemed acceptance of the conditional election to terminate; and Developer will be entitled to compensation calculated as follows (calculated at the Early Termination Date and without double-counting):

- (a) an amount equal to its Equity Investments less Distributions paid to the Equity Members, which shall never be a negative number; plus
- (b) Lenders' Liabilities; plus
- (c) Developer Employee and Contractor Breakage Costs; minus
- (d) Account Balances; minus
- (e) Insurance Proceeds; minus
- (f) any D&C Period Deductions to the extent not deducted in full from Milestone Payments.

17.3 Termination for Developer Default

17.3.1 Developer Defaults Triggering LAWA Termination Rights

Subject to the rights of the Lenders pursuant to any Direct Agreement, if any Developer Default occurs and has not been cured within the applicable cure period, if any, set out in Section 16.1.2 (Cure Periods), LAWA may terminate this Agreement with immediate effect upon written notice to Developer.

17.3.2 Compensation to Developer

17.3.2.1 Subject to Section 17.3.2.2, if LAWA issues a notice of termination of this Agreement due to a Developer Default:

- (a) if termination occurs before the Passenger Service Availability Date, Developer will be entitled to compensation in an amount equal to the lesser of:
 - (i) the D&C Work Value less any D&C Period Deductions to the extent not deducted in full from Milestone Payments; and
 - (ii) the amount equal to:
 - (A) Lenders' Liabilities; minus
 - (B) Account Balances; minus
 - (C) Insurance Proceeds (excluding proceeds of personal injury, property damage or other Third Party liability insurance payable to or for the account of a Third Party); minus
 - (D) any D&C Period Deductions to the extent not deducted in full from Milestone Payments;
- (b) if termination occurs on or after the Passenger Service Availability Date, Developer will be entitled to compensation equal to the amount calculated at the Early Termination Date (without double-counting) as follows:
 - (i) eighty percent (80%) of Lenders' Liabilities; minus

- (ii) Maintenance Rectification Costs; minus
- (iii) Account Balances; minus
- (iv) Deferred Equity Amounts; minus
- (v) Insurance Proceeds; minus;
- (vi) any D&C Period Deductions to the extent not deducted in full from Milestone Payments; plus
- (vii) the balance standing to the credit of the Handback Requirements Reserve Account on the Early Termination Date.

17.3.2.2 If the calculation described in Section 17.3.2.1 results in a negative number, the negative value shall represent damages recoverable by LAWA in accordance with Section 16.2.5.2.

17.3.3 Finality

If LAWA issues notice of termination of this Agreement due to a Developer Default, termination shall be effective and final regardless of whether LAWA is correct in determining that it has the right to terminate for Developer Default. If it is determined that LAWA lacked such right, then such termination shall be treated as a Termination for Convenience as provided in Section 17.1 (Termination for Convenience; Condemnation) for the purpose of determining the Termination Compensation due.

17.4 Developer Rights to Terminate

17.4.1 Termination for LAWA Default

17.4.1.1 If a LAWA Default under Section 16.3.1 (LAWA Default) remains uncured following (a) notice and expiration of the applicable cure period under Section 16.3.2 (Cure Periods), and (b) Developer's compliance with the warning requirements set forth in Section 17.4.1.2, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of written notice of termination to LAWA. In the event of such termination, LAWA shall pay compensation to Developer equal to the amount described in Section 17.1.3.

17.4.1.2 Developer shall provide a warning notice to LAWA at least 15 days before terminating, which notice may not be delivered until 30 days after delivery of the notice under Section 16.3.2.1. Developer shall provide a second warning notice to LAWA at least five days before terminating, which notice may not be delivered until 10 days after delivery of the first warning notice. If LAWA fails to effect cure within five days after the date of delivery of the second warning notice, Developer shall have the right to terminate this Agreement in accordance with Section 17.4.1.1.

17.4.2 Termination for Suspension of Work

17.4.2.1 If LAWA issues a suspension order under Section 16.2.7.3 that suspends the Work for a period of 270 days or more, and provided that (a) such suspension is not the result of the negligence, willful misconduct, or breach of applicable Law or contract by any Developer-

Related Entity; and (b) Developer has delivered a warning notice to LAWA at least 15 days before terminating, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of written notice of termination to LAWA. In the event of such termination, Developer will be entitled to compensation equal to the amount described in Section 17.1.3.

17.4.2.2 Developer may not terminate under this Section 17.4.2 if, at the time Developer's right to terminate would arise, circumstances exist entitling either Party to terminate under Sections 17.2, 17.3, 17.4.3 or 17.5.

17.4.3 Termination Due to Court Ruling

17.4.3.1 Termination Due to Court Ruling means, and becomes effective upon: (a) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals to the effect that this Agreement is void, voidable, and/or unenforceable or impossible to perform in its entirety for reasons beyond the reasonable control of Developer; or (b) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals upholding the binding effect on Developer and/or LAWA of a Change in Law that causes impossibility of performance of a fundamental obligation by Developer or LAWA under the Contract Documents or impossibility of exercising a fundamental right of Developer or LAWA under the Contract Documents. The final court order shall be treated as the notice of termination. In the event of such termination, Developer will be entitled to compensation in an amount equal to the amount described in Section 17.2.8, provided that if the Termination Due to Court Ruling is caused solely by a LAWA Default or a LAWA-Caused Event, Developer will be entitled to compensation in the amount described in Section 17.1.3.

17.5 Termination if Financial Close Fails to Occur

17.5.1 Sections 3.6 (No-Fault Termination) and 3.7 (Developer's Failure to Achieve Financial Close) set forth the terms applicable to termination before Financial Close.

17.6 Termination Procedures and Duties

The provisions of this Section 17.6 shall apply upon expiration of the Term or earlier termination of this Agreement. 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 LAWA on account of termination. If LAWA determines that Developer has failed to comply with the provisions of this Section 17.6, then upon notice from LAWA to Developer making reference to this Section 17.6, Developer acknowledges and agrees it shall be deemed to have surrendered its access rights in accordance with the Contract Documents.

17.6.1 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 all the standards, requirements and terms of the Contract Documents.

17.6.2 Transition Plan

17.6.2.1 Within 90 days before expiration of the Term, or, if applicable, within three days after Developer receives or delivers a notice of termination, Developer shall meet and confer with

LAWA for the purpose of developing a transition plan for the orderly transition of Work, demobilization and transfer of Project management, maintenance, operation, care, custody and control to LAWA. The Parties shall use diligent efforts to complete preparation of the transition plan within 30 days before expiration of the Term or, if applicable, within 15 days after the date Developer receives or delivers the notice of termination.

17.6.2.2 The transition plan shall include a plan to promptly deliver to LAWA or its designee possession of all the property, data and documents described in Sections 17.6.5.1 and 17.6.5.2.

17.6.2.3 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.

17.6.2.4 The transition plan shall:

- (a) be in form and substance acceptable to LAWA and shall include and be consistent with the other provisions and procedures in this Section 17.6;
- (b) reserve the last month for LAWA's operation of the system with technical support and other necessary management support from Developer similar to the demonstration test performed by Developer before the start of Passenger Service Availability; and
- (c) if required by LAWA, provide for Developer to continue to perform specified Work during the period between the Termination Date and the effective date of the release and discharge, following payment of Termination Compensation.

17.6.3 Relinquishment and Possession of Project

17.6.3.1 On or as soon as possible after the Termination Date as provided in the approved transition plan, Developer shall relinquish and surrender care, custody and control of the Project, to LAWA, and shall cause all persons and entities claiming under or through Developer to do likewise (except as may be set forth in any Direct Agreement), in at least the condition required by Section 8.6.1 (Handback Condition).

17.6.3.2 On the later of the Termination Date or the date Developer relinquishes all care, custody and control as provided in the transition plan, LAWA shall have the exclusive right to, and shall assume responsibility at its expense for, care, custody and control of the Project and the Site, subject to any rights to damages against Developer where the termination is due to a Termination for Developer Default.

17.6.3.3 If the transition plan developed under Section 17.6.2 (Transition Plan) requires Developer to perform any obligations under this Agreement after the Termination Date, this Agreement will remain in full force and effect only to the extent necessary for Developer to perform such obligations, and LAWA shall pay Developer the Post-Termination Services Amount in accordance with this Article 17. On the Termination Date, or such later date provided in the approved transition plan, LAWA grants to Developer a right to access the Site for the limited purpose of carrying out Developer's obligations contemplated by this Section 17.6, including execution of the transition plan contemplated in Section 17.6.2 (Transition Plan). This right of access is subject to rescission by LAWA for Developer's failure to perform any of its

obligations under this Agreement after the Termination Date, and shall automatically expire upon Developer's fulfillment of such obligations.

17.6.4 Continuance or Termination of Key Contracts Before Work Completion

17.6.4.1 If, as of the Termination Date, Developer has not completed the Work, in whole or in part, LAWA may elect, by written notice to Developer to continue in effect some or all of the Key Contracts or to require their termination. If LAWA elects to continue any Key Contracts, then Developer shall execute and deliver (or shall cause the relevant Key Contractor(s) to execute and deliver) to LAWA a written assignment, in form and substance acceptable to LAWA, acting reasonably, of all Developer's (or Key Contractor's) right, title and interest in and to such Key Contracts, and LAWA shall assume in writing Developer's (or such Key Contractor's) obligations thereunder that arise from and after the Termination Date.

17.6.4.2 If LAWA 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 stop Work on the date and to the extent specified in the notice of termination and stop and cancel orders for materials, services or facilities, unless otherwise approved by LAWA;
- (b) promptly and orderly demobilize and secure in a safe manner the Site in a manner satisfactory to LAWA, remove all debris and waste materials and complete any Hazardous Materials Management Work already in process, except as otherwise approved by LAWA;
- (c) take such other actions as are necessary or appropriate to mitigate further costs;
- (d) subject to LAWA's reasonable prior approval, settle all outstanding liabilities and all claims arising out of, relating to or resulting from such Key Contracts;
- (e) as a condition to LAWA's obligation to make payments to Developer under this Article 17 and under the requirements of the transition plan, cause each of the Key Contractors to execute and deliver to LAWA a written assignment, in form and substance acceptable to LAWA, of all of their interest in (i) all Governmental Approvals, Third Party agreements and permits pertaining to the Project or the Work (excluding Subcontracts), provided that LAWA assumes in writing all of the Key Contractor's obligations under said approvals, agreements and permits 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, provided that Developer shall retain the right to pursue any cause of action against the Subcontractor or other Third Parties for damages incurred by Developer; and
- (f) as a condition to LAWA's obligation to make payments to Developer under this Article 17 and under the requirements of the transition plan, carry out such

other directions as LAWA may give for termination of the Work in accordance with the transition plan.

17.6.5 Other Close-Out Activities

17.6.5.1 Within 90 days before expiration of the Term, or within 30 days after any earlier notice of termination is delivered, Developer shall deliver to LAWA a true and complete list of all materials, goods, machinery, equipment, hardware, parts, supplies and other tangible property in inventory or storage (whether then 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 as soon after the Termination Date 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 LAWA, and deliver to LAWA's Authorized Representative, all such materials, goods, machinery, equipment, hardware, parts, supplies and other property, provided LAWA 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.

17.6.5.2 Within 90 days before the expiration of the Term, or within 30 days after any earlier notice of termination is delivered, Developer shall provide LAWA with a true and complete list of all the data and documents identified in this Section 17.6.5.2. Subject to Sections 21.4 (Intellectual Property) and 21.5 (Intellectual Property Escrows), Developer shall execute and deliver to LAWA an executed bill of sale or other written instrument, in form and substance reasonably acceptable to LAWA, assigning and transferring to LAWA the following:

- (a) all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, Design Documents, Record Documents, plans, surveys, and other documents and information pertaining to the design or construction of the Project or the Utility Adjustments;
- (b) all samples, borings, boring logs, geotechnical data and similar data and information relating to the Project or the Site;
- (c) all Books and Records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Project or the Site;
- (d) all Intellectual Property, documents evidencing licenses of Developer Intellectual Property to LAWA, other work product and other materials relating to all such Intellectual Property and Developer Intellectual Property; and
- (e) if the Termination Date occurs before the Passenger Service Availability Date, all Vehicles ordered by Developer for the Project but not delivered to the Site.

Such bill of sale or other instrument shall be delivered to LAWA as provided in the approved transition plan (or if not specified in the transition plan, shall be delivered on the Termination Date or as soon thereafter as possible), and shall be accompanied by originals or copies, as appropriate, of all of the materials described therein, together with certificates of title for any Vehicles described in Section 17.6.5.2(e).

17.6.5.3 Developer shall take all action that may be necessary, or that LAWA 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.

17.6.5.4 On or as soon as possible after the Termination Date or as provided in the approved transition plan, Developer shall execute and deliver to LAWA a written assignment, in form and substance acceptable to LAWA, all of Developer's interest in any IP Escrows or similar arrangements for the protection of Source Code and Source Code Documentation of others used for or relating to the Project or the Work.

17.6.5.5 On or as soon as possible after the Termination Date or as provided in the approved transition plan, Developer shall execute and deliver to LAWA a written assignment, in form and substance acceptable to LAWA, of all Developer's interest in 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, except to the extent that LAWA has already received credit for such matters in calculating Termination Compensation amounts, in which case they may be pursued by Developer for its own account.

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

17.6.5.7 For a period of four years following the Termination Date, Developer shall maintain a secure archive copy of all electronic data transferred to LAWA.

17.6.6 Calculation of Compensation

17.6.6.1 Within 5 days after the Early Termination Date, Developer shall:

- (a) provide LAWA with a written statement prepared by the Collateral Agent as to (i) the Lenders' Liabilities and (ii) the Account Balances, to the extent such accounts are controlled by the Collateral Agent, with documentation reasonably required by LAWA to support such statement and the Collateral Agent's certification that such amounts are true and correct;
- (b) provide a written statement as to the following amounts, (without duplication of any Account Balances verified by the Collateral Agent under Section 17.6.6.1(a)(ii)), together with documentation reasonably required by LAWA to support such statement and a certification that such amounts are true and correct:
 - (i) for termination pursuant to Section 17.1 (Termination for Convenience; Condemnation) or Section 17.4 (Developer Rights to Terminate), amounts described in clauses (i) and (ii) of Section 17.1.3(a) and Sections 17.1.3(c) through 17.1.3(f);

- (ii) for termination pursuant to Section 17.2 (Termination for Extended Delay Events or Insurance Unavailability), amounts described in Sections 17.2.8(a), 17.2.8(b), and 17.2.8(d) through 17.2.8(g); or
- (iii) for termination pursuant to Section 17.3 (Termination for Developer Default), (A) the amounts described in clauses (ii) through (vii) of Section 17.3.2.1(b), and (B) the Insurance Proceeds (excluding proceeds of personal injury, property damage or other Third Party liability insurance payable to or for the account of a Third Party; and
- (c) for termination pursuant to Section 17.1 (Termination for Convenience Condemnation), Section 17.2 (Termination for Extended Delay Events or Insurance Unavailability), or Section 17.4 (Developer Rights to Terminate), an estimate of any interest and fees that will accrue (on a daily basis) on the outstanding principal due to Lenders at the rate due (excluding default interest), under the Financing Documents over the period between the Early Termination Date and the anticipated date that the Termination Compensation will be paid by LAWA.

17.6.6.2 From and after the Termination Date, except as otherwise stated in this Article 17, Developer shall cease to have any right to (a) Availability Payments except for those accrued and owing before the Early Termination Date and (b) any other compensation, except as provided under Section 17.8.2

17.7 Payment of Termination Compensation

17.7.1 For termination under Section 17.1 (Termination for Convenience; Condemnation), or Section 17.4 (Developer Rights to Terminate), provided Developer has timely provided to LAWA the statements and information required under Section 17.6.6.1, LAWA shall, within 120 days of the Early Termination Date, pay to Developer an amount equal to the:

- (a) Termination Compensation; plus
- (b) interest and fees that accrued on the outstanding principal due to Lenders (excluding default interest) under the Financing Documents over the period between the Early Termination Date and such payment date.

17.7.2 For termination under Section 17.2 (Termination for Extended Delay Events or Insurance Unavailability), provided Developer has timely provided to LAWA the statements and information required under Section 17.6.6.1, LAWA shall, within 120 days of the Early Termination Date, pay to Developer an amount equal to the:

- (a) Termination Compensation; plus
- (b) interest and fees that accrued on the outstanding principal due to Lenders (excluding default interest) under the Financing Documents over the period between the Early Termination Date and such payment date.

17.7.3 For termination pursuant to Section 17.3 (Termination for Developer Default), provided Developer has timely provided to LAWA the statements and information required

under Section 17.6.6.1, LAWA shall, within 120 days of the Early Termination Date, pay to Developer an amount equal to the Termination Compensation.

17.7.4 If as of the date that LAWA is required to tender payment of Termination Compensation under Sections 17.7.1, 17.7.2 or 17.7.3, as applicable, the Parties have not agreed upon the amount of Termination Compensation due, then:

- (a) LAWA shall proceed to make payment to Developer of the undisputed portion of the Termination Compensation;
- (b) Within 30 days after receiving such payment Developer shall deliver to LAWA written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the “disputed portion”); and
- (c) LAWA shall pay the disputed portion of the Termination Compensation to Developer in immediately available funds after the disputed portion is agreed to by the Parties or otherwise determined to be payable pursuant to Article 18 (Dispute Resolution Procedures), as the case may be.

17.8 Effect of Termination

17.8.1 Except to the extent set out in Section 17.6.3.3, and regardless of LAWA’s prior actual or constructive knowledge thereof:

- (a) no Contract or agreement to which Developer is a party as of the Termination Date shall bind LAWA, unless LAWA elects to assume such Contract or agreement; and
- (b) except in the case of LAWA’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 LAWA of Project care, custody and control, or to any claim, legal or equitable, against LAWA.

17.8.2 Termination of this Agreement shall not:

- (a) relieve Developer or any Surety of its obligation for any claims arising before the Termination Date;
- (b) excuse either Party from any liability arising out of, related to or resulting from any default as provided in this Agreement that occurred before the Termination Date; and
- (c) relieve LAWA of claims of Developer to payment of Compensation Amounts for adverse cost and revenue impacts accruing before the Termination Date due to Compensation Events that occurred before the Termination Date.

17.9 Liability after Termination; Final Release

Notwithstanding the foregoing, any termination of this Agreement under Section 17.2, 17.3, 17.4.3 or 17.5 shall automatically extinguish any claim of Developer to payment of

Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date due to Relief Events that occurred before termination. Except as otherwise expressly provided in this Agreement (other than Section 16.2.9 (Cumulative, Non-Exclusive Remedies)), if this Agreement is earlier terminated for any reason, then LAWA's payment to Developer of the amounts required under this Agreement (if any) shall constitute full and final satisfaction of, and upon payment LAWA 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 LAWA arising out of, relating to or resulting from this Agreement or termination thereof, the other Contract Documents, or the Project, excluding any proceedings that are pending as of 30 days after the Termination Date, remain 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 LAWA all such releases and discharges as LAWA 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.

17.10 Exclusive Termination Rights

This Article 17 contain the entire and exclusive provisions and rights of LAWA and Developer regarding termination of this Agreement, and each Party waives, to the maximum extent permitted by Law, any and all other rights to terminate at law.

17.11 Access to Information

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

ARTICLE 18. DISPUTE RESOLUTION PROCEDURES

18.1 General

18.1.1 All Disputes shall be subject to the Dispute Resolution Procedures set forth in this Article 18, except for:

- (a) any decision, determination, judgment or other action of LAWA that the Contract Documents state is subject to LAWA's sole or absolute discretion (in which case the decision, determination, judgment or other action shall be final, binding and not subject to dispute resolution and shall not constitute a basis for any claim for additional monetary compensation, time extension or any other relief); and
- (b) any other matter for which the Contract Documents expressly provide otherwise.

18.1.2 Except as provided in Section 18.2.1, LAWA's initial determination of Disputes that are subject to the Dispute Resolution Procedures shall be binding upon the Parties pending any final determination of the Dispute under this Article 18.

18.1.3 Unless and until a decision, determination, judgment or other action by LAWA expressly provided in the Contract Documents as being subject to LAWA's good faith discretion is finally determined by clear and convincing evidence that it was arbitrary or capricious, such decision shall be binding and shall not constitute a basis for any Claim for any additional monetary compensation, time extension or any other relief.

18.1.4 The Parties acknowledge the requirements of Public Contract Code section 9204, a copy of which is provided in Exhibit 16B (State Requirements). In addition to the requirements of Public Contract Code section 9204, the Contract Documents prescribe procedures for LAWA Changes, Developer Change Requests, Claims and Disputes that the Parties agree are reasonable and consistent with and do not impair the timeframes set forth in Public Contract Code section 9204.

18.1.5 The Parties agree to use reasonable efforts to resolve any Disputes under this Article 18 as quickly as possible. The Parties may agree to omit any of the steps or shorten the time periods in this Article 18 in order to hasten resolution.

18.2 Conclusions and Determinations of the Independent Engineer; Accelerated Dispute Resolution Procedures

18.2.1 If LAWA or Developer disagrees with the conclusions reached or determinations made by the Independent Engineer under Section 7.10 (Passenger Service Availability and Final Completion) regarding Passenger Service Availability and Final Completion, under Section 8.6.2 (Handback Renewal Work Plan and Handback Reserve Amount) regarding the Handback Reserve Amount, or under Section 8.6.4 (Handback Assessment) regarding the achievement of the Handback Requirements, and a Dispute arises, the conclusions and determinations of the Independent Engineer shall be provisionally binding upon the Parties in respect only of any payment obligations, pending any final determination of the Dispute under this Article 18.

18.2.2 The Parties agree to accelerate the procedures set forth in this Article 18 for Disputes relating to the Independent Engineer's determinations under Section 7.10, 8.6.2 and 8.6.4 as follows:

- (a) if the Dispute is not resolved pursuant to Section 18.3 (Informal Dispute Resolution) within 10 days following the date of the Independent Engineer's determination, then the disputing Party may file, within an additional seven days following the relevant determination, a notice with the other Party, stating clearly and in detail the basis for the objection;
- (b) the Parties shall proceed to non-binding project neutral proceedings in accordance with Section 18.5 (Project Neutral Proceedings) and LAWA and Developer shall identify the project neutral in accordance with Section 18.5.2 within 10 days of the addressee Party's receipt of the notice referred to in clause (a) above;
- (c) the project neutral proceeding shall be held within 14 days of identification of the project neutral, unless the Parties mutually agree to a longer time period;
- (d) project neutral proceedings shall be completed within 15 days after commencement, and any findings the Parties request the project neutral to provide shall be provided within 10 days after completion of the proceedings, provided that in cases of extreme complexity, the Parties may agree in writing to allow additional time; and
- (e) if the Dispute is not resolved within 10 days following conclusion of project neutral proceedings, including delivery of any written findings requested by the Parties, either Party may proceed to litigation in accordance with Section 18.6 (Litigation of Dispute).

18.3 Informal Dispute Resolution

The Parties agree to make good faith efforts to resolve by amicable negotiations all Disputes arising between the Parties before filing a Dispute Submittal in accordance with Section 18.4 (Dispute Submittal Process).

18.4 Dispute Submittal Process

18.4.1 If the Parties are unable to resolve a Dispute informally pursuant to Section 18.3 (Informal Dispute Resolution), and if Developer does not agree with LAWA's initial determination regarding a Dispute, Developer may submit its position to LAWA as a Dispute Submittal, following the procedures outlined in this Section 18.4.

18.4.2 Any Dispute or Claim by Developer must be submitted to LAWA in writing by registered mail or certified mail with return receipt requested and in electronic form with all documentation that supports and relates to the issues raised in the Dispute ("**Dispute Submittal**"). All electronic documents shall be searchable scanned copies of the originals. Time is of the essence in Developer's submittal of Dispute Submittals and updates thereto.

18.4.3 Any Dispute Submittal by Developer must be delivered within 45 days of the initial LAWA determination regarding a Dispute that gave rise to the Dispute Submittal, or if LAWA

failed to make an initial determination, within six months of Developer notifying LAWA in writing of the subject of the Dispute. A Dispute Submittal is a condition precedent to consideration of a Government Code Claim pursuant to Section 18.6 (Litigation of Dispute). If all of the information relating to a Dispute or Claim cannot reasonably be ascertained or furnished within the applicable period, Developer shall provide LAWA with further details and supporting documentation as soon as possible after it receives such information. Any Dispute or Claim that lacks specific calculation or that lacks documentary support will not be considered. The Parties agree that any failure to submit a timely and properly documented Claim shall constitute a waiver by Developer of any Claim for additional compensation, time or impact costs from LAWA.

18.4.4 Upon receipt of a Dispute Submittal, LAWA shall conduct a reasonable review of the Dispute, and within 45 days shall provide Developer a written statement identifying what portion of the Dispute is disputed and what portion is undisputed at the time of the statement.

18.4.5 If LAWA needs approval from the Board of Airport Commissioners to provide Developer the written statement identifying the disputed portion and the undisputed portion of the Dispute, and the Board of Airport Commissioners does not meet within the 45 days, LAWA shall have three days following the next duly publicly noticed meeting of the Board of Airport Commissioners after the 45 days to provide Developer the written statement identifying the disputed portion and the undisputed portion.

18.4.6 If Developer does not accept the results of LAWA's determination regarding the Dispute, or LAWA has failed to respond to a Dispute within the time periods specified in this Section 18.4, Developer may demand in writing by registered mail or certified mail return receipt requested an informal conference to meet and confer for settlement on the issues in dispute. Upon receipt of such a demand in writing, LAWA shall schedule a meet and confer conference within 30 days for settlement of the Dispute.

18.4.7 Within 10 Business Days following the conclusion of the meet and confer conference, if the Dispute remains unresolved, LAWA shall provide Developer with a written statement identifying the portion of the Dispute that remains and the portion that is undisputed. Any payment due on an undisputed portion of a Claim shall be processed and made within 30 days. Undisputed amounts not paid when due as required by this Section 18.4.7 shall bear interest at the rate of seven percent per annum until paid. Any disputed portion of a Claim shall be submitted to project neutral proceedings, as set forth in Section 18.5 (Project Neutral Proceedings).

18.4.8 Failure by LAWA to respond to a Dispute from Developer within the time periods described in this Section 18.4 or to otherwise meet the time requirements of this Section 18.4 shall result in the Dispute being deemed rejected in its entirety unless the Parties mutually agree in writing specifically identifying this subsection. A Dispute that is denied by reason of LAWA's failure to provide a timely response to the Dispute, or its failure to otherwise meet the time requirements of this Section 18.4, shall not constitute an adverse finding with regard to the merits of the Dispute or the responsibility or qualifications of Developer except as otherwise provided in this Agreement.

18.5 Project Neutral Proceedings

18.5.1 Exhibit 17 (the "**Project Neutral List**") identifies an individual as the Project Neutral, together with two alternates, as of the Effective Date. The Parties agree to keep the Project Neutral List current with one identified Project Neutral and at least two alternates that are each

eligible and willing to serve as project neutrals from time to time for proceedings conducted in accordance in this Section 18.5. Each individual included on the Project Neutral List must:

- (a) have substantial experience in interpreting and/or implementing public-private partnership projects in North America, and also with:
 - (i) public construction contracts, if serving with respect to Disputes arising during the D&C Period; or
 - (ii) public facilities management contracts, if serving with respect to Disputes arising during the O&M Period;
- (b) have the ability to develop a thorough understanding of the Contract Documents promptly upon selection;
- (c) be free of conflicts of interest, including:
 - (i) not having an ownership interest in any Person involved in the Project, or a financial interest in the Agreement;
 - (ii) except for fee-based consulting services on other projects, not having been previously employed by, or having had financial ties to, any Person involved in the Project within a period of eight years preceding award of the Agreement;
 - (iii) not having provided to either Party fee-based consulting services within a period of two years preceding award of the Agreement;
 - (iv) not having had a close professional or personal relationship with any key member of either Party involved in the Agreement which, in the judgment of either Party, could suggest partiality or give an appearance of impropriety; and
 - (v) not having had prior involvement in the Project of a nature which could compromise his or her ability to serve as an impartial project neutral; and
- (d) while included on the Project Neutral List, not be employed by or discuss or make an agreement for employment, including fee-based consulting services, with any party involved in this Agreement except with the express approval of both Parties.

18.5.2 LAWA and Developer agree that any individual identified in Exhibit 17 (Project Neutral List) may act as a project neutral in accordance with this Section 18.5. In the event of a Dispute, the Parties will first seek the services of the individual identified in Exhibit 17 as the Project Neutral. If that individual is unavailable, the Parties will proceed to contact the alternates, in the order in which they appear in Exhibit 17. The individual selected from Exhibit 17 will be the Project Neutral for purposes of the procedures set forth in Section 18.5.3.

18.5.3 If the Parties are unable to reach agreement on the Dispute pursuant to Section 18.4 (Dispute Submittal Process), then:

- (a) LAWA or Developer may submit such Dispute to consideration by the Project Neutral in accordance with the procedures set forth in this Section 18.5; or
- (b) the Parties may mutually agree in writing to waive the project neutral proceedings and to proceed directly to the commencement of a civil action as contemplated in Section 18.6 (Litigation of Dispute).

18.5.4 LAWA and Developer shall allocate the costs associated with any project neutral proceedings equally.

18.5.5 No project neutral shall be empowered to render a binding decision as to any Dispute; however, agreements reached in project neutral proceedings shall be enforceable as settlement agreements in any court having jurisdiction thereof.

18.5.6 Oral and written statements made during project neutral proceedings shall not be admissible or discoverable in any judicial or other dispute resolution proceeding.

18.6 Litigation of Dispute

18.6.1 Disputes that remain unresolved after the Parties have proceeded in accordance with Sections 18.2 through 18.5 may be resolved by litigation. Developer may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencement with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code (“**Government Code Claim**”) within the time limits set forth in the Government Code.

18.6.2 The Parties may agree that the time for the filing of a Government Code Claim shall be tolled during the pendency of negotiations and any project neutral proceedings. The terms of the tolling agreement shall be subject to the agreement of the Parties.

18.7 Continuance of Work During Dispute

18.7.1 Developer shall proceed diligently with performance of the Work pending resolution of any Dispute, including any Work that is the subject of the Dispute, except for any performance LAWA determines in writing should be delayed, suspended or terminated as a result of such Dispute.

ARTICLE 19. REPRESENTATIONS AND WARRANTIES

19.1 Developer Representations and Warranties

Developer represents to LAWA as follows:

19.1.1 The Financial Model (a) was prepared by or on behalf of Developer in good faith, (b) uses financial formulas that, as of the Effective Date are mathematically and formulaically correct and suitable for making reasonable projections, (c) was audited and verified by an independent recognized model auditor immediately before the Effective Date and such audit will be updated within 48 hours after Financial Close, (d) fully discloses all cost, revenue and other financial assumptions and projections that Developer has used or is using in making its decision to enter into this Agreement and in making disclosures to potential equity investors and Lenders under the Initial Financing Agreements and (e) as of the Effective Date represents the projections that Developer believes in good faith are the most realistic and reasonable for the Project; subject to the understanding that such projections are based upon a number of estimates and assumptions and are subject to significant business, economic and competitive uncertainties and contingencies, and that Developer's stated belief regarding the projections does not constitute a representation that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

19.1.2 As of the Effective Date, Developer has reviewed all applicable Laws relating to Taxes, and has taken into account all requirements imposed by such Laws in preparing the Financial Model.

19.1.3 As of the Setting Date, based upon review of information provided by LAWA and other reasonable investigations undertaken by Developer consistent with Good Industry Practice, Developer has evaluated the constraints affecting the APM Operating System development, design, and construction of the Project, including the D&C Limits, surface and subsurface conditions discoverable through such investigation, the terms of the LAWA-Provided Approvals and requirements of applicable Laws, and, based on the foregoing, Developer has reasonable grounds for believing and does believe that the Project can be developed, designed, and constructed.

19.1.4 Developer, consistent with Good Industry Practice, conducted an investigation of property to which it had access and other available information regarding conditions at the Site before the Setting Date, and as a result of such investigation, Developer is familiar with and accepts the physical requirements of the Work, subject to Developer's rights regarding Relief Events. Developer shall comply with this Section 19.1.4 at its sole cost and without any additional compensation, any extension of time, excuse from compliance or other relief on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents or would have an adverse effect on costs, subject to Developer's rights regarding Relief Events.

19.1.5 Before the Effective Date, Developer familiarized itself with the requirements of all applicable Laws and the conditions of any required Governmental Approvals.

19.1.6 As of the Effective Date, Developer has no reason to believe that any Governmental Approval required to be obtained by Developer will not be granted in due course and thereafter

remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

19.1.7 All Work furnished by Developer will be performed by or under the supervision of Persons who hold all necessary licenses, certifications, registrations, permits or approvals to practice in the State, by personnel who are experienced, competent and skilled in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

19.1.8 Developer is a [_____], duly organized and validly existing under the laws of [_____], has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute, and deliver this Agreement and to perform each and all of the obligations of Developer provided for under this Agreement. Developer is duly qualified to do business and is in good standing in the State as of the Effective Date, and will remain duly qualified and in good standing throughout the Term and for as long as any obligations remain outstanding under the Contract Documents. **[NOTE: CONFORM IN EXECUTED AGREEMENT]**

19.1.9 The execution, delivery and performance of this Agreement has been duly authorized by all necessary action of Developer's governing body, each person executing this Agreement has been duly authorized to execute and deliver each such document on behalf of Developer and this Agreement has been duly executed and delivered by Developer.

19.1.10 No default under, violation of, or conflict with the governing instruments of Developer or any agreement, judgment or decree to which Developer is a party or is bound will result from (a) the execution and delivery by Developer of this Agreement, or (b) performance by Developer of its obligations under this Agreement.

19.1.11 The execution and delivery by Developer of this Agreement, and the performance by Developer of its obligations under this Agreement will not conflict with any Laws applicable to Developer that are valid and in effect on the date of execution and delivery. As of the Effective Date, Developer is not in breach of any applicable Law that would have a material adverse effect on the Work or the performance of any of its obligations under the Contract Documents.

19.1.12 This Agreement constitutes the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

19.1.13 No proceeds of or commitments to provide the Committed Investment, as applicable, is or shall be from a Prohibited Person.

19.1.14 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement or which challenges the authority of the representative of Developer executing this Agreement; and Developer has disclosed to LAWA before the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware. No current, pending or outstanding criminal, civil, or enforcement actions have been initiated

against Developer by LAWA or the State, and Developer agrees that it will immediately notify LAWA if any such action is initiated during the Term.

19.1.15 As of the Financial Proposal Due Date, Developer disclosed to LAWA in writing all organizational conflicts of interest of Developer and its Contractors of which Developer was actually aware; and between the Financial Proposal Due Date and the Effective Date Developer has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Developer or its Contractors identified in its Proposal, which have not been approved in writing by LAWA.

19.1.16 As of the effective date of the relevant Key Contract, (a) each Key Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business, and is in good standing, in the State, (b) the ownership interests (including options, warrants and other rights to acquire ownership interests) of each such entity that is a single purpose entity formed for the Project are held by those Persons identified in a written certification delivered by Developer to LAWA before the such effective date; (c) each such entity has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) each such entity has (i) obtained and will maintain all required registrations, licenses, certifications, permits and approvals required under applicable Law as of such date and (ii) expertise, qualifications, experience, competence, and skills and is qualified to perform the Work for which it is responsible; (e) each such Entity will be required by the applicable Key Contract to comply with all health, safety and environmental Laws in the performance of any work activities for, or on behalf of, Developer for the benefit of LAWA; and (f) no such entity is in breach of any applicable Law that would have a material adverse effect on any aspect of the Work.

19.1.17 Developer has not employed or retained, and Developer shall not employ or retain, any Person other than employees, agents, attorneys, consultants and advisors of a Developer-Related Entity, to solicit or secure this Agreement, and that it has not paid or agreed to pay any Person any fee or any other consideration contingent on the making of this Agreement.

19.1.18 Developer warrants that it owns, or will own, and has, or will have, good and marketable title and sufficient rights to all materials, Intellectual Property, equipment, tools and supplies furnished, or to be furnished, by any Developer-Related Entity that become part of the Project or are purchased for LAWA for the development, operation, maintenance or repair of the Project, free and clear of all liens, royalties, fees or other charges of any kind or nature. All such materials, Intellectual Property, equipment, devices, or processes shall be delivered free of any claim of any Third Party for infringement of any Intellectual Property rights or ownership. Refer to Section 2.4.3 for provisions regarding transfer of title to LAWA;

19.1.19 Developer warrants that the individual signing this Agreement on behalf of Developer is the properly authorized representative, agent, member or officer of Developer, that he/she has not, nor has any other member, employee, representative, agent or officer of Developer, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

19.1.20 [] is a [], duly organized and validly existing under the laws of [], has the requisite power and all required licenses to carry on its present and

proposed activities, and has full power, right and authority to perform each and all of the obligations of an Equity Member provided for under this Agreement. **[NOTE: CONFORM IN EXECUTED AGREEMENT]**

19.1.21 [] is a [], duly organized and validly existing under the laws of [], has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to perform each and all of the obligations of an Equity Member provided for under this Agreement. **[NOTE: CONFORM IN EXECUTED AGREEMENT]**

19.1.22 [] is a [], duly organized and validly existing under the laws of [], has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to perform each and all of the obligations of an Equity Member provided for under this Agreement. **[NOTE: CONFORM IN EXECUTED AGREEMENT]**

19.2 LAWA Representations and Warranties

LAWA represents to Developer as follows:

19.2.1 As of the Effective Date, City has full power, right and authority to execute, deliver this Agreement and LAWA has full power, right and authority to perform its obligations under this Agreement;

19.2.2 Each person executing this Agreement on behalf of City is duly authorized to execute and deliver this Agreement, and this Agreement has been duly executed and delivered by City;

19.2.3 This Agreement has each been duly authorized by LAWA, and constitutes a legal, valid and binding obligation of LAWA enforceable against LAWA in accordance with its terms;

19.2.4 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on LAWA which challenges LAWA's authority to execute, deliver and perform this Agreement, or which challenges the validity or enforceability of, this Agreement or which challenges the authority of LAWA officials executing this Agreement; and LAWA has disclosed any pending action, suit, proceeding, investigation or litigation against LAWA (including filed but un-served complaints of which LAWA's senior officials are aware) relating to this Agreement or the Project;

19.2.5 Neither the execution and delivery by City of this Agreement, nor the consummation of the transactions contemplated under this Agreement, is in conflict with or has resulted or will result in a default under or a violation of any agreement, judgment or decree to which LAWA is a party or is bound;

19.2.6 The execution and delivery by City of this Agreement, and the performance by LAWA of its obligations under this Agreement, will not conflict with any Laws applicable to LAWA that are valid and in effect on the date of execution and delivery. LAWA is not in breach of any applicable Law that would have a material adverse effect on the performance of any of its obligations under the Contract Documents; and

19.2.7 LAWA's execution and delivery of this Agreement is not subject to any requirement to obtain consent or approval of any other Person (including Governmental Entities), other than consents and approvals already obtained.

19.3 Special Remedies for Mutual Breach of Warranty

Notwithstanding any other provision of this Agreement, if any circumstance or event occurs that constitutes or results in a concurrent breach by both Developer and LAWA of similar warranties referenced in Section 16.1.1(e) or 16.3.1(c) but does not also constitute or result in any other breach or default by either Party, then the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the Contract Documents in accordance with Section 23.11 (Severability), or Termination Due to Court Ruling in accordance with Section 17.4.3 (Termination Due to Court Ruling).

ARTICLE 20. ASSIGNMENT AND TRANSFER

20.1 Restrictions on Equity Transfers and Change of Control

20.1.1 Except as provided in Section 20.1.3, any:

- (a) Change of Control of Developer; or
- (b) Equity Transfer that results in any Equity Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in Developer that it owned (directly or indirectly) as of the Financial Close Date,

shall be subject to LAWA's prior written approval in accordance with Section 20.2 (Standards and Procedures for LAWA Approval).

20.1.2 Neither an Equity Transfer to a Prohibited Person, nor a Change of Control that would involve the provision of any amount of Committed Investment directly or indirectly from a Prohibited Person, is permitted at any time. Further, none of the events described in clauses (b) through (g) of the definition of Change of Control are permitted at any time if it would result in the direct or indirect ownership by a Prohibited Person of any interest in Developer.

20.1.3 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 LAWA's approval but, provided that:

- (a) for an exception described in clause (a) (with respect to any initial public offering), or clause (b), (c) or (d), Developer shall deliver to LAWA, within 10 days before the effectiveness of the transfer or transaction, written 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; and
- (b) for an exception described in clause (a) (other than with respect to an initial public offering), Developer shall deliver to LAWA, within five days after the effectiveness of the transfer or transaction, written 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.

20.2 Standards and Procedures for LAWA Approval

20.2.1 Where LAWA's prior written 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 years after the Passenger Service Availability Date, LAWA may withhold or condition its approval in its sole discretion. Any such decision of LAWA to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures.

20.2.2 After the second anniversary of the Passenger Service Availability Date, LAWA shall not unreasonably withhold its approval of a Transaction.

20.2.3 Among other factors and considerations, it shall be reasonable for LAWA to withhold its approval if:

- (a) Developer fails to demonstrate to LAWA's reasonable satisfaction that: (i) the proposed Transaction that would amount to a Change of Control of Developer will not have any adverse effect on Developer's ability to timely perform its obligations under the Contract Documents and the Principal Project Documents, taking into account the financial resources, qualifications and experience of the proposed assignee, grantee or transferee; and (ii) the proposed assignee, grantee or transferee is in compliance with LAWA's rules, regulations, and adopted written policies regarding organizational conflicts of interest; or
- (b) 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 LAWA receives from the proposed transferee assurances of cure and performance acceptable to LAWA in its good faith discretion.

20.2.4 For Transactions subject to LAWA's prior reasonable approval, LAWA will approve or disapprove in writing within 60 days after it receives from Developer:

- (a) a request for approval;
- (b) a reasonably detailed description of the proposed Transaction;
- (c) such information, evidence, and supporting documentation as LAWA may request concerning the identity, financial resources, qualifications, experience, and potential conflicts of interest of the proposed transferee and its proposed contractors; and
- (d) such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations, and warranties as LAWA may reasonably request.

20.2.5 For Transactions subject to LAWA's prior reasonable approval, LAWA 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 LAWA's requests for qualifications for similar agreements for comparable projects and facilities.

20.2.6 If for any reason LAWA does not act within such 60 day period, or any extension thereof by mutual agreement of the Parties, then the proposed Transaction shall not be permitted, subject to Developer's right, in the case of a proposed Transaction governed by Section 20.2.2, to submit a Dispute for resolution according to the Dispute Resolution Procedures.

20.3 Restrictions on Assignment, Subletting and Other Transfers of Developer's Interest or the Project

20.3.1 Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber Developer's Interest or any portion thereof without LAWA's prior written approval, in its sole discretion, except:

- (a) to Lenders for security as permitted by this Agreement, provided Developer retains responsibility for the performance of Developer's obligations under the Contract Documents; or
- (b) to any Substituted Entity approved by LAWA in accordance with the Direct Agreement, provided that such Substituted Entity assumes in writing full responsibility for performance of the obligations of Developer under this Agreement, the other Contract Documents, and the Key Contracts and Financing Documents arising from and after the date of assignment.

20.3.2 Developer shall not grant any special right of entry onto, use of, or right to manage and control the Project to any other Person except as expressly contemplated in this Agreement without LAWA's prior written approval, in its sole discretion. Any purported voluntary or involuntary sale, assignment, subletting, conveyance, transfer, pledge, mortgage, encumbrance or grant of other special use, management or control of the Project in violation of this provision shall be null and void ab initio and LAWA, at its option, may declare any such attempted action to be a material Developer Default.

20.4 Assignment by LAWA

LAWA may assign all or any portion of its right, title and interest in the Contract Documents, Payment Bonds and Performance Bonds, guarantees, letters of credit and other security for payment or performance:

- (a) in its sole discretion and without Developer's consent, to any other Person that succeeds to the powers and authority of LAWA under the Los Angeles City Charter and Los Angeles Administrative Code; and
- (b) to others with the prior written consent of Developer, which consent cannot be unreasonably withheld if LAWA's assignee has a credit rating equal to or better than LAWA's senior lien rating at the time of the assignment as measured by a Rating Agency.

20.5 Assumption

Each transferee of Developer's Interest, including any Person who acquires Developer's Interest through foreclosure, transfer in lieu of foreclosure or similar proceeding, shall execute and deliver to LAWA an assumption agreement in form acceptable to LAWA, providing that the transferee takes Developer's Interest subject to, and shall be bound by, the Project Management Plan, including Developer's Design Quality Plan, Developer's Construction Quality Plan, the O&M Management Plan, the Key Contracts, 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 LAWA.

20.6 Change of Organization or Name

20.6.1 Developer shall not change the legal form of its organization in a manner that adversely affects LAWA's rights, protections and remedies under the Contract Documents without the prior written approval of LAWA.

20.6.2 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 21. RECORDS AND AUDITS; INTELLECTUAL PROPERTY

21.1 Maintenance and Inspection of Records

21.1.1 Developer shall undertake the following with respect to its Books and Records:

- (a) keep and maintain said Books and Records, including copies of all original documents delivered to LAWA, in Los Angeles, California, or in another location approved by LAWA in writing, and notify LAWA where the Books and Records are kept;
- (b) keep and maintain Books and Records in accordance with applicable provisions of the Contract Documents, including the Technical Provisions, applicable provisions of the Project Management Plan and O&M Management Plan, and in accordance with Good Industry Practice;
- (c) make all Books and Records available for inspection by LAWA and its representatives in Developer's principal offices in Los Angeles, California, or in accordance with each IP Escrow, at all times during normal business hours, or at other reasonable times during the Term;
- (d) provide to LAWA, or make available to LAWA for review in accordance with each IP Escrow, copies of any Books and Records as and when reasonably requested by LAWA. LAWA may inspect upon 48 hours' prior notice or without prior notice where there is good faith suspicion of fraud. LAWA's right of inspection includes the right to make extracts and take notes and shall not be construed as a waiver by Developer of the attorney-client privilege;
- (e) retain all Books and Records related to the D&C Work until five years after the Passenger Service Availability Date and retain all Books and Records related to the O&M Work until five years after the date of final payment under the Contract Documents, provided that all records which are being audited or 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 audits, Claims, Disputes and actions are finally resolved; and
- (f) permit LAWA, upon 10 days' prior notice to Developer (which notice shall identify the persons LAWA 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 LAWA to determine whether Developer is in compliance with this Agreement and applicable Law. The interviewees and their employers may have counsel present at the interviews.

21.1.2 Developer shall cause each Key Contract to include the provisions of Section 21.1.1, to the extent applicable, modified as appropriate to apply to the Contractor's Books and Records.

21.1.3 Exhibit 16 (Federal, State, and City Requirements) includes additional requirements regarding maintenance and inspection of Books and Records.

21.2 Audits

21.2.1 LAWA may review and audit Developer, its Contractors and their respective Books and Records as and when LAWA deems necessary for purposes of verifying compliance with the Contract Documents and applicable Law and verifying Claims.

21.2.2 Without limiting Section 21.2.1:

- (a) LAWA may audit the Project Management Plan and O&M 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 O&M Management Plan and its component parts, plans and other documentation;
- (b) the audits may be performed by employees or consultants of LAWA, City or the City Controller, or by an auditor under contract with LAWA, City or the City Controller;
- (c) Developer shall provide adequate and appropriate work space for LAWA or its representative(s) to conduct audits;
- (d) Developer shall: allow auditor(s) access to such Books and Records during normal business hours; provide to LAWA copies thereof, in any physical and/or digital medium, as and when reasonably requested by LAWA; allow interviews of any employee who might have information related to such Books and Records; and otherwise cooperate with the auditors including furnishing a management representation letter upon request of the auditor; and
- (e) Developer shall cause each Contract to include a similar right of LAWA to audit records and interview staff of the Contractor, and a similar covenant to cooperate with the auditors.

The foregoing shall not be deemed to waive the right of Developer or Contractor to have counsel or other appropriate representatives present at the interview.

21.2.3 If any LAWA audit results in a correction to the Books and Records, Developer shall pay the reasonable costs of LAWA in conducting the audit, but if not, LAWA will bear the costs of the audit.

21.2.4 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 be sufficient basis for LAWA to deny recovery by Developer of the Claim to the extent of such failure.

21.2.5 Full compliance by Developer with the provisions of Section 21.2 (Audits) is a contractual condition precedent to Developer's right to seek relief on a Claim.

21.2.6 LAWA'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.

21.2.7 Developer shall include in the Project Management Plan and O&M Management Plan internal procedures to facilitate review and audit by LAWA and, if applicable, City representatives and the City Controller or their employees and consultants.

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

21.2.9 Developer's internal and Third Party quality and compliance auditing responsibilities shall be identified in the Project Management Plan and O&M Management Plan, in accordance with Part 2A, Section 1.1 (Project Management Plan (PMP)) and Part 2C, Section 3.1.1 (APM System Operations and Maintenance Management Plan) of the Technical Provisions and other related provisions concerning QA and compliance auditing.

21.2.10 Nothing in the Contract Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected officials, including the independent rights of the City Controller, in carrying out his or her legal authority.

21.3 Public Records Act

21.3.1 Developer acknowledges and agrees that all Submittals, records, documents, drawings, plans, specifications and other materials in LAWA's possession, including any Books and Records submitted by Developer to LAWA, may be considered public information subject to disclosure under the California Public Records Act (the "PRA").

21.3.2 If Developer believes any Books and Records submitted to LAWA constitute trade secrets, proprietary information or other information that is not subject to or excepted from disclosure under the PRA, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any such designation of trade secret or other basis for exemption shall be accompanied by a concise statement of reasons supporting the claim including the specific Law that authorizes the exemption from disclosure under the PRA.

21.3.3 If LAWA receives a request for public disclosure of information or materials that have been designated by Developer as "CONFIDENTIAL," LAWA will use reasonable efforts to notify Developer of the request and may request advice from LAWA's counsel before disclosing any such documents in accordance with applicable Law. Developer shall then have the opportunity to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under the PRA or other applicable Law to LAWA within the time period specified in the notice issued by LAWA (if any) and before the deadlines for release in the PRA and other applicable Law. However, it is the responsibility of Developer to monitor requests for disclosure and proceedings and make timely filings. LAWA may make filings of its own concerning possible disclosure; however, LAWA is under no obligation to support Developer's positions. By entering into this Agreement, Developer consents to, and expressly waives any right to contest, provision by LAWA to LAWA's counsel of all, or representative samples of, information or materials designated as "CONFIDENTIAL" by Developer, in accordance with the PRA. LAWA shall have no responsibility or obligation for a failure of Developer to respond or to respond timely to any request for disclosure of information or materials designated as "CONFIDENTIAL" by Developer, in accordance with the PRA, and LAWA shall not be required to wait for a response

before making a disclosure or otherwise taking action under the PRA or other applicable Law. Under no circumstances will LAWA be responsible or liable to Developer or any other party as a result of disclosing any such materials, including materials marked "CONFIDENTIAL", whether the disclosure is deemed required by Law or by an order of court or LAWA's general counsel or occurs through inadvertence, mistake or negligence on the part of LAWA or its officers, employees, contractors or consultants.

21.3.4 Nothing contained in this Section 21.3 shall modify or amend requirements and obligations imposed on LAWA by the PRA or other applicable Law, and the provisions of the PRA or other Laws shall control to the extent of a conflict between the procedures under this Agreement and applicable Law. LAWA will not advise a submitting party or Developer as to the nature or content of documents entitled to protection from disclosure under the PRA or other applicable Laws, as to the interpretation of such Laws, or as to definition of trade secret. Developer is advised to contact its own legal counsel concerning the effect of applicable Laws to Developer's Books and Records and actions to be taken to preserve confidentiality.

21.3.5 In the event of any proceeding or litigation concerning the disclosure of any Books and Records to Third Parties, LAWA's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or other authority having jurisdiction. Developer shall be responsible for prosecuting or defending any action, acting on its own behalf, concerning such materials at its sole expense and risk; provided, however, that LAWA may intervene or participate in the litigation in such manner as it deems necessary or desirable. Developer shall indemnify and hold harmless Indemnified Parties from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys' and expert witness fees and costs, arising out of, relating to or resulting from LAWA's refusal to disclose any material that Developer has designated as a trade secret.

21.4 Intellectual Property

21.4.1 Project Intellectual Property; LAWA Intellectual Property

21.4.1.1 Developer acknowledges and agrees that all LAWA Intellectual Property, in any medium, is either owned by LAWA or specially ordered or commissioned by LAWA, including works made for hire in accordance with Section 101 of the Copyright Act of the United States. Developer hereby assigns to LAWA all rights, title and interest in and to the LAWA Intellectual Property including any and all software, work product and designs.

21.4.1.2 LAWA hereby grants to Developer a limited, non-exclusive license to use, exploit, manufacture, distribute, reproduce, adapt and display the LAWA Intellectual Property and Project Intellectual Property solely in connection with and limited to: (a) incorporation of relevant Intellectual Property into the Project, Proposal or Work; (b) performance, provision, furnishing and discharge of the Work; (c) changing the APM System; and (d) licensing to other entities (to the extent required for interoperability). All Intellectual Property rights of LAWA, including the Los Angeles World Airport's name and other trademarks, not specifically granted to Developer pursuant to the Contract Documents are reserved to LAWA. All rights granted in this Section 21.4.1.2 shall terminate on the Termination Date.

21.4.2 Developer Intellectual Property

21.4.2.1 Developer hereby grants to LAWA an irrevocable, perpetual, non-exclusive, transferable (solely to a permitted LAWA's assignee under Article 20 (Assignment and Transfer)), fully paid-up right and license to use, exploit, manufacture, distribute, reproduce, adapt and display the Developer Intellectual Property, including any Technology Enhancements that are Developer Intellectual Property, in connection with the Project, Proposal or Work. The rights granted herein shall survive the termination, expiration or cancellation of this Agreement or any rights related thereto.

21.4.2.2 Developer shall identify and disclose all Developer Intellectual Property contained, or included in, the Project Intellectual Property including (when reasonably available): full and specific information detailing Intellectual Property claimed; date of authorship, creation and/or invention; date of application(s); application number(s) and registering entity(ies); date of registration(s), registration number(s) and registering entity(ies), if any, and owner including person or entity name and address. Subject to the IP Materials deposit requirements of Section 21.5 (Intellectual Property Escrows), Developer shall not be required to identify or disclose Developer Intellectual Property only to the extent that doing so would eliminate or substantially limit the legal protections for such Intellectual Property.

21.4.3 Third Party Intellectual Property

21.4.3.1 Developer shall secure perpetual, nonexclusive, transferable, irrevocable, unconditional, royalty-free license(s) in the name of LAWA to use, exploit, manufacture, distribute, reproduce, adapt and display the Third Party Intellectual Property in connection with the Project, Proposal or Work, and shall pay any and all royalties and license fees required to be paid for any Intellectual Property incorporated into the Project Intellectual Property.

21.4.3.2 Developer shall:

- (a) obtain LAWA's prior written approval of the terms and conditions of Third Party Intellectual Property licenses;
- (b) identify and disclose to LAWA all Third Party Intellectual Property contained, or included, in the Project Intellectual Property, including (when reasonably available): full and specific information detailing Intellectual Property claimed; date of authorship, creation and/or invention; date of application(s); application number(s) and registering entity(ies); date of registration(s), registration number(s) and registering entity(ies), if any, and owner, including person or entity name and address; and
- (c) obtain from each owner of the Third Party Intellectual Property prior consent to have the relevant Third Party Intellectual Property deposited into an IP Escrow in accordance with Section 21.5 (Intellectual Property Escrows), or, to the extent the owner of the relevant Third Party Intellectual Property has not provided such consent, obtain LAWA's prior written approval for a waiver of this requirement.

21.4.3.3 Developer shall not incorporate Third Party Intellectual Property into the Project without first obtaining (a) the licenses described in Section 21.4.3.1 and (b) consent from each owner of the Third Party Intellectual Property or from LAWA in accordance with

Section 21.4.3.2(c). The rights granted in this Section 21.4.3 shall survive the termination, expiration or cancellation of this Agreement or any rights related thereto.

21.4.4 Delivery of IP Materials

Subject to clause (n) of Exhibit 15E (Conditions to Passenger Service Availability) and clause (g) of Exhibit 15F (Conditions to Final Completion), Developer shall deliver to LAWA all IP Materials related to Developer Intellectual Property and Third Party Intellectual Property, or deposit such IP Materials into IP Escrow(s) in accordance with Section 21.5 (Intellectual Property Escrows), as soon as reasonably practicable following incorporation of the relevant Intellectual Property into the Project, Proposal or Work.

21.4.5 Payments Inclusive

Developer acknowledges and agrees that the payments provided for in Article 11 include all royalties, fees, costs and expenses arising from or related to the Project Intellectual Property, including any fees pursuant to Section 21.5 (Intellectual Property Escrows).

21.4.6 Video/Photographs

Without waiving any obligations or releasing any grants by Developer or Third Parties under this Section 21.4, any and all audio visual works (including video and motion pictures) and pictorial, graphic, and sculptural works (including photographs and 3-d renderings), are copyrightable works expressly included in the terms of this Section. Notwithstanding any provision or definition to the contrary, all copyrightable works subject to this Section 21.4.6 (i) that are authored or created under and/or for the purposes of the Project or the Work, are subject to the ownership, assignment and/or obligations of Section 21.4.1 or (ii) that are Developer Intellectual Property or Third Party Intellectual Property are subject to the rights granted to LAWA under Sections 21.4.2.1 and 21.4.3.1, respectively. The rights granted herein shall survive the termination, expiration or cancellation of this Agreement or any rights related thereto.

21.5 Intellectual Property Escrows

21.5.1 LAWA and Developer acknowledge that Developer or other Developer Related Entities that supply software, Source Code and Source Code Documentation or other Intellectual Property may not wish to deliver the applicable IP Materials directly to LAWA, as public disclosure could deprive such Person of commercial value. Developer further acknowledges that LAWA nevertheless must be ensured access to such IP Materials at any time, and must be assured that the IP Materials are delivered to LAWA pursuant to Section 21.4.4 (Delivery of IP Materials).

21.5.2 In lieu of delivering the IP Materials directly to LAWA, Developer may elect to deposit the IP Materials with a neutral depository. In such event, LAWA and Developer shall:

(a) mutually select one or more escrow companies or other neutral depositories (each an "**IP Escrow Agent**") engaged in the business of receiving and maintaining escrows of software source code and/or other Intellectual Property; (b) establish one or more escrows (each an "**IP Escrow**") with the IP Escrow Agent on terms and conditions reasonably acceptable to LAWA and Developer for the deposit, retention, upkeep, authentication, confirmation and release of IP Materials to LAWA pursuant to this Agreement; (c) determine a date for Developer's deposit of the IP Materials into the IP Escrow; and (d) determine a process for releasing from escrow the IP Materials to be delivered to LAWA pursuant to this Agreement. IP Escrows also may include

Affiliates as parties and may include deposit of their Intellectual Property. Developer shall be responsible for the fees and costs of the IP Escrow Agent.

21.5.3 The IP Escrows shall survive expiration or earlier termination of this Agreement regardless of the reason.

21.5.4 The IP Materials shall be released and delivered to LAWA in any of the following circumstances:

- (a) expiry of the Term;
- (b) early termination of this Agreement for any reason; or
- (c) Developer fails or ceases to provide services as necessary to permit continued use of any such Developer Intellectual Property pursuant to the license or any sublicense thereof.

21.5.5 IP Materials released to LAWA shall be kept confidential by LAWA and protected from disclosure except in accordance with applicable Law. LAWA may use, exploit (including sublicensing any rights as necessary), manufacture, distribute, reproduce, adapt and display the IP Materials released under this Section 21.5 for the purposes of ((a) completion of the APM System in case of release before Final Completion, and (b) operation, maintenance and renewal of the APM System in case of release after Final Completion.

ARTICLE 22. ADVERTISING AND OTHER BUSINESS OPPORTUNITIES

22.1 Rights and Interests in the Project and Site

Developer's rights and interests in the Project and Site are limited to such rights and interests that are required for performing the Work and Developer's timely fulfillment of its obligations under the Contract Documents. Developer's rights and interests exclude any Airspace which is not necessary and required for such purposes.

22.2 Advertising and Business Opportunities

22.2.1 LAWA reserves all rights and opportunities concerning:

- (a) advertising on the Project and, as between Developer and LAWA, within the O&M Limits, including use of Project physical assets (for example, Stations, Vehicles, etc.) for advertising purposes; and
- (b) entrepreneurial, commercial and business activities that are ancillary or collateral to the use and operation of the Project and Site, whether developed or pursued by LAWA or through others worldwide. The rights and opportunities reserved to LAWA under this Section 22.2.1(b) include the rights described in Section 22.2.1(a) and any sponsorships, naming rights, etc. (collectively, "**Business Opportunities**").

22.2.2 Developer shall cooperate and grant all necessary access to LAWA and any Third Party designees authorized by LAWA in connection with LAWA's exercise of its rights relating to advertising and Business Opportunities. Developer shall be compensated for reasonable costs and expenses incurred directly by Developer in installing and maintaining facilities for advertising or Business Opportunities (other than routine maintenance), through a Change Order issued under Article 14 (Compensation and Other Relief for Relief Events).

22.2.3 Except as authorized by LAWA, Developer shall not engage in, and shall not permit:

- (a) any advertising within the O&M Limits (including on or within Vehicles);
- (b) use of occupation of the Project for any Business Opportunities; and
- (c) operation of any business on Vehicles, at Stations or within the Site, including
 - (i) the sale of products or services (including any newsstand or concession stand for the sale of food, beverages or gifts or other retail or rental services);
 - or (ii) the sale or rental of any wire, cable, transmission or receiving device or any other utility on, or transmission or receipt of any electronic communication to or from, any part of the Project.

22.2.4 Developer may request LAWA to consider Business Opportunities. If LAWA consents, the parties shall execute an amendment to the Contract Documents memorializing the agreement reached, including any agreement as to any revenue and cost attribution. Unless otherwise expressly stated in the amendment, LAWA shall be entitled to all revenues generated by Business Opportunities arising out of, relating to or resulting from the Project or in the Airspace. Notwithstanding the foregoing, Developer shall be compensated pursuant to a LAWA Change for Developer's reasonable costs and expenses that are directly attributable to

implementation of such Business Opportunities (other than routine maintenance) as well as any support efforts the LAWA Change requires Developer to provide.

22.2.5 Unless expressly approved by LAWA, Developer may not allow any Person to use or occupy the Project for any ancillary or collateral purpose.

22.3 Remedies

If a Developer Default concerns a breach of the provisions of Section 22.2 (Advertising and Business Opportunities), then, in addition to any other remedies available to LAWA under this Agreement or applicable Law, LAWA shall be entitled to receive from Developer an amount equal to all profits from the prohibited activity, together with interest thereon at the Late Payment Rate from the date of collection until the date payment is made. In addition, LAWA may require Developer to restore the APM System to its original condition or to transfer to LAWA all of Developer's interest in the prohibited assets and improvements and revenues derived therefrom, or any combination of the foregoing.

ARTICLE 23. MISCELLANEOUS

23.1 Standard for Approvals

In all cases where approvals, acceptances or consents are required to be provided by LAWA or Developer hereunder, such approvals, acceptances or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified, the decision shall not be subject to Dispute Resolution Procedures hereunder.

23.2 Amendments

The Contract Documents may be amended only by a written instrument duly executed by or on behalf of the Parties, except to the extent expressly provided otherwise in this Agreement (e.g., Sections 7.2.5, 8.1.2, 12.1, and 12.3).

23.3 Waiver

23.3.1 The failure of a Party to exercise or delay in exercising any right under this Agreement shall not:

- (a) constitute a waiver of such right or any other right under the Contract Documents; or
- (b) relieve the other Party from performance of its obligations under the Contract Documents except as otherwise provided in the Contract Documents.

23.3.2 No waiver of any right under this Agreement shall be effective unless made in a writing duly executed by a duly authorized representative of the Party charged with the waiver.

23.3.3 Any waiver under Section 23.3.2 shall be limited to the specific instance and shall not constitute a waiver of such right in the future or of any other right under this Agreement.

23.3.4 If the Parties make and implement any interpretation of the Contract 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.

23.3.5 No waiver of any right under this Agreement shall be deemed to have occurred as the result of any acceptance by LAWA, any payment for or acceptance of the whole or any part of the Work, any extension of time, or any possession taken by LAWA.

23.4 Independent Contractor; No Joint Venture or Partnership

23.4.1 Developer is an independent contractor. Neither Developer nor any of its employees or agents is or shall be deemed to be an employee or agent of LAWA, and in no event shall the relationship between LAWA and Developer be construed as creating any relationship whatsoever between LAWA and Developer's employees or agents. Except as otherwise provided in the Contract 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.

23.4.2 Nothing in the Contract Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between LAWA 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.

23.4.3 Developer shall not have, or be deemed to have, power or authority to make any commitments on LAWA's behalf or to execute agreements in the name of or on behalf of LAWA. Developer shall not enter into any agreement with any Governmental Entity, Utility, property owner or other Third Party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or the Work that in any way purports to obligate LAWA, or states or implies that LAWA has an obligation to the Third Party, to undertake any activity, unless LAWA otherwise approves.

23.5 Successors and Assigns

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

23.6 Designation of Representatives; Cooperation with Representatives

23.6.1 LAWA 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 Contract Documents. Exhibit 3 (Initial Designation of Authorized Representatives) provides the initial Authorized Representative designations. A Party may change such designations by written notice in accordance with Section 23.10 (Notices and Communications).

23.6.2 Developer shall cooperate with LAWA and all representatives of LAWA designated as described above in performance of their obligations under the Contract Documents.

23.7 Survival

The following provisions shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work:

- (a) Developer's and LAWA's representations and warranties;
- (b) the Dispute Resolution Procedures;
- (c) the indemnifications, limitations and releases contained in Sections 7.7.1.4(f) and 10.5 (Indemnities);
- (d) the limitations on remedies contained in Section 16.6 (Limitation on Consequential Damages);
- (e) the express obligations of the Parties following termination (including those in Articles 17 (Termination) and 20 (Assignment and Transfer));
- (f) the Direct Agreement);and

- (g) and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work.

23.8 Limitation on Third Party Beneficiaries

Except to the extent that specific provisions (such as the warranty and indemnity provisions, and the provisions for the protection of certain Lenders under any Direct Agreement) identify Third Parties and state that they are entitled to benefits, (a) it is not intended by any of the provisions of the Contract Documents to create any third party beneficiary to this Agreement or to authorize anyone not a Party to maintain a suit for personal injury or property damage under this Agreement, and (b) the duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between LAWA and a Contractor or any Person other than Developer.

23.9 Governing Law; Venue

The Contract Documents shall be governed by and construed in accordance with the laws of the State, any applicable federal law, the Los Angeles City Charter, and the ordinances, regulations, codes, and Executive Orders enacted and/or promulgated pursuant thereto. The venue for any litigation arising from a Dispute shall be the Torrance Branch of the Los Angeles County Superior Court.

23.10 Notices and Communications

23.10.1 Notices under the Contract Documents shall be in writing and: (a) delivered personally; (b) sent by certified mail, with return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy and with receipt confirmed by telephone.

23.10.2 Notices under Section 23.10.1 shall be sent to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

- (a) All notices to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

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

- (b) All notices to LAWA shall be marked as regarding the Project and shall be delivered to the following address or as otherwise directed by LAWA's Authorized Representative:

Deputy Executive Director - LAMP
7301 World Way West
10th Floor
Los Angeles, CA 90045

In addition, copies of all notices to LAWA shall be marked as regarding the Project and shall be delivered to the following address:

Department of Airports
1 World Way
Post Office Box 92216
Los Angeles, CA 90009

23.10.3 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, except notices received after 5:00 p.m. (Pacific Time) shall be deemed received on the first Business Day following delivery.

23.10.4 Any technical or other communications pertaining to the Work shall be conducted by Developer's Authorized Representative and technical representatives designated by LAWA.

23.10.5 Developer shall promptly provide to LAWA a copy of each communication received from any Lender relating to any default or event of default under any Financing Agreement or Security Document.

23.11 Severability

23.11.1 If any provision or part of the Contract Documents is ruled invalid (including invalidity due to any statutory change or other change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such provision 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 original 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 provision or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable provision or part.

23.11.2 If after the efforts required by Section 23.11.1, no interpretation or reformation of the Contract Documents can reasonably be adopted that will return the Parties to the benefits of their original bargain, then the court order shall be treated as a Termination Due to Court Ruling under Section 17.4.3 (Termination Due to Court Ruling).

23.12 Construction and Interpretation of Agreement

23.12.1 The Contract Documents shall be construed simply, as a whole and in accordance with the fair meaning of the language used and not strictly for or against any Party.

23.12.2 The Parties acknowledge and agree that (a) the Contract 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; (b) each Party has been given the opportunity to independently review the Contract Documents with legal counsel; and (c) each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of a conflict, ambiguity or inconsistency in or Dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be interpreted or construed against the Party preparing it, and instead the Dispute resolver shall consult other customary rules of interpretation and construction.

23.12.3 LAWA's final answers to the questions posed during the Proposal preparation process for the Contract Documents shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

23.12.4 The captions of the articles, sections and subsections in the Contract Documents are for convenience only and are not to be treated or construed as part of this Agreement.

23.12.5 Unless otherwise expressly stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meaning.

23.12.6 Wherever the word "including", "includes" or "include" is used in the Contract Documents, it is deemed to be followed by the words "without limitation." Wherever reference is made in the Contract Documents to a particular Governmental Entity, it includes any public agency succeeding to the powers and authority of such Governmental Entity.

23.12.7 References to "days" contained in the Contract Documents shall mean calendar days unless otherwise stated.

23.12.8 Subject to Section 23.12.9, if the day on or by which any thing is to be done in accordance with this Agreement is not a Business Day, that thing must be done on the next Business Day.

23.12.9 If the Contract Documents require action to be taken in the event of an emergency and otherwise where it is clear that performance is intended to occur on a non-Business Day, Developer shall be required to perform such obligations, even though the date in question may fall on a non-Business Day.

23.12.10 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.

23.12.11 All monetary amounts and obligations in the Contract Documents are expressed and payable in U.S. dollars.

23.12.12 Each party must perform its obligations in accordance with this Agreement at its own cost, unless expressly provided otherwise.

23.12.13 If this Agreement requires calculation of an amount payable to a party there must be no double counting in calculating that amount.

23.13 Further Assurances

Each Party shall promptly execute and deliver to the other Party all such instruments and other documents and assurances as are reasonably requested by the second Party to further evidence its obligations hereunder, including, specifically with respect to Developer, assurances regarding the validity of (a) the assignments of Contracts contained herein and (b) any instruments securing performance hereof.

23.14 Entire Agreement

LAWA and Developer agree and expressly intend for the Contract Documents to constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible. The Contract Documents contain the entire understanding of the Parties with respect to the subject matter of this Agreement and supersede all prior agreements, understandings, statements, representations and negotiations, in each case oral or written, between the Parties with respect to the subject matter of this Agreement.

23.15 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, City has caused this Agreement to be executed by the Chief Executive Officer of its Department of Airports, and Developer has caused the same to be executed by its duly authorized officers, and its corporate seal to be hereunto affixed, all as of the day and year first hereinabove written.

APPROVED AS TO FORM

Michael N. Feuer, City Attorney

CITY OF LOS ANGELES

Date: _____

By: _____

Chief Executive Officer
Los Angeles World Airports

By: _____

Assistant/Deputy City Attorney

By: _____

Chief Financial Officer
Los Angeles World Airports

[INSERT DEVELOPER'S NAME]

ATTEST:

CA Contractors License

No.: _____

By: _____

Secretary (Signature)

By: _____

Signature

Print Name

Print Name

[SEAL]

Print Title