

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, whenever the following abbreviations or terms are used in this Agreement and the other Contract Documents, they have the meanings given below. References in this Exhibit 1 to Sections and Exhibits shall mean sections of and exhibits to the Agreement unless otherwise specified.

AASHTO	American Association of State Highway and Transportation Officials
AC	Alternating Current
ACAMS	Access Control and Alarm Monitoring System
ACI	American Concrete Institute
ACM	Asbestos Containing Material
ACP	Access Control Panel
ACS	Access Control System
ADA	Americans with Disabilities Act
ADAAG	Americans with Disabilities Act Accessibility Guidelines
ADT	Average Daily Traffic
AED	Automatic Electronic Defibrillator
AHA	Activity Hazard Analysis
AHJ	Authority(ies) Having Jurisdiction
AISC	American Institute of Steel Construction
ALP	Airport Layout Plan
AM	Asset Management
AMC	Airport Metro Connector
ANSI	American National Standards Institute
AOC	Airport Operation Center
APCS	Automatic Passenger Counting System
APM	Automated People Mover
APTA	American Public Transportation Association
AQMD	Air Quality Management District
ARCC	Airport Response Coordination Center
AREMA	American Railway Engineering and Maintenance of Way Association
ARI	Air Conditioning and Refrigerator Institute
ARS	Acceleration Response Spectrum
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	ASTM International (formerly known as the American Society for Testing and Materials)
ATO	Automatic Train Operation
ATP	Automatic Train Protection
ATS	Automatic Train Supervision
ATSAC	Automatic Traffic Surveillance and Control System
AVI	Automatic Vehicle Identification
AVL	Automatic Vehicle Location
AW	Assigned Weight
AWS	American Welding Society
BIL	Basic Insulation Level
BIM	Building Information Modeling

BOCC	Building Operations Control Center
BODR	Basis of Design Report
BTU	British Thermal Unit
CADD	Computer Aided Design and Drafting
CALM	Coordination and Logistics Management Program
Caltrans	California Department of Transportation
CAP	Compliance Action Plan
CARPP	Capital Asset Replacement Program Plan
CBC	California Building Code
CCC	Central Control Console
CCF	Central Control Facility
CCI	Construction Cost Index
CCO	Central Control Operator
CCR	Central Control Room
CCTV	Closed-Circuit Television
CDRL	Contract Data Requirements List
CEC	California Electrical Code
CEI	Construction Engineering and Inspection
CEL	Certifiable Elements List
CEQA	California Environmental Quality Act, California Public Resources Code § 21000 et seq., as it may be amended
CFC	Certificate of Final Completion
CFR	Code of Federal Regulations
CIB	Communications Infrastructure Backbone
CIDH	Cast In Drilled Hole
CIH	Central Instrument House
CIL	Certifiable Items List
CIP	Controlled Insurance Program
CIR	Committed Information Rate
CIS	Customer Information System
CL	Checklist
CM	Construction Management
CO	Carbon Monoxide
ConRAC	Consolidated Rent-A-Car Facility
CPESEC	Customer Premises Equipment
CPI	Consumer Price Index
CPM	Critical Path Method
CPT	Cone Penetrometer Test
CPTED	Crime Prevention through Environmental Design
CPU	Central Processing Unit
CPUC	California Public Utilities Commission
CQCM	Construction Quality Control Manager
CS	Construction/Installation Supervisor
CSEMS	Construction Site Environmental Management Supervisor
CSP	Construction Security Plan
CTA	Central Terminal Area
CUP	Central Utility Plant
CWA	Clean Water Act
CWR	Continuous Welded Rail
D&C	Design and Construction
D/CID	Design Construction Integration Documents
DAS	Distributed Antenna System
DBE	Disadvantaged Business Enterprise

DC	Direct Current
DCQP	Developer's Construction Quality Plan
DDQP	Developer's Design Quality Plan
DECP	Developer's Environmental Compliance Plan
DOT	Department of Transportation
DQP	Developer's Quality Program
DQPP	Developer's Quality Program Plan
DSE	Developer's Safety Engineer
DSHP	Developer Safety & Health Plan
DSS	Developer's Safety Supervisor
DSSSP	Developer Site Specific Safety Plan
DTS	Data Transmission System
DVBE	Local-State Disabled Veteran Business Enterprise
DVD	Digital Video Disc
DVMS	Digital Video Management System
DWP	Department of Water and Power
EA	Environmental Assessment
EB	East Bound Direction of Travel
ECI	Environmental Compliance Inspector
ECP	Environmental Compliance Plan
EDC	Embedded Data Collectors
EEO	Equal Employment Opportunity
EIA	Electronic Industries Association
EMP	Emergency Management Panel
EMS	Emergency Medical Services
EP	Extraction Procedure (toxicity)
EPA	Environmental Protection Agency
EPS	Electrical Power System
ER	Equipment Room
ERRS	Electricity Rate Risk Share
ESC	Erosion and Sediment Control
ESD	Environmental Site Design
ET	Environmental Team
ETEL	Emergency Telephone
ETS	Emergency Trip Station
EVP	Emergency Vehicle Preemption
FA	Forced Air
FAA	Federal Aviation Administration, or its successor entity
FAS	Fire Alarm System
FC	Footcandle
FCC	Federal Communications Commission
FCM	Fracture Critical Member
FDC	Fire Department Connections
FEIR	Final Environmental Impact Report
FEMA	Federal Emergency Management Agency, or its successor entity
FHWA	Federal Highway Administration, or its successor entity
FMECA	Failure Mode, Effects, and Criticality Analysis
FMP	Fire Management Panel
FMS	Fire Management System
FMVSS	Federal Motor Vehicle Safety Standard
FOD	Foreign Object Debris
FONSI	Finding of No Significant Impact
FOV	Field of View

FTA	Federal Transit Administration
GDR	Geotechnical Data Report
GER	Geotechnical Engineering Reports
GHS	Globally Harmonized System
GIS	Geographical Information System
GPM	Gallons per Minute
GPR	Geotechnical Planning Report
GRS	Galvanized Rigid Steel
GSD	General System Display
GUI	Graphical User Interface
HCF	Hundred Cubic Feet
HVAC	Heating, Ventilation, and Air Conditioning
ICD	Interface Control Document
ICEA	Insulated Cable Engineers Association
ICM	Interface Control Manual
ID	Identifier
IDO	Interdepartmental Order
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronics Engineers
IESNA	Illuminating Engineer Society of North America (also known as IES)
IISNS	Internally Illuminated Street Name Sign
IMP	Incident Management Plan
IMTG	Information Management and Technology Group
IP	Internal Protocol
IR	Infrared
ISO	International Organization for Standardization
ITF	Intermodal Transfer Facility
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
IVAS	Intelligent Video Analytics System
LA Metro	Los Angeles County Metropolitan Transportation Authority
LABI	Labor Index
LADOT	Los Angeles Department of Transportation
LADWP	Los Angeles Department of Water and Power
LAMP	Landside Access Modernization Program
LAN	Local Area Network
LAWA	Los Angeles World Airport
LAX	Los Angeles World Airport
LBE	Local Business Enterprise
LCD	Liquid Crystal Display
LED	Light Emitting Diode
LEED	Leadership in Energy & Environmental Design
LFMC	Liquidtight Flexible Metallic Conduit
LIDAR	Light Detecting and Ranging
LOE	Level of Effort
LRFD	Load and Resistance Factor Design
LRU	Lowest Replaceable Unit
LSBE	Local Small Business Enterprise
LTA	Lenders' Technical Advisor
LULEP	LAWA Utilities and LAMP Enabling Project
M&SF	Maintenance & Storage Facility
MAC	Media Access Control
MaxAP	Maximum Availability Payment

MDE	Maximum Design Earthquake
MEP	Mechanical, Electrical and Plumbing
MMIS	Maintenance Management Information System
MMPR	Mitigation Monitoring and Reporting Program
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPI	Metal and Metal Products Index
MSDS	Material Safety Data Sheets
MSI	Master Systems Integrator
MTBHE	Mean Time Between Hazard Events
MUTCD	Manual on Uniform Traffic Control Devices
MW	Megawatt
NACE	National Association of Corrosion Engineers
NCE	Noncompliance Event
NCEER	National Center for Earthquake Engineering Research
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as it may be amended
NESC	National Electrical Safety Code
NETA	International Electrical Testing Association
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRC	Noise Reduction Coefficient
NRCS	Natural Resource Conservation Service
NRHP	National Register of Historic Places
NSC	National Safety Council
NTAS	National Terrorism Advisory System
NVR	Network Video Recorder
O&M	Operations and Maintenance
O&SHA	Operating and Support Hazards Analysis
O/S-SSPP	Operating System Safety Program Plan
OCC	Operations Control Center
OCR	Optical Character Recognition
OCS	Overhead Catenary System
ODE	Operating Design Earthquake
OEM	Original Equipment Manufacturer
OFAC	Office of Foreign Assets Control
OH	Overhead
OR	Operational Readiness
OSHA	Occupational Safety and Health Administration
PA	Public Address
PAB	Private Activity Bond
PABX	Private Automatic Branch Exchange
PARCS	Parking Access and Revenue Control System
PCB	Polychlorinated Biphenyl
PCI	Precast/Prestressed Concrete Institute
PCMO	Project Construction Management Office
PDA	Preliminary Design Audit

PDF	Portable Document Format
PDM	Precedence Diagram Method
PDS	Power Distribution System
PHA	Preliminary Hazards Analysis
PLA	Project Labor Agreement
PM	Project Management
PMP	Project Management Plan
PoE	Power over Ethernet
POH	Point of Handoff
PPHPD	Passengers Per Hour Per Direction
PPI	Producer Price Index
PQM	Program Quality Manager
PRA	California Public Records Act
P-S	P-S Suspension Loggings
PSA	Passenger Service Availability
PSTN	Public Switched Telephone Network
PTZ	Pan, Tilt, Zoom
PVC	Polyvinyl Chloride
QA	Quality Assurance
QC	Quality Control
QM	Quality Management
QMP	Quality Management Plan
QMS	Quality Management System
QoS	Quality of Service
QPM	Quality Program Manager
QSD	Qualified SWPPP Developer
QT	Qualification Test
RAMS	Reliability, Availability, Maintainability, and Safety/Security/Service
RDE	Restorable Design Earthquake
RFC	Request for Comments
RFCCD	Release for Conformed Construction Documents
RFCD	Release for Construction Documents
RFP	Request for Proposals
RGS	Rigid Galvanized Steel
ROD	Record of Decision
ROW	Right of Way
RS-N	Receiving Station #N
SBE	Small Business Enterprise
SC	Safety Certification
SC Plan	Safety Certification Plan
SCADA	Supervisory Control and Data Acquisition
SCAQMD	South Coast Air Quality Management District
SCS	Structured Cabling System
SCVM	System Compliance Verification Matrix
SCVR	Safety Certification Verification Report
SD	System Demonstration
SF	Square Feet
SF6	Sulfur Hexafluoride
SHA	System Hazards Analysis
SHPO	State Historic Preservation Officer
SMARTS	Stormwater Multi-Application and Report Tracking System
SNMP	Simple Network Management Protocol
SOP	Standard Operating Procedure

SOQ	Developer's Statement of Qualification
SPCCP	Spill Prevention Control and Countermeasures Plan
SPFMA	System Performance and Failure Management Analysis
SQAP	Software Quality Assurance Plan
SSEPP	System Security Emergency Preparedness Plan
SSHA	System Subsystem Hazards Analysis
SSI	Sensitive Security Information
SSO	State Safety Oversight
SSP	System Security Plan
SSPP	System Safety Program Plan
SSPWC	Standard Specifications for Public Works Construction
SSRC	Safety and Security Review Committee
STA	Station Points in an Alignment
SUE	Subsurface Utility Engineering
SUSMP/LID BMP	Standard Urban Stormwater Mitigation Plan/Low Impact Development Best Management Practices
SWP	Safe Work Plan
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TBIT	Tom Bradley International Terminal
TCP	Transmission Control Protocol
TCSQM	Transit Capacity and Quality of Service Manual
TEI	Transportation Equipment Index
TI	Traffic Index
TIA	Time Impact Analysis
TMP	Transportation Management Plan
TPs	Technical Provisions
TPSS	Traction Power Substations
TR	Telecommunications Room
TRB	Transportation Research Board
TRO	Temporary Restraining Order
TSC	Traffic Signal Coordination
TVA	Threat and Vulnerability Assessment
TVC	Terminal Vertical Core
U.S.C.	United States Code
UL	Underwriters Laboratory
UPS	Uninterruptable Power Supply
USDOT	United States Department of Transportation, or its successor entity
USO	United Service Organizations Inc.
VAR	Volt-Amp Resistance
VLAN	Virtual Local Area Network
VMS	Variable Message Sign
VoIP	Voice over Internet Protocol
VRLA	Valve-Regulated, Lead Acid
VSS	Video Surveillance System
VT	Verification Test
WAN	Wide Area Network
WBS	Work Breakdown Structure

Accessibility Law(s) means any statute, law, code, regulation, ordinance, rule or common law applicable to the Project or the Work that pertains to the accessibility of facilities for any Individual with a Disability, including the following (each as may be amended from time to time):

- (a) all Title II and Title III regulations of the ADA (28 C.F.R. Part 35);
- (b) Section 504, Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.);
- (c) Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance (49 C.F.R. Part 27);
- (d) the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.);
- (e) Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (28 C.F.R. Part 36);
- (f) Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines (36 C.F.R. Part 1191);
- (g) Transportation Services for Individuals with Disabilities (ADA) (49 C.F.R. Part 37);
- (h) Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles (49 C.F.R. 38); and
- (i) the California Disabled Persons Act (§ 54 et seq. of the California Civil Code).

Account Balances means all amounts standing to the credit of any bank account held by or on behalf of Developer (excluding the Handback Requirements Reserve Account), or the value of any letter of credit issued in lieu of any bank account held or required to be held by or on behalf of Developer (excluding the Handback Requirements Reserve Account), at the Early Termination Date.

Actual Insurance Policy(ies) has the meaning set forth in Section 10.1.2.11(b)(ii).

Actual Insurance Premiums has the meaning set forth in Section 10.1.2.11(e)(i).

Additional Property(ies) has the meaning set forth in Section 7.5.2.2.

Adverse Event Notice has the meaning set forth in Section 3.4.2.

Affiliate means:

- (a) any Equity Member;
- (b) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any Equity Member; and

- (c) any Person owned in whole or in part by (i) Developer, (ii) any Equity Member or (iii) any Affiliate of Developer under clause (b) of this definition, whether the ownership interest is direct or indirect, beneficial or of record, provided that ownership of less than 10% of the equity interest in a Person shall not give rise to Affiliate status.

For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

Affordability Event means the occurrence of a fluctuation in the Base Interest Rates and/or credit spreads during the Bank Debt Rate Protection Period or Bond Rate Protection Period that results, or in the reasonable opinion of LAWA is likely to result, in an increase to the Base MaxAP of 10% or greater.

Agreement means the Design-Build-Finance-Operate-Maintain Agreement to which this Exhibit 1 is attached, including all exhibits, appendices and attachments, as such agreement may be modified from time to time.

Airport has the meaning set forth in Recital A.

Airport Police means the Los Angeles Airport Police.

Airspace means any and all real property, including the surface of the ground, within the vertical column extending above and below the surface boundaries of the Project ROW and not necessary or required for the Project (including Upgrades) or developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project (including Upgrades) or Developer’s timely fulfillment of its obligations under the Contract Documents.

Alternative Technical Concept means each alternative technical concept included in the Proposal in accordance with the RFP, constituting an approved deviation from the requirements of the Technical Provisions included in the RFP. The Alternative Technical Concepts are listed in Exhibit 2B (Alternative Technical Concepts).

Annual Vandalism Deductible has the meaning set forth in Section 8.3.4.

AP Delay Period has the meaning set forth in Section 14.1.5(c).

APM Fixed Facilities means the fixed structures that represent permanent improvements to the Site that are necessary for the installation and the integrated operation of the APM Operating System, including but not limited to, guideway structure(s), station structures, equipment room structures, Maintenance & Storage Facility structure, propulsion power substation structures, structures within which the CCF and administrative offices related to the APM System may be located, and Pedestrian Walkways, as described in Part 1 (Scope of Work) of the Technical Provisions.

APM Fixed Facilities Contractor means the Contractor primarily responsible for construction of the APM Fixed Facilities.

APM Fixed Facilities Designer means the Contractor primarily responsible for designing the APM Fixed Facilities.

APM Fixed Facilities O&M Manager has the meaning set forth in Part 2A, Section 1.5.9 (APM Fixed Facilities O&M Manager) of the Technical Provisions.

APM Fixed Facilities O&M Provider means the Contractor primarily responsible for operations and maintenance obligations of the APM Fixed Facilities.

APM Operating System means the Vehicles, running surfaces or track, switches, other guideway equipment, active graphics, any platform barrier doors, platform barrier walls, power distribution, central control and automated train control, communications, maintenance equipment, and all other equipment, which when integrated results in the operation of the Vehicles in conformance with the requirements of the Contract Documents, as described in Part 2B, Section 11 (APM Operating System) of the Technical Provisions.

APM Operating System Acceptance Plan means the plan described in Part 2C, Section 4.5 (APM Operating System Verification) of the Technical Provisions.

APM Operating System As-Built Record Documents has the meaning set forth in Part 2A, Section 27.4.1 (APM Operating System As-Built Documents) of the Technical Provisions.

APM Operating System Contract means the Contract that obligates the APM Operating System Supplier to design, build, operate and maintain the APM Operating System.

APM Operating System O&M Manager has the meaning set forth in Part 2A, Section 1.5.8 (APM Operating System O&M Manager) of the Technical Provisions.

APM Operating System O&M Provider means the Contractor that is primarily responsible for operations and maintenance of the APM Operating System.

APM Operating System Shutdown means the APM Operating System is not providing any service and such failure to provide service is not caused by a Relief Event or any of the exclusions identified in Part 2B, Section 11.3.6.2 (Service Mode Availability) of the Technical Provisions.

APM Operating System Supplier means the Contractor primarily responsible for designing and building the APM Operating System.

APM OS Availability means, for each Month of the O&M Period, the percentage availability of the APM Operating System determined in accordance with Part 2B, Section 11.3.6.2 (Service Mode Availability) of the Technical Provisions.

APM OS Unavailability Factor means the factor determined in accordance with Section 1 of Appendix A to Exhibit 4B (Availability Payment Mechanism) based on APM OS Availability.

APM System means the APM Operating System and the APM Fixed Facilities.

APM System Maintenance Plans means the plans prepared by Developer in accordance with Part 2C, Section 3.3 (APM System Maintenance Plan) of the Technical Provisions describing the Maintenance Work and maintenance procedures for the infrastructure, APM Fixed Facilities,

Fixed Equipment, Vehicles, APM System and other parts or portions of the Project within the O&M Limits.

APM System O&M Plan has the meaning set forth in Part 2C, Section 3 (APM System O&M Readiness) of the Technical Provisions.

APM System Operating Plan (SOP) has the meaning set forth in Part 2C, Section 3.2 (APM System Operating Plan) of the Technical Provisions.

APM System Operations Manuals means the manual included as an appendix to the Operating Plan, prepared by Developer in accordance with Part 2C, Section 3.2.3 (APM System Operations Manuals) of the Technical Provisions describing the operations procedures for the facilities and roadways within the D&C Limits.

APM System Punch List means an itemized list of D&C Work as agreed upon by Developer and LAWA which remains to be completed after the Passenger Service Availability Date with respect to the APM System as a condition to Final Completion, and which is limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety, use or operability of the Project.

Art Accommodation Allowance has the meaning set forth in Section 11.8.1.1(c).

Art Accommodation and Installation Work has the meaning set forth in Section 7.8.2.

As-Built Documents has the meaning set forth in Part 2A, Section 27.4 (As-Built Documents) of the Technical Provisions.

Asset Management Plan means the plan required under Part 2A, Section 10 (Asset Management) of the Technical Provisions.

Authority(ies) Having Jurisdiction means an organization, office or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure. The term "Authorities Having Jurisdiction" refers to more than one such organization, office or individual.

Authorized Representative means the authorized representative for either Party identified in Exhibit 3 (Initial Designation of Authorized Representatives) or otherwise designated in accordance with the Agreement.

Automated People Mover (APM) means a guided transit mode with fully automated operation, featuring Vehicles that operate on guideways with exclusive right-of-way.

Automatic Train Control has the meaning set forth in Part 2B, Section 11.3.9 (Automatic Train Control) of the Technical Provisions.

Automatic Train Operation (ATO) has the meaning set forth in Part 2B, Section 11.3.9.2 (Automatic Train Operation (ATO)) of the Technical Provisions.

Automatic Train Protection (ATP) has the meaning set forth in Part 2B, Section 11.3.9.1 (Automatic Train Protection (ATP)) of the Technical Provisions.

Automatic Train Supervision (ATS) has the meaning set forth in Part 2B, Section 11.3.9.3 (Automatic Train Supervision (ATS)) of the Technical Provisions.

Availability Payment means the payments to be made by LAWA to Developer under Section 11.2 (Availability Payments), determined on an annual basis in accordance with Exhibit 4B (Availability Payment Mechanism) and payable monthly.

Bank Debt means any debt financing, other than Bond Financing, provided by a bank or similar financial institution.

Bank Debt Pricing Date means with respect to any Bank Debt proposed in Developer's Financial Proposal, the earliest to occur of:

- (a) the date of Financial Close;
- (b) the date at which the Bank Debt is fixed or hedged by Developer; and
- (c) such other date as is mutually agreed to by Developer and LAWA.

Bank Debt Rate Protection Period means the period beginning at 3:00 p.m. Pacific Time on December 6, 2017 and ending on, with respect to any Bank Debt, the Bank Debt Pricing Date.

Base Capital MaxAP means, initially, [$\$$ _____] [*insert Bid Capital Maximum Availability Payment from Financial Proposal, as adjusted for: (a) any changes agreed by Parties as of the Effective Date and (b) interest rate and credit spread adjustments or other mitigation steps implemented prior to Financial Close pursuant to Section 3.4*], which is the Base Capital MaxAP reflected in the Financial Model for the first Operating Year, as amended from time to time in accordance with the Agreement.

Base Case Financial Model means the Financial Model as approved by the Parties as of the Effective Date.

Base Incremental Costs has the meaning set forth in Exhibit 13 (Base Incremental Costs and Permitted Markup).

Base Interest Rate means the publicly-documented interest rates of each maturity included in the following indices:

- (a) the LIBOR swap spot curve as provided by Bloomberg;
- (b) the U.S. Spot Treasury Yield Curve;
- (c) the Municipal Market Data (MMD) Benchmark, supplied by Thomson Reuters; and
- (d) the Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index (formerly known as the Bond Market Association (BMA) Municipal Swap Index).

The Base Interest Rates do not include any additional credit spread, margin or fee components.

Base MaxAP means, initially, [\$ _____] *[insert Bid MaxAP from Financial Proposal, as adjusted for: (a) any changes agreed by Parties as of the Effective Date and (b) interest rate and credit spread adjustments or other mitigation steps implemented prior to Financial Close pursuant to Section 3.4]*, which is the Base MaxAP for the first Operating Year, as amended from time to time in accordance with the Agreement and equal to the sum of the Base Capital MaxAP and the Base Operating MaxAP.

Base Operating MaxAP means, initially, [\$ _____] *[insert Bid Operating MaxAP from Financial Proposal, as adjusted for: (a) any changes agreed by Parties as of the Effective Date and (b) interest rate and credit spread adjustments or other mitigation steps implemented prior to Financial Close pursuant to Section 3.4]*, or the Base Operating MaxAP reflected in the Financial Model for the First Operating Year, as amended from time to time in accordance with the Agreement.

Baseline Credit Spreads means the set of credit spreads issued by LAWA that assumes different coupons for the range of maturities, ratings and types of Bond Financings that will serve as the basis for the Credit Spread Risk Mitigation.

Baseline Passenger Service Availability Date means the Passenger Service Availability Date identified in the Initial Project Schedule, which is _____ *[insert from Developer's Initial Project Schedule]*.

Baseline Schedule means the Initial Project Schedule prepared by Developer and approved by LAWA in accordance with Part 2A, Section 3.1.3 (Baseline Schedule) of the Technical Provisions to be used as the basis for development of the Project Schedule.

Basis of Design Report (BODR) means the report described in Part 2A, Section 5.10.2 (Basis of Design Report) of the Technical Provisions, concerning design methodology and approach for the D&C Work, key assumptions and operations and maintenance design methodology.

Benchmarking Date has the meaning set forth in Section 10.1.2.11(b).

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

Betterment means any upgrading of a Utility that is not attributable to the construction of the Project and is made during the course of a Utility Adjustment solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of the facility over that which was provided by the existing Utility; provided that if a Cooperation Agreement applies to a particular Utility then the definition in such agreement shall control. The following are not considered Betterments:

- (a) any upgrading required for accommodation of the Project,
- (b) any upgrading required under the Contract Documents;
- (c) replacement devices or materials that are of equivalent standards although not identical;

- (d) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (e) any upgrading required by applicable Law;
- (f) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); and
- (g) any upgrading required by the Utility Owner's applicable Utility Adjustment Standards.

Bond Financing means any debt financing comprising of bonds, which includes tax-exempt bonds issued by a Conduit Issuer or taxable capital market instruments.

Bond Pricing Date means with respect to any Bond Financing proposed in a Proposer's Financial Proposal, the earliest to occur of the (a) date of Financial Close, (b) the date at which any Bond Financing is priced, and (c) the date at which any Bond Financing is fixed or hedged.

Bond Rate Protection Period means the period beginning at 3:00 p.m. Pacific Time on December 6, 2017 and ending on, with respect to any Bond Financing, [_____] [*insert the date that is the Bond Pricing Date*].

Books and Records means any and all documents, books, records, papers, or other information of any Developer-Related Entity or Affiliate relating to the Project, including (a) all design and construction documents, and all operations and maintenance documents (including drawings, specifications, Submittals, Contracts, invoices, schedules, meeting minutes, budgets, forecasts and change orders), (b) all budgets, certificates, claims, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, vehicular traffic information, train operational information analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by Developer or its Contractors in connection with the Project, (c) the Base Case Financial Model, Financial Model, subsequent Financial Model Updates and Financial Modeling Data, and (d) with respect to all of the above, any information that is stored electronically or on computer-related media (in its original source and not converted to PDF or other format)". For purposes of the requirements of the Contract Documents to maintain Books and Records, the term "Books and Records" includes documents or information that are subject to the attorney-client privilege, but for purposes of requirements of the Contract Documents to provide access to Books and Records, the term specifically excludes documents or information that are subject to the attorney-client privilege and are identified in a privilege log as attorney-client privileged information.

Breakage Costs means any commercially reasonable prepayment premiums or penalties (including documented LIBOR breakage fees, customary and reasonable trustee, Collateral Agent and Lender fees but excluding any fees related to legal or other consulting costs), make-whole payments or other prepayment amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, payable by or on behalf of, or credited against payments owing to, Developer, under any Financing Agreement or Security Document or otherwise as a result of the payment (including pre-payment), redemption or

acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date (less any breakage benefits), excluding, however, any such amounts included in the principal amount of any Refinancing. The term "Breakage Costs" excludes any such premiums, penalties, payments or other amounts relating to Equity Member Debt.

Bridge means a structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening. For lengths, all dimensions shall be parallel to the center line of the roadway. The dimensions of handrails will not be taken into account in measuring bridge lengths.

Any bridge or highway grade separation structure includes the connecting highways, substructure, superstructure, roadway approaches, entrance plazas, interchanges, overpasses, underpasses, and other structures which LAWA may deem necessary together with all property rights, easements, franchises and interests acquired for the construction and operation of the bridge.

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

Business Opportunities has the meaning set forth in Section 22.2.1(b).

Caltrans means the California Department of Transportation.

CALM means LAWA's Coordination and Logistics Management program.

Capacity Improvement means any Project expansion, improvement, measure or procedure that both (a) maintains or increases the throughput capacity of the Project or any portion thereof and (b) improves the level of service of the Project. Capacity Improvements could include adding Stations, constructing bridges or other structures, new or improved intelligent transportation systems and applications, and making other improvements that achieve the foregoing conditions.

Car means an individual passenger-carrying unit.

Central Control Console (CCC) means the Central Control Operators' work station(s) within the Central Control Facility, consisting of displays and controls that permit all necessary interfaces with the APM Operating System.

Central Control Facility (CCF) means a building or rooms in which the Central Control Operators perform their tasks and duties and in which is located the System Schematic Display, the Power Schematic Display, the General System Display, the CCC, and related Automatic Train Control, communication, and control equipment.

Central Control Operator (CCO) means any operations staff member whose work area is the CCF and who uses Automatic Train Control equipment and other communication, control, operating audio, and/or visual equipment to interact with the APM Operating System to achieve

optimum APM System performance. CCO can refer to one or more such persons when describing actions or capabilities.

Central Terminal Area (CTA) means that portion of LAX west of Sepulveda Boulevard between the runways that contains terminals, concourses, parking facilities and access roadway systems.

Certificate of Compliance means a certificate, by an individual authorized to certify on behalf of Developer, indicating that all materials incorporated in the Project conform to the requirements of the Contract Documents.

Certificate of Final Completion means the certificate issued by the Independent Engineer as contemplated in Section 7.10.3 (Final Completion).

Certificate of Non-O&M Facility Final Acceptance means the certificate issued by LAWA as contemplated in Section 7.9.3 (Non-O&M Facility Final Acceptance).

Certificate of Non-O&M Facility Occupancy Readiness means the certificate issued by LAWA as contemplated in Section 7.9.2 (Non-O&M Facility Occupancy Readiness).

Certificate of Occupancy means a certificate issued by an Authority Having Jurisdiction, certifying that a Non-O&M Facility has met all applicable building code standards and requirements under the CBC.

Certificate of Passenger Service Availability means the certificate issued by the Independent Engineer as contemplated in Section 7.10.2 (Passenger Service Availability).

Change in Law means:

- (a) the adoption of any federal, State or local Law at any point after the Setting Date; and
- (b) any change in any federal, State or local Law or in the interpretation or application thereof by any federal, State or local Governmental Entity, as applicable, after the Setting Date,

in each case that is materially inconsistent with Laws in effect on the Setting Date; but excluding (i) any change in or new federal, State or local Law passed or adopted but not yet effective as of the Setting Date; (ii) any change in federal, State or local labor Laws on or prior to the Passenger Service Availability Date, except to the extent that such changes apply to the O&M Work; and (iii) any change in federal, State or local tax Laws of general application (it being understood that any change in federal, State or local tax Laws shall not be deemed of general application if it is solely directed at, and the effect of which is solely borne by, Developer or similar projects).

Change of Control means any Equity Transfer, transfer of an interest, direct or indirect, in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of

Developer or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of an Equity Member will constitute a Change of Control if such Equity Member possesses, immediately prior to such Change of Control, the power to direct or control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following events shall not constitute a Change of Control:

- (a) a change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;
- (b) an upstream reorganization or transfer of indirect interests in Developer so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;
- (c) a change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving a beneficial interest in a parent organization of an Equity Member if the references, experience or financial statements of the parent organization were not considered or evaluated in the Statement of Qualifications or Proposal, provided, however, that this exception shall not apply if at the time of the transaction the transferee is suspended or debarred from bidding, proposing or contracting with any federal, State or local department or agency, or is subject to a suspension or debarment proceeding;
- (d) an Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;
- (e) a transfer of interests between (i) managed funds that are under common ownership or control or (ii) the general partner, manager or the parent company of such general partner or manager and any managed funds under common ownership or control with such general partner or manager (or parent company of such general partner or manager); provided in all cases that the relevant funds and the general partner or manager of such funds (or the parent company of such general partner or manager) have been approved by LAWA in writing prior to the date of this Agreement;
- (f) the exercise of minority veto or voting rights (whether pursuant to applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are exercised pursuant to shareholder or similar agreements, LAWA received copies of such agreements on or before the Effective Date; and
- (g) the grant of Security Documents, including the Initial Security Documents, in strict compliance with Section 4 of the Direct Agreement or the exercise of Lender remedies thereunder, including foreclosure.

Change Order means a written order issued by LAWA directing Developer to make changes which the changes clause of the Agreement authorizes LAWA to order with or without Developer's consent, amending the Contract Documents by adding, deleting or modifying the documents to include price, time, work and conditions not previously addressed within the Contract Documents.

Change Proposal has the meaning set forth in Section 1.2.1 of Exhibit 9 (LAWA Change Procedures and Directive Letters).

City means the City of Los Angeles.

City Additional Insured(s) means any (and all) of the City, LAWA, its Board of Airport Commissioners and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

City Agreement has the meaning set forth in Exhibit 12A (Cooperation Agreements).

City Departments means the Los Angeles Department of City Planning, Los Angeles Department of Building and Safety, Los Angeles Fire Department, Los Angeles Department of Transportation, Los Angeles Bureau of Contract Administration, Los Angeles Bureau of Engineering, Los Angeles Bureau of Sanitation, Los Angeles Bureau of Street Lighting, Los Angeles Bureau of Street Services, and Los Angeles Department of Water and Power.

City Taskforce means the Construction Traffic Project Taskforce, City's taskforce on traffic management for LAWA's Landside Access Modernization Project.

Claim means, depending on the context: (a) a written demand submitted by Developer pursuant to the Contract Documents, which is or potentially could be disputed by LAWA, for a time extension, payment of money or damages or other relief from LAWA to Developer, and includes any Relief Event Claim, and/or (b) a written demand submitted by LAWA pursuant to the Contract Documents, which is or potentially could be disputed by Developer, for payment of money or damages by Developer to LAWA.

Closure means that all or a portion of the APM System is closed or that use thereof by passengers is otherwise restricted for any reason, during the O&M Period.

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

Commercially Reasonable Insurance Rates means insurance premiums that are less than or equal to the greater of (a) rates that a reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude are justified by the risk protection afforded, and (b) 200% of the rates indicated for the period in question in the Base Case Financial Model and related Financial Modeling Data.

Committed Investment means Equity Investments and Deferred Equity Amounts.

Compensation Amount means the amount of compensation to be paid to Developer, if any, under a Change Order, which may include Incremental Costs and/or Delayed Payment Compensation, as agreed upon or determined through the Dispute Resolution Procedures.

Compensation Event means any of the following events to the extent that the event materially and adversely affects performance of Developer's obligations under the Contract Documents, subject to the limitations and requirements set forth in this Agreement for such events, but excluding any event to the extent caused by the negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity:

- (a) LAWA-Caused Event;
- (b) discovery of paleontological, cultural, archaeological or historical resources within or under the D&C Limits (excluding Additional Properties and Temporary Areas);
- (c) discovery of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Setting Date) within or under the D&C Limits (excluding Additional Properties and Temporary Areas);
- (d) Release of Hazardous Materials by a Person other than a Developer-Related Entity that (i) renders use of the Project unsafe or potentially unsafe absent assessment, containment and/or remediation or (ii) are required by applicable Law to be recycled, treated or stored;
- (e) provided Developer conducted an investigation of site conditions at the applicable portion of the Site in accordance with Section 14.1.6.2 (Reduced Relief for Delay in Investigating Site Conditions), discovery of Pre-Existing Hazardous Materials within the D&C Limits that (i) render use of the Project unsafe or potentially unsafe absent assessment, containment and/or remediation or (ii) are required by applicable Law to be recycled, treated or stored, but excluding from the foregoing any Known Hazardous Materials and any Hazardous Materials within Additional Properties and Temporary Areas;
- (f) provided Developer conducted an investigation of site conditions at the applicable portion of the Site in accordance with Section 14.1.6.2 (Reduced Relief for Delay in Investigating Site Conditions), discovery of any underground Utility (excluding Service Lines) within the D&C Limits (i) not identified in the Utility Information and which could not have been reasonably inferred as of the Setting Date from the presence of other facilities, such as buildings, meters, junction boxes, manholes or identifying markers, visible during a surface inspection of the Site; or (ii) misidentified in the Utility Information outside of the baseline tolerance of the applicable Quality Level; any Utility identified as Quality Level D in the Utility Information shall not be deemed to be misidentified under this clause (f)), but excluding from the foregoing any Utilities within Additional Properties or Temporary Areas);

- (g) discovery of geotechnical conditions:
 - (i) within the D&C Limits (but excluding Additional Properties and Temporary Areas) of an unusual nature and differing materially from those ordinarily encountered on, and generally recognized as inherent in, work of the character provided for in the Agreement; or
 - (ii) located at the boring holes identified in the Geotechnical Data Report and differ materially from the conditions indicated at such boring holes in the Geotechnical Data Report.
- (h) Earthquake or tidal wave that causes physical damage to the Project;
- (i) Terrorism;
- (j) Qualifying Change in Law;
- (k) issuance of a temporary restraining order, injunction or other form of legal order by a court that prohibits or has the effect or prohibiting prosecution of any portion of the Work;
- (l) during the O&M Period, permanent and planned power network change in voltage by the Utility Owner supplying electricity to the APM System that has a material adverse effect on operations;
- (m) California governor-declared emergency;
- (n) issuance of a rule, order or directive from the U.S. Department of Homeland Security or any Governmental Entity regarding specific security threats to the Project or LAX, to the extent compliance with such rule, order or direction requires specific changes in Developer's normal design, construction, operation or maintenance procedures;
- (o) interruptions or suspensions required by Airport Police, emergency response personnel or other public officials;
- (p) discovery of latent defects in (i) the ConRAC building; (ii) the Terminal Vertical Cores; or (iii) the columns constructed by LA Metro between the Southwest Yard Track and the Crenshaw Mainline Track;
- (q) issuance by LAWA of a Safety Compliance Order;
- (r) a Delay to a Utility Adjustment caused by a Utility Owner's failure to complete a task for which the Utility Owner is responsible within the required time period, in each case as specified in Table 25.1 (Utility Matrix) of Part 2A of the Technical Provisions, provided that such time period shall commence upon Developer's submission to the Utility Owner of a complete and adequate request for completion of that task, including applicable submittals if any, that meet applicable quality requirements, and provided Developer has complied with the requirements of Section 7.6.7.1;

- (s) a Delay in obtaining a Governmental Approval required from Caltrans, AQMD or the County of Los Angeles beyond 120 days following Developer's submission to the relevant Governmental Entity of a complete and sufficient application for the approval that meets applicable quality requirements;
- (t) breach by City or LA Metro of its respective Cooperation Agreement, except for breaches covered by clause (r) of the definition of Compensation Event;
- (u) breach by the ITF W Party, the ConRAC Party, the TVC Party, the PARCS Party, or the Cellular Telecommunications System Party of its respective interface obligations as set forth in Exhibit 10 (Interface Obligations);
- (v) Logistics Delay Days; and
- (w) a change to the Project required in order to obtain the FAA's approval based on FAA's environmental review of the Project in accordance with NEPA.

Concurrent Projects means any projects occurring in the vicinity of the Project during the Term, including the projects listed in Part 2A, Section 21.3 (Concurrent Projects) of the Technical Provisions.

Conduit Issuer means an existing agency that will issue Private Activity Bonds in connection with the Project.

Construction Cost Index (CCI) means the "Construction Cost Index" for Los Angeles, as published by Engineering News-Record. If the CCI is discontinued or substantially altered, a suitable replacement will be determined by the Parties in accordance with general market practice at the time.

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

Construction Manager means the Key Person described in Part 2A, Section 1.5.6 (Construction Manager) of the Technical Provisions.

Construction Security Plan shall have the meaning set forth in Part 2A, Section 14.3 (Construction Security Plan) of the Technical Provisions.

Construction Work means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver, landscape, equip, test and commission or demolish any structure, building, or other improvement to real property included in the Project (including the APM Fixed Facilities and Fixed Equipment), but excluding:

- (a) Design Work, professional environmental services and similar services;
- (b) preparing and processing applications for Governmental Approvals;
- (c) coordinating with adjacent property owners and Utility Owners; and

- (d) manufacturing and supply of Vehicles (provided that Construction Work includes testing and commissioning of Vehicles at the Site (excluding Temporary Areas)).

Consumer Price Index (CPI) means the “Consumer Price Index – Los Angeles-Riverside-Orange County for all Urban Consumers, All Items” (not seasonally adjusted), Series ID: CUURA421SA0, CUUSA421SA0 as published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the CPI is changed so that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury’s Inflation-Linked Treasuries as described at 62 Federal Register 846-847 (January 6, 1997), or if no such securities are outstanding, will be determined by the Parties in accordance with general market practice at the time.

Contract means any agreement, and any modification of such agreement, by Developer with any Person to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term “Contract” does not include agreements with Utility Owners.

Contract Data Requirements List (CDRL) means the Contract Data Requirements List, as described in Part 2C, Attachment B (Preliminary APM Operating System Compliance Verification Matrix) of the Technical Provisions, that Developer is required to submit during the D&C Period.

Contract Deadline means either the Passenger Service Availability Deadline or Long Stop Date. The term “Contract Deadlines” means more than one Contract Deadline.

Contract Documents means the Agreement, the Technical Provisions and other documents identified in Section 1.2 (Contract Documents; Rules to Reconcile Conflicting Provisions).

Contract Drawings means the drawings included in Part 5 (Contract Drawings/Engineering Data) of the Technical Provisions.

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

Contractor Responsibility Program means LAWA’s Contractor Responsibility Program set forth in Resolution No. 21601 adopted by the Board of Airport Commissioners and available at http://www.lawa.org/welcome_LAWA.aspx?id=600.

Controlling Affiliate means any Person which directly, or indirectly through one or more intermediaries, controls a majority of the voting shares of Developer, or controls the election of a majority of the board of directors, trustees or other persons exercising similar functions for Developer. For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

Cooperation Agreements means the LACMTA Agreement and City Agreement included at Exhibit 12 (Additional Project Requirements).

Corridor means the right of way and adjoining roadways, sidewalks and landscaped areas physically modified by the Project.

Cost and Pricing Data means the data (including calculations, formulas, unit and material prices, and other cost and fee information) assembled by Developer and delivered as specified in the ITP and Section 4.8 (Escrow of Financial Model and Cost and Pricing Data), which data supports and explains the basis of Developer's cost estimates for development, design, construction, operations, and maintenance of the Project and provides all cost assumptions for human resources, including salary and benefits during the O&M Period for non-management personnel performing the Work.

Cost to Complete means (without double-counting):

- (a) those costs (internal and external) that LAWA reasonably and properly projects that it will incur in carrying out any process to request tenders from any parties interested in entering into a contract with LAWA to achieve Final Completion, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; plus
- (b) costs that LAWA reasonably and properly projects that it will incur in achieving Final Completion; plus
- (c) any other Losses that, but for the termination of the Agreement, LAWA would not have incurred prior to Final Completion; minus
- (d) any insurance proceeds available to LAWA for the purposes of achieving Final Completion.

Credit Spread Risk Mitigation has the meaning set forth in Section 3.2.3.2.

Critical Day means, for each year during the Term:

- (a) a day that falls within the time period beginning on, and including:
 - (i) the Friday before Memorial Day (the last Monday of May) through the Tuesday after Memorial Day;
 - (ii) the Friday before Thanksgiving Day (the fourth Thursday of November) through the Monday after Thanksgiving Day (excluding Thanksgiving Day and the day after Thanksgiving Day); and
 - (iii) the Sunday before Christmas Day (December 25th) through January 3rd of the following year; and
- (b) an additional five days per year determined by LAWA in its sole discretion and communicated to Developer at least 30 days prior to the applicable date.

Critical Path means each path shown on the Project Schedule for which there is zero Float.

Critical Path Method (CPM) is a method of planning and scheduling a construction project where activities are arranged based on activity relationships.

Crush Load (AW2) has the meaning set forth in Part 2B, Section 11.3.7.2 (Vehicle Space and Weight Allocations) of the Technical Provisions.

Culvert means any structure not classified as a bridge which provides an opening under any roadway.

D&C Contract Amount means [\$ _____] *[insert Total Project Cost from Developer's Design and Construction Schedule of Values]*.

D&C Limits means the lines delineating the Project ROW boundaries in Part 5 (Contract Drawings/Engineering Data) of the Technical Provisions, as such boundaries may be modified from time to time in accordance with the Contract Documents.

D&C Percentage means the value of the Design Work and Construction Work completed at a given point in time divided by the value of the total Design Work and Construction Work required to be completed to achieve Final Completion.

D&C Period means that portion of the Term that commences on the Effective Date and ends at 11:59 p.m. on the day immediately preceding the Passenger Service Availability Date.

D&C Period Noncompliance Deduction means a deduction from a Milestone Payment made in accordance with Section 2 of Exhibit 4A (Milestone Payment Mechanism).

D&C Work means all Work to be performed to achieve Final Completion, including Design Work and Construction Work.

D&C Work Value means an amount equal to the D&C Contract Amount minus the Cost to Complete and minus the amount of any Milestone Payments paid to Developer prior to the Early Termination Date.

Daily Report means the daily report prepared by Developer during the O&M Period regarding prior day(s) service delivery, Vehicles, systems, Station performance and other operations activities.

Data Flow Diagram means the interconnections for each of the functions that a system element must perform, including all inputs & outputs, and the characteristics of each path shown.

Day means calendar day, unless otherwise expressly specified.

Deduction means a Noncompliance Deduction or an Unavailability Deduction.

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

- (a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users;
- (b) a structural deterioration of the affected element or any other part of the Project;
- (c) damage to a Third Party's property or equipment;
- (d) damage to the Environment; and
- (e) failure of the affected element to meet the requirements of the Contract Documents.

Deferred Equity Amounts means, on any date, any amount of unfunded cash equity that has been committed to Developer (including commitments to provide an Equity Investment or Equity Member Debt) and is shown to be available for use in the Financial Model prior to the Final Completion Date, but only to the extent that the commitment to provide such amount is supported by an irrevocable on-demand letter of credit issued by an Eligible LC Issuer naming Developer and/or the Collateral Agent as beneficiary and guaranteeing the provision of the committed amount by a date which is not later than the Final Completion Date.

Delay means any unanticipated event, action, force or factor during the performance of the D&C Work that extends Developer's time of performance of any activity or work item on the Critical Path of the D&C Work beyond the applicable Contract Deadline after consumption of Float. The term "Delay" is intended to cover all such events, actions, forces or factors, whether styled "delay", "disruption", "interference", "impedance", "hindrance", or otherwise, which are beyond the control of and not caused by any Developer-Related Entity. The term "Delay" does not include "Extra Work."

Delay Costs means the direct cost of actual idle labor and equipment, extended overhead, unabsorbed home office overhead, additional storage costs, and labor and material cost escalation. Delay Costs do not include Delayed Payment Compensation.

Delayed Financial Close Date has the meaning set forth in Section 3.4.2(a).

Delayed Payment Compensation has the meaning set forth in Section 14.1.5(g).

Design Audit means the formal process whereby Developer submits required information to LAWA for review and, if appropriate, acceptance, as required prior to initiating detailed subsystem and equipment design and engineering, as set forth in Part 2C, Section 4.2 (Design Audits) of the Technical Provisions.

Design Capacity means the passenger capacity of a Vehicle, calculated as set forth in Part 2B, Section 11.3.7.3 (Vehicle Capacity) of the Technical Provisions.

Design Certification has the meaning set forth in Part 2A, Section 6.2.2 (Submittal Certification) of the Technical Provisions.

Design Construction Integration Documents (D/CID) has the meaning set forth in Part 2B, Section 11.3.17.1.3 (Design/Construction Integration Document) of the Technical Provisions.

Design Documents means those documents that manifest the design for the Project, at all stages, as developed by Developer or any portion, component or element thereof, including design required in connection with the operation and maintenance of the Project and Renewal Work, in each case regardless of whether such documents are required by the Contract Documents or are prepared or used by Developer in the Design Work. Design Documents include the Final Design Documents.

Design Exception means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and Submittals necessary for, or related to, the design of an element to design criteria that do not meet minimum values or ranges established for that element by applicable design guidelines and the requirements in the Contract Documents.

Design Manager has the meaning set forth in Part 2A, Section 1.5.4 (Design Manager) of the Technical Provisions.

Design Weight or Design Load (AW1) has the meaning set forth in Part 2B, Section 11.3.7.2 (Vehicle Space and Weight Allocations) of the Technical Provisions.

Design Work means all Work related to the design, engineering, architecture and other professional services for the Project, including all such Work relating to the APM Operating System.

Developer means [____], a [____] organized under the laws of [____], and its permitted successors and assigns.

Developer Change Request has the meaning set forth in Section 12.2.1.

Developer Default has the meaning set forth in Section 16.1.1 (Developer Default).

Developer Employee and Contractor Breakage Costs means:

- (a) the payment of all wages earned, accrued unused vacation time, and any other payments required to be made by Developer to its employees under law, or under the terms and conditions of Developer's employment agreements with its employees as a direct result of the termination of the Agreement; and
- (b) Losses that have been or will be reasonably and properly incurred by Developer under a Key Contract as a direct result of the termination of the Agreement (and which shall not include lost profit or lost opportunity), but only to the extent that:
 - (i) the Losses are incurred in connection with the Project and with respect to the Work required to be provided or carried out, including:
 - (1) any materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred;

- (2) any expenditure incurred in anticipation of the provision of services or the completion of Work in the future; and
 - (3) the cost of demobilization including the cost of any relocation of equipment used in connection with the Project;
- (ii) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm's length basis; and
- (c) Developer and the relevant Key Contractor have each used their reasonable efforts to mitigate such Losses

Developer Intellectual Property means Intellectual Property developed by Developer or its Affiliates or Contractors either (a) prior to the Effective Date, (b) independently of the Contract Documents or (c) any Intellectual Property that is authored, created, invented and/or put into practice under and/or for the purposes of the Project, is an improvement, continuation or adaptation of Intellectual Property subject to (a) and (b) herein, and is incorporated into the Proposal, Project, or Work including Technology Enhancements.

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

Developer Release means, with respect to Hazardous Materials, (a) any Release of Hazardous Material, or the exacerbation of any such Release, attributable to the culpable actions, culpable omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity; (b) any Release of Hazardous Materials arranged to be brought onto the Site by any Developer-Related Entity; regardless of cause, (c) any migration of Hazardous Materials into, onto, under or from the D&C Limits where the source of such Hazardous Materials is a Developer-Related Entity; or (d) any use, containment, storage, management, handling, transport or disposal of any Hazardous Materials, by any Developer-Related Entity in violation of the requirements of the Contract Documents, Good Industry Practice or any applicable Law or Governmental Approval.

Developer's Construction Quality Plan (DCQP) means the deliverable described in Part 2A, Section 4.3 (General Requirements for Developer's Construction Quality Plan) of the Technical Provisions, following approval thereof by LAWA.

Developer's Design Quality Plan (DDQP) means the deliverable described in Part 2A, Section 4.2 (General Requirements for Developer's Design Quality Plan (DDQP)) of the Technical Provisions, following approval by LAWA.

Developer's Interest means all right, title and interest of Developer in, to, under or derived from the Contract Documents.

Developer's Quality Program means the set of LAWA-approved plans, procedures, processes and systems for Quality Assurance, management and control of the Project and Work, compliant with the requirements of ISO 9001, prepared, implemented, operated and maintained

by Developer, and applicable to Developer and its Contractors. There shall only be one Quality Program for Developer and its Contractors.

Deviation(s) has the meaning set forth in Section 12.4.1.

Direct Agreement means the agreement substantially in the form of Exhibit 5B (Form of Direct Agreement), by and among LAWA, Developer and the Lender (or if there is more than one Lender, the Collateral Agent on behalf of the Lenders) respecting certain of Lenders' rights under the Contract Documents.

Directive Letter means a letter, issued at any time, by LAWA to Developer (a) regarding any matter for which a Change Order can be issued or (b) obligating Developer proceed immediately as directed in the letter in connection with any Dispute regarding the scope of the Work or Developer's compliance with the requirements of the Contract Documents, in either case.

Disadvantaged Worker means an individual whose primary place of residence is within the City of Los Angeles and who, prior to commencing Work: (a) has a household income of less than 50% of the Area Median Income; (b) faces at least one of the following barriers to employment: being homeless; receiving public assistance; lacking a GED or high school diploma; having a history of involvement with the justice system; being a single parent; or (c) suffers from chronic unemployment or underemployment.

Dispute means any dispute, disagreement or controversy between LAWA and Developer concerning (a) their respective rights and obligations under the Contract Documents, including concerning any Claim, alleged breach or failure to perform and remedies; and (b) actions taken by LAWA as a party to the Cooperation Agreements to the extent that such actions affect Developer's performance of Developer's obligations under the Contract Documents.

Dispute Resolution Procedures means the procedures for resolving Disputes set forth in Article 18 (Dispute Resolution Procedures).

Dispute Submittal has the meaning set forth in Section 18.4.2.

Distributions means any of the following, whether in cash or in kind, and whether made or projected to be made:

- (a) Any:
 - (i) Dividend or other distribution in respect to share or other capital;
 - (ii) Payments or other distributions in reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;
 - (iii) Payments (whether of principal, interest or otherwise) on Equity Member Debt;
 - (iv) Payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it is neither in the ordinary course of business nor on reasonable commercial terms; and

- (v) Receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms, or
- (b) The value to Equity Members realized through the extinguishment of Deferred Equity Amounts as a result of a Refinancing, the extinguished Deferred Equity Amount being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

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

Downtime Event means a Mode Downtime Event or an APM Operating System Shutdown.

Duty Cycle means the normal train operations throughout a typical day as generally defined in Part 2B, Sections 11.3.3.1 and 11.3.3.2.1 of the Technical Provisions. For a train, the Duty Cycle includes the design profile for the propulsion and braking subsystems consisting of starts, stops, dwells, grades, loads, and speeds. Also applies in general to other subsystems, such as power distribution, facilities and their components and items of equipment.

Dwell Time means the period of time commencing when a Train has come to a complete stop in a Station and ending the moment the Train begins to move to depart from the Station.

Early Termination Date means the effective date of termination of the Agreement prior to the stated expiration of the Term set forth in Section 2.3 (Term).

Early Works has the meaning set forth in the Early Works Agreement.

Early Works Agreement means the agreement, substantially in the form of Appendix G (Form of Early Works Agreement) to the ITP, entered into by City and Developer with respect to the performance of certain Work by Developer following selection of Developer as the Lowest Ultimate Cost Proposer and prior to Financial Close.

Earthquake means all land movement due to seismic activity, including shocks, tremors, volcanic action, tsunami and earth rising or shifting, including any aftershocks or other Earthquakes for a period of 168 hours after the initial event, which proximately causes damage to the physical improvements of the Project or interrupts the Work.

Effective Date means the date of execution and delivery of the Agreement by both LAWA and Developer.

Electricity Rate Risk Share (ERRS) means the electricity rate risk share amount calculated pursuant to Appendix C to Exhibit 4B (Availability Payment Mechanism).

Electromagnetic Interference (EMI) has the meaning set forth in Part 2B, Section 11.3.4.2 (Electromagnetic Compatibility) of the Technical Provisions.

Eligible Investments has the meaning set forth in Section 8.7.2.5.

Eligible LC Issuer means a financial institution with long term unsecured debt ratings of at least the following, from at least two of the listed major rating agencies: (a) A- by Standard & Poor's Ratings Services; (b) A3 by Moody's Investor Service, Inc.; or (c) A- by Fitch Ratings.

Eligible Surety(ies) means a surety or insurance company, as applicable, meeting the requirements of applicable Law, licensed or authorized to do business in the State and rated at least “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “VIII” or better according to A.M. Best’s Financial Size Rating.

Emergency means any unplanned event within the Site that (a) causes or has the potential to cause disruption to movement of Vehicles; (b) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property immediately adjacent to the Project or to the safety of Users or the traveling public, (c) is recognized or declared to be an emergency by the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

Emergency Response means the action taken by Developer, as described in the O&M Plan, to respond to an Emergency within the O&M Limits.

Emergency Services means law enforcement, fire service, ambulance service and other similar services from agencies with which Developer establishes protocols for Incident or Emergency response, safety and security procedures, which protocols are to be provided in the Incident Management Plan in accordance with Part 2A, Section 16.2 (Transportation Management Plan) of the Technical Provisions.

Empty Weight or Empty Load (AWO) has the meaning set forth in Part 2B, Section 11.3.7.2 (Vehicle Space and Weight Allocations) of the Technical Provisions.

Enabling Projects means the projects listed in Part 2A, Section 21.1 (Enabling Projects) of the Technical Provisions.

Engineer of Record (EOR) has the meaning set forth in Part 2A, Section 1.5.2 (Engineer(s) of Record) of the Technical Provisions.

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

Environmental and Hazardous Material Response Plan has the meaning set forth in Part 2A, Section 13.4.4 (Environmental and Hazardous Material Response Plan) of the Technical Provisions.

Environmental Approvals means all Governmental Approvals arising from or required by any Environmental Law in connection with the Project.

Environmental Compliance Plan has the meaning set forth in Part 2A, Section 7.3 (Developer’s Environmental Compliance Plan) of the Technical Provisions.

Environmental Law(s) means (a) any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the Environment, Hazardous Materials, contamination of any type whatsoever, or health and safety matters, and (b) any requirements and standards that pertain to the protection of the Environment, or to the management or Release of Hazardous Materials, contamination of any type whatsoever, or health and safety

matters with respect to Hazardous Materials, set forth in any agreements, permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as each of the foregoing have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof), including those relating to:

- (a) the manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation and transportation of Hazardous Materials;
- (b) air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) releases of Hazardous Materials;
- (d) protection of wildlife, endangered, threatened, and sensitive species, wetlands, water courses and water bodies, paleontological, cultural, archaeological and historical resources and natural resources;
- (e) the operation and closure of underground or aboveground storage tanks;
- (f) health and safety of employees and other persons with respect to Hazardous Materials; and
- (g) notification, documentation and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following (each as may be amended from time to time):

- i. the National Environmental Policy Act (42 U.S.C. § 4321 et seq.);
- ii. the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) and associated Superfund Amendments and Reauthorization Act (42 U.S.C. § 9601 et seq.);
- iii. the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.);
- iv. the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 11001 et seq.);
- v. the Clean Air Act (42 U.S.C. § 7401 et seq.);
- vi. the Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. § 1251 et seq.);
- vii. the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.);
- viii. the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. § 6924 et seq.);
- ix. the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.);

- x. the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.);
- xi. section 404 of the Clean Water Act (33 U.S.C. § 1344);
- xii. the Oil Pollution Act (33 U.S.C. § 2701 et. seq.);
- xiii. the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.);
- xiv. the Federal Safe Drinking Water Act (42 U.S.C. § 300 et seq.);
- xv. the Federal Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 et seq.);
- xvi. the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.);
- xvii. the Endangered Species Act (16 U.S.C. § 1531 et seq.);
- xviii. the Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.);
- xix. the California Environmental Quality Act (§ 21000 et seq. of the California Public Resources Code);
- xx. the California Clean Air Act of 1988 (§ 39000 et seq. of the California Health and Safety Code);
- xxi. the California Occupational Safety and Health Act of 1973 (§ 6300 et seq. of the California Labor Code);
- xxii. the Porter-Cologne Water Quality Act (§ 13000 et seq. of the California Water Code);
- xxiii. the Integrated Waste Management Act of 1989 (§ 40000 et seq. of the California Public Resources Code);
- xxiv. the Safe Drinking Water and Toxic Enforcement Act of 1986 (§ 25249.5 et seq. of the California Health and Safety Code);
- xxv. Hazardous Waste Control (§ 25100 et seq. of the California Health and Safety Code); and
- xxvi. Fish and Wildlife Protection and Conservation (§ 1600 et seq. of the California Fish and Game Code).

Environmental Protection Program means the overarching system by which Developer shall ensure that commitments made during the environmental approval and permitting processes, and other environmental requirements, be carried forward and reflected, as appropriate, in the design and implemented throughout the Work, as defined in Part 2A, Section 7.3 (Developer's Environmental Compliance Plan) of the Technical Provisions.

Equity Investment(s) means (a) any form of direct cash investment by Equity Members, including the purchase of newly issued equity shares in Developer and/or subordinated loans to Developer, and (b) any cash draws by or on behalf of Developer under the letter(s) of credit described in the definition of Deferred Equity Amount.

Equity IRR means the nominal post-tax internal rate of return to the Committed Investment over the full Term calculated, using the Financial Model, at the discount rate that, when applied to Committed Investment cash flows, gives a zero net present value. Equity IRR is initially equal to the Original Equity IRR and can change when and if the Financial Model is updated pursuant to Section 4.7.2 (Updates to the Financial Model) of the Agreement. For purposes of this definition:

- (a) The phrase “post-tax” refers to a single level of U.S. federal, state and local corporate income tax for regularly taxed U.S. organized, domestic “C” corporations only, and excludes any foreign income tax and other tax of any kind; and
- (b) The phrase “cash flows” refers to Distributions minus Equity Investments.

Equity Member(s) means any Person that holds a direct ownership interest (legal and beneficial) in Developer either based on Committed Investments or as a result of an Equity Transfer.

Equity Member(s) Debt means bona fide indebtedness for funds borrowed that: (a) is held by any Equity Member and (b) is subordinated in priority of payment and security to all Project Debt held by Persons who are not Equity Members.

Equity Members Funding Agreement means any loan agreement, credit agreement or other similar financing agreement or subordination agreement providing for or evidencing Equity Member Debt.

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

Escalated Benchmark Insurance Premiums has the meaning set forth in Section 10.1.2.11(d)(ii).

Exempt Refinancing means:

- (a) Any Refinancing that was fully and specifically identified and taken into account in the Base Case Financial Model;
- (b) Any of the following, provided that Developer does not receive a direct or indirect financial benefit therefrom, individually or in the aggregate:
 - (i) Amendments, modifications, supplements or consents to Financing Agreements and Security Documents, and
 - (ii) the exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision;
- (c) Movement of monies between the Project accounts in accordance with the terms of Financing Agreements and Security Documents;

- (d) Any of the following acts by a Lender of senior lien priority Project Debt: (i) the syndication of any of such Lender's rights and interests in the senior Financing Agreements; (ii) the grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, with respect to the senior Financing Agreements in favor of any other Lender of senior lien Project Debt or any other investor; or (iii) the grant by such Lender of any other form of benefit or interest in either the senior Financing Agreements or the revenues or assets of Developer, whether by way of security or otherwise, in favor of any other Lender of senior lien Project Debt or any investor; and
- (e) Periodic resetting and remarketing of tax-exempt or taxable bonds that bear interest at a variable or floating rate and are money market eligible under SEC Rule 2a-7.

Expected Financial Close Date means June 11, 2018.

Extended Delay Event(s) has the meaning set forth in Section 17.2.1.

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

Fail-Safe means a characteristic of an APM Operating System or its elements has intrinsically safe failure characteristics or whereby any failure or malfunction affecting safety will cause the APM Operating System to revert to a state that is known to be safe, as described in Part 2B, Section 11.3.5.1.1 (Safety Principles and Automatic Train Control System Fail-Safe Design) of the Technical Provisions.

Final Completion means that all D&C Work is complete and all other prerequisites for Final Completion have been met. Final Completion is deemed to have occurred upon satisfaction of all the conditions in Section 7.10.3 (Final Completion), as confirmed by the Independent Engineer's issuance of a certificate in accordance with the procedures and within the time frame established in Sections 7.10.3.3 and 7.10.3.4.

Final Completion Date means the date that Final Completion is achieved.

Final Design means the general design stage, consistent of all elements, collections of elements, or areas of the Project at 100% design completion, as more fully set forth in Part 2A, Section 5 (Design) of the Technical Provisions, and depending on the context: the term "Final Design" may refer to (a) the Final Design Documents, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents.

Final Design Audit (FDA) has the meaning set forth in Part 2C, Section 4.2.2 (Types of Design Audits) of the Technical Provisions.

Final Design Documents means the complete final construction plans (including plan sheets, specifications, technical memoranda, reports, studies, calculations, drawings, elevations, sections, details and diagrams) and specifications needed for performance of Construction Work, which includes all Submittals specified as required to be part of the Final Design or Final Design Documents under the Technical Provisions.

Final Environmental Impact Report (FEIR) means the Final Environmental Impact Report, dated February 2017 and available at <http://www.connectinglax.com/informed.html>.

Final Subcontracting Report has the meaning set forth in LAWA's Small Business Enterprise Program.

Financial Close means satisfaction by Developer of (a) all conditions precedent to the effectiveness of commitments of the Lenders under the Financing Documents; and (b) the conditions set forth in Section 3.2.4.1.

Financial Close Date means the date on which Financial Close occurs.

Financial Close Deadline means June 18, 2018.

Financial Close Security means the bond or letter of credit in the amount of \$20 million provided by Developer to LAWA as a condition precedent to execution and delivery of the Agreement by both LAWA and Developer as provided in Section 5.9 (Financial Close Security) of the ITP.

Financial Model means the Microsoft Excel-based financial model that includes financial forecasts, projections and calculations with respect to revenues, expenses, the repayment of Project Debt and Distributions to Equity Members that result in achievement of the Equity IRR.

Financial Model Update(s) has the meaning set forth in Section 4.7.2.1.

Financial Modeling Data means all books, documents and back-up information setting forth all assumptions, calculations and methodology used in the preparation of the Financial Model and any other documentation necessary or reasonably requested by LAWA to operate the Financial Model, including:

- (a) the logical layout and structure of the Financial Model, including the names of all worksheets and a description of the color coding and/or labeling scheme(s);
- (b) an assumptions book, fully describing all assumptions and their sources underlying the estimates, projections and calculations in the Financial Model, revisions to the Base Case Financial Model in accordance with Sections 3.2.4 and 3.3.1, and updates to such assumptions book related to Financial Model Updates;
- (c) a detailed description of the function and intended use of all macros (each of which must be logically structured and well documented with comments included within the programming code);
- (d) the step-by-step instructions on the procedure to run and to optimize the Financial Model submitted with the Proposal and each Financial Model Update, such that LAWA will be able to read, use and modify the data contained therein, operate the Financial Model and conduct detailed sensitivity analyses; and
- (e) all other supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge, fee and

revenue information used by Developer in the creation and derivation of its Proposal or of any Financial Model Update.

Financial Proposal means Developer's plan for financing the Project as set forth in the Proposal.

Financial Proposal Due Date means the date on which Developer submitted its Financial Proposal in accordance with the ITP.

Financing Agreement means:

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

Financing Costs has the meaning set forth in Section 14.1.5(h).

Financing Documents means Financing Agreements and Security Documents.

Fire Management Panel (FMP) means the local premises fire command center at the local station/building level, complying with the intent of NFPA 72, National Fire Alarm and Signaling Code, and NFPA 130 for fire alarm annunciator panel. The FMP is also the same device referred to by the International Building Code (IBC) and International Fire Code (IFC) as the fire fighter control panel. The term FMP is sometimes also referred to by transit agencies as the emergency management panel (EMP).

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

Fixed Equipment means all equipment and other components of the APM System that are affixed to real property within the D&C Limits.

Fleet means the rolling stock of Vehicles.

Fleet Size means the total number of Vehicles to be provided under the Agreement, as described in Part 2B, Section 11.3.3.1.6 (Fleet Size, Train Length and Spare Vehicles) of the Technical Provisions.

Float means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect Developer's ability to achieve Passenger Service Availability by the Passenger Service Availability Deadline. Float

is generally identified on the Project Schedule as the difference between the early completion times and late completion times for activities. The term includes float contained within an activity as well as any period containing an artificial activity (that is, an activity that is not encompassed within the meaning of the definition of D&C Work).

Force Majeure Event means the occurrence of:

- (a) war, civil war, invasion, blockade, embargo or violent act of foreign enemy or armed conflict, except Terrorism;
- (b) any strike, lockout, work slowdown or other dispute generally affecting the construction, transit facility maintenance or transit facility operations industry in the State, but excluding any strike, lockout, work slowdown or similar dispute specific to the Project, Developer or any Contractor; or
- (c) nuclear, chemical or biological contamination unless the source or cause is caused by a Developer-Related Entity.

Garage Vertical Cores means that portion of a garage dedicated to the vertical transportation of pedestrians between the garage floors and the Pedestrian Walkway.

General System Display (GSD) has the meaning set forth in Part 2B, Section 11.3.9.3.2.3 (General System Display) of the Technical Provisions.

Geotechnical Data Report (GDR) means the reports entitled Geotechnical Data Report, Geotechnical Data Report – Appendices and Geotechnical Data Report – Supplemental Geotechnical Investigation containing the results of field exploration and laboratory testing performed for the Project set forth in Part 5 (Contract Drawings/Engineering Data) of the Technical Provisions.

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced designer, engineer, constructor, APM Operating System Supplier, other supplier, operator or maintenance provider, as applicable, operating in the United States under the same or similar circumstances and conditions, seeking in good faith to comply with its contractual obligations, the Contract Documents and all applicable Laws and Governmental Approvals in conformance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State. With respect to storm water management for construction activities, Good Industry Practice means Best Management Practices.

Government Code Claim has the meaning set forth in Section 18.6.1.

Governmental Approvals means all permits, licenses, consents, concessions, grants, franchises, authorizations, waivers, variances or other approvals, guidance, protocol(s), mitigation agreement(s), or memoranda of agreement/understanding, and any amendment(s) or modification(s) of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Project or the Work.

Governmental Entity(ies) means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory

instrumentality, administrative agency, authority, body or entity. Governmental Entity includes City, including all City departments, but excludes LAWA.

Guideway means the complete guideway facility including the structure, the track or other running surface and guidance surfaces and other APM Operating System equipment that supports and physically guides the Vehicles specifically designed to travel exclusively on it.

Guideway Structure means the Guideway, but excluding the track or other running and guidance surfaces and other APM Operating System equipment that supports and physically guides the Vehicles specifically designed to travel exclusively on it.

Handback means delivery of the Project assets by Developer to LAWA upon expiration of the Term or Early Termination Date.

Handback Renewal Work means the Renewal Work required in order for the Project to meet the Handback Requirements.

Handback Renewal Work Plan means the plan prepared and submitted to LAWA in accordance with Part 2C, Section 4.5.2.4 (Handback Renewal Work Plan) of the Technical Provisions.

Handback Requirements means the terms, conditions, requirements and procedures governing the condition in which Developer is to deliver the Project assets upon Handback, as stated in Part 2C, Section 4.5.2 (Handback Requirements) of the Technical Provisions.

Handback Requirements Letter(s) of Credit has the meaning set forth in Section 8.7.5.1.

Handback Requirements Reserve Account means the account established pursuant to Section 8.7.1.1.

Handback Requirements Reserve Balance means: (a) if no Handback Requirements Letter of Credit is delivered pursuant to Section 8.7.5.1, all amounts standing to the credit of the Handback Requirements Reserve Account on the Termination Date; or (b) if any Handback Requirements Letter of Credit is delivered pursuant to Section 8.7.5.1, all amounts that would have been standing to the credit of the Handback Requirements Reserve Account on the Termination Date if no Handback Requirements Letter of Credit had been delivered pursuant to Section 8.7.5.1.

Handback Reserve Amount means the cost of the Handback Renewal Work determined in accordance with Section 8.6.2 (Handback Renewal Work Plan and Handback Reserve Amount) required to be expended to ensure the Project meets the Handback Requirements.

Handback Year means each consecutive 12-month period commencing five full years before the expected end of the Term.

Hazard means an existing or potential condition that can result in an accident.

Hazardous Material(s) means any (a) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Environmental Law; (b) substance, product, waste, pollutant, contaminant or other material of

any nature whatsoever that is or becomes listed, regulated, or addressed under any Environmental Law; (c) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever which may give rise to liability under clause (a) or (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a state or federal court; (d) petroleum hydrocarbons excluding de minimis amounts and excluding petroleum hydrocarbon products contained within regularly operated motor vehicles; and (e) hazardous building materials including asbestos or asbestos-containing materials, lead or PCBs in structures and/or other improvements on or in the Site or in subsurface artifacts (other than mineral asbestos naturally occurring in the ground). The term "Hazardous Materials" includes Hazardous Waste and contaminated materials.

Hazardous Materials Management means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Project, D&C Limits or the Work (including demolition Work), including investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever approach is effective, most cost-efficient and permitted under applicable Law.

Hazardous Waste means waste as defined in 40 C.F.R. Part 261.

Hazmat Allowance has the meaning set forth in Section 11.8.1.1(b).

Headway means the time between consecutive trains at a point on the Guideway as defined in Part 2B, Section 11.3.3.1.2 (Headway) of the Technical Provisions.

Housekeeping means provisions that are neither necessary nor part of the APM System but are provided for other functions. Examples are utilities (e.g., water or power) for cleaning or carrying out repairs.

Incident means any unplanned event within the D&C Limits that causes potential or actual disruption to the free flow of Vehicles or traffic in the vicinity of, or crossing, the D&C Limits.

Incident Response means the actions taken by Developer, as described in the O&M Plan, to respond to an Incident within the D&C Limits.

Incidental Utility Work means all of the following work necessary for the construction of the Project:

- (a) Temporary Relocations;
- (b) Relocations of Service Lines;
- (c) Protections in Place;
- (d) The adjustment of utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work;

- (e) All work necessary to remove any utilities (whether or not in use as of the Financial Proposal Due Date) in situations for which leaving the utilities in place is not feasible or not permitted, or for facilities which Developer proposes be removed to accommodate or permit construction of the Project, regardless of whether replacements for such utilities are being installed in other locations; and
- (f) All work necessary to abandon in place any utility in accordance with proper procedures (e.g., flushing, capping, slurry backfill, etc.).

Inclusivity Plan means Developer's Form L (SBE, LBE, LSBE, DVBE Affidavit) submitted with the Proposal and Developer's plan for achieving the requirements set forth in Section 9.6 (Inclusivity), included in Exhibit 2A-1 (SBE, LBE, LSBE, DVBE Affidavit) and Exhibit 2A-10 (Inclusivity Commitments), respectively.

Incremental Costs means (a) the Base Incremental Costs, if any, incurred by Developer in the performance of Extra Work specifically related to, and solely attributable to, a Compensation Event; (b) the Markup on the Base Incremental Costs; (c) Delay Costs for Compensation Events to the extent that the Compensation Event results in a Relief Event Delay; and (d) the costs to Developer of financing any of (a) through (c) including commitment fees and capital costs, interest and hedging costs, lost interest on any of Developer's own capital employed and any financing required pending receipt of payment, which, for each of (a) through (d), could not have been reasonably mitigated by Developer or its Contractors. Incremental Costs do not include Delayed Payment Compensation, nor shall any Incremental Costs be included within Delayed Payment Compensation.

Indemnified Party(ies) means City, any and all of City's Boards and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

Independent Assurance means LAWA-performed (a) verification sampling and testing on samples taken independently of the quality control samples and (b) evaluation of (i) sampling and testing personnel and (ii) testing equipment (including evaluation of the processes of sampling, testing and testing equipment maintenance of Developer's QC and QA procedures).

Independent Engineer means the independent engineering consultant retained by LAWA and Developer in accordance with Section 5.8 (Independent Engineer).

Individual with a Disability means: an individual who (a) has a physical or mental impairment that substantially limits one or more major life activities; (b) has a history or record of such an impairment; and/or (c) a person who is perceived by others as having such an impairment.]

Information means that, in the context of Submittals, the Submittal is provided to LAWA for information purposes only without any expectation that LAWA will review, comment upon or approve the Submittal.

Initial Financing Agreements means the documents identified in Part A of Exhibit 5A (List of Initial Financing Documents).

Initial Financing Documents means Initial Financing Agreements and Initial Security Documents.

Initial Project Debt means the Project Debt originally to finance the Project and Work, in the total face amount at each lien priority, and with the particular Lenders, set forth in the Contract Documents, which Project Debt is evidenced by the Initial Financing Agreements and secured by the Initial Security Documents.

Initial Project Schedule means the preliminary CPM schedule for all D&C Work leading up to and including Passenger Service Availability and Final Completion provided as part of Developer's Technical Proposal.

Initial Security Documents means the documents identified in Part B of Exhibit 5A (List of Initial Financing Documents).

Institutional Lender means:

- (a) The United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;
- (b) Any (i) bank, trust company (whether acting individually or in a fiduciary capacity), savings and loan organization or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or bank qualified to do business as such, as applicable under the laws of the United States of America or any state thereof, or (iii) pension fund, foundation or university or college endowment fund; provided that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and federal courts in the State in any actions;
- (c) Any "qualified institutional buyer" under Rule 144(a) under the Securities Act of 1933, 15 U.S.C. § 77a et seq., or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms; or
- (d) Any other financial institution or entity designated by Developer and approved in writing by LAWA; provided that such institution or entity, in its activity under the Agreement, is acceptable under then current guidelines and practices of LAWA;

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

Instructions to Proposers (ITP) means the instructions to Proposers included in the RFP.

Insurance Policy(ies) means all of the insurance policies Developer is required to carry under Exhibit 7 (Insurance Requirements).

Insurance Proceeds means all proceeds from insurance payable to Developer (or that would have been payable to Developer but for Developer's breach of any obligation under the Agreement to procure or maintain said insurance) on or after the Early Termination Date.

Insurance Review Report means the report furnished in accordance with Section 10.1.2.11(b).

Insurance Unavailability means either:

- (a) Any Insurance Policy coverage required under Section 10.1 or Exhibit 7 (Insurance Requirements) is deemed unavailable under Section 10.1.2.12 (Inadequacy and Unavailability of Required Coverages); or
- (b) Provision of all such Insurance Policy coverages has become unavailable at Commercially Reasonable Insurance Rates from insurers meeting the requirements in Section 10.1.2.1 (Insurers).

For the purpose of clause (b), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for project-financed transit facilities, and Developer shall bear the burden of proving that premium increases are the result of such changes in general market conditions. No increase in insurance premiums attributable to particular conditions of the Project or D&C Limits, or to claims or loss experience of any Developer-Related Entity or Affiliate, whether under an Insurance Policy required to be placed under the Agreement or in connection with any unrelated work or activity of Developer-Related Entities or Affiliates, shall be considered in determining whether Insurance Unavailability exists or has occurred.

Integration Testing has the meaning set forth in Part 2C, Section 4.3.4 (On-Site Integration Test and Inspection) of the Technical Provisions. The term "Integrated Testing" may also be used in variants (e.g., "Integrated Test" and "Integration Test").

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how (including trade secrets and confidential business information which have been recorded in or on any media), patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade dress, trade secrets, trade secret rights, designs (registered and unregistered), other design rights, logos, utility models, circuit layouts, database rights, business and domain names (including fictitious business names), inventions (patentable or not), solutions embodied in technology, other intellectual activity, all analogous rights in other jurisdictions and applications (drafted or pending). Intellectual Property includes software used in connection with the Project (including software used for management of Project operations), Source Code and Source Code Documentation, Base Case Financial Model, Financial Modeling Data and trade secret information contained in the Financial Proposal. Intellectual Property is distinguished from any physical embodiment of, and documentation disclosing, Intellectual Property including, without limitation, Submittals, physical construction and equipment itself and from data, sketches, charts, calculations, plans, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, correspondence and other documents or work product.

Interface Control Manual (ICM) means the comprehensive manual Developer develops and submits to LAWA in accordance with Part 2A, Section 12.6 (Interface Control Manual (ICM)) of

the Technical Provisions that defines the process by which all interfaces are identified, defined and managed.

Interval of Recurrence means, with respect to any Noncompliance Occurrence, the applicable time period or further time period within which Developer shall rectify a Noncompliance Occurrence as specified in the “Interval of Recurrence” column of the Noncompliance Occurrence Table.

IP Escrow(s) has the meaning set forth in Section 21.5.2 of the Agreement.

IP Escrow Agent has the meaning set forth in Section 21.5.2 of the Agreement.

IP Materials means all physical and/or electronic embodiment of Intellectual Property including, without limitation, preliminary source materials, software, source code and all relevant commentary, explanations and instructions to compile source code, final construction diagrams, instructions and repair manuals, work product, documents, results and related materials where and as such embodiments are necessary to allow LAWA the full benefits, exercise, use and purpose of its contractual rights pursuant to this Agreement.

Key Contract means any one of the following:

- (a) all Prime Contracts for Construction Work and Design Work;
- (b) the APM Operating System Contract;
- (c) all Prime Contracts for O&M Work;
- (d) all Prime Contracts for project or program management services; and
- (e) all other Prime Contracts with a single Contractor (or a single Contractor and its affiliates) that individually or in the aggregate total in excess of \$2 million on a term (not annual) basis.

The term “Key Contracts” means all such Contracts in the aggregate or more than one of such Contracts.

Key Contractor means each Contractor under any Key Contract.

Key Personnel means, collectively, those individuals: (a) in Exhibit 2A-3 (Key Personnel Statement of Availability); and (b) appointed by Developer and approved by LAWA from time to time to fill the “Key Personnel” positions identified in Part 2A, Section 1.5 (Key Personnel) of the Technical Provisions (each is a “**Key Person**”).

Key Ratios means ratios contained in the Financing Documents that have financial covenants attached to them.

Known Hazardous Materials means:

- (a) Hazardous Materials that are known to Developer as of the Setting Date or that would have become known to Developer based on a reasonable

investigation of the area and information available to Developer as of the Setting Date, consistent with Good Industry Practice; and

- (b) all Hazardous Materials identified in the Asbestos Survey Report, Lead-Based Paint Survey Report, Hazardous Materials Assessment Report, Hazardous Materials Assessment Memo - HZMT-0027 and FEIR - Appendix K – Hazardous Materials Assessment set forth in Part 5 (Contract Drawings/Engineering Data) of the Technical Provisions.

LA Metro means the Los Angeles County Metropolitan Transportation Authority.

Labor Index (LABI) means the “Employment Cost Index – Wages and salaries for Private industry workers in West” Series ID: Series ID: CIU202000000240A, as published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the LABI is changed so that the base year of the LABI changes, the LABI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics. If the LABI is discontinued or substantially altered, a suitable replacement will be determined by the Parties in accordance with general market practice at the time.

LACMTA Agreement has the meaning set forth in Exhibit 12A (Cooperation Agreements).

Late Payment Rate means seven percent (7%) per annum.

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

LAWA has the meaning set forth in Recital B.

LAWA Allowances has the meaning set forth in Section 11.8.1.1.

LAWA-Caused Event means any of the following events:

- (a) LAWA Change;
- (b) failure of LAWA to provide Developer with rights of access to a Project ROW property as shown in the Project ROW plans included in Part 5 (Contract Drawings/Engineering Data) of the Technical Provisions by the applicable date specified in Section 7.5.1 (Project ROW Property Acquisition);
- (c) failure of LAWA to provide access to the Related Projects and Enabling Projects specified in Part 2A, Section 21 (Enabling, Related and Concurrent

Projects) of the Technical Provisions within the time periods specified in Part 2A, Section 21 of the Technical Provisions;

- (d) any suspension of Work order issued (or deemed issued) by LAWA under Section 16.2.7.3;
- (e) LAWA direction to uncover, remove, and restore Work, if LAWA (i) had the opportunity to inspect the Work before it was covered, (ii) orders the Work uncovered after the fact and (iii) the Work exposed proves acceptable;
- (f) failure of LAWA to provide responses to proposed schedules, plans, Design Documents, and other Submittals and matters for which a response is required as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the Contract Documents;
- (g) LAWA's failure to perform or observe any of its material covenants or obligations under the Contract Documents or to comply with Law or Governmental Approvals; or
- (h) failure of LAWA to provide the LAWA-Provided Approvals as of the Effective Date or any lapse or revocation of same.

LAWA Change has the meaning set forth in Section 12.1.1.1.

LAWA Default has the meaning set forth in Section 16.3.1 (LAWA Default).

LAWA Intellectual Property means:

- (a) Intellectual Property owned by or licensed to LAWA; and
- (b) any Intellectual Property authored, created, invented and/or put into practice under and/or for the purposes of the Project,

except, for each of (a) and (b), (i) Developer Intellectual Property, (ii) Third Party Intellectual Property and/or (iii) Intellectual Property subject to (b) that is an improvement, continuation or adaptation of either Developer Intellectual Property or Third Party Intellectual Property.

LAWA-Provided Approvals means the Governmental Approvals listed in Exhibit 8 (LAWA-Provided Approvals).

LAX means International Air Transport Association (IATA) code for Los Angeles International Airport.

LAX Impact Area means the area located in portions of Inglewood, El Segundo, Lennox, Culver City, Hawthorne and Los Angeles and identified by the following zip codes: 90043, 90044, 90045, 90047, 90066, 90094, 90230, 90245, 90250, 90293, 90301, 90302, 90303, 90304 and 90305.

Lender(s) means each of the holders and beneficiaries of Security Documents, including any financial guarantor providing Project Debt or any guaranty or credit enhancement in respect

thereof, and their respective successors, assigns, participating parties, trustees and agents, including the Collateral Agent.

Lenders' Liabilities means, at the relevant time, the aggregate of (without double counting), all principal, interest (including capitalized and default interest under the Financing Documents, but with respect to default interest, only to the extent that it arises as a result of LAWA making any payment later than the date that it is due under this Agreement or any other default by LAWA under this Agreement), Breakage Costs, banking fees, premiums or reimbursement obligations with respect to financial insurance policies, agent and trustee fees, costs and expenses properly incurred owing or outstanding to the Lenders by Developer under or pursuant to the Financing Documents on the Early Termination Date, including any prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, that Developer must pay, or that may be payable or credited to Developer, under any Financing Agreement or Security Document or otherwise as a result of the payment, redemption or acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date that are determined to be reasonable by LAWA at the time LAWA reviews and approves the Financing Agreements.

Lenders' Technical Advisor (LTA) means the Lenders' technical advisor, [____], and any replacement technical advisor engaged by Developer and the Lenders with respect to the Project.

LIBOR means the offered rate per annum (rounded up to the next highest one thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Reuters Screen LIBOR01 Page available at approximately 11:00 a.m., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market. All interest based on LIBOR shall be calculated on the basis of a 360-day year for the actual days elapsed.

Light Detection and Ranging (LiDAR) is a remote sensing method that uses light in the form of a pulsed laser to measure ranges (variable distances) to the earth.

Line Capacity has the meaning set forth in Part 2B, Section 11.3.3.1.5 (Line Capacity) of the Technical Provisions.

Local Business, Local Small Business and Local-State Disabled Veterans Business Enterprise Program means the program set forth in Division 10, Chapter 1, Article 23 of the Los Angeles Administrative Code, and any resulting rules and regulations.

Local Business Enterprise (LBE) has the meaning set forth in LAWA's Local Business, Local Small Business and Local-State Disabled Veterans Business Enterprise Program.

Local Small Business Enterprise (LSBE) has the meaning set forth in LAWA's Local Business, Local Small Business and Local-State Disabled Veterans Business Enterprise Program.

Local-State Disabled Veteran Business Enterprise (DVBE) has the meaning set forth in LAWA's Local Business, Local Small Business and Local-State Disabled Veterans Business Enterprise Program.

Local Worker means qualified local persons residing within the City or the LAX Impact Area.

Logistics Delay Days means any day during the D&C Period in which a decision of CALM or a decision of the City Taskforce prevents construction activities during more than fifty percent (50%) or more of Developer's scheduled work day and results in a Delay, but only to the extent that (i) Developer complied with the procedures of CALM or City Taskforce, as applicable; (ii) Developer supplied a complete and adequate application to CALM or City Taskforce, as applicable, at least 30 days prior to the date that Developer required a logistic accommodation; and (iii) the number of such days exceeds 36 days in the aggregate.

Long Stop Date means 12 months after the Passenger Service Availability Deadline, as such deadline may be extended from time to time under the Agreement.

Loss(es) means, whether asserted, suffered or incurred by a Party or a Third Party, any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witness fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty or fine. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources, utility facilities or Intellectual Property.

Lost Line Capacity means, during Major Service Degradation, the difference between actual Line Capacity and the applicable minimum Line Capacity set forth in Part 2B, Section 11.3.3.1.5.1 (APM Operating System Line Capacity) of the Technical Provisions.

Lowest Replaceable Unit (LRU) means the smallest unit, such as a component, circuit board, or assembly that would be replaced in effecting a repair of the APM Operating System in accordance with Developer's specific maintenance plan. An item that could be purchased from Developer or from other vendors. If an assembly is to be repaired on the APM Operating System and not fully replaced then it is not considered to be an LRU, but an assembly of LRUs.

Lowest Ultimate Cost Proposer means Developer, as party to the Early Works Agreement.

LTA Agreement means the technical advisory agreement dated as of the Effective Date between Developer, the Lenders and [_____].

Maintenance and Recovery Vehicle (MRV) means a Guideway-based service Vehicle, as described in Part 2B, Section 11.3.13.6 (APM Operating System Support Vehicles) of the Technical Provisions.

Maintenance & Storage Facility (M&SF) means an area including a maintenance facility of repair shops, work bays, and other amenities; a layout (yard) of tracks and switches that includes a test track and storage lanes and necessary administrative offices.

Maintenance of Traffic (MOT) means the comprehensive effort to maintain traffic.

Maintenance Rectification Costs means, in respect of any termination of the Agreement that occurs after Passenger Service Availability, all Losses that LAWA determines it is reasonably

likely to incur as a direct result of the termination of the Agreement, including (without double counting):

- (a) those costs (internal and external) that LAWA is reasonably likely to incur as a direct result of carrying out any process to request tenders from any parties interested in entering into a contract with LAWA to carry out the O&M Work, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation, and execution of relevant contracts; and
- (b) those costs reasonably projected to be incurred by LAWA in relation to:
 - (i) remediation or, if remediation is not possible or would cost more than renewal, renewal of any defective D&C Work or O&M Work;
 - (ii) rectification or cure of any breach of the Agreement by Developer; and
 - (iii) carrying out of all other matters necessary in order to ensure that within a reasonable period of the Early Termination Date, the Project complies with the requirements of the Contract Documents, and has a reasonable prospect of continuing to perform to the same standard and cost that it would have continued to perform at had the Agreement not been terminated and the Project been in compliance with all of the requirements of the Contract Documents.

Maintenance Work means all Work during the O&M Period to maintain, repair, preserve and modify the Project, including the supply of machinery, equipment, materials, hardware, software, systems or any other items related to such Work, and including Renewal Work, but excluding (a) Operations Work; and (b) Work remaining to be performed by the APM Fixed Facilities Contractor or the APM Fixed Facilities Designer following Passenger Service Availability.

Major Service Degradation means actual Line Capacity is less than 80% of the applicable minimum Line Capacity set forth in Part 2B, Section 11.3.3.1.5.1 (APM Operating System Line Capacity) of the Technical Provisions.

Major Subsystem(s) has the meaning set forth in Part 2B, Section 11.3.1.1 (APM Operating System Technology Maturity) of the Technical Provisions.

Manual Operation means restricted operation of a Train under on-board control of a human operator without the benefit of ATP, as described in Part 2B, Section 11.3.7.20.2.1 (Manual Operations of Self-Propelled Vehicles) of the Technical Provisions. Manual operations are used for failure recovery purposes and not for regular passenger operations.

Markup has the meaning set forth in Section 1.3 of Exhibit 13 (Base Incremental Costs and Permitted Markup).

Maximum Availability Payment (MaxAP) means the maximum Availability Payment that Developer can earn in a given Operating Year during the O&M Period, as calculated in accordance with Part A of Exhibit 4B (Availability Payment Mechanism), and as may be further adjusted in accordance with the Contract Documents.

Maximum Design Earthquake (MDE) means the earthquake selected for the design or evaluation of structures and is that earthquake expected to occur approximately once every 2,500 years.

Maximum Length Train means the longest train for which the overall APM System is designed. This shall not exceed the berthing length as defined in Part 5 (Contract Drawings/Engineering Data) of the Technical Provisions.

Metal and Metal Products Index (MMPI) means the “Metal and Metal Products Index, Not Seasonally Adjusted” Series ID: WPU10, as published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the MMPI is changed so that the base year of the MMPI changes, the MMPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics. If the MMPI is discontinued or substantially altered, a suitable replacement will be determined by the Parties in accordance with general market practice at the time.

Milestone Payment(s) has the meaning set forth in Section 1.1 of Exhibit 4A (Milestone Payment Mechanism).

Milestone Payment Amount means the amount of a Milestone Payment as indicated in Column C of Table 1.1 in Exhibit 4A (Milestone Payment Mechanism).

Milestone Payment Number means the number of a Milestone Payment as indicated in Column A of Table 1.1 in Exhibit 4A (Milestone Payment Mechanism).

Milestone Payment Request has the meaning set forth in Section 1.2(a) of Exhibit 4A (Milestone Payment Mechanism).

Minimum Operational Headway has the meaning set forth in Part 2B, Section 11.3.3.1.2 (Headway) of the Technical Provisions.

Minimum Percentage D&C Work Completed means the minimum percentage of D&C Work completed as condition to payment of a Milestone Payment, as indicated in Column D of Table 1.1 in Exhibit 4A (Milestone Payment Mechanism).

Mode Downtime Event has the meaning set forth in Part 2B, Section 11.3.6.2 (Service Mode Availability) of the Technical Provisions.

Month(s) means, except as specified otherwise, specific calendar months.

Monthly Disbursement means a partial payment of the MaxAP (as calculated under Section 1.3 of Part A of Exhibit 4B) payable to Developer in accordance with Exhibit 4B (Availability Payment Mechanism).

Monthly Report means each of the reports described in Part 2A, Section 3.3.2 (Monthly Reports) of the Technical Provisions.

MP Delay Period has the meaning set forth in Section 14.1.5(a).

Non-Compensation Event means any of the following events to the extent that the event materially and adversely affects performance of Developer’s obligations under the Contract

Documents, subject to the limitations and requirements set forth in this Agreement for such events, but excluding any event to the extent caused by the negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity:

- (a) Force Majeure Event;
- (b) Change in Law excluding a Qualifying Change in Law;
- (c) Earthquake or tidal wave that impacts performance of Work at the Site, but excluding earthquakes or tidal waves that cause physical damage to the Project;
- (d) fire, explosion or flood directly impacting the physical improvements of the Project or performance of Work at the Site; and
- (e) during the O&M Period, disruptions due to trespassers or other third party criminal action occurring to the APM System except restricted access areas identified in the plan provided by Developer pursuant to Part 2A, Section 8.1 (APM Operating System Safety and Security Programs) of the Technical Provisions and accepted by LAWA; and
- (f) Weather Delay Days.

Noncompliance Database has the meaning set forth in Section 15.3.1.1.

Noncompliance Deduction means a D&C Period Noncompliance Deduction or an O&M Period Noncompliance Deduction.

Noncompliance Event has the meaning set forth in Section 15.1.2.

Noncompliance Occurrence has the meaning set forth in Section 15.1.1.

Noncompliance Occurrence Table(s) means the tables set forth in Exhibit 4C (Noncompliance Occurrence Tables) for the then current period of the Agreement.

Noncompliance Points means the points that may be assessed in accordance with Section 15.4 (Assessment of Noncompliance Points).

Nonconforming Work means any Work (including any product of the Work) that does not conform to the requirements of the Contract Documents, the Governmental Approvals, applicable Law, the Design Documents or the Construction Documents, including any Work required to be repaired or replaced under Part 2A, Section 4.0 (Quality Management) of the Technical Provisions.

Non-O&M Facility(ies) means those facilities specified in Part 1 (Scope of Work) of the Technical Provisions.

Non-O&M Facilities Defect means any Non-O&M Facilities Work that is not completed in accordance with the requirements of the Contract Documents or is defective in its workmanship or material, ordinary wear and tear excepted.

Non-O&M Facilities Punch List means an itemized list of D&C Work as agreed upon by Developer and LAWA which remains to be completed after Non-O&M Facility Occupancy Readiness with respect to any Non-O&M Facility as a condition to Non-O&M Facility Final Acceptance, and which is limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety, use or operability of the Project.

Non-O&M Facilities Warranty Period has the meaning set forth in Section 6.13.1.1.

Non-O&M Facilities Warranty Work means all work necessary to correct a Non-O&M Facilities Defect, including repair or replacement of the defective Non-O&M Facility and any other facilities or improvements that may have been damaged or displaced as a result of the Non-O&M Facilities Defect or the work to correct the Non-O&M Facilities Defect.

Non-O&M Facilities Work means the D&C Work with respect to the Non-O&M Facilities, or any of them, as applicable.

Non-O&M Facility Final Acceptance means that all prerequisites for Non-O&M Facility Final Acceptance have been met with respect to a Non-O&M Facility, as confirmed by the Independent Engineer's issuance of a Certificate of Non-O&M Facility Final Acceptance in accordance with Section 7.9.3 (Non-O&M Facility Final Acceptance).

Non-O&M Facility Occupancy Readiness means that all conditions for Non-O&M Facility Occupancy Readiness have been met with respect to a Non-O&M Facility, as confirmed by LAWA's issuance of a Certificate of Non-O&M Facility Occupancy Readiness in accordance with Section 7.9.2 (Non-O&M Facility Occupancy Readiness).

Non-Vital means that a malfunction affecting the referenced piece of equipment or system will not cause the equipment or system to revert to a state that is known to be safe.

Normal Capacity means the Vehicle capacity under normal operating conditions, determined as set forth in Part 2B, Section 11.3.7.3 (Vehicle Capacity) of the Technical Provisions.

Notice(s) of Conditional Termination has the meaning set forth in Section 17.2.1 (Notice of Conditional Election to Terminate – Extended Delay Events).

Notice of Determination has the meaning set forth in Section 15.3.3.2.

Notice of Developer Default means a written notice provided by LAWA concerning LAWA's determination that a Developer Default has occurred, with respect to any default for which a cure period is allowed under Section 16.1.2 (Cure Periods).

NTP 1 means the written notice issued by LAWA to Developer in accordance with Section 7.4.3 (Commencement of Non-Construction Work) authorizing Developer to proceed with non-Construction Work.

NTP 2 means the written notice issued by LAWA to Developer in accordance with Section 7.4.4 (Commencement of Construction Work) authorizing Developer to proceed with Construction Work.

O&M Contract means each Contract between Developer and an APM Fixed Facilities O&M Provider or an APM Operating System O&M Provider. There may be more than one O&M Contract concurrently in effect.

O&M Inclusivity Adjustment has the meaning set forth in Section 9.6.2.2.

O&M Inclusivity Period has the meaning set forth in Section 9.6.2.2.

O&M Limits means the three-dimensional area identified in Part 5 (Contract Drawings/Engineering Data) of the Technical Provisions for which Developer has responsibility to operate and maintain during the O&M Period.

O&M Management Plan(s) means those management plans, manuals, policies, procedures and reports identified in Part 2C, Section 3.1.1 (APM System Operations and Maintenance Management Plan) of the Technical Provisions.

O&M Period means that portion of the Term commencing on the Passenger Service Availability Date and ending on the Termination Date.

O&M Period Deduction(s) means an Unavailability Deduction or an O&M Period Noncompliance Deduction.

O&M Period Noncompliance Deduction(s) means a deduction from an Availability Payment made in accordance with Part B of Exhibit 4B (Availability Payment Mechanism).

O&M Quality Management Plan has the meaning set forth in Part 3, Section 2.1.2.1 (O&M Quality Management Plan) of the Technical Provisions.

O&M Records means all data in connection with maintenance, operation, renewals and expansion of the Project including (a) all inspection and inventory records, whether generated by Developer or a Third Party, (b) any communication to and/or from LAWA or a Third Party, and (c) any information system (as may be introduced or amended by LAWA from time to time) in connection with operation, maintenance, renewal or handback of the Project that LAWA requires Developer to use or operate.

O&M Work means Operations Work, Maintenance Work and Technology Enhancements, but excludes D&C Work.

Open Book Basis means review by LAWA of documentation showing Developer's underlying assumptions and data associated with the issue in question, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, swap and hedge rates, insurance rates, bonding rates, letter of credit fees, overhead, profit and other items reasonably required by LAWA to satisfy itself as to validity or reasonableness.

Operating Hours means the scheduled and actual number of hours during which the APM System provides service in an operating period. See Part 2B, Section 11.3.3.1.1 (APM Operating System Operating Hours) of the Technical Provisions.

Operating Modes means the normal, failure management, and other operational modes of the APM System described in Part 2B, Section 11.3.3.2 (APM Operating System Operating Modes) of the Technical Provisions.

Operating Year means the consecutive 12 Month periods starting on the first of the Month in which Passenger Service Availability Date occurs (being Operating Year 1), and each anniversary thereafter.

Operational Headway has the meaning set forth in Part 2B, Section 11.3.3.1.2 (Headway) of the Technical Provisions.

Operational Readiness means the process leading up to the placement of the APM System into Passenger Service, as more particularly described in Part 2C, Section 4 (APM Operating System Review, Verification, and Acceptance) of the Technical Provisions.

Operations Control Center (OCC) means the control location used to manage, control and monitor the Train Service and all associated activities.

Operations Work means Work to be performed during the O&M Period relating to the operation, management and administration of the Project, including the supply of machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project, but excluding (a) Maintenance Work; and (b) Work remaining to be performed by the APM Fixed Facilities Contractor or the APM Fixed Facilities Designer following Passenger Service Availability.

Ordinance has the meaning set forth in Recital C.

Original Equity IRR means [___], which is the Equity IRR listed in the Base Case Financial Model.

Oversight means monitoring, inspecting, sampling, measuring, spot-checking, reviewing, attending, observing, testing, investigating, auditing and conducting any other ongoing oversight respecting any part or aspect of the Project or the Work, by any Person so entitled, including all the activities described in Section 5.4.2.

Overtravel Buffer means the device placed at any Guideway terminus to provide a controlled deceleration should a train not stop before reaching the device, as described in Part 2B, Section 11.3.11.3, (Overtravel Buffer) of the Technical Provisions.

P-S Suspension Loggings means a method of measuring seismic wave velocity profiles in deep, uncased boreholes to characterize earthquake site response.

Party means Developer or LAWA, as the context may require, and “Parties” means Developer and LAWA, collectively.

Passenger Service means operation of the APM System carrying passengers.

Passenger Service Availability means that all D&C Work is complete (except for APM System Punch List items that do not affect normal and safe use and operation of the APM System and any D&C Work that, by its nature, is to be performed after the Passenger Service Availability Date), and all other prerequisites for start of Passenger Service have been met. Passenger

Service Availability is deemed to have occurred upon satisfaction of all the conditions for the Project in Exhibit 15E (Conditions to Passenger Service Availability), as confirmed by the Independent Engineer's issuance of a Certificate of Passenger Service Availability in accordance with the procedures and within the time frame established in Section 7.10.1 (Passenger Service Availability).

Passenger Service Availability Date means the date the Independent Engineer issues a Certificate of Passenger Service Availability for the Project.

Passenger Service Availability Deadline means the Passenger Service Availability Date identified in the Project Schedule, which is _____ *[insert from Developer's Initial Project Schedule]*, as such deadline may be extended from time to time pursuant to the Agreement.

Payment Bond means the payment bond(s) to secure payment for labor and materials, as required under the Agreement.

Peak Period means the time interval(s) expected to have the heaviest APM System passenger demand, as set forth in Part 2B, Section 11.3.3.1.1 (APM Operating System Operating Hours) of the Technical Provisions.

Pedestrian Walkway(s) means a structure that primarily carries pedestrian traffic with an occasional small maintenance vehicle. Pedestrian Walkways shall be considered separate structures from the Terminal Vertical Cores and the terminals with respect to code standards and requirements.

Performance Bond means the performance bond(s) securing performance of the Work required under the Agreement.

Performance Inspection(s) means a detailed inspection of the Project by Developer during the O&M Period in accordance with the Technical Provisions, to verify compliance with the Contract Documents.

Performance Measurement Report means any of the Monthly, Quarterly and Annual Performance Monitoring Reports required under Part 2A, Section 3.3.1 (Performance Measurement) of the Technical Provisions.

Persistent Unavailability Event means a Month in which APM OS Availability is below 98%, as calculated in accordance with the procedures set for the in Part 2B, Section 11.3.6.2 (Service Mode Availability) of the Technical Provisions.

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

Phase I Environmental Site Assessment (ESA) (Phase I or Phase I ESA) means an environmental assessment conducted in accordance with American Society of Testing and Materials guidelines ASTM E-1527 -05, or any future revision or replacement thereof, to identify possible environmental risks of a particular site and surrounding sites.

Phase II Environmental Site Assessment (Phase II or Phase II ESA) means a detailed environmental assessment of contaminated sites conducted in accordance with American Society of Testing and Materials guidelines ASTM test E1903.

Platform means the portion of a Station used by passengers for boarding and alighting Vehicles and awaiting train arrival.

Point of Handoff (POH) has the meaning set forth in Part 2B, Section 12.3.8 (Points of Handoff) of the Technical Provisions.

Post-Refinancing Financial Model has the meaning set forth in Section 1.2 of Exhibit 5C (Calculation of Refinancing Gain).

Post-Termination Services Amount means for the whole or any part of any month or months for the period from the Termination Date to the time of payment of the Termination Compensation, an amount equal to the Availability Payment for that month or months, assuming no Noncompliance Points, which would have been payable in that month or months under the Agreement had the Agreement not been terminated less an amount equal to the aggregate of (without double counting):

- (a) For any O&M Work that has been terminated and therefore will not be performed by Developer, the greater of (i) all cost components related to the provision of the O&M Work, and (ii) the reasonable costs to LAWA of alternative provision of the O&M Work pursuant to the standards set out in and otherwise pursuant to the Agreement (whether or not any O&M Work is performed);
- (b) all cost components related to the provision of insurance; and
- (c) Rectification Costs incurred by LAWA.

The Post-Termination Services Amount can be an amount that is less than zero.

Power Distribution System (PDS) has the meaning set forth in Part 2B, Section 11.3.8 (APM Operating System Power Distribution System and Backup Power Supplies) of the Technical Provisions.

Power Schematic Display (PSD) has the meaning set forth in Part 2B, Section 11.3.9.3.2.2 (Power Schematic Display) of the Technical Provisions.

Pre-Existing Hazardous Materials means Hazardous Materials that:

- (a) are located in, on or under, or are emanating from, any parcel within the boundaries of the Site as of the date access to such parcel is provided to Developer; or
- (b) existed in another location as of the date access to such a parcel was provided and thereafter migrated to such parcel,

excluding any Hazardous Materials that are located in, on or under, or are emanating from any Additional Property or Temporary Areas or which arise as a result of any act or omission of any Developer-Related Entity in connection with any Additional Property or Temporary Areas.

Pre-Refinancing Financial Model has the meaning set forth in Section 1 of Exhibit 5C (Calculation of Refinancing Gain).

Preliminary Design means the general design stage, elements, collections of elements, or areas of the Project at approximately 20% to 30% design completion, as more fully set forth in Part 2A, Section 5 (Design) of the Technical Provisions. Depending on the context, the term “Preliminary Design” may refer to (a) the Preliminary Design Documents, (b) the design concepts set forth in the Preliminary Design Documents or (c) the process of development of the Preliminary Design Documents.

Preliminary Design Audit (PDA) has the meaning set forth in Part 2C, Section 4.2.2 (Types of Design Audits) of the Technical Provisions.

Preliminary Design Documents means the preliminary plan sheets, specifications, technical memoranda, reports, studies, calculations, drawings, elevations, sections, details, diagrams, and specifications needed for the Preliminary Design, which includes all Submittals specified as required to be part of the Preliminary Design or Preliminary Design Documents under the Technical Provisions.

Prime Contract means a direct Contract between Developer and a Contractor.

Prime Contractor means any Contractor that has a direct contract with Developer.

Principal Project Document(s) means the Contract Documents, the Key Contracts and the escrow agreements relating to the escrow of the Financial Model and Cost and Pricing Data and the IP Escrows.

Private Activity Bonds (PABs) means bonds, notes or other evidence of indebtedness issued by the Conduit Issuer in accordance with the provisions of Internal Revenue Code section 142(a)(1).

Prohibited Person means any Person who is:

- (a) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded from participating in procurement or nonprocurement transaction or determined to be a non-responsible bidder or contractor (as such terms are defined or used in LAWA’s Contractor Responsibility Program);
- (b) indicted or convicted of a crime, including misdemeanors, or had a civil suit or administrative judgment rendered against such Person involving the bidding, awarding, or performance of a government contract, a false claim or material misrepresentation to any private or governmental entity, or the crime of theft, fraud, embezzlement, perjury, or bribery (as such terms are defined or used in LAWA’s Contractor Responsibility Program);
- (c) identified on the list entitled “Entities Prohibited from Contracting with Public Entities in California per the Iran Contracting Act of 2010” maintained by the Department of General Services;
- (d) located within, or doing business or operating from, a country or other territory subject to a general embargo administered by the United States Office of Foreign Assets Control (OFAC);

- (e) designated on the OFAC list of “Specially Designated Nationals”;
- (f) otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC or any other U.S. federal economic sanctions authority or any divestment or sanctions program of the State of California;
- (g) a financial institution against which, or a banking institution chartered or licensed in a jurisdiction against which, the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act;
- (h) located within or is operating from a jurisdiction that has been designated as a “high-risk and non-cooperative jurisdiction” by the Financial Action Task Force;
- (i) a “senior foreign political figure” or a prohibited “foreign shell bank” within the meaning of 31 C.F.R. Section 1010.605; or
- (j) engaged in litigation with the City of Los Angeles relating to performance of a contract or business practices (unless the City has first waived (in the City’s sole discretion) by written notice to the transferring equity holder, with a copy to Developer, the prohibition on a transfer to such Person during the continuance of the relevant litigation).

Project means the Automated People Mover Project described in Part 1 (Scope of Work) of the Technical Provisions, to be developed by Developer as described in the Contract Documents, including (a) the Vehicles, facilities, equipment, subsystems and other components of the APM System, (b) other structures and improvements to be developed by Developer, including Utility improvements, and (c) all other work product of Developer relating to the foregoing.

Project Construction Management Office (PCMO) means the Developer-established temporary Project office facility, described in Part 2A, Section 17.2 (Overview of Temporary Facilities) of the Technical Provisions, for purposes of construction administration and inspection.

Project Debt means bona fide indebtedness (including subordinated indebtedness) for or with respect to funds borrowed or obligations incurred (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received, the repayment of which has specified payment dates and is secured by one or more Security Documents. Project Debt includes principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto and lease financing obligations. Project Debt excludes (a) any indebtedness of Developer or any Equity Member of Developer that is secured by anything less than the entire Developer’s Interest, such as indebtedness secured only by an assignment of economic interest in Developer or of rights to cash flow or dividends from Developer, (b) debt that constitutes consideration paid for the sale of the economic rights in Developer or Developer’s Equity Members, and (c) any increase in indebtedness to the extent resulting from an agreement or other arrangement Developer enters into after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective

occurrence of an event of termination giving rise to an obligation of LAWA to pay Termination Compensation, including Developer's receipt of a Notice of Termination for Convenience and occurrence of a LAWA Default of the type entitling Developer to terminate the Agreement. In addition, no debt shall constitute Project Debt unless and until the Collateral Agent provides LAWA with notice thereof and the related Financing Agreements and Security Documents in accordance with the relevant Direct Agreement.

Project Debt Competition has the meaning set forth in Section 3.4.2(d)(ii).

Project Execution Plan(s) (PEP) means a separate, detailed plan regarding (a) the prosecution of Utility Work (including performance of Betterments) for a Utility Owner, or (b) the prosecution of Third Party Work for a Third Party. Additional information regarding Project Execution Plans is provided in Part 2A, Section 24.3 (Project Execution Plan) of the Technical Provisions. Depending on the context, the term "Project Execution Plan" may refer to an individual plan or to all of the plans in the aggregate. The aggregate Project Execution Plan is part of the Project Management Plan.

Project Financial Performance means the cashflows from Developer's operations, financing and investments, including: (a) cash revenues and expenses, (b) Project Debt drawdowns, fees, interest expense and repayments, (c) Committed Investment drawdowns and Distributions; and (d) funding and release of reserves.

Project Intellectual Property means all Developer Intellectual Property, Third Party Intellectual Property and LAWA Intellectual Property incorporated into the Project, Proposal or Work.

Project Labor Agreement (PLA) has the meaning set forth in Section 9.9 (Project Labor Agreement).

Project Management Office (PMO) means the Developer-established temporary Project office facility, described in Part 2A, Section 17.2 (Overview of Temporary Facilities) of the Technical Provisions, from which Developer administers the design and construction of the Project.

Project Management Plan (PMP) means the document setting forth Developer's prescribed approaches to, and plan for, its scope of Work, described in Part 2A, Section 1.1 (Project Management Plan (PMP)) of the Technical Provisions, as it may be modified and updated from time to time, following approval thereof by LAWA.

Project Manager means the Key Person described in Part 2A, Section 1.5.1 (Project Manager) of the Technical Provisions.

Project Neutral means an individual identified on the Project Neutral List.

Project Neutral List means the list attached to the Agreement as Exhibit 17 (Project Neutral List).

Project ROW means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the D&C Limits.

Project Schedule has the meaning set forth in Part 2A, Section 3.1.4 (Project Schedule) of the Technical Provisions

Property Acquisition Schedule has the meaning set forth in Section 7.5.1.1.

Proposal means Developer's response to the RFP. Portions of the Proposal are incorporated by reference in Exhibit 2 (Proposal Commitments; Alternative Technical Concepts).

Proposal Validity Period means the period of 180 consecutive days commencing on the Financial Proposal Due Date, as such period may have been extended under the terms of the ITP.

Proposed Milestone Payment Date has the meaning set forth in Section 1.2 of Exhibit 4A (Milestone Payment Mechanism).

Protection in Place means any action taken to avoid damaging a utility facility which does not involve removing or relocating that facility, including staking the location of a facility, exposing the facility, locating construction equipment so as to avoid impacts to facilities, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered a Protection in Place; whereas temporarily moving power lines to another location after cutting them would be considered a phased Utility Adjustment and not a Protection in Place. The term "Protection in Place" includes both temporary measures and permanent installations meeting the foregoing definition.

Public Records Act means California Public Records Act, Cal. Gov't Code § 6250 et seq., as amended from time to time.

Qualifying Change in Law means:

- (a) a Change in Law that is principally directed at and the effect of which is principally borne by Developer, including Developer-Related Entities, or airport owners or operators in the State, except where such change (i) is in response, in whole or in part, to any failure to perform or breach of the Contract Documents, violation of applicable Law or Governmental Approval, or culpable acts or omissions on the part of any Developer-Related Entity, (ii) is a directive by the U.S. Department of Homeland Security or comparable State agency, or (iii) is otherwise expressly permitted under the Contract Documents;
- (b) a Change in Law for which compliance requires capital expenditures by Developer; or
- (c) a Change in Law for which compliance requires specific changes in Developer's normal operation or maintenance procedures.

Quality Assurance (QA) means all planned and systematic actions by Developer necessary to provide confidence that QC is performed in accordance with the Quality Management Plan, that all Work complies with the Contract Documents and that all materials incorporated in the Work, and that all equipment and all elements of the Work will perform satisfactorily for the purpose intended. QA actions include: monitoring and verification of design through auditing, spot-checking and participation in the review of the Design Documents and Working Plans; and monitoring and verification of construction, manufacturing/process facilities and equipment, on-site equipment and QC documentation through auditing, spot inspections and reconciliation of material acceptance and rejection based on QC testing and Verification Sampling and Testing

at production sites and the Site. Quality Assurance also includes documentation of all QA efforts.

Quality Audit means the audits performed by Developer in connection with its quality audit program, as described in further detail in Part 2A, Section 4.1.15 (Quality Audits) of the Technical Provisions.

Quality Control (QC) means the total of all activities performed by Developer to ensure that the Work meets the requirements of the Contract Documents. For design, this includes procedures for design quality, checking, and design review including reviews for constructability, and review and approval of Working Plans. For construction, this includes: procedures for materials handling and construction quality; inspection, sampling, testing and acceptance/rejection of materials, plants, production and construction; material certifications; calibration and maintenance of equipment; production process control; and monitoring of environmental compliance. Quality Control also includes documentation of all QC design and construction efforts.

Quality Level and Quality Levels A, B, C and D have the meanings set forth in the Utility Information under the title "Utility Information– Quality Level Designations".

Quality Program Manager has the meaning set forth in Part 2A, Section 1.5.7 (Quality Program Manager) of the Technical Provisions.

Quality Records means the documentation required to be produced and maintained by Developer-Related Entities in accordance with Developer's Quality Program.

Quarter means a time period comprised of three calendar consecutive Months. Each Operating Year contains four consecutive Quarters, beginning on the first Month of such Operating Year.

Rating Agency(ies) means any credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization ("NRSRO").

Record Documents means construction drawings, specifications and related documentation furnished by Developer to reflect the actual conditions and location in detail of Work as constructed and installed, which may be generated initially as marked-up Release for Construction Documents, revised subsequently as finished revised drawings and documents, and updated thereafter as required by the Technical Provisions.

Recoverable Costs means:

- (a) The reasonably required costs of any assistance, action, activity or work undertaken by LAWA which Developer is liable for or is obligated to reimburse LAWA for under the terms of the Contract Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of LAWA staff and employees performing such action, activity or work; plus
- (b) Reasonably required out-of-pocket costs LAWA incurs to publicly procure any such third party contractors; plus

- (c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of the Office of the City Attorney), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or work, including in connection with defending claims by and resolving disputes with third party contractors; plus
- (d) Interest on all the foregoing sums at the Late Payment Rate, commencing on the date due under the applicable terms of the Contract Documents and continuing until paid.

Rectification means, with respect to any Noncompliance Occurrence, fixing the noncompliance so that future operations comply with the requirements of the Contract Documents, and includes (a) restoring any functional capability which has been disabled or otherwise fails to comply with the requirements of the Contract Documents; (b) repairing any defect, hazard, or other condition that fails to comply with the requirements of the Contract Documents; and (c) formally notifying LAWA's Authorized Representative that Rectification has been completed.

Rectification Costs means an amount equal to the reasonable and proper costs incurred or reasonably anticipated to be incurred by LAWA in curing or otherwise addressing any default by Developer and procuring performance of Developer's obligations pursuant to the Agreement.

Rectification Period means, with respect to any Noncompliance Occurrence, the period within which Rectification of the event must be completed as specified in the "Rectification Period" column of the Noncompliance Occurrence Table, calculated from the date and time Developer first obtained knowledge or had reason to know of the Noncompliance Occurrence.

Reference Documents means the documents provided with and so designated in the RFP, which are provided for disclosure purposes only and without any warranty as to their accuracy, completeness or fitness for any particular purpose.

Refinancing means:

- (a) any amendment, variation, novation, extension, renewal, supplement, refunding, defeasance or replacement of any Project Debt, Financing Agreement or Security Document (other than any Equity Member Debt);
- (b) any Project Debt incurred by Developer in addition to the Initial Project Debt, secured or unsecured;
- (c) the disposition of any rights or interests in, or the creation of any rights of participation with respect to, Project Debt, Financing Agreements and Security Documents or the creation or granting by Developer or any Lender of any other form of benefit or interest in either Project Debt, Financing Agreements and Security Documents or Developer's Interest whether by way of security or otherwise; or
- (d) any other arrangement put in place by Developer or another Person which has an effect similar to any of clauses (a) through (c) above.

Refinancing Data means the Pre-Refinancing Financial Model, the Post-Refinancing Financial Model, the Interim Financial Model, and all assumptions, calculations and other information supporting the calculation of the Refinancing Gain, including any debt term sheets or other similar documentation relating to the proposed Refinancing.

Refinancing Gain means an amount equal to the greater of (a) zero and (b) $(A - B)$, as such variables are calculated in accordance with Exhibit 5C (Calculation of Refinancing Gain).

Related Projects means facilities that are not Developer's responsibility but that interface with Developer's Work, as described in Part 2A, Section 21.2 (Related Projects) of the Technical Provisions.

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

Release for Construction Documents (RFCD) means Design Documents that have been authorized to be used as the basis for Construction Work, in accordance with the design management portion of the approved Project Management Plan, as more fully set forth in Part 2A, Section 5.7 (Release for Construction Documents) of the Technical Provisions.

Relevant Event has the meaning set forth in Section 4.7.1 (Relevant Events).

Relief Event(s) means a Compensation Event or a Non-Compensation Event.

Relief Event Claim(s) has the meaning set forth in Section 13.1.5.1.

Relief Event Delay means a Delay that is solely and directly attributable to a Relief Event and is not concurrent with any delay which is not caused by a Relief Event.

Relief Event Notice has the meaning set forth in Section 13.1.2.1.

Renewal Work means all work related to the capital replacement, reconstruction, overhaul, refurbishment and reinstatement of the Project, including the APM Operating System, APM Fixed Facilities, Fixed Equipment and other Project assets, and including the supply of machinery, equipment, materials, hardware, software, systems or any other items related to such Work, carried out within the O&M Limits by Developer during the Term to maintain compliance with the Contract Documents.

Request for Change Proposal means a written notice issued by LAWA to Developer setting forth a proposed LAWA Change and requesting Developer's assessment of cost and schedule impacts thereof, in Section 1.1 of Exhibit 9 (LAWA Change Procedures and Directive Letters).

Request for Proposals (RFP) means that certain Request for Proposals to Design, Build, Finance, Operate and Maintain the Project, issued by LAWA on _____, as amended.

Request for Qualifications (RFQ) means that certain Request for Qualifications to Design, Build, Finance, Operate and Maintain the Project, issued by LAWA on June 9, 2016, as amended.

Required Minimum Insurance Policy(ies) means the Insurance Policies required in Exhibit 7 (Insurance Requirements) for performing the O&M Work, subject to Section 10.1.2.12.

Rescue Refinancing means any Refinancing that:

- (a) occurs due to the failure or imminent failure of Developer to comply with any material financial obligation under any Financing Document;
- (b) results in the cure of such failure or imminent failure;
- (c) does not result in an increase in the Equity IRR beyond the Original Equity IRR; and
- (d) does not result, singly or in the aggregate, in an actual or potential increase of the Lenders' Liabilities (determined without including any Exempt Refinancings) by more than 10%.

Residual Life means, for an element of the Work, the period remaining until the element will next require reconstruction, rehabilitation, restoration, renewal or replacement. The Residual Life of an element would be equal to its originally calculated Useful Life less its age if (a) the element has performed in service in the manner and with the levels of traffic and wear and tear originally expected by Developer and (b) Developer has performed the type of routine maintenance of the element which is normally included as an annually recurring cost in transit facility maintenance and repair budgets, and as a result thereof the element complies throughout its originally calculated Useful Life with all applicable requirements of the Contract Documents. The Residual Life of an element would be different from its originally calculated Useful Life minus its age if any of the foregoing conditions is not true.

Response means, with respect to any Noncompliance Occurrence, the following actions by Developer following the occurrence:

- (a) establishing the location, investigating the nature and cause of the event and attending the site if necessary;
- (b) appointing a suitably qualified, experienced and accountable person to assess the situation who, within reasonable limits, is empowered to take or to authorize any required action;
- (c) taking any necessary actions to make the non-compliant system or item safe and secure, thereby as a minimum fulfilling all health and safety requirements;
- (d) taking any and all necessary actions to establish temporary measures that mitigate the effect of the event and maintain to the extent possible the normal functioning of the APM System;
- (e) when necessary, giving LAWA an assessment of the problem, the action taken, details of any work required with timescales, and any limitations that this may impose on Operations and Maintenance; and
- (f) formally advising the Operations Control Center that the Response has been completed.

Restricted Manual Operation means restricted operation of a Train under on-board control of a human operator under the protection of Automatic Train Control, as described in Part 2B, Section 11.3.7.20.2 (Manual Mode for Self-Propelled Vehicles) of the Technical Provisions. Manual operations are used for failure recovery purposes and not for regular passenger operations.

Restricted Person means a Person that, after exhaustion of all rights of appeal, is suspended or debarred from bidding, proposing or contracting with any federal or State department or agency, or any Person whose managing member, general partner or controlling investor of such Person has been so suspended or debarred.

Retaining Wall means a wall structure which retains fill with a minimum exposed face height of 4 feet and a minimum overall height from top of footing to top of wall of 5 feet.

Round Trip Time (RTT) has the meaning set forth in Part 2B, Section 11.3.3.1.4 (Travel and Round Trip Times) of the Technical Provisions.

Route means a closed path over which Trains are operated in a regulated sequence.

Routine Maintenance means maintenance activities that are scheduled in advance, occur on a regular basis (such as weekly, monthly, quarterly, semi-annually or annually), and are normally included as an annually recurring cost in transit facility (and associated equipment) maintenance and repair budgets.

Rule Book means the appendix to the Operation Plan and Timetable that includes information regarding procedures for normal, abnormal and emergency operations, as more particularly described in Part 2C, Section 3.4 (Rule Book) of the Technical Provisions.

Safe Separation Headway has the meaning set forth in Part 2B, Section 11.3.3.1.2 (Headway) of the Technical Provisions.

Safety and Security Review Committee (SSRC) means the committee consisting of representatives from LAWA, Developer, and other parties as defined in Part 2A, Section 8.7.1 (APM Operating System Safety and Security Programs) of the Technical Provisions.

Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement, changes in configuration, or procedures implemented to correct a specific safety condition or risk that LAWA has reasonably determined to exist by investigation or analysis (excluding a safety condition that exists despite compliance with the Contract Documents).

Safety Compliance Order means a written order or directive from LAWA to Developer to implement Safety Compliance.

Safety Orientation Program means Developer's detailed plan for the safety orientation of employees, as more particularly described in Part 2A, Section 13.4.1 (Safety Orientation Program) of the Technical Provisions.

Safety Standards means those provisions of the Technical Provisions that LAWA has identified as such. Safety Standards are considered to be important measures to protect public safety, worker safety or the safety of property.

Samples means physical examples furnished by Developer to illustrate materials, equipment, or workmanship.

Scheduled Financial Close Date has the meaning set forth in Section 3.1.2 (Date of Financial Close).

Scheduled Maintenance means Maintenance Work that has been properly planned and performed in accordance with the O&M Management Plan.

Scheduled Milestone Payment Date has the meaning set forth in Section 1.2(c)(i) of Exhibit 4A (Milestone Payment Mechanism).

Scheduled Service means operation of the APM during periods when the APM Operating System is functioning in the selected operating mode, resulting in the planned number of trains operating in accordance with the LAWA-accepted APM System Operating Plan of Part 2C, Section 3.2 (APM System Operating Plan) of the Technical Provisions.

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

Sensors means a device used to measure traffic volumes, density, flow, and related travel speeds. Combined with CCTV systems, sensors provide information to highway operators so appropriate actions can be taken to inform motorists, using other ITS devices, of potential delays and alternate routes.

Service Line(s) means a utility line, the function of which is to connect directly the improvements on an individual property (e.g., a commercial building or an industrial warehouse) to another utility line located off such property, which other utility line connects more than one such individual line to a larger system, as well as any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a Governmental Entity's local lighting and electrical systems, traffic control systems, street lights, communications systems and/or irrigation systems.

Setting Date means October 9, 2017.

Shafts means off-line structures which are needed for system operation, access, and egress. Shafts are constructed from the surface in open or decked excavations.

Single Point Failure means a failure of any portion of the APM System which results in failure that affects the normal operation of the APM System.

Site means:

- (a) during the D&C Period, the areas within the D&C Limits and Temporary Areas; and
- (b) during the O&M Period, the areas within the O&M Limits,

or either of them, as the context may require.

Small Business Enterprise (SBE) means LAWA's Small Business Enterprise Program.

Small Business Enterprise Program means the program at http://www.lawa.org/welcome_LAWA.aspx?id=6496, except that the reference in the "SBE Rules and Regulations" to "California's 'Subletting and Subcontracting Fair Practices Act' (Public Contract Code § 4100 et seq.) (www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pcc&codebody=&hits=20)" is replaced with "Section 10.14 of the Los Angeles Administrative Code, as modified by Ordinance No. 184937."

Source Code and Source Code Documentation means (a) software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, which shall be in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and (b) documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, revisions, additions, substitutions, replacements, updates, upgrades and corrections made to the foregoing items.

Source of Supply Certificate of Compliance has the meaning set forth in Part 2A, Section 4.3.4 (Material Certifications) of the Technical Provisions.

Special Tools means (a) specialized tools necessary for maintenance or repair of Project elements or equipment (including Vehicles), and (b) other tools obtained or developed by Developer or any Contractor for use in performance of the O&M Work. The term excludes tools used in performance of the Work that were not procured for the Project or developed for use on the Project and that were acquired by Developer or Contractor at its own expense for use on multiple projects. The term "tool" as used in the Contract Documents includes "special tools."

Standards and Specifications means the standards, specifications and other documents referenced in Part 4 (Standards and Specifications) of the Technical Provisions.

Starting Insurance Benchmarking Premiums has the meaning set forth in Section 10.1.2.11(a).

State means the State of California.

State of Good Repair means the condition of asset when there is no backlog of deferred Maintenance Work, no asset remains in service beyond its Useful Life unless otherwise approved in the Maintenance Plan, and the performance of the asset (from a reliability and maintainability perspective) does not adversely impact performance of the APM System.

Statement of Qualification (SOQ) means Developer's Statement of Qualification, provided in response to the Request for Qualifications.

Station means a facility where passengers normally enter and leave the APM Operating System, board and exit the Trains.

Station Downtime Event(s) has the meaning set forth in Part 3, Section 3.2.1.1 (Station Downtime Events) of the Technical Provisions.

Station Unavailability Period means the total duration of Station Downtime Events for a given Month, calculated pursuant to Section 2 of Appendix A to Exhibit 4B (Availability Payment Mechanism).

Step-in Party means (a) the Collateral Agent, a Lender or any entity that is wholly owned by a Lender or group of Lenders, or (b) any Person approved by LAWA as a Substituted Entity; in each case where such Person is not a Restricted Person.

Storage Lane means a section of Guideway used to store (a) service-ready Vehicles/Trains prior to their dispatch into passenger-carrying service and (b) any failed Vehicles/Trains removed from service.

Streetscape, Landscape and Public Realm Allowance has the meaning set forth in Section 11.8.1.1(a).

Streetscape, Landscape and Public Realm Allowance Work means the Work specified in Part 2B, Section 13 (Streetscape, Landscape and Public Realm) of the Technical Provisions, except to the extent that such requirements apply to the TPSS or the M&SF.

Structural Support means an element of a bridge or ancillary facility that bears load from the superstructure or overhead portions of the structure and transfers it to the foundations. Structural supports include abutments, piers, bents, and columns.

Structure means, as the context may require, bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, end walls, buildings, sewers, service pipes, under drains, foundation drains, steps, fences and other features which may be encountered in the Work and not otherwise classified.

Subcontract means each Contract with a Subcontractor.

Subcontractor means each Contractor that is not a Prime Contractor.

Submittal(s) means any document, work product or other written or electronic end-product, report or item (excluding notices, correspondence and submittals under Articles 12 through 16) required to be delivered or submitted to LAWA under the Contract Documents, the Project Management Plan or the O&M Management Plan.

Submittal Schedule has the meaning set forth in Part 2A, Section 3.1.5 (Submittal Schedule for D&C Work Submittals) of the Technical Provisions.

Substituted Entity means a Third Party proposed by the Collateral Agent and approved by LAWA under a Direct Agreement to act in Developer's stead and not merely as a Step-in Party, in each case where such Person is (a) a Suitable Substitute and (b) not a Restricted Person.

Subsystem means a group of items satisfying a logical group of functions within a particular system.

Suitable Substitute means a Person, approved in writing by LAWA in accordance with the Direct Agreement that:

- (a) has the legal capacity, power and authority to become the party to and perform the obligations of Developer under the Agreement;
- (b) is in compliance with LAWA's rules, regulations and has adopted written policies regarding organizational conflicts of interest consistent with LAWA's conflicts of interest policy;
- (c) has ensured that all of its subcontractors are in compliance with LAWA's rules and regulations;
- (d) has adopted written policies regarding organizational conflicts of interest consistent with LAWA's conflicts of interest policy;
- (e) employs individuals having the appropriate qualifications, experience and technical competence to timely perform Developer's obligations under the Contract Documents and the Principal Project Documents; and
- (f) otherwise has available resources (including committed financial resources and subcontracts) sufficient to enable it to perform the obligations of Developer under the Contract Documents and the Principal Project Documents.

Superfund Site means a site listed on either the National Priorities List or the Proposed National Priorities List at <https://www.epa.gov/superfund/superfund-national-priorities-list-npl>.

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

Surety(ies) means each properly licensed surety company, insurance company or other Person approved by LAWA, which has issued a Payment Bond or a Performance Bond.

System Compliance Verification Matrix (SCVM) has the meaning set forth in Part 2C, Section 4.1.4.1 (APM Operating System Compliance Verification Matrix (SCVM)) of the Technical Provisions.

System Demonstration (SD) has the meaning set forth in Part 2C, Section 4.5.1.1 (APM System Demonstration) and Part 2C, Attachment C (Preliminary APM Operating System Acceptance Plan) of the Technical Provisions.

System Equipment means equipment that is part of the APM System.

System Safety Program Plan (SSPP) means Developer's plan to ensure the overall safety of the Project and the Work in accordance with Part 2A, Section 8.2.1 (APM System Safety Program Plan (SSPP)) of the Technical Provisions.

System Schematic Display (SSD) has the meaning set forth in Part 2B, Section 11.3.9.3.2.1 (System Schematic Display) of the Technical Provisions.

System Security Plan means Developer's plan described in Part 2A, Section 8.2.6 (APM System Security Plan) of the Technical Provisions.

Taxes means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work, revenues or act, business, status or transaction of Developer, including any interest, penalty or addition to such amounts, and including utility rates or rents, in all cases whether disputed or undisputed.

Technical Proposal means the portions of the Proposal other than the Financial Proposal.

Technical Provisions means the documents included in the RFP identified as Technical Provisions.

Technology Enhancements means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to Intellectual Property, equipment, mechanism, operational technology, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements. Technology Enhancements specifically includes modifications, updates, or revisions made to software or any related documentation that correct errors or support new models of input-output devices with which the software is designed to operate.

Technology Modification has the meaning set forth in Part 2B, Section 11.3.1.1 (APM Operating System Technology Maturity) of the Technical Provisions.

Temporary Areas means areas outside of the D&C Limits where activities incidental to construction of the Project are being performed by Contractors, including field office sites, storage sites, staging areas dedicated to the Project, temporary work areas and parking areas, but excluding any permanent locations of Developer or any Contractor.

Temporary Relocation means any (a) interim relocation of any utility (i.e., the installation, removal and disposal of an interim facility) pending installation of a permanent facility in the same or a new location, and (b) removal and reinstallation of the utility in the same place without an interim relocation.

Temporary Work means any temporary works and structures necessary for the construction of permanent improvements. This includes falsework, formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, special erection equipment and the like.

Term means the period commencing on the Effective Date and ending on the date specified in Section 2.3 (Term).

Terminal Vertical Core (TVC) means that portion of a terminal dedicated to the vertical transportation of pedestrians between the terminal levels and the Pedestrian Walkway.

Termination Compensation means the measure of compensation owing from LAWA to Developer upon termination of the Agreement prior to the stated expiration of the Term, as determined in accordance with the Agreement.

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

Termination Due to Court Ruling has the meaning set forth in Section 17.4.3.1.

Termination for Convenience has the meaning set forth in Section 17.1.1.

Terrorism means activities against Persons or property of any nature:

- (a) that involve the following or preparation for the following:
 - (i) use or threat of force or violence; or
 - (ii) commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
- (b) when one or both of the following applies:
 - (i) the effect is to intimidate or coerce a Governmental Entity, LAWA or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - (ii) it appears that the intent is to intimidate or coerce a Governmental Entity or LAWA, or to further a political, ideological, religious, social or economic objective or to express (or express opposition to) a philosophy or ideology.

Test Procedures means a description of a test to be performed. Test Procedures shall describe the test configuration, the test equipment required, the personnel required to perform the test, all construction and testing pre-requisites that must be completed before the test can be performed, lists each individual step to be followed in the test, expected result of each step, and the pass/fail criteria for each step, and shall include a Test Report form on which the results of the test shall be recorded.

Test Program Plan means a plan describing the planned set of tests to be performed on a Vehicle, Fixed Equipment, APM Fixed Facility, Subsystem, APM System, or an integrated set of subsystems or systems.

Test Report means a form that lists each step to be performed in a test. Each Test Report shall identify the expected results of each step, a location to enter the actual results of each

step, a place for the person responsible for performing the test to sign and date the form, and a place for any witnesses of the test to sign and date the form.

Test Track means a section of track near or in the M&SF designed and equipped for the departure testing of vehicles, as described in Part 2B, Section 11.3.5.1.9 (Departure Test) of the Technical Provisions.

Third Party means any Person other than LAWA and Developer, including the City Departments.

Third Party Intellectual Property means any Intellectual Property owned by any Person unrelated to Developer or its Affiliates or Contractors, and which is incorporated into the Project, Proposal or Work.

Third Party Work means the Work performed by Developer to coordinate with Third Parties as specified in Part 2A, Section 24 (Third Party Coordination) of the Technical Provisions.

Threat and Vulnerability Assessment (TVA) means all studies, analyses, reports and other documentation related to assessing the terrorist threat and vulnerability of the Project, and determining appropriate mitigation measures.

Threatened or Endangered Species means any species listed by the United States Fish and Wildlife Service as threatened or endangered under the Endangered Species Act, as amended, 16 U.S.C. § 1531 et seq., or any species listed as threatened or endangered under the California Endangered Species Act, Fish and Game Code § 2050 et seq.

Traction Power means power used as metered at the primary side of the traction power transformer used for providing electricity to the Vehicles for locomotion and any power drawn from the secondary side of the traction power.

Traction Power Substation (TPSS) means the Traction Power Substation Infrastructure described in Part 2B, Section 18 (Traction Power Substation Infrastructure) of the Technical provisions and the Traction Power Substation Transformer and Rectifier Units described in Part 2B, Section 11.3.8.1.6 (Substation Transformers and Rectifier Units) of the Technical Provisions that provide traction power for Train propulsion and auxiliary power to the APM Operating System.

Traffic Control Plan(s) (TCP) means the site-specific design plan that provides necessary details to control traffic through and around the work area.

Train means the set of one or more APM Operating System Vehicles coupled together and operated as a single unit. For this Project, the APM Operating System shall have the capability to operate with multiple Train lengths including any combination of different length Trains at the same time.

Train Control System means the train control system, where and if necessary, that provides one or all of automatic train protection, automatic train operation and automatic train supervision.

Train Ready Track means the track used for positioning trains that are ready for dispatch into passenger service, as described in Part 2B, Section 11.3.13.1.6 (Train Ready Track) of the Technical Provisions.

Train Service means providing Trains for the Users to travel from one point on the line to another.

Training and Transition Plan means Developer's plan transferring O&M Work responsibilities back to LAWA at the end of the Term, prepared in accordance with Part 2C, Section 4.5.2.5 (Training and Transition Plan) of the Technical Provisions.

Transaction has the meaning set forth in Section 20.2.1.

Transportation Equipment Index (TEI) means the "Transportation Equipment Index, Not Seasonally Adjusted" Series ID: WPU14, as published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the TEI is changed so that the base year of the TEI changes, the TEI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics. If the TEI is discontinued or substantially altered, the Parties will determine a suitable replacement in accordance with general market practice at the time.

Travel Time has the meaning set forth in Part 2B, Section 11.3.3.1.4 (Travel and Round Trip Times) of the Technical Provisions.

Unavailability Deduction means a deduction from an Availability Payment made in accordance with Part B of Exhibit 4B (Availability Payment Mechanism) for reduced APM OS Availability and/or Station Unavailability.

Uninterruptible Power Supply (UPS) has the meaning set forth in Part 2B, Section 11.3.8.2.1 (Uninterruptible Power Supply) of the Technical Provisions.

Unsafe Condition means a condition that (a) gives rise to the imminent possibility of serious injury to workers or the public or of serious damage to property or the environment, or (b) affects the safe movement of trains.

Unsuccessful Proposer's Work Product means any technical concepts (a) included in the proposal or any portion thereof submitted by an unsuccessful proposer in response to the RFP, (b) submitted by such proposer for review by LAWA in accordance with the RFP, or (c) otherwise communicated by such proposer to LAWA prior to the Financial Proposal Due Date. In each case the term includes any alternative technical concepts, ideas, innovation, technology, techniques, methods, processes, unique uses of commercial items, design concepts, solutions, construction means and methods, project execution approach, drawings, reports, plans and specifications and information that constitutes intellectual property in such proposal, any alternative technical concept submittal or technical concepts communicated by the proposer to LAWA prior to the Financial Proposal Due Date.

Upgrades means alterations, improvements, modifications or changes, including Capacity Improvements, that Developer makes to any portion of the Project, as originally designed and constructed, at any time after the Passenger Service Availability Date, except as part of ordinary maintenance or Renewal Work. Upgrades may include alterations, improvements, modifications or changes that require an amendment or supplement to the final environmental

impact documents for the Project or that are to be located outside the boundaries of the original D&C Limits. Upgrades exclude Technology Enhancements and any alterations, improvements, modifications or changes undertaken in the use or development of a Business Opportunity.

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

User(s) means members of the public lawfully present on or using the APM System.

Utility(ies) or utility(ies) means a privately, publicly or cooperatively owned facility (which term includes lines, systems and other facilities, and includes municipal and/or government facilities) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any fire or police signal system as well as streetlights associated with roadways owned by local agencies. However, when used in the context of Utility Adjustments of facilities to accommodate the Project, the term "Utility" or "utility" excludes (a) stormwater facilities, and (b) traffic signals, ramp metering systems, flashing beacon systems, and lighting systems for the mainline Project. Necessary appurtenances to each utility facility (including the utility source, guide poles, Service Lines, supports, etc.) shall be considered part of the facility. Without limitation, any service lateral connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service lateral.

Utility Adjustment means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned utility facilities as well as newly-abandoned facilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate the Project or the Work. For any utility crossing the D&C Limits, the Utility Work for each crossing of the D&C Limits by that utility shall be considered a separate Utility Adjustment. For any utility installed longitudinally within the D&C Limits, the Utility Work for each continuous segment of that utility located within the D&C Limits shall be considered a separate Utility Adjustment.

Utility Information means the information identified in the Utility Information – Quality Level Designations and Utility Information – ACAD Files in Part 5 (Contract Drawings/Engineering Data) of the Technical Provisions, but only to the extent that such information describes underground Utilities that are not Service Lines within the D&C Limits with an identified Quality Level of A, B, C or D.

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

Utility Owners' Costs Account has the meaning set forth in Section 3.3.4.

Utility Relocation Plans has the meaning set forth in Section 7.6.1.1(d).

Utility Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Except as may be specifically identified in the Technical Provisions, "Utility Standards" are not "Standards and Specifications."

Utility Work means the design and construction necessary for a Utility Adjustment. Any Utility Work furnished or performed by Developer is part of the D&C Work; any Utility Work furnished or performed by a Utility Owner is not part of the D&C Work.

Vandalism means willful or malicious damage or defacement (including graffiti) that:

- (a) could not reasonably be expected to have been avoided by Developer as part of Developer's obligations under the Contract Documents; and
- (b) does not arise from, or was not contributed to, directly or indirectly, by any act or omission of Developer or any Developer-Related Entity.

Vehicle means a single Car, or multiple Cars when coupled together, that can operate independently in full compliance with the Contract Documents including redundancy.

Vehicle-hours means the total operating time accrued on a Vehicle measured in hours.

Vehicle-miles means the total travel distance accrued on a Vehicle measured in the US distance unit of miles.

Verification Sampling and Testing means sampling and testing performed to validate the quality of the product. LAWA, or its designee, will perform Verification Sampling and Testing as part of its QA Oversight efforts.

Vertical Conveyances means escalators and elevators.

Video Surveillance Subsystem (VSS) has the meaning set forth in Part 2B, Section 11.3.10.2 (Video Surveillance) of the Technical Provisions.

Weather Delay Days means Adverse Weather Days in excess of 21 days in the aggregate per calendar year (pro-rated for any partial calendar year), it being understood that Developer will incorporate 21 days of such delay per Calendar Year into the Baseline Project Schedule. For purposes of this definition, **Adverse Weather Day** means any day in which inclement weather, or the conditions resulting from inclement weather, prevents work from beginning at the usual starting time with the result that the crew is dismissed, and prevents Developer from proceeding with at least 75% of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60% of the total daily time being spent on the controlling operation or operations.

Work means all of the work, services and obligations required to be furnished, performed and provided by Developer under the Contract Documents, including activities to obtain financing as well as all administrative, design, engineering, construction, demolition, supply of Vehicles, Utility Adjustments, payment to Third Parties, support services, financing services, operations, maintenance and other work of renewal, reconstruction, repair or reinstatement of Project improvements and equipment, and management services. The term does not include any efforts which the Contract Documents expressly specify will be performed by Persons other than Developer-Related Entities.