APPENDIX 1

ABBREVIATIONS

AAN	American Association of Nurserymen, Inc.
AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
ADL	Aerially Deposited Lead
AGC	The Associated General Contractors of America, Inc.
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects.
AISC	American Institute of Steel Constructors
AISI	American Iron and Steel Institute
AMCA	Air Movement and Control Association
AMRL	AASHTO Materials Reference Laboratories
ANSI	American National Standards Institute, Inc.
APE	Area of Potential Effect
AREA	American Railway Engineering Association
AREMA	American Railway Engineering and Maintenance-of-Way Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASR	Archaeological Survey Report
ASTM	American Society for Testing and Materials
ATP	Archaeological Treatment Plan
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CAPWAP	Case Pile Wave Analysis Program
CAR	Condition Assessment Report
CCTV	Closed Circuit Television
CEQA	California Environmental Quality Act (§§ 21000 *et seq*. of the California Public Resources Code)
CHP	California Highway Patrol

CM	Cultural Resources Compliance Manager
CMS	Changeable Message Sign
CPI	Consumer Price Index
CRSI	Concrete Reinforcing Steel Institute
CSLB	Contractors State License Board
DBE	Disadvantaged Business Enterprise
DLTWAVE	Dynamic Load Test – Wave Equation Program, Signal Matching for PDA and DLT.
DRB	Disputes Review Board
DVBE	Disadvantaged Veteran Business Enterprise
EASA	Electrical Apparatus Service Association
EIA	Electronic Industries Association
EOR	Engineer of Record
EPA	Environmental Protection Agency of the United States Government
EPT	Eastern Prevailing Time
FEIS/ R	Final Environmental Impact Study / Report (see NEP/CEQA Approval definition)
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FGDC	Field Geographic Data Committee
FSS	Federal Specifications and Standards
FOE	Findings of Effect
GFCI	Ground Fault Circuit Interrupter
GGBHTD	Golden Gate Bridge, Highway and Transportation District
GRLWEAP	Goble, Rausche, Likins Wave Equation Analysis of Piles
HABS	Historic American Buildings Survey
HAER	Historic American Engineering Record
HALS	Historic American Landscapes Survey
HAR	Highway Advisory Radio
HASP	Health and Safety Plan
HASR	Historic Architecture Survey Report
HPSR	Historic Property Survey Report
HRER	Historical Resources Evaluation Reports
HSR	Historic Survey Report
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IMMS	Integrated Maintenance Management System

IRI	International Roughness Index
IPCEA	Insulated Power Cable Engineers Association
IPD	Indicative Preliminary Design
IPDC	Initial Project Debt Competition
ISO	International Organization for Standards
ITS	Intelligent Transportation Systems
IVHS	Intelligent Vehicle Highway Systems
JFWG	Joint Finance Working Group
LBE	Local Business Enterprise
MBTA	Migratory Bird Treaty Act
MSTCSD	Minimum Specifications for Traffic Control Signals and Devices
MTS	Maintenance Testing Specifications
MUTCD	Manual on Uniform Traffic Control Devices
MVDS	Multipoint Video Distribution System
NES	Natural Environment Study
NESC	National Electrical Safety Code
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq*.)
NETA	InterNational Electrical Testing Association
NFPA	National Fire Protection Association
NIST	National Institute for Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NTCIP	National Transportation Communications for Intelligent Transportation Systems Protocol.
NTP	Notice to Proceed
OSHA	Occupational Safety and Health Administration
PDA	Pile Driving Analyzer
PDI PLOT	Pile Dynamics, Inc.
PDPWAVE – PDPWAVE Program	Pile Driving Prediction. Software by Profound, Netherlands and USA
PFG	Principals Finance Group
PG&E	Pacific Gas and Electric Company
PIM	Preliminary Information Memorandum

RFP	Request for Proposals
RFQ	Request for Qualifications
ROW	Right of Way
RWIS	Road Weather Information Systems
RWQCB	Regional Water Quality Board
SAE	Society of Automotive Engineers
SBE	Small Business Enterprise
SCADA	Supervisory Control and Data Acquisition
SFCTA	San Francisco County Transportation Authority.
SHPO	State Historic Preservation Office
SI	International System of Units
SSPC	Steel Structures Painting Council
STIP	State Transportation Improvement Program
SWPPP	Storm Water Pollution Prevention Plan
TCE	Temporary Construction Easement
TOP	Treatment Oversight Panel
TSCS	Traffic Surveillance and Control System
UAO	Utility Agency Owner
UDBE	Underutilized Disadvantaged Business Enterprise
UL	Underwriters' Laboratories
USACE	US Army Corps of Engineers
USDOT	United States Department of Transportation.
USFWS	US Fish and Wildlife Service
UXO	Unexploded Ordinance
VMS	Variable Message Sign
WPCP	Water Pollution Control Program

UNITS OF MEASUREMENT

Some of the symbols for U. S. Customary units of measurement used in the specifications and in the Engineer's Estimate are defined as follows:

Symbols as used in the Specifications	Symbols as used in the Engineer's Estimate	Definitions
A	—	amperes
	ACRE	acre
	CF	cubic foot
	CY	cubic yard
—	EA	each
g	—	gram
ksi	—	kips per square inch
	GAL	gallon
h	H	hour
	LB	pound
—	LS	lump sum
	LF	linear foot
	LNMI	lane mile
	MFBM	thousand foot board measure
	MI	mile
	MSYD	thousand station yard
Ω	—	ohm
pcf	—	pounds per cubic foot
s	—	second
	STA	100 feet
	SQFT	square foot
	SQYD	square yard
	TAB	tablet
ton	TON	2,000 pounds
W	—	watt
V	—	volt

DEFINITIONS

Actual Insurance Benchmark Policies has the meaning set forth in Section 2.2 of Appendix 9 to the Agreement.

Actual Insurance Policy(ies) has the meaning set forth in Section 2.4 of Appendix 9 to the Agreement.

Adjust(ed) means perform(ed) a Utility Adjustment (including Protection in Place).

Adjustment Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those

being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense, as the same may be amended by the Utility Owner from time to time.

Aerial O&M Limit has the meaning set forth in Appendix 5-C to the Agreement.

Affiliate means:

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

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

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

Affiliated means having the status of an Affiliate.

Affordability Limit means an amount not exceeding $35,000,000 for the First Year maximum Availability Payment.

Agreement means that certain Public-Private Partnership Agreement, to which this Appendix 1 is attached, executed by the Department and Developer, including any and all Appendices and amendments thereto.

Airspace means any and all real property, including but not limited to the surface of the ground: (a) that is within the vertical column extending above and below the surface boundaries of the Project Right of Way; (b) title of which is held in fee simple by the Department; and (c) that is not necessary or required for the Project (including Upgrades) or for developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project (including Upgrades).

Allowance Landscaping means the scope of Work and authorized improvements set forth in Section 3, 12.5 of Division II, including Restored Landscaping and New Landscaping.

Archaeological Treatment Plan means the document that was prepared as part of the studies conducted for compliance with Section 106 of the National Historic Preservation Act of 1966 as outlined in the Programmatic Agreement for the South Access to the South Access to the Golden Gate Bridge Doyle Drive Project. The Plan outlines the avoidance and protection measures that will be taken to protect known archaeological resources and to address the potential for discovery of unknown archaeological resources.

Architectural Criteria Report means the document that addresses how Doyle Drive relates to the existing historic, cultural, and scenic resources of the Presidio as well as integrating the facility within the Presidio's transportation infrastructure. These criteria are a commitment to influence, where feasible, the project design process so that the design is compatible with the overall character of the Presidio National Historic Landmark District as well as that of the Golden Gate Bridge.

Architect means an architect as defined in Section 5500 of the California Business and Professions Code licensed in the State or a professional architectural corporation as defined in Section 5610 of the California Business and Professions Code authorized to render professional services in the State.

Architect of Record means an Architect registered in the State of California that approves and stamps architectural documents on behalf of Developer or the Lead Engineering Firm.

Asbestos Abatement Contractor means a properly licensed contractor as described in Section 6 of the Division I.

As-Built Record Plans means construction drawings, specifications, and related documentation furnished by Developer that reflect the actual conditions and location in detail of the Phase II Construction as constructed and installed; usually generated initially as marked-up Final Design Documents and finally as finished revised drawings and documents, also known as as-built plans.

Authority means the San Francisco County Transportation Authority.

Authorized Representative means the individuals authorized to make decisions and bind the parties on matters relating to the Contract Documents pursuant to Section 25.5 of the Agreement.

Auxiliary Lane means a lane adjoining the General Purpose Lanes or another Auxiliary Lane, which is used for speed change, turning, storage for turning, weaving, or other purposes.

Availability Payment means the amount earned in each given year by Developer as determined in accordance with Appendix 7 to the Agreement.

Background Intellectual Property means all Intellectual Property developed by Developer or its Affiliates or Contractors that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law but was created, used, applied and reduced to practice independently of the Project and the Work.

Backward Looking Termination for Convenience Amount means the amount calculated in accordance with Section 19.1.3 of the Agreement.

Base means (whether capitalized or not) a layer of specified material of planned thickness placed immediately below the pavement or surfacing.

Baseline Report means the report on the baseline asset condition of the Phase I Construction prepared pursuant to Section 4.16 of the Agreement.

Baseline Substantial Completion Date means the scheduled date for Substantial Completion set forth in the initial Project Schedule included in Appendix 2-A to the Agreement (in no event later than December 31, 2014).

Base Maximum Availability Payment means the amount that would be a full Fiscal Year Maximum Availability Payment prior to consideration of the indexation allowed in accordance with the Agreement, as set forth in Section 2.1 of Appendix 7 to the Agreement.

Basement Material means (whether capitalized or not) the material in excavation or embankments underlying the lowest layer of Subbase, Base, Pavement, surfacing or other specified layer which is to be placed.

Best Management Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, operator or Developer seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Governmental Approvals, and engaged in the same type of undertaking under similar circumstances and conditions.

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

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

(b) Replacement devices or materials that are not identical, but meet equivalent standards;

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

(d) Any upgrading required by applicable Law;

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

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

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

Biological Monitoring Plan means the document that was prepared to meet project commitments to protect natural and biological resources in the Presidio. The Plan is designed to ensure that biological monitoring is effectively administered and results in the avoidance and minimization of adverse impacts to sensitive resources throughout the duration of construction activities associated with the Project. In addition to describing monitoring procedures, it also provides measures for situations where resource protection standards are not met; response procedures, and chain-of-command protocol to aid in the rapid deployment of corrective action or adaptive management for such circumstances.

Breakage Costs means any prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate hedging arrangements, that Developer must pay, or that may be payable or credited to Developer, under any Financing Document or otherwise as a result of the prepayment, redemption or acceleration of

the maturity of any Project Debt or the termination, in whole or in part, of any interest rate swaps or commitments to lend or provide Project Debt.

Bridge means (whether capitalized or not) a structure, including supports, erected over a depression or over an obstruction such as water, Highway or railway, or for elevated Roadway, for carrying traffic or other moving loads, and having a length, measured along the center of the Roadway, of more than 20 feet between the inside faces of end supports. A multiple-span box culvert is considered a Bridge, where the length between the extreme ends of the openings exceeds 20 feet.

Business Day means each day on which the Department is officially open for business and Department employees are not on furlough.

Business Opportunity has the meaning set forth in Section 20.2.1 of the Agreement.

Calendar Day means every day shown on the calendar, ending and beginning at midnight.

Certificate of Compliance means a Department document in which a company certifies that the material listed complies with the material and workmanship requirements of the Department Contract Plans, Special Provisions, Standard Specifications and Standard Plans for the contract listed. Furthermore, the document also certifies that the individual signing it is an official representative for the manufacturer of the material listed and that the manufacturer has performed the necessary quality control to substantiate the certification where California Test methods, physical, or chemical test requirements are part of the specifications.

Certified Professional in Erosion and Sediment Control. means a recognized specialist in soil erosion and sediment control. A Certified Professional in Erosion and Sediment Control has educational training, demonstrated expertise, expertise in controlling erosion and sedimentation, and meets certification standards.

Certified Industrial Hygienist means an individual holding a current certification of industrial hygiene from the American Board of Industrial Hygiene.

Change in Law means (a) the adoption of any Law of the State at any point after the date that corresponds to the date 30 days prior to the Proposal Submission Date, (b) any change in any Law of the State or in the interpretation or application thereof by any Governmental Entity of the State after 30 days prior to the Proposal Submission Date, or (c) any change in the Adjustment Standards applicable to a Utility Adjustment after 30 days prior to the Proposal Submission Date, in each case that is materially inconsistent with Laws or Adjustment Standards, respectively, in effect 30 days prior to the Proposal Submission Date; excluding, however, (i) any change in or new Law of the State passed or adopted but not yet effective as of 30 days prior to the Proposal Submission Date, (ii) any change in Adjustment Standards that qualifies as a Betterment, (iii) any change in State labor Laws, and (iv) any change in State tax Laws of general application except the levy of State or local ad valorem property taxes on the Developer's Interest (it being understood that any change in State tax laws shall not be deemed of general application if it is solely directed at and the effect of which is solely borne by Developer or private operators of transportation assets or transportation asset Developers, in each case, in the State).

Change of Control means any Equity Transfer, transfer of an interest in an Equity Member, or other transaction that results in a loss or acquisition of a Controlling Interest in Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) The grant of Security Documents, including the Initial Security Documents, in strict compliance with Section 12.1 of the Agreement or the exercise of Lender remedies thereunder, including foreclosure, subject to Section 13.1.4 of the Agreement; and

(b) 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.

Change Proposal means a written proposal submitted by Developer pursuant to Section 10.2 of the Agreement.

Checker has the meaning set forth in Section 2 of Division I.

Civil Engineer means an individual holding a current and valid registration as "Professional Civil Engineer" in the State.

Claim means a written demand submitted by Developer pursuant to the Contract Documents, which is or potentially could be disputed by the Department, for a time extension or payment of money or damages from the Department to Developer. Claim also means a written demand submitted by the Department pursuant to the Contract Documents, which is or potentially could be disputed by Developer, for payment of money or damages from Developer to the Department.

Claim Deductible means the following amounts, as applicable: (a) the first $50,000 of Extra Work Costs; and (b) the amount equal to the Delay Costs for the first ten days of delay.

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

Collateral Agent means the financial institution listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the Lenders in the Security Documents or intercreditor agreement or similar document with respect to the Project Debt, a copy of which shall be delivered by Developer to the Department.

Commissioning means the process to certify to the Department that systems, equipment, mechanical and electrical controls, and special systems are functioning together in a composite manner as shown on the plans and as specified in Section 3, 17 of Division II. It is required to be completed prior to Substantial Completion.

Commissioning Agent means the designated agency or person hired by Developer and approved by the Department for the commissioning process. The Commissioning Agent communicates, directs and coordinates the day-to-day commissioning activities, and does not take an oversight role. Its work is subject to the QA/QC standards established for the overall Project.

Commissioning Issues Log means a complete and detailed recordation of all non-standard items or occurrences encountered during the commissioning process.

Commissioning Plan means the document that details the implementation of the commissioning process. It includes a full list of equipment to be tested, the sequences of such

testing, and the nature of the system verification checks to be performed. It describes the roles, responsibilities, and communication protocols for Commissioning Team members.

Commissioning Team means and consist of the Commissioning Agent, Developer's Engineer of Record, appropriate subcontractors, the operator and any other subcontractors or suppliers of Equipment. The Office of the State Fire Marshal will participate in commissioning of fire protection and alarm systems.

Committed Investment means (a) any form of direct investment by Equity Members, including the purchase of equity shares in and/or the provision of Equity Members Debt to Developer or (b) an irrevocable on-demand letter of credit issued by or for the account of an Equity Member naming Developer as beneficiary, satisfying the requirements of Sections 16.3.2.1, 16.3.2.2, 16.3.2.5 and 16.3.2.6 of the Agreement and guaranteeing the provision of the direct investment referenced in clause (a) of this definition by a date which is no later than one year after the scheduled date for Final Acceptance set forth in the initial Project Schedule included in Appendix 2-A of the Agreement.

Committed Investment Cash Flows means Distributions described in clause (a) of the definition of Distributions, minus Committed Investment described in clause (a) of the definition of Committed Investment.

Completion Deadline means the Scheduled Substantial Completion Date, the Final Acceptance Deadline and the Long Stop Date, as applicable. "Completion Deadline" does not include the Financial Close Deadline.

Compliance Work means any Work required as a direct result of the Relief Events described in clauses (b), (c) (d), (e), (f), (g), (h), (l), (m) (p) or (q) of the definition of Relief Event.

Condition Assessment Report or CAR means the report that documents the findings of the pre-construction survey and assessment of character-defining features of historic buildings and historic integrity of the features by an architectural historian or historical architect. The assessment will include the use of 3-dimensional recording equipment to survey the buildings with the resulting images draped over digital photographs to provide a highly detailed visual and measured record of each building.

Conduit means (whether capitalized or not) a pipe or tube in which smaller pipes, tubes or electrical conductors are inserted or are to be inserted.

Construction Affecting Public Safety means construction that may jeopardize public safety such as structures spanning functioning vehicular Roadways, pedestrian walkways, railroads, navigation channels of navigable waterways and walls or other structure foundations located in embankments immediately adjacent to functioning roadways. It does not apply to those areas of the Site under Developer's control and outside the limits of normal public access.

Construction Claim means a Dispute over the scope, meaning, interpretation or application of a standard, requirement or provision of the Contract Documents pertaining to the D&C Work, including pertaining to Project Right of Way required for D&C Work or to Utility Adjustments, but excluding insurance requirements.

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

Construction Documents means all plans, 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 in accordance with the Contract Documents.

Construction Noncompliance Adjustment means the amount assigned to each Construction Noncompliance Event as set forth in Table 4.1 of Section 4 of Division II.

Construction Noncompliance Event means the failure to meet one of the minimum performance requirements as set forth in Table 4.1 Section 4 of Division II.

Construction Noncompliance Event Classification means the relative classification from letter "A" through letter "E" assigned to Construction Noncompliance Events as set forth in Table 4.1 of Section 4 of Division II.

Construction Period means the period starting on the date of issuance of NTP 2 and ending on the Substantial Completion Date.

Construction Period O&M Limits means the areas in which the O&M During Construction is to be performed, as identified in Appendix 5C and Section 4 of Division II.

Construction Quality Plan means the plan prepared for quality assurance and quality control of the Construction Work in accordance with Division I.

Construction Safety Orders of the Division of Occupational Safety and Health, better known as Cal/OSHA, means its regulations, orders and directives for the protection of workers and the public from safety hazards.

Construction Work means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver, landscape or equip the Project.

Consumer Price Index or **CPI** means the "Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items" (not seasonally adjusted) 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.

Contaminated Materials means Hazardous Materials.

Contaminated Materials Management means Hazardous Materials Management.

Contract means any agreement, and any supplement or amendment thereto, by Developer with any other Person, Contractor or Supplier to perform any part of the Work or provide any

machinery, materials, equipment, hardware, software, systems or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term Contract excludes Utility Agreements.

Contract Documents means the Agreement, the Technical Requirements, including all Appendices and exhibits to the Agreement and Technical Requirements (and the executed originals of exhibits that are contracts), and the other documents listed in Section 1.2 of the Agreement, including all amendments to the foregoing and all issued Supplemental Agreements. "Contract Documents" include the Lease.

Contract Time means the number of calendar days allowed for completion of the D&C Work calculated from the number of days between the date identified in NTP 1 and the Final Acceptance Deadline, including authorized time extensions.

Contractor means any Person with whom Developer has entered into any Contract to perform any part of the Work or provide any machinery, materials, equipment, hardware, software, systems 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.

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

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

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

Controlling Work Item means the activity or work item on the critical path of the D&C Work having the least amount of total Float. The Controlling Work Item may also be referred to as a "Critical Activity."

Core Lender(s) means each project finance lender (underwriting bank and/or financial institution) who was identified in and supported Developer's Proposal and provided letters of support and term sheets as well as oversaw due diligence on legal, technical and insurance matters. A Core Lender may also serve as a financial advisor to Developer.

Critical Path means (whether capitalized or not capitalized) the longest chain(s), in terms of time, of logically connected activities on the Project Schedule ending with Final Acceptance.

Cultural Resources Compliance Manager means the person that meets the qualifications of a historian, architectural historian or archaeologist as set forth in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (36 CFR 44738-9) and that Developer designates to represent Developer and coordinate with the Treatment Oversight Panel as set forth in Division I.

Culvert means (whether capitalized or not) any structure not classified as a bridge that provides an opening under the roadway.

Cure Period has the meaning set forth in Section 6.2.3 of the Agreement. This definition does not apply to other contexts in which the words "cure period" are used.

Customer Relations Unit means a function of Developer's O&M Work that serves as the means for the general public to inquire about any issues related to the Project and also serves as the means to distribute information about the Project to the public, all as further defined in Section 4 of Division II.

Day or day means Calendar Day unless otherwise expressly specified as a Business Day.

D&C Work means the Design Work and Construction Work, including those obligations of Developer identified in Section 3 of Division II.

DBE/SBE Participation Rates For D&C Work has the meaning set forth in Section 7.8.1.3 of the Agreement.

DBE/SBE Participation Rates For O&M Work has the meaning set forth in Section 7.8.2.3 of the Agreement.

DBE/SBE Program or DBE/UDBE/SBE/DVBE/LBE Participation Program means the program developed and implemented by Developer that provides a vehicle for increasing the participation of certified Disadvantaged Business Enterprise (DBE), Underutilized Business Enterprise (UDBE), Small Business Enterprise (SBE), Disabled Veteran Business Enterprise (DVBE) and Local Business Enterprise (LBE) in all levels of the Work.

Deductible Relief Event means the Relief Events referenced in clauses (a), (b), (e), (j) (but only as to violations of Law by a third party), (k) (but only as to performance or failure to perform work by a Governmental Entity), (l), (m), (n) (but only as to releases by a third party), (q), (r), (t), (u) and (v) of the definition of Relief Event.

Default Termination Event means each of the Developer Defaults listed in Section 19.4.1 of the Agreement.

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

(a) Extension of the Term;

(b) Adjustment of the MAP; or

(c) Periodic payments over the Term.

Delay means any unanticipated event, action, force or factor during the performance of the D&C Work, which extends Developer's time of performance of any Controlling Work Item. 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 Developer or any Developer-Related Entity. The term "Delay" does not include "Extra Work."

Delay Costs means Developer's additional costs that result from a Delay to the Work caused by a Relief Event, which are limited to (a) direct costs for the actual idle labor and

equipment, (b) the indirect costs and expenses thereof excluding cost of funds (whether debt or equity) and excluding Lender charges, damages and penalties, and (c) profit thereon, all as calculated pursuant to Appendix 6 to the Agreement; provided that for Delays to non-Controlling Work Items, the term Delay Costs does not include any indirect costs, expenses or profit thereon. Delay Costs do not include any costs that Developer can reasonably mitigate.

Department means the California Department of Transportation, and any entity succeeding to the powers, authorities and responsibilities of the Department invoked by or under the Contract Documents.

Department-Caused Delays means Delays directly attributable to the following matters and no others, but only to the extent that they (a) are not mitigated by or susceptible to handling by consumption of Float, (b) are not capable of mitigation pursuant to Section 9.2.6 of the Agreement, and (c) are not due to the negligence, willful misconduct, breach of contract or violation of Law or Governmental Approval by any Developer-Related Entity:

(a) Failure of the Department to issue NTP 1 by five days after Developer satisfies the requirements in Section 4.6 of the Agreement, respectively;

(b) Failure of the Department to issue NTP 3 by the later of (i) October 31, 2011 or (ii) five days after Developer satisfies the requirements in Sections 4.7.1 through 4.7.12 of the Agreement;

(c) Department Changes;

(d) Failure of the Department 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, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the Submittal or matter, following delivery of written notice from Developer requesting such action in accordance with the terms and requirements of the Contract Documents;

(e) Suspension of Work orders issued by the Department pursuant to Section 18.2.7.2 of the Agreement, provided that:

i. Any suspension of Work arising from Force Majeure Events, litigation, or security threat rule, order or directive shall not be considered a Department-Caused Delay (although it may qualify as a Relief Event under clause (a), (o) or (q), respectively of the definition of "Relief Event"), despite the fact that the Department may specifically direct Developer to suspend the Work; and

ii. Any suspension of Work arising from the Department's performance of data recovery respecting archeological, paleontological, historical or cultural resources, or the Department's actions related to endangered or threatened species, or presence or Release of Hazardous Materials or Pre-existing Hazardous Materials shall not be considered a Department-Caused Delay (although it may qualify as a Relief Event under clause (l), (m), (n) or (r), respectively, of the definition of "Relief Event"), despite the fact that the Department may specifically direct Developer to suspend the Work; and

(f) Failure to complete the installation work described in Section 4.5.9.1 of the Agreement regarding the PG&E Utility Line by the latest of (i) September 30, 2013, (ii) 120 days before the Scheduled Substantial Completion Date or (iii) 120 days before the projected Substantial Completion Date as shown on Developer's updated Project Schedule.

Department Change means an alteration or change in the Work or the terms and conditions of the Technical Requirements authorized or directed by the Department pursuant to Article 10 of the Agreement, or any other matter or circumstance that the Agreement expressly designates to be a "Department Change".

Department Default has the meaning set forth in Section 18.3.1 of the Agreement.

Department's Finance Team has the meaning set forth in Appendix 13 to the Agreement.

Department's Recoverable Costs means:

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

(b) Reasonably required out of pocket costs the Department 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 Department's attorneys), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic 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 applicable Late Payment Rate, commencing on the date due under the applicable terms of the Contract Documents and continuing until paid.

Design and Construction Costs means the cost for the D&C Work of the Project as set forth in the Schedule of Values, as may be amended to reflect Supplemental Agreements and Unilateral Payments for Delay Costs and Extra Work Costs related to the D&C Work.

Design Criteria (Design Standards) means standards, measures and expectations used in evaluating and verifying design performance for the Project, as set forth in the Technical Requirements.

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

Design Exception means the fact sheets for exceptions to mandatory or advisory design standards. Certain design exceptions have already been approved for the Project. Requests for additional design exceptions are subject to the procedure laid out in Chapter 21 of the Department's Project Development Procedure Manual.

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

Design Package – see Design Documents

Design Work means all Work related to the design, engineering or architecture for the Project.

Detour means (whether capitalized or not) a temporary route for traffic around a closed portion of a Road.

Developer means **[INSERT NAME]**, and its permitted successors and assigns.

Developer Default has the meaning set forth in Section 18.1.1 of the Agreement.

Developer Originated Designs means items which the Contract Documents require Developer to design, detail and incorporate into the Permanent Works.

Developer-Related Entity(ies) means (a) Developer, (b) Equity Members, (c) Contractors at all tiers (including Suppliers), (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, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

Developer's Finance Team has the meaning set forth in Appendix 13 to the Agreement.

Developer's Financial Plan means the financial plan Developer submitted to the Department as part of the Proposal.

Developer's Interest means all right, title, interest and estate, real or personal, of Developer in, to, under or derived from the Agreement and the other Contract Documents, including (a) Developer's leasehold estate in the Project and Project Right of Way under the Lease,(b) Developer's right, title and/or interest in and to the Milestone Payment and Availability Payments earned, Handback Requirements Reserve Account, Submittals, Claims and Intellectual Property, and (c) any right of Developer to collect tolls and users fees.

Developer's Lead Personnel means the collection of Specialty Engineers, environmental specialists, and consultants employed by Developer to oversee specific aspects of the Work and outlined in Division I.

Developer's Proposal Commitments are those commitments made by Developer in its Proposal and attached as Appendix 2 to the Agreement.

Developer's Supervisory Personnel means the supervisory personnel described in Section 6 of Division I.

Direct Agreement means the agreement in the form attached as Appendix 14 to the Agreement by and among the Department, Developer, and the Lender (or if there is more than one Lender, the Collateral Agent on behalf of the Lenders) respecting the Lenders' rights to notice, step-in and cure of Developer Defaults. The Direct Agreement shall follow the "Form of Direct Agreement" provided as Appendix 14 to the Agreement in all material respects.

Director means the executive officer of the Department, as created by Law.

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

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

Dispute Resolution Procedures means the procedures for resolving Disputes set forth in Article 24 of the Agreement.

Disputes Review Board or DRB means the disputes review board established pursuant to Article 24 of the Agreement to aid in the resolution of Disputes described in Section 24.1.3 of the Agreement.

Distribution means (a) whether in cash or in kind, any (i) dividend or other distribution in respect to share capital, (ii) reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital, (iii) payments under Equity Members Funding Agreements (whether of principal, interest, breakage costs or otherwise), (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms, (v) the receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms, or (b) the early release of any contingent funding liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

District Director means the individual employed by the Department who holds the position of director for District 4 of the Department.

Divided Highway means (whether capitalized or not) a highway with separated Traveled Ways for traffic, generally in opposite directions.

Division I means Division I of the Technical Requirements.

Division II means Division II of the Technical Requirements.

Doyle Drive Sustainability Program means the development of a program to support the interests of the community and the aspiration to ensure the Project upholds high standards of environmental stewardship as further described in Section 1 of Division I. Priority areas of the program include the development of: greenhouse gas emission reduction strategies, a materials and resources strategy, a project-specific construction waste management plan, and a sustainability performance target tracking and reporting mechanism.

DRB Chairperson means the DRB member appointed as the chair of the DRB.

DRB Report has the meaning set forth in Section 24.7.5 of the Agreement.

Early Termination Date means the effective date of termination of the Agreement for any reason prior to the stated expiration of the Term, as specified in the relevant provisions of Section 16.1.2.13 or Article 19 of the Agreement.

Effective Date means the later of the date on which the Department and Developer have mutually executed and delivered the Agreement, or such other date as they shall have mutually agreed upon in writing.

Electronic Document Management System means a computer system (or set of computer programs) used to track and store electronic documents and/or images of paper documents.

Element means an individual component, system or subsystem, including landscaping, of the Project.

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

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

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

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

(d) Any money market funds, the investments of which consist of cash and obligations fully and unconditionally guaranteed by (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America and which have been rated "A" or higher by a Rating Agency; and

(e) Other investments listed in Section 16430 of the California Government Code.

Emergency means any unforeseen event affecting the Project whether directly or indirectly which (a) causes or has the potential to cause disruption to the free flow of traffic on the Project or a threat to the safety of the public; (b) is an immediate or imminent threat to the integrity of any part of the infrastructure of the Project, to the Environment or to property adjacent to the Project; or (c) is recognized or declared by the Department or a Governmental Entity as an emergency.

Emergency Management means the processes described in Section 4 of Division II.

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 Response Officials means any Governmental Entity that is authorized or tasked to provide Emergency Response.

Emergency Response Plan means the plans and procedures prepared under Section 4 of Division II by Developer that are to be implemented to protect the O&M Limits from governor declared Emergencies and other Emergencies.

Engineer of Record (EOR) means the Professional Engineer, retained by Developer or the Lead Engineering Firm, that performs the design and analysis, and is responsible for the preparation of the Design Documents.. "Engineer of Record" also means and will apply to the Shop Drawing checker and certifier retained by Developer or the Lead Engineering Firm, regardless of whether that party is normally the Engineer of Record or a Specialty Engineer.

Engineer's Estimate means the list of estimated quantities of work to be performed as contained in the Design Documents.

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

Environmental and Cultural Resources Management Plan means the plan, as part of the Project Management Plan, which outlines Developer's approach to handling environmental and cultural resources as described in Section 1 of Division I.

Environmental Approvals means all Governmental Approvals arising from or required by any Environmental Law in connection with construction, use or operation of the Project, including approvals and permits required under the National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended, or the California Environmental Quality Act (§§ 21000 *et seq*. of the California Public Resources Code) . Environmental Approvals include the NEPA/CEQA Approval and the Programmatic Agreement.

Environmental Law 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 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, parks and recreation lands, cultural, historical, archeological, and paleontological 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 (all as amended):

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*.);

iii. The Resource Conservation and Recovery Act, amending 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 Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq*.);

viii. The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq*.);

ix. Section 404 of the Clean Water Act (33 U.S.C. § 1344);

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

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

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

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

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

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

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

xvii. The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq*.);

xviii. The Rivers and Harbors Act of 1899 (33 U.S.C. §§ 401 *et seq*.);

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

xx. The Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq*.);

xxi. Section 4f of the Department of Transportation Act (49 U.S.C. § 303);

xxii. The National Historic Preservation Act (16 U.S.C. § 470);

xxiii. 33 C.F.R. §§ 114 and 125;

xxiv. The California Environmental Quality Act (§§ 21000 *et seq*. of the California Public Resources Code);

xxv. The California Clean Air Act of 1988 (§§ 39000 *et seq*. of the California Health and Safety Code);

xxvi. The California Occupational Safety and Health Act of 1973 (§§63000 *et seq*. of the California Labor Code);

xxvii. The Porter-Cologne Water Quality Act (§§ 13000 *et seq*. of the California Water Code;

xxviii. The California Coastal Act (§§ 30000 *et seq*. of the California Public Resource Code);

xxix. The Integrated Waste Management Act (§§ 40000 *et seq*. of the California Public Resources Code);

xxx. The Safe Drinking Water and Toxic Enforcement Act (§§ 25249.5 *et seq*. of the California Health and Safety Code);

xxxi. Chapter 6.5 of Division 20 of the California Health and Safety Code (§§ 25100 *et seq*.); and

xxxii. §§ 1600 *et seq.* of the California Fish and Game Code

Equipment means (whether capitalized or not) the machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, and all other tools and apparatus necessary for the construction and acceptable completion of the Work.

Equity IRR means the nominal post-tax internal rate of return to the Committed Investment described in clause (a) of the definition of Committed Investment, over the full Term calculated using the Financial Model as the discount rate that, when applied to Committed Investment Cash Flows, gives a zero net present value. Accordingly, (a) the Equity IRR can only change when and if the Financial Model is updated in accordance with Section 14.2 of the Agreement, and (b) the Equity IRR initially is equal to the Original Equity IRR. For purposes of this definition, the phrase "post-tax" refers only to U.S. federal and state income tax liability of Developer or its Equity Members and specifically excludes (i) any foreign income tax and other tax of any kind, and (ii) any withholding tax, including any tax that Developer or an Equity Member is obligated to withhold on Distributions (whether actual or constructive) or other payments or allocations to Equity Members or holders of debt of or equity interests in an Equity Member under 26 U.S.C. §§ 1441 – 1446, notwithstanding 26 U.S.C. § 1461.

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

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

Equity Members Funding Agreements means any Funding Agreements relating to Equity Members Debt.

Equity Members Security Documents means any Security Documents securing Equity Members 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 2.7 of Appendix 9 to the Agreement.

Escort Service Plan means the plan, described in Section 4 of Division II, detailing Developer's approach to providing Tunnel escorts for all Fire Hazardous Vehicles which are permitted to use the Project.

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

Exceptions to Advisory Design Standards – see Design Exceptions.

Exceptions to Mandatory Design Standards – see Design Exceptions.

Excluded Premium Increases has the meaning set forth in Section 2.1 of Appendix 9 to the Agreement.

Exempt Refinancing means (a) any Refinancing that was fully and specifically identified and taken into account in the Original Financial Model and calculation of the Availability Payment,

(b) any amendment, modification, supplement, or consent to any Financing Document or the exercise by a Lender of rights, waivers, consents and similar actions in the ordinary course of day-to-day loan administration and supervision which does not provide a financial benefit to Developer, (c) any changes in taxation or Developer's accounting treatment or policies, and (d) any of the following acts by a Lender: (i) the syndication in the ordinary course of business of any of such Lender's rights and interests in the Funding Agreements related to Project Debt; (ii) the grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, in respect of the Funding Agreements related to Project Debt in favor of any other Lender or any investor; or (iii) the grant by such Lender of any other form of benefit or interest in either the Funding Agreements related to Project Debt or the revenues or assets of Developer, whether by way of security or otherwise, in favor of any other Lender or any investor.

Extra Work means any Work which is required by the Department to be performed by Developer and which at that time is not otherwise covered or included in the Project by the Contract Documents, whether it is in the nature of additional work, altered work, deleted work, or otherwise. The term "Extra Work" includes additional Work or changes in the Work attributable to the Department's changes in terms and conditions of the Technical Requirements (including changes in the standards applicable to the Work), except to the extent provided otherwise in Sections 4.1.2.3 and 8.2.1 of the Agreement. The term "Extra Work" does not include "Delay."

Extra Work Costs means the incremental increase in Developer's costs directly attributable to Extra Work, which include (a) labor and burden costs, (b) Material and supply costs, (c) Equipment costs, (d) indirect costs and expenses excluding cost of funds (whether debt or equity) and excluding Lender charges, damages and penalties and (e) profit; which costs shall be calculated pursuant to Appendix 6 to the Agreement.

Falsework means (whether capitalized or not) any temporary construction work used to support the permanent structure until it becomes self-supporting. Falsework includes steel or timber beams, girders, columns, piles and foundations, and any proprietary equipment including modular shoring frames, post shores, and adjustable horizontal shoring.

Federal Agencies means any agency or officer of the federal government, and any agency or officer succeeding in accordance with law to the powers, duties, jurisdiction and authority of the agency or officer mentioned.

Federal Requirements means the provisions required to be part of federal-aid construction contracts by applicable Law, including those federal Laws and Developer requirements under federal Laws identified in Division I and Appendix 20 to the Agreement.

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions set forth in Section 4.9.3.1 of the Agreement, as and when confirmed by the Department's issuance of a notice in accordance with the procedures and within the time frame established in Section 4.9.3 of the Agreement.

Final Acceptance Date means the date upon which Developer achieves Final Acceptance.

Final Acceptance Deadline means the date by which Developer must achieve Final Acceptance, which shall be June 30, 2015, subject to adjustment in accordance with the Agreement.

Final Design means, depending on the context: (a) the Final Design Documents; (b) the design concepts set forth in the Final Design Documents; or (c) the process of developing the Final Design Documents.

Final Design Documents means the complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, design exceptions and variations, details and diagrams, specifications, reports, studies, calculations, electronic files, records and submittals prepared by Developer, necessary or related to construction and maintenance of the Project.

Final Design Package means the design submittal described in Section 2 of Division I.

Final System Integration Test means the test described in of Section 3, 17 of Division II.

Financial Close means the satisfaction or waiver of all conditions precedent set forth in Section 15.2.5 of the Agreement to the first utilization under the Initial Funding Agreements relating to the long-term financing of the Initial Project Debt.

Financial Close Deadline means the deadline for achieving Financial Close, which shall be 180 days after issuance of the IPDC Commencement Notice, as the same may be adjusted in accordance with Section 9.2.5.1 of the Agreement.

Financial Close Security means the bond or letter of credit in the amount of $15,000,000 provided by Developer to the Department under Section 4.9.2 of Volume I of the RFP (Instructions to Proposers).

Financial Model means the financial computer model, including the Financial Model Formulas and the related output, audited by an independent model auditor reasonably acceptable to the Department that is used to produce the financial forecasts pursuant to the Funding Agreements and which is represented by material contained on computer disks and printouts, which are held in the escrow established under Section 21.6 of the Agreement and copies of which are held by the Department and Developer, and which includes certain projections and calculations with respect to revenues, expenses, the repayment of Project Debt and Distributions to initial Equity Members that result in achievement of the Equity IRR.

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

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

(a) Appendix D-2 of the Proposal (Detailed Costing Form)**]**;

(b) The data book submitted with the Proposal, fully describing all assumptions underlying the estimates, projections and calculations in the Original Financial

Model, and updates to such data book related to the Financial Model and Financial Model Updates;

(c) The step by step instructions on the procedure to run and to optimize the Financial Model Formulas, the Original Financial Model and Financial Model Updates;

(d) Copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) identified in the Proposal and any other potential Contractors that provided data and information used as the basis for Appendix D-2 of the Proposal;

(e) Copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) related to any Relief Event; and

(f) 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 the Financial Model or any Financial Model Update, or related to any Relief Event.

Financial Model Update means any update to the Financial Model prepared pursuant to Section 14.2 of the Agreement.

Financing Documents means Funding Agreements and Security Documents.

Fire Hazardous Vehicles means all vehicles designated by the State Fire Marshal that require Tunnel escorts by Developer when traveling the Project.

First Year Maximum Availability Payment means the nominal value of all the Availability Payments which could be earned for the first full year following the Baseline Substantial Completion Date.

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

Fixed Costs mean any necessary labor, material and equipment costs directly expended on the item or items under consideration which remain constant regardless of the quantity of the work done.

Float means the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every activity in the Project Schedule.

Force Majeure Event means the occurrence of any of the following events that materially and adversely affects performance of Developer's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer or any Developer-Related Entity: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Work, in each case occurring within the State of California; (b) any act of riot, insurrection, civil commotion or sabotage that causes direct physical damage to the Work; (c) nuclear explosion, radioactive contamination of the Site, unless the source of the explosion or radioactive contamination, is brought to or near the Site by any Developer-Related Entity; (d) fire, explosion, Seismic Event, flood caused by natural events, gradual inundation

caused by natural events, sinkhole caused by natural events or landslide caused by natural events; (e) Terrorism; or (f) any governor declared Emergency within the limits of the Project Right of Way.

Formwork means (whether capitalized or not) any structure or mold used to retain plastic or fluid concrete in its designated shape until it hardens. Formwork comprises common materials such as wood or metal sheets, battens, soldiers and walers, ties, proprietary forming systems such as stay-in-place metal forms, and proprietary supporting bolts, hangers and brackets. Formwork may be either permanent formwork requiring a shop drawing submittal such as stay-in-place metal or concrete forms, or may be temporary formwork which requires certification by the Specialty Engineer for Construction Affecting Public Safety and for Major and Unusual Structures.

Forward Looking Termination for Convenience Amount means the amount calculated in accordance with Section 19.1.4 of the Agreement.

Frontage Road means a local street or road auxiliary to and located generally on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

Functional Performance Test means the tests described in of Section 3, 17 of Division II.

Funding Agreement means:

(a) Any loan agreement, funding agreement, account maintenance or control agreement, intercreditor agreement, subordination agreement, trust indenture, hedging agreement, swap agreement, credit insurance policy, guaranty, indemnity agreement, reimbursement agreement, or other agreement by, with or in favor of any Lender pertaining to or evidencing Project Debt (including any Refinancing), other than Security Documents;

(b) Any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of Developer for Project Debt (including any Refinancing); and

(c) Any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments.

General Purpose Lanes means the Traffic Lanes of the Project other than Auxiliary Lanes.

Geotechnical Design Report means the report described in of Section 3, 6 of Division II.

Geotechnical Engineering Consultant means the consultant hired by Developer to prepare the Geotechnical Design Report.

Geotechnical Execution Plan means the plan described in Section 6 of Division I.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, agreement or memoranda of agreement/understanding, and any revision, modification, amendment, supplement, renewal or extension of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorizes or pertains to or is required for the Project or the Work. Governmental Approvals include the Presidio Trust Right of Entry Agreement, the Programmatic Agreement, and actions, approvals and authorizations from any Governmental Entity required thereunder.

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

Governor Declared Emergencies means emergencies officially declared by the Governor of California.

Grading Plane means (whether capitalized or not) the surface of the Basement Material upon which the lowest layer of Subbase, Base, pavement, surfacing or other specified layer is placed.

Greenhouse Gases (GHG) means gases that contribute to the greenhouse effect by absorbing infrared radiation. Greenhouse Gases include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

Guarantor means any Person that is the obligor under any guaranty in favor of the Department required under the Agreement, including any guaranty of a Key Contract with the Lead Contractor or the Lead Operations and Maintenance Contractor.

Handback Evaluation Criteria means the minimum physical conditions described in Table 5.1 in Section 5 of Division II that the Project assets, Structures, systems and equipment shall conform to in order to meet the minimum Handback Requirements pursuant to Section 5 of Division II.

Handback Renewal Amount means the cost of the Handback Renewal Work determined according to Section 5 of Division II, which is required to be expended to ensure the Project meets the Handback Requirements.

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

Handback Renewal Work Plan means the plan prepared in accordance with Section 5 of Division II.

Handback Requirements means the terms, conditions, requirements and procedures governing the condition in which Developer is to deliver the assets within the O&M Limits to the Department upon expiration or earlier termination of the Agreement, as set forth in Section 5 of Division II.

Handback Requirements Letter of Credit means the letter of credit of that name described in Section 5.10.4.1 of the Agreement.

Handback Requirements Reserve Account means the account of that name established pursuant to Section 5.10.1 of the Agreement.

Haul Routes means access roads on lands of the Presidio Trust designated in Appendix 5-D to the Agreement that may be used by construction vehicles and equipment (whether in connection with the Construction Work or the Phase I Construction).

Hazardous Materials means any element, chemical, compound, mixture, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or

otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins, fungi or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the environment or human health and safety. "Hazardous Materials" includes the following:

(a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances, ignitable, corrosive and reactive substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP" toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);

(b) Any petroleum product, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

(c) Any solvent, solvent waste, including any refined solvent product, and any waste solvent or waste solvent byproduct, including any additive, byproduct or fraction of any of the foregoing;

(d) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(e) Any flammable substances or explosives, including unexploded ordnance;

(f) Any radioactive materials;

(g) Any asbestos or asbestos-containing materials;

(h) Silica;

(i) Any lead, cadmium, or lead-based paint or any other heavy metal-based paint or material, or any metal listed in or regulated by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);

(j) Any radon or radon gas;

(k) Any methane gas or similar or regulated gaseous materials;

(l) Any urea formaldehyde foam insulation;

(m) Electrical equipment and components which contain any oil or dielectric fluid containing polychlorinated biphenyls;

(n) Pesticides, herbicides or fungicides;

(o) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, Users or any Persons in the vicinity of the Project or to the indoor or outdoor Environment; and

(p) Soil, or surface water or groundwater containing any of the Hazardous Materials as defined above.

Hazardous Materials Management means procedures and requirements to address Hazardous Materials conditions and contamination encountered, impacted, caused by or occurring in connection with the Project, Project Right of Way or the Work, as well as investigation and remediation of such Hazardous Materials where required. 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 authorized under applicable Law and Governmental Approvals.

Hazardous Materials Management Plan means the plan describing how Developer will perform Hazardous Materials Management and shall be part of the Environmental and Cultural Resources Management Plan.

Hazardous Waste Operations Safety and Health Program for Hazardous Waste Management means the document prepared following federal, State, and local requirements for addressing Hazardous Materials Management including measures for handling known and unknown Hazardous Materials and includes a Health and Safety Plan.

Health and Safety Plan means the document prepared that outlines the measures to protect construction personnel and the general public during the construction of the Project.

High Priority Hour(s) has the meaning set forth in Table 1 in Section 3.3 of Appendix 7 to the Agreement during the Operating Period.

Highway, Street, or Road (whether capitalized or not) are general terms denoting a public way for purposes of vehicular travel.

Historic Landmark District means a group of buildings, properties or sites that the U.S. Department of Interior designates as historically or architecturally significant.

Historic Resources Evaluation Report means a document that is used for identification, recordation and evaluation efforts for historical archaeological resources, such as buildings, structures, objects, districts, and linear features.

Holidays means days designated by the State as holidays, which include New Year's Day, Martin Luther King Jr. Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the following Friday, and Christmas Day.

Hour means a period of 60 minutes in a day, the first such period (calculated with reference to a 24 hour clock) commencing at 00:00 hours on that day, and each further period commencing on the hour.

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

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

Indemnified Parties means the Department, the State, and their respective successors, assigns, agencies, divisions, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees.

Independent Assurance Procedures means policies, procedures, and guidelines to assure the quality of materials and construction of the Project per the requirements of the Federal Highway Administration's (FHWA) Quality Assurance requirement described in Title 23, Code of Federal Regulations 637 Subpart B - Quality Assurance Procedures for Construction.

Independent Checker has the meaning set forth in Section 2 of Division I.

Indicative Preliminary Design means the conceptual and/or preliminary design included in the Reference Documents.

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

Initial Funding Agreements means the Funding Agreements establishing the rights and obligations pertaining to the Initial Project Debt, either (a) as specifically identified in Appendix 8 to the Agreement to the extent executed and delivered by Developer on or before the Effective Date, or (b) as executed and delivered by Developer at Financial Close, to the extent Financial Close occurs after the Effective Date.

Initial Project Debt means the Project Debt incurred by Developer to originally finance the Project and Work, in at least the total amount set forth in Appendix 8 to the Agreement. The Initial Project Debt is evidenced and secured by the Initial Financing Documents.

Initial Security Documents means the Security Documents securing the Initial Project Debt, either (a) as specifically identified in Appendix 8 to the Agreement to the extent executed and delivered by Developer on or before the Effective Date or (b) as executed and delivered by Developer at Financial Close, to the extent Financial Close occurs after the Effective Date.

Instructions to Proposers means the Instructions to Proposers, including any addenda or riders, issued by the Department as part of the RFP.

Insurance Policies means all of the insurance policies Developer is required to carry or cause its Contractors to carry pursuant to Section 16.1 of the Agreement. "Insurance Policies" does not include the OCIP.

Insurance Premium Benchmark Amount has the meaning set forth in Section 2.8 of Appendix 9 to the Agreement.

Insurance Review Report has the meaning set forth in Section 2.2 of Appendix 9 to the Agreement.

Insurer means the entity insuring risk under an Insurance Policy.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes traffic management algorithms, and software used in connection with the Project (including but not limited to software used for management of traffic on the Project), and software source code. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

Intellectual Property Escrow has the meaning set forth in Section 21.5.2 of the Agreement.

Internal Checker has the meaning set forth in Section 2 of Division I.

International Society of Arboriculture Certified Arborist means an individual who is certified as an arborist from the International Society of Arboriculture.

Interpretive Engineering Decision has the meaning set forth in Section 3.4.1 of the Agreement.

Interval of Recurrence means for each Noncompliance, whether a Construction Noncompliance Event or O&M Noncompliance Event, the period of time after which, unless already cured, such Noncompliance will be deemed to have occurred anew and therefore assessed another Construction Noncompliance Event Adjustment or O&M Noncompliance Event Adjustment, as applicable; provided, however, that there shall be no cure period for such new Noncompliance Event. The Intervals of Recurrence are set forth in Table 4.1 and Table 4.2 of Section 4 of Division II.

IPDC has the meaning set forth in Appendix 13 to the Agreement.

IPDC Commencement Notice has the meaning set forth in Section 15.2.2 of the Agreement.

IPDC Protocol has the meaning set forth in Appendix 13 to the Agreement.

Joint Finance Working Group or JFWG has the meaning set forth in Appendix 13 to the Agreement.

Key Contract means any one, or an aggregate of more than one, of the following Contracts for Work Developer causes to be performed:

(a) All Prime Contracts for design, include the Contract with the Lead Engineering Firm;

(b) All Prime Contracts for construction, including the Contract with the Lead Contractor;

(c) All O&M Contracts, including the Contract with the Lead Operations and Maintenance Contractor;

(d) All Prime Contracts project or program management services;

(e) All Prime Contracts for maintenance, if any, unless with the Department; and

(f) All other Prime Contracts with a single Contractor which individually or in the aggregate total in excess of $2,000,000.

Key Contractor means the Contractor under any Key Contract.

Key Objectives has the meaning set forth in Appendix 13 to the Agreement.

Key Personnel means those individuals appointed by Developer and approved by the Department from time to time to fill the following positions:

(a) The Project Executive;

(b) The Project Manager;

(c) The superintendents for the Lead Contractor;

(d) The lead design engineer from the Lead Engineering Firm;

(e) The Quality Manager; and

(f) Any other key members of Developer's management team or other individuals that were identified in the Proposal or in the Contract Documents.

Laboratory means the Division of Engineering Services - Materials Engineering and Testing Services and Division of Engineering Services - Geotechnical Services of the Department of Transportation, or established laboratories of the various districts of the Department, or other laboratories authorized by the Department to test materials and other items involved in the Work. When a reference is made in the Technical Requirements to the "Transportation Laboratory", the reference shall mean Division of Engineering Services - Materials Engineering and Testing Services and Division of Engineering Services - Geotechnical Services, located at 5900 Folsom Boulevard, Sacramento, CA 95819, Telephone (916) 227-7000.

Late Payment Rate means:

(a) With respect to late payments from the Department to Developer up to the date of a final money judgment, the rate established under California Government Code Section 927.6(b),

(b) With respect to late payments from Developer to the Department up to the date of a final money judgment, the same rate as provided in clause (a) above,

(c) With respect to payment from the Department to Developer of a final money judgment, the rate established under Cal. Const., Art. XV, section 1 or any statute authorized thereunder; and

(d) With respect to payment from Developer to the Department of a final money judgment, the rate established under California Code of Civil Procedure Section 685.010.

Law or **Laws** means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws," however, excludes Governmental Approvals.

Lead Contractor means **[INSERT NAME]**.

Lead Engineering Firm means **[INSERT NAME]**.

Lead Operations and Maintenance Contractor means **[INSERT NAME]**.

Lease means the Project Lease to be entered into between Department and Developer pursuant to Sections 2.1 of the Agreement, in the form attached as Appendix 3 to the Agreement, as amended from time to time.

Lender means each bank or financial institution, the U.S. Department of Transportation (when granting a TIFIA Loan), the PABs Issuer or any other holder of a beneficial interest in a Security Document, including any financial guarantor, which is a provider of Project Debt or any guaranty or credit enhancement in respect thereof, and any participating parties, trustees and agents, including the Collateral Agent, together with their respective successors and assigns.

License to Enter Agreement means the certain Doyle Drive Replacement Project License to Enter and Conduct Utility Relocations given by the Presidio Trust to the Department and the Authority for the purpose of relocating existing Utilities.

Long Cure Priority Noncompliance means a Noncompliance that, even if cured within the applicable Cure Period, counts as an instance of Noncompliance for purposes of Section 6.7.1 of the Agreement and toward a Persistent Developer Noncompliance for purposes of Section 18.2.6.3 of the Agreement. Long Cure Priority Noncompliances are identified in the tables in Section 4 of Division II.

Long Stop Date means the date by which Developer must achieve Substantial Completion, which shall be the earlier of (a) 365 days after the Baseline Substantial Completion Date, subject to adjustment in accordance with the Agreement or (b) a date consistent with achieving Final Acceptance by the Final Acceptance Deadline assuming a time period needed between Substantial Completion and Final Acceptance as set forth in the original Project Schedule, subject to adjustment in accordance with the Agreement.

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

Low Priority Hour(s) has the meaning set forth in Table 1 in Section 3.3 of Appendix 7 to the Agreement during the Operating Period.

Maintenance Manual means the manual prepared by Developer in accordance with Section 4 of Division II describing the maintenance procedures for the facilities and roadways within the O&M Limits.

Major and Unusual Structures means bridges of complex geometry and/or complex design. Generally, this includes the following types of structures:

(a) Bridges with an individual span longer than 300 feet;

(b) Structurally continuous superstructures with spans over 150 feet;

(c) Steel box and plate girder bridges;

(d) Steel truss bridges;

(e) Concrete segmental and longitudinally post-tensioned continuous girder bridges;

(f) Cable stayed or suspension bridges;

(g) Arch bridges;

(h) Tunnels;

(i) Movable bridges (specifically electrical and mechanical components); and

(j) Rehabilitation, widening, or lengthening of any of the above.

Major Permits means those Governmental Approvals identified in Table 2 of Appendix 21 to the Agreement.

Major Permits Deadline means each date set forth in Appendix 21 to the Agreement for obtaining the applicable Major Permit.

Mandatory Technology Enhancement means the Technology Enhancements required under Section 8.1 of the Agreement.

The Manual on Uniform Traffic Control Devices means the Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition (MUTCD) as administered by the Federal Highway Administration. **The MUTCD 2003 California Supplement** (MUTCD California Supplement) is issued by the Department to provide amendments to the MUTCD. The MUTCD and MUTCD California Supplement supersede the Department's Manual of Traffic Controls.

Manuals and Guidelines or **Governing Regulations** means the manuals, guidelines and other documents referenced in Volume III and incorporated into the Technical Requirements by such reference.

Master Lighting Plan means the plan described in Section 3 of Division II.

Master Utility Relocation Plan means the plan completed as part of the Utility Adjustment Work.

Materials mean (whether capitalized or not) any substances to be incorporated in, or encountered during the execution of, the Work under the Contract Documents.

Material Quality Control Program means the program of that name described in Division I.

Maximum Availability Payment or **MAP** means the maximum Availability Payment that Developer can earn in a given Fiscal Year from and after the Substantial Completion Date, as calculated in accordance with Appendix 7 to the Agreement, and as may be further adjusted in accordance with the Contract Documents.

Median means (whether capitalized or not) the portion of a Divided Highway or street separating the Traveled Ways for traffic moving in opposite directions.

Mid Priority Hour(s) has the meaning set forth in Table 1 in Section 3.3 of Appendix 7 to the Agreement.

Milestone Payment means the payment identified in Section 4.9.4.1 and Appendix 4 of the Agreement before the Milestone Payment Adjustments and the deductions and offsets identified in Section 4.9.4.5 of the Agreement.

Milestone Payment Adjustment Cap has the meaning set forth in Appendix 4 to the Agreement.

Milestone Payment Adjustment Excess has the meaning set forth in Appendix 4 to the Agreement.

Milestone Payment Amount means the amount of the Milestone Payment after the Milestone Payment Adjustments and the deductions and offsets identified in Section 4.9.4.5 of the Agreement.

Milestone Payment Adjustment means the amount to be deducted from the Milestone Payment as calculated in accordance with Section 4.9.4.3 and Appendix 4 of the Agreement.

Monthly Handback Reserve Deposit has the meaning set forth in Section 5.10.2.1 of the Agreement.

NEPA/CEQA Approval means the project report dated January 28, 2009 and the Final Environmental Impact Statement/Report and Final Section 4(f) Evaluation and Record of Decision dated September 2008 and December 18, 2008, respectively, for the Project, and all approved supplements and reevaluations thereof pertaining to the Project completed 30 days prior to the Proposal Submission Date.

New Agreements has the meaning set forth in Section 13.2 of Appendix 14 to the Agreement.

New Landscaping means the scope of Work and authorized improvements within the TCE as generally set forth in Section 3, 12.5 of Division II that are not part of Restored Landscaping included as part of Phase 1 Construction or Phase 2 Construction.

Noise Control Plan means the plan that outlines the procedures for noise field monitoring of construction activities, the measures to mitigate noise levels that exceed set sound limits, and the specifications for noise control found in the Department's Standard Specifications and Standard and Special Specifications.

Noncompliance means any Developer breach or failure to meet the minimum performance requirements set forth in Section 4 of Division II, as those requirements may be revised from time to time.

Noncompliance Offsets has the meaning set forth in Section 6.3.4 of the Agreement.

Noncompliance Points means the points that may be assessed for certain Noncompliance by Developer, as set forth in Section 4 of Division II,.

Nonconforming Work means D&C Work that does not conform to (and does not exceed) the requirements of the Contract Documents.

Non-Discriminatory O&M Changes means alterations or changes (including additions) to provisions in the Technical Requirements relating to the O&M Work of general application to comparable Department projects, including revisions to the Manuals and Guidelines, adoption of new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other technical provisions. A Non-Discriminatory O&M Change is a Department Change.

Non-Discriminatory O&M Change Deductible has the meaning set forth in Section 5.2.2.6 of the Agreement.

Normal Working Hours means the time period between 8:00 am to 6:00 pm Monday through Friday and from 9:00 am to 5:00 pm on Saturday's and Sundays, excluding Holidays.

Notice of Termination for Convenience means written notice issued by the Department to Developer terminating the Agreement for convenience under Section 19.1.1 of the Agreement.

NTP 1 means the written notice issued by the Department to Developer authorizing Developer to proceed with Design Work.

NTP 2 means the written notice by the Department to Developer authorizing Developer to proceed with O&M During Construction.

NTP 3 means the written notice issued by the Department to Developer authorizing Developer to proceed with Construction Work and all O&M Work not authorized by NTP 2.

Offices of Structure Design of the Department of Transportation means the Department's Offices of Structure Design, Documents Unit, Mail Station 9-4/4I, 1801 30th Street, Sacramento, CA 95816, Telephone (916) 227-8252.

O&M After Construction means the O&M Work for all elements of the Project according to Table 4.2 in Section 4 of Division II. O&M After Construction encompasses all O&M Work during the Operating Period.

O&M Annual Report means the annual report Developer submits to the Department for the O&M Work as set forth in Section 4 of Division II.

O&M Contract means any Contract entered into by Developer for third-party management, direction, supervision or performance of the O&M Work or any significant portion thereof. There may be more than one O&M Contract concurrently in effect.

O&M Contractor means the Contractor under any O&M Contract.

O&M During Construction means the O&M Work for all permanent elements of Phase 1 Construction according to Table 4.2 in Section 4 of Division II and the O&M Work for all residual elements of Doyle Drive, temporary elements of Phase I Construction, and all elements of Phase II Construction according to Table 4.1 in Section 4 of Division II. O&M During Construction encompasses all O&M Work during the Construction Period.

O&M Limits means the Construction Period O&M Limits and the Operating Period O&M Limits.

O&M Monthly Report means the monthly report Developer submits to the Department for the O&M Work as set forth in Section 4 of Division II.

O&M Noncompliance Adjustment means the amount assigned to each O&M Noncompliance Event as set forth in Table 4.2 of Section 4 of Division II.

O&M Noncompliance Event means the failure to meet one of the minimum performance requirements during the Operating Period in Table 4.2 of Section 4 of Division II.

O&M Noncompliance Event Classification means the relative classification from letter "A" through letter "E" assigned to O&M Noncompliance Events as set forth in Table 4.2 of Section 4 of Division II.

O&M Plan means the plan prepared by Developer describing the plan, systems, approach, staffing and schedule to operate and maintain the facilities and roadways within the O&M Limits, as well as the Operations Manual and Maintenance Manual that describe all of the activities, procedures and information necessary to operate and maintain the facilities and roadways within the O&M Limits, as further described in Section 4 of Division II.

O&M Quality Management System means the systems to monitor Developer's performance of the O&M Work as described in 1.3.1.4 of Division I.

O&M Quality Management System Reports means reports prepared by Developer that identify the results of the procedures and processes implemented by Developer via the O&M Quality Management System.

O&M Records means all documentation and 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 the Department or a third party, and (c) any information system (as may be introduced or amended by the Department from time to time) in connection with operation, maintenance, renewal or handback of the Project or the Availability Payment (including O&M Noncompliance Events, Closures and Permitted Closures), Construction Noncompliance Events, Construction Closures, Permitted

Construction Closures, and Noncompliance Point systems that the Department requires Developer to use or operate.

O&M Work means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of any portion of the Project within the O&M Limits, including Renewal Work, Compliance Work, Planned Maintenance and those obligations of Developer identified in Section 4 of Division II.

OCIP means the owner-controlled insurance program described in Section 16.1.6 and Appendix 9 of the Agreement.

OCIP Administrator means the person designated by the Department to manage and administer the OCIP.

OCIP Manual has the meaning set forth in Section 16.1.6.6 of the Agreement.

OCIP Site means for each OCIP policy the Project areas and other areas or premises where Work is performed, if any, that the OCIP policy identifies as being within the scope of its coverage. The scope of the OCIP Site for one OCIP policy may be different from the scope of the OCIP Site for another OCIP policy. The OCIP Site may not include all the areas of the Site.

Open Book Basis means allowing the Department to review all underlying assumptions, data, documents and information associated with the Financial Model, each Financial Model Update, Schedule of Values, pricing or compensation or adjustments thereto, costs of the Work, Extra Work Costs, Delay Costs, costs claimed under Section 9.2.2 or 9.2.3 of the Agreement, 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, traffic volumes, toll revenues (if applicable), changes in toll rates (if applicable), and other items the Department requires to satisfy itself as to validity or reasonableness.

Operations Manual means the manual prepared by Developer in accordance with Section 4 of Division II describing the operations procedures for the facilities and roadways within the O&M Limits.

Operating Period means the period starting on the Substantial Completion Date and ending on the Termination Date.

Operating Period O&M Limits means the areas in which the O&M After Construction is to be performed as identified in Appendix 5-C.

Operating Traffic Management Plan means Developer's plan for traffic management in performing the O&M Work.

Original Equity IRR means the Equity IRR projected in the Original Financial Model, which is **[XXX]**%.

Original Financial Model means the financial computer model, including the Financial Model Formulas and the related output, used to produce the financial forecasts in the Proposal, the original of which is initialed by the Department and Developer on or before the Effective Date and

held in escrow established under the RFP or Section 21.6 of the Agreement and copies of which are held by the Department and Developer, and which includes certain projections and calculations with respect to revenues, expenses, the repayment of Project Debt and Distributions to initial Equity Members that result in achievement of the Original Equity IRR. The Original Financial Model will be updated on or before Financial Close:

(a) In accordance with Section 14.2.1 of the Agreement; and/or

(b) With the Department's prior consent, to reflect any outcomes of the model audit process of the Original Financial Model being conducted by the Lenders, provided, however, that in no event shall the outcomes of such model audit result in an increase in the MAP or other payments that may be due to Developer under the Agreement.

Oversight CEI Consultant means the consulting firm under contract to the Department to provide validation and oversight of the Construction Work to ensure compliance with the Contract Documents.

PABs means private activity bonds allocated and issued pursuant to Section 11143 of Title XI of SAFETEA-LU, which amended Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds may be issued.

PABs Issuer means, collectively, any Governmental Entity that issues PABs or other Project Debt.

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

Pavement means (whether capitalized or not) the uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

Payment Bond means a payment bond in place as a condition to the commencement of O&M During Construction and Construction Work and the Department's issuance of NTP 2 as set forth in Section 16.2.2 of the Agreement.

Performance Security means the performance bond(s) or letter(s) of credit in place as a condition to the commencement of O&M During Construction and Construction Work and the Department's issuance of NTP 2 as set forth in Section 16.2.1 of the Agreement.

Permanent Works means (whether capitalized or not) all the permanent structures and parts thereof required of the completed Project.

Permit Coordination and Inspection Plan means the plan of that name described in Section 3 of Division I.

Permitted Closure means, subject to Section 9.2.4 of the Agreement:

(a) Closures for performance of properly scheduled and executed Planned Maintenance as provided in Section 4 of Division II;

(b) A Closure due to an Emergency that is not the result of the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity nor considered a Relief Event, provided Developer is using commercially reasonable efforts to: (i) respond to the Emergency in accordance with the requirements of the Contract Documents, (ii) mitigate the impact of the Emergency, (iii) reopen the affected Traffic Lane(s) as quickly as possible to traffic during High Priority Hours and Mid Priority Hours, and (iv) minimize the impact of Developer's activities to traffic flow during such Hours;

(c) A Closure due to utility installation work during the Operating Period as provided in Section 5.2.6, provided Developer is using commercially reasonable efforts to (i) avoid or minimize the impact thereof on traffic flow during High Priority Hours and Mid Priority Hours, (ii) reopen the affected Traffic Lane(s) as quickly as possible to traffic during High Priority Hours and Mid Priority Hours;

(d) A Closure specified, caused or ordered by, and continuing only for so long as required by, the Department or any Governmental Entity (other than in its capacity as a Utility Owner), including Closures caused by a Relief Event described in clause (o), (p) or (q) of the definition of Relief Event, except to the extent such Closure is the result of the negligence, willful misconduct, or breach of applicable Law or contract, by Developer or any Developer-Related Entity;

(e) A Closure as a result of a Relief Event described in clause (a) or (n) of the definition of Relief Event, in accordance with the limitations, provisions and conditions set forth in Section 9.2.4 of the Agreement, provided Developer is using commercially reasonable efforts to: (i) mitigate the impact of the Relief Event, (ii) reopen the affected Traffic Lane(s) as quickly as possible to traffic during High Priority Hours and Mid Priority Hours, and (iii) minimize the impact of Developer's activities to traffic flow during such Hours;

(f) A Closure due to a Relief Event described in clause (i), (j), (k), (r), (s), (t) or (u) of the definition of Relief Event, provided Developer is using commercially reasonable efforts to: (i) mitigate the impact of the Relief Event, (ii) reopen the affected Traffic Lane(s) as quickly as possible to traffic during High Priority Hours and Mid Priority Hours, and (iii) minimize the impact of Developer's activities to traffic flow during such Hours; or

(g) A Closure due to any other Relief Event not covered under clause (d), (e) or (f) of this definition of Permitted Closure shall be deemed a Permitted Closure only insofar as Developer's response to such Relief Event is deemed to be Compliance Work and undertaken as Planned Maintenance.

Notwithstanding the foregoing, in the event that any Traffic Lane is the subject of a Permitted Closure, and a Closure that is not a Permitted Closure occurs in the Traffic Lane(s) remaining in service, then the Traffic Lanes subject to the Permitted Closure also shall be deemed to be subject to a Closure, which is not a Permitted Closure.

Permitted Construction Closure means:

(a) A Construction Closure for performance of properly scheduled and executed Planned Maintenance;

(b) A Construction Closure due to an Emergency that is not the result of the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity nor considered a Relief Event, provided Developer is using commercially reasonable efforts to: (i) respond to the Emergency in accordance with the requirements of the Contract Documents, (ii) mitigate the impact of the Emergency, (iii) reopen the affected Traffic Lane(s) as quickly as possible to traffic during High Priority Hours and Mid Priority Hours, and (iv) minimize the impact of Developer's activities to traffic flow during such Hours; or

(c) A Closure due to utility installation work during the Construction Period as provided in Section 4.5.6, provided Developer is using commercially reasonable efforts to (i) avoid or minimize the impact thereof on traffic flow during High Priority Hours and Mid Priority Hours, (ii) reopen the affected Traffic Lane(s) as quickly as possible to traffic during High Priority Hours and Mid Priority Hours;

(d) A Construction Closure specified, caused or ordered by, and continuing only for so long as required by, the Department or any Governmental Entity (other than in its capacity as a Utility Owner), including Construction Closures caused by a Relief Event described in clause (o), (p) or (q) of the definition of Relief Event, except to the extent such Closure is the result of the negligence, willful misconduct, or breach of applicable Law or contract, by Developer or any Developer-Related Entity;

(e) A Construction Closure due to a Relief Event described in clause (a) (i), (j), (k), (n), (r), (s), (t), (u) or (v) of the definition of Relief Event, provided Developer is using commercially reasonable efforts to: (i) mitigate the impact of the Relief Event, (ii) reopen the affected Traffic Lane(s) as quickly as possible to traffic during High Priority Hours and Mid Priority Hours, and (iii) minimize the impact of Developer's activities to traffic flow during such Hours

(f) A Construction Closure during any period that Developer is properly suspending Work in accordance with Section 18.5 of the Agreement;; or

(g) A Construction Closure due to any other Relief Event not covered under clause (e) or (f) of this definition of Permitted Construction Closure shall be deemed a Permitted Construction Closure only insofar as Developer's response to such Relief Event is deemed to be Compliance Work and undertaken as Planned Maintenance.

Persistent Developer Noncompliance means:

(a) Accumulation of assessed Noncompliance Points at or above any of the trigger points set forth in Section 18.2.6.2 of the Agreement; or

(b) Accumulation of a number of instances of Long Cure Priority Noncompliance at or above the trigger point set forth in Section 18.2.6.3 of the Agreement.

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

PG&E Utility Line means design, construction and installation of PG&E electrical utility line, whether within or outside the Project Right of Way, to serve the permanent redundant power substation for the Tunnel Systems.

Phase I Construction means all the physical improvements constructed by other parties under contracts 1 through 4 as described in more detail in Section 1 of Division II.

Phase I Final Acceptance means the date after Phase I Substantial Completion at which the Department has certified, in its sole discretion, final acceptance of the Phase I Construction such that (a) the conditions of Phase I Substantial Completion are met, (b) the Phase I Punch List has been resolved to the Department's satisfaction, (c) the Department has issued the Survey of Existing Conditions pursuant to Section 4.17 of the Agreement, and (d) the Department is able to make available to Developer use of all of Developer's TCE Occupation Plan, as it may be amended pursuant to Section 4.4.5 of the Agreement.

Phase I Operation Start Date means that the Department has certified, in its sole discretion, that the Phase I Construction is safe to open for traffic.

Phase I Punch List has the meaning set forth in Section 4.16.1 of the Agreement.

Phase I Substantial Completion means that the Department (a) has certified, in its sole discretion, substantial completion of the Phase I Construction such that the Phase I Construction is safe to open for traffic and all Phase I Construction demolition, and demobilization are complete, (b) has issued the Baseline Report pursuant to Section 4.16.1 of the Agreement, and (c) is able to make available to Developer use of all or substantially all of Developer's TCE Occupation Plan, as it may be amended up to but not later than the Phase I Operation Start Date pursuant to Section 4.4.5 of the Agreement.

Phase II Construction means all the physical improvements of the Project other than the Phase I Construction, which physical improvements will be constructed by Developer during the Construction Period, as described in more detail in Section 1 of Division II:

Planned Maintenance means O&M Work that has been properly scheduled and executed in accordance with Appendix 7 to the Agreement and Section 4 of Division II.

Planned Maintenance Schedule means a schedule, prepared annually and updated by Developer and approved by the Department, showing the times during which Planned Maintenance will be performed and the Traffic Lanes in which such Planned Maintenance will be performed.

Pre-existing Hazardous Materials means Hazardous Materials that exist in, on or under the Project Right of Way at any time during the Construction Period, including Hazardous Materials that migrate from property outside the boundaries of the Project Right of Way into, onto or under the Project Right of Way after the Effective Date, except Hazardous Materials introduced or Released by any Developer-Related Entity in the course of performing Work.

Pre-existing Hazardous Materials Deductible has the meaning set forth in Section 4.10.2.2.1 of the Agreement.

Preliminary Information Memorandum or PIM has the meaning set forth in Appendix 13 to the Agreement.

Presidio Trust means the trust created on November 12, 1996, pursuant to the Presidio Trust Act, Public Law 104-333, codified at 16 U.S.C. 460bb appendix.

Presidio Trust Right of Entry Agreement means that certain Right of Entry Agreement, entered into July 16, 2009, by and among the Presidio Trust, the Department and SFCTA.

Prime Contract means a Contract between Developer and a Contractor.

Prime Contractor means the Contractor under a Prime Contract; provided that this definition does not apply to this term as used in Attachment 1 to Appendix 20 to the Agreement.

Principals Finance Group or PFG has the meaning set forth in Appendix 13 to the Agreement.

Professional Electronic Data Delivery System means the Department's electronic transmittal system to be used as described in Section 2 of Division I.

Professional Engineer means a professional engineer as defined in Section 6701 of the California Business and Professions Code licensed in the State, or a partnership, firm or corporation authorized to practice engineering in the State in accordance with Section 6738 of the California Business and Professions Code.

Programmatic Agreement means that certain Programmatic Agreement among FHWA, Department, SFCTA, Presidio Trust, the National Parks Service, the Department of Veterans Affairs, the California State Historic Preservation Officer, the Advisory Council on Historic Preservation and the San Francisco Recreation and Parks Department, for the South Access to the Golden Gate Bridge, Doyle Drive Replacement Project, San Francisco, California.

Project means the entire approximately 1.6 mile Presidio Parkway Project, which is described in detail in Section 1 of Division II. "Project" includes any Upgrades thereto. The Project consists of four construction and operations phases (see definitions of Phase I Construction, O&M During Construction, Phase II Construction and O&M After Construction).

Project Adjusted Costs means those costs and expenses that have actually been incurred by or on behalf of Developer directly in connection with the design, acquisition or construction of the Project, as well as in connection with Renewal Work, less the Milestone Payment Amount actually paid by the Department (less all adjustments to and deductions from such Milestone Payment made pursuant to Sections 4.9.4.3 and 4.9.4.5 of the Agreement). Project Adjusted Costs also include the concession payment set forth in Section 2.3 of the Agreement. Notwithstanding the foregoing, Project Adjusted Costs do not include capitalized interest and other financing costs, professional and advisory fees, Developer overhead and administrative expenses, Redundancy Payments or demobilization costs.

Project Debt means bona fide indebtedness (including mezzanine and subordinated indebtedness) for funds borrowed or for the value of goods or services rendered or received, the repayment of which is secured by one or more Security Documents, and shall include the TIFIA Loan. Project Debt includes principal (including accreted principal), accrued interest (including capitalized interest), customary and reasonable lender, agent, trustee and monoline fees (excluding those monoline fees that would not otherwise have been due and payable if termination under the Agreement had not occurred), costs and expenses payable to Lenders with respect thereto, premiums or reimbursement obligations with respect to any insurance or financial guaranty with respect thereto (excluding those premiums that would not otherwise have been due and payable if termination under the Agreement had not occurred), all payment obligations under any hedging agreements with respect thereto, including current-pay and accreting swaps, lease

financing obligations, and Breakage Costs. Project Debt excludes Equity Member Debt and any other indebtedness of Developer or any Equity Member, partner or joint venturer of Developer (or Affiliate thereof) that is secured by anything less than the entire Developer's Interest, such as indebtedness secured only by an assignment of economic interest in Developer or of rights to cash flow or dividends from Developer. Project Debt also excludes any increase in indebtedness, other than an increase in indebtedness incurred due to a Rescue Refinancing or permitted borrowing or funds raised exclusively for Extra Work Costs or Delay Costs, to the extent resulting from an agreement or other arrangement Developer enters into or first becomes obligated to repay after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination giving rise to an obligation of the Department to pay Termination Compensation, including Developer's receipt of a Notice of Termination for Convenience, a Warning Notice or other notice of Developer Default respecting a Default Termination Event, and Developer's declaration of a Department Default of the type entitling Developer to terminate the Agreement.

Project Debt Termination Amount means:

(a) All amounts outstanding in respect of the Project Debt; plus

(b) Without double counting in relation to such Project Debt, all Breakage Costs payable by Developer as a result of prepayment of the outstanding amounts of such Project Debt, subject to Developer and the Lenders mitigating all such costs to the extent reasonably possible; minus

(c) To the extent it is a positive amount, such amounts under clause (a) and (b) above that constitute or accumulate by reason of default rates of interest, late charges and penalties, including any such items added to principal; minus

(d) In connection with the calculation of Termination Compensation pursuant to Section 19.3 of the Agreement, to the extent it is a positive amount, the aggregate of all Breakage Costs payable by the Lenders to Developer as a result of prepayment of any outstanding Project Debt.

Project Enhancement means any extensions of, additions to, modifications or improvements to the Project that is not part of the Work.

Project Executive means the individual designated and engaged by Developer and approved in writing by the Department in the position to take overall responsibility for the Project and who will act as a single point of contact on all matters on behalf of Developer.

Project Management Plan means the document, including approved changes, additions and revisions, describing the Work necessary to manage the development, design, construction, operation and maintenance of the Project, and containing the component parts, plans and documentation required under the Contract Documents. The Project Management Plan includes the Quality Plans, the Traffic Control Plan, the Operating Traffic Management Plan, and the O&M Plan.

Project Manager means the individual designated by Developer and approved in writing by the Department in the position to take full responsibility for the prosecution of the Work.

Project Right of Way or **Project ROW** means any real property (which term is inclusive of all estates, easements, leases and other interests in real property, whether temporary or permanent), improvements and fixtures within the lines established by the Right of Way Plans to delineate the outside limits of the Project for (a) Construction Work and (b) O&M Work (both horizontal and, where specified, vertical), as such limits may be adjusted from time to time in accordance with the Contract Documents. The term specifically includes all air space, surface rights and subsurface rights within the horizontal limits of the Project Right of Way to the extent they are subject to an interest held by the Department.

Project Schedule means the logic-based critical path schedule for all D&C Work as set forth in Appendix 2-A to the Agreement, as may be revised and updated in accordance with the Contract Documents.

Proposal means Developer's firm submission titled Response to the Request for Proposals for the Presidio Parkway Project and dated **[INSERT ISSUANCE DATE]**.

Proposal Submission Date means September 24, 2010.

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

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

Public Information Consultant means the person, persons, or firm to be used as described in Section 3, 5 of Division II.

Public Records Act means Sections 6250 *et seq.* of the California Government Code, as amended from time to time.

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

Qualifying Utility Agreement means a Utility Agreement between Developer and a Qualifying Utility Owner that meets all of the following requirements:

(a) Describes the scope of the Utility Adjustment(s), including each activity to be performed by Developer and the Qualifying Utility Owner relating to such Utility Adjustment(s);

(b) Indicates a schedule for the Utility Adjustment(s) that indicates the start date and scheduled duration of the Utility Adjustment(s), including the duration of each activity to be performed by Developer and the Qualifying Utility Owner; and

(c) Contains and references a set of plans agreed to by Developer and the Qualifying Utility Owner, including any revisions thereto, for the Utility Adjustment(s).

Qualifying Utility Owner means a Utility Owner that will perform the Utility Adjustment(s) with its own forces or through separate contractors that are not Developer-Related Entities.

Quality Assurance System means the system of that name described in Division 1.

Quality Control Program means the program outlined by Developer's Quality Plan.

Quality Manager means the individual retained by Developer with the authority and responsibility for quality management system-related activities for all Work, including the establishment and maintenance of, and compliance with the Quality Plan(s).

Quality Plan means the plan prepared for quality assurance and quality control of the Work as described in Division I.

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

Quarterly Milestone Payment Adjustment Excess has the meaning set forth in Appendix 7 to the Agreement.

Quarterly O&M Noncompliance Adjustment means an amount equal to the sum of the O&M Noncompliance Adjustments incurred during a given Quarter and calculated as provided in Appendix 7 to the Agreement.

Quarterly Payment means the amount of the portion of Availability Payment payable by the Department to Developer for a given Quarter, calculated as provided in Section 1 of Appendix 7 to the Agreement.

Quarterly Payment Adjustment means an amount equal to the sum of the Quarterly Unavailability Adjustment, the Quarterly O&M Noncompliance Adjustment and the Quarterly Milestone Payment Adjustment Excess and calculated as provided in Appendix 7 to the Agreement.

Quarterly Unavailability Adjustment means an amount equal to the sum of the adjustments for each Unavailability Event incurred during a given Quarter, calculated as provided in Appendix 7 to the Agreement.

Rating Agency means any of Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Fitch Investors Service, Inc. or Duff & Phelps, Inc. or any other entity providing similar services and having comparable market recognition, or any of their respective successors.

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

Reference Documents means the collection of information, data, documents and other materials that the Department has provided to Developer in connection with the Project or the Work (including those contained in the RFP documents) for general or reference information only and without any warranty as to their accuracy, completeness or fitness for any particular purpose. The Reference Documents are not Contract Documents.

Refinancing means:

(a) Any amendment, variation, novation or supplement of any Project Debt, Financing Documents, including the Initial Project Debt, and the Initial Financing Documents, that results in a reduced interest rate, an increase of such Project Debt, or a tangible financial benefit to Developer;

(b) The issuance by Developer of any Project Debt other than the Initial Project Debt, secured or unsecured;

(c) The disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Project Debt of the Financing Documents, or the creation or granting of any other form of benefit or interest in either the Financing Documents or the Developer's Interest, whether by way of security or otherwise, by Developer; or

(d) Any other arrangement put in place by Developer or another Person which has an effect similar to the arrangements discussed in clauses (a) through (c) above.

The term Refinancing excludes (i) Equity Transfer or (ii) any sale or transfer of the Equity Members Debt or Equity Members' existing rights and/or interest under the Equity Members Funding Agreements.

Refinancing Gain means the amount calculated as provided in Appendix 12 to the Agreement.

Release of Hazardous Materials means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials (including Pre-existing Hazardous Materials) into the soil, air, surface water, groundwater or indoor or outdoor environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

Relief Event means any of the following events, subject to other limitations, requirements and deductibles that may be set forth in the Agreement for such events:

(a) Force Majeure Event;

(b) Change in Law;

(c) Department Change (other than a Discriminatory O&M Change and Non-Discriminatory O&M Change);

(d) Discriminatory O&M Change;

(e) Non-Discriminatory O&M Change;

(f) The Department's failure to perform or observe any of its material covenants or obligations under the Agreement or other Contract Documents (except where such failure is within another defined Relief Event);

(g) Department-Caused Delay;

(h) Failure or inability of the Department to make available to Developer (i) from issuance of NTP 3 through the Final Acceptance Date a Project Right of Way parcel as shown in Appendix 5-A or the Temporary Construction Easement as shown in Appendix 5-B, except for the Restricted Areas and except for any failure or inability to make available to Developer any such parcel beyond December 31, 2015 to the extent of the period of delay in the Final Acceptance Date beyond such date not caused by a Relief Event, (ii) the Restricted Areas shown in yellow and brown on Appendix 5-B from the respective dates set forth in Appendix 5-B for such Restricted Areas through the Final Acceptance Date, (iii) throughout the Construction Period any other Project Right of Way parcel as shown in the Right of Way Plans that is within the Construction Period O&M Limits as shown in Appendix 5-C, except for any failure or inability to make available to Developer any such parcel beyond December 31, 2015 to the extent of the period of delay in the Final Acceptance Date beyond such date not caused by a Relief Event, or (iv) throughout the Operating Period a Project Right of Way parcel as shown in the Right of Way Plans that is within the Operating Period O&M Limits as shown in Appendix 5-C;

(i) The development or operation of a Business Opportunity in the Airspace or Project Right of Way as set forth in Section 20.2.3 of the Agreement;

(j) Violation of Law by the Department or a third party that materially and adversely impacts the Project or Developer, excluding, however, any such violation of Law that is or results in a Relief Event under any other clause of this definition;

(k) Performance of work in the Project Right of Way by the Department or any Governmental Entity which work materially disrupts Developer's on-site Work, or failure to perform work required of the Department or any Governmental Entity in the Project Right of Way which failure materially disrupts Developer's on-site Work, in each case excluding any Utility Adjustment Work (or failure to perform Utility Adjustment Work);

(l) Discovery at, near or on the Project Right of Way as defined in the Right of Way Plans of archeological, paleontological or cultural resources, excluding any such resources known to Developer 30 days prior to the Proposal Submission Date or that would have become known to Developer by undertaking reasonable investigation 30 days prior to the Proposal Submission Date;

(m) Discovery at, near or on the Project Right of Way as defined in the Right of Way Plans of any species listed as threatened or endangered under the federal or State endangered species act (regardless of whether the species is listed as threatened or endangered as of the Effective Date), excluding any such presence of species known to Developer 30 days prior to the Proposal Submission Date or that would have become known to Developer by undertaking reasonable investigation 30 days prior to the Proposal Submission Date;

(n) Release of Hazardous Materials by the Department or a third party (including a Department contractor or subcontractor for the Phase I Construction) who is not a Developer-Related Entity, but only to the extent such release (i) occurs after the Effective Date, (ii) is required to be reported to a Governmental Entity, and (iii) renders use of the roadway or construction area unsafe or in breach of applicable Law absent assessment, containment and/or remediation;

(o) Issuance of a temporary restraining order or other form of injunction or legal order by a court that prohibits prosecution of any portion of the Work;

(p) Safety Compliance Orders;

(q) 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 the region in which the Project is located or which the Project serves, to the extent such rule, order or directive requires specific changes in Developer's normal design, construction, operation or maintenance procedures in order to comply;

(r) Pre-existing Hazardous Materials;

(s) Structural Latent Defects discovered during the ten-year period after the date the Department issues the Baseline Report pursuant to Section 4.16.2 of the Agreement;

(t) Delays in obtaining Major Permits by the applicable Major Permits Deadline or, once obtained, the unlawful revocation or suspension of a Major Permit by the relevant Governmental Entity;

(u) Utility Owner Delays;

(v) Discovery of Unknown Utilities during Phase II Construction; or

(w) Delay directly attributable to Developer's suspension of Work pursuant to Section 18.5 of the Agreement.

Notwithstanding the foregoing, a "Relief Event" excludes any event or circumstance to the extent caused by the negligence, willful misconduct, breach of contract, or violation of Law or Governmental Approval by any Developer-Related Entity.

Relief Event Delay means a delay to a Controlling Work Item, provided that such delay is solely and directly attributable to a Relief Event and is not concurrent with any other delay which is not caused by a Relief Event.

Renewal Work means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element within the Operating Period O&M Limits of a type which is not normally included as an annually recurring cost in highway maintenance and repair budgets, that requires a significant amount of time to accomplish and therefore must be coordinated, scheduled and planned well in advance of the work effort, including any resurfacing required during the Operating Period.

Renewal Work Letter of Credit has the meaning set forth in Section 5.7.6.1 of the Agreement.

Renewal Work Plan means the plan prepared by Developer describing the plan, systems, approach, staffing and schedule to perform all Renewal Work as further described in Section 4 of Division II. The Renewal Work Schedule is part of the Renewal Work Plan.

Renewal Work Report means the annual report Developer submits to the Department for the Renewal Work as set forth in Section 5.5.3 of the Agreement and Section 4 of Division II.

Renewal Work Reserve has the meaning set forth in Section 5.7.1.1 of the Agreement.

Renewal Work Schedule means the schedule for Renewal Work to be prepared and updated by Developer pursuant to Section 4 of Division II. The Renewal Work Schedule is part of the Renewal Work Plan.

Required Minimum Insurance Policies has the meaning set forth in Section 2.3 of Appendix 9 to the Agreement.

Rescue Refinancing means any Refinancing that: (a) occurs due to the failure or imminent failure of Developer to comply with any material financial obligation under any Funding Agreement or (b) is undertaken expressly to facilitate the cure of any other material default or event of default by Developer under the Financing Documents and does not result in an increase in the Equity IRR beyond the Original Equity IRR. Notwithstanding the foregoing, no Rescue Refinancing shall result in an actual or potential increase of the Project Debt Termination Amount by more than 10%.

Resident Engineer means a licensed engineer, acting as a duly Authorized Representative of the Department, responsible for the Department's activities respecting the day-to-day D&C Work.

Residual Life means, for an Element, the period remaining until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement. The Residual Life of an Element would be equal to its originally calculated Design 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 on the Element which is normally included as an annually recurring cost in highway (and associated equipment) maintenance and repair budgets, and as a result thereof the Element complies throughout its originally calculated Design Life and with each applicable performance requirement set forth in Section 4 of Division II. The Residual Life of an Element would be different from its originally calculated Design Life minus its Age if any of the foregoing conditions is not true.

Restored Landscaping means Work and authorized improvements within the TCE as generally set forth in Section 3, 12.5 of Division II, that are required to restore the TCE to the condition it was in when received from the Presidio Trust prior to any Phase 1 Construction or Phase 2 Construction as described in the Presidio Trust Right of Entry Agreement.

Restricted Areas means the areas of the Project Right of Way depicted in red, yellow and brown on Appendix 5-B to the Agreement and labeled "Available After 3/1/12", "Caltrans – Developer Cannot Use" and "Available After Detour is Removed for Restoration Work".

RFP or **Request for Proposals** has the meaning set forth in Recital C of this Agreement.

RFQ or **Request for Qualifications** has the meaning set forth in Recital B of this Agreement.

Right of Way Plans refer to the graphic depictions of the Project Right of Way, Temporary Construction Easement, Construction Period O&M Limits and Operating Period O&M Limits set forth in Appendix 5 to the Agreement.

Roadbed means (whether capitalized or not) that area between the intersection of the upper surface of the Roadway and the side slopes or curb lines. The roadbed rises in elevation as each increment or layer of Subbase, Base, surfacing or Pavement is placed. Where the medians are so wide as to include areas of undisturbed land, a Divided Highway is considered as including two separate roadbeds.

Roadway means (whether capitalized or not) that portion of the Highway included between the outside lines of sidewalks, or curbs, slopes, ditches, channels, waterways, and including all the appertaining structures, and other features necessary to proper drainage and protection.

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

Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition of the Project that the Department or a Governmental Entity has reasonably determined to exist by investigation or analysis (including if the condition exists despite prior compliance with Safety Standards but excluding a condition or risk directly and primarily caused by compliance with Safety Standards).

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

Safety Plan means the plans and procedures prepared by Developer and included in the O&M Plan that are to be implemented to protect the safety of the public and Developer's employees when performing any O&M Work.

Safety Standards means those provisions of the Technical Requirements that the Department considers to be important measures to protect public safety or worker safety. As a matter of clarification, provisions of the Technical Requirements primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

Scaffolding means (whether capitalized or not) an elevated work platform used to support workmen, materials and equipment, but not intended to support the structure.

Schedule of Values means the schedule of values included as Appendix 2-I to the Agreement.

Scheduled Substantial Completion Date means the scheduled date for Substantial Completion set forth in the initial Project Schedule included in Appendix 2-A to the Agreement, as the same may be adjusted in accordance with the Agreement.

Secretary means the Secretary of Business, Transportation and Housing, State of California Department of Transportation, acting directly or through an assistant or other representative authorized by him or her.

Secretary of the Interior's Professional Qualification Standards means the standards that Developer's designated Cultural Resources Compliance Manager must meet as described in Section 6 of Division I.

Section 143 has the meaning set forth in Recital B of the Agreement.

Section 143 Litigation means a lawsuit filed and served against the State or the Department in a court of competent jurisdiction seeking to declare this Agreement void on grounds it is not authorized under applicable Law, including Section 143.

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

Seismic Event means (a) an earthquake in excess of magnitude of 3.5 on the Richter Scale or (b) a tidal wave, which, in both cases, directly impacts the physical improvements of the Project.

Seismic Event Deductible has the meaning set forth in Section 9.1.3.2 of the Agreement.

Senior Resident Engineer means a licensed engineer, acting as a duly Authorized Representative of the Department, responsible for supervising the Resident Engineer for the Project.

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

Shop Drawings means all working, shop and erection drawings, associated trade literature, calculations, schedules, manuals and similar documents prepared or furnished by Developer to define some portion of the Work. The type of Work includes both Permanent Works and Temporary Works as appropriate to the Project.

Shoring means (whether capitalized or not) a component of Falsework such as horizontal, vertical or inclined support members.

Shoulder means (whether capitalized or not) the portion of the Roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of Base and surface courses.

Site means the Project Right of Way, Temporary Construction Easement and any other temporary rights or interests that Developer may acquire in connection with the Project, including for construction, staging, lay down, storage, stockpiling and borrow areas.

Sound Control Plan – see Noise Control Plan.

Special Erection Equipment means and includes launching gantries, beam and winch equipment, form travelers, stability towers, strong-backs, erection trusses, launching noses or similar items made purposely for construction of the structure. It does not apply to commonly available proprietary construction equipment such as cranes.

Specialty Engineer means the initiator or producer of Shop Drawings regardless of whether that party is normally the Engineer of Record or specialty Professional Engineer.

Staging Areas means temporary areas, lands or properties of the Trust, included in the Temporary Construction Easement, made available to Developer for temporary construction activities such as staging, lay down, storage, stockpiling, and equipment parking activities. These areas will be defined at the discretion of the Department.

Standard Specifications means all specifications published by the Department and used on Department projects.

Starting Insurance Benchmarking Premiums has the meaning set forth in Section 2.6 of Appendix 9 to the Agreement.

State means the State of California.

Statement of Qualifications means Developer's firm submission titled Statement of Qualifications to Design, Build, Finance, Operate and Maintain the Presidio Parkway Project, through a Public-Private Partnership Agreement and dated March 11, 2010.

Stormwater Pollution Prevention Plan or SWPPP means a document that addresses water pollution control during construction. Applicable Law and the related NPDES permit require that all storm water discharges associated with construction activity, where clearing, grading, and excavation results in soil disturbance of at least 2 hectares (ha) (5 ac) of total land area, must comply with the provisions of the permit and develop and implement an effective SWPPP.

Structural Latent Defects means latent defects in or material damage to the Structures of the Phase I Construction that are caused by (a) design or construction errors based on the Department's standards and specifications in effect at the time of the original design and construction of the Phase I Construction or (b) unknown subsurface conditions.

Structures means any permanent load-bearing constructions including Substructures, Superstructures, Bridges, Tunnels, Tunnel walls, bulkheads, retaining walls, Pavement, footings, foundations, piles, columns, and culverts. The minimum design and construction requirements of the Structures are outlined in Section 3 of Division II.

Subbase means (whether capitalized or not) the layer of specified material of planned thickness between a Base and the Basement Material.

Subgrade means (whether capitalized or not) the portion of the Roadbed immediately below the Base course or Pavement, including below the curb and gutter, valley gutter, shoulder and driveway Pavement. The subgrade limits ordinarily include those portions of the Roadbed shown in the Plans to be constructed to a design bearing value or to be otherwise specially treated. Where no limits are shown in the Plans, the subgrade section extends to a depth of 12 inches below the bottom of the Base or Pavement and outward to six inches beyond the Base, Pavement, or curb and gutter.

Submittal means any document, work product or other written or electronic end product or item required under the Contract Documents to be delivered or submitted to the Department. Notwithstanding the foregoing, an invoice submitted by Developer seeking payments pursuant to the Agreement is not a Submittal.

Substantial Completion means the occurrence of all events and satisfaction of all conditions set forth in Section 4.9.2.1 of the Agreement, as and when confirmed by the Department's issuance of a notice in accordance with the procedures and within the time frame established in Section 4.9.2 of the Agreement.

Substantial Completion Date means the date upon which Developer achieves Substantial Completion.

Substituted Entity means any Person selected by Lenders and approved by the Department in accordance with Section 12.5 of the Agreement to perform all or a portion of Developer's obligations and to succeed to the Developer's Interests.

Substructure means (whether capitalized or not) all of that part of a Bridge structure below the Bridge seats, including the parapets, backwalls, and wingwalls of abutments.

Subsurface O&M Limit has the meaning set forth in Appendix 5-C to the Agreement.

Surface O&M Limit has the meaning set forth in Appendix 5-C to the Agreement.

Superstructure means (whether capitalized or not) the entire Bridge structure above the Substructure, including anchorage and anchor bolts, but excluding the parapets, backwalls, and wingwalls of abutments.

Supplemental Agreement means a written agreement between Developer and the Department, signed by the surety (if applicable), modifying the Contract Documents within the limitations set forth in the Contract Documents.

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

Surety means each properly licensed surety company, insurance company or other Person approved by the Department, which has issued any Payment Bond or Performance Security in the form of a bond.

Survey of Existing Conditions has the meaning set forth in Section 4.17.2 of the Agreement.

Survey of Existing Conditions Prior to Phase I Work has the meaning set forth in Section 4.17.1 of the Agreement.

Sustainability Management Plan means the plan prepared by Developer describing the approach, plan, targets, roles and responsibilities, monitoring, and reporting necessary for Developer to conform to the requirements set forth in Division I.

Taxes means federal, State, local or foreign income, 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 or act, business, status or transaction of Developer, including any interest, penalty or addition thereto, and including utility rates or rents, in all cases whether disputed or undisputed.

TCE Occupation Plan means Developer's plan submitted as part of the Proposal, as set forth in Appendix 2-P to the Agreement and as amended pursuant to Section 4.4.4.1 of the Agreement, showing which areas within the TCE that Developer requires to occupy and use for the execution of the Work.

Technical Requirements means Volume II of the Contract Documents, consisting of Sections 1 through 5 of Division II, as such provisions may be changed, added to or replaced pursuant to the Agreement, together with such documents as may be incorporated into Volume II by reference therein.

Technology Enhancements means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to or in place of enforcement systems deployed on or for the Project or to any other computer systems or other technology used for the operation of the Project, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements. The term specifically includes modifications, updates, revisions, replacements and upgrades made to or in place of software, software source code or any related documentation that correct errors or safety hazards or support new models of computer hardware with which the software is designed to operate. Technology Enhancements also include such new models of computer hardware.

Temporary Construction Easement or TCE means lands, facilities, and properties as shown in Appendix 5-B to the Agreement made available to Developer for the purpose of carrying out Construction Work.

Temporary Works means (whether capitalized or not) any temporary works and structures necessary for the construction of the Permanent Works. This includes Falsework, Formwork, Scaffolding, Shoring, temporary earthworks, sheeting, cofferdams, special erection equipment and the like.

Temporary Works Checker has the meaning set forth in Section 2 of Division I.

Term has the meaning set forth in Section 2.2.1 of the Agreement.

Termination by Court Ruling has the meaning set forth in Section 19.5.4 of the Agreement.

Termination Compensation means the measure of compensation, if any, owing from the Department to Developer upon termination of the Agreement prior to the stated expiration of the Term, as set forth in Section 16.1.2.13 or Article 19 of the Agreement.

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

Termination for Convenience has the meaning set forth in Section 19.1.1 of the Agreement.

Terrorism means activities directly against or directly affecting the Project or the Work:

(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 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 to further a political, ideological, religious, social or economic objective or to express (or express opposition to) a philosophy or ideology.

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

Tiered Pre-existing Hazardous Materials Deductible has the meaning set forth in Section 4.10.2.2.2 of the Agreement.

TIFIA Loan means a loan from the United States Department of Transportation pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998 ("TIFIA"), § 1501 *et. seq*. of Public Law 105-178, as amended by the TEA 21 Restoration Act, Public Law 105-206 and the Safe, Accountable, Flexible, Effective Transportation Equity Act, A Legacy for Users, Public Law 109-59 (the "Act"), codified as 23 U.S.C. §§ 601 *et seq.*

Traffic Backup means a decrease in average speed of traffic passing through a Planned Maintenance activity measured from a point 200 feet in advance of the first full lane Closure to the

midpoint of the Planned Maintenance activity in excess of 50% of the posted speed limit, averaged over any period of 15 minutes.

Traffic Control Plan means Developer's plan for traffic management during construction of the Project, prepared in accordance with Section 3 of Division II.

Traffic Incident Management Plan has the meaning given in Section 4 of Division II.

Traffic Lane means (whether capitalized or not) that portion of a Traveled Way for the movement of a single line of vehicles.

Traffic Management Plan means either of the Traffic Control Plan or the Operating Traffic Management Plan. "**Traffic Management Plans**" means both such plans.

Travel Direction means southbound from the Park Presidio Interchange toward the new Presidio access at Girard Road or northbound from the new Presidio access at Girard Road to the Park Presidio Interchange.

Traveled Way means (whether capitalized or not) the portion of the Roadway providing for the movement of vehicles, including Auxiliary Lanes but exclusive of shoulders.

Treatment Oversight Panel or TOP means the cultural resource advisory and oversight group that includes professionally qualified representatives from the National Park Service, Presidio Trust, the Department for FHWA, and Authority consultant.

Tunnel means the enclosed Roadways with vehicle access that is restricted to portals regardless of type of structure or method of construction. Tunnels do not include highway bridges, railroad bridges or other bridges over a Roadway. Tunnels are structures that require special design considerations that include lighting, ventilation, fire protection systems, and emergency egress capacity.

Tunnel Systems means all mechanical, electrical, hydraulic and ventilation systems that are provided to protect Users during normal, congested and emergency operations of the Tunnels. Examples of major Tunnel Systems include ventilation fans, water-based fire suppression, lighting, monitoring systems, and roadway drainage.

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

Unavailability Factors means the Unavailability Factors set out in Table 1 in Section 3.3 of Appendix 7 to the Agreement.

Undesirable Materials means any excavated or buried materials that are not Hazardous Materials but which due to the lack of engineering or other desirable properties, have no inherent value, cannot be utilized or sold, and must be handled, transported, and disposed. Undesirable Materials include garbage, trash, or other discarded items, muck or organic material. The term "Undesirable Materials" excludes archeological, paleontological or cultural resources.

Undesirable Materials Management means procedures and requirements to address Undesirable Materials conditions encountered, impacted, caused by or occurring in connection with the Project, Project Right of Way or the Work, as well as investigation and removal of such

Undesirable Materials where required. Undesirable Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, removal, transportation and/or off-site disposal of Undesirable Materials, whichever approach is effective, most cost-efficient and authorized under applicable Law and Governmental Approvals.

Unilateral Payment means a payment of money made to Developer by the Department for sums the Department determines to be due to Developer for performance of the Work, and whereby Developer by acceptance of such payment does not waive any rights Developer may otherwise have against the Department for payment of any additional sums Developer claims are due for the Work.

Unknown Utility means a Utility, other than a Service Line, that meets one of the following criteria:

(a) The Utility Information incorrectly indicates that the subject Utility does not exist anywhere within the boundary lines of the Project Right of Way;

(b) The Utility Information incorrectly indicates the centerline location of the subject Utility by more than six feet from the centerline of the actual location of the subject Utility; or

(c) Both the Utility Information incorrectly indicates that the subject Utility is abandoned (i.e., nonexistent except on paper, or existent but no longer active for any type of Utility use).

If any discrepancy exists between the information provided by one component of the Utility Information and that provided by any other component of the Utility Information, only the more accurate information shall be relevant for purposes of this definition.

Updated Survey of Existing Conditions has the meaning set forth in Section 4.17.3 of the Agreement.

Upgrades means alterations, improvements, modifications, technology enhancements or changes that Developer makes to the Project, as originally designed and constructed, at any time after the Substantial Completion Date, including as part of the Renewal Work.

User(s) means the traveling public and any others who use the Project.

Utility(ies) or utility(ies) means a privately, publicly, or cooperatively owned line, facility, or system for transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with the highway drainage, and other similar commodities, including wireless telecommunications, television transmission signals and publicly owned fire and police signal systems, which directly or indirectly serve the public. However, the term "Utility" or "utility" excludes (a) streetlights and traffic signals and (b) ITS and IVHS facilities. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

Utility Adjustment means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project or the Work;

provided, however, that the term "Utility Adjustment" shall not refer to any of the work associated with the Phase I Construction or facilities owned by any railroad. The Utility Adjustment Work for each crossing of the Project Right of Way by a Utility that crosses the Project Right of Way more than once shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project Right of Way, the Utility Adjustment Work for each continuous segment of that Utility located within the Project Right of Way shall be considered a separate Utility Adjustment.

Utility Adjustment Work means all efforts and costs necessary to accomplish the required Utility Adjustments during the Construction Period, including all coordination, design, design review, permitting, construction, inspection and maintenance of records, whether provided by the Department, by Developer or by the Utility Owners. The term also includes any reimbursement of Utility Owners that is Developer's responsibility pursuant to Section 4.5 of the Agreement.

Utility Agreement means (a) the License to Enter Agreement and (b) any agreement between Developer or the Lead Contractor and a Utility Owner that provides information and terms affecting a Utility Adjustment; such an agreement may be general or comprehensive or may address only certain aspects of a Utility Adjustment.

Utility Enhancement means a Betterment or a Utility Owner Project, as referenced in Section 4.5.5 of the Agreement.

Utility Information means the information regarding Utilities included in the Reference Documents, together with any other information the Department provided to Developer prior to the Proposal Submission Date with regard to identification of Utilities. The Utility Information includes survey information regarding existing Utilities; Utility relocation maps included as an overlay on the survey, and as-built maps for existing Utilities.

Utility Owner or Utility Agency Owner (UAO) means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies). The Presidio Trust is a Utility Owner.

Utility Owner Delay means a Delay respecting a Utility Adjustment directly attributable to a Qualifying Utility Owner in performing its obligations under a Qualifying Utility Agreement.

Utility Owner Project means the design and construction by or at the direction of a Utility Owner (or by Developer) of a new Utility or the modification, upgrading, relocation or expansion of an existing Utility except (a) as part of a Utility Adjustment or (b) as required solely to service the construction, operation or maintenance of the Project. Betterments are not Utility Owner Projects. Utility Owner Projects are entirely the financial obligation of the Utility Owner.

Utility Work Plan means the plan for Utility Adjustment Work as described in Section 3, 15 of Division II.

Variation Package – see Design Exception

Vibration Monitoring Plan means the plan required under Section 3 of Division II for monitoring and recording vibration levels produced by equipment used on the Project.

Volume II means the Technical Requirements.

Volume III means the Manuals and Guidelines.

Warning Notice means a written notice that the Department delivers to the Collateral Agent and Developer in accordance with Section 18.2.8 of the Agreement.

Work means all of the work and services required to be furnished, performed and provided by Developer under the Contract Documents, including all administrative, design, engineering, construction, Utility Adjustment, financing, payment to third parties, support services, operations, maintenance and management services, except for those efforts which such Contract Documents expressly specify will be performed by Persons other than Developer-Related Entities.

Workforce Development and Training Program means the program developed and implemented by Developer, in close collaboration with construction trade unions, community based organizations and Governmental Entities, that delivers comprehensive services to train and engage the region's workforce in the Work.

[END OF DEFINITIONS]