

*In the opinion of Nixon Peabody, LLP, Bond Counsel, under existing law and assuming compliance with the tax covenants described herein and the accuracy of certain representations and certifications made by the Issuer, the Department and the Borrower and described herein, interest on the Series 2018 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), except that no opinion is expressed as to the exclusion of interest from gross income for any period during which such Bond is held by a person who, within the meaning of Section 147(a) of the Code, is a “substantial user” of the facilities financed with proceeds of the Series 2018 Bonds or a “related person.” Bond Counsel is further of the opinion that such interest is treated as a preference item in calculating the alternative minimum tax imposed under the Code. Bond Counsel is further of the opinion that interest on the Series 2018 Bonds is exempt from State of California personal income taxes. See “Tax Matters” herein regarding certain other tax considerations.*

**\$1,181,525,000****CALIFORNIA MUNICIPAL FINANCE AUTHORITY****\$1,162,150,000 Senior Lien Revenue Bonds (LINXS APM Project), Series 2018A****\$19,375,000 Senior Lien Revenue Bonds (LINXS APM Project), Series 2018B****Dated: Date of Delivery****Due: As shown on the inside cover**

The California Municipal Finance Authority (the “Issuer”), a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (the “State”), is issuing its Senior Lien Revenue Bonds (LINXS APM Project), Series 2018A (“Series 2018A Bonds”) and its Senior Lien Revenue Bonds (LINXS APM Project), Series 2018B (“Series 2018B Bonds,” together with the Series 2018A Bonds, the “Series 2018 Bonds”) pursuant to a Trust Indenture, dated as of June 5, 2018 (the “Indenture”), between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”). The proceeds of the Series 2018 Bonds will be loaned to LAX Integrated Express Solutions, LLC, a Delaware limited liability company (the “Borrower”), pursuant to a Senior Loan Agreement (the “Series 2018 Loan Agreement”), dated June 5, 2018, by and between the Issuer and the Borrower. The proceeds of the Series 2018 Bonds are expected to be used to (i) finance a portion of the costs of the planning, development, design and construction of the Automated People Mover Project (the “APM Project”) at the Los Angeles International Airport, Los Angeles, California (the “Airport” or “LAX”), (ii) pay interest on the Series 2018 Bonds during construction, and (iii) pay certain costs of issuance related to the Series 2018 Bonds. The Borrower’s obligations under the Series 2018 Loan Agreement are Senior Secured Obligations.

A portion of the construction costs of the APM Project are expected to be paid from the proceeds of a loan under the Design-Build Loan Facility Credit Agreement, to be executed at the time of the pricing of the Series 2018 Bonds, between the Borrower and the Bank Lenders named therein, in an amount up to \$269,322,603.50. The Design-Build Loan matures on the earlier to occur of (a) the End of Funding Date and (b) the date that is eighteen (18) months after the original Planned Early PSA Date. The proceeds of the Design-Build Loan Facility Credit Agreement are expected to be made available to the Borrower subject to certain conditions. The Borrower’s obligations under the Design-Build Loan Facility Credit Agreement are Senior Secured Obligations.

The Department of Airports (the “Department”) of the City of Los Angeles, California (the “City”), acting through the Board of Airport Commissioners of the City, has entered into the Design-Build-Finance-Operate-Maintain Agreement, dated as of April 11, 2018 (the “DBFOM Agreement”), with the Borrower, pursuant to which, among other things, the Borrower has agreed to design, construct, finance, operate and maintain the APM Project. The DBFOM Agreement terminates on the 30th anniversary of the Financial Close Date, or upon its earlier termination in accordance with the terms thereof. For information regarding the Department, see APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES.” The DBFOM Agreement requires the Department to make payments to the Borrower (i) upon the achievement of certain construction milestones (“Milestone Payments” and “Additional D&C Payments”) and (ii) for operating and capital investments in the APM Project (“Availability Payments”), each subject to deduction as described herein. In certain circumstances, the Department is required under the DBFOM Agreement to make a payment to the Borrower following termination of the DBFOM Agreement, as more fully described herein. Milestone Payments, Additional D&C Payments and Availability Payments are the Borrower’s main source of Project Revenues.

The Series 2018 Bonds are secured by (i) all right, title and interest of the Issuer (except for the Issuer’s Reserved Rights as described herein) in and to the Series 2018 Loan Agreement, (ii) monies and obligations held by the Trustee under the Indenture (except monies held in any rebate fund), and (iii) certain Collateral (including pledged funds and accounts) held by U.S. Bank National Association, as collateral agent (the “Collateral Agent”), pursuant to the Collateral Agency and Accounts Agreement, dated as of June 5, 2018, among the Borrower, the Administrative Agent, the Intercreditor Agent, the Collateral Agent, the Depository Agent, U.S. Bank National Association, as intercreditor agent (the “Intercreditor Agent”) and the Trustee (the “Collateral Agency and Accounts Agreement”). The Collateral held by the Collateral Agent includes the Borrower’s interest under the DBFOM Agreement and the other security more fully described herein, including security pledged pursuant to the (i) Collateral Agency and Accounts Agreement, (ii) Security Documents and (iii) Direct Agreements. See “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS.”

The scheduled payment of principal of and interest on certain maturities of the Series 2018 Bonds as indicated on the inside cover hereof (the “Insured Bonds”), when due will be guaranteed under an insurance policy which will be issued concurrently with the delivery of the Insured Bonds by Assured Guaranty Municipal Corp. See “BOND INSURANCE” herein and APPENDIX H—“SPECIMEN MUNICIPAL BOND INSURANCE POLICY” attached hereto for a specimen Bond Insurance Policy.



The Series 2018 Bonds will bear interest from the date of their initial delivery, at the rates set forth on the inside cover, payable (i) on the Series 2018A Bonds on June 30 and December 31 of each year, commencing on December 31, 2018 and (ii) on the Series 2018B Bonds on June 1 and December 1 of each year, commencing on December 1, 2018, and will mature on the dates and in the principal amounts set forth on the inside cover. Purchases of beneficial interests in the Series 2018 Bonds will be made in book-entry form through DTC participants and no physical delivery of the Series 2018 Bonds will be made to purchasers, except as otherwise described herein. The Depository Trust Company, New York, New York (“DTC”) will act as securities depository for the Series 2018 Bonds. The payment of the principal or Redemption Price of, and interest on the Series 2018 Bonds will be made by the Trustee directly to DTC, as described herein. See APPENDIX F—“DTC – BOOK-ENTRY-ONLY SYSTEM” herein. The Series 2018 Bonds are being issued as fully registered bonds in denominations of \$5,000 or in integral multiples thereof. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

The Series 2018 Bonds are subject to optional, extraordinary and mandatory redemption prior to their maturity, in whole and in part, as described herein. See “THE SERIES 2018 BONDS—Redemption.”

No Issuer member or any person executing the Series 2018 Bonds is liable personally on the Series 2018 Bonds or subject to any personal liability or accountability by reason of their issuance. The Series 2018 Bonds are limited obligations of the Issuer, payable solely from and secured by the pledge of the Trust Estate under the Indenture. Neither the Issuer, its members, the Department, the City, the State of California, nor any of its other political subdivisions shall be directly, indirectly, contingently or morally obligated to use any other moneys or assets to pay all or any portion of the debt service due on the Series 2018 Bonds, to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The Series 2018 Bonds are not a pledge of the faith and credit of the Issuer, its members, the Department, the City, the State of California or any of its political subdivisions, nor do they constitute indebtedness within the meaning of any constitutional or statutory debt limitation. The Issuer has no taxing power.

Investing in the Series 2018 Bonds is subject to numerous risks described in “RISK FACTORS” and APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Certain Considerations Related to LAX Revenues.”

**NONE OF THE SERIES 2018 BONDS CONSTITUTES OR EVIDENCES AN INDEBTEDNESS OF THE CITY OR THE DEPARTMENT OR A LIEN OR CHARGE ON ANY PROPERTY OR THE GENERAL REVENUES OF THE CITY OR THE DEPARTMENT. NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY, THE DEPARTMENT, THE STATE OR ANY PUBLIC AGENCY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2018 BONDS. THE DEPARTMENT IS UNDER NO OBLIGATION TO PAY THE SERIES 2018 BONDS.**

This cover page contains certain information for quick reference only. It is not a summary of the Series 2018 Bonds. Investors must read this Official Statement and appendices hereto in their entirety to obtain information essential to the making of an informed decision with respect to the Series 2018 Bonds.

The Series 2018 Bonds are being offered, subject to prior sale, withdrawal, or modification of the offer without notice and certain other conditions. Certain legal matters relating to the authorization and validity of the Series 2018 Bonds and the exclusion of the interest on the Series 2018 Bonds from gross income for federal income tax purposes will be subject to the approving opinion of Nixon Peabody LLP, as Bond Counsel. Certain legal matters will be passed upon for the Issuer by its counsel, Jones Hall, a Professional Corporation, for the Borrower by its counsel, White & Case LLP, and for the Department by the Office of the City Attorney of the City of Los Angeles, Polsinelli LLP has served as Disclosure Counsel to the Department. Certain legal matters will be passed upon for the Underwriters by Ashurst LLP. It is expected that the Series 2018 Bonds will be available for delivery through the facilities of DTC in New York, New York on or about June 8, 2018.

**BofA Merrill Lynch****Ramirez & Co., Inc.****Citigroup**

Dated: June 5, 2018

**\$1,181,525,000**

**CALIFORNIA MUNICIPAL FINANCE AUTHORITY**  
**Senior Lien Revenue Bonds (LINXS APM Project), Series 2018A**  
**Senior Lien Revenue Bonds (LINXS APM Project), Series 2018B**

**MATURITY SCHEDULE**

**Series 2018A Bonds**

<b>Maturity</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>	<b>CUSIP Number*</b>
December 31, 2023	\$ 4,910,000	5.00 %	2.51 %	13048VBA5
June 30, 2024	2,835,000	5.00	2.63	13048VBB3
December 31, 2024	3,640,000	5.00	2.71	13048VBC1
June 30, 2025	4,335,000	5.00	2.80	13048VBD9
December 31, 2025	5,260,000	5.00	2.85	13048VBE7
June 30, 2026	6,160,000	5.00	2.92	13048VBF4
December 31, 2026	6,720,000	5.00	2.94	13048VBG2
June 30, 2027	8,410,000	5.00	2.99	13048VBH0
December 31, 2027	8,755,000	5.00	3.01	13048VBH6
June 30, 2028	8,980,000	5.00	3.04	13048VBK3
December 31, 2028†	10,150,000	5.00	3.07	13048VBL1
June 30, 2029†	9,345,000	5.00	3.12	13048VBM9
December 31, 2029†	11,570,000	5.00	3.14	13048VBN7
December 31, 2030**	24,275,000	3.00	3.30	13048VBP2
June 30, 2031†	12,635,000	5.00	3.22	13048VBQ0
December 31, 2031†	13,695,000	5.00	3.26	13048VBR8
December 31, 2032**	27,785,000	3.25	3.54	13048VBS6
December 31, 2033†	29,435,000	5.00	3.35	13048VBT4
December 31, 2034†	33,220,000	5.00	3.39	13048VBU1
December 31, 2035†	19,040,000	5.00	3.42	13048VCC0
December 31, 2035**	20,000,000	3.50	3.71	13048VBZ0
December 31, 2036†	45,465,000	5.00	3.45	13048VBV9
December 31, 2037†	46,300,000	5.00	3.47	13048VBW7
December 31, 2038†	52,210,000	5.00	3.49	13048VBX5
December 31, 2043†	353,435,000	5.00	3.54	13048VBY3
December 31, 2047	185,000,000	4.00	4.00	13048VCA4
December 31, 2047†	178,585,000	5.00	3.58	13048VCD8
December 31, 2047**†	30,000,000	4.00	3.75	13048VCB2

**Series 2018B Bonds**

<b>Maturity</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>	<b>CUSIP Number*</b>
June 1, 2048††	\$ 19,375,000	5.00 %	3.59 %	13048VCE6

**(interest accrues from date of delivery)**

† Priced at the stated yield to June 30, 2028 the optional redemption date at a Redemption Price of 100% of the principal amount thereof plus interest accrued to the date fixed for redemption without premium.

†† Priced at the stated yield to June 1, 2028 the optional redemption date at a Redemption Price of 100% of the principal amount thereof plus interest accrued to the date fixed for redemption without premium.

\* Copyright 2018, American Bankers Association. CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein are provided by Standard & Poor's, CUSIP Service Bureau, a division of the McGraw-Hill Companies, Inc. The CUSIP numbers listed above are being provided solely for the convenience of the holders of the Series 2018 Bonds only at the time of the issuance of the Series 2018 Bonds and none of the Issuer, the Borrower nor any of the Underwriters makes any representation with respect to such numbers nor undertakes any responsibility for their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2018 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Series 2018 Bonds.

\*\* Maturities of the Series 2018 Bonds insured by Assured Guaranty Municipal Corp.

**Issuer**

California Municipal Finance Authority

**Equity Members**

ACS LINXS Holdings, LLC

Balfour Beatty Investments, Inc.

Bombardier Transportation (Holdings) USA Inc.

Fluor Enterprises, Inc.

HOCHTIEF LINXS Holding, LLC

**Borrower's Counsel**

White & Case LLP

**Underwriters' Counsel**

Ashurst LLP

**Bond Counsel**

Nixon Peabody LLP

**Issuer's Counsel**

Jones Hall, A Professional Corporation

**Lenders' Technical Advisor**

Infrata

**Trustee**

U.S. Bank National Association

**Collateral Agent**

U.S. Bank National Association

**Intercreditor Agent**

U.S. Bank National Association

No dealer, broker, salesman or other person has been authorized by the Borrower, the Issuer, the Department, the City, the Underwriters or any other person described or contemplated herein to give any information or to make any representations, other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by the Borrower, the Issuer, the Department or the Underwriters or any such other person. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor will there be (i) any sale of the Series 2018 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale, or (ii) any offer, solicitation or sale to any person to whom it is unlawful to make such offer, solicitation or sale. The information set forth herein concerning DTC has been furnished by DTC, and no representation is made by the Borrower, the Issuer, the Department or the Underwriters as to the completeness or accuracy of such information. None of the Underwriters, the Issuer, the Borrower nor any other person guarantees the accuracy or completeness of information contained herein and obtained from Assured Guaranty Municipal Corp. (“AGM”) or any other third party sources (and nothing contained herein will be construed as a representation in respect of such information), although the third party sources from which such information has been obtained by the Issuer and/or the Borrower are believed to be reliable by the Issuer and/or the Borrower, as applicable, with respect to information related to it. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sales made hereunder will, under any circumstances, create any implication that there has been no change in the affairs of the Issuer, the Borrower, the Equity Members, the Department or DTC (or any other information) since the date hereof.

This Official Statement is intended to reflect facts and circumstances on the date of this Official Statement or on such other date or at such other time as identified herein. No assurance can be given that such information will not be misleading at a later date. Consequently, reliance on this Official Statement at times subsequent to the date hereof should not be made on the assumption that any such facts or circumstances are unchanged.

AGM makes no representation regarding the Series 2018 Bonds or the advisability of investing in the Series 2018 Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AGM presented under the heading “BOND INSURANCE” and APPENDIX H—“Specimen Municipal Bond Insurance Policy.”

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

Neither the Issuer nor any of its Board members, officers, representatives or employees take any responsibility for and have not prepared or assisted in the preparation of this Official Statement except with respect to the statements made under “PROJECT PARTICIPANTS—The Issuer” and “LITIGATION—The Issuer” herein and, except as aforesaid, the Issuer is not responsible for any statements made in this Official Statement. Except for the execution and delivery of documents required to effect the issuance of the Series 2018 Bonds, the Issuer has not otherwise assisted in the public offer, sale or distribution of the Series 2018 Bonds. Accordingly, except as aforesaid, the Issuer disclaims responsibility for the disclosures set forth in this Official Statement or otherwise made in connection with the offer, sale and distribution of the Series 2018 Bonds. Except as expressly set forth in this Official Statement, all information contained herein has been provided by the Borrower which (except as aforesaid) is responsible for its content.

The Department is only obligated to make certain payments required by the DBFOM Agreement and is not responsible for paying, and is not guaranteeing the payment of, the principal or accreted value of, premium, if any, or interest on the Series 2018 Bonds. The Series 2018 Bonds are not secured by a lien on any properties or improvements of the City or of the Department, or by a pledge of any revenues of the Department. The Department is not a party to any of the documents relating to the Series 2018 Bonds or the APM Project other than the DBFOM Agreement, the Lenders’ Direct Agreement and the Department Continuing Disclosure Certificate and is not subject to any of the covenants or other restrictions contained in any of the other documents relating to the Series 2018



Bonds or the APM Project. Except as described in APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES," APPENDIX B-4—"SUMMARY OF THE MASTER SENIOR INDENTURE" and APPENDIX B-5—"SUMMARY OF THE MASTER SUBORDINATE INDENTURE," the Department is not restricted from issuing Additional Senior Bonds, Additional Subordinate Obligations or Third Lien Obligations or incurring any other debt which may be supported by or secured by the Department's revenues and the payment of which may be senior to any of the payments to be made by the Department to the Borrower pursuant to the DBFOM Agreement.

THE DEPARTMENT HAS NOT PREPARED OR ASSISTED IN THE PREPARATION OF THIS OFFICIAL STATEMENT EXCEPT THAT THE DEPARTMENT HAS PROVIDED ONLY THE INFORMATION SET FORTH UNDER THE CAPTIONS "SUMMARY— THE PROJECT — THE DEPARTMENT AND LOS ANGELES INTERNATIONAL AIRPORT", "INTRODUCTION—THE CITY, THE DEPARTMENT AND THE LOS ANGELES INTERNATIONAL AIRPORT", "INTRODUCTION—AVIATION ACTIVITY," "THE APM PROJECT—OVERVIEW—AUTHORIZATIONS FOR THE APM PROJECT" - "THE APM PROJECT—OVERVIEW—STATE ENVIRONMENTAL APPROVALS," "CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—UNSECURED PAYMENTS OF THE DEPARTMENT," "PROJECT PARTICIPANTS—THE DEPARTMENT", THE FIRST PARAGRAPH UNDER "LITIGATION – THE DEPARTMENT – TPS PARKING MANAGEMENT LITIGATION" AND IN APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES," APPENDIX B-2—"ANNUAL FINANCIAL REPORT OF LOS ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016," APPENDIX B-3—"CERTAIN DEFINITIONS," APPENDIX B-4—"SUMMARY OF THE MASTER SENIOR INDENTURE," APPENDIX B-5—"SUMMARY OF THE MASTER SUBORDINATE INDENTURE," APPENDIX B-6—"AMENDMENTS TO THE MASTER SENIOR INDENTURE," APPENDIX B-7—"AMENDMENTS TO THE MASTER SUBORDINATE INDENTURE" AND APPENDIX B-8—"CERTAIN INFORMATION REGARDING THE RETIREMENT PLAN AND PENSION SYSTEMS OF THE CITY OF LOS ANGELES," AND APPENDIX E-2—"FORM OF THE DEPARTMENT CONTINUING DISCLOSURE AGREEMENT CERTIFICATE" AND HAS NOT REVIEWED OR APPROVED AND IS NOT RESPONSIBLE FOR, AND MAKES NO REPRESENTATION, WARRANTY OR CERTIFICATION AS TO THE ADEQUACY OR ACCURACY OF THE INFORMATION SET FORTH ANYWHERE ELSE IN THIS OFFICIAL STATEMENT (INCLUDING ANY INFORMATION CONTAINED IN THIS OFFICIAL STATEMENT, OR IN ANY APPENDIX OBTAINED FROM ANY CONSULTANT OF THE DEPARTMENT OR FROM THE CITY), AND EXCEPT AS NOTED ABOVE, THE DEPARTMENT IS NOT RESPONSIBLE FOR ANY STATEMENTS MADE IN THIS OFFICIAL STATEMENT. THE DEPARTMENT HAS NOT ASSISTED IN THE PUBLIC OFFER, SALE OR DISTRIBUTION OF THE SERIES 2018 BONDS. ACCORDINGLY, EXCEPT AS AFORESAID, THE DEPARTMENT HAS NOT ASSISTED IN THE PUBLIC OFFER, SALE OR DISTRIBUTION OF THE SERIES 2018 BONDS AND THE DEPARTMENT DISCLAIMS ANY RESPONSIBILITY FOR THE INFORMATION SET FORTH IN THIS OFFICIAL STATEMENT OR OTHERWISE MADE AVAILABLE IN CONNECTION WITH THE OFFER, SALE AND DISTRIBUTION OF THE SERIES 2018 BONDS. NONE OF THE SERIES 2018 BONDS CONSTITUTES OR EVIDENCES AN INDEBTEDNESS OF THE CITY OR THE DEPARTMENT OR A LIEN OR CHARGE ON ANY PROPERTY OR THE GENERAL REVENUES OF THE CITY OR THE DEPARTMENT. NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY, THE DEPARTMENT, THE STATE OR ANY PUBLIC AGENCY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2018 BONDS. THE DEPARTMENT IS UNDER NO OBLIGATION TO PAY THE SERIES 2018 BONDS.

The Series 2018 Bonds have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended. Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the Series 2018 Bonds or passed upon the accuracy or adequacy of this Official Statement. Any representation to the contrary is a criminal offense. In making an investment decision, investors must rely on their own examination of the Borrower and the terms of the offering, including the merits and risks involved. Before making an investment decision to purchase the Series 2018 Bonds, investors should carefully review the risks described under "RISK FACTORS" and APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Forward Looking Statements" for a description of certain factors relating to an investment in the Series 2018 Bonds, including information about the APM Project, the Department and the Borrower. None of the Borrower, the Issuer, the

Department or the Underwriters or any of their representatives or affiliates is making any representation regarding the legality of an investment by any investor under applicable investment or similar laws. Investors should not construe anything in this Official Statement as legal, business or tax advice and should consult with their own advisors as to the legal, tax, business, financial and related aspects of an investment in the Series 2018 Bonds.

**The statements contained in this Official Statement, and in any other information provided by the Borrower or the Lenders' Technical Advisor, that are not purely historical, may be considered to be forward looking statements. Forward looking statements can be identified by the use of forward looking words such as "believes," "expects," "may," "will," "should," "seeks," "approximately," "intends," "plans," "estimates" and "anticipates" or the negative terms or other comparable words, or by discussions of strategy, plans or intentions. Examples of forward looking statements contained in this Official Statement are statements that concern the Borrower's future revenues, costs, traffic projections and liquidity. The forward looking statements contained herein are based on the Borrower's expectations and are necessarily dependent upon assumptions, estimates and data that it believes are reasonable as of the date made but that may be incorrect, incomplete, imprecise or not reflective of actual results. The Borrower does not undertake to update or revise any of the forward looking statements contained herein, even if it becomes clear that they will not be realized. See also APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Forward Looking Statements" and "—Certain Considerations Relating to LAX Revenues."**

The order and placement of information in this Official Statement, including appendices, are not an indication of relevance, materiality or relative importance, and this Official Statement, including the appendices, must be read in its entirety. The captions and headings in this Official Statement are for convenience purposes only and in no way define, limit or describe the scope or intent, or affect the meaning or construction, of any provision or section of this Official Statement.

References to website addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement. The Issuer maintains a website and the information presented on such website is *not* incorporated by reference as part of this Official Statement and should not be relied upon in making investment decisions with respect to the Series 2018 Bonds.

This Official Statement contains summaries of and references to documents that the Borrower believes to be accurate in all material respects; however, reference is made to the actual documents for complete information. All such summaries and references are qualified in their entirety by such reference. ALL CAPITALIZED TERMS USED HEREIN BUT NOT OTHERWISE DEFINED HEREIN WILL HAVE THE RESPECTIVE MEANINGS ASCRIBED TO THEM IN THE DEFINITIONS SET FORTH IN APPENDIX A—"DEFINITIONS."

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2018 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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## SUMMARY

*This Summary is subject in all respects to more complete information contained in this Official Statement and should not be considered a complete statement of the facts material to making an investment decision regarding the Series 2018 Bonds. The offering of the Series 2018 Bonds to potential investors is made only by means of the entire Official Statement. Capitalized terms used in this Summary and not defined in this Summary have the meanings given to such terms in APPENDIX A—“DEFINITIONS” or as otherwise defined elsewhere in this Official Statement.*

## THE PROJECT

<b><i>The APM Project .....</i></b>	LAX Integrated Express Solutions LLC, a Delaware limited liability company (the “Borrower”), was formed for the express purpose of undertaking the project (the “APM Project”), comprising the design, build, finance, operation and maintenance by the Borrower of an approximately 2.25 mile elevated, grade-separated, automated people mover system (the “APM System”) at Los Angeles International Airport (“LAX”) for the Department of Airports (the “Department”) of the City of Los Angeles (the “City”). The work to be completed by the Borrower under the DBFOM Agreement includes (a) the procurement and supply of passenger vehicles, facilities, equipment, subsystems and other components of the APM System, (b) construction of other structures and improvements to be developed by the Borrower, including utility improvements, (c) operation and maintenance of the APM Project throughout the term of the DBFOM Agreement, (d) performance of certain Renewal Work and handback of the APM Project at the end of the Term and (e) the performance of all other activities relating to the foregoing not specifically retained by the Department for the APM Project.
<b><i>DBFOM Agreement.....</i></b>	The Borrower and the City, acting through the Department, have entered into the Design-Build-Finance-Operate-Maintain Agreement, dated as of April 11, 2018 (the “DBFOM Agreement”), pursuant to which the Department has granted to the Borrower, and the Borrower has accepted, the obligation to design, build, finance, operate and maintain the APM Project for a term of 30 years following the Financial Close Date, subject to earlier termination as described herein.
<b><i>Design-Build Contractor &amp; Design-Build Guarantors.....</i></b>	<p>The Borrower has contracted substantially all of the design and construction work relating to the APM Project to Balfour Beatty Infrastructure, Inc., Dragados USA, Inc., Flatiron West, Inc. and Fluor Enterprises, Inc., each of which, pursuant to the Design-Build Contract, are jointly and severally liable to perform all of the duties and obligations expressed to be duties and obligations of the Design-Build Contractor under the Design-Build Contract. See “PRINCIPAL PROJECT AGREEMENTS—Design-Build Contract” and APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”</p> <p>The supply of INNOVIA APM 300 vehicles for the APM Project is being undertaken by Bombardier Transportation (Holdings) USA Inc. (the “APM Operating System Supplier”), as a subcontractor to the Design-Build Contractor, pursuant to the APM Operating System Subcontract. See “PRINCIPAL PROJECT AGREEMENTS—APM Operating System Subcontract,” “RISK FACTORS—Risks Relating to the Project—<i>Pass-Through Risks under the Design-Build Contract and the O&amp;M Contract</i>” and “<i>Vehicle Supply Risks</i>” and APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT.”</p> <p>To support performance of its obligations under the Design-Build Contract, the Design-Build Contractor is required to deliver, or cause to be delivered to the Borrower, a parent guaranty from the respective parent companies of each</p>

of Balfour Beatty Infrastructure, Inc., Dragados USA, Inc., Flatiron West, Inc. and Fluor Enterprises, Inc. Each such parent guaranty is required to guarantee for the benefit of the Borrower and the Senior Secured Parties (subject to the Direct Agreements) all of each Design-Build Guarantor's respective subsidiary Design-Build Contractor member's obligations under the Design-Build Contract, the Interface Agreement and the DB Lenders' Direct Agreement. The Borrower may enforce each parent guaranty up to the full amount of the applicable Design-Build Contractor member's liability under such agreements, subject to certain limitations on liability set forth in the Design-Build Contract. See "RISK FACTORS—Risks Relating to the Project—*Construction Risks—General*." Additional support for performance of the Design-Build Contractor's obligations is required to be provided in the form of one or more payment bonds, one or more performance bonds, one or more letters of credit and one or more Contingent Letters of Credit. See APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Performance Security" and APPENDIX C—"REPORT OF THE LENDERS' TECHNICAL ADVISOR."

***O&M Contractor & O&M  
Guarantors .....***

Pursuant to the DBFOM Agreement, commencing on the Passenger Service Availability Date, the Borrower is required to operate and maintain the portion of the APM Project located within the O&M Limits. The Borrower has contracted substantially all of the operations and maintenance work relating to the APM Project within the O&M Limits to Bombardier Transportation (Holdings) USA Inc., Fluor Enterprises, Inc., HOCHTIEF Operators Holding, LLC and ACS LINXS O&M Holdings, LLC, each of which, pursuant to the O&M Contract, are jointly and severally liable to perform all of the duties and obligations expressed to be duties and obligations of the O&M Contractor under the O&M Contract. See "PRINCIPAL PROJECT AGREEMENTS—O&M Contract" and APPENDIX D-7—"SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT."

To support performance of its obligations, the O&M Contractor will deliver or cause to be delivered to the Borrower a parent guaranty from the respective parent companies of each of ACS LINXS O&M Holdings, LLC, Bombardier Transportation (Holdings) USA Inc., Fluor Enterprises, Inc. and HOCHTIEF Operators Holding, LLC. Each such parent guaranty is required to guarantee for the benefit of the Borrower and the Senior Secured Parties (subject to the Direct Agreements) all of each O&M Guarantor's O&M Contractor member's obligations under the O&M Contract, the Interface Agreement and the O&M Lenders' Direct Agreement and the Borrower may enforce each such parent guaranty up to the full amount of the applicable O&M Contractor member's liability under such agreements, subject to certain limitations on liability set forth in the O&M Contract. See "RISK FACTORS—Risks Relating to the Project—*Pass-Through Risks under the Design-Build Contract and O&M Contract*." Additional support for performance of the O&M Contractor's obligations is required to be provided in the form of one or more letters of credit. See APPENDIX D-7—"SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Performance Security."

***The Department and Los Angeles  
International Airport.....***

The Department is designated a proprietary department of the City. The City is a municipal corporation and charter city duly organized and existing under and pursuant to the provisions of the Constitution of the State of California (the "State") and the Charter of the City of Los Angeles. The City, acting through the Department, owns, operates and maintains Los Angeles International Airport ("LAX") and Van Nuys Airport ("VNY"). In addition, the Department maintains LA/Palmdale Regional Airport ("LA/PMD" and, collectively with LAX and VNY, the "Airport System"), although LA/PMD

is not currently certificated by the Federal Aviation Administration (the “FAA”). The Department’s fiscal year (“Fiscal Year”) currently begins on July 1 and ends on June 30 of the immediately subsequent year. The City operates the Airport System as a financially self-sufficient enterprise, without support from the City’s General Fund, through the Department under the supervision of the Board. The Department is governed by the seven-member Board, which is in possession, management and control of the Airport System. For additional information about the Department, see APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES.”

**The Department is not a party to any of the documents relating to the Series 2018 Bonds or the APM Project other than the DBFOM Agreement, the Lenders’ Direct Agreement and the Department Continuing Disclosure Certificate and is not subject to any of the covenants or other restrictions contained in any of the other documents relating to the Series 2018 Bonds or the APM Project. Except as described in APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES,” APPENDIX B-4—“SUMMARY OF THE MASTER SENIOR INDENTURE” and APPENDIX B-5—“SUMMARY OF THE MASTER SUBORDINATE INDENTURE,” the Department is not restricted from issuing Additional Senior Bonds, Additional Subordinate Obligations or Third Lien Obligations (each as defined in APPENDIX B-3—“CERTAIN DEFINITIONS”) or incurring any other debt which may be supported by or secured by the Department’s revenues and the payment of which may be senior to any of the payments to be made by the Department to the Borrower pursuant to the DBFOM Agreement. None of the amounts due to the Borrower from the Department pursuant to the DBFOM Agreement are secured by any lien on any funds or assets of the City or the Department.**

**Payments by the Department under the DBFOM Agreement are unsecured obligations of the Department. See “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Unsecured Payments of the Department.”**

*The Borrower.....* LAX Integrated Express Solutions, LLC, a Delaware limited liability company, was formed for the express purpose of undertaking the APM Project.

*Project Revenues.....* Pursuant and subject to the terms of the DBFOM Agreement, the Department is required to make (i) Milestone Payments to the Borrower upon its completion of certain design and construction milestones, (ii) Additional D&C Payments to the Borrower upon its completion of certain design and construction milestones and (iii) during the O&M Period, Availability Payments to the Borrower for the APM Project being made available for passenger service in accordance with the requirements of the DBFOM Agreement, subject to Deductions for the Borrower’s failure to meet certain performance and maintenance standards as described herein. Milestone Payments, Additional D&C Payments and Availability Payments are the Borrower's expected source of the majority of Project Revenues. In addition, in certain circumstances, the Department is required to make a payment to the Borrower in connection with certain Compensation Events and early termination of the DBFOM Agreement. See APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Termination of the DBFOM Agreement.”

## THE OFFERING

<b><i>Securities Offered</i></b> .....	California Municipal Financing Authority Senior Lien Revenue Bonds (LINXS APM Project), Series 2018A (the “Series 2018A Bonds”) and the Senior Lien Revenue Bonds (LINXS APM Project), Series 2018B (the “Series 2018B Bonds,” together with the Series 2018A Bonds, the “Series 2018 Bonds”) are being issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof. See “THE SERIES 2018 BONDS—General.”
<b><i>Issuer</i></b> .....	The Issuer is a public entity created by certain California communities through the execution of a joint exercise powers agreement in accordance with the laws of the State. See “PROJECT PARTICIPANTS—The Issuer.”
<b><i>Limited Obligations</i></b> .....	No Issuer member or any person executing the Series 2018 Bonds is liable personally on the Series 2018 Bonds or subject to any personal liability or accountability by reason of their issuance. The Series 2018 Bonds are limited obligations of the Issuer, payable solely from and secured by the pledge of the Trust Estate under the Indenture. Neither the Issuer, its members, the State of California, nor any of its political subdivisions shall be directly, indirectly, contingently or morally obligated to use any other moneys or assets to pay all or any portion of the debt service due on the Series 2018 Bonds, to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The Series 2018 Bonds are not a pledge of the faith and credit of the Issuer, its members, the State of California or any of its political subdivisions, nor do they constitute indebtedness within the meaning of any constitutional or statutory debt limitation. The Issuer has no taxing power. See “THE SERIES 2018 BONDS—Special and Limited Obligations / Issuer Not Liable on the Series 2018 Bonds.”
<b><i>Interest</i></b> .....	The Series 2018 Bonds will bear interest from their date of issuance at the rate or rates as shown on the inside cover of this Official Statement. Interest on the Series 2018 Bonds will be calculated on the basis of a 360-day year comprising twelve 30-day months.
<b><i>Interest Payment Dates</i></b> .....	Interest will be payable (i) on the Series 2018A Bonds, on June 30 and December 31 of each year, commencing December 31, 2018, and (ii) on the Series 2018B Bonds, on June 1 and December 1 of each year, commencing December 1, 2018, until maturity or prior redemption.
<b><i>Maturity Dates</i></b> .....	The maturity date or dates set forth on the inside cover of this Official Statement.
<b><i>Optional Redemption</i></b> .....	The Series 2018A Bonds maturing on or before June 30, 2028 are not subject to optional redemption prior to maturity. After June 30, 2028, the Issuer at the written request of the Borrower may redeem the Series 2018A Bonds at par plus accrued interest, in whole or in part. On or after June 1, 2028, the Issuer at the written request of the Borrower may redeem the Series 2018B Bonds at par plus accrued interest, in whole or in part. The Issuer may direct the Trustee to redeem specific maturities of the Series 2018 Bonds as designated by the Borrower. See “THE SERIES 2018 BONDS—Redemption—Optional Redemption.”
<b><i>Mandatory Sinking Fund Redemption</i></b> .....	The Series 2018A Bonds maturing on December 31, 2030, December 31, 2032, December 31, 2033, December 31, 2034, December 31, 2035 (CUSIP 13048VCC0), December 31, 2035 (CUSIP 13048VBZ0), December 31, 2036, December 31, 2037, December 31, 2038, December 31, 2043, December 31, 2047 (CUSIP 13048VCA4), December 31, 2047 (CUSIP 13048VCD8) and December 31, 2047 (CUSIP 13048VCB2) will be subject to mandatory sinking fund redemption



***Extraordinary Mandatory  
Redemption .....***

prior to maturity. Such Series 2018A Bonds will be redeemed without notice to the holder and in accordance with the arrangements with DTC (or, if not applicable, by lot). See “THE SERIES 2018 BONDS—Redemption—Mandatory Sinking Fund Redemption.”

The Series 2018 Bonds are subject to extraordinary mandatory redemption, in whole or in part, at a redemption price equal to the Amortized Redemption Price or the Accreted Redemption Price from (i) Termination Compensation received from the Department, (ii) certain excess Insurance Proceeds and Condemnation Proceeds, (iii) certain proceeds from the disposition of assets by the Borrower and (iv) certain unspent proceeds of the Series 2018 Bonds. Any extraordinary mandatory redemption from the proceeds referred to in (i), (ii) or (iii) above may occur on any date and any such redemption shall be pro rata with other Senior Secured Obligations. The extraordinary mandatory redemption of Series 2018 Bonds from certain unspent proceeds thereof may only occur during a ninety (90) day period that commences on the date that is five (5) years from the date of issuance of the Series 2018 Bonds. See “THE SERIES 2018 BONDS—Redemption—Extraordinary Mandatory Redemption.”

***Purchase in Lieu of Optional  
Redemption .....***

Whenever the Series 2018 Bonds are subject to optional redemption as described above and are called for redemption, the Borrower may elect to purchase in lieu of redemption all or any portion of the Series 2018 Bonds called for optional redemption upon written notice to the Trustee, at a purchase price equal to 100% of the principal amount thereof, plus accrued interest to, but not including the redemption date, without premium. See “THE SERIES 2018 BONDS—Purchase in Lieu of Redemption.”

***Indenture.....***

The Series 2018 Bonds will be issued pursuant to a Trust Indenture, dated as of June 5, 2018, between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”). See “FINANCING FOR THE APM PROJECT—Senior Debt—Indenture.”

***Ratings .....***

Fitch Ratings Inc. (“Fitch”) has assigned a preliminary investment grade rating of “BBB+” to the Series 2018 Bonds. The Insured Bonds have been assigned a rating of “AA” by S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC (“S&P”) based upon the issuance of the Policy by AGM at the time of delivery of the Series 2018 Bonds. See “BOND INSURANCE.” The delivery of an at least equivalent final rating from such rating agencies is a condition to the issuance of the Series 2018 Bonds. A rating is not a recommendation to buy, sell or hold the Series 2018 Bonds and may be subject to revision or withdrawal at any time by the rating agency. See “RATING.”

The Borrower has agreed to enter into a reasonable and customary “rating surveillance” agreement with at least one Rating Agency with respect to the rating of the Series 2018 Bonds.

***Book-Entry-Only System .....***

DTC will act as the securities depository for the Series 2018 Bonds. Purchases of beneficial interests in the Series 2018 Bonds will be made in book-entry form through DTC participants and no physical delivery of the Series 2018 Bonds will be made to purchasers, except as otherwise described herein. See APPENDIX F—“DTC – BOOK-ENTRY-ONLY SYSTEM.”

**FINANCING FOR THE APM PROJECT**

***Project Costs .....***

The Borrower anticipates that the costs to complete the design and construction of, and supply of vehicles for, the APM Project will be paid from the following sources (in no particular order): (i) equity contributions received by the Borrower from the Equity Members on the terms and conditions set forth in the Equity Contribution Agreement, (ii) the proceeds

	of the Series 2018 Bonds and interest income on such proceeds, (iii) the proceeds of the Design-Build Loan Facility, (iv) Milestone Payments received from the Department under the DBFOM Agreement, (v) Additional D&C Payments received from the Department under the DBFOM Agreement and (vi) interest earned on amounts held in the Project Accounts during construction.
<b><i>Senior Secured Obligations</i> .....</b>	The initial Senior Secured Obligations incurred to finance the APM Project are expected to be comprised of the Series 2018 Bonds, the Design-Build Loan Facility and the Hedging Obligations.
<b><i>Series 2018 Bonds</i> .....</b>	The proceeds of the Series 2018 Bonds are expected to be used to (i) finance a portion of the costs of the design, construction, financing, operation and maintenance of the APM Project, (ii) pay interest on the Series 2018 Bonds during construction, and (iii) pay certain costs of issuance related to the Series 2018 Bonds.
<b><i>Design-Build Loan Facility</i> .....</b>	To finance a portion of the costs of the planning, development, design and construction of the APM Project, the Borrower is expected, on the pricing date of the Series 2018 Bonds, to enter into the Design-Build Loan Facility Credit Agreement (the “Design-Build Loan Facility Credit Agreement”), by and between the Borrower and Canadian Imperial Bank of Commerce, Mizuho Bank, Ltd., Sumitomo Mitsui Banking Corporation, The Korea Development Bank and The Toronto-Dominion Bank, as Mandated Lead Arrangers (the “Bank Lenders”), and Mizuho Bank, Ltd., as Administrative Agent. Pursuant to the terms of the Design-Build Loan Facility Credit Agreement, the Bank Lenders are expected to loan the Borrower up to approximately \$262.9 million, subject to certain conditions and certifications to be made by the Borrower. See “RISK FACTORS—Risks Relating to the Series 2018 Bonds— <i>Potential Inadequacy of Funding Sources; Failure of Bank Lenders to Fund.</i> ” The proceeds of the Design-Build Loan Facility Credit Agreement are expected to be used to finance a portion of the costs of construction of the APM Project, including the costs and fees of the Bank Lenders and Hedge Providers.
<b><i>Hedging Agreements</i> .....</b>	The interest rate for the Design-Build Loan Facility is a floating rate. The Borrower will enter into swap agreements with hedging banks (the “Hedge Providers”) to synthetically fix the interest rate on the Design-Build Loan Facility. The obligations of the Borrower to the Hedge Providers are secured ratably with the Series 2018 Bonds, the Design-Build Loan Facility Credit Agreement and any other Senior Secured Obligations. The swap agreements are terminable by the Hedge Providers in the event the obligations under the Design-Build Loan Facility Credit Agreement are repaid and are also terminable by the Hedge Providers and the Borrower in certain other limited circumstances. See “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement” for a discussion of the Hedge Providers' rights in the event of an Enforcement Action at the direction of the Owners of the Series 2018 Bonds or the Bank Lenders.
<b><i>Additional Senior Secured Obligations</i> .....</b>	The Series 2018 Loan Agreement permits the Borrower to incur Additional Senior Secured Obligations to (i) pay for completion of the APM Project; (ii) pay to refurbish, upgrade, modify, expand or add to the APM Project, in connection with any LAWA Change, Directive Letter, Safety Compliance Order, Relief Event or to meet other costs necessary for the purpose of complying with the requirements of the DBFOM Agreement; or (iii) refinance, replace or refund any or all of the Senior Secured Obligations. The conditions to the incurrence of Additional Senior Secured Obligations differ depending on the purpose for which such obligation is incurred. Under the Design-Build Loan Facility Credit Agreement, the Borrower may not

incur any Additional Senior Secured Obligations, see “FINANCING FOR THE APM PROJECT—Senior Debt—*Additional Senior Secured Obligations*.”

***Construction Account Transfer  
Conditions.....***

Each withdrawal or transfer from the Construction Account by the Depositary Agent on behalf of the Borrower is, pursuant to the terms of the Collateral Agency and Accounts Agreement, required to be made pursuant to an “Approved Construction Requisition,” which consists of:

(i) a “Construction Requisition Certificate” from the Borrower, in which the Borrower sets forth the amount requested and certifies that (A) no Event of Default has occurred and is continuing, or will occur as a result of the requested withdrawal, and (B) no Funding Shortfall exists; and

(ii) a certificate from the Lenders’ Technical Advisor stating that (A) the Lenders’ Technical Advisor does not dispute the certification given by the Borrower that no Funding Shortfall exists, (B) Passenger Service Availability is reasonably expected to occur prior to the Lenders’ Long Stop Date and (C) the amounts being requested by the Borrower in the Construction Requisition Certificate are for the payment of Project Costs (and, with respect to proceeds of the Series 2018 Bonds, for the payment of Project Costs in accordance with the Tax Regulatory Agreement).

See “ACCOUNTS AND FLOW OF FUNDS—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts.”

***Equity Financing.....***

To finance a portion of the Project Costs each Equity Member is expected to enter into the Equity Contribution Agreement. Each Equity Member is required to make Equity Contributions in the manner and at the times contemplated in the Equity Contribution Agreement, in an amount not to exceed such Equity Member's Aggregate Equity Commitment. The maximum aggregate equity commitment of all Equity Members is \$102,741,025.63.

The Aggregate Equity Commitment and Percentage Interest of each Equity Member is as set forth below:

<b>Equity Member</b>	<b>Percentage Interest</b>	<b>Aggregate Equity Commitment (US\$)</b>
ACS LINXS Holdings, LLC	18%	\$18,493,385
Balfour Beatty Investments, Inc.	27%	\$27,740,077
Bombardier Transportation (Holdings) USA Inc.	10%	\$10,274,103
Fluor Enterprises, Inc.	27%	\$27,740,077
HOCHTIEF LINXS Holding, LLC	18%	\$18,493,385

From June 5, 2018 to the Release Date, the obligations of each Equity Member to make Equity Contributions are required to be secured by one or more Acceptable Letters of Credit, in a form reasonably acceptable to the Collateral Agent or, for each Equity Member, substantially in the form of such Equity Member’s Equity Letter of Credit executed and provided by such Equity Member to the Collateral Agent as of June 5, 2018, in an aggregate face amount not less than such Equity Member’s Unfunded Equity Commitment, unless such amount is, at the election of such Equity Member, cash collateralized in accordance with the Equity Contribution Agreement; provided, that as of any date of determination, amounts on deposit in the Applicable Equity Member Cash Collateral Account with respect to such

Equity Member plus the amounts available under such Equity Member's Equity Letters of Credit must equal such Equity Member's Unfunded Equity Commitment. An Equity Letter of Credit is subject to draw in certain circumstances and amounts drawn under an Equity Letter of Credit and deposited into the Equity Contribution Sub-Account are deemed an Equity Contribution. See "FINANCING FOR THE APM PROJECT—Equity Contributions—*Equity Letters of Credit*."

***Bond Insurance* .....** To the extent any of the Series 2018 Bonds are issued as Insured Bonds, AGM will issue its Municipal Bond Insurance Policy (the "Policy") for the Insured Bonds. If issued, the Policy guarantees the scheduled payment of principal of and interest on the Insured Bonds when due as set forth in the form of the Policy included as Appendix H to this Official Statement. See "BOND INSURANCE" and APPENDIX H—"SPECIMEN MUNICIPAL BOND INSURANCE POLICY" herein.

#### **CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT**

***Milestone Payments* .....** Subject to the terms of the DBFOM Agreement, the Department is obligated to pay to the Borrower six milestone payments for performance of the D&C Work (excluding the Additional D&C Work) in the aggregate amount of \$1,009,749,090.72, subject to Deductions. Subject to the terms of the DBFOM Agreement, these Milestone Payments will be paid in equal amounts upon completion of certain Minimum D&C Percentage thresholds and the final ("Milestone Payment 6") will be paid within 60 days following Final Completion. Each Milestone Payment amount may be reduced by D&C Period Noncompliance Deductions. See "CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT."

Milestone Payment 6 together with other funds available to the Borrower are expected to be applied to repay the Design-Build Loan Facility. Milestone Payment 6 will be deposited to the Proceeds Account and thereafter transferred to the Milestone Payment Sub-Account and applied to repay the Design-Build Loan Facility Obligations and any Hedging Obligations and Hedging Termination Obligations arising from the termination of the associated Hedging Obligations in accordance with the Design-Build Loan Facility Credit Agreement.

***Additional D&C Payments* .....** Subject to the terms of the DBFOM Agreement, the Department is obligated to pay to the Borrower a series of four Additional D&C Payments totaling \$21,520,825.30 for the Borrower's performance of the Additional D&C Work. See "CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Additional D&C Payments."

***Availability Payments* .....** Subject to the terms of the DBFOM Agreement, (a) the Department is obligated to make Availability Payments to the Borrower as compensation for the APM Project being made available for passenger service (including certain Renewal Work), subject to Deductions for the Borrower's failure to meet certain performance and maintenance standards and (b) the Department is required to pay Availability Payments to the Borrower during the O&M Period, commencing from the later of: (i) the Planned Early PSA Date (being March 31, 2023, which is the date the Borrower is committed to achieving Passenger Service Availability, as may be extended under the DBFOM Agreement), and (ii) the date the Independent Engineer issues a Certificate of Passenger Service Availability for the APM Project (the "Passenger Service Availability Date").

#### **SECURITY FOR THE SECURED OBLIGATIONS**

***Collateral* .....** The payment of the obligations in respect of the Series 2018 Bonds and any Additional Senior Bonds will be secured by the Trust Estate, which includes

the Collateral. The Collateral also secures the Design-Build Loan Facility and any other Permitted Senior Secured Indebtedness. The Collateral is comprised of all real and personal property of the Borrower (subject to certain excluded assets), now owned or hereafter acquired, which is subject to the Security Interests under any of the Security Documents, including (a) the “Collateral,” as described under the Security Agreement, which includes, among other things, all of the Borrower’s right, title and interest in and to the Borrower’s Interest (being all right, title and interest of the Borrower in, to, under or derived from the Contract Documents), Project Revenues, and the Project Accounts, and (b) the “Pledged Collateral,” as described under the Pledge Agreement, which includes, among other things, Borrower HoldCo’s direct membership interests in the Borrower and all Indebtedness owed by the Borrower to Borrower HoldCo, and all proceeds or products therefrom, provided that (i) the Senior Secured Segregated Collateral will secure only the Senior Secured Obligations, (ii) the Bonds Segregated Collateral will secure only the Series 2018 Loan Agreement and the related interest of the Trustee and the Owners and (iii) the Bank Segregated Collateral will secure only the Design-Build Loan Facility Credit Agreement and the related interest of the Administrative Agent and the Bank Lenders.

The Senior Secured Segregated Collateral consists of the Senior Interest Payment Sub-Account, the Senior Principal Payment Sub-Account and the Senior Debt Service Reserve Account and all respective amounts on deposit therein, credited thereto or earnings thereon. The Bonds Segregated Collateral consists of the Bond Proceeds Account and the Bond Mandatory Prepayment Sub-Account and all respective amounts on deposit therein, credited thereto or earnings thereon. The Bank Segregated Collateral consists of the Milestone Payment Sub-Account and the Design-Build Loan Mandatory Prepayment Sub-Account and all respective amounts on deposit therein, credited thereto or earnings thereon.

See “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Senior Secured Obligations—*Pledge Agreement*” and “—*Security Agreement*” and “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement.”

***Flow of Funds.....***

The Project Accounts will be established under the Collateral Agency and Accounts Agreement in the name of the Borrower and pledged to the Collateral Agent. Proceeds of the Series 2018 Bonds will be deposited directly to the Bond Proceeds Account, to be disbursed periodically upon satisfaction by the Borrower of certain requirements set forth in the Collateral Agency and Accounts Agreement.

See “ACCOUNTS AND FLOW OF FUNDS.”

***Senior Debt Service Reserve Account.....***

The Borrower is required to fund the Senior Debt Service Reserve Account not later than the Passenger Service Availability Date from sources available to Borrower, which may include proceeds of the Series 2018 Bonds, proceeds of the Design-Build Loans, Milestone Payment 6, Equity Contributions and other amounts.

The Senior Debt Service Reserve Account is required to be funded not later than the Passenger Service Availability Date in an amount (which, together with funds available to be drawn against an Applicable Reserve Letter of Credit) equal to \$32,738,235.61, which amount represents the Required Senior Debt Service Reserve as of the Passenger Service Availability Date. The Required Senior Debt Service Reserve equals the sum of the principal and interest on the outstanding Series 2018 Bonds and any other Permitted Senior Secured Indebtedness (other than the Design-Build Loans, the Hedging Obligations and Hedging Termination Obligations), the terms of

which Permitted Senior Secured Indebtedness require a debt service reserve, during the six months commencing from the relevant Monthly Transfer Date or any other applicable date of determination (the “Required Senior Debt Service Reserve”). The Senior Debt Service Reserve Account will be established with the Depositary Agent and held by the Collateral Agent for the benefit of the Owners of the Series 2018 Bonds, the Bank Lenders, the Hedge Providers and the providers of other Permitted Senior Secured Indebtedness (to the extent that such Permitted Senior Secured Indebtedness requires a debt service reserve) and the Security Interest thereon will be maintained for the exclusive benefit of such Senior Secured Parties. Prior to an Enforcement Action, amounts on deposit in the Senior Debt Service Reserve Account shall be available only to pay principal and interest on the Series 2018 Bonds and other Permitted Senior Secured Indebtedness (excluding the Design-Build Loans, the Hedging Obligations, Hedging Termination Obligations and other Permitted Senior Secured Indebtedness that does not include a required senior debt service reserve), provided that in the event of an Enforcement Action against the Collateral (in accordance with the Intercreditor Agreement), the Design-Build Loan Facility Obligations will share ratably with all Senior Secured Obligations then outstanding in the amounts in the Senior Debt Service Reserve Account.

For a complete description of the Senior Debt Service Reserve Account, see “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Senior Debt Service Reserve Account,” “—Intercreditor Agreement” and “ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—*Senior Debt Service Reserve Account*.”

#### MISCELLANEOUS

***Risk Factors.....***

Certain risks could affect the payments to be made with respect to the Series 2018 Bonds or the market value of the Series 2018 Bonds. See “RISK FACTORS” for a discussion of such risks. Such discussion is not exhaustive, should be read in conjunction with all other parts of this Official Statement and the documents incorporated by reference in this Official Statement, and should not be considered as a complete description of all risks that could affect such payments or the market value of the Series 2018 Bonds. Investors should carefully consider the information set forth in such section along with all of the other information provided herein or incorporated by reference in this Official Statement and additional information in the form of the complete documents summarized herein (copies of which are available as described in this Official Statement) before deciding whether to invest in the Series 2018 Bonds. See “RISK FACTORS.” See also, APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Certain Considerations Related to LAX Revenues.”

***Technical Advisor Report.....***

Infrata Limited (“Infrata” or the “Lenders' Technical Advisor”) was engaged to review and report on the technical aspects of the APM Project and to prepare a Technical Due Diligence Report, dated May 24, 2018 (the “Technical Advisor Report”). The Technical Advisor Report includes an assessment of the expected capabilities and experience of key Project participants and identifies the potential and anticipated commercial and technical risks that Infrata believes are associated with the APM Project. The Technical Advisor Report also estimates the extent to which these risks are believed to be mitigated. The Technical Advisor Report is included as Appendix C to this Official Statement. Matters addressed in the Technical Advisor Report are based on forward looking statements and opinions, various assumptions and methodologies, and are subject to certain qualifications. Reference is hereby made to the entire Technical Advisor's

Report for such forward looking statements, opinions, projections, qualifications and assumptions. See “TECHNICAL ADVISOR REPORT” and APPENDIX C—“REPORT OF THE LENDERS’ TECHNICAL ADVISOR.”

## **INTRODUCTION**

### **General**

This Official Statement (including the cover page, the inside cover page, the Summary Statement, and the Appendices) is being distributed in connection with the offering and sale of \$1,181,525,000 aggregate principal amount of the California Municipal Finance Authority Senior Lien Revenue Bonds (LINXS APM Project), Series 2018A (“Series 2018A Bonds”) and its Senior Lien Revenue Bonds (LINXS APM Project), Series 2018B (“Series 2018B Bonds,” together with the Series 2018A Bonds, the “Series 2018 Bonds”). Capitalized terms used herein unless otherwise defined herein have the meanings given to them in APPENDIX A—“DEFINITIONS.”

### **The City, the Department and the Los Angeles International Airport**

The Department is designated a proprietary department of the City of Los Angeles. The City is a municipal corporation and charter city duly organized and existing under and pursuant to the provisions of the Constitution of the State of California and the Charter of the City of Los Angeles. The City, acting through the Department, operates and maintains LAX and VNY. In addition, the Department maintains LA/PMD and, collectively with LAX and VNY, the “Airport System”), although LA/PMD is not currently certificated by the FAA. The Department's Fiscal Year (“Fiscal Year”) currently begins on July 1 and ends on June 30 of the immediately subsequent year. The City operates the Airport System as a financially self-sufficient enterprise, without support from the City's General Fund, through the Department under the supervision of the Board. The Department is governed by the seven-member Board, which is in possession, management and control of the Airport System. For additional information about the Department and LAX, see APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES.”

The Department is not a party to any of the documents relating to the Series 2018 Bonds or the APM Project other than the DBFOM Agreement, the Lenders’ Direct Agreement and the Department Continuing Disclosure Certificate and is not subject to any of the covenants or other restrictions contained in any of the other documents relating to the Series 2018 Bonds or the APM Project. Except as described in APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES,” APPENDIX B-4—“SUMMARY OF THE MASTER SENIOR INDENTURE” and APPENDIX B-5—“SUMMARY OF THE MASTER SUBORDINATE INDENTURE,” the Department is not restricted from issuing Additional Senior Bonds, Additional Subordinate Obligations or Third Lien Obligations (each as defined in APPENDIX B-3—“CERTAIN DEFINITIONS”) or incurring any other debt which may be supported by or secured by the Department’s revenues and the payment of which may be senior to any of the payments to be made by the Department to the Borrower pursuant to the DBFOM Agreement. None of the amounts due to the Borrower from the Department pursuant to the DBFOM Agreement are secured by any lien on any funds or assets of the City or the Department.

### **Aviation Activity**

According to Airports Council International (“ACI”) preliminary statistics, in calendar year 2017, LAX ranked as the 5th busiest airport in the world and the 2nd busiest airport in North America in terms of total number of enplaned passengers, and 13th busiest airport in the world and 4th busiest airport in North America in terms of total cargo. According to the United States Department of Transportation Origins and Destinations Survey of Airline Passenger Traffic, for Fiscal Year 2016, LAX ranked first nationally in number of domestic origin and destination passengers. LAX is classified by the FAA as a large hub airport. For additional information about the Department and LAX, see APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES” and APPENDIX B-2—“ANNUAL FINANCIAL REPORTS OF LAS ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016.”



## **The APM Project**

The Borrower was formed for the express purpose of undertaking the APM Project, comprising the design, construction, financing, operation and maintenance of an approximately 2.25 mile elevated, grade-separated, automated people mover system for the Department at LAX and ancillary construction work for other related structures. For information regarding the modernization program being undertaken by the Department, See APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES.” The work required to be completed by the Borrower as part of the APM Project includes (a) the procurement and supply of passenger vehicles, facilities, equipment, subsystems and other components of the APM System, (b) construction of other structures and improvements to be developed by the Borrower, including utility improvements (both (a) and (b) to be performed by the Design-Build Contractor under the Design-Build Contract), (c) performance of operations, maintenance and certain Renewal Work and handback of the APM Project at the end of the Term by the Borrower (to be performed by the O&M Contractor under the O&M Contract) and (d) the performance of all other activities relating to the foregoing not specifically retained by the Department for the APM Project.

While the Design-Build Contractor remains liable to the Borrower for all of the risk of the design and construction of the APM Operating System, including the supply of 44 INNOVIA APM 300 vehicles, such work will be performed by Bombardier Transportation (Holdings) USA Inc., as the APM Operating System Supplier pursuant to a subcontract between the APM Operating System Supplier and the Design-Build Contractor. A direct agreement between the APM Operating System Supplier, the Collateral Agent and the Design-Build Contractor will be executed for the benefit of both the Borrower and the Collateral Agent. See “SECURITY THE SERIES 2018 BONDS—Direct Agreements and Consent and Agreements.”

## **The DBFOM Agreement**

The APM Project is being undertaken by the Borrower pursuant to the DBFOM Agreement. Under the DBFOM Agreement, the Department has granted to the Borrower and the Borrower has accepted the obligation to design, build, finance, operate and maintain the APM Project, including the supply of the passenger vehicles, running surfaces, switches, other guideway equipment, active graphics, platform barrier doors, platform barrier walls, power distribution, central control and automated train control, communications, maintenance equipment, and all other equipment which, when integrated, results in the operation of the vehicles in conformance with the contractual requirements described in the DBFOM Agreement (the “APM Operating System”), the performance of renewal work related to the capital replacement, reconstruction, overhaul, refurbishment and reinstatement of the APM Project, the handback of the APM Project at the end of the Term, and performance of all other activities relating to the foregoing not specifically retained by the Department for the APM Project.

The Term of the DBFOM Agreement commenced on April 11, 2018 (the “Effective Date”) and will expire 30 years after the Financial Close Date, subject to the right of the parties to terminate the DBFOM Agreement earlier in accordance with its terms.

In consideration for the performance of the Work in accordance with the DBFOM Agreement, the Department is required to compensate the Borrower through the Milestone Payments, Additional D&C Payments and Availability Payments. See “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Additional D&C Payments.”

See APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT.”

## **Construction and Operation of the APM Project**

### *Design and Construction*

The Borrower has contracted substantially all of the design and construction work relating to the APM Project to Balfour Beatty Infrastructure, Inc., Dragados USA, Inc., Flatiron West, Inc. and Fluor Enterprises, Inc., each of which, pursuant to the Design-Build Contract, are jointly and severally liable to perform all of the duties and

obligations expressed to be duties and obligations of the Design-Build Contractor under the Design-Build Contract. See “PRINCIPAL PROJECT AGREEMENTS—Design-Build Contract” and APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

The supply of INNOVIA APM 300 vehicles for the APM Project is being undertaken by the APM Operating System Supplier, as a subcontractor to the Design-Build Contractor, pursuant to the APM Operating System Subcontract. See “PRINCIPAL PROJECT AGREEMENTS—APM Operating System Subcontract,” “RISK FACTORS—Risks Relating to the Project—*Pass-Through Risks under the Design-Build Contract and the O&M Contract*” and “*Vehicle Supply Risks*” and APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT.”

To support performance of its obligations under the Design-Build Contract, the Design-Build Contractor is required to deliver, or cause to be delivered to the Borrower, a parent guaranty from the respective parent companies of each of Balfour Beatty Infrastructure, Inc., Dragados USA, Inc., Flatiron West, Inc. and Fluor Enterprises, Inc. Each such parent guaranty is required to guarantee for the benefit of the Borrower and the Senior Secured Parties (subject to the Direct Agreements) all of the Design-Build Contractor’s obligations under the Design-Build Contract, the Interface Agreement, and the DB Lenders’ Direct Agreement. The Borrower may enforce each parent guaranty up to the full amount of the applicable Design-Build Contractor member’s liability under such agreements, subject to certain limitations on liability set forth in the Design-Build Contract. See “RISK FACTORS—Risks Relating to the Project—*Construction Risks—General*.” Additional support for performance of the Design-Build Contractor’s obligations is required to be provided in the form of one or more payment bonds, one or more performance bonds, one or more letters of credit and one or more Contingent Letters of Credit. See APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Performance Security” and APPENDIX C—“REPORT OF THE LENDERS’ TECHNICAL ADVISOR.”

#### *Operation and Maintenance*

Pursuant to the DBFOM Agreement, commencing on the Passenger Service Availability Date, the Borrower is required to operate and maintain the portion of the APM Project located within the O&M Limits. The Borrower has contracted substantially all of the operation and maintenance work relating to the APM Project within the O&M Limits to Bombardier Transportation (Holdings) USA Inc., Fluor Enterprises, Inc., HOCHTIEF Operators Holding, LLC and ACS LINXS O&M Holdings, LLC, each of which, pursuant to the O&M Contract, are jointly and severally liable to perform all of the duties and obligations expressed to be duties and obligations of the O&M Contractor under the O&M Contract. See “PRINCIPAL PROJECT AGREEMENTS—O&M Contract” and APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT.”

To support performance of its obligations, the O&M Contractor is required to deliver or cause to be delivered to the Borrower a parent guaranty from the respective parent companies of each of ACS LINXS O&M Holdings, LLC, Bombardier Transportation (Holdings) USA Inc., Fluor Enterprises, Inc. and HOCHTIEF Operators Holding, LLC. Each such parent guaranty is required to guarantee for the benefit of the Borrower and the Senior Secured Parties (subject to the Direct Agreements) all of the O&M Contractor’s obligations under the O&M Contract, the Interface Agreement and the O&M Lenders’ Direct Agreement and the Borrower may enforce each such parent guaranty up to the full amount of applicable the O&M Contractor member’s liability under such agreements, subject to certain limitations on liability set forth in the O&M Contract. See “RISK FACTORS—Risks Relating to the Project—*Pass-Through Risks under the Design-Build Contract and O&M Contract*.” Additional support for performance of the O&M Contractor’s obligations is required to be provided in the form of one or more letters of credit. See APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Performance Security.”

#### **Financing for the APM Project**

The Borrower expects to incur costs in respect of the planning, development, design, construction and financing of the APM Project estimated at approximately \$2.72 billion. Such costs are expected to be expended over a 66-month period. The Borrower expects to pay such costs from the following sources (in no particular order): (i) equity contributions received by the Borrower from the Equity Members on the terms and conditions set forth in the Equity Contribution Agreement (see “FINANCING FOR THE APM PROJECT—Equity Contributions”), (ii) the

proceeds of the issuance of the Series 2018 Bonds and interest income on such proceeds (see “THE SERIES 2018 BONDS”), (iii) the proceeds of the Design-Build Loan Facility (see “FINANCING FOR THE APM PROJECT—Senior Debt—*Design-Build Loan Facility*” and APPENDIX D-4—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD LOAN FACILITY CREDIT AGREEMENT”), (iv) Milestone Payments received from the Department under the DBFOM Agreement (see “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Milestone Payments”) and (v) Additional D&C Payments received from the Department under the DBFOM Agreement (see “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Milestone Payments”).

### **Security and Sources of Payment for the Series 2018 Bonds**

The payment of the obligations in respect of the Series 2018 Bonds and any Additional Senior Bonds will be secured by the Trust Estate, which includes the Collateral, being the “Collateral” (as defined in the Security Agreement) and the “Pledged Collateral” (as defined in the Pledge Agreement). The Collateral also secures the Design-Build Loan Facility and any Additional Senior Secured Obligations. Any Additional Senior Secured Obligations will rank on parity with the Senior Secured Obligations, provided that the Borrower will not be permitted to incur any other Permitted Senior Secured Indebtedness prior to the repayment in full of all obligations of the Borrower under the Design-Build Loan Facility Credit Agreement (and the other Financing Documents) relating to the Design-Build Loan Facility (the “Design-Build Loan Facility Obligations”). On the date of issuance of the Series 2018 Bonds, the only Senior Secured Obligations of the Borrower will be the Series 2018 Bond Obligations, the Design-Build Loan Facility Obligations and the Hedging Obligations. The Senior Secured Segregated Collateral will secure only the Senior Secured Obligations, the Bonds Segregated Collateral will secure only the Series 2018 Loan Agreement and the related interest of the Trustee and the Owners and the Bank Segregated Collateral will secure only the Design-Build Loan Facility Credit Agreement and the related interest of the Administrative Agent and the Bank Lenders.

**NONE OF THE SERIES 2018 BONDS CONSTITUTES OR EVIDENCES AN INDEBTEDNESS OF THE CITY, THE DEPARTMENT OR A LIEN OR CHARGE ON ANY PROPERTY OR THE GENERAL REVENUES OF THE CITY OR THE DEPARTMENT. NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY, THE DEPARTMENT, THE STATE OR ANY PUBLIC AGENCY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2018 BONDS. THE DEPARTMENT IS UNDER NO OBLIGATION TO PAY THE SERIES 2018 BONDS.**

### **Investment Considerations**

Certain risks could affect the payments to be made with respect to the Series 2018 Bonds or the market value of the Series 2018 Bonds. See “RISK FACTORS” for a discussion of such risks. See also APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Certain Considerations Related to LAX Revenues.”

## THE SERIES 2018 BONDS

### General

The Series 2018 Bonds are being issued in the aggregate principal amount, and will mature, subject to prior redemption, on the dates shown on the inside cover page of this Official Statement. The Series 2018 Bonds will be subject to redemption prior to maturity as described below. The Series 2018 Bonds are being issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof. The Series 2018 Bonds will be issued in book-entry form pursuant to the book-entry-only system described herein. Except for limited circumstances noted in the Indenture, Beneficial Owners of the Series 2018 Bonds will not receive physical delivery of any Bond certificates.

The Series 2018 Bonds will be dated their date of initial delivery and will bear interest at the fixed rate or rates per year set forth on the inside cover of this Official Statement.

Interest on the Series 2018A Bonds will be payable semi-annually on June 30 and December 31 of each year or, if such date does not fall on a Business Day, on the following Business Day, commencing on December 31, 2018, until maturity or prior redemption. Interest on the Series 2018B Bonds will be payable semi-annually on June 1 and December 1 of each year or, if such date does not fall on a Business Day, on the following Business Day, commencing on December 1, 2018, until maturity or prior redemption. Interest on the Series 2018 Bonds will be calculated on the basis of a 360-day year comprising twelve 30-day months.

The Issuer and the Trustee will treat and consider the person in whose name each Bond is registered in the registration books kept by the Trustee as the Owner of such Bond for the purpose of receiving payment of, or on account of, the principal or Redemption Price thereof and interest due on such Bond, giving notices of redemption and other matters with respect to such Bond, registering transfers with respect to such Bond and for all other purposes contemplated by the Indenture or the Bond. See APPENDIX F—“DTC—BOOK-ENTRY-ONLY SYSTEM.”

For more information on the Indenture governing the Series 2018 Bonds, see APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”

### Special and Limited Obligations / Issuer Not Liable on the Series 2018 Bonds

None of the Issuer, any Issuer member or any person executing the Series 2018 Bonds is liable personally on the Series 2018 Bonds or subject to any personal liability or accountability by reason of their issuance. The Series 2018 Bonds are limited obligations of the Issuer, payable solely from and secured by the pledge of the Trust Estate under the Indenture. Neither the Issuer, its members, the State of California, nor any of its political subdivisions shall be directly, indirectly, contingently or morally obligated to use any other moneys or assets to pay all or any portion of the debt service due on the Series 2018 Bonds, to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The Series 2018 Bonds are not a pledge of the faith and credit of the Issuer, its members, the State of California or any of its political subdivisions, nor do they constitute indebtedness within the meaning of any constitutional or statutory debt limitation. The Issuer has no taxing power.

**NONE OF THE SERIES 2018 BONDS CONSTITUTES OR EVIDENCES AN INDEBTEDNESS OF THE CITY, THE DEPARTMENT OR A LIEN OR CHARGE ON ANY PROPERTY OR THE GENERAL REVENUES OF THE CITY OR THE DEPARTMENT. NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY, THE DEPARTMENT, THE STATE OR ANY PUBLIC AGENCY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2018 BONDS. THE DEPARTMENT IS UNDER NO OBLIGATION TO PAY THE SERIES 2018 BONDS.**

### Payment of the Series 2018 Bonds

The principal and the Redemption Price of and interest on the Series 2018 Bonds will be payable only to the Owner thereof appearing on the registration record maintained by the Trustee.

Pursuant to the Indenture, the principal or Redemption Price of the Series 2018 Bonds shall be payable at the Corporate Trust Office of the Trustee upon surrender of the Series 2018 Bonds to the Trustee or its agent for cancellation. Payment of the interest on any Series 2018 Bond shall be made on each applicable Interest Payment Date to the Owner thereof as of the Record Date for each such Interest Payment Date by check mailed by first class mail on each such Interest Payment Date to such Owner at his address as it appears on the registration books maintained by the Trustee or, upon the written request of any Owner of at least \$1,000,000 in principal amount of Series 2018 Bonds, submitted to the Trustee at least one Business Day prior to the Record Date, by wire transfer in immediately available funds to an account within the United States designated by such Owner. Payment of principal and Redemption Price of and interest on any Series 2018 Bond registered in the name of Cede & Co. shall be made by wire transfer of New York clearing house or equivalent next day funds or by wire transfer of same day funds to the account of Cede & Co. at the address indicated on the Record Date or Special Record Date for Cede & Co. in the registration books of the Trustee. The “Record Date” means (a) with respect to the Series 2018A Bonds, for a June 30 Interest Payment Date, the preceding June 15th and for a December 31 Interest Payment Date, the preceding December 15th, notwithstanding whether such June 15th or December 15th is a Business Day, (b) with respect to the Series 2018B Bonds, for a June 1 Interest Payment Date, the preceding May 15th and for a December 1 Interest Payment Date, the preceding November 15th, notwithstanding whether such May 15th or November 15th is a Business Day and (c) with respect to any Additional Senior Bonds, the Record Date set forth in the Supplemental Indenture.

The Indenture provides that any such interest not so timely paid shall cease to be payable to the person who is the Owner thereof at the close of business on the Record Date and shall be payable to the person who is the Owner thereof at the close of business on a Special Record Date for the payment of such defaulted interest. Such Special Record Date shall be fixed by the Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given by the Trustee to the Owners of the Series 2018 Bonds, not less than ten days prior to the Special Record Date, by first-class mail to each such Owner as shown on the Trustee’s registration records on a date selected by the Trustee, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest.

## **Redemption**

The Series 2018 Bonds are subject to redemption prior to their stated maturity, in accordance with the terms and provisions of the Indenture.

### *Optional Redemption*

The Series 2018A Bonds maturing on or before June 30, 2028 are not subject to optional redemption prior to maturity. The Series 2018A Bonds maturing after June 30, 2028 are subject to optional redemption prior to maturity, at the written direction of the Borrower, in whole or in part, on any date on or after June 30, 2028 with funds provided by the Borrower, at a Redemption Price equal to 100% of the principal amount of the Series 2018A Bonds to be redeemed, plus accrued interest to, but not including, the redemption date, without premium.

The Series 2018B Bonds are subject to optional redemption prior to maturity, at the written direction of the Borrower, in whole or in part, on any date on or after June 1, 2028 with funds provided by the Borrower, at a Redemption Price equal to 100% of the principal amount of the Series 2018B Bonds to be redeemed, plus accrued interest to, but not including, the redemption date, without premium.

### *Mandatory Sinking Fund Redemption of the Series 2018A Bonds*

The Series 2018A Bonds maturing on December 31, 2030, December 31, 2032, December 31, 2033, December 31, 2034, December 31, 2035 (CUSIP 13048VCC0), December 31, 2035 (CUSIP 13048VBZ0), December 31, 2036, December 31, 2037, December 31, 2038, December 31, 2043, December 31, 2047 (CUSIP 13048VCA4), December 31, 2047 (CUSIP 13048VCD8) and December 31, 2047 (CUSIP 13048VCB2) (collectively, the “**Series 2018A Term Bonds**”) will be subject to mandatory sinking fund redemption prior to maturity in the aggregate principal amounts and on the dates set forth in the following schedules at a redemption price of 100% of the principal amount thereof, plus accrued interest to, but not including, the date fixed for

redemption. The Series 2018A Term Bonds in book-entry form will be redeemed by lot in accordance with the applicable procedures of the Securities Depository.

<b>Maturity</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2030*	June 30, 2030	\$ 11,820,000
	December 31, 2030	12,455,000†
	†Final Maturity	
<b>Maturity</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2032*	June 30, 2032	\$ 13,800,000
	December 31, 2032	13,985,000†
	†Final Maturity	
<b>Maturity</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2033	June 30, 2033	\$ 14,405,000
	December 31, 2033	15,030,000†
	†Final Maturity	
<b>Maturity</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2034	June 30, 2034	\$ 15,915,000
	December 31, 2034	17,305,000†
	†Final Maturity	
<b>Maturity CUSIP</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2035 13048VCC0	June 30, 2035	\$ 9,060,000
	December 31, 2035	9,980,000†
	†Final Maturity	
<b>Maturity CUSIP</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2035* 13048VBZ0	June 30, 2035	\$ 9,485,000
	December 31, 2035	10,515,000†
	†Final Maturity	
<b>Maturity</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2036	June 30, 2036	\$ 22,720,000
	December 31, 2036	22,745,000†
	†Final Maturity	
<b>Maturity</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2037	June 30, 2037	\$ 23,660,000
	December 31, 2037	22,640,000†
	†Final Maturity	

\* Maturities of the Series 2018 Bonds insured by Assured Guaranty Municipal Corp.

<b>Maturity</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2038	June 30, 2038	\$ 24,920,000
	December 31, 2038	27,290,000 <sup>†</sup>
	<sup>†</sup> Final Maturity	

<b>Maturity</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2043	June 30, 2039	\$ 29,800,000
	December 31, 2039	31,405,000
	June 30, 2040	32,185,000
	December 31, 2040	32,090,000
	June 30, 2041	33,785,000
	December 31, 2041	35,985,000
	June 30, 2042	37,585,000
	December 31, 2042	38,130,000
	June 30, 2043	40,065,000
	December 31, 2043	42,405,000 <sup>†</sup>
	<sup>†</sup> Final Maturity	

<b>Maturity CUSIP</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2047 13048VCA4	June 30, 2044	\$ 19,915,000
	December 31, 2044	20,755,000
	June 30, 2045	21,220,000
	December 31, 2045	23,500,000
	June 30, 2046	23,940,000
	December 31, 2046	23,795,000
	June 30, 2047	25,220,000
	December 31, 2047	26,655,000 <sup>†</sup>
	<sup>†</sup> Final Maturity	

<b>Maturity CUSIP</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2047 13048VCD8	June 30, 2044	\$ 19,715,000
	December 31, 2044	20,375,000
	June 30, 2045	20,720,000
	December 31, 2045	22,770,000
	June 30, 2046	23,050,000
	December 31, 2046	22,770,000
	June 30, 2047	23,980,000
	December 31, 2047	25,205,000 <sup>†</sup>
	<sup>†</sup> Final Maturity	

<b>Maturity CUSIP</b>	<b>Redemption Date</b>	<b>Principal Amount to be Redeemed</b>
December 31, 2047*	June 30, 2044	\$ 3,230,000
13048VCB2	December 31, 2044	3,365,000
	June 30, 2045	3,440,000
	December 31, 2045	3,810,000
	June 30, 2046	3,880,000
	December 31, 2046	3,860,000
	June 30, 2047	4,090,000
	December 31, 2047	4,325,000 <sup>†</sup>

<sup>†</sup>Final Maturity

\*Maturities of the Series 2018 Bonds insured by Assured Guaranty Municipal Corp.

At the option of the Borrower, to be exercised by delivery of a written certificate to the Trustee on or before the 60<sup>th</sup> day next preceding any mandatory sinking fund redemption date, it may (i) deliver to the Trustee for cancellation Series 2018A Term Bonds or portions thereof (in Authorized Denominations) purchased in the open market or otherwise acquired by the Borrower or (ii) specify a principal amount of such Series 2018A Term Bonds or portions thereof (in Authorized Denominations) which prior to said date have been optionally redeemed pursuant as described above under “Optional Redemption” or subject to extraordinary mandatory redemption as described below under “Extraordinary Mandatory Redemption” and previously cancelled by the Trustee at the written request of the Borrower and not theretofore applied as a credit against any mandatory sinking fund redemption requirement. Each such Series 2018A Term Bonds or portion thereof so purchased, acquired or redeemed and delivered to the Trustee for cancellation shall be credited by the Trustee at 100% of the principal amount thereof against the obligation of the Issuer to pay the principal of such Series 2018A Term Bonds on such mandatory sinking fund redemption date or such other mandatory sinking fund redemption date as may be selected by the Borrower.

#### *Extraordinary Mandatory Redemption*

Unspent Series 2018 Bond Proceeds. The Series 2018 Bonds are subject to extraordinary mandatory redemption prior to maturity, in whole or in part, on any date that is no earlier than five (5) years after the Financial Close Date and no later than five years and 90 days after the Financial Close Date, at a Redemption Price equal to 100% of the principal amount of the Series 2018 Bonds to be redeemed, plus accrued interest to, but not including, the date fixed for redemption, of the Series 2018 Bonds to be redeemed from any remaining unspent Series 2018 Bonds proceeds (rounded down to the nearest multiple of \$5,000) transferred to the Mandatory Prepayment Account from the Bond Proceeds Account pursuant to the Collateral Agency and Accounts Agreement. No such redemption of the Series 2018 Bonds will be required to occur if the Borrower has obtained an opinion of Bond Counsel stating that the failure to redeem any such Series 2018 Bonds will not adversely affect the exclusion of interest on such Series 2018 Bonds from gross income for federal income tax purposes; provided further, that the Borrower shall use reasonable efforts to receive such an opinion prior to any redemption of the Series 2018 Bonds with funds received pursuant to the Collateral Agency and Accounts Agreement.

Termination of DBFOM Agreement. The Series 2018 Bonds are subject to extraordinary mandatory redemption (on a pro rata basis with other Senior Secured Obligations) prior to maturity, in whole or in part, on any date, at a Redemption Price equal to the Amortized Redemption Price or Accreted Redemption Price, as applicable, of the Series 2018 Bonds (as determined by the Borrower) to be redeemed from Termination Compensation deposited in the Mandatory Prepayment Account and applied in accordance with the Collateral Agency and Accounts Agreement. Such redemption shall be subject in all respects to the provisions and requirements of the Indenture and the Intercreditor Agreement. For a summary of the termination provisions of the DBFOM Agreement, see “PRINCIPAL PROJECT DOCUMENTS—DBFOM Agreement—Termination of the DBFOM Agreement.”

Event of Loss. The Series 2018 Bonds are subject to extraordinary mandatory redemption (on a pro rata basis with other Senior Secured Obligations) prior to maturity, in whole or in part, on any date, at a Redemption Price equal to the Amortized Redemption Price or Accreted Redemption Price, as applicable, of the Series 2018



Bonds (as determined by the Borrower) to be redeemed from certain excess Insurance Proceeds and Condemnation Proceeds from the Loss Proceeds Account deposited in the Mandatory Prepayment Account and applied in accordance with the Collateral Agency and Accounts Agreement. Such redemption shall be subject in all respects to the provisions and requirements of the Indenture and the Intercreditor Agreement.

Disposition Proceeds. The Series 2018 Bonds are subject to extraordinary mandatory redemption (on a pro rata basis with other Senior Secured Obligations) prior to maturity, in whole or in part, on any date, at a Redemption Price equal to the Amortized Redemption Price or Accreted Redemption Price, as applicable of the Series 2018 Bonds (as determined by the Borrower) to be redeemed from the proceeds of dispositions of the Borrower's assets (other than Permitted Dispositions) deposited in the Mandatory Prepayment Account and applied in accordance with the Collateral Agency and Accounts Agreement. Such redemption shall be subject in all respects to the provisions and requirements of the Indenture and the Intercreditor Agreement.

#### *Notice of Redemption*

Notice of the call for redemption, identifying the Series 2018 Bonds or portions thereof to be redeemed and specifying the terms of such redemption, shall be given by the Trustee by mailing a copy of the redemption notice by United States first-class mail (or with respect to Series 2018 Bonds held by the Securities Depository, either via electronic means or by an express delivery service for delivery on the next following Business Day), at least 30 days and not more than 60 days prior to the date fixed for redemption, to the Owner of each Series 2018 Bond to be redeemed at the address as it last appears on the registration records of the Trustee; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings of any Series 2018 Bonds as to which no such failure has occurred. The Trustee shall call the Series 2018 Bonds for redemption and payment as provided in the Indenture upon receipt by the Trustee of a written request of the Borrower at least 35 days (or such lesser time as the Trustee shall agree) prior to the date fixed for redemption; provided that the Trustee is required to give notice of redemption of Series 2018A Term Bonds for mandatory sinking fund redemption without such written request. Such request shall specify the Series and the principal amount of Series 2018 Bonds to be called for redemption, the applicable Redemption Price or Prices, the date fixed for redemption and the provision or provisions above referred to pursuant to which Series 2018 Bonds are to be called for redemption. Any notice mailed as provided by the Indenture shall be conclusively presumed to have been duly given, whether or not the Owner receives the notice.

If at the time of mailing of notice of any redemption of Series 2018 Bonds at the option of the Borrower there shall not have been deposited with the Trustee moneys sufficient to pay the Redemption Price of all the Series 2018 Bonds called for redemption, which moneys are or will be available for redemption of Series 2018 Bonds, such notice will state that it is conditional upon the deposit of the redemption moneys with the Trustee for such purpose not later than the Business Day immediately preceding the redemption date, and such notice shall be of no effect unless such moneys are so deposited. If moneys are not deposited with the Trustee, the Issuer, at the direction of the Borrower, will provide the Owners with a notice of the failed redemption.

So long as DTC is effecting book-entry transfers of the Series 2018 Bonds, the Trustee will provide the redemption notices to DTC. It is expected that DTC will, in turn, notify the Direct Participants and that the Direct Participants, in turn, will notify or cause to be notified the Beneficial Owners (as defined below) of the Series 2018 Bonds. Any failure on the part of DTC or a Direct Participant, or the failure on the part of a nominee of a Beneficial Owner of a Series 2018 Bond (having been mailed notice from the Trustee, DTC, a Direct Participant or otherwise) to notify the Beneficial Owner of the Series 2018 Bonds so affected, will not affect the validity of the redemption of such Series 2018 Bonds. See APPENDIX F—"DTC—BOOK-ENTRY-ONLY SYSTEM."

#### *Selection of Series 2018 Bonds for Redemption*

Each Series of the Series 2018 Bonds subject to optional redemption, as described above, shall be redeemed in such order of maturity as the Borrower shall direct, and by lot within a maturity selected in such manner as the Trustee (or DTC, as long as DTC is the securities depository for the Series 2018 Bonds) shall deem appropriate.

### *Effect of Redemption*

On the date so designated for redemption, notice having been given in the manner and under the conditions provided in the Indenture and sufficient moneys for payment of the Redemption Price being held in trust to pay the Redemption Price, the Series 2018 Bonds so called for redemption shall become and be due and payable on the redemption date, interest on such Series 2018 Bonds shall cease to accrue from and after such redemption date, such Series 2018 Bonds shall cease to be entitled to any lien, benefit or security under the Indenture and the Owners of such Series 2018 Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price.

### **Purchase in Lieu of Redemption**

Whenever Series 2018 Bonds are subject to optional redemption and are so called for redemption, the Borrower may elect to purchase in lieu of optional redemption all or any portion of the Series 2018 Bonds called for optional redemption upon provision of written notice to the Trustee prior to or on the Business Day immediately preceding the redemption date that the Borrower wishes to purchase the principal amount of Series 2018 Bonds specified in such notice at a purchase price equal to the Redemption Price. On the date specified as the redemption date unless such redemption will not occur in the case of a conditional notice of redemption, the Trustee will be furnished with funds in sufficient time for the Trustee to make the purchase on the redemption date. Any such purchase of Series 2018 Bonds by the Borrower shall not be deemed to be a payment or redemption of the Series 2018 Bonds or any portion thereof and such purchase shall not operate to extinguish or discharge the indebtedness evidenced by such Series 2018 Bonds.

### **Book-Entry-Only System**

DTC will act as the securities depository for the Series 2018 Bonds. The Series 2018 Bonds will be issued as fully registered securities in the name of Cede & Co., DTC's partnership nominee or such other name as may be requested by an authorized representative of DTC. Except as described herein, purchasers of beneficial interests in the Series 2018 Bonds will not receive physical delivery of certificates representing their interest in the Series 2018 Bonds. Payments of interest on, together with principal and redemption premium, if any, of, the Series 2018 Bonds, will be paid by the Trustee directly to DTC, so long as DTC or its nominee is the registered owner of the Series 2018 Bonds. See APPENDIX F—"DTC—BOOK-ENTRY-ONLY SYSTEM."

## THE APM PROJECT

### Overview

#### *APM Project Location*

The APM System is expected to extend from Manchester Square to the LAX Central Terminal Area (“CTA”). The CTA is located between the north and south airfields, west of Sepulveda Boulevard. The area outside of the CTA and east of Sepulveda Boulevard, is made up of a mix of land uses, including hotels, rental car facilities, airport parking lots, a LA Metro bus terminal, office buildings and Manchester Square. Manchester Square is an existing residential community (which has been under a long term voluntary acquisition program by the Department) and is also home to a Los Angeles Unified School District site, currently leased to a charter school.

Traffic within the CTA is a mix of private vehicles, hotel, parking and rental car shuttle buses, taxis, limousines, Transportation Network Company (“TNC”) vehicles, on-going CTA construction project vehicles and various other vehicles. The APM Project is intended to address traffic congestion within the CTA.

These projects, as well as a number of other projects, are being undertaken concurrently at LAX which may require coordination between the Department, the Borrower and the relevant contractors of such projects. The Borrower will also be required to interface directly with a number of projects, both within and outside of the Landside Access Modernization Program (“LAMP”), that will directly connect with the APM Project infrastructure. Coordination and interfacing will require a significant degree of planning and management by the Borrower and/or the Design-Build Contractor. See “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Compensation Amounts in respect of Certain Relief Events” and “RISK FACTORS—Risks Relating to the Project—Construction Risks.”

#### *Authorizations for the APM Project*

To continue the extensive upgrading and modernization of LAX and to address increasing levels of traffic congestion at and around LAX, the Department is working to redevelop the ground access system to LAX. As part of the overall modernization of LAX, the Department has proposed to implement the LAMP to, among other things, improve access options and the travel experience for passengers; shift the location where different modes of traffic operate within the CTA and on the surrounding street network; and provide a direct connection to the Metro's rail and transit system. By implementing LAMP, the Department seeks to provide more travel time certainty, reduce traffic congestion and improve air quality in and around LAX. LAMP includes several individual components, including, among others, the APM System, intermodal transportation facilities, the CONRAC, pedestrian walkway connections to the passenger terminals within the CTA, and roadway improvements. Upon implementation, the APM System would offer passengers an opportunity to bypass the existing roadway loop in the CTA. Departing passengers would be able to access the APM System from the intermodal transportation facilities, the CONRAC, or future Metro station.

The APM Project is being procured pursuant to competitive bidding processes authorized in the Los Angeles City Charter and an ordinance authorizing the Department to use alternative project delivery methods and the competitive sealed proposal selection process and establishing criteria relating to such contracts for select capital improvement projects related to the LAMP.

In June 2016, the Department began the procurement process through a formal solicitation of interest and qualification process of interested private sector parties to construct and maintain a people mover system as part of the LAMP. As a result of that procurement process, the Department selected the Borrower to enter into negotiations for a public-private partnership. On April 11, 2018, the Department and the Borrower entered into the DBFOM Agreement pursuant to which the Borrower is required to, among other things, design, build, finance, operate and maintain the APM Project. See APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES.”

### *State Environmental Approvals*

As part of the required environmental review process for the LAMP, the Department published the Draft Environmental Impact Report (“DEIR”) on September 15, 2016 pursuant to the California Environmental Quality Act (“CEQA”). The Final Environmental Impact Report (“FEIR”) was released on February 15, 2017. On March 2, 2017, the Board of Airport Commissioners via Resolution No. 26185 certified that the FEIR has been completed in compliance with the requirements of CEQA and the City of Los Angeles CEQA Guidelines and approved the LAMP as described in the FEIR. On June 7, 2017, the Los Angeles City Council affirmed the certification of the FEIR and adopted related amendments to the LAX Specific Plan and the City of Los Angeles General Plan. A challenge to the FEIR has been filed. See “LITIGATION—The Department” and “RISK FACTORS—Risks Relating to the Project—*Judicial Challenge*” for a description of a challenge to the FEIR.

On June 30, 2017 petitioners TPS Parking Management, LLC, doing business as The Parking Spot, and TPS Parking Century, LLC filed a petition for writ of mandate against the City and the Department (the “Petition”). Among other things, the Petition (i) alleges that the environmental review process for LAMP was inadequate and that the LAMP Environmental Impact Report did not adequately address, disclose, evaluate and potentially mitigate various environmental impacts and (ii) seeks to set aside the approvals related to the LAMP, injunctive relief, and to require the City and the Department to revise the LAMP Environmental Impact Report to evaluate and disclose alleged deficiencies. The litigation is currently focusing on compilation of the administrative record; a trial date has not been set and a motion seeking injunctive relief has not been filed. While the Department believes that the environmental review process for LAMP was adequate and that the LAMP Environmental Impact Report adequately addresses, discloses, evaluates and mitigates environmental impacts, at this time the Department cannot predict the outcome of this matter and/or whether this matter will result in delays or cost increases to LAMP projects, including the APM System.

### *Federal Environmental Approvals*

The Federal Aviation Administration (“FAA”) issued its Record of Decision for the LAX Landside Access Modernization Program under NEPA on January 12, 2018 with a finding of No Significant Impact.

For the purposes of the Technical Advisor Report, the Department has confirmed that the US Army Corps of Engineers 404 permit will not be required for the APM Project.

### **Scope of Work**

The following is a high level summary of the scope of the APM Project and is not a full statement of all requirements of the DBFOM Agreement and the Technical Provisions. For the complete scope of the APM Project investors should refer to the DBFOM Agreement, and the Technical Provisions, which are available, free of charge, from the Borrower or the Trustee upon request by Owners and prospective investors.

The scope of work to be performed by the Borrower includes (i) the design, construction, finance, operation and maintenance of a fully-functional APM System (including vehicles) and (ii) the design, build and finance of the Non-O&M Facilities under and in accordance with the terms set forth in the DBFOM Agreement, including all exhibits and the Financial Model, as well as the Technical Provisions (collectively, and as amended from time to time in accordance with the terms of the DBFOM Agreement, the “Contract Documents”).

### *APM System*

The D&C Work for the APM System includes (i) approximately 2.25 miles of elevated, grade-separated Guideway, (ii) five stand-alone stations, (iii) installation of APM Operating System components within a sixth station enclosure to be provided by the developer of the separately procured ConRAC project, (iv) mezzanine access to the Airport Metro Connector transit station (provided by others) to be located on the LA Metro Crenshaw line at West 96th Street/Aviation Boulevard, (v) Pedestrian Walkways, (vi) pedestrian access to the Theme Building from the APM System, (vii) procurement and delivery of APM Operating System components, vehicles and equipment, (viii) a maintenance & storage facility, (ix) Traction Power Substation, (x) central control and administrative offices,

(xi) signing and illumination, (xii) certain landscaping and drainage, and (xiii) quality control/assurance work, among other items.

Following completion of the D&C Work for the APM System, the Borrower will be responsible for the operation and maintenance of the APM System for the term of the DBFOM Agreement which is 30 years from the Financial Close Date, subject to the rights of the parties to terminate the DBFOM Agreement earlier in accordance with the terms of the DBFOM Agreement.

#### *Non-O&M Facilities*

As part of the APM Project, the Borrower is also responsible for performance of D&C Work associated with certain other facilities as specified in the Technical Provisions (the “Non-O&M Facilities”). Such work includes (i) installation of CCTV cameras on guideway columns at grade level and in parking garages, (ii) improvements to various parking garages, relocation/reconstruction of roadway segments and construction of new roadway segments (including associated drainage, irrigation, and adjacent landscaping works), (iii) construction of curbs and pedestrian/bicycle facilities at stations, (iv) utility relocation, (v) new Garage Vertical Cores, and (vi) provision of cellular equipment and IT infrastructure, among other items. The Non-O&M Facilities portion of the D&C Work is expected to be completed January 27, 2023. See “RISK FACTORS—Risks Relating to the Project Agreements—*Risks Related to the DBFOM Agreement—Delay under the DBFOM Agreement.*”

The Borrower will not be required to operate and maintain the Non-O&M Facilities during the O&M Period and, upon achievement of the receipt of the Certificate of Non-O&M Facility Occupancy Readiness, such facilities will be turned over to the Department or the applicable Authority Having Jurisdiction. The Borrower will warrant each Non-O&M Facility against certain construction defects for a two-year period commencing on occupancy readiness.

### **Design and Construction Obligations**

#### *Design and Construction Obligations*

Pursuant to the DBFOM Agreement, the Borrower is responsible for the performance of the D&C Work in accordance with all applicable Laws, Governmental Approvals, Good Industry Practice and the requirements specified in the Contract Documents, including the relevant Technical Provisions of the DBFOM Agreement. For a more detailed description, see “PRINCIPAL PROJECT AGREEMENTS—DBFOM Agreement—Design and Construction” and APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction.”

Substantially all of the design and construction work relating to the APM Project have been passed down to the Design-Build Contractor pursuant to the Design-Build Contract. The scope of the Contracted Work includes, subject to the limited exceptions specified in the Design-Build Contract, the performance of all work required to be furnished and provided, and activities and services required to be performed, by the Design-Build Contractor, and all other obligations of the Design-Build Contractor under the Design-Build Contract, the Design-Build Early Works Agreement and the Interface Agreement, including the responsibility for all deliverables required to obtain the relevant milestones provided under the Design-Build Contract. For a more detailed description, see “PRINCIPAL PROJECT AGREEMENTS—Design-Build Contract” and APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.” Responsibility for the supply and delivery of the automated people mover vehicles is being undertaken by Bombardier Transportation (Holdings) USA Inc., as the APM Operating System Supplier, pursuant to the APM Operating System Subcontract, which is a subcontract under the Design-Build Contract. For a more detailed description, see “PRINCIPAL PROJECT AGREEMENTS—APM Operating System Subcontract” and APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT.”

### *Early Work*

The Department and the Borrower entered into the Early Works Agreement on February 15, 2018 in order to (a) permit the Borrower to commence the Early Works prior to execution of the DBFOM Agreement and to compensate the Borrower for Early Works, and (b) provide for reimbursement of amounts paid by the Department to the Borrower for Early Works performed if Financial Close is achieved.

The scope of work performed under the Early Works Agreement is limited to the work furnished or provided by the Borrower, as set forth in the work plan attached to the Early Works Agreement. Early Works excludes permanent Construction Work. The Early Works Agreement will remain in effect until the earlier of (a) the Financial Close Date; and (b) the date of termination pursuant to certain termination events as described in the Early Works Agreement.

Responsibility for Early Works was passed down to the Design-Build Contractor pursuant to the Design-Build Early Works Agreement, dated as of February 15, 2018, between the Borrower and the Design-Build Contractor. In addition, the Borrower, the Design-Build Contractor and the O&M Contractor also entered into the Design-Build Early Works Co-operation Agreement in order to set out cooperation-related obligations among the parties in connection with the Early Works and the DB Early Works.

Design Work commenced in February 2018, and the Borrower has made submittals to the Department regarding the design quality plan, design basis and design criteria. The Borrower has also made submittals to the Department regarding the Borrower's safety and security plan. The Borrower is conducting weekly Early Works status meetings with the Department and is providing the Department with a weekly update of the Early Works activities and submittals. In connection with the Early Works investigative work, the Borrower has taken occupancy of two Department trailers within the CTA for the Borrower's use as an Early Works construction office.

### **Operations, Maintenance and Rehabilitation Obligations**

Pursuant to the DBFOM Agreement, the Borrower is responsible for the performance of the O&M Work in accordance with all applicable Laws, Governmental Approvals, Good Industry Practice and the requirements specified in the Contract Documents, including the relevant Technical Provisions. For a more detailed description, see "PRINCIPAL PROJECT AGREEMENTS—DBFOM Agreement—*Operation and Maintenance*" and APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—*Operation and Maintenance*."

Substantially all of the operation and maintenance work relating to the APM Project within the O&M Limits have been passed down to the O&M Contractor pursuant to the O&M Contract. The scope of the O&M Activities includes (a) the performance of the following in accordance with the DBFOM Agreement and the O&M Contract: (i) Work to be performed during the O&M Period relating to the operation, management and administration of the APM Project, including the supply of machinery, equipment, materials, hardware, software, systems or any other appurtenance to the APM Project, (ii) all Work during the O&M Period to maintain, repair, preserve and modify the APM Project, including the supply of machinery, equipment, materials, hardware, software, systems or any other items related to such Work; (iii) modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to intellectual property, equipment, mechanism, operational technology, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements; (iv) all work related to the capital replacement, reconstruction, overhaul, refurbishment and reinstatement of the APM Project within the O&M Limits, including the APM Operating System, APM Fixed Facilities, fixed equipment, Vehicles and other APM Project assets, and including the supply of machinery, equipment, materials, hardware, software, systems or any other items related thereto, carried out within the O&M Limits by the O&M Contractor during the O&M Term to maintain compliance with the O&M Documents; (b) the performance of the O&M Contractor's obligations under the Interface Agreement; and (c) the performance of all other obligations of the O&M Contractor under the O&M Contract, but in each case, excluding certain obligations as set forth in the O&M Contract. For a more detailed description, see "PRINCIPAL PROJECT AGREEMENTS—O&M Contract" and APPENDIX D-7—"SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT."

## Handback Provisions

Pursuant to the DBFOM Agreement, the Borrower must diligently perform and complete all Renewal Work required to be performed and completed before the Termination Date, based on the required adjustments and changes to the Asset Management Plan resulting from the inspections and analysis under the Handback Requirements. Upon the Termination Date, the Borrower is required to surrender the APM Project, including any Upgrades, to the Department, in the condition and meeting all of the requirements of the Handback Requirements. For a detailed description of the handback provisions under the DBFOM Agreement, see “PRINCIPAL PROJECT AGREEMENTS—DBFOM Agreement—*Handback*” and APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—*Handback*.”

The Borrower’s obligations relating to Handback have been passed down to the O&M Contractor pursuant to the O&M Contract. For a detailed description of the handback provisions under the O&M Contract, see “PRINCIPAL PROJECT AGREEMENTS—O&M Contract—*Scope of O&M Activities—Handback*” and APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—*Scope of O&M Activities—Handback*.”

## FINANCING FOR THE APM PROJECT

### Sources of Funds Generally

The costs of the Borrower related to the planning, development, design, construction and financing of the APM Project are estimated to be approximately \$2.72 billion, which are expected to be expended over a 66-month period. The Borrower expects to pay such costs from the following sources: (i) equity contributions received by the Borrower from the Equity Members on the terms and conditions set forth in the Equity Contribution Agreement, (ii) the proceeds of the issuance of the Series 2018 Bonds and interest income on such proceeds, (iii) the proceeds of the Design-Build Loan Facility, (iv) Milestone Payments received from the Department under the DBFOM Agreement and (v) Additional D&C Payments received from the Department under the DBFOM Agreement.

### Senior Debt

#### *Series 2018 Bonds*

The proceeds of the Series 2018 Bonds will be loaned by the Issuer to the Borrower in accordance with and subject to the terms of the Series 2018 Loan Agreement. Proceeds remaining after the payment of the costs of issuance of the Series 2018 Bonds will be deposited into the Bond Proceeds Account established by the Collateral Agency and Accounts Agreement that is established and maintained with the Depositary Agent, subject to the control of the Collateral Agent, in the name of the Borrower. Amounts deposited in the Bond Proceeds Account will be used by the Borrower to pay a portion of the Project Costs, including paying a portion of interest on the Series 2018 Bonds during construction, as set forth in the Collateral Agency and Accounts Agreement and the other Financing Documents. For a description of the conditions to withdrawal of Series 2018 Bonds proceeds from the Bond Proceeds Account, see “ACCOUNTS AND FLOW OF FUNDS—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts.”

#### *Design-Build Loan Facility*

Concurrently with the pricing of the Series 2018 Bonds, the Borrower is expected to enter into the Design-Build Loan Facility Credit Agreement with the Bank Lenders. The Design-Build Loan Facility is available to be drawn by the Borrower as shown in “—Projected Semi-Annual Sources and Uses of Funds through the End of the Funding Date” (each such loan made under the Design-Build Loan Facility being a “Design-Build Loan”). The conditions to draws for the Design-Build Loan Facility require the Borrower to certify that (i) certain repeating representations and warranties are either: (A) where such representations and warranties are qualified as to “materiality,” “Material Adverse Effect,” or similar language, true and correct in all respects or (B) as to all other representations and warranties, true and correct in all material respects; (ii) no Event of Default or Specified Default has occurred and is continuing; (iii) no Funding Shortfall exists (iv) the Borrower has obtained all governmental approvals required to be obtained in respect of the construction work performed as at the date of such certificate; (v) with respect to the initial Disbursement only, Financial Close has occurred; (vi) the Borrower has delivered to the Administrative Agent a certificate from the Lenders’ Technical Advisor stating that (A) the Passenger Service Availability Date is reasonably expected to occur prior to the Lenders’ Long Stop Date, (B) the amounts being requested in the applicable drawing request are for the payment of Project Costs and, in the case of Project Costs for construction work, are for payment of actual work completed and are payable in accordance with the terms of the Design-Build Contract, and (C) the Lenders’ Technical Advisor does not dispute the Borrower’s certification regarding no Funding Shortfall as described in clause (iii) above; and (vii) the Borrower has delivered to the Administrative Agent certain invoices and lien waivers from by the Design-Build Contractor. The proceeds of each draw under the Design-Build Loan Facility will be deposited in the Operating Account held by U.S. Bank National Association and such amounts are required to be applied to pay Project Costs. See “RISK FACTORS—Risks Relating to the Series 2018 Bonds—*Potential Inadequacy of Funding Sources; Failure of Bank Lenders to Fund.*”

#### Sources of Payment of the Design-Build Loan

The Design-Build Loan Facility is required to be repaid upon the earlier of (i) the End of Funding Date and (ii) the date that is eighteen months after the original Planned Early PSA Date. Milestone Payment 6 together with



other funds available to the Borrower are expected to be applied to repay the Design-Build Loan Facility. Milestone Payment 6 will be deposited to the Proceeds Account and thereafter transferred to the Milestone Payment Sub-Account and applied to repay the Design-Build Loan Facility Obligations and any Hedging Obligations and Hedging Termination Obligations arising from the termination of the associated Hedging Obligations in accordance with the Design-Build Loan Facility Credit Agreement.

For a description of the sources of the repayment of the Design-Build Loan Facility, see “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Milestone Payments” and “ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—*Milestone Payment Sub-Account.*”

#### Prepayment of the Design-Build Loan

The Borrower is required to make mandatory prepayments of the Design-Build Loans, without premium or penalty (other than any associated hedging termination obligations, if any, pursuant to the Hedging Agreements and Break-Funding Costs, if such prepayment occurs on a date other than a Design-Build Loan Payment Date) under certain conditions, including upon receipt by the Borrower of any Termination Compensation, from net amounts of insurance proceeds, loss proceeds or condemnation proceeds, and in an amount equal to the net cash proceeds of any payment received by the Borrower from the Hedge Providers following early termination of any Hedging Agreement (except to the extent such proceeds are used to offset the costs of the Borrower entering into a replacement Hedging Agreement).

The Borrower may optionally prepay the Design-Build Loan Facility, together with accrued interest up to and including the prepayment date, without premium or penalty (other than associated hedging termination obligations, if any, pursuant to the Hedging Agreements and Break-Funding Costs if such prepayment occurs on a date that is not a Design-Build Loan Payment Date), from time to time in whole or in part upon certain conditions, including that no Funding Shortfall would result from such prepayment and that no Default or Event of Default has occurred and is continuing or could be reasonably expected to result as a consequence of any such prepayment.

#### Hedging Agreements and Interest Rate on the Design-Build Loan Facility

The interest rate for the Design-Build Loan Facility is a floating rate. The Borrower will enter into interest rate swap agreements with each of SMBC Capital Markets, Inc., Canadian Imperial Bank of Commerce, Mizuho Capital Markets LLC and the Toronto-Dominion Bank (the “Hedge Providers”) to synthetically fix the interest rate on the Design-Build Loan Facility. The obligations of the Borrower to the Hedge Providers are secured with the Series 2018 Bonds and the Design-Build Loan Facility as a Senior Secured Obligation. The Borrower is required, as an affirmative covenant under both the Series 2018 Loan Agreement and the Design-Build Loan Facility Credit Agreement, to comply with the “Hedging Strategy,” under which the Borrower is required to ensure that such swap agreements collectively have a stated notional amount of not less than one hundred percent (100%) (or as close to one hundred percent (100%) as possible) of the aggregate principal amount of the Design-Build Loans projected to be outstanding until the maturity of such Design-Build Loans in accordance with the Base Financial Model as of the Financial Close Date. The swap agreements are terminable by the Hedge Providers in the event the obligations under the Design-Build Loan Facility are accelerated by the Bank Lenders and are also terminable by the Hedge Providers or the Borrower in certain other limited circumstances. See “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement” for a discussion of the Hedge Provider's rights in the event of an Enforcement Action at the direction of the Owners of the Series 2018 Bonds or the Bank Lenders.

The Design-Build Loan Facility will bear interest at:

- (a) during each Interest Period, from and including the first day of such Interest Period to but excluding the last day thereof, at a rate per annum equal to the sum of the relevant Adjusted LIBOR plus the Applicable Margin for such Interest Period,
- (b) in the event that a LIBOR Loan is converted to an Alternative Rate Loan in accordance with the Design-Build Loan Facility Credit Agreement, at the Alternative Rate plus the Applicable Margin,

- (c) if any amount payable on any Design-Build Loan by the Borrower is not paid when due, at the otherwise applicable interest rate (including the Applicable Margin) plus 2.00%,
- (d) in the event that LIBOR is temporarily or permanently unable to be determined, at the Alternative Rate plus the Applicable Margin or as otherwise set described in the Design-Build Loan Facility Credit Agreement; and
- (e) if a Market Disruption Event occurs, the sum of (a) the Applicable Margin plus (b) the weighted average of the rates per annum (calculated on the basis of a year of 360 days) certified to the Administrative Agent by each affected Lender as soon as practicable but, in any event, before interest is due to be paid in respect of such Interest Period as constituting the cost to such affected Lender of funding its participation in such borrowing from whatever source it may reasonably select; provided, that in no event shall such rate be lower than the LIBOR rate.

Accrued interest on each Design-Build Loan is required to be paid on each Interest Payment Date and upon any repayment or prepayment of principal under the Design-Build Loan Facility Credit Agreement, on the amount of such repayment or prepayment, or as otherwise provided in the Design-Build Loan Facility Credit Agreement.

If any amount payable by the Borrower under the Design-Build Loan Facility Credit Agreement is not paid when due, whether on its due date, or stated maturity, by mandatory prepayment, upon acceleration or otherwise, all principal of or interest on any Design-Build Loan or any fee or other amount payable by the Borrower under the Design-Build Loan Facility Credit Agreement and overdue will bear interest at the otherwise applicable interest rate (including the Applicable Margin) plus 2.00%. The payment of Market Disruption Interest and the Alternative Rate of Interest, in each case, together with capitalized interest thereon, is deferred and payable by the Borrower on the first Design-Build Loan Payment Date to occur on or after the End of Funding Date (or if incurred after the End of Funding Date, on the next Design-Build Loan Payment Date following the date incurred) in accordance with the Pre-Enforcement Waterfall, and the failure to pay such interest during such deferral period will not constitute a Default or Event of Default under the Design-Build Loan Facility Credit Agreement.

#### *Additional Senior Secured Obligations*

The Series 2018 Loan Agreement permits the Borrower to incur Permitted Indebtedness, which includes Additional Senior Secured Obligations. Additional Senior Secured Obligations are obligations that may be incurred for the following reasons and subject to the following conditions:

(a) To pay for completion of the APM Project so long as (i) the Lenders' Technical Advisor certifies that additional debt to complete the construction of the APM Project is necessary and that the proceeds, together with other funds available to complete the APM Project are expected to be sufficient to complete the construction of the APM Project; and (ii) the aggregate amount of Additional Senior Secured Obligations incurred pursuant to this clause (a) may not exceed five percent (5%) percent of the original principal amount of the Series 2018 Bonds.

(b) To pay to refurbish, upgrade, modify, expand or add to the APM Project, in connection with any LAWA Change, Directive Letter, Safety Compliance Order, Relief Event or to meet other costs necessary for the purpose of complying with the requirements of the DBFOM Agreement: if (i) no Event of Default has occurred and is continuing, (ii) the incurrence of such Additional Senior Secured Obligations shall not result in a downgrade of the credit ratings for the Series 2018 Bonds from the then-existing rating, (iii) the Lenders' Technical Advisor confirms that the proceeds of such Additional Senior Secured Obligations, together with other available funds, shall be sufficient for the proposed purpose; and (iv) for each Calculation Period ending on a Calculation Date on and after the first Calculation Date after the delivery of such proposed Additional Senior Secured Obligations and through the period ending on the maturity date of the then outstanding Secured Obligations, the Total Debt Service Coverage Ratio, calculated and certified by the Borrower will be projected to be at least 1:15:1.00, taking the proposed Additional Senior Secured Obligations into account.

(c) To refinance, replace or refund any or all of the Senior Secured Obligations: if the Borrower certifies, that (i) Senior Debt Service, after the incurrence of such Additional Senior Secured Obligations, in each

year of the remaining term of the Series 2018 Bonds is forecast to be not more than the Senior Debt Service forecast for such year in the initial forecast for the APM Project prepared as of the Financial Close Date using the Base Financial Model, or (ii)(x) for each Calculation Period ending on a Calculation Date on and after the first Calculation Date after the delivery of such proposed Additional Senior Secured Obligations and through the period ending on the maturity date of the then outstanding Secured Obligations, the Total Debt Service Coverage Ratio, calculated and certified by the Borrower will be projected to be at least 1.15:1.00, taking the proposed Additional Senior Secured Obligations into account, (y) the Additional Senior Secured Obligations shall not result in a downgrade of the credit ratings for the Series 2018 Bonds from the then-existing rating, and (z) if all the then outstanding Secured Obligations are to be refunded, prepaid or defeased prior to maturity, all necessary instructions or arrangements shall have been made in order to give effect to such refunding, prepayment or defeasance.

## Equity Contributions

Each Equity Member is required to make Equity Contributions in the manner and at such times as contemplated in the Equity Contribution Agreement, in an amount not to exceed such Equity Member's Aggregate Equity Commitment.

The Aggregate Equity Commitment and Percentage Interest of each Equity Member is as set forth below:

Equity Member	Percentage Interest	Aggregate Equity Commitment (US\$)
ACS LINXS Holdings, LLC	18%	\$18,493,385
Balfour Beatty Investments, Inc.	27%	\$27,740,077
Bombardier Transportation (Holdings) USA Inc.	10%	\$10,274,103
Fluor Enterprises, Inc.	27%	\$27,740,077
HOCHTIEF LINXS Holding, LLC	18%	\$18,493,385

### *Equity Contributions by the Equity Members*

Pursuant to the Equity Contribution Agreement, each Equity Member is required to make Equity Contributions as follows:

(a) on or prior to each Construction Funds Transfer Date occurring on or prior to the End of Funding Date and, subject to the Equity Contribution Agreement, after all disbursements under the Design-Build Loan Facility and all proceeds from the issuance of the Series 2018 Bonds have been fully utilized, subject to delivery of a Contribution Notice, each Equity Member is required to make, or cause to be made through any of its Affiliates (which are permitted to make an equity contribution under the DBFOM Agreement or any Financing Document) on its behalf, an Equity Contribution in an amount equal to such Equity Member's Percentage Interest of any Funding Insufficiency (including, the initial funding of the Senior Debt Service Reserve Account in accordance with the Collateral Agency and Accounts Agreement) as of such Construction Funds Transfer Date, up to an amount no greater than such Equity Member's Unfunded Equity Commitment; provided, however, that in the event any such contributions are made to provide funds in advance of other Project Revenues, upon receipt of such Project Revenues by the Borrower, the applicable Equity Member may be reimbursed for such cash contributions from such Project Revenues in accordance with the Equity Contribution Agreement and the Collateral Agency and Accounts Agreement; and

(b) upon the occurrence and continuance of an Event of Default, the full amount of each Equity Member's Unfunded Equity Commitment will be automatically due and payable and subject to the delivery of a Contribution Notice, each Equity Member is required to make, or cause to be made through any of its Affiliates (which are permitted to make an equity contribution under the DBFOM Agreement or any Financing Document) on its behalf, an Equity Contribution equal to such Equity Member's Unfunded Equity Commitment as of such date.

### *Additional Equity Contributions*

Each Equity Member retains the option, but not the obligation, to contribute additional funds to the capital of the Borrower or Borrower HoldCo to be directed to the Borrower, at any time (in addition to any funds in the Equity Lock-Up Account that are available to fund shortfalls in the Pre-Enforcement Waterfall) to fund shortfalls in the Pre-Enforcement Waterfall.

### *Equity Letters of Credit*

From June 5, 2018 through the Release Date, unless otherwise secured by cash collateral described below, the obligation of each Equity Member to make Equity Contributions under the Equity Contribution Agreement is required to be secured by one or more Acceptable Letters of Credit, in a form reasonably acceptable to the Collateral Agent or, for each Equity Member, substantially in the form of such Equity Member's Equity Letter of Credit executed and provided by such Equity Member to the Collateral Agent as of June 5, 2018, in an aggregate face amount not less than such Equity Member's Unfunded Equity Commitment. An Equity Letter of Credit is subject to draw in certain circumstances, including failure by an Equity Member to perform its obligations to make Equity Contributions, failure of an Equity Letter of Credit to have an Acceptable Credit Rating and expiration of an Equity Letter of Credit prior to satisfaction of the obligations of the applicable Equity Member under the Equity Contribution Agreement, subject in certain instances to replacement rights and/or grace periods described in the Equity Contribution Agreement. Amounts drawn under an Equity Letter of Credit and deposited into the Equity Contribution Sub-Account are deemed an Equity Contribution. As of any determination date, amounts on deposit in an Equity Member's Applicable Equity Member Cash Collateral Account plus the amounts available under such Equity Member's Equity Letters of Credit are required to equal such Equity Member's Unfunded Equity Commitment.

### *Applicable Equity Member Cash Collateral Accounts*

At the option of an Equity Member, such Equity Member may satisfy all or a portion of its obligations under the Equity Contribution Agreement with respect to Equity Letters of Credit at any time by depositing amounts in cash to such Equity Member's Applicable Equity Member Cash Collateral Account equal to all or a portion of such Equity Member's Unfunded Equity Commitment otherwise secured by Equity Letters of Credit pursuant to the Equity Contribution Agreement; provided that, as of any date of determination, amounts on deposit in the Applicable Equity Member Cash Collateral Account plus the amounts available under such Equity Member's Equity Letters of Credit are required to equal such Equity Member's Unfunded Equity Commitment. Any drawings on the Applicable Cash Collateral Account established by an Equity Member and all releases of funds from such Applicable Equity Member Cash Collateral Account will be subject to the terms and conditions of the Collateral Agency and Accounts Agreement. An Equity Member may instruct the Borrower to direct the Depositary Agent to withdraw funds from the Applicable Equity Member Cash Collateral Account and deposit such funds into the Equity Contribution Sub-Account to satisfy in whole or in part such Equity Member's obligations to make Equity Contributions.

Amounts drawn from an Applicable Equity Member Cash Collateral Account and deposited into the Equity Contribution Sub-Account to satisfy the obligations of an Equity Member to make Equity Contributions will, pursuant to the Equity Contribution Agreement, be deemed to be an Equity Contribution under the Equity Contribution Agreement.

To the extent that, as of any date of determination, amounts on deposit in any Equity Member's Applicable Cash Collateral Account plus the amounts available under such Equity Member's Equity Letters of Credit exceed such Equity Member's Unfunded Equity Commitment, such Equity Member may instruct the Borrower to direct the Collateral Agent to withdraw any such excess funds from such Applicable Equity Member Cash Collateral Account and immediately transfer such funds directly to the Distribution Account or as otherwise directed by the applicable Equity Member without passing through the Pre-Enforcement Waterfall or requiring satisfaction of the Restricted Payment Conditions, for distribution to the applicable Equity Member; provided that, such transfer will only be permitted if after such withdrawal and transfer, amounts on deposit in the Applicable Cash Collateral Account plus the amounts available under such Equity Member's Equity Letters of Credit will equal such Equity Member's Unfunded Equity Commitment.

All or any portion of the funds within any Applicable Equity Member Cash Collateral Account may, at the option of the applicable Equity Member, subsequently be replaced with an Equity Letter of Credit, and the cash being replaced will be transferred to the Distribution Account or as otherwise directed by the applicable Equity Member without passing through the Pre-Enforcement Waterfall or requiring satisfaction of the Restricted Payment Conditions, for distribution to the Equity Member that provided the applicable Equity Letter of Credit.

To the extent that an Equity Member has made any Equity Contributions to the Borrower to provide funds to pay for Project Costs in advance of the receipt by the Borrower of Project Revenues, and the Borrower thereafter receives such Project Revenues, the applicable Equity Member may direct the Borrower to deposit all or any portion of such Project Revenues (solely up to the amount so prefunded) into the Applicable Equity Member Cash Collateral Account in accordance with the Collateral Agency and Accounts Agreement, and such funds may, at the option of the applicable Equity Member, subsequently be replaced with an Equity Letter of Credit, and the cash being replaced will be transferred to the Distribution Account or as otherwise directed by the applicable Equity Member without passing through the Pre-Enforcement Waterfall or requiring satisfaction of the Restricted Payment Conditions, for distribution to the Equity Member that provided the applicable Equity Letter of Credit as further described in “ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—*Equity Member Cash Collateral Account*.”

#### *Nature of Obligations*

The obligation of each Equity Member under the Equity Contribution Agreement, including to make Equity Contributions thereunder, is irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any Financing Document or the Intercreditor Agreement or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guarantee of, or security for, the Equity Contributions or any Secured Obligation, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of the Equity Contribution Agreement that the obligation of each Equity Member thereunder be absolute and unconditional under any and all circumstances (other than as contemplated in the Equity Contribution Agreement).

#### **Milestone Payments**

Subject to the terms of the DBFOM Agreement, the Department is obligated to pay to the Borrower six Milestone Payments as partial compensation for the Borrower's performance of the D&C Work in an amount up to \$1,009,749,090.72, subject to D&C Period Noncompliance Deductions. The final Milestone Payment, Milestone Payment 6, is expected to be applied in full to the repayment of the Design-Build Loan Facility Obligations and any Hedging Obligations and Hedging Termination Obligations arising from the termination of the associated Hedging Obligations in accordance with the Design-Build Loan Facility Credit Agreement. See “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Milestone Payments.”

#### **Additional D&C Payments**

Subject to the terms of the DBFOM Agreement, the Department is obligated to pay to the Borrower a series of four Additional D&C Payments totaling \$21,520,825.30 for the Borrower's performance of certain D&C Work, comprised of stored back-up train control equipment, hardened walls and doors, parking gates and vehicle restriction equipment, minor highway, footpath and grade parking arrangements, relocation of a substation, various street realignments, removal of electrical vault MH-155A, addition for two new electric vaults, and relocation of an electrical duct bank. This Additional D&C Work includes certain design and operational enhancements to address Threat and Vulnerability Assessment requirements specific to the Borrower's design as well as the incorporation of minor scope modifications that were implemented between award of the APM Project to the Borrower and the execution of the DBFOM Agreement. See “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Additional D&C Payments.”

## Projected Sources and Uses of Funds

*The sources and uses tables included in this Official Statement set forth the projected financing sources for the APM Project as well as the anticipated uses thereof. The amounts of the actual sources and uses of the proceeds from the financing of the APM Project are subject to change as contemplated hereunder.*

### Projected Sources and Uses of Proceeds of Series 2018 Bonds\*

(dollars in thousands)

#### Sources

Par Amount of Series 2018 Bonds	\$1,181,525
Net Original Issue Premium	113,159
<b>Total Sources of Funds</b>	<b>\$1,294,684</b>

#### Uses

Deposit to Bonds Proceeds Account	\$1,288,114
Costs of Issuance <sup>(1)</sup>	6,570
<b>Total Uses of Funds</b>	<b>\$1,294,684</b>

\*Totals presented may not add up due to rounding.

<sup>(1)</sup> Includes underwriters' discount and the bond insurance policy premium.

Source: Borrower

**Projected Sources and Uses of Funds Prior to the End of the Funding Date\***  
(dollars in thousands)

**Sources**

Par Amount of Series 2018 Bonds	\$1,181,525
Net Original Issue Premium	113,159
Design-Build Loan Facility	269,323
Equity Contributions	102,741
Milestone Payments	1,009,749
Additional D&C Payments <sup>(1)</sup>	21,521
Interest Earned During Construction <sup>(2)</sup>	49,660
<b>Total Sources of Funds</b>	<b>\$2,747,677</b>

**Uses**

Construction Costs <sup>(3)</sup>	\$1,979,756
Interest on the Series 2018 Bonds During Construction <sup>(4)</sup>	281,754
Repayment of Design-Build Loan Facility <sup>(5)</sup>	269,323
Interest and Fees of Design-Build Loan Facility	11,955
Additional D&C Costs <sup>(6)</sup>	21,499
SPV Costs during Construction	9,371
Funding of Utility Owners' Cost Account	50,000
Development Fees and Bid Costs	35,523
Initial Debt Service Reserve Fund Deposit <sup>(7)</sup>	32,738
Construction Taxes	34,918
Transaction and Closing Costs <sup>(8)</sup>	8,569
Other Fees <sup>(9)</sup>	12,270
<b>Total Uses of Funds</b>	<b>\$2,747,677</b>

\* Totals presented may not add up due to rounding.

<sup>(1)</sup> Includes gross up for City of LA taxes paid on Additional D&C Payments.

<sup>(2)</sup> Assumed at rate of 2.00% per annum.

<sup>(3)</sup> Includes: Borrower Insurances during Construction paid at Financial Close and during Construction, Construction Costs, Early Works, Construction Mobilization paid at Financial Close, O&M Mobilization and TAMSA during Construction.

<sup>(4)</sup> Interest on the Series 2018 Bonds up to and including June 30, 2023.

<sup>(5)</sup> Includes interest expense and commitment fees paid on Design-Build Loan Facility.

<sup>(6)</sup> Includes TVA and ATC Scope Change Costs during Construction.

<sup>(7)</sup> The Debt Service Reserve Fund for the Series 2018 Bonds is expected to be funded on the Passenger Service Availability Date with funds available to the Borrower.

<sup>(8)</sup> Includes underwriters' fees and discount, the bond insurance policy premium, costs of issuance of the Series 2018 Bonds and Design-Build Loan Facility Upfront fees.

<sup>(9)</sup> Includes Equity Letter of Credit and Fees and other annual costs (e.g., rating agency fees).

Source: Borrower

## Projected Semi-Annual Sources and Uses of Funds through the End of the Funding Date

Projected Sources and Uses of Funds Prior to the End of the Funding Date*													
(dollars in thousands)													
	6/30/18	12/31/18	6/30/19	12/31/19	6/30/20	12/31/20	6/30/21	12/31/21	6/30/22	12/31/22	6/30/23	12/31/23	Total
<b>Sources of Funds</b>													
Proceeds of Series 2018 Bonds	\$230,711	\$142,219	\$31,355	\$105,259	\$148,949	\$163,219	\$195,486	\$182,372	\$95,113	\$ -	\$ -	\$ -	1,294,684
Design-Build Loan Facility	-	-	-	-	-	-	-	-	746	137,696	125,272	5,609	269,323
Equity Contributions	0.1	-	-	-	-	-	-	-	-	-	-	102,741	102,741
Milestone Payments and Additional D&C Payments	-	2,152	125,374	114,983	109,139	133,865	125,059	84,115	168,292	-	-	168,292	1,031,270
Interest Earned During Construction <sup>(2)</sup>	1,101	10,298	9,247	8,644	7,814	5,567	3,911	2,454	623	-	-	-	49,660
<b>Total Sources of Funds</b>	<b>\$231,812</b>	<b>\$154,669</b>	<b>\$165,976</b>	<b>\$228,887</b>	<b>\$265,902</b>	<b>\$302,652</b>	<b>\$324,456</b>	<b>\$268,942</b>	<b>\$264,773</b>	<b>\$137,696</b>	<b>\$125,272</b>	<b>\$276,642</b>	<b>\$2,747,677</b>
<b>Uses of Funds</b>													
Construction Costs <sup>(3)</sup>	\$137,069	\$119,493	\$126,094	\$191,438	\$230,758	\$263,355	\$287,628	\$234,415	\$227,629	\$101,915	\$57,852	\$2,108	1,979,756
Interest on the Series 2018 Bonds During Construction	-	31,309	27,827	27,827	27,827	27,827	27,827	27,827	27,827	27,827	27,827	-	281,754
Repayment of Design-Build Loan Facility <sup>(4)</sup>	-	-	-	-	-	-	-	-	-	-	-	269,323	269,323
Interest and Fees of Design-Build Loan Facility	40	330	325	330	327	330	325	330	325	1,223	3,753	4,316	11,955
Additional D&C Costs <sup>(5)</sup>	-	2,150	6,450	6,450	-	6,450	-	-	-	-	-	-	21,499
SPV Costs during Construction	141	914	914	914	914	914	914	914	908	953	969	-	9,371
Funding of Utility Owners' Cost Account	50,000	-	-	-	-	-	-	-	-	-	-	-	50,000
Development Fees and Bid Costs	35,523	-	-	-	-	-	-	-	-	-	-	-	35,523
Initial Debt Service Reserve Fund Deposit <sup>(6)</sup>	-	-	-	-	-	-	-	-	-	-	32,738	-	32,738
Construction Taxes	470	472	1,927	1,927	3,769	3,775	5,455	5,455	5,777	5,777	76	38	34,918
Transaction and Closing Costs <sup>(7)</sup>	8,569	-	-	-	-	-	-	-	-	-	-	-	8,569
Other Fees <sup>(8)</sup>	-	-	2,438	-	2,307	-	2,307	-	2,307	-	2,055	856	12,270
<b>Total Uses of Funds</b>	<b>\$231,812</b>	<b>\$154,669</b>	<b>\$165,976</b>	<b>\$228,887</b>	<b>\$265,902</b>	<b>\$302,652</b>	<b>\$324,456</b>	<b>\$268,942</b>	<b>\$264,773</b>	<b>\$137,696</b>	<b>\$125,272</b>	<b>\$276,642</b>	<b>\$2,747,677</b>

\*Totals presented may not add up due to rounding.

<sup>(1)</sup> Includes gross up for City of LA taxes paid on Additional D&C Payments.

<sup>(2)</sup> Assumed at rate of 2.00% per annum.

<sup>(3)</sup> Includes: Borrower Insurances during Construction paid at Financial Close and during Construction, Construction Costs, Early Works, Construction Mobilization paid at Financial Close, O&M Mobilization and TAMSA during Construction.

<sup>(4)</sup> Funds for payment of Design-Build Loan Facility are expected to come from Milestone Payment 6 and Equity Contributions.

<sup>(5)</sup> Includes TVA and ATC Scope Change Costs during Construction.

<sup>(6)</sup> The Debt Service Reserve Fund for the Series 2018 Bonds is expected to be funded on the Passenger Service Availability Date with funds available to the Borrower in an equal to Required Senior Debt Service Reserve.

<sup>(7)</sup> Includes underwriters' fees and discount, the bond insurance policy premium, costs of issuance of the Series 2018 Bonds and Design-Build Loan Facility Upfront fees.

<sup>(8)</sup> Includes Equity Letter of Credit and Fees and other annual costs (e.g., rating agency fees).

Source: Borrower



### Projected Cash Flow and Debt Service Coverage for the Series 2018 Bonds During Operations

(dollars in thousands)

Period Ending	Revenues	Operating Expenses	Rehabilitation Costs	Net Cash Flow	2018 Bonds Interest paid during Operations	2018 Bonds Principal	2018 Bonds Debt Service	Net Cash Flow Divided by Bond Debt Service
	(A)	(B)	(C)	(A)-(B)-(C) = (D)	(E)	(F)	(E) + (F) = (G)	(D)/(G)
2023	\$58,220	\$14,028	\$17	\$ 44,176	\$27,827	\$ 4,910	\$32,737	1.35x
2024	101,172	24,023	143	77,006	55,338	6,475	61,813	1.25
2025	103,818	25,108	111	78,599	54,977	9,595	64,572	1.22
2026	106,537	26,079	27	80,431	54,452	12,880	67,332	1.19
2027	109,334	27,259	274	81,801	53,751	17,165	70,916	1.15
2028	112,195	27,969	926	83,300	52,879	19,130	72,009	1.16
2029	115,135	28,185	1,649	85,301	51,913	20,915	72,828	1.17
2030	118,163	28,667	2,940	86,555	50,924	24,275	75,199	1.15
2031	121,269	29,400	3,954	87,914	50,057	26,330	76,387	1.15
2032	124,454	30,723	5,337	88,393	48,832	27,785	76,617	1.15
2033	127,729	31,593	7,184	88,952	47,793	29,435	77,228	1.15
2034	131,108	31,853	7,731	91,524	46,284	33,220	79,504	1.15
2035	134,596	32,132	5,472	96,992	44,628	39,040	83,668	1.16
2036	138,181	32,848	3,810	101,523	42,801	45,465	88,266	1.15
2037	141,825	35,110	5,955	100,760	40,504	46,300	86,804	1.16
2038	145,602	35,632	5,746	104,224	38,157	52,210	90,367	1.15
2039	149,506	35,259	3,069	111,179	35,425	61,205	96,630	1.15
2040	153,475	36,220	5,307	111,947	32,305	64,275	96,580	1.16
2041	157,566	37,073	6,685	113,809	29,051	69,770	98,821	1.15
2042	161,776	38,212	7,102	116,462	25,468	75,715	101,183	1.15
2043	166,105	39,291	7,010	119,804	21,620	82,470	104,090	1.15
2044	170,542	40,089	9,343	121,111	17,542	87,355	104,897	1.15
2045	175,127	40,558	8,043	126,526	13,592	95,460	109,052	1.16
2046	179,822	41,586	9,849	128,387	9,217	101,295	110,512	1.16
2047	184,660	42,056	9,339	133,265	4,654	109,475	114,129	1.17
2048	113,164	25,108	4,503	83,553	484	19,375	19,859	4.21

(1) Revenues include MAPC, MAPO and Interest Income during Operations.

(2) Operating Expenses include O&M Costs, Energy, Insurance Costs during Operations, SPV Costs during Operations, and Annual Cost during Operations (rating agency fees & CMFA fees).

(3) Net Cash flow does not include DSRA movements, per the Collateral Agency and Accounts Agreement.

Source: Borrower

## BOND INSURANCE

### Bond Insurance Policy

Concurrently with the issuance of the Series 2018 Bonds, AGM will issue its Municipal Bond Insurance Policy for the Insured Bonds. The Policy guarantees the scheduled payment of principal of and interest on the Insured Bonds when due as set forth in the form of the Policy included as APPENDIX H to this Official Statement.

The Policy is not covered by any insurance security or guaranty fund established under New York, California, Connecticut or Florida insurance law.

### Assured Guaranty Municipal Corp.

AGM is a New York domiciled financial guaranty insurance company and an indirect subsidiary of AGL, a Bermuda-based holding company whose shares are publicly traded and are listed on the New York Stock Exchange under the symbol “AGO.” AGL, through its operating subsidiaries, provides credit enhancement products to the U.S. and global public finance, infrastructure and structured finance markets. Neither AGL nor any of its shareholders or affiliates, other than AGM, is obligated to pay any debts of AGM or any claims under any insurance policy issued by AGM.

AGM’s financial strength is rated “AA” (stable outlook) by S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC (“S&P”), “AA+” (stable outlook) by Kroll Bond Rating Agency, Inc. (“KBRA”) and “A2” (stable outlook) by Moody’s Investors Service, Inc. (“Moody’s”). Each rating of AGM should be evaluated independently. An explanation of the significance of the above ratings may be obtained from the applicable rating agency. The above ratings are not recommendations to buy, sell or hold any security, and such ratings are subject to revision or withdrawal at any time by the rating agencies, including withdrawal initiated at the request of AGM in its sole discretion. In addition, the rating agencies may at any time change AGM’s long-term rating outlooks or place such ratings on a watch list for possible downgrade in the near term. Any downward revision or withdrawal of any of the above ratings, the assignment of a negative outlook to such ratings or the placement of such ratings on a negative watch list may have an adverse effect on the market price of any security guaranteed by AGM. AGM only guarantees scheduled principal and scheduled interest payments payable by the issuer of bonds insured by AGM on the date(s) when such amounts were initially scheduled to become due and payable (subject to and in accordance with the terms of the relevant insurance policy), and does not guarantee the market price or liquidity of the securities it insures, nor does it guarantee that the ratings on such securities will not be revised or withdrawn.

#### *Current Financial Strength Ratings*

On May 7, 2018, Moody’s announced it had affirmed AGM’s insurance financial strength rating of “A2” (stable outlook). AGM can give no assurance as to any further ratings action that Moody’s may take.

On January 23, 2018, KBRA announced it had affirmed AGM’s insurance financial strength rating of “AA+” (stable outlook). AGM can give no assurance as to any further ratings action that KBRA may take.

On June 26, 2017, S&P announced it had affirmed AGM’s financial strength rating of “AA” (stable outlook). AGM can give no assurance as to any further ratings action that S&P may take.

For more information regarding AGM’s financial strength ratings and the risks relating thereto, see AGL’s Annual Report on Form 10-K for the fiscal year ended December 31, 2017.

#### *Capitalization of AGM*

At March 31, 2018:

- The policyholders’ surplus of AGM was approximately \$2,247 million.

- The contingency reserves of AGM and its indirect subsidiary Municipal Assurance Corp. (“MAC”) (as described below) were approximately \$1,133 million. Such amount includes 100% of AGM’s contingency reserve and 60.7% of MAC’s contingency reserve.
- The net unearned premium reserves of AGM and its subsidiaries (as described below) were approximately \$1,646 million. Such amount includes (i) 100% of the net unearned premium reserves of AGM and AGM’s wholly owned subsidiaries Assured Guaranty (Europe) plc, Assured Guaranty (UK) plc, CIFG Europe S.A. and Assured Guaranty (London) plc (together, the “AGM European Subsidiaries”) and (ii) 60.7% of the net unearned premium reserve of MAC.

The policyholders’ surplus of AGM and the contingency reserves and net unearned premium reserves of AGM and MAC were determined in accordance with statutory accounting principles. The net unearned premium reserves of the AGM European Subsidiaries were determined in accordance with accounting principles generally accepted in the United States of America.

#### *Incorporation of Certain Documents by Reference*

Portions of the following documents filed by AGL with the Securities and Exchange Commission (the “SEC”) that relate to AGM are incorporated by reference into this Official Statement and shall be deemed to be a part hereof:

- the Annual Report on Form 10-K for the fiscal year ended December 31, 2017 (filed by AGL with the SEC on February 23, 2018); and
- the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 (filed by AGL with the SEC on May 4, 2018).

All consolidated financial statements of AGM and all other information relating to AGM included in, or as exhibits to, documents filed by AGL with the SEC pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, excluding Current Reports or portions thereof “furnished” under Item 2.02 or Item 7.01 of Form 8-K, after the filing of the last document referred to above and before the termination of the offering of the Series 2018 Bonds shall be deemed incorporated by reference into this Official Statement and to be a part hereof from the respective dates of filing such documents. Copies of materials incorporated by reference are available over the internet at the SEC’s website at <http://www.sec.gov>, at AGL’s website at <http://www.assuredguaranty.com>, or will be provided upon request to Assured Guaranty Municipal Corp.: 1633 Broadway, New York, New York 10019, Attention: Communications Department (telephone (212) 974-0100). Except for the information referred to above, no information available on or through AGL’s website shall be deemed to be part of or incorporated in this Official Statement.

Any information regarding AGM included herein under the caption “BOND INSURANCE—Assured Guaranty Municipal Corp.” or included in a document incorporated by reference herein (collectively, the “AGM Information”) shall be modified or superseded to the extent that any subsequently included AGM Information (either directly or through incorporation by reference) modifies or supersedes such previously included AGM Information. Any AGM Information so modified or superseded shall not constitute a part of this Official Statement, except as so modified or superseded.

#### *Miscellaneous Matters*

AGM makes no representation regarding the Series 2018 Bonds or the advisability of investing in the Series 2018 Bonds. In addition, AGM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AGM supplied by AGM and presented under or derived from the heading “BOND INSURANCE.”

## **CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT**

*The information under the caption “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT” is not provided by the Department, but derived from information provided by the Borrower. The Department has not reviewed or approved and is not responsible for, and makes no representation, warranty or certification as to the adequacy or accuracy of the information set forth under the caption “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT” except under the subparagraph “—Unsecured Payments of the Department” and is not responsible for any statements made herein. The Department disclaims any responsibility for the information set forth under the caption “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT” except under the subparagraph “—Unsecured Payments of the Department.”*

### **General**

The DBFOM Agreement provides for the Department to make a series of six Milestone Payments to the Borrower for the performance of D&C Work. The DBFOM Agreement states that these Milestone Payments will be paid in equal amounts upon completion of certain Minimum D&C Percentage thresholds and the final “Milestone Payment 6” will be paid within 60 days following Final Completion. However, the Borrower may not receive any such amount prior to the Scheduled Milestone Payment Date for each such milestone set forth in the DBFOM Agreement and each Milestone Payment will be subject to D&C Period Noncompliance Deductions for certain breaches of the DBFOM Agreement by the Borrower. Subject to the terms of the DBFOM Agreement, the Department is also obligated to pay the Borrower a series of four Additional D&C Payments for its performance of the Additional D&C Work in accordance with the DBFOM Agreement. For operating, maintaining and performing Renewal Work on the APM Project, the Department is obligated to pay to the Borrower Availability Payments in accordance with the DBFOM Agreement, subject to Noncompliance Deductions and Unavailability Deductions (“Deductions”). The Department's payment of Milestone Payments, Additional D&C Payments and Availability Payments are the Borrower's main source of Project Revenues. Where there is an early termination of the DBFOM Agreement, subject to the terms thereof, the Department is required to pay Termination Compensation to the Borrower. The amount of the Termination Compensation will vary based on the reason for such termination. However, in the case of termination for a Developer Default, the Department is not required to pay the Borrower termination compensation in an amount sufficient to fully repay or redeem the Series 2018 Bonds. See APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Termination of the DBFOM Agreement” and “RISK FACTORS—Certain Risks Relating to the Department and the Department's Revenues—*Unsecured Payments of the Department.*”

### **Unsecured Payments of the Department**

*The Department's Payment Obligations under the DBFOM Agreement are Unsecured*

The Department's obligations to make Milestone Payments, Additional D&C Payments, and Availability Payments and to pay any Termination Compensation is an unsecured obligation of the Department to be paid from any available moneys of the Department. Except as otherwise limited by the Senior Bond Indenture and the Subordinate Bond Indenture, there are no limits or caps on the Department's ability to enter into additional contracts relating to its capital plan for the Airport or any other function of the Airport. The Milestone Payments, Additional D&C Payments, Availability Payments and any Termination Compensation will be payable after all operating and maintenance expenses, debt service on the Department's Senior Bonds, the Subordinate Obligations and the Third Lien Obligations, if any, as well as deposits to the respective debt service reserve accounts and other amounts paid as required by the Senior Bond Indenture and the Subordinate Bond Indenture. However, the Department may treat the portion of the Availability Payments relating to the operations and maintenance of the APM Project as an LAX Maintenance and Operation Expense (as defined in the Senior Bond Indenture) and therefore such payment may be made by the Department prior to the payment of debt service on the Department's Senior Bonds, Subordinate Obligations, Third Lien Obligations, if any, and the respective debt service reserve accounts. The Department is not required and owners of the Series 2018 Bonds should not expect the Department to make payments to the Borrower from any sources other than from available moneys of the Department. Except as otherwise required under the Senior Bond Indenture and the Subordinate Bond Indenture, neither the Department nor the City is obligated to raise rates or take any other action to raise revenues if Department revenues and other amounts available in the LAX Revenue Account are insufficient to pay its contractual obligations, including to the Borrower under the DBFOM

Agreement. For a description of the Department's flow of funds provisions under the Senior Bond Indenture and the Subordinate Bond Indenture, see APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Security and Sources of Payments for the Senior Bonds, the Subordinate Obligations and the Third Lien Obligations—*Flow of Funds*."

### *Budgeting Process of the Department*

Each year, Department Management submits the Department's proposed budget to the Board for adoption. The final budget is adopted by the Board prior to the beginning of the fiscal year. The Chief Executive Officer of the Department also submits the Department's proposed budget to the Mayor for informational purposes only, and for information purposes only, the Mayor includes the Department's proposed budget as a part of the overall City budget. Neither the Mayor nor the City Council may amend or otherwise change the adopted budget; however, see "THE DEPARTMENT OF AIRPORTS – Oversight." Department Management expects to submit a Fiscal Year 2019 LAX Operating Budget to the Board in June 2018. There can be no assurances whether the Fiscal Year 2019 LAX Operating Budget will materially deviate from the Fiscal Year 2018 LAX Operating Budget (described below) or whether the Board will approve the Fiscal Year 2019 LAX Operating Budget as and when presented. Certain of the Department's payment obligations under the DBFOM Agreement (e.g., APM Operations and Maintenance Payments), like the Department's other contractual obligations, are subject to the Board approving the appropriation of funds required for the DBFOM Agreement and the annual budgeting process described in APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Financial and Operating Information Concerning LAX—Budgeting Process."

In connection with the Board approval of the Department's entry into the DBFOM Agreement, the Board also approved a long-term appropriation of Department funds for the payment of the Milestone Payments and the APM Capital Availability Payments for the duration, and subject to the terms, of the DBFOM Agreement. Generally, the Milestone Payments and the APM Capital Availability Payments represent the capital costs associated with the construction and maintenance of the APM System. With regard to the Department's other payment obligations under the DBFOM Agreement (e.g., APM Operations and Maintenance Payments), the Department expects that each year it will budget and seek approval from the Board for the payment of those amounts through the annual budgeting process, as the Department regularly does for those other contractual obligations requiring the Board's approval, as described under the caption APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Financial and Operating Information Concerning LAX—Budgeting Process."

## **Milestone Payments**

### *Timing and Quantum of Milestone Payments*

Subject to the terms of the DBFOM Agreement, the Borrower is entitled to receive six payments from the Department as compensation for its performance of a portion of the D&C Work, excluding the Additional D&C Work described below. The table below sets forth, for each Milestone Payment, the scheduled payment date, amount, and certain conditions to payment.

Column A	Column B	Column C	Column D
Milestone Payment Number	Scheduled Milestone Payment Date	Milestone Payment Amount	Minimum D&C Percentage
1	March 31, 2019	\$168,291,515.12	15%
2	December 31, 2019	\$168,291,515.12	30%
3	September 30, 2020	\$168,291,515.12	50%
4	June 30, 2021	\$168,291,515.12	65%
5	March 31, 2022	\$168,291,515.12	80%
6	60 days after Final Completion Date	\$168,291,515.12	N/A
<b>Total</b>	-	<b>\$1,009,749,090.72</b>	<b>N/A</b>

Subject to the terms of the DBFOM Agreement, the Department is required to pay to the Borrower the Milestone Payment Amount listed in Column C of the table above, subject to any applicable Deductions, on the dates requested by the Borrower (each, a “Proposed Milestone Payment Date”), provided that: (a) the Proposed Milestone Payment Date is not earlier than the corresponding Scheduled Milestone Payment Date listed in Column B; (b) the applicable Milestone Payment Request is complete and is reasonably satisfactory to Department in form and content and Borrower has provided all other information reasonably requested by Department relating to the request; (c) in connection with Milestone Payments 1 through 5, the D&C Percentage completed as of the date of such Milestone Payment Request is equal to or greater than the applicable minimum D&C Percentage listed in Column D; (d) in connection with Milestone Payment 6, Final Completion has occurred and (e) there are no Developer Defaults.

In each Milestone Payment Request, the Borrower is required to state (i) that the Milestone Payment will not be used to pay the principal of any outstanding obligations the interest on which is excludable from gross income for federal income tax purposes as set forth under the Code and (ii) the amount of such Milestone Payment to be used to pay interest, if any, that has accrued on and after the Passenger Service Availability Date on obligations the interest on which is excludable from gross income for federal income tax purposes as set forth under the Code.

It is expected that the proceeds of Milestone Payment 6 will be used first to repay the Design-Build Loan Facility Obligations and any Hedging Obligations and Hedging Termination Obligations arising from the termination of the associated Hedging Obligations in accordance with the Design-Build Loan Facility Credit Agreement. To the extent any amounts of Milestone Payment 6 are available after application in accordance with the preceding sentence, those amounts are to be used to pay any remaining Project Costs in connection with Final Completion, and, subsequently, to the extent any amounts of Milestone Payment 6 remain available, those amounts are to be used to fund the Senior Debt Service Reserve Account so that the funds deposited therein equal the Required Senior Debt Service Reserve. (See “ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts- *Milestone Payment Sub-Account*”).

#### *D&C Period Noncompliance Deductions*

The Department may make D&C Period Noncompliance Deductions from each Milestone Payment, if applicable, as calculated in accordance with the D&C Period Noncompliance Occurrences Table set forth in Exhibit 4C of the DBFOM Agreement. D&C Period Noncompliance Deductions will be made for Borrower breaches or failures in the performance of its obligations under the Contract Documents, these include, among other things, failures to submit certain plans or monthly reports by the times required, failure to utilize the minimum participation levels for local business enterprises, road lane closures outside of allotted time periods, parking garage closures, constructing without an approved design, changing key personnel for non-permitted reasons, failure to satisfy workforce and apprenticeship requirements and failure to comply with specific commitments of a remedial

plan. See “RISK FACTORS—Risks Relating to the Project Agreements—*Risks Related to the DBFOM Agreement—Failure to Comply with the DBFOM Agreement; Termination of the DBFOM Agreement.*”

The assessable D&C Period Noncompliance Deductions are double the applicable amount with respect to any period for which the event resulting in the assessment of D&C Period Noncompliance Deductions occurs on certain holidays and other specified dates.

If the amount of D&C Period Noncompliance Deductions combined with the amount of any other adjustments that the Department makes to a Milestone Payment in accordance with the terms of the Contract Documents, would reduce any of Milestone Payments 1 through 5 to less than 90 percent of the applicable Milestone Payment Amount, then the excess of such D&C Period Noncompliance Deductions amount and any other adjustment amount will accrue and be added to the D&C Period Noncompliance Deduction for the subsequent Milestone Payments until such accrued amount has been deducted in full.

### **Additional D&C Payments**

Subject to the terms and conditions of the DBFOM Agreement, the Borrower is also entitled to receive a series of four Additional D&C Payments totaling \$21,520,825.30, as compensation for the Borrower's performance of certain D&C Work, comprised of stored back-up train control equipment, hardened walls and doors, parking gates and vehicle restriction equipment, minor highway, footpath and grade parking arrangements, relocation of a substation, various street realignments, removal of electrical vault MH-155A, addition for two new electric vaults, and relocation of an electrical duct bank (“Additional D&C Work”). This Additional D&C Work includes certain design and operational enhancements to address Threat and Vulnerability Assessment requirements specific to the Borrower’s design as well as the incorporation of minor scope modifications that were implemented between award of the APM Project to the Borrower and the execution of the DBFOM Agreement. Any amounts paid to the Borrower for the performance of Additional D&C Work (the “Additional D&C Payments”) are not included in the Milestone Payments or in the calculation or payment of Availability Payments. The table below sets forth, for each such payment, the payment date, amount and the conditions to payment.

<b>Payment Number</b>	<b>Payment Date</b>	<b>Conditions to Payment</b>	<b>Payment Amount</b>
1	September 30, 2018	Minimum D&C Percentage of 10 percent	\$2,152,082.50
2	Date that the Department pays Milestone Payment 1	Payment by the Department of Milestone Payment 1	\$6,456,247.60
3	Date that the Department pays Milestone Payment 2	Payment by the Department of Milestone Payment 2	\$6,456,247.60
4	Date that the Department pays Milestone Payment 3	Payment by the Department of Milestone Payment 3	\$6,456,247.60

Pursuant to the terms of the DBFOM Agreement the Department has agreed to pay to the Borrower each of the four payments comprising the Additional D&C Payments on or before the corresponding payment date, provided that the applicable request for the Additional D&C Payment is complete; there are no Developer Defaults; the conditions to payment described in the third column of the table above have been satisfied; and with respect to Additional D&C Payments 2 through 4, the requests for such payments accompany the Borrower’s Milestone Payment Requests for Milestone Payments 1 through 3, respectively, and the requirements for payment of the applicable Milestone Payment are satisfied.

## Availability Payments

### *Timing and Quantum of Availability Payments*

Subject to the terms and conditions of the DBFOM Agreement, the Department is required to pay Availability Payments to the Borrower during the O&M Period, commencing from the later of: (i) the Planned Early PSA Date (being March 31, 2023, which is the date the Borrower is committed to achieving Passenger Service Availability, as may be extended under the DBFOM Agreement), and (ii) the Passenger Service Availability Date.

The Maximum Annual Availability Payment for any year, i.e. the MaxAP for Operating Year (y) (“MaxAP<sub>y</sub>”), is calculated for any period commencing on or after the Passenger Service Availability Date as follows:

$$\text{MaxAP}_y = \text{MAPC} \times 1.03^{y-1} + \text{MAPO} \times \text{ESC}_y$$

*Where:*

*MAPC* means Base Capital MaxAP.

*MAPO* means Base Operating MaxAP.

*ESC<sub>y</sub>* means the escalation factor calculated in accordance with Section 1.4 (Availability Payment Escalation) of Part A of Exhibit 4B of the DBFOM Agreement (as described below).

*y* means the numbered Operating Year commencing on the first of the Month in which the Passenger Service Availability Date occurs and on each 12-month anniversary thereof.

The DBFOM Agreement provides for the annual Availability Payments to be paid to the Borrower in monthly installments. The Maximum Monthly Payment (“MMP<sub>m</sub>”) is calculated as the monthly amount of the annual MaxAP plus, for the Month immediately following the end of each Quarter, a Utility Rate Risk Adjustment adjusting the MMP<sub>m</sub> for actual electricity and water consumption costs for the APM Project.

### *Deductions from the Availability Payments*

The Department may make Deductions from Availability Payments in respect of Unavailability Deductions and O&M Period Non-Compliance Deductions as described in Exhibit 4B of the DBFOM Agreement. Non-Compliance Deductions may be assessed by the Department for the Borrower's failure to meet minimum performance requirements, including, among other things, failure to provide required insurances, usage of untrained personnel, delay in delivery of plans or submittals, failure to satisfy the local business enterprise participation or local hiring requirements, road lane closures outside of permitted times, lack of vehicle or station cleanliness, failure to repair or remove any impacts to the APM Project from vandalism, failure to satisfy lighting and damage repair requirements, failure to report suspicious activity to law enforcement within required timeframes, walkway or elevator downtime, failure to meet the required response time to passengers stranded in elevators, failure to perform required preventative maintenance or handback requirements and failure to maintain safety and security standards. The MMP<sub>m</sub> is subject to reduction based on the Applied Deductions which include deductions for O&M Noncompliance Deductions and Unavailability Deductions, the calculation of which is described in more detail in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Payments During the O&M Period—Monthly Application of Deductions.”

The Maximum Quarterly Deduction from the MMP<sub>m</sub> for any three consecutive month period shall be applied in the Month immediately following the Quarter for which the Maximum Quarterly Deduction was calculated, provided that:

(a) If the Maximum Quarterly Deduction which may be applied to Month (m) exceeds the Maximum Monthly Payment for Month (m), then: (i) the amount of the Deduction actually applied (“Applied Deduction”) will



be equal to the Monthly Maximum Payment; and (ii) any unapplied amount of the Maximum Quarterly Deduction (“Unapplied Deductions” (“UD”)) shall be accumulated and applied to each subsequent Month until such accumulated amounts have been deducted in full. See APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—*Payments During the O&M Period—Maximum Quarterly Deductions*” and —“RISK FACTORS—Risks Relating to the Project Agreements—*Risks Related to the DBFOM Agreement—Failure to Comply with the DBFOM Agreement; Termination of the DBFOM Agreement.*”

(b) If the Maximum Quarterly Deduction which may be applied to Month (m) is less than or equal to the Maximum Monthly Payment for Month (m), then the amount of the Applied Deduction will be the Maximum Quarterly Deduction plus, to the extent that it can be applied, any carried forward Unapplied Deductions from previous Months. For further detail see APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—*Payments During the O&M Period—Monthly Application of Deductions.*”

(c) Unavailability Deductions (“UAm”) with respect to Month (m) shall be calculated in accordance with Part B of Exhibit 4B to the DBFOM Agreement as described in more detail in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—*Payments During the O&M Period—Calculation of Unavailability Deductions and O&M Period Noncompliance Deductions.*” Unavailability Deductions may be deducted from Availability Payments by the Department based on a reduced availability of the APM Operating System from the performance standards in the Technical Requirements and based on the total duration of station downtime for a given month.

(d) O&M Period Noncompliance Deductions (“OMNDm”) with respect to the relevant Month (m) shall be calculated in accordance with Part B of Exhibit 4B to the DBFOM Agreement as described in more detail in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—*Payments During the O&M Period—Calculation of Unavailability Deductions and O&M Period Noncompliance Deductions.*”

If an event results in both an Unavailability Deduction and an O&M Period Noncompliance Deduction, the higher Deduction applies. When such an event occurs, the higher Deduction is determined by comparing the potential Noncompliance Deduction for the event to the incremental contribution of the event to the Unavailability Deduction. The calculation of such Deductions, and the determination of which Deduction applies, is made at the end of each Month. The Unavailability Deductions and O&M Period Noncompliance Deductions that are assessable is double the applicable amount with respect to any period for which the event resulting in the assessment of Deductions occurs on certain holidays and other specified dates.

#### *Utility Rate Risk Adjustment*

During the O&M Period, the Borrower is required to monitor and measure the consumption of electricity and water for the APM Project using monitoring equipment and systems suitable to enable the collection of the information required for the purposes of the Utility Risk Rate Adjustment to be calculated in accordance with Appendix B to Exhibit 4B of the DBFOM Agreement, which is applied to the calculation of the Availability Payment as described above.

By the 15th day following each Month during the O&M Period, the Borrower is required to deliver to the Department a report showing its actual consumption of electricity and water for that previous Month and by the 15th day following each Quarter during the O&M Period, the Borrower is required to deliver to the Department a report showing actual electricity and water consumption and its weighted average rates for electricity and water for that previous Quarter calculated based on the Borrower’s total expenditure on such utilities for the Quarter.

The Utility Rate Risk Adjustment (“URRA<sub>q-1</sub>”) is described in more detail in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments During the O&M Period—*Utility Rate Risk Adjustment.*” The Utility Rate Risk Adjustment is applied to the calculation of the Availability Payment as described above.

*Impact of Relief Events on the Payment of Milestone Payments and Commencement of Availability Payments*

If the Borrower demonstrates pursuant to the requirements of the Relief Event procedures in the DBFOM Agreement that a Compensation Event results in a Relief Event Delay and:

(a) that the Borrower has been delayed in achieving Passenger Service Availability by the original Planned Early PSA Date specified in the Initial Project Schedule and reset in accordance with the DBFOM Agreement, if applicable, because of a Compensation Event, then, to the extent that the Borrower incurs any Financing Costs during such applicable delay period (being amounts reflected in the Financial Model, that would have been paid to Lenders, or reserved for future debt service), then the Department will pay to the Borrower an amount equal to such Financing Costs (the “Delayed Payment Compensation”) throughout such delay period no later than the date the Borrower would have received the relevant Availability Payment; or

(b) that the Relief Event Delay prevents the Borrower from (i) timely achieving any of Milestone Payments 1 through 5 or (ii) Final Completion, then to the extent the Borrower incurs any Financing Costs during such delay period, the Department is required to pay the Borrower Delayed Payment Compensation throughout such delay period no later than the date the Borrower would have received the relevant Milestone Payment. See APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—*Extension of Contract Deadlines*.” For any Relief Event that is not a Compensation Event the Borrower will not be entitled to any compensation, including Delayed Payment Compensation, in connection with such delay, but the Contract Deadlines are required to be extended to reflect the such Non-Compensation Event.

Financing Costs only include such amounts as reflected in the Financial Model that would have been paid or reserved from the Milestone Payment or Availability Payment proceeds that were projected to be received by the Borrower during such period(s). Financing Costs also excludes any costs of financing that may be payable as, and included within the definition of, Incremental Costs.

*LAWA Allowances*

The DBFOM Agreement states that the Department has established the following LAWA Allowances from which the Department is required to make payments to the Borrower in accordance with the DBFOM Agreement for the Borrower’s performance of the following types of Work:

(a) an allowance of \$6 million for the required streetscaping, landscaping and improvements within the public realm for the Work, except to the extent (i) such requirements are included elsewhere in the Contract Documents, or (ii) such requirements apply to the Traction Power Substation or the maintenance and storage facility;

(b) an allowance of \$3.7 million for Hazardous Materials Management Work, subject to the risk allocations set forth in the DBFOM Agreement);

(c) an allowance of \$15 million for Art Accommodation and Installation Work; and

(d) subject to receipt of necessary approvals, a possible future allowance of \$118,450,000 for Work relating to a potential additional Station.

To the extent that the Borrower incurs amounts for the Work described in (a) through (d) above in excess of the applicable LAWA Allowance, such amounts are required to be paid by the Department pursuant to a Change Order.

*Maximum Payment*

The maximum aggregate amount payable to the Borrower for Milestone Payments, Availability Payments, LAWA Allowances and the Additional D&C Payments is \$4,895,750,000 (the “Maximum Invoice Amount”),

without prejudice to any other claims for compensation or other payments otherwise available to the Borrower under the DBFOM Agreement, including the rights of the Borrower described above regarding Utility Rate Risk Adjustments. The Maximum Invoice Amount includes (i) projections for inflation adjustments to the Availability Payments based on historical measures of inflation; and (ii) an assumption that fluctuations in interest rates and/or credit spreads, in the period between December 6, 2017 and the applicable pricing date, will not cause a 10% or more increase to the Base Capital MaxAP. If actual inflation or fluctuations in interest rates and/or credit spreads exceeds these projections, the Borrower is entitled to payment of additional amounts in the case of the events in clause (i) based on the escalation factor described further above at “-Availability Payments – *Timing and quantum of Availability Payments*” and in the case of clause (ii) in accordance with the financial model update agreed to by the Department and the Borrower at Financial Close.

### **Compensation Amounts in respect of Certain Relief Events**

If a Compensation Event occurs, the Borrower may be entitled to receive compensation from the Department in the form of Incremental Costs and/or Delayed Payment Compensation (as described above) (“Compensation Amounts”).

#### *Incremental Costs*

Incremental Costs include (a) Base Incremental Costs incurred by the Borrower in the performance of Extra Work specifically related to, and solely attributable to, a Compensation Event, (b) the permitted mark-up on those Base Incremental Costs, (c) Delay Costs for certain Compensation Events that result in a Relief Event Delay, and (d) the costs to the Borrower of financing any of (a) through (c), which, for each of (a) through (d) could not have been reasonably mitigated by the Borrower or its Contractors. Such costs are calculated in further detail under Exhibit 13 of the DBFOM Agreement in respect of certain amounts paid or actually incurred by the Borrower in the performance of Extra Work specifically related to, and solely attributable to, a Compensation Event (unless otherwise indicated). The total permitted markup for overhead and profit as a percentage of the Base Incremental Costs is limited to:

- (a) for Borrower, 10% of the cost of that portion of the Extra Work to be performed by Borrower with its own forces;
- (b) for Borrower, 3% of the cost of that portion of the Extra Work to be performed by Contractors;
- (c) for Contractors, 12% of the cost of that portion of the Extra Work to be performed by Contractors with their own forces;
- (d) subject to clause (e) below, for Contractors, 3% of the cost of that portion of the Extra Work to be performed by lower tier Contractors; and
- (e) the aggregate total markup is not permitted to exceed 20% irrespective of the number of tiers of Contractors performing the Extra Work.

### **Department Payments upon Early Termination**

#### *Maximum Termination Compensation Amount*

In the event of: (i) a Termination for Convenience, (ii) the Department confiscates, sequesters, condemns or appropriates the Borrower’s Interest, (iii) a City ordinance directly causes the Borrower to be unable to perform all or substantially all of its obligations under the DBFOM Agreement for a period of 180 consecutive days or more, (iv) a termination due to a LAWA Default, (v) a Termination Due to Court Ruling (caused solely by a LAWA Default or LAWA-Caused Event), or (vi) termination due to a suspension of Work by the Department for a period of 270 days or more, the Borrower will be entitled to receive compensation in an amount equal to the “Maximum Termination Compensation Amount” calculated as follows:

(a) (i) all amounts shown in the Financial Model as payable by the Borrower to Equity Members from the Early Termination Date, either as dividends, payments or other Distributions on their committed or invested equity investments or as payments of interest or repayments of principal made by the Borrower in respect of loans and other subordinated indebtedness pursuant to any Equity Members Funding Agreements, each amount discounted back at the Equity IRR from the date on which it is shown to be payable in the Financial Model to the Early Termination Date, minus (ii) Deferred Equity Amounts comprising unfunded cash equity committed to the Borrower as at the Early Termination Date; plus

(b) Lenders' Liabilities, which includes the aggregate of (without double counting) (i) all principal, interest (including capitalized and default interest under the Financing Documents, but with respect to default interest, only to the extent that it arises as a result of the Department making any payment later than the date that it is due under the DBFOM Agreement or any other default by the Department under the DBFOM Agreement), (ii) Breakage Costs, (iii) banking fees, (iv) premiums or reimbursement obligations with respect to financial insurance policies, (v) agent and trustee fees, and (vi) costs and expenses properly incurred owing or outstanding to the Lenders by the Borrower under or pursuant to the Financing Documents on the Early Termination Date, including any costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, that the Borrower must pay, or that may be payable or credited to the Borrower, under any financing agreement or security document or otherwise as a result of the payment, redemption or acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date that are determined to be reasonable by the Department at the time the Department reviews and approves the financing agreements; plus

(c) Developer Employee and Contractor Breakage Costs (which include wages earned, unused vacation and other payments required to be made by the Borrower to its employees and Losses reasonably and properly incurred by the Borrower under a Key Contract, in each case as a direct result of the termination of the DBFOM Agreement); minus

(d) Account Balances, being all amounts standing to the credit of any bank account of the Borrower or the value of any letter of credit issued in lieu of any bank account held or required by the Borrower, as at the Early Termination Date but excluding in each case the Handback Requirements Reserve Account; minus

(e) Insurance Proceeds, being all proceeds from insurance payable to the Borrower (or that would have been payable to the Borrower but for the Borrower's breach of any obligation under the DBFOM Agreement to procure or maintain said insurance) on or after the Early Termination Date; minus

(f) any Deductions to the extent not deducted in full from Milestone Payments or Monthly Disbursements.

*Extended Delay/Insurance Unavailability Termination Amount*

If termination of the DBFOM Agreement occurs due to a *Force Majeure* Event, a Qualifying Change in Law (other than City ordinances), or an event as described in clause (h) (relating to an earthquake or tidal wave that causes physical damage to the APM Project) or clause (i) (relating to terrorism) of the definition of Compensation Events (each an "Extended Delay Event") or Insurance Unavailability as described in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Insurance—*Inadequacy and Unavailability of Required Coverages*," the Borrower will be entitled to compensation as described below:

(a) an amount equal to its Equity Investments less Distributions paid to the Equity Members, which shall never be a negative number; plus

(b) Lenders' Liabilities; plus

(c) Developer Employee and Contractor Breakage Costs; minus

(d) Account Balances; minus

- (e) Insurance Proceeds; minus
- (f) any Deductions to the extent not deducted in full from Milestone Payments or Monthly Disbursements.

*Developer Default Termination Amount*

If the Department terminates the DBFOM Agreement due to a Developer Default, the Borrower will be entitled to compensation in an amount calculated as follows (the “Developer Default Termination Amount”):

- (a) if termination occurs before the Passenger Service Availability Date, the lesser of:
  - (i) the D&C Work Value (comprising the D&C Contract Amount minus the Cost to Complete and minus the amount of Milestone Payments paid to the Borrower prior to the Early Termination Date) less any D&C Period Deductions to the extent not deducted in full from Milestone Payments; and
  - (ii) the amount equal to:
    - (A) Lenders’ Liabilities; minus
    - (B) Account Balances; minus
    - (C) Insurance Proceeds (excluding proceeds of personal injury, property damage or other Third-Party liability insurance payable to or for the account of a Third Party); minus
    - (D) any D&C Period Deductions to the extent not deducted in full from Milestone Payments; and
- (b) if termination occurs on or after the Passenger Service Availability Date:
  - (i) eighty percent (80%) of Lenders’ Liabilities; minus
  - (ii) Maintenance Rectification Costs (including costs that the Department is reasonably likely to incur as a direct result of carrying out any tender process for the O&M Work and costs reasonably projected to be incurred by the Department in relation to remediation or renewal of any defective D&C Work or O&M Work and rectification or cure of any breach of the DBFOM Agreement by the Borrower); minus
  - (iii) Account Balances; minus
  - (iv) Deferred Equity Amounts; minus
  - (v) Insurance Proceeds; minus;
  - (vi) any Deductions to the extent not deducted in full from Milestone Payments or Monthly Disbursements; plus
  - (vii) the balance standing to the credit of the Handback Requirements Reserve Account on the Early Termination Date.

Provided in each case that if the calculation described above results in a negative number, the negative value represents damages recoverable by the Department.

## SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS

### Collateral Generally

The Series 2018 Bond Obligations will constitute direct, secured and unconditional obligations of the Borrower, which will rank *pari passu* and ratably without any preference or priority among themselves or any other Senior Secured Obligations, and will rank in priority to Permitted Subordinated Indebtedness and all unsecured obligations of the Borrower, and will be payable from the Trust Estate under the Indenture, and secured by all personal and real property interests of the Borrower (to the extent permitted and except as otherwise expressly provided in the Security Documents).

### Indenture

In order to secure the payment of the Series 2018 Bonds and to secure the performance and observance of all the covenants and conditions set forth in the Series 2018 Bonds and the Indenture, the Issuer will pledge and assign to the Trustee, subject to the Security Documents, for the benefit of the Owners of the Series 2018 Bonds, all of its interest in the Series 2018 Loan Agreement (other than the Reserved Rights), certain funds and accounts held under the Indenture, any security interest in the Collateral and its interest, subject to the Security Documents, in certain funds and accounts established under the Collateral Agency and Accounts Agreement. For more information on the Indenture governing the Series 2018 Bonds, see APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”

*Insurance Provisions.* For a summary of certain provisions in the Indenture relating to the Insured Bonds, see APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Insurance Provisions.”

### Collateral Agency and Accounts Agreement

The Collateral Agency and Accounts Agreement provides for the creation of and deposits to the Project Accounts, including transfers of funds to the Trustee for deposit to the Series 2018 Debt Service Fund created under the Indenture. See “ACCOUNTS AND FLOW OF FUNDS.” The Flow of Funds is set forth in the Collateral Agency and Accounts Agreement and is summarized in “ACCOUNTS AND FLOW OF FUNDS—Flow of Funds Post-Passenger Service Availability.”

Pursuant to the terms of the Collateral Agency and Accounts Agreement, U.S. Bank National Association is appointed as Collateral Agent for the benefit of the Secured Parties with respect to the Security Interests in the Collateral and the rights and remedies granted pursuant to the Security Documents. Pursuant to the Collateral Agency and Accounts Agreement, certain Project Accounts will be established and created with the Depositary Agent in the name of the Borrower, but subject to and under the control of the Collateral Agent. Except as expressly provided in the Collateral Agency and Accounts Agreement, the Borrower, in its capacity as the Borrower, will not have any right to withdraw funds from any Project Accounts.

All (i) net proceeds from the issuance of the Series 2018 Bonds; (ii) net proceeds of the Design-Build Loans; (iii) proceeds of all Equity Contributions; (iv) Project Revenues, including Milestone Payments; and (v) other amounts received by the Borrower in its capacity as the Borrower, from any source whatsoever, will be deposited into certain Project Accounts, and the Borrower authorizes the Depositary Agent to credit funds to or deposit funds into, and to withdraw and transfer funds from, each Project Account in accordance with the terms of the Collateral Agency and Accounts Agreement. See “ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts,” “ACCOUNTS AND FLOW OF FUNDS—Flow of Funds Post-Passenger Service Availability,” and for a more detailed description of the Project Accounts and the Flow of Funds, see APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT.”

The Collateral will be held by the Collateral Agent subject to the Intercreditor Agreement and administered by the Collateral Agent in the manner contemplated by the Security Documents. See “SECURITY FOR THE

SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement” and “ACCOUNTS AND FLOW OF FUNDS—Priority of Transfers from Project Accounts; Event of Default.”

### **Senior Debt Service Reserve Account**

The Borrower is required to fund the Senior Debt Service Reserve Account not later than the Passenger Service Availability Date from sources available to the Borrower, which may include proceeds of the Series 2018 Bonds, proceeds of the Design-Build Loans, Milestone Payment 6, Equity Contributions and other amounts.

The Senior Debt Service Reserve Account is required to be funded not later than the Passenger Service Availability Date in an amount (which, together with funds available to be drawn against an Applicable Reserve Letter of Credit) equal to \$32,738,235.61, which amount represents the Required Senior Debt Service Reserve as of the Passenger Service Availability Date. The Required Senior Debt Service Reserve equals the sum of the principal and interest on the outstanding Series 2018 Bonds and any other Permitted Senior Secured Indebtedness (other than the Design-Build Loans, the Hedging Obligations and Hedging Termination Obligations), the terms of which Permitted Senior Secured Indebtedness require a debt service reserve, during the six months commencing from the relevant Monthly Transfer Date or any other applicable date of determination. The Senior Debt Service Reserve Account will be established with the Depositary Agent and held by the Collateral Agent for the benefit of the Owners of the Series 2018 Bonds, the Bank Lenders and the providers of other Permitted Senior Secured Indebtedness (to the extent that such Permitted Senior Secured Indebtedness requires a debt service reserve) and the Security Interest thereon will be maintained for the exclusive benefit of such Senior Secured Parties. Prior to an Enforcement Action, amounts on deposit in the Senior Debt Service Reserve Account shall be available only to pay principal and interest on the Series 2018 Bonds and other Permitted Senior Secured Indebtedness (excluding the Design-Build Loans, the Hedging Obligations, the Hedging Termination Obligations and other Permitted Senior Secured Indebtedness that does not include a required senior debt service reserve), provided that in the event of an Enforcement Action against the Collateral by the Bank Lenders (in accordance with the Intercreditor Agreement), the Design-Build Loan Facility Obligations will share ratably with all Senior Secured Obligations then outstanding in the amounts in the Senior Debt Service Reserve Account.

See “ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—*Senior Debt Service Reserve Account*” and APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Description of Project Accounts—*Senior Debt Service Reserve Account*.”

### **Senior Secured Obligations**

At the time of issuance of the Series 2018 Bonds, the obligations under the Design-Build Loan Facility and the Hedging Agreements will be the only other Secured Obligations of the Borrower. The lien and payment of the Series 2018 Bonds and any Additional Senior Bonds is senior to the lien and payment of any Permitted Subordinated Indebtedness.

The Borrower may incur Permitted Indebtedness, which includes Additional Senior Secured Obligations and Permitted Subordinated Indebtedness, to finance the costs of the APM Project and certain other permitted uses. See “FINANCING FOR THE PROJECT—Senior Debt—*Additional Senior Secured Obligations*.”

The payment of the Secured Obligations, including the Series 2018 Bonds, will be secured by:

(a) the pledge and collateral assignment of and a grant by the Borrower to the Collateral Agent of a Security Interest on all of the Borrower's rights, title and interest in and to all of its personal property and fixtures, whether now owned or in the future acquired, including all Project Revenues, the Developer's Interest (as defined in the DBFOM Agreement), the Design-Build Guarantees, the Material Project Contracts, the Account Collateral (which includes “securities accounts,” all “deposit accounts” and all “proceeds,” each as defined under the UCC), the Securities Accounts, all accounts and general intangibles, all Termination Compensation, Insurance Proceeds, Condemnation Proceeds, instruments, equipment, inventory, agreements, contracts, tangible and intangible property

and fixtures, Governmental Approvals, certain commercial tort claims, proceeds of insurance policies and other associated proceeds and profits, as further detailed, and except as specifically excluded, in the Security Agreement;

(b) all Project Accounts (which, for certainty, does not include the Distribution Account) held by the Collateral Agent pursuant to and subject to the Collateral Agency and Accounts Agreement, and all funds or other property deposited therein, and all proceeds of the foregoing, excluding certain accounts which are held for the benefit of specified Senior Secured Parties as described in more detail in “Description of Project Accounts”; and

(c) the pledge by Borrower HoldCo to the Collateral Agent of (i) its limited liability company interests in the Borrower, and all options, warrants and rights to purchase limited liability company interests in the Borrower, and all dividends, distributions, cash, securities, instruments and other property from time to time paid, payable or otherwise distributed in respect of or in exchange for all or any part of its limited liability company interests in the Borrower and all proceeds thereof (the “Pledged Membership Interests”); (ii) any Indebtedness owed to Borrower HoldCo by the Borrower, from time to time, including any instruments or payment intangibles evidencing or relating to such Indebtedness; (iii) all proceeds, products and accessions of and to any and all of the foregoing, including, without limitation, proceeds, including whatever is received upon any sale, exchange, collection or other disposition of any of the Pledged Membership Interests, and any property into which any of the Pledged Membership Interests are converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the Pledged Membership Interests; and (iv) all books and records relating to the foregoing (collectively, the “Pledged Collateral”), provided, however, that the Pledged Collateral does not include any cash or other property distributable or payable, or distributed or paid, to Borrower HoldCo pursuant to the Collateral Agency and Accounts Agreement, including, without limitation, any cash payable or paid out through the Distribution Account and any cash on deposit in and excess to the required balance of, or released from, any Reserve Account as the result of the substitution of an Acceptable Letter of Credit for such cash in accordance with the Collateral Agency and Accounts Agreement (clauses (a) and (b) above, and this clause (c), collectively, the “Collateral”).

#### *Security Agreement*

In order to secure the prompt payment and performance in full when due of all Secured Obligations (howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing or due or to become due in accordance with the terms thereof, whether at stated maturity, upon acceleration, on any mandatory prepayment date or otherwise), the Borrower and the Collateral Agent will enter into a security agreement (the “Security Agreement”) pursuant to which the Borrower will pledge, grant and collaterally assign to the Collateral Agent, for the benefit of the Secured Parties, a Security Interest in the Collateral, other than the Excluded Assets, as further detailed in the Security Agreement. The Security Agreement requires that the Borrower take all actions necessary to create, establish and perfect the liens on the Collateral. Further, the Borrower may not amend or terminate any lien granted to the Collateral Agent without the prior written consent of the Collateral Agent.

Notwithstanding anything to the contrary in the Security Agreement, (i) the Borrower will remain liable for all obligations under and in respect of the Collateral and nothing contained in the Security Agreement is intended to or will be a delegation of duties to the Collateral Agent or the Secured Parties, (ii) it is understood and agreed that the rights and interests of the Collateral Agent in and to the DBFOM Agreement are subject to the rights and interests reserved thereunder to the Department, (iii) the Bonds Segregated Collateral will secure only the Series 2018 Loan Agreement and the related interest of the Trustee and the Owners, (iv) the Bank Segregated Collateral will secure only the Design-Build Loan Facility Credit Agreement and the related interest of the Administrative Agent and the Lenders, and (v) the Senior Secured Segregated Collateral will secure only the Senior Secured Obligations, in each case in accordance with the Intercreditor Agreement and the Collateral Agency and Accounts Agreement.

If any Event of Default shall have occurred and be continuing to the knowledge of the Collateral Agent, to the extent permitted by applicable Law, and acting in compliance with the Collateral Agency and Accounts Agreement, the Intercreditor Agreement and the UCC, the Collateral Agent, upon receipt of directions by the Intercreditor Agent, acting in accordance with the terms of the Intercreditor Agreement, may exercise remedies as further described in the Security Agreement, including: (a) the right to require the Borrower to assemble the



Collateral owned by it at such place or places, reasonably convenient to both the Collateral Agent and the Borrower, designated in the Collateral Agent's request; (b) the right to make any compromise or settlement with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of all or any part of the Collateral; (c) the right to, in its name or in the name of the Borrower or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for all or any part of the Collateral, but shall be under no obligation to do so; (d) the right, without demand of performance or other notice, upon fifteen (15) days' prior written notice to the Borrower of the time and place, with respect to the Collateral or any part thereof in the possession, custody or control of the Collateral Agent or the Secured Parties or any of their respective agents, sell, lease, assign or otherwise dispose of all or any part of such Collateral, at such place or places as the Collateral Agent deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, and the Secured Parties or anyone else may be the purchaser, lessee, assignee or recipient of any or all of the Collateral so disposed of at any public sale or, to the extent permitted by law, at any private sale, and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of the Borrower, and the Borrower hereby expressly waives and releases any such demand, notice and right or equity; (e) the rights to exercise all of the rights, remedies, powers and privileges with respect to the Collateral of a secured party under the UCC and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of the Security Agreement or the Collateral may be asserted; and (f) to the full extent provided by law, the right to have a court having jurisdiction appoint a receiver, which receiver shall take charge and possession of and protect, preserve, replace and repair the Collateral or any part thereof, and manage and operate the same, and receive and collect all rents, income, receipts, royalties, revenues, issues and profits therefrom. In the absence of receipt of direction from the Intercreditor Agent, the Collateral Agent may (but shall not be obligated to) exercise the above remedies, subject to the requirements of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement, provided that in respect of the Bank Segregated Collateral and the Bonds Segregated Collateral, direction from the Intercreditor Agent shall not be required for the Collateral Agent to exercise any of the above remedies with respect to such Bank Segregated Collateral or Bonds Segregated Collateral, and the Collateral Agent shall instead act upon receipt of directions from the Administrative Agent or the Trustee in accordance with the terms of the Financing Documents, as applicable.

#### *Pledge Agreement*

Borrower HoldCo and the Collateral Agent will enter into a pledge agreement (the "Pledge Agreement"), pursuant to which Borrower HoldCo will, as collateral security for the prompt payment and performance in full when due of all Secured Obligations (howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing or due or to become due in accordance with the terms thereof, whether at stated maturity, upon acceleration, on any mandatory prepayment date or otherwise), collaterally assign, pledge and grant to the Collateral Agent, for the benefit of the Secured Parties, a Security Interest in the Pledged Collateral as set forth in the Pledge Agreement. The Pledge Agreement requires Borrower HoldCo to take all actions necessary to create, establish and perfect the liens on the Pledged Collateral.

Pursuant to the Pledge Agreement, upon obtaining any additional Pledged Collateral, Borrower HoldCo is also obligated to hold such Pledged Collateral in trust for the Collateral Agent, segregate such Pledged Collateral from other property or funds of the Borrower HoldCo, and promptly (and in any event, within ten (10) Business Days of obtaining such additional Pledged Collateral) deliver to the Collateral Agent the certificates or instruments evidencing such additional Pledged Collateral.

Unless or until an Event of Default occurs and is continuing under the Series 2018 Loan Agreement or the Design-Build Loan Facility Credit Agreement, Borrower HoldCo will be entitled to (i) exercise any and all voting and other consensual rights pertaining to the Pledged Collateral, and to give consents, waivers or ratifications in respect thereof, and (ii) receive all dividends, distributions, and other proceeds payable in respect of the Collateral and to receive directly, and to retain as part of the Pledged Collateral, all other or additional stock, notes, certificates, limited liability company interests, or other securities or property paid or distributed in respect of the Pledged Collateral.

Notwithstanding anything to the contrary in the Pledge Agreement, (a) neither Borrower HoldCo nor the direct or indirect owners of any equity interests in, nor Affiliates of, the Borrower nor any past, present or future officer, director, employees, advisors, shareholders, agents, representatives thereof (collectively, the "Non-Recourse Parties") will have any obligations under the Financing Documents or be liable for any amounts payable under the Pledge Agreement or any other Financing Document, other than obligations or liabilities with respect to any Non-Recourse Party arising under any Financing Document to which such Non-Recourse Party is a party; (b) no Secured Party is permitted to seek a money judgment or deficiency or personal judgment against any Non-Recourse Party for payment of the Indebtedness secured by the Pledge Agreement; and (c) no property or assets of any Non-Recourse Party, other than the Pledged Collateral is permitted to be sold, levied upon or otherwise used to satisfy any judgment rendered in connection with any action brought with respect to the Pledge Agreement. The foregoing acknowledgments, agreements and waivers shall survive the termination of the Pledge Agreement, enforceable by any Non-Recourse Party as third-party beneficiaries thereof, and are a material inducement for Borrower HoldCo's execution of the Pledge Agreement, provided that none of the foregoing is deemed to waive any cause of action the Collateral Agent or any Secured Party may have against any Person for fraud or willful misconduct by such Person.

Upon the occurrence and during the continuance of an Event of Default under the Series 2018 Loan Agreement or the Design-Build Loan Facility Credit Agreement, the Collateral Agent (acting at the direction of the Intercreditor Agent, acting in accordance with the terms of the Intercreditor Agreement) may exercise, in addition to all other rights and remedies granted to it, all rights and remedies with respect to the Pledged Collateral of a secured party under the UCC and such additional rights, remedies, powers and privileges to which a secured party is entitled under the Laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of the Pledge Agreement or the Pledged Collateral may be asserted, including the right, to the maximum extent permitted by Law, to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral as if the Collateral Agent were the sole and absolute owner of the Pledged Collateral provided, however, that in no event will Borrower HoldCo be required, in the context of any foreclosure action or exercise of remedies contemplated under the Pledge Agreement, to register its Pledged Collateral with any state or federal securities regulatory agencies.

The Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement, or notice of any kind, upon fifteen (15) days' prior written notice to Borrower HoldCo of the time and place, to sell, lease, assign, give option or options to purchase, or otherwise dispose of all or any part of such Pledged Collateral, at such place or places as the Collateral Agent deems best, for cash, for credit or for future delivery (without thereby assuming any credit risk) at public or private sale, and the Collateral Agent or any other Person may be the purchaser, lessee, assignee or recipient of any or all of the Pledged Collateral so disposed of at any public sale or, to the extent permitted by Law, at any private sale, and thereafter hold the same absolutely free from any claim or right of whatsoever kind.

## **Series 2018 Loan Agreement**

### *Generally*

The Borrower and the Issuer will enter into the Series 2018 Loan Agreement, pursuant to which the proceeds of the Series 2018 Bonds will be loaned to the Borrower on the Financial Close Date, subject to the terms and conditions of the Series 2018 Loan Agreement and the Indenture. The net proceeds received from the sale of the Series 2018 Bonds will be deposited into the Bond Proceeds Account in accordance with the Collateral Agency and Accounts Agreement. The Borrower is required to use the proceeds of the loan under the Series 2018 Loan Agreement to pay a portion of the Project Costs as provided in the Indenture and the Collateral Agency and Accounts Agreement, and is required to cause the Collateral Agent to maintain such proceeds prior to such uses in accordance with the Collateral Agency and Accounts Agreement and the Indenture.

### *Compliance with the Indenture*

In accordance with any applicable provisions of the Indenture, at the request of the Borrower, the Issuer is obligated to take any action directed by the Borrower to the extent required under, or permitted by, the provisions of the Indenture or the Series 2018 Loan Agreement. The Borrower, in turn, is obligated to take all action required to be taken by the Borrower in the Indenture as if the Borrower were a party to the Indenture.

### *Amounts Payable*

The Borrower is required to prepay its obligations under the Series 2018 Loan Agreement at the same times and in the same amounts as the Series 2018 Bonds become due for redemption or purchase in accordance with the terms of the Indenture and the Series 2018 Bonds. The Issuer, at the request of the Borrower, will be obligated to take all steps (other than the payment of funds necessary to effect such redemption or purchase) necessary under the applicable redemption or purchase provisions of the Indenture to effect redemption or purchase of all or part of the outstanding Series 2018 Bonds, as may be permitted by the Indenture and specified by the Borrower or required by the Indenture, on the date established for such redemption or purchase.

### *Additional Payments*

In addition to the amounts payable as described in “—*Amounts Payable*” above, the Borrower is also required to pay to the Issuer or to the Trustee, as applicable, certain fees and other amounts, as further described in APPENDIX D-2—“SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2018 LOAN AGREEMENT—Additional Payments.”

### *Events of Default under the Series 2018 Loan Agreement*

The following events will be “Events of Default” under the Series 2018 Loan Agreement (subject to certain cure periods, materiality and other qualifications, as applicable). See APPENDIX D-2—“SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2018 LOAN AGREEMENT—*Events of Default under the Series 2018 Loan Agreement*.”

(a) The Borrower fails to pay (i) principal on the Series 2018 Bonds within three Business Days after the same has become due and payable, and (ii) interest on the Series 2018 Bonds or any other sum (other than principal on the Series 2018 Bonds) owed under the Series 2018 Loan Agreement within three Business Days after the same has become due and payable; provided that where such failure to pay is a result of a technical or an administrative error caused by a party other than the Borrower in connection with the administration of the accounts from which such payment is made or is due to be made (and, for clarity, without limiting the Borrower’s other cure rights set forth in the Series 2018 Loan Agreement), the Borrower shall have 7 additional Business Days after notice is received by the Borrower from the Trustee requiring such payment to be made in which to cure such failure to pay.

(b) Any representation or warranty made by the Borrower in any Financing Document proves to have been incorrect in any material respect when made, and a Material Adverse Effect would reasonably be expected to result therefrom, unless the effect of such misrepresentation is capable of remedy and is remedied, as reasonably determined by the Trustee, within 30 days after the Borrower’s receipt of written notice from the Trustee of such misrepresentation.

(c) The Borrower fails to comply with any affirmative or negative covenant in the Series 2018 Loan Agreement (other than as expressly provided under the Series 2018 Loan Agreement), unless such failure is capable of being remedied and is remedied within 45 days after the earlier of (i) written notice specifying such failure shall have been given to the Trustee by the Borrower and (ii) written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by the Trustee, or such longer period as is reasonably necessary under the circumstances to remedy such failure so long as corrective action is instituted by the Borrower within the applicable period and is diligently pursued until such failure is corrected (a) within 180 days after the date of such failure, or (b) otherwise, in such longer time frame agreed to with the prior written approval of the Majority Owners.

(d) The Borrower fails to maintain all required insurance, unless such failure is remedied within 10 Business Days after the earlier of (i) written notice specifying such failure shall have been given to the Trustee by the Borrower or (ii) written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by the Trustee.

(e) The Borrower fails to comply with the negative covenant relating to abandonment of the APM Project (as set forth in clause (ff) of APPENDIX D-2—“SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2018 LOAN AGREEMENT—Covenants of the Borrower”), unless such failure is remedied within 30 days after the earlier of (i) written notice specifying such failure is given to the Trustee by the Borrower or (ii) written notice specifying such failure and requesting that it be remedied is given to the Borrower by the Trustee.

(f) A Bankruptcy Event occurs with respect to the Borrower.

(g) Any Financing Document (except to the extent otherwise permitted) ceases to be in effect against the Borrower unless such document is replaced by a contract on substantially similar terms with a counterparty reasonably acceptable to the Trustee (at the instructions of the Majority Owners, if so requested by the Trustee) within five Business Days following the earlier of (i) the Borrower’s actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Collateral Agent and the Trustee, or such longer period, reasonably necessary to effect such replacement except in the case of any rescission or repudiation of a Financing Document by the Borrower in writing, in which case no cure period will apply.

(h) Either (i) a Developer Default occurs and is continuing beyond any applicable cure period or has not been waived by the Department, and the Department is entitled to and serves a notice of termination to the Borrower pursuant to the terms of the DBFOM Agreement as a result thereof, or (ii) the Borrower fails to perform or observe any material term or obligation in any Material Project Contract (other than the DBFOM Agreement) and such failure constitutes an event of default under such Material Project Contract that has not been cured or waived within the grace period provided in such Material Project Contract and would reasonably be expected to result in a Material Adverse Effect; provided that in each case, the Borrower shall be entitled to an extension of such time (such extension not to exceed 90 days) if corrective action is instituted by the Borrower within the applicable period and diligently pursued until such failure is corrected and the Borrower has been granted a concurrent extension by the applicable counterparty under the respective Material Project Contract.

(i) A non-appealable final judgment for the payment of money in excess of ten million dollars (\$10,000,000), such amount to be adjusted annually in accordance with the Escalation Factor (and not covered by insurance) individually or such lesser aggregate amount which would reasonably be likely to have a Material Adverse Effect is entered against the Borrower and such judgment remains unsatisfied without any procurement of a stay of execution within 30 days.

(j) Any Security Document ceases (other than as expressly permitted under the Financing Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described therein other than as a result of actions or failure to act by the applicable Agent or any other Senior Secured Party, and with the priority purported to be created thereby.

(k) The DBFOM Agreement ceases to be valid and binding and in full force and effect (other than as a result of its expiration or any termination of the DBFOM Agreement in accordance with its terms) and such invalidity has not been remedied within 10 Business Days following the earlier of (i) the Borrower’s actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Collateral Agent, the Department or the Trustee.

(l) A termination of the DBFOM Agreement pursuant to Section 17.3 thereof shall have occurred.

(m) An “Equity Transfer” or “Change of Control” that is prohibited under Section 20.1 of the DBFOM Agreement has occurred and, prior to the repayment of the Design-Build Loan Facility and solely in respect of an Equity Transfer or Change of Control requiring Department consent under Section 20.1 of the DBFOM Agreement, has not been approved by the Majority Bank Lenders.

(n) (i) The provider of any Equity Letter of Credit fails to honor its obligations to fund any draw request appropriately submitted thereunder and either (x) a replacement Acceptable Letter of Credit is not issued within 20 Business Days following such failure on substantially the same terms or (y) the applicable Equity Member has not cash collateralized its respective obligations in substitution of such Equity Letter of Credit within 20

Business Days following such failure or (ii) the Equity Members fail to make in full any Equity Contributions when required in accordance with the terms of the Equity Contribution Agreement (provided that if such Equity Member's obligations are secured by an Equity Letter of Credit with an undrawn amount equal to or greater than the amount of such Equity Contribution (or such Equity Letter of Credit will have been previously drawn and the proceeds thereof will have been deposited in an account as security), before any such failure will constitute an Event of Default, the Collateral Agent will be required to have made a drawing under the applicable Equity Letter of Credit supplied by such Equity Member pursuant to the Equity Contribution Agreement (or shall have withdrawn the applicable amount from the collateral account), and the proceeds of such drawing (if any) will have been insufficient to make the amount of such Equity Contribution in full), and such failure shall continue unremedied or unwaived for a period of 20 Business Days; provided that with respect to each of clauses (i) and (ii) above, no Event of Default shall occur if before the last day in which such Default could have been remedied prior to an Event of Default occurring, any one or more Equity Members have made a cash contribution or replaced the Equity Letter of Credit with an Acceptable Letter of Credit sufficient to fund any deficiencies resulting after the applicable Equity Letters of Credit have been drawn (or after the withdrawal of any applicable cash collateral (it being understood that, in each case, any draw on a letter of credit provided by an Equity Member pursuant to the Equity Contribution Agreement within the cure periods described above shall satisfy the obligations of such Equity Member with respect to Equity Contributions to be made by such Equity Member and cure any default in respect thereof); provided, however, that if any of the events set forth above is caused by, or results from the action or inaction of, one (and not all) of the Equity Members, such event shall not constitute an Event of Default so long as such event is capable of being remedied by the other Equity Members and is remedied within 20 Business Days after the Trustee gives written notice thereof to such Equity Member, or, with the prior written approval of the Majority Owners, such longer period as is reasonably necessary under the circumstances to remedy such event.

(o) The Design-Build Contract becomes void, voidable, unenforceable or illegal or is terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless the Design-Build Contract is replaced as provided under the Series 2018 Loan Agreement within 30 days following delivery of written notice thereof to the Borrower by the Trustee or Collateral Agent or such longer period reasonably necessary to effect such replacement so long as the Borrower is diligently pursuing such replacement.

(p) The O&M Contract becomes void, voidable, unenforceable or illegal or is terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless the O&M Contract is replaced as provided under the Series 2018 Loan Agreement within 30 days following delivery of written notice thereof to the Borrower by the Trustee or such longer period reasonably necessary to effect such replacement so long as the Borrower is diligently pursuing such replacement.

(q) A Bankruptcy Event occurs in respect of any member of the Design-Build Contractor, Design-Build Guarantor, member of the O&M Contractor or O&M Guarantor unless such party or guarantee is replaced by a replacement party or guarantee on substantially similar terms or other form of security from another counterparty of similar or greater creditworthiness as the counterparty being so replaced or with the prior written consent of the Trustee, within 30 days following delivery of written notice thereof to the Borrower by the Trustee or Collateral Agent or such longer period reasonably necessary to effect such replacement so long as the Borrower is diligently pursuing such replacement, provided that the occurrence of any Event of Default pursuant to this clause will be subject to the Acceptable Remaining Party Principle.

(r) The Borrower fails to achieve Passenger Service Availability by the Lenders' Long Stop Date.

(s) Any Funding Shortfall occurs and continues unwaived and unremedied for a period in excess of 60 days of written notice having been received by the Borrower from the Trustee or the Collateral Agent.

(t) An ERISA Event (as such term is defined in the Series 2018 Loan Agreement) occurs, and such ERISA Event, together with all other ERISA Events, if any, results in or would reasonably be expected to result in a Material Adverse Effect.

(u) All or a material part of the APM Project is condemned or appropriated without appropriate compensation therefor, unless such condemnation or appropriation constitutes a Relief Event under the DBFOM Agreement or the Borrower has demonstrated to the reasonable satisfaction of the Trustee (at the instructions of the Majority Owners, if so requested by the Trustee), within 10 Business Days of such condemnation or appropriation, that such condemnation or appropriation will not have a Material Adverse Effect.

(v) Any failure to procure a DB Contingent Letter of Credit or retain the required amounts from the Design-Build Contractor, all in accordance with the Design-Build Contract, and such failure has not been remedied or waived within 20 Business Days.

(w) Any Financing Document is terminated by any Senior Secured Party, in accordance with its terms, by reason of any default or breach on the part of the Borrower or any Material Project Party, except as expressly permitted under any Financing Document.

(x) The occurrence of an “event of default” (howsoever described) with respect to the non-payment of any Indebtedness under any instrument or agreement governing Additional Senior Secured Obligations involving in the aggregate in excess of \$10,000,000, and the maturity of such Indebtedness is accelerated as a result thereof.

#### *Remedies upon Event of Default under the Series 2018 Loan Agreement*

Subject to the terms of the Intercreditor Agreement, whenever any Event of Default under the Series 2018 Loan Agreement has occurred and is continuing, the Trustee, or the Issuer with the written consent of the Trustee, may, in conjunction with its available remedies under the Indenture, take one or any combination of the following remedial steps, by notice to the Borrower and the Collateral Agent:

(a) Upon direction by the Majority Owners or if the date for payment of the Series 2018 Bonds is accelerated pursuant to the Indenture, declare that all or any part of any amount outstanding under the Series 2018 Loan Agreement is (i) immediately due and payable, and/or (ii) payable on demand by the Trustee, and any such notice shall take effect in accordance with its terms but only if all amounts payable with respect to the Outstanding Bonds are being concurrently accelerated pursuant to the Indenture;

(b) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower during regular business hours of the Borrower and following prior reasonable notice; or

(c) The Trustee may (but is not obligated to), and upon direction of the Majority Owners shall, take on behalf of the Owners of the Series 2018 Bonds, subject to the Intercreditor Agreement and applicable law, whatever other action at law or in equity as is necessary to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under the Series 2018 Loan Agreement or the rights of the Owners of the Series 2018 Bonds in each case subject to the terms of the Intercreditor Agreement.

In addition, whenever any Event of Default occurs and is continuing, if so instructed by the Intercreditor Agent pursuant to the terms of the Intercreditor Agreement and the Collateral Agency and Accounts Agreement, the Trustee or Collateral Agent may take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Security Documents.

#### *Amendments, Changes and Modifications*

Following the issuance of the Series 2018 Bonds and prior to their repayment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Series 2018 Loan Agreement, the Series 2018 Loan Agreement may not be effectively amended, changed, modified, altered or terminated, except in accordance with the provisions of the Indenture.

For more detailed information relating to the terms of the Series 2018 Loan Agreement in general, including provisions relating to covenants, defaults and terminations, see APPENDIX D-2—“SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2018 LOAN AGREEMENT.”

### **Direct Agreements and Consent and Agreements**

Each of the Department, the Design-Build Contractor, each Design-Build Guarantor, the O&M Contractor and each O&M Guarantor will enter into an agreement among the respective Project participant, the Borrower and the Collateral Agent consenting to the Borrower's pledge and assignment of the Borrower's rights under the Contract Documents with such participant referenced below. In the applicable agreement, each of the Department, the Design-Build Contractor, each Design-Build Guarantor, the O&M Contractor and each O&M Guarantor agree that the Collateral Agent may enforce the Borrower's rights under such Project contract(s) with the respective participant, in each case in accordance with the terms and conditions of the applicable agreement.

The following direct agreements and consents among the Borrower, the Collateral Agent and the applicable participants will be entered into as of the Financial Close Date:

(a) The Department will enter into a direct agreement with the Collateral Agent (on behalf of the Secured Parties) and the Borrower (the “Lenders’ Direct Agreement”) that will set forth certain assurances from the Department of the Secured Parties' rights with respect to the DBFOM Agreement in the event of a default thereunder by the Borrower, including step in and cure rights, forbearance obligations of the Department with respect to its exercise of remedies under the DBFOM Agreement, rights of substitution and other rights of the Secured Parties. Nothing in the direct agreement amends or modifies any of the Borrower's obligations to the Department under the DBFOM Agreement.

(b) The Design-Build Contractor will enter into a direct agreement with the Collateral Agent (on behalf of the Secured Parties) and the Borrower (the “DB Lenders’ Direct Agreement”) providing for the Design-Build Contractor's (a) consent to the Borrower's pledge, assignment and grant of a lien on all of the Borrower's right, title and interest in the Design-Build Contract and the Interface Agreement, and (b) assurance of certain of the Secured Parties' rights with respect to the Design-Build Contract and the Interface Agreement.

(c) Each of the Design-Build Guarantors will enter into a consent and agreement with the Collateral Agent (on behalf of the Secured Parties) and the Borrower providing for each Design-Build Guarantor's (a) consent to the Borrower's pledge, assignment and grant of a lien on all of the Borrower's right, title and interest in the respective Design-Build Contract guaranty, and (b) assurance of certain of the Secured Parties' rights with respect to the respective Design-Build Contract guaranty.

(d) The O&M Contractor will enter into a direct agreement with the Collateral Agent (on behalf of the Secured Parties) and the Borrower (the “O&M Lenders’ Direct Agreement”) providing for the O&M Contractor's (a) consent to the Borrower's pledge, assignment and grant of a lien on all of the Borrower's right, title and interest in the O&M Contract and the Interface Agreement, and (b) assurance of certain of the Secured Parties' rights with respect to the O&M Contract and the Interface Agreement.

(e) Each of the O&M Guarantors will enter into a consent and agreement with the Collateral Agent (on behalf of the Secured Parties), the O&M Contractor and the Borrower providing for each O&M Guarantors' (a) consent to the Borrower's pledge, assignment and grant of a lien on all of the Borrower rights, title and interest in the O&M Contract guaranty, and (b) assurance of certain of the Secured Parties' rights with respect to the O&M Contract guaranty.

The assurances referred to in clause (b) of each of (ii), (iii), (iv) and (v) above (but not (i) regarding the Department) include each consenting counterparty's (1) acknowledgement of the right of Collateral Agent to make all demands, give all notices, take all actions, and enforce directly and exercise all rights and remedies of the Borrower under the applicable assigned agreement; (2) agreement that in the event it is notified that the Collateral Agent has exercised its rights and remedies with respect to the Borrower's rights and interest under the applicable assigned agreement, that it will recognize the Collateral Agent or its assignee or designee as the substituted party

and will continue to perform its obligations in favor of the Collateral Agent or its assignee or designee; and (3) agreement that in the event the applicable assigned agreement is rejected or otherwise terminated in a bankruptcy or insolvency proceeding affecting the Borrower, the counterparty will, at the option of the Collateral Agent, enter into a new agreement with the Collateral Agent or its assignee or designee having substantially the same terms as the applicable assigned agreement.

The APM Operating System Supplier will enter into a direct agreement with the Collateral Agent (on behalf of the Secured Parties), the Design-Build Contractor and the Borrower (the “BT Lenders’ Direct Agreement”) providing for the APM Operating System Supplier’s assurance of certain of the Secured Parties’ rights with respect to the APM Operating System Subcontract. The purpose of the BT Lenders’ Direct Agreement is to: (i) provide both Borrower and the Collateral Agent rights to cure any Design-Build Contractor BT Defaults, (ii) ensure that the APM Operating System Supplier will not exercise its termination or certain suspension rights during any cure period afforded to the Borrower and Collateral Agent and (iii) provide for the APM Operating System Supplier to consent to the assignment of the subcontract to an entity nominated by the Borrower or the Collateral Agent, as the case may be.

Under the Collateral Agency and Accounts Agreement, the Borrower and the Collateral Agent equitably allocate between each other the time periods available to cure any such Design-Build Contractor BT Defaults, as described further in “ACCOUNTS AND FLOW OF FUNDS—Priority of Transfers from Project Accounts; Events of Default—*Allocation of Cure Periods Under the BT Lenders’ Direct Agreement.*”

## **Intercreditor Agreement**

### *Intercreditor Terms Among the Senior Creditors*

The Intercreditor Agreement will be entered into by and among the Intercreditor Agent, (on behalf of the Senior Creditors), the Trustee (on behalf of the Owners of the Series 2018 Bonds), the Bank Lenders, the Administrative Agent (on behalf of the Bank Lenders), the Collateral Agent (on behalf of the Senior Creditors) and the Hedge Providers and thereafter certain holders or owners of other Additional Senior Secured Obligations that may become a party to the Intercreditor Agreement from time to time.

The Intercreditor Agreement sets forth the parties’ rights and obligations with respect to (i) the exercise and enforcement of remedies against the Collateral, (ii) certain rights of the Senior Creditors to unilaterally enforce against Shared Collateral and Segregated Collateral as further described in “RISK FACTORS—Risks Relating to the Series 2018 Bonds—*Intercreditor Agreement and Rights of Senior Creditors—Unilateral Rights of the Bank Lenders,*” (iii) limitations on the Senior Creditors to make certain modifications to the Financing Documents, and (iv) the rights of the Senior Creditors upon a Borrower Bankruptcy Event.

### *Senior Creditor Permitted Actions*

Nothing in the Intercreditor Agreement limits or otherwise modifies any of the rights of any of the Senior Creditors when permitted under their applicable Financing Documents, following the occurrence of an Event of Default to take any of the following “Permitted Actions”:

- (i) declare Events of Default under such Senior Creditor's Financing Documents;
- (ii) cancel or terminate any available commitments under its Financing Documents;
- (iii) make any modifications to its Financing Documents subject to certain limitations described in “—Amendments to Financing Documents” below;
- (iv) exercise certain other remedial actions upon the occurrence of any non-monetary covenant breach under such Senior Creditor’s Financing Documents resulting in an Event of Default; or



(v) declare and issue a notification to the Borrower that all or any portion of the Obligations under its Financing Document are due and payable.

Upon an Agent's authorization by the Senior Creditors required under any Financing Document to take any such Permitted Actions, the Agent for such Financing Document must promptly deliver written notice of such Permitted Action to the Intercreditor Agent and the other Agents.

#### *Exercise and Enforcement of Remedies*

##### ICA Enforcement Action Generally.

Upon the occurrence of an Event of Default under any Financing Document, the applicable Agent is required to deliver written notice of the occurrence of such Event of Default to the Intercreditor Agent, and the Intercreditor Agent is required to provide a copy of such Default Notice to the other Agents in accordance with the Intercreditor Agreement.

Each Senior Creditor agrees under the Intercreditor Agreement that at any time, including upon the occurrence and continuation of an Event of Default, no Senior Creditor is permitted to take any ICA Enforcement Action or instruct any Agent to take any ICA Enforcement Action, against the Borrower or any Shared Collateral, except through an Act of Required Senior Creditors or pursuant to an Enforcement Exception.

##### Enforcement Exceptions.

The following “Enforcement Exceptions” may be taken by a Senior Creditor without an Intercreditor Vote or an act of the Required Senior Creditors:

- (i) unilateral ICA Enforcement Actions against a Senior Creditor's Segregated Collateral;
- (ii) unilateral ICA Enforcement Action (excluding initiating a involuntary bankruptcy proceeding against the Borrower, unless approved by the Required Senior Creditors) against the Shared Collateral upon the occurrence of certain Fundamental Events of Default described further below;
- (iii) exercise cure rights under the Lenders' Direct Agreement upon LAWA's issuance of a LAWA notice under the Lenders' Direct Agreement (collectively, (ii) or (iii) (“Fundamental Enforcement Rights”);
- (iv) upon any breach by the Borrower of a non-monetary covenant or term under a Senior Creditor's applicable Financing Documents, (A) bring suit against the Borrower seeking an order directing specific performance of a non-monetary covenant or term, (B) an order of injunction against the Borrower restraining it from any further breach of such covenant, or (C) seek a declaratory judgment or exercise any other right under the Financing Documents;
- (v) certain actions in connection with a Borrower Bankruptcy Event, described further in “RISK FACTORS—Risks Relating to the Series 2018 Bonds—*Limitations on Senior Creditors during a Bankruptcy Proceeding*” and below in “—*Enforcement in Bankruptcy Proceedings*”;
- (vi) certain administrative actions that are permitted for any Agent to take under any Financing Document to which they are a party; and
- (vii) any other separate rights expressly granted to an Agent or Senior Creditor under any Financing Document (to the extent such rights under the Financing Documents are not inconsistent, conflicting or contradictory with the terms of the Intercreditor Agreement).

### Fundamental Events of Default and Fundamental Enforcement Rights

Upon the occurrence of a Fundamental Event of Default, the Administrative Agent acting at the direction of the Required Bank Lenders or the Trustee acting at the direction of the Required Bondholders may, subject to (A) providing advance written notice to the Intercreditor Agent ("Fundamental Enforcement Notice") and (B) expiration of the Standstill Period, unilaterally instruct the Intercreditor Agent to instruct the Collateral Agent to exercise a Fundamental Enforcement Right.

Except with respect to any Borrower Bankruptcy Event, prior to the Collateral Agent exercising any Fundamental Enforcement Rights for which the Intercreditor Agent has delivered a notice to the other Agents, the applicable Senior Creditor and its Agent must allow for an initial 60-day standstill period to expire from the later of the date on which (x) the Intercreditor Agent has notified each of the Parties to the Intercreditor Agreement and (y) the Intercreditor Agent notifies the Bondholders by notice to the Electronic Municipal Market Access ("EMMA") (the "Standstill Period"). During the Standstill Period (A) the other Senior Creditors may choose to join the enforcing Senior Creditor in its Enforcement Action, (B) the Parties' will work amicably together in order to resolve any disputes and coordinate, as reasonably necessary, in order to avoid the occurrence of any Adverse Action, (C) the Intercreditor Agent will provide a second duplicate notice to EMMA once 50% of the Standstill Period has expired, (D) the Required Senior Creditors, pursuant to an Intercreditor Vote, may alter or stop any such exercise of any Fundamental Enforcement Rights, such vote to be final and binding on the Senior Creditors and their respective Agents; and (E) the Standstill Period will not apply where the enforcing Senior Creditor is taking any Enforcement Action or exercising any cure rights under any of the Direct Agreements or in connection with any Bankruptcy Event.

The Senior Creditors will be restricted from exercising any Fundamental Enforcement Rights in a manner, or with an effect, that is inconsistent with the terms of the Intercreditor Agreement, adverse to the liens of any other Senior Creditor or materially impairs any Collateral (excluding such Senior Creditor's Segregated Collateral) to the detriment of any other Senior Creditor (an "Adverse Action"). Fundamental Enforcement Rights are described further in "RISK FACTORS—Risks Relating to the Series 2018 Bonds—*Intercreditor Agreement and Rights of Senior Creditors—Unilateral Rights of the Bank Lenders.*"

Except as otherwise provided under the Indenture, any ICA Enforcement Action by any Senior Creditor (other than the Hedge Providers) must be taken by each Agent on behalf of such Class of Senior Creditors, and not individually.

#### *Actions by Intercreditor Vote*

Where, under the Intercreditor Agreement or any Financing Document, any direction or other decision or action of the Intercreditor Agent or the Collateral Agent is requested or required, including, in each case, in connection with any act of Required Senior Creditors, the giving of such direction, the making of such decision, or the taking of such action by the Intercreditor Agent, the Collateral Agent or the Required Senior Creditors, as applicable, will be decided by a vote of the Senior Creditors as described further below (an "Intercreditor Vote").

The Intercreditor Agent will solicit an Intercreditor Vote to determine the decision of the Required Senior Creditors with respect to any instruction or other decision that is the subject of such Intercreditor Vote.

Each Senior Creditor, excluding the following "Non-Voting Senior Secured Parties," will be entitled to vote in each Intercreditor Vote conducted under the Intercreditor Agreement:

- (i) the Borrower, any Equity Member or any of their respective Affiliates that from time to time holds any Senior Secured Obligation;
- (ii) any Senior Creditor that has agreed to vote in respect of the Senior Secured Obligations held by it at the direction or subject to the approval or disapproval of the Borrower, any Equity Member or any of their respective Affiliates;

- (iii) any Permitted Subordinated Secured Indebtedness;
- (iv) solely prior to any ICA Enforcement Action pursuant to subsections (a) and (c) of the definition thereof, the Hedge Providers; and
- (v) the holders of any Senior Secured Obligations if the principal of, and interest accrued on, such Secured Obligations have been fully paid, discharged or legally defeased pursuant to the terms of the applicable Financing Document.

The Intercreditor Agent, in determining the percentage of votes cast (and instructions of the Required Senior Creditors), will disregard the Secured Obligations held by Non-Voting Senior Secured Parties in both the numerator and denominator of the calculation in determining the outcome of such vote.

#### *Instructions Generally*

Excluding the Enforcement Exceptions and Permitted Actions (i) the Senior Creditors and the Agents will not be entitled to instruct the Intercreditor Agent or the Collateral Agent under or with respect to any Financing Document, (ii) no discretion will be exercised by the Intercreditor Agent or the Collateral Agent under or with respect to any Financing Document (other than to the extent expressly permitted under the applicable Financing Document or the Intercreditor Agreement), including, in each case, in connection with any proposed Modification to any Financing Document to which such Agent is party, and (iii) no decision by the Required Senior Creditors will be permitted, unless, in each case, an Intercreditor Vote is taken in accordance with the procedures described below and the Senior Creditors constituting the Required Senior Creditors authorize the instruction or the exercise of such discretion or the making of such decision, as the case may be.

Voting – Each Agent must, within the Decision Period, provide a written certificate (“Voting Certification”) to the Intercreditor Agent setting forth: (A) whether the Required Percentage of Senior Creditors, under the applicable Financing Document, voted for, or against, any subject decision or action; and (B) the total applicable Class Percentage represented, based on either, (1) prior to ICA Enforcement Action, the Total Pre-Enforcement Senior Secured Voting Value or (2) following ICA Enforcement Action, the Total Post-Enforcement Senior Secured Voting Value.

Determination – Upon receipt of each Voting Certification in connection with any Intercreditor Vote, the Intercreditor Agent will calculate the sum of all Class Percentages certified in each Class's Voting Certification to determine whether the threshold percentage for Required Senior Creditor has been met by any Senior Creditors. Once such calculation is determined, the vote either for, or against, any subject decision or action, of the Senior Creditors which have a Class Percentage, either individually or collectively, that meets or exceeds the threshold for Required Senior Creditor will determine the outcome of each Intercreditor Vote. The Intercreditor Agent shall promptly notify each Agent of the outcome of each Intercreditor Vote. The Voting Exposure calculation is described in “RISK FACTORS—Risks Relating to the Series 2018 Bonds—*Intercreditor Agreement and Rights of Senior Creditors—Intercreditor Voting.*”

#### *Amendments to Financing Documents*

Except for the following prohibited circumstances, any Agent or Senior Creditor may, without the consent of the Required Senior Creditors, enter into amendments with the Borrower, or grant waivers or consents to the Borrower (“Modifications”), as such Agent or Senior Creditor deem proper in connection with its respective Financing Document pursuant to the terms under such document:

- (i) modify the lending commitments, shorten the fixed maturity, alter the prepayment or cash sweep provisions so as to accelerate the repayment of the Senior Secured Obligations, or shorten the amortization schedule of the Senior Secured Obligations;
- (ii) modify the rate of interest of, change the method of calculation of interest upon, or shorten the time for payment of interest on, the applicable Senior Secured Obligations, except with respect to the provisions

relating to an Alternative Rate under the Credit Agreement described further in APPENDIX D-4—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD LOAN FACILITY CREDIT AGREEMENT—*Interest Rates*”;

(iii) authorize any additional exceptions which would constitute Enforcement Exceptions under the Intercreditor Agreement;

(iv) increase the rate of any letter of credit fees or other fees payable under such Financing Document, or shorten the scheduled date of any payment under such agreement;

(v) permit the amendment of any Financing Documents in a manner that would materially and adversely impact the rights of Hedge Providers (in such case requiring majority consent of the Hedge Providers within the Decision Period);

(vi) reduce the percentage or other voting thresholds specified in respect of matters requiring approval of the Senior Creditors; or

(vii) cause any Adverse Action with respect to any Senior Creditor or its Agent.

Notwithstanding (i), (ii) and (iv) above, nothing will limit any amendment of any Financing Document if, after giving effect to such amendment, the indebtedness, if treated as a new borrowing, would satisfy the requirements for any other Permitted Senior Secured Indebtedness by the Borrower under any Financing Document, in each case, as of the effective date of such amendment.

*Enforcement in Bankruptcy Proceedings.*

Notwithstanding any other provision in the Intercreditor Agreement to the contrary, upon the occurrence of a Borrower Bankruptcy Event:

(i) any Senior Creditor or its Agent may accelerate its Senior Secured Obligations without prior written notice and file a proof of claim or statement of interest with respect to the Senior Secured Obligations owed to such Senior Creditors;

(ii) any Agent or other Senior Creditor may take any action to preserve or protect the validity and enforceability of the Liens granted in favor of Senior Creditors, provided that no such action is, or could reasonably be expected to be an Adverse Action;

(iii) any Agent or any other Senior Creditor may file any responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims or Liens of such Senior Creditor, including any claims secured by the Collateral, in each case, to the extent not inconsistent with the terms of the Intercreditor Agreement. No other Agent or any other Senior Creditor may contest, protest or object to any foreclosure proceeding or action brought by the Collateral Agent or any Senior Creditor or any other exercise by the Collateral Agent or any Senior Creditor of any rights and remedies relating to the Collateral; and

(iv) the Trustee, Administrative Agent and any Additional Agent for themselves and on behalf of such applicable Senior Creditors are restricted from contesting or supporting any other Person in contesting, in any proceeding (including any Borrower Bankruptcy Event), the perfection, priority, validity, attachment or enforceability of a lien held by or on behalf of any of the Senior Creditors in all or any part of the Collateral, or the provisions of the Intercreditor Agreement.

Upon any Borrower Bankruptcy Event, each Agent, for itself and on behalf of each applicable Senior Creditor, agrees that, except as otherwise permitted under the Intercreditor Agreement: (i) it will not challenge, or support any other Person in challenging, in any proceeding the validity or enforceability of any Senior Secured Obligations of any Class or any Security Document or the validity, attachment, perfection or priority of any Lien

under any Security Document or the validity or enforceability of the priorities, rights or duties established by or other provisions of the Intercreditor Agreement; (ii) will not take or cause to be taken any action the purpose or intent of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other disposition of the Collateral by the Collateral Agent, (iii) it will not institute in any Bankruptcy Event or other proceeding any claim against the Collateral Agent or any other Senior Creditor seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to any Shared Collateral, and no Agent or any other Senior Creditor shall be liable for any action taken or omitted to be taken by the Collateral Agent or other Senior Creditor with respect to any Collateral in accordance with the provisions of the Intercreditor Agreement, (iv) it will not seek, and waives any right, to have any Shared Collateral or any part thereof marshaled upon any foreclosure or other disposition of such Shared Collateral; and (v) it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of the Intercreditor Agreement.

Each Agent agrees, for itself and on behalf of each applicable Senior Creditor, that, other than pursuant to the terms of the Intercreditor Agreement, if it shall obtain possession of any Shared Collateral, any new additional Collateral, or any proceeds or payment in respect of any such Shared Collateral, pursuant to any Financing Document by the exercise of any rights available to it under applicable law or in any Bankruptcy Event or through any other exercise of remedies (including pursuant to any intercreditor agreement), at any time prior to the discharge of each of the Senior Secured Obligations, then it shall hold such Shared Collateral or new additional Collateral, proceeds or payment in trust for the other Senior Creditors that have a security interest in such Collateral and promptly transfer such Collateral, proceeds or payment, as the case may be, to the Collateral Agent, to be distributed in accordance the Collateral Agency and Accounts Agreement or with respect to any new additional Collateral, shared pro-rata among the Senior Creditors.

The Senior Creditors will not be permitted to support or vote in favor or in connection with a plan of reorganization, plan of liquidation, agreement of composition, or other type of plan of arrangement proposed in or in connection with any Borrower Bankruptcy Event without first obtaining the consent of the Required Banks and Required Bondholders.

#### *DIP Financing*

After the commencement of a case under the Bankruptcy Code in connection with a Borrower Bankruptcy Event, any Senior Creditor is permitted to enter into a debtor in possession financing agreement or other financing agreement or arrangement with the Borrower (each, a "DIP Facility") which is: (i) secured by the Shared Collateral, (ii) senior to the existing Security Interests, and (iii) such DIP Facility satisfies the DIP Conditions.

To the extent possible, any person that becomes party to a DIP Facility (a "DIP Lender") is required to structure such security for any DIP Facility to avoid liens on the Shared Collateral; however if it is commercially necessary to obtain liens on any Shared Collateral, then the DIP Lender will only be entitled to obtain the minimum amount of commercially reasonable Liens on any such Shared Collateral ("DIP Facility Liens"). See "RISK FACTORS—Risks Relating to the Series 2018 Bonds—*Limitations on Senior Creditors during a Bankruptcy Proceeding*" for a description of risks associated with a DIP Facility.

#### *Cash Collateral & Adequate Protection*

Upon a Borrower Bankruptcy Event, no Party or Senior Creditor to the Intercreditor Agreement or any other Agent or Senior Creditor will be entitled to use, take custody or foreclose upon any cash Collateral (excluding Segregated Collateral) without obtaining the direction of the Intercreditor Agent acting at the direction of the Required Senior Creditors. If any Senior Creditors are granted judicial application for adequate protection with respect to Senior Secured Obligations, the proceeds of such adequate protection will be applied in accordance with the Collateral Agency and Accounts Agreement. Any Senior Creditors receiving adequate protection are restricted from objecting to any other Senior Creditor receiving adequate protection comparable to any adequate protection granted to such Senior Creditor.

## **Other Terms of the Intercreditor Agreement**

### *Second Lien Senior Creditor*

To the extent required or permitted under any Financing Documents, the Parties to the Intercreditor Agreement will enter into a separate second lien intercreditor agreement consistent with Clause (b)(iii) of the definition of "Permitted Indebtedness" with any holder or provider of Permitted Subordinated Secured Indebtedness in order to prescribe the relationship between the Senior Creditors' and each Agents' senior secured rights relative to any rights or interests that any holder or provider of any Permitted Subordinated Secured Indebtedness may have in the Shared Collateral, on the terms acceptable to the parties to the Intercreditor Agreement.

### *Insurance Proceeds*

In the event of the occurrence of any casualty with respect to any of the Collateral, each Senior Creditor agrees that the Collateral Agent will have the sole and exclusive right to adjust, compromise or settle any such loss with the insurer thereof, and to collect, receive and apply the proceeds from such insurer in accordance with the terms of the Collateral Agency and Accounts Agreement, the other applicable Financing Documents and the Intercreditor Agreement.

If, in accordance with the provisions of the Collateral Agency and Accounts Agreement or any Financing Document, any Senior Creditor or Agent receives the proceeds of any insurance coverage (as loss payee or assignee) of the Borrower, such recipient will be required to take any necessary steps (including, if applicable, depositing such monies into the Loss Proceeds Account, as applicable), to ensure that such proceeds are applied in accordance with the Collateral Agency and Accounts Agreement.

### *Priority of Claims*

Following the exercise of any ICA Enforcement Action by the Collateral Agent, the proceeds of any collection, recovery, receipt, appropriation, realization or sale of any or all of the Collateral or the enforcement of any Security Document must be applied in accordance with the Collateral Agency and Accounts Agreement.

If (i) an Event of Default has occurred and is continuing, (ii) the Collateral Agent is taking an ICA Enforcement Action, (iii) any distribution is made in respect of any Shared Collateral in any Bankruptcy Event of the Borrower; or (iv) any Senior Creditor or Agent receives any payment pursuant to any Financing Document (including under the Second Lien Intercreditor Agreement, if any) with respect to any Shared Collateral for any other reason, the proceeds of any such sale, collection or other liquidation of any such Shared Collateral by any Agent or any Senior Creditor and proceeds of any such distribution or payments or any other action (all such payments, distributions, proceeds of any sale, collection or other liquidation of any Shared Collateral and all proceeds of any such payment or distribution being collectively referred to as "Proceeds"), will be applied in accordance with the Post-Enforcement Waterfall. If, despite the foregoing, any Senior Creditor or Agent receives any payment or other recovery in excess of its portion of payments on account of the Senior Secured Obligations to which it is then entitled, such Senior Creditor or Agent will be required to hold such payment or recovery in trust for the benefit of all Senior Creditors for prompt (as legally permitted) redistribution in accordance with the Post-Enforcement Waterfall.

The Collateral Agent and the Administrative Agent on behalf of each applicable Senior Creditor, agree that (i) the Liens securing each Class of Senior Secured Obligations on any Shared Collateral are of equal priority and (ii) the benefits and proceeds of the Shared Collateral will be shared, pro-rata among the Secured Parties in accordance with the Post-Enforcement Waterfall.

## ACCOUNTS AND FLOW OF FUNDS

### General

As further described below, all of the Project Accounts are required to be established with the Depositary Agent and be under the control of the Collateral Agent and, except as expressly provided in the Collateral Agency and Accounts Agreement, the Borrower will not have any right to withdraw funds from any Project Account. The Borrower is also required to establish other accounts with the Depositary Agent (which accounts will not constitute Project Accounts) in the manner and for the purposes described below.

### Project Accounts

The Collateral Agency and Accounts Agreement requires the following Project Accounts to be established and created at such times as required under the Collateral Agency and Accounts Agreement, and to be maintained by the Depositary Agent in the name of the Borrower (collectively, the “Securities Accounts”):

- (i) the Construction Account, including:
  - (A) the Milestone Payment Sub-Account;
  - (B) the Equity Contribution Sub-Account;
  - (C) the DB Non-Compliant LC Cash Security Sub-Account;
  - (D) the DB Contingent Letter of Credit Sub-Account; and
  - (E) the DB Contingent Retainage Sub-Account.
- (ii) the Bond Proceeds Account;
- (iii) the Proceeds Account;
- (iv) the Revenue Account;
- (v) the Senior Debt Service Account, comprising:
  - (A) the Senior Interest Payment Sub-Account; and
  - (B) the Senior Principal Payment Sub-Account;
- (vi) the Subordinated Debt Service Account, comprising:
  - (A) the Subordinated Interest Payment Sub-Account;
  - (B) the Subordinated Principal Payment Sub-Account;
- (vii) the Senior Debt Service Reserve Account;
- (viii) the Utility Owners’ Costs Account;
- (ix) the Major Maintenance Account;
- (x) the Equity Lock-Up Account;

- (xi) the Loss Proceeds Account;
- (xii) the Mandatory Prepayment Account, comprising:
  - (A) the Bond Mandatory Prepayment Sub-Account; and
  - (B) the Design-Build Loan Mandatory Prepayment Sub-Account; and
- (xiii) the Equity Member Cash Collateral Account, comprising:
  - (A) the ACS Cash Collateral Sub-Account;
  - (B) the BBI Cash Collateral Sub-Account;
  - (C) the BT Cash Collateral Sub-Account;
  - (D) the Fluor Cash Collateral Sub-Account; and
  - (E) the HT Cash Collateral Sub-Account.

In addition to these Securities Accounts, the Borrower is also obligated to establish (i) a deposit account with U.S. Bank National Association (not in its capacity as the Depositary Agent) (the “Operating Account”), and (ii) a deposit account with U.S. Bank National Association (not in its capacity as the Depositary Agent) (the “Voluntary Equity Contributions Account”), in each case subject to the Blocked Account Control Agreement by and among the Borrower, the Collateral Agent and U.S. Bank National Association as Deposit Account Bank, and each such account is required to be maintained in the name of the Borrower, provided that each of the Operating Account and the Voluntary Equity Contributions Account may instead be maintained with a successor Deposit Account Bank, in each case subject to a successor Control Agreement (as described in the definition of clause (b) thereof). The Operating Account and the Voluntary Equity Contributions Account each also constitute a Project Account and will be subject to the Security Interest of the Collateral Agent.

#### *Other Accounts*

Pursuant to the Collateral Agency and Accounts Agreement, the Borrower is required to cause to be established with U.S. Bank National Association (not in its capacity as the Depositary Agent) in the Borrower’s name a Handback Requirements Reserve Account to the extent required under and in accordance with the DBFOM Agreement, as further described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Handback.” The Handback Requirements Reserve Account will be for the sole and exclusive benefit of the City. The Borrower will have the exclusive right (subject to the rights of the City under the DBFOM Agreement) to withdraw or otherwise dispose of funds in the Handback Requirements Reserve Account, without any restriction or condition, for purposes contemplated in the DBFOM Agreement. The Handback Requirements Reserve Account does not constitute a Project Account and will not be subject to the Security Interest of the Collateral Agent. Pursuant to the DBFOM Agreement, the City is required to have a first priority perfected security interest over such account.

A distribution account is also to be established in the name of the Borrower with U.S. Bank National Association (not in its capacity as the Depositary Agent) pursuant to the Collateral Agency and Accounts Agreement (the “Distribution Account”). Such account is not subject to the Security Interest of the Collateral Agent, and the Borrower has the exclusive right to withdraw or otherwise dispose of funds from the Distribution Account, subject to the terms and conditions of the Collateral Agency and Accounts Agreement, as further described under “—Restricted Payment Conditions” below, provided that the Distribution Account may, at the Borrower’s discretion, instead be maintained with a Deposit Account Bank.



## Description of Project Accounts

### *Construction Account*

Prior to the Final Project Costs Payment Date, except for amounts expressly required to be deposited in other Project Accounts (including, without limitation, amounts to be deposited into the Bond Proceeds Account pursuant to “—*Bond Proceeds Account*” below, the Proceeds Account pursuant to “—*Proceeds Account*” below, the Loss Proceeds Account pursuant to “—*Loss Proceeds Account*” below and the Mandatory Prepayment Account pursuant to “—*Mandatory Prepayment Account*” below), all (i) proceeds of all Equity Contributions, (ii) Project Revenues received prior to the Passenger Service Availability Date, (iii) all Additional D&C Payments and Milestone Payments initially received into the Proceeds Account (whether received prior to or following the Passenger Service Availability Date), and (iv) other amounts received by the Borrower from any source whatsoever, will be deposited into the Construction Account (including the sub-accounts thereof, as set forth below). If requested by the Depositary Agent, the Borrower is required to provide a written certification with respect to any amounts received by the Depositary Agent as to whether such amounts constitute funds under clauses (i), (ii), (iii) or (iv) above. Subject to certain exceptions, an Approved Construction Requisition is required for withdrawal of funds in the Construction Account or sub-account thereof, unless otherwise expressly specified. Subject to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts” below, from time to time, upon receipt by the Depositary Agent (copied to the Collateral Agent) of an Approved Construction Requisition at least five Business Days prior to the applicable proposed transfer date, which day must be a Business Day (each such date being a “Construction Funds Transfer Date”), the Depositary Agent is required to make such transfers in accordance with such Approved Construction Requisition on such Construction Funds Transfer Date.

No Approved Construction Requisition will be required for (i) the withdrawal of Project Costs constituting the payment of interest on the Secured Obligations, fees payable to the Finance Parties and the costs of issuance of the Series 2018 Bonds, (ii) any withdrawal of proceeds that the Borrower receives in the Proceeds Account from the Department pursuant to the provisions of the DBFOM Agreement relating to allowances made by the Department to pay the costs of certain additional work (as further described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—*LAWA Allowances*”), and which are subsequently transferred to the Construction Account pursuant to “—*Proceeds Account*” below, (iii) the withdrawal of any amount that the Borrower is required to pay to the Design-Build Contractor pursuant to the Design-Build Contract in connection with such *LAWA Allowances* (iv) the withdrawal of any amount of Additional D&C Payments that the Borrower is required to pay to the Design-Build Contractor pursuant to Section 2.1(c) of Attachment 4A to the Design-Build Contract, therein referred to as “Additional D&C Costs” (as further described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—*Additional D&C Payments*” and APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Contract Price and Payments—*Additional D&C Costs*”) or (v) the withdrawal of any amounts that were funded by Equity Contributions, and the only condition in respect of any such withdrawal by the Borrower pursuant to the foregoing clauses (i) through (v) will be, in the case of (i) only, delivery to the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate from the Borrower setting forth the amount requested and the applicable accounts or payees to which such funds are to be transferred, and, in the case of (iv) only, delivery to the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate from the Borrower setting forth the amount requested and the applicable accounts to which such funds will be transferred and an Additional D&C Payment Certificate executed by the Lenders' Technical Advisor, provided that in respect of any withdrawal pursuant to clauses (ii), (iii) or (v) above, the Borrower is required to provide written notice to the Depositary Agent as to under which of the above clauses such withdrawal is being made.

Upon the later of (i) the date on which the Borrower has made the payments described in “—*Milestone Payment Sub-Account*” below and (ii) receipt of the Final Project Costs Payment Amount Certificate in accordance with the following paragraph, the Depositary Agent is required to transfer all funds then on deposit in the Construction Account or any sub-accounts thereof to the Revenue Account; provided that, the Final Project Costs Payment Amount (as set forth in the Final Project Costs Payment Amount Certificate), as well as any amount on deposit in the DB Non-Compliant LC Cash Security Sub-Account will remain in the Construction Account or such sub-account, respectively, and will not be transferred to the Revenue Account.

At least five Business Days prior to the Final Project Costs Payment Date, the Borrower is required to provide the Depositary Agent (copied to the Collateral Agent and the Intercreditor Agent) with a Withdrawal Certificate (a “Final Project Costs Payment Amount Certificate”) confirming the Final Project Costs Payment Date, which certificate must have been executed by an Authorized Representative of the Borrower. Any funds remaining in all sub-accounts of the Construction Account (other than any amount on deposit in the DB Non-Compliant LC Cash Security Sub-Account) after the transfers as indicated in the Final Project Costs Payment Amount Certificate are then to be transferred to the Revenue Account.

Upon receipt by the Depositary Agent on or after the last day of the warranty period under the Design-Build Contract of a Withdrawal Certificate (copied to the Collateral Agent and the Intercreditor Agent) confirming that the warranty period has expired and that there are no warranty claims outstanding against the Design-Build Contractor pursuant to the Design-Build Contract, which Withdrawal Certificate must have been executed by an Authorized Representative of the Borrower, the Depositary Agent will within five Business Days after receipt thereof (A) close the Construction Account and the DB Non-Compliant LC Cash Security Sub-Account, (B) transfer any funds in the DB Non-Compliant LC Cash Security Sub-Account to the Design-Build Contractor to the extent required pursuant to the Design-Build Contract and as set forth in such certificate and (C) if there are any remaining funds in the DB Non-Compliant LC Cash Security Sub-Account, transfer such amounts to the Revenue Account.

Any amounts deposited into the Construction Account pursuant to the first paragraph of this section “—*Construction Account*” are required to be (x) deposited into sub-accounts thereof, if applicable, as set forth below and (y) withdrawn from the Construction Account or any sub-account thereof, in each case subject to the conditions and limitations set forth below:

#### *Milestone Payment Sub-Account*

Milestone Payment 6 (which shall be identified as such upon delivery to the Depositary Agent), and only Milestone Payment 6, is required and permitted to be transferred from the Proceeds Account to the Milestone Payment Sub-Account promptly upon receipt thereof by the Depositary Agent and first applied to repay the Design-Build Loans and associated Hedging Termination Obligations, as described in this section.

Upon receipt of Milestone Payment 6 in the Milestone Payment Sub-Account (including any amounts that are transferred from the Utility Owners’ Costs Account to the Milestone Payment Sub-Account to offset amounts withheld by the Department from Milestone Payment 6 as described in “—*Utility Owners’ Costs Account*” below), on or prior to the End of Funding Date, such funds are required to be applied in the following order of priority (the “Final Milestone Payment Waterfall”):

First, to the pro rata payment of all accrued and unpaid interest due on the Design-Build Loan Facility Obligations, all accrued and unpaid Hedging Obligations, then, to the pro rata payment of all unpaid principal of Design-Build Loan Facility Obligations and all accrued and unpaid Hedging Termination Obligations, and then, to all other amounts payable in respect of the Design-Build Loan Facility Obligations, which amounts are required to be certified to the Depositary Agent by the Administrative Agent;

Second, to the extent funds are available after application in the preceding level, to the payment of the remaining Project Costs in connection with Final Completion;

Third, to the extent funds are available after application in the preceding levels to fund the Senior Debt Service Reserve Account so that the funds deposited therein equal the Required Senior Debt Service Reserve; and

Fourth, to the extent funds are available after application in the preceding levels, to the Revenue Account.

The Security Interest in the funds on deposit in the Milestone Payment Sub-Account (and all earnings thereon) will be for the sole benefit of the Administrative Agent on behalf of the Bank Lenders and in respect of the obligations of the Borrower under the Design-Build Loan Facility Credit Agreement, and such amounts are required to be applied solely to such obligations. No amounts other than Milestone Payment 6 (including any other Milestone Payments) shall be deposited into the Milestone Payment Sub-Account.

#### *Equity Contribution Sub-Account*

The proceeds of Equity Contributions made in accordance with the Equity Contribution Agreement, the proceeds of any drawing upon any Equity Letter of Credit where an Equity Member has failed to fund, and any additional Equity Contribution made pursuant to the Equity Contribution Agreement on or prior to the End of Funding Date are required, in each case, to be identified to the Depositary Agent for deposit in, and deposited in, the Equity Contribution Sub-Account.

Monies in the Equity Contribution Sub-Account are required to be applied by the Depositary Agent at the direction of the Borrower to pay, or reimburse for a prior payment of, Project Costs due and payable on or prior to the End of Funding Date, including the initial funding of the Senior Debt Service Reserve Account. On the End of Funding Date, any amounts remaining on deposit in the Equity Contribution Sub-Account are required to be applied in the following order of priority:

First, to the pro rata payment of all accrued and unpaid interest due on the Design-Build Loan Facility Obligations, all accrued and unpaid Hedging Obligations, then, to the pro rata payment of all unpaid principal of Design-Build Loan Facility Obligations and all accrued and unpaid Hedging Termination Obligations, and then, to all other amounts payable in respect of the Design-Build Loan Facility Obligations, which amounts are required to be certified to the Depositary Agent by the Administrative Agent;

Second, to the extent funds are available after application in the preceding level, to pay any remaining Project Costs relating to the achievement of Final Completion (including the initial funding of the Senior Debt Service Reserve Account); and

Third, to the extent funds are available after application in the preceding levels, for transfer to the Revenue Account and application in accordance with the Pre-Enforcement Waterfall.

#### *DB Non-Compliant LC Cash Security Sub-Account*

The proceeds of any draws on any Liquid Performance Security or any Contingent Letters of Credit made in connection with the failure of such letter of credit (or its issuer) to satisfy the requirements set forth in the Design-Build Contract are required to be deposited in the DB Non-Compliant LC Cash Security Sub-Account. Monies in the DB Non-Compliant LC Cash Security Sub-Account are required to be, at the direction of the Borrower in accordance with the Transaction Documents, (1) applied to pay any amounts due and payable for any incurred and unpaid Project Costs, subject to the satisfaction of the certification procedures described in the first two paragraphs of “—*Construction Account*” above, as applicable or (2) released to the Design-Build Contractor in accordance with the provisions of the Design-Build Contract relating to release of proceeds of Liquid Performance Security and Contingent Letters of Credit, as further described in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Performance Security,” subject only to receipt by the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate confirming that such transfer or release is in compliance with the Design-Build Contract, which Withdrawal Certificate must have been executed by an Authorized Representative of the Borrower.

#### *DB Contingent Retainage Sub-Account and DB Contingent Letter of Credit Sub-Account*

Any (1) payments due to the Design-Build Contractor under the Design-Build Contract that are retained as the Contingent Retainage Amount in accordance with the Design-Build Contract are required to be deposited in the DB Contingent Retainage Sub-Account pursuant to the direction of the Borrower and (2) any proceeds of draws on any Contingent Letters of Credit (other than draws on such Contingent Letters of Credit resulting from the same ceasing to meet certain requirements), are required to be deposited in the DB Contingent Letter of Credit Sub-Account.

Monies in the DB Contingent Retainage Sub-Account and the DB Contingent Letter of Credit Sub-Account are required to be, at the direction of the Borrower, (1) applied in accordance with the two immediately subsequent paragraphs, subject to the satisfaction of the certification procedures described in the first two paragraphs of “—

*Construction Account*” above, in each case, as applicable or (2) released to Design-Build Contractor in accordance with certain provisions of the Design-Build Contract relating to reduction of the Contingent Retainage Amount or the Contingent Security Amount (including if the Design-Build Contractor adequately cures the deficiencies that led initially to the Borrower retaining amounts otherwise payable to the Design-Build Contractor or the Design-Build Contractor being required to post a Contingent Letter of Credit, as applicable); provided that any release to the Design-Build Contractor under the foregoing clause (2) will be subject to receipt by the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate confirming that such release is required by the Design-Build Contract, which Withdrawal Certificate must have been executed by an Authorized Representative of the Borrower.

Amounts in the DB Contingent Retainage Sub-Account or the DB Contingent Letter of Credit Sub-Account that are drawn by the Borrower (or the Collateral Agent) and applied toward Delay Liquidated Damages owed by the Design-Build Contractor or any other amounts owed by Design-Build Contractor in accordance with the Design-Build Contract are required, at the direction of the Borrower, to be transferred or withdrawn to pay directly any amounts due and payable for any incurred and unpaid Project Costs, subject to the satisfaction of the certification procedures described in the first two paragraphs of “—*Construction Account*” above.

Upon the Passenger Service Availability Date, the Depositary Agent is obligated, at the direction of the Borrower, to withdraw and transfer to the Design-Build Contractor any funds remaining in the DB Contingent Retainage Sub-Account and the DB Contingent Letter of Credit Sub-Account, subject to receipt by the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate confirming (i) the occurrence of the Passenger Service Availability Date and (ii) that any Delay Liquidated Damages payable by the Design-Build Contractor in accordance with the Design-Build Contract have been paid in full, which Withdrawal Certificate must have been executed by an Authorized Representative of the Borrower.

Subject to the terms and conditions of the Design-Build Contract, amounts on deposit in the DB Contingent Retainage Sub-Account, at the option of the Design-Build Contractor, may be replaced or reduced from time to time by replacing such amount with a letter of credit meeting the requirements set forth in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.” Letters of Credit and the amount to be replaced shall be released to the Design-Build Contractor in accordance with clause (2) of the second paragraph of this section “—*DB Contingent Retainage Sub-Account and DB Contingent Letter of Credit Sub-Account*.”

#### *Bond Proceeds Account*

All proceeds from the issuance of the Series 2018 Bonds (net of any costs of issuance, original issue discount, underwriting discount or similar fee, if any) received by the Borrower pursuant to the terms of the Series 2018 Loan Agreement and, thereafter, subject to the Borrower’s right to cause such deposits made to be invested and reinvested in Permitted Investments in accordance with the Collateral Agency and Accounts Agreement, any interest earned on such proceeds, are required to be deposited in the Bond Proceeds Account. The Bond Proceeds Account is Segregated Collateral and the Security Interest in the funds on deposit in the Bonds Proceeds Account (and all earnings thereon) is for the sole benefit of the Trustee on behalf of the Owners of the Series 2018 Bonds and in respect of the obligations of the Borrower under the Series 2018 Loan Agreement and the related rights of the Trustee, on behalf of the holders of the Series 2018 Bonds, and such amounts will be solely applied to such obligations.

Monies in the Bond Proceeds Account are required to be applied to Permitted Uses of Proceeds, including release to the Operating Account for Project Costs incurred or projected to be incurred within the following one-month period, substantially in accordance with the budget, upon receipt by the Depositary Agent (copied to the Collateral Agent) of an Approved Construction Requisition at least five Business Days prior to the applicable proposed transfer date; provided, however, that if on any withdrawal date, any portion of such proceeds is to be used solely to pay interest on the Series 2018 Bonds or fees payable to the Finance Parties (to the extent it is a Permitted Use of Proceeds), no Approved Construction Requisition will be required and the only condition in respect of such withdrawal will be delivery to the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate from the Borrower setting forth the amount requested and the applicable accounts or payees to which such funds are to be transferred; provided further that the Borrower is required, at the time of delivering such Withdrawal Certificate for the payment of interest or fees, to notify the Collateral Agent if any Funding Shortfall exists.

Upon the earlier of the Final Project Costs Payment Date or the fifth (5th) anniversary of the Financial Close Date, except as otherwise required by any applicable Law, to the extent that there are funds remaining on deposit in the Bond Proceeds Account, such amounts are required to be applied by the Depositary Agent as follows:

First, if the fifth (5th) anniversary of the Financial Close Date has not occurred, amounts are required to be transferred to the Construction Account for the payment of any remaining incurred but unpaid Project Costs;

Second, any applicable amount is required to be transferred to the Trustee for deposit in the Series 2018 Rebate Fund in accordance with the Indenture; and

Third, any remaining amounts are required be transferred to the Mandatory Prepayment Account for redemption of the Series 2018 Bonds; provided that no such redemption of the Series 2018 Bonds will be required (and, instead, amounts in the Bond Proceeds Account will be transferred to the Revenue Account) if the Borrower has obtained and delivered to the Trustee and the Depositary Agent an opinion of Bond Counsel stating that the failure to redeem any such Series 2018 Bonds will not adversely affect the exclusion of interest on such Series 2018 Bonds from gross income for federal or State income tax purposes and that such redemption is not required by State law.

#### *Proceeds Account*

All Project Revenues received from the Department pursuant to the DBFOM Agreement are required to be deposited initially in the Proceeds Account. Funds on deposit in the Proceeds Account are required, at the direction of the Borrower, (i) at any time prior to the Passenger Service Availability Date, to be transferred to the Construction Account (or applicable sub-account thereof) and (ii) at all times after the Passenger Service Availability Date, to be transferred to the Revenue Account, except any Milestone Payments, which are required to continue to be transferred to the Construction Account (or applicable sub-account thereof); provided that:

(A) any Compensation Amounts received in the Proceeds Account at any time that are the subject of an Equivalent Claim (as such terms are defined in the Design-Build Contract) and payable to the Design-Build Contractor under the Design-Build Contract will be transferred to the Design-Build Contractor in accordance with the Design-Build Contract, subject to receipt by the Depositary Agent (copied to the Collateral Agent) at least three (3) Business Days prior to the requested withdrawal date of a Withdrawal Certificate executed by an Authorized Representative of the Borrower and an EPR Certificate executed by the Lenders' Technical Advisor;

(B) any Compensation Amounts received in the Proceeds Account at any time that are the subject of an Equivalent Claim (as such terms are defined in the O&M Contract) and payable to the O&M Contractor under the O&M Contract are required to be transferred to the O&M Contractor in accordance with the O&M Contract, subject to receipt by the Depositary Agent (copied to the Collateral Agent) at least three (3) Business Days prior to the requested withdrawal date of a Withdrawal Certificate executed by an Authorized Representative of the Borrower and an EPR Certificate executed by the Lenders' Technical Advisor; and

(C) any Project Revenues received into the Proceeds Account which are to be reimbursed to any Applicable Equity Member Cash Collateral Account in accordance with the Equity Contribution Agreement are to be transferred from the Proceeds Account and paid into the Applicable Equity Member Cash Collateral Account (for the avoidance of doubt, without the delivery of a Withdrawal Certificate or a Funds Transfer Certificate) pursuant to a written direction to the Depositary Agent (copied to the Collateral Agent) from an Authorized Representative of the Borrower on the date specified in such written direction.

#### *Revenue Account*

On and after the Passenger Service Availability Date, except for amounts required to be deposited in other Project Accounts pursuant to the Collateral Agency and Accounts Agreement (including, without limitation, all Milestone Payments, which are required to continue to be transferred to the Construction Account or any sub-account thereof, as applicable, promptly upon receipt) all (i) Project Revenues and (ii) any other amounts received by the Borrower from any source whatsoever, are required to be deposited into the Revenue Account.

Subject to the delivery of a Funds Transfer Certificate by the Borrower to the Depositary Agent and copied to the Collateral Agent, and subject to the Post-Enforcement Waterfall, beginning with the first Monthly Transfer Date after the Passenger Service Availability Date, the Depositary Agent will be required, to the extent of available funds, to make the withdrawals, transfers and payments from the Revenue Account and any sub-accounts therein in the amounts, on each Monthly Transfer Date or Distribution Date, as applicable, and in the order of priority set forth in the Pre-Enforcement Waterfall.

For a further detailed summary of the provisions of the Collateral Agency and Accounts Agreement relating to the Revenue Account, see APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Description of Project Accounts—*Revenue Account*.”

The flow of funds in the Pre-Enforcement Waterfall is described under “ACCOUNTS AND FLOW OF FUNDS—Flow of Funds Post-Passenger Service Availability” below.

#### *Senior Debt Service Account*

The Senior Interest Payment Sub-Account is required to be funded in accordance with clause Fourth of the Pre-Enforcement Waterfall and the Senior Principal Payment Sub-Account is required to be funded in accordance with clause Fifth of the Pre-Enforcement Waterfall.

Funds (i) on deposit in the Senior Interest Payment Sub-Account are required to be applied pro rata on the applicable Interest Payment Date to pay accrued and unpaid interest due and payable on all Senior Secured Obligations and, if applicable, any related Hedging Obligations due to the Hedge Providers and (ii) on deposit in the Senior Principal Payment Sub-Account are required to be applied pro rata on the applicable Principal Payment Date to pay principal that is due and payable on all Senior Secured Obligations and, if applicable, any related Hedging Termination Obligations, in each case in accordance with a Funds Transfer Certificate delivered by the Borrower.

#### *Subordinated Debt Service Account*

The Subordinated Interest Payment Sub-Account is required to be funded in accordance with clause Eighth of the Pre-Enforcement Waterfall and the Subordinated Principal Payment Sub-Account is required to be funded in accordance with clause Ninth of the Pre-Enforcement Waterfall.

Funds (i) on deposit in the Subordinated Interest Payment Sub-Account are required to be applied to pay accrued and unpaid interest due and payable on all Permitted Subordinated Indebtedness and related Hedging Obligations and (ii) on deposit in the Subordinated Principal Payment Sub-Account are required to be applied to pay principal that is due and payable on all Permitted Subordinated Indebtedness and related Hedging Termination Obligations, in each case, provided, that in the event that the holder of such Permitted Subordinated Indebtedness is an Affiliate of the Borrower, such payments may only be made: (A) on a Distribution Date and (B) so long as the Restricted Payment Conditions have been satisfied as of such Distribution Date, in each case in accordance with a Funds Transfer Certificate delivered by the Borrower.

#### *Senior Debt Service Reserve Account*

The Senior Debt Service Reserve Account is required to be established solely for the benefit of the Owners of the Series 2018 Bonds, the Bank Lenders and providers of other Permitted Senior Secured Indebtedness (solely to the extent set forth in the applicable Additional Financing Documents, to the extent that such other Permitted Senior Secured Indebtedness includes a required debt service reserve) for the exclusive benefit of only such Senior Secured Parties. Prior to an Enforcement Action, amounts on deposit in the Senior Debt Service Reserve Account shall be available only to pay principal and interest on the Series 2018 Bonds and other Senior Secured Obligations (excluding the Design-Build Loan Facility Obligations, the Hedging Obligations, the Hedging Termination Obligations and other Permitted Senior Secured Indebtedness that does not include a required senior debt service reserve) provided, however, that in the event of an Enforcement Action against the Collateral (in accordance with

the terms of the Intercreditor Agreement), the Design-Build Loan Facility Obligations will share ratably with all Senior Secured Obligations then outstanding in the amounts in the Senior Debt Service Reserve Account.

The Senior Debt Service Reserve Account is required to be funded (i) not later than the Passenger Service Availability Date in an amount equal to the Required Senior Debt Service Reserve (as calculated on such date) and (ii) thereafter to the extent of available funds in accordance with clause Sixth of the Pre-Enforcement Waterfall. Any amounts on deposit in the Senior Debt Service Reserve Account in excess of the Required Senior Debt Service Reserve are required, at the direction of the Borrower, to be deposited into the Revenue Account for application pursuant to the Pre-Enforcement Waterfall.

If on any Interest Payment Date or Principal Payment Date with respect to the Senior Secured Obligations (excluding the Design-Build Loan Facility Obligations, Hedging Obligations, Hedging Termination Obligations and other Permitted Senior Secured Indebtedness that does not require a required senior debt service reserve), the funds on deposit in the Senior Interest Payment Sub-Account or the Senior Principal Payment Sub-Account (after giving effect to the transfers contemplated in (x) clauses *First, Second, Third, Fourth* and *Fifth* of APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Invasion of Accounts” and (y) clauses Fourth and Fifth, in each case as applicable, of the Pre-Enforcement Waterfall), solely with respect to such Senior Secured Obligations are insufficient to pay the interest or principal due on such Senior Secured Obligations, as applicable, on such Interest Payment Date or Principal Payment Date, the Collateral Agent, without a Funds Transfer Certificate or further direction from the Borrower, is obligated to direct the Depositary Agent to withdraw the amount of such insufficiency, to the extent available, from the funds on deposit in the Senior Debt Service Reserve Account (including funds available to be drawn against an Applicable Reserve Letter of Credit) and apply such amount pro rata on such Interest Payment Date to pay accrued and unpaid interest due and payable on such Secured Obligations, and then apply such remaining amount pro rata on such Principal Payment Date to pay principal that is due and payable on such Senior Secured Obligations. Following the taking of an Enforcement Action, monies on deposit in such Senior Debt Service Reserve Account are required to be applied in the manner set forth in the Post-Enforcement Waterfall.

If, at any time after the Passenger Service Availability Date, the balance in the Senior Debt Service Reserve Account is less than the Required Senior Debt Service Reserve, such event will not constitute a Default or an Event of Default but will constitute a failure to comply with the Restricted Payment Conditions.

For a further detailed summary of the provisions of the Collateral Agency and Accounts Agreement relating to the Senior Debt Service Reserve Account, see APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Description of Project Accounts—*Senior Debt Service Reserve Account*.”

#### *Utility Owners’ Costs Account*

No later than the Financial Close Date, the Borrower is required to deposit, or cause to be deposited, into the Utility Owners’ Costs Account funds in the amount of \$50,000,000. Funds on deposit in the Utility Owners’ Costs Account are required to be applied by the Borrower in accordance with the provisions of the DBFOM Agreement relating to work to be performed by Utility Owners at prices approved by the Department.

If, on or following the Final Completion Date, any amounts remain on deposit in the Utility Owners’ Costs Account, the Department may recover such amounts from the Borrower as set forth in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction—*Utilities—Utility Adjustments Performed by Utility Owners; Utility Owners’ Costs Account*” and the Borrower is obligated to make corresponding transfers of amounts remaining on deposit in the Utility Owners’ Cost Account, as follows:

(i) if the Department reduces Milestone Payment 6, such remaining amounts, upon the direction of the Borrower to the Depositary Agent, are required to be transferred to the Milestone Payment Sub-Account of the Construction Account and applied in accordance with the Final Milestone Payment Waterfall;

(ii) if the Department reduces any Availability Payment due and owing from the Department to the Borrower, such remaining amounts, upon the direction of the Borrower to the Depositary Agent, are required to be transferred to the Revenue Account and applied in accordance with the Pre-Enforcement Waterfall;

(iii) if the Department invoices Borrower for any such remaining amounts in the Utility Owners' Costs Account, the Borrower, upon the direction of the Borrower to the Depositary Agent, is entitled to withdraw from the Utility Owners' Costs Account and pay to the Department such remaining amounts; and

(iv) if the Department sets off such remaining amounts in the Utility Owners' Costs Account against any other amount due and owing from the Department to Borrower, the Borrower, upon the direction of the Borrower to the Depositary Agent, is entitled to transfer such amounts to the Revenue Account by issuing a Withdrawal Certificate to the Depositary Agent (with a copy to the Collateral Agent).

#### *Major Maintenance Account*

In the event that, on the tenth (10th), fifteenth (15th) and twentieth (20th) anniversaries of the Passenger Service Availability Date (each a "Testing Date"), the projected expenditures required in order to meet the requirements under the DBFOM Agreement relating to handback and other Renewal Work obligations (the "Projected Lifecycle Costs") are greater than (i) the aggregate remaining portion of all future O&M rehabilitation payments projected to be available for expenditures for Renewal Work (the "Remaining Lifecycle Budgeted Amount") plus (ii) the amount standing to the credit of the Major Maintenance Account (such excess, the "Major Maintenance Deficit Amount"), the Borrower is obligated, in accordance with the O&M Contract, to either (a) cause the O&M Contractor to deposit an amount equal to the Major Maintenance Deficit Amount into the Major Maintenance Account, (b) set-off against any O&M Payments due and payable to the O&M Contractor up to the full amount of the Major Maintenance Deficit Amount and transfer an amount equal to any amount so set-off into the Major Maintenance Account or (c) cause the O&M Contractor to deliver an Acceptable Letter of Credit in an amount equal to the Major Maintenance Deficit Amount.

Following any review at a Testing Date or as requested by the O&M Contractor, if the funds on deposit in the Major Maintenance Account exceed the Required MMA Balance, the Borrower will be entitled to withdraw from the Major Maintenance Account (without the requirement for a Funds Transfer Certificate but upon direction to the Depositary Agent) and pay to the O&M Contractor at the first level of the Pre-Enforcement Waterfall any amount in excess of the Required MMA Balance. If, at any time after the first Testing Date, the balance in the Major Maintenance Account is less than required, such event will not constitute a Default or an Event of Default but will constitute a failure to comply with the Restricted Payment Conditions.

For a further detailed summary of the provisions of the Collateral Agency and Accounts Agreement relating to the Major Maintenance Account, see APPENDIX D-3—"SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Description of Project Accounts—*Major Maintenance Account*."

#### *Voluntary Equity Contributions Account*

Any Equity Member will have the right, but not the obligation, to make equity contributions to the Voluntary Equity Contributions Account. Unless an Event of Default under the Series 2018 Loan Agreement or the Design-Build Loan Facility Credit Agreement has occurred and is continuing, and the Collateral Agent has exercised remedies in accordance with the Security Documents, withdrawals from the Voluntary Equity Contributions Account are required to be directed by the Borrower and will not require compliance with any conditions, except that amounts withdrawn are required to be applied (i) toward Project Costs through the Final Project Costs Payment Date and (ii) during the O&M Period, to fund any level of the Pre-Enforcement Waterfall (excluding clause Eleventh thereof).

For a further detailed summary of the provisions of the Collateral Agency and Accounts Agreement relating to the Voluntary Equity Contribution Account, see APPENDIX D-3—"SUMMARY OF CERTAIN



PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Description of Project Accounts—*Voluntary Equity Contributions Account*.”

*Equity Lock-Up Account*

The Equity Lock-Up Account is required to be funded in accordance with clause Eleventh of the Pre-Enforcement Waterfall. Funds on deposit in the Equity Lock-Up Account, upon direction by the Borrower to the Depositary Agent to such effect, may be applied, subject to the provisions of the Collateral Agency and Accounts Agreement relating to invasion of accounts, on any Monthly Transfer Date, for any purpose that has priority over the funding of the Equity Lock-Up Account in accordance with the Pre-Enforcement Waterfall.

Funds on deposit in the Equity Lock-Up Account may be transferred to the Distribution Account (i) on any Distribution Date, if the Restricted Payment Conditions are satisfied as of the applicable Calculation Date or (ii) on any other date occurring prior to the next succeeding Calculation Date, if the Restricted Payment Conditions are satisfied as of such date; provided that the Borrower is required to deliver to the Depositary Agent (copied to the Collateral Agent and the Intercreditor Agent) a requisition certificate in the required form that specifically certifies that such conditions have been met as of the applicable date.

*Distribution Account*

The Distribution Account is required to be funded in accordance with clause Eleventh of the Pre-Enforcement Waterfall. Funds on deposit in the Distribution Account may be distributed to an account (or to such Person) as directed by the Borrower in its sole discretion. The Distribution Account will at all times be subject to the control of the Borrower and will not be pledged for the benefit of the Secured Parties.

*Operating Account*

The Operating Account is required to be funded in accordance with clause First of the Pre-Enforcement Waterfall. Prior to the Final Project Costs Payment Date, the Operating Account may also be funded from the Construction Account in accordance with “—*Construction Account*” above and all disbursements of the Design-Build Loan Facility are also required to be deposited into the Operating Account. Unless an Event of Default under the Series 2018 Loan Agreement or the Design-Build Loan Facility Credit Agreement has occurred and is continuing, and the Collateral Agent has exercised remedies in accordance with the Security Documents, withdrawals from the Operating Account may be made upon direction of the Borrower and will not require compliance with any certification conditions, except that amounts withdrawn are required to be applied (i) toward Project Costs through the Final Project Costs Payment Date or (ii) toward O&M Expenditures and Renewal Expenditures at any time during the O&M Period.

For a further detailed summary of the provisions of the Collateral Agency and Accounts Agreement relating to the Operating Account, see APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Description of Project Accounts—Operating Account.”

*Loss Proceeds Account*

Subject to the requirements of the DBFOM Agreement relating to application of Insurance Proceeds and Condemnation Proceeds (as further described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Insurance”), all Insurance Proceeds and Condemnation Proceeds with respect to physical property damage are required to be deposited directly into the Loss Proceeds Account.

Amounts on deposit in the Loss Proceeds Account are required to be withdrawn and paid to the Borrower and required then to be applied to restoration of the APM Project or any portion thereof in accordance with the requirements of the DBFOM Agreement, as certified by the Borrower. If any amounts remaining on deposit in the Loss Proceeds Account after such use (i) are below \$25 million, such amounts are required to be transferred to the Revenue Account or (ii) are equal to or greater than \$25 million, such amounts are required to be transferred to the

Mandatory Prepayment Account to cause the extraordinary mandatory redemption of the Senior Secured Obligations (on a pro rata basis), and, in the case of any remaining monies thereafter, to the Revenue Account.

For a further detailed summary of the provisions of the Collateral Agency and Accounts Agreement relating to the Loss Proceeds Account, see APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Description of Project Accounts—*Loss Proceeds Account*.”

#### *Mandatory Prepayment Account*

Funds are required to be deposited into the Mandatory Prepayment Account, the Bond Mandatory Prepayment Sub-Account and/or the Design-Build Loan Mandatory Prepayment Sub-Account and/or any other sub-account established for any other Secured Obligations in accordance with the provisions of the Collateral Agency and Accounts Agreement and applied as follows:

(i) amounts transferred to the Mandatory Prepayment Account from the Loss Proceeds Account are required to be applied to the payment of the Senior Secured Obligations on a pro rata basis (the outstanding amounts of such Senior Secured Obligations to be certified to the Depositary Agent by the Trustee or the Administrative Agent, as applicable);

(ii) the proceeds of any Termination Compensation received from the Department under the DBFOM Agreement are required to be deposited into the Mandatory Prepayment Account and applied to the prepayment of the Senior Secured Obligations on a pro rata basis (and any such Proceeds which are to be used to pay any amounts to the Owners shall be paid to the Trustee for deposit into the Series 2018 Debt Service Fund);

(iii) the proceeds of dispositions of the Borrower’s assets (other than Permitted Dispositions), whether then owned or thereafter acquired, are required to be deposited into the Mandatory Prepayment Account and applied to the prepayment of the Senior Secured Obligations on a pro rata basis;

(iv) an amount equal to the net cash proceeds of any payment received by the Borrower from the Hedge Providers following early termination of any Hedging Agreement, except to the extent such proceeds are used to offset the costs to the Borrower of entering into a replacement Hedging Agreement in accordance with the terms of the Design-Build Loan Facility Credit Agreement, are required to be deposited into the Design-Build Loan Mandatory Prepayment Sub-Account and applied to the prepayment of the Design-Build Loan Facility in accordance with the Design-Build Loan Facility Credit Agreement; and

(v) the amounts transferred to the Mandatory Prepayment Account from the Bond Proceeds Account (relating to the distribution of funds that remain on deposit in the Bond Proceeds Account upon the earlier of the fifth (5th) anniversary of the Financial Close Date and the Final Project Costs Payment Date as described in “—APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Description of Project Accounts—*Bond Proceeds Account*”)) are required to be applied to the Series 2018 Redemption Account established pursuant to the terms of the Indenture to cause the mandatory redemption of the Series 2018 Bonds in accordance with the Indenture.

The Bond Mandatory Prepayment Sub-Account will be pledged solely to secure the Series 2018 Loan Agreement and will be established solely for the benefit of the Trustee, on behalf of the Owners of the Series 2018 Bonds, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such Owners, and the Design-Build Loan Mandatory Prepayment Sub-Account will be pledged solely to secure the Design-Build Loans and will be established solely for the benefit of the Bank Lenders, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only the Bank Lenders.

#### *Equity Member Cash Collateral Account*

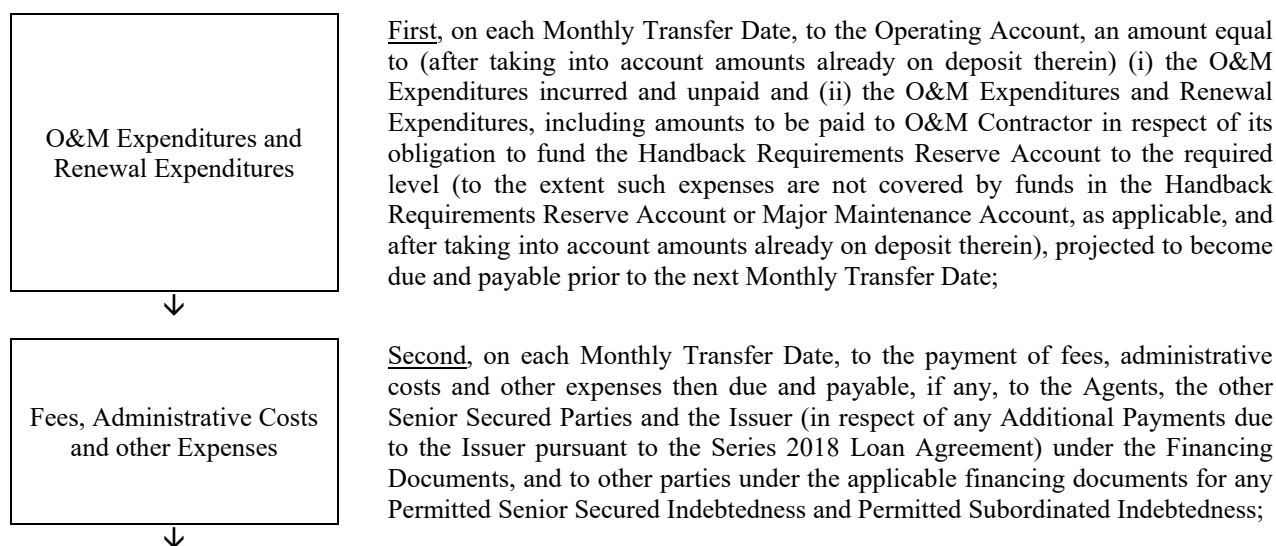
The Applicable Equity Member Cash Collateral Account relating to each Equity Member is required to be funded with (i) certain amounts received from, or on behalf of, such Equity Member in accordance with the Equity

Contribution Agreement and (ii) the proceeds of any drawing upon such Equity Member's Equity Letter of Credit in accordance with the Equity Contribution Agreement. The Borrower may also transfer funds to the Applicable Equity Member Cash Collateral Account from the Proceeds Account or the Loss Proceeds Account, as applicable, in accordance with the Collateral Agency and Accounts Agreement upon the receipt of Project Revenues that are to be reimbursed to any Equity Member in accordance with the Equity Contribution Agreement. All amounts to be deposited into the Applicable Equity Member Cash Collateral Account are required to be identified as such upon delivery to the Depositary Agent.

Funds in an Applicable Equity Member Cash Collateral Account are required to be transferred (without the delivery of a Withdrawal Certificate or Funds Transfer Certificate or satisfaction of the Restricted Payment Conditions) to (i) the Equity Contribution Sub-Account as directed by the Borrower, or by the Depositary Agent upon the direction of the Collateral Agent, in each case in accordance with the Equity Contribution Agreement, (ii) to the applicable Equity Member, at the direction of the Borrower in accordance with the Equity Contribution Agreement if amounts therein plus amounts available under such Equity Member's Equity Letters of Credit exceed each Equity Member's Unfunded Equity Commitments, or (iii) to the applicable Equity Member, at the direction of the Borrower, in accordance with the Equity Contribution Agreement, solely to the extent that such Equity Member has delivered an Equity Letter of Credit meeting the requirements of the Equity Contribution Agreement with respect to Equity Letters of Credit in substitution for such funds.

### Flow of Funds Post-Passenger Service Availability

Pursuant to the terms of the Collateral Agency and Accounts Agreement, beginning with the first Monthly Transfer Date after the Passenger Service Availability Date, subject to the receipt of a Funds Transfer Certificate from the Borrower (if required), Project Revenues are required to be transferred into the Revenue Account and the Depositary Agent is obligated, to the extent of available funds, to make the following withdrawals, transfers and payments from the Revenue Account and any sub-accounts therein in the amounts, on each Monthly Transfer Date or Distribution Date, as applicable, and in the following order of priority (the "Pre-Enforcement Waterfall" or the "Flow of Funds"), provided that no amount is permitted to be withdrawn on any date pursuant to any clause below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior clauses shall have been withdrawn or set aside. For a further detailed summary of the Pre-Enforcement Waterfall and a description of the accounts and sub-accounts, see APPENDIX D-3—"SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT."



Payments to the Series  
2018 Rebate Fund



Interest on Senior Secured  
Obligations and Hedging  
Obligations



Principal on Senior  
Secured Obligations and  
Hedging Obligations



Senior Debt Service  
Reserve Required Balance

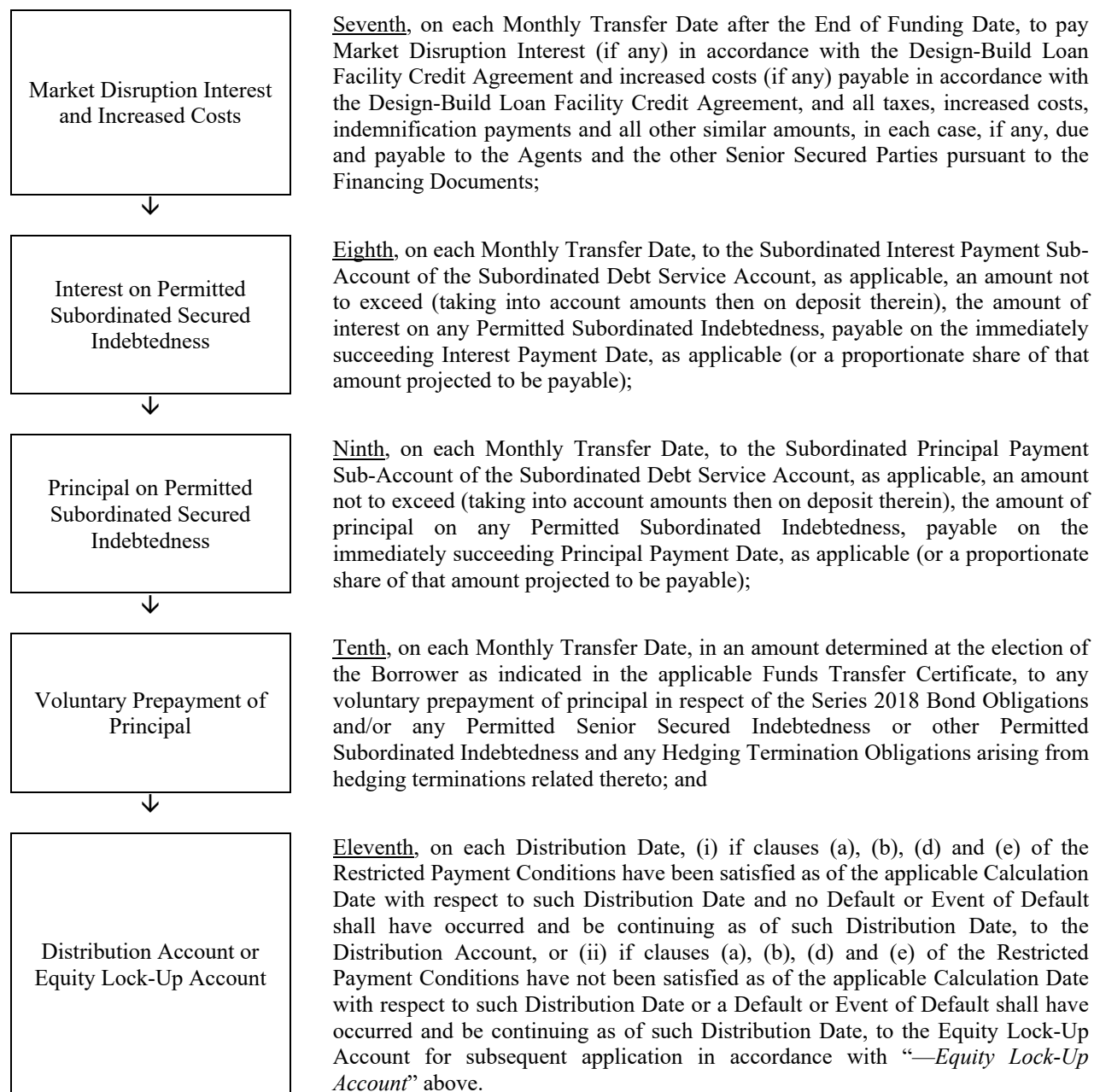


Third, on each Monthly Transfer Date, to any payments then due and payable by the Borrower to the Trustee for deposit in the Series 2018 Rebate Fund (or any similar fund established with respect to any tax-exempt financing) in accordance with the Indenture and Section 148 of the Code;

Fourth, on each Monthly Transfer Date, to the Senior Interest Payment Sub-Account of the Senior Debt Service Account, an amount not to exceed the sum of (i) (A) one-sixth (1/6) of the amount of the interest payable on the immediately succeeding Interest Payment Date in the case of the Senior Secured Obligations having semi-annual interest payment dates; (B) in the case of Senior Secured Obligations having monthly interest payment dates, the amount of interest payable on the immediately succeeding Interest Payment Date; (C) the proportionate amount of interest payable on any other Permitted Senior Secured Indebtedness in accordance with the applicable Additional Financing Documents; and (D) in each case, if applicable, the related Hedging Obligations; plus (ii) the sum of any shortfall in transfers required to have been made on any preceding Monthly Transfer Date; plus (iii) if such Monthly Transfer Date is also an Interest Payment Date or the last Monthly Transfer Date before an Interest Payment Date, any other amount required to make the amount credited to the Senior Interest Payment Sub-Account equal to the amount of interest (and, if applicable, related Hedging Obligations) due and payable on the Senior Secured Obligations (and, if applicable, related Hedging Obligations) on such Interest Payment Date;

Fifth, on each Monthly Transfer Date, to the Senior Principal Payment Sub-Account of the Senior Debt Service Account, an amount not to exceed the sum of (i) (A) one-sixth (1/6) of the amount of principal payable on any immediately succeeding semi-annual principal payment date, including mandatory sinking fund redemption dates in the case of the Series 2018 Bond Obligations; (B) the proportionate amount of principal payable on any other Permitted Senior Secured Indebtedness in accordance with the applicable Additional Financing Documents; (C) with respect to each Monthly Transfer Date after the End of Funding Date, to the extent the Design-Build Loan Facility has not been repaid in accordance with Final Milestone Payment Waterfall, the proportionate amount of principal payable on such date and (D) in each case, if applicable, the related Hedging Termination Obligations; plus (ii) the sum of any shortfall in transfers required to have been made on any preceding Monthly Transfer Date; plus (iii) if the Monthly Transfer Date is also a principal payment date (or a mandatory sinking fund payment date) or the last Monthly Transfer Date before a principal payment date (or a mandatory sinking fund payment date), any other amount required to make the amount credited to the Senior Principal Payment Sub-Account equal to the total aggregate amount of principal due and payable on the Senior Secured Obligations (and, if applicable, related Hedging Termination Obligations) on such Principal Payment Date;

Sixth, on each Monthly Transfer Date, to the Senior Debt Service Reserve Account the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such reserve account, equals the Required Senior Debt Service Reserve at such time;



## **Restricted Payment Conditions**

Certain payments by the Borrower are subject to the Restricted Payment Conditions (each a “Restricted Payment”), as follows:

(i) any payment of a dividend or other equity distribution of property in respect of any capital stock of the Borrower; and

(ii) any payment of any amounts in respect of Permitted Subordinated Indebtedness owed to Affiliates of the Borrower,

provided that, the following will not constitute Restricted Payments: (A) any amount distributed from the Distribution Account or otherwise distributed after satisfaction of the Restricted Payment Conditions, (B) any funds transferred from any Project Account or the Handback Requirements Reserve Account following substitution of an Acceptable Letter of Credit or Handback Requirements Letter of Credit, as applicable, for cash on deposit in such account, (C) amounts required to be paid by the Borrower to the Design-Build Contractor under the Design-Build Contract, (D) amounts required to be paid by the Borrower to the O&M Contractor under the O&M Contract, (y) any Technical Assistance and Management Services Fees, and (E) any development fees or letter of credit fees payable to the Equity Members or to any future equity owners of the Borrower.

Pursuant to the payment provisions of the Pre-Enforcement Waterfall, funds on deposit in the Revenue Account, after application as contemplated in clauses First through Tenth thereof, or in the Equity Lock-up Account, are able to be transferred on each Distribution Date to the Distribution Account, so long as the following conditions (collectively, the “Restricted Payment Conditions”) are satisfied:

(a) all transfers required to have been made pursuant to clause First through clause Tenth of the Pre-Enforcement Waterfall as of the applicable Calculation Date have been satisfied in full, and any Reserve Account required to be established and funded as of such date has been fully funded to the level of the Applicable Reserve Requirement as of such date, or replaced with an Acceptable Letter of Credit;

(b) the Total DSCR as of the applicable Calculation Date (i) is not less than 1.10:1.00 for the immediately preceding period of twelve (12) consecutive months (or, with respect to any Calculation Date occurring prior to the first anniversary of the Passenger Service Availability Date, for any shorter period from the Passenger Service Availability Date) and (ii) is not projected to be less than 1.10:1.00 for the immediately succeeding twelve (12) consecutive months, as set forth in a certificate provided by the Borrower to the Intercreditor Agent setting forth such Total DSCRs;

(c) no Default or Event of Default has occurred and is continuing under the Financing Documents, or would exist as a result of making the requested Restricted Payment;

(d) the Passenger Service Availability Date has been achieved; and

(e) all amounts outstanding under the Design-Build Loan Facility (and any associated Hedging Obligations and Hedging Termination Obligations) have been repaid.

## **Withdrawal and Application of Funds; Priority of Transfers from Project Accounts**

Each withdrawal or transfer of funds from the Securities Accounts by the Depositary Agent on behalf of the Borrower which, pursuant to the terms of the Collateral Agency and Accounts Agreement, is expressly required to be made pursuant to an Approved Construction Requisition is required to be transferred by the Depositary Agent as directed in the applicable Construction Requisition Certificate to pay Project Costs upon receipt by the Depositary Agent (copied to the Collateral Agent) of the following documents and satisfaction of the following conditions, as applicable:

(i) a duly executed Construction Requisition Certificate from the Borrower setting forth the amount requested and certifying that (A) no Event of Default has occurred or is continuing, or would result from the proposed transfer of funds, (B) no Funding Shortfall exists and (C) if funds are being requested from the Bond Proceeds Account, that such funds will be used solely for Permitted Uses of Funds; and

(ii) except in the case of any withdrawal to pay for administrative expenses of the Borrower, including, without limitation, personnel, insurance and lease expenses, and fees related to Equity Letters of Credit, a duly executed Technical Advisor Certificate stating that (A) the Lenders' Technical Advisor does not dispute the certification given by the Borrower that no Funding Shortfall exists, (B) Passenger Service Availability is reasonably expected to occur prior to the Lenders' Long Stop Date, and (C) if applicable, the amounts being requested in the applicable drawing request are for the payment of Project Costs (and with respect to any proposed withdrawal from the Bond Proceeds Account, for the payment of Project Costs in accordance with the Tax Regulatory Agreements).

In the event that a Construction Requisition Certificate does not comply with the requirements of the Collateral Agency and Accounts Agreement, the Depositary Agent has the right to reject such certificate and the Borrower will not be entitled to cause the proposed withdrawal or transfer until it has submitted a revised and compliant certificate.

Except as otherwise provided in the Collateral Agency and Accounts Agreement, each withdrawal or transfer of funds from the applicable Project Account by the Depositary Agent on behalf of the Borrower is required to be made pursuant to an executed Funds Transfer Certificate, which certificate must be provided and prepared by the Borrower and is required to contain a certification by the Borrower, as applicable, that such withdrawal or transfer complies with the requirements of the Collateral Agency and Accounts Agreement. The Borrower is obligated to deliver to the Depositary Agent (copied to the Collateral Agent) at least five (5) Business Days prior to each Distribution Date (or such other date on which a transfer to the Distribution Account is proposed) a Distribution Requisition Certificate.

For a further detailed summary of the procedures for withdrawal and application of funds under the Collateral Agency and Accounts Agreement, see APPENDIX D-3—"SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts."

#### **Priority of Transfers from Project Accounts; Event of Default**

Upon receipt of a notice of an Event of Default and during the continuance of the related Event of Default, the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) may, in connection with the taking of an Enforcement Action, without consent of the Borrower, instruct the Collateral Agent in writing to apply, or direct the Depositary Agent to apply, proceeds of the Project Accounts to the payment of Secured Obligations, in accordance with the terms of the Intercreditor Agreement and in the order set forth in the Post-Enforcement Waterfall, so long as such payments are on account of amounts due under the Financing Documents in respect of such Secured Obligations; provided that at any time prior to the taking of an Enforcement Action, proceeds of the Project Accounts are required to be applied in the order set forth in the Pre-Enforcement Waterfall; and provided, further, that proceeds of the Bonds Segregated Collateral, the Bank Segregated Collateral and the Senior Secured Segregated Collateral may only be applied in accordance with the provisions of the Collateral Agency and Accounts Agreement relating to the Milestone Payment Sub-Account, the Bond Proceeds Account, the Senior Debt Service Reserve Account and the Mandatory Prepayment Account, as applicable.

On and after any date on which the Depositary Agent receives a written notice from the Collateral Agent stating that an Event of Default has occurred and is continuing, the Depositary Agent is obligated thereafter to accept all notices and instructions required or permitted to be given to the Depositary Agent pursuant to the terms of the Collateral Agency and Accounts Agreement only from the Collateral Agent and not from the Borrower or any other Person, and the Depositary Agent will not be permitted to withdraw, dispose of, transfer, pay or otherwise distribute any monies in any of the Project Accounts except pursuant to such notices and instructions from the Collateral Agent until such time as the Depositary Agent receives written notice from the Borrower, countersigned

by the Collateral Agent, stating that such Event of Default no longer exists due to the same having been waived (or deemed waived) or cured or no longer existing in accordance with the terms of the Financing Documents.

*Allocation of Cure Period under the BT Lenders' Direct Agreement*

Promptly, but no later than 5 Business Days after the Borrower obtains knowledge or notice of the occurrence of a Design-Build Contractor BT Default, the Borrower is required to notify Collateral Agent of such Design-Build Contractor BT Default and whether or not the Borrower is curing or intends to take meaningful steps to cure such Design-Build Contractor BT Default. If the Borrower delivers a notice advising that the Borrower is curing or intends to take meaningful steps to cure the Design-Build Contractor BT Default ("Borrower BT Cure Notice"), the Borrower will have the remaining portion of the available cure period, up to 75% of the total cure period ("Borrower BT Cure Period") to remedy such Design-Build Contractor BT Default. If the Borrower delivers a Borrower BT Cure Notice and, upon expiration of the Borrower BT Cure Period, the Design-Build Contractor BT Default is continuing, the Collateral Agent may, but is not obligated to (in accordance with the instructions given by the Intercreditor Agent acting pursuant to the terms of the Intercreditor Agreement) notify the Borrower that the Collateral Agent intends to take meaningful steps to cure such Design-Build Contractor BT Default ("Collateral Agent BT Cure Notice"). If the Collateral Agent issues a Collateral Agent BT Cure Notice, the Borrower will be required to cease all remedial activity (unless otherwise permitted in writing by the Collateral Agent to continue) and will promptly transition all remedial and cure efforts to the Collateral Agent, affording the Collateral Agent the balance of the total available cure period to remedy such Design-Build Contractor BT Default. If the Borrower fails to issue a Borrower BT Cure Notice when required, the Collateral Agent may, but is not obligated to (in accordance with the instructions given by the Intercreditor Agent acting pursuant to the terms of the Intercreditor Agreement) issue a Collateral Agent BT Cure Notice and will be afforded the entire remaining cure period to remedy any such Design-Build Contractor BT Default.

For a further detailed summary of Events of Default, see APPENDIX D-3—"SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts."



## **PROJECT PARTICIPANTS**

### **The Issuer**

Under Title 1, Division 7, Chapter 5 of the California Government Code (the “JPA Act”), certain California cities, counties and special districts have entered into a joint exercise of powers agreement (the “JPA Agreement”) forming the Issuer for the purpose of exercising powers common to the members and exercising the additional powers granted to the Issuer by the JPA Act and any other applicable provisions of California law. Under the JPA Agreement, the Issuer may issue bonds, notes or any other evidence of indebtedness, for any purpose or activity permitted under the JPA Act or any other applicable Law.

The Issuer may sell and deliver obligations other than the Series 2018 Bonds. These obligations will be secured by instruments separate and apart from the Indenture, and the holders of such other obligations of the Issuer will have no claim on the security for the Series 2018 Bonds. Likewise, the Owners of the Series 2018 Bonds will have no claim on the security for such other obligations that may be issued by the Issuer.

Neither the Issuer nor its independent contractors has furnished, reviewed, investigated or verified the information contained in this Official Statement other than the information contained in this section and the section captioned “LITIGATION—The Issuer.” The Issuer does not and will not in the future monitor the financial condition of the Department or the Borrower or otherwise monitor payment of the Series 2018 Bonds or compliance with the documents relating thereto. Any commitment or obligation for continuing disclosure with respect to the Series 2018 Bonds has been undertaken solely by the Department and the Borrower. See “CONTINUING DISCLOSURE AND OTHER REPORTING REQUIREMENTS.”

### **The Department**

For information about the Department, see APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES.”

The Department is only obligated to make certain payments required by the DBFOM Agreement and is not responsible for paying, and is not guaranteeing the payment of, the principal or accreted value of, premium, if any, or interest on the Series 2018 Bonds. The Series 2018 Bonds are not secured by a lien on any properties or improvements of the City or of the Department, or by a pledge of any revenues of the Department. The Department is not a party to any of the finance documents relating to the Series 2018 Bonds other than the DBFOM Agreement and the Department Continuing Disclosure Certificate and is not subject to any of the covenants or other restrictions contained in any of the other finance documents relating to the Series 2018 Bonds. Except as described in APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES,” APPENDIX B-4—“SUMMARY OF THE MASTER SENIOR INDENTURE” and APPENDIX B-5—“SUMMARY OF THE MASTER SUBORDINATE INDENTURE,” the Department is not restricted from issuing Additional Senior Bonds, Additional Subordinate Obligations or Third Lien Obligations or incurring any other debt which may be supported by or secured by the Department’s revenues and the payment of which may be senior to any of the payments to be made by the Department to the Borrower pursuant to the DBFOM Agreement.

**THE DEPARTMENT HAS NOT PREPARED OR ASSISTED IN THE PREPARATION OF THIS OFFICIAL STATEMENT EXCEPT THAT THE DEPARTMENT HAS PROVIDED ONLY THE INFORMATION SET FORTH UNDER THE CAPTIONS “SUMMARY— THE PROJECT — THE DEPARTMENT AND LOS ANGELES INTERNATIONAL AIRPORT”, “INTRODUCTION—THE CITY, THE DEPARTMENT AND THE LOS ANGELES INTERNATIONAL AIRPORT”, “INTRODUCTION— AVIATION ACTIVITY,” “THE APM PROJECT—OVERVIEW—AUTHORIZATIONS FOR THE APM PROJECT” – “THE APM PROJECT—OVERVIEW—STATE ENVIRONMENTAL APPROVALS,” “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—UNSECURED PAYMENTS OF THE DEPARTMENT,” “PROJECT PARTICIPANTS—THE DEPARTMENT”, THE FIRST PARAGRAPH UNDER “LITIGATION – THE DEPARTMENT – TPS PARKING MANAGEMENT LITIGATION” AND IN APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES,” APPENDIX B-2—“ANNUAL FINANCIAL REPORT OF LOS**

ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016,” APPENDIX B-3—“CERTAIN DEFINITIONS,” APPENDIX B-4—“SUMMARY OF THE MASTER SENIOR INDENTURE,” APPENDIX B-5—“SUMMARY OF THE MASTER SUBORDINATE INDENTURE,” APPENDIX B-6—“AMENDMENTS TO THE MASTER SENIOR INDENTURE,” APPENDIX B-7—“AMENDMENTS TO THE MASTER SUBORDINATE INDENTURE” AND APPENDIX B-8—“CERTAIN INFORMATION REGARDING THE RETIREMENT PLAN AND PENSION SYSTEMS OF THE CITY OF LOS ANGELES,” AND APPENDIX E-2—“FORM OF THE DEPARTMENT CONTINUING DISCLOSURE AGREEMENT CERTIFICATE” AND HAS NOT REVIEWED OR APPROVED AND IS NOT RESPONSIBLE FOR, AND MAKES NO REPRESENTATION, WARRANTY OR CERTIFICATION AS TO THE ADEQUACY OR ACCURACY OF THE INFORMATION SET FORTH ANYWHERE ELSE IN THIS OFFICIAL STATEMENT (INCLUDING ANY INFORMATION CONTAINED IN THIS OFFICIAL STATEMENT, OR IN ANY APPENDIX OBTAINED FROM ANY CONSULTANT OF THE DEPARTMENT OR FROM THE CITY), AND EXCEPT AS NOTED ABOVE, THE DEPARTMENT IS NOT RESPONSIBLE FOR ANY STATEMENTS MADE IN THIS OFFICIAL STATEMENT. THE DEPARTMENT HAS NOT ASSISTED IN THE PUBLIC OFFER, SALE OR DISTRIBUTION OF THE SERIES 2018 BONDS. ACCORDINGLY, EXCEPT AS AFORESAID, THE DEPARTMENT DISCLAIMS ANY RESPONSIBILITY FOR THE INFORMATION SET FORTH IN THIS OFFICIAL STATEMENT OR OTHERWISE MADE AVAILABLE IN CONNECTION WITH THE OFFER, SALE AND DISTRIBUTION OF THE SERIES 2018 BONDS. NONE OF THE SERIES 2018 BONDS CONSTITUTES OR EVIDENCES AN INDEBTEDNESS OF THE CITY OR THE DEPARTMENT OR A LIEN OR CHARGE ON ANY PROPERTY OR THE GENERAL REVENUES OF THE CITY OR THE DEPARTMENT. NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY, THE DEPARTMENT, THE STATE OR ANY PUBLIC AGENCY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2018 BONDS. THE DEPARTMENT IS UNDER NO OBLIGATION TO PAY THE SERIES 2018 BONDS.

### **The Borrower**

The Borrower is a special purpose vehicle, which was formed as a Delaware limited liability company on January 30, 2018 for the sole purpose of undertaking the APM Project. The Borrower’s activities related to the APM Project include, among other things, entering into the DBFOM Agreement. LAX Integrated Express Solutions HoldCo, LLC (“Borrower HoldCo”) is the direct holder of one hundred percent (100%) of the outstanding membership interests of the Borrower. The table below sets forth the direct ownership of Borrower HoldCo.

<b>Equity Member</b>	<b>Percentage</b>
ACS LINXS Holdings, LLC	18%
Balfour Beatty Investments, Inc.	27%
Bombardier Transportation (Holdings) USA Inc.	10%
Fluor Enterprises, Inc.	27%
HOCHTIEF LINXS Holding, LLC	18%

### **Equity Members**

Many of the Equity Members, members of the DB Contractor, members of the O&M Contractor, the Design-Build Guarantors and the O&M Guarantors are affiliates and direct or indirect subsidiaries, each of which have assumed a number of roles in the APM Project. The interests of the various affiliates or their commitments to the APM Project under the various Transaction Documents may diverge from one another or from the interests of their parent companies during the term of the DBFOM Agreement. The parties are required to conduct business on an arms-length basis but conflicts of interest may arise between or amongst any of the Equity Members, members of the DB Contractor, members of the O&M Contract, the Design-Build Guarantors or the O&M Guarantors.

The following summaries of the Equity Members and the Equity Members’ affiliates, as applicable, are included solely to provide any potential investor in the Series 2018 Bonds with additional background regarding the technical capabilities of each Equity Member, as well as the source of the equity contributions as contemplated in

the Equity Contribution Agreement and discussed in this Official Statement. Potential investors in the Series 2018 Bonds should note that, as described elsewhere in this Official Statement, the Series 2018 Bonds are payable from payments received from the Borrower pursuant to the Series 2018 Loan Agreement. The Borrower's obligations under the Series 2018 Loan Agreement are non-recourse obligations of the Borrower and in no event will all or any of the Equity Members or their parent companies have any obligation with respect to any payment related to the Series 2018 Bonds (except as relating to the Equity Members' equity contributions solely to the extent contemplated in the Equity Contribution Agreement and described herein). Each Equity Member will commit to make certain equity investments in the Borrower pursuant to the Equity Contribution Agreement described herein, subject to the terms of the Equity Contribution Agreement. Each Equity Member's obligation to contribute equity to the Borrower under the Equity Contribution Agreement will be secured by a separate Equity Letter of Credit. See "FINANCING FOR THE APM PROJECT—Equity Contributions." Pursuant to the Equity Contribution Agreement, the Equity Members and Borrower HoldCo each have the right to transfer their direct or indirect ownership interests in the Borrower to any person or entity at any time, provided that such transferor complies with the terms and provisions of the DBFOM Agreement and obtains the consent of the Lenders. See "PRINCIPAL PROJECT DOCUMENTS—DBFOM AGREEMENT—ASSIGNMENT AND TRANSFER—Restrictions on Equity Transfers and Change of Control."

<b>Equity Member</b>	<b>Aggregate Equity Commitment (US\$)</b>
ACS LINXS Holdings, LLC	18,493,385
Balfour Beatty Investments, Inc.	27,740,077
Bombardier Transportation (Holdings) USA Inc.	10,274,103
Fluor Enterprises, Inc.	27,740,077
HOCHTIEF LINXS Holding, LLC	18,493,385

None of the obligations in respect of the Series 2018 Bonds or any of the Transaction Documents (other than the Equity Members' obligations under the Equity Contribution Agreement to the limited extent described below) will constitute obligations of, or be guaranteed by, the Equity Members or any of their respective affiliates, other than the Borrower. In addition, except for the obligations of the Equity Members under the Equity Contribution Agreement to the limited extent described below, none of the Equity Members or any of their respective affiliates, other than the Borrower, will be bound by the covenants set forth in the Financing Documents. Neither the Equity Members nor the Borrower will be required to provide to the holders of the Series 2018 Bonds updated information about the Equity Members or any of their respective affiliates (other than the Borrower), except that the Borrower will be required to deliver certain audited and unaudited financials of the Design-Build Guarantors and O&M Guarantors to the Trustee and Administrative Agent.

#### *ACS LINXS Holdings, LLC*

ACS LINXS Holdings, LLC, a Delaware limited liability company, is a wholly-owned subsidiary of ACS Infrastructure Development, Inc. ("ACSID"), which is the U.S. concession arm of ACS Actividades de Construcción y Servicios, S.A. ("ACS Group"), a global construction and PPP projects contractor. ACS Group is one of the largest infrastructure construction companies in the world, with more than 182,000 employees spread across over 60 countries and annual revenues of EUR 34.9 billion as of December 31, 2017. For the 11<sup>th</sup> year running, ACS Group leads the ranking of major global concession groups as the World's Largest Transportation Developer, as listed by Public Works Financing, and is currently ranked number one on the 2017 Top 250 International Contractors by Engineering News Record.

ACS Group has over 50 years of experience in developing, financing, operating and maintaining highway, bridge, railway, and social infrastructure projects, and has developed over 110 PPP projects globally, including PPP rail projects: Seville Metro Line 1 (Seville, Spain); Perpignan – Figueras High Speed Rail Connection (between Perpignan, France and Figueras, Spain); Sections II and IV of the Barcelona Metro Line 9 (Barcelona, Spain); as well as (each currently in the construction phase) the Lima Metro Line 2 (Lima, Peru), Eglinton Crosstown LRT (Ontario, Canada), Finch West LRT (Ontario, Canada) and the Confederation Line (Ontario, Canada).

In North America, through ACSID and its Canadian sister company, ACS Infrastructure Canada Inc. ("ACSIC"), ACS Group's PPP projects portfolio is composed of (including the APM Project) 15 projects, including

12 availability-based, two revenue risk, and one hybrid availability-revenue risk. Six of these projects are in operations phase and eight projects are in construction phase.

In addition to the APM Project, the table below sets forth ACSID and ACSIC's project experience in North America. The size of the project reflects the total project costs during construction.

<b>Project / Client / Location</b>	<b>Year Closed</b>	<b>Size</b>	<b>Description</b>
Autoroute 30 / Ministre des Transports du Québec / Québec, Canada	2008	CAD 1.9 billion	A DBFOM hybrid availability-revenue risk highway project with a 30-year concession period. ACSIC is an equity member, and the concessionaire has been self-performing the operations and maintenance and toll collection since the opening in December 2012. The project is in operation.
I-595 Corridor Roadway Improvements / Florida Department of Transportation / Broward County, Florida, U.S.	2009	USD 1.7 billion	A DBFOM availability-based project for a 17-kilometer length of highway located in Broward County, Florida. Construction began in 2009 and was completed in March 2014. ACSID is an equity member, and the concessionaire is self-performing the operation and maintenance of all project assets during the 30-year concession period. The project is in operation.
South Fraser Perimeter Road / British Columbia Ministry of Transportation / British Columbia, Canada	2010	CAD 715 million	A DBFOM availability-based highway project that reached substantial completion six months ahead of schedule. ACSIC is an equity member and is lead partner in the operations and maintenance entity performing the operations and maintenance for the project, with a 75% share. The project is in operation.
Right Honourable Herb Gray Parkway / Infrastructure Ontario / Windsor, Ontario, Canada	2010	CAD 1.3 billion	A DBFOM availability-based highway project with a 30-year concession agreement. ACSIC is an equity member and the concessionaire is self-performing the operations and maintenance for the project. The project is in operation.
Northeast Anthony Henday Drive / Alberta Transportation / Edmonton, Alberta, Canada	2012	CAD 1.5 billion	A DBFOM availability-based highway project, with a contract term of 34 years. ACSIC is an equity member. The project is in operation.

<b>Project / Client / Location</b>	<b>Year Closed</b>	<b>Size</b>	<b>Description</b>
The Confederation Line / City of Ottawa / Ottawa, Ontario, Canada – Stage 1	2013	CAD 2.0 billion	A DBFM availability-based project that will provide rapid, high-quality transit service with the first network of light rail transit lines in Ottawa, through a 35-year contract. ACSIC is an equity member and a partner in the entity performing the maintenance for the project. The project is in construction.
The Confederation Line / City of Ottawa / Ottawa, Ontario, Canada – Stage 2	2017	CAD 1.17 billion	A mandate to maintain the two additional segments of light rail transit lines in Ottawa through a 30-year contract, and also expand the MSF Facility (structured as a DBF). The project is in construction.
New Champlain Bridge / City of Brossard / Montreal, Quebec, Canada	2015	CAD 2.5 billion	A DBFOM availability-based project that will design-build a new bridge with its connections (four-year construction period). ACSIC is an equity member, and the concessionaire will be self-performing the operations and maintenance over a 30-year contract. The project is in construction.
Eglinton Crosstown LRT / Infrastructure Ontario / Eglinton, Ontario, Canada	2015	CAD 5.5 billion	A DBFM availability-based development that will execute a rail infrastructure over 19.7 kilometers and will provide services through a 30-year contract. ACSIC is an equity member and a partner in the maintenance entity performing the maintenance for the project. The project is in construction.
Southern Ohio Veterans Memorial Highway / Ohio Department of Transportation / Portsmouth, Ohio, U.S.	2015	USD 557 million	A DBFOM availability-based project involving 26 kilometers of new four lane highway in Portsmouth, Ohio. ACSID is an equity member and the concessionaire will be self-performing the operations and maintenance of the project through a 35-year term contract. The project is in construction.
SH-288 Highway / Texas Department of Transportation / Houston, Texas, U.S.	2016	USD 1.1 billion	A revenue-risk project including the DBFOM of four new managed toll lanes in the median of a 10.3-mile segment of SH-288 in Harris County, Texas, plus improvements to the two major intersections and operations and maintenance of the existing general purpose lanes and related facilities. ACSID is an equity member and the concessionaire will be self-performing

Project / Client / Location	Year Closed	Size	Description
			the operations and maintenance, including toll operations, through a 48-year agreement. The project is in construction.
Angels Flight / City of Los Angeles / Los Angeles, California, U.S.	2017	Less than USD 5 million	A revenue-risk project for the operation and maintenance of the Angels Flight Funicular in the City of Los Angeles. ACSID is the lead equity member and the concessionaire is self-performing the operations and maintenance and providing services through a 30-year contract. The project is in operation.
Highway 427 Expansion / Infrastructure Ontario/ Toronto, Ontario, Canada	2017	CAD 363 million	A DBFOM availability-based project for the 6.6 kilometers expansion of the 427 Highway. ACSIC is the lead equity member, and the concessionaire will be self-performing the operations and maintenance through a 30-year contract. The project is in construction.
Finch West LRT / Infrastructure Ontario and Metrolinx / Toronto, Ontario, Canada	2018	CAD 1.4 billion	A DBFM availability-based project of a new 11 kilometers Light Rail Transit System on Finch Avenue in Toronto, Ontario. ACSIC is an equity member and is a partner in the entity performing the maintenance for the project over a 30-year maintenance contract term, which follows a 5.4-year construction period. The project is in construction.

*Balfour Beatty Investments, Inc.*

Balfour Beatty Investments, Inc., a Delaware corporation, is a wholly-owned subsidiary and part of the global Investments division of Balfour Beatty plc (“Balfour Beatty”), a leading international infrastructure group with more than 100 years of experience in delivering highly complex infrastructure projects. Balfour Beatty finances, develops, builds and maintains complex infrastructure, such as transportation, power, utilities, and social and commercial buildings. Balfour Beatty is a constituent of the UK’s FTSE 250 Index and employs over 28,000 people worldwide, working across the United Kingdom, Ireland, the United States, Canada and South East Asia.

The Investments division of Balfour Beatty has established itself as one of the largest investors in the PPP industry, building a portfolio of over 70 projects worldwide, predominantly in the United Kingdom and North America. Balfour Beatty’s PPP portfolio valuation, as of December 31, 2017, is \$1,679.4 million of which \$858.6 million is comprised of U.K. assets and \$820.8 million is comprised of North American assets (each amount converted from GBP to USD using an exchange rate of 1.35).

The table below sets forth a selection of Balfour Beatty’s PPP project experiences in North America. The size of the project indicates the design-build contract price. Balfour Beatty Investments, Inc. is an equity investor or developer partner in each of these projects.

Project / Client / Location	Year Closed	Size	Description
BC Children's and BC Women's Redevelopment Project / Children's and Women's Health Centre of British Columbia Branch/ British Columbia, Canada	2014	CAD 336 million	A DBFOM project for a new 259,037 m <sup>2</sup> Acute Care Centre, including below grade parking garage (180 stalls), and 30 year operations and maintenance term. The project has been in operations since July 2017.
North Island Hospitals / Vancouver Island Health Authority / British Columbia, Canada	2014	CAD 422 million	A DBFOM project for two new hospitals. The new Campbell River Hospital (29,674 m <sup>2</sup> ) is located at the existing hospital campus at Campbell River and Comox Valley Hospital (37,067 m <sup>2</sup> ) is on a greenfield site. Project also includes a 30 year operations and maintenance term. The project has been in operations since April 2017.
Enterprise Data Centre / Defense Construction Canada / CFB Borden, Ontario, Canada	2016	CAD 110 million	A DBFOM project for new single story data center facility housing 5MW of IT data halls (10,000 m <sup>2</sup> ), demolition of 40,000 m <sup>2</sup> existing data center and six small ancillary buildings, and construction of a 500 m <sup>2</sup> low specification separate new admin/storage building within the site perimeter. Project includes a 25 year operations and maintenance term. The project is in construction.
Various Military Housing Privatization Projects (21 projects) / U.S. Department of Defense (Army, Air Force and Navy) / 56 military installations in over 20 states across United States	2003-2014	USD 5.8 billion	Portfolio of PPP privatized military housing projects covering design, build, finance, operation and maintenance of military family housing over a 50 year term. 19 projects have completed the initial development period. Two projects are still in their initial development period.
Various Student Accommodation Projects (14 projects) / Various public and private universities and colleges / Various locations including University of Iowa, Texas A&M System, University of Oklahoma, University of Nevada – Reno, Purdue University	2010-2018	USD 900 million	Portfolio of PPP projects covering design, build, finance, and operations and maintenance of on-campus student housing, academic facilities and related infrastructure. Projects vary with respect to equity and 501(c)(3) financing models and have 30-65 year ground lease terms. Four projects are under construction. Nine projects are in operations.

*Bombardier Transportation (Holdings) USA Inc.*

Bombardier Transportation (Holdings) USA Inc. ("Bombardier"), a Delaware corporation, is a wholly-owned indirect subsidiary of Bombardier Transportation (Global Holding) UK Limited, the transportation group's consolidated holding company ("Bombardier Transportation") established in November 2015, which is part of the Bombardier Inc. group of companies. Since February 2016, Caisse de dépôt et placement du Québec, a large

Canadian institutional investor and pension fund, indirectly owns a 30% equity stake (27.5% on an as converted basis) in Bombardier Transportation.

With over 60 production and engineering sites in 27 countries and USD 8.5 billion of revenues as of December 31, 2017, Bombardier Transportation is a global leader in the rail industry. Bombardier Transportation covers the full spectrum of rail solutions, ranging from design and supply of vehicles, operation and maintenance services, system integration and signaling to customized turnkey system solutions. Bombardier Transportation provides integrated solutions that create benefits for operators, passengers and the environment.

The table below sets forth a selection of Bombardier Transportation's PPP projects. The size of the project indicates the total project costs during construction.

Project / Client / Location	Year Closed	Size	Description
Edmonton Valley Line LRT / City of Edmonton/ Alberta, Canada	2016	CAD 1.8 billion	A DBFOM project for a 13.1 kilometers light rail transit system for the City of Edmonton with a 35 year term. Bombardier Transportation acted as a developer and equity member as well as the lead technology and O&M provider. The project is in construction.
New Generation Rolling Stock/ State of Queensland / Queensland, Australia	2014	AUD 4.4 billion	A DBFM project for 75 new six-car trains, maintenance services for a period of 30 years and the construction of a purpose-built maintenance center. The project has a term of 32 years. Bombardier Transportation acted as a developer and equity member, lead contractor and lead maintenance provider. The project is in its delivery phase.
Gautrain Rapid Rail Link / Provincial Government / Gauteng, South Africa	2007	USD 3.3 billion	A DBFOM project for an 80 kilometers long commuter system with 10 stations and a depot for the Province of Gauteng and with a 20 year term. The project has been operating since 2010. Bombardier Transportation acted as a developer and equity member, lead contractor (vehicles, core E&M works) and maintenance provider.

*Fluor Enterprises, Inc.*

Fluor Enterprises, Inc. ("Fluor Enterprises"), a California corporation, is the principal operating subsidiary of Fluor Corporation ("Fluor"), a holding company and one of the world's largest publicly traded engineering, procurement, fabrication, construction, maintenance and project management companies. Fluor is an integrated solutions provider for clients in a diverse set of industries worldwide, including oil and gas, chemicals and petrochemicals, transportation, mining and metals, power, life sciences and manufacturing, and is also a service provider to the U.S. federal government. Fluor has a global workforce of more than 56,000 employees and maintains a network of more than 100 offices and 36 countries across six continents.

For more than a century, Fluor, through its operating subsidiaries, has worked with clients to deliver solutions aimed to optimize assets, improve competitive position and increase long-term success. Fluor has



executed, or has been part of teams that have executed, more than \$40 billion of design-build projects over the past ten years, including the \$690 million Exposition Light Rail Transit Project in Los Angeles, and the \$1.6 billion Denver Eagle Rail Transit Project in Colorado. In 2017, Fluor's revenue totaled \$19.5 billion, with new awards of \$12.6 billion and business backlog at year-end of \$31 billion.

The table below sets forth Fluor's Design, Build, Finance, Operate and Maintain project experience in North America. The size of the project indicates the total capital cost of the project.

<b>Project / Client / Location</b>	<b>Year Closed</b>	<b>Size</b>	<b>Description</b>
495 Express Lanes / Virginia Department of Transportation / Fairfax County, Virginia	2007	USD 2.0 billion	The project involved a 14-mile widening of the Capital Beltway to add two express lanes in each direction, plus dedicated express lane interchanges. The project was opened to traffic ahead of schedule in 2012. Fluor was an equity investor and the managing partner of the design-build contractor.
95 Express Lanes / Virginia Department of Transportation / Fairfax, Stafford, and Prince William Counties, Virginia	2012	USD 925 million	The project involved converting and extending an existing HOV facility to a managed lane facility, including providing multiple new access points, improved interchanges, and an electronic toll system along the 29 mile corridor. The project was opened to traffic on schedule in 2014. Fluor was an equity investor and the managing partner of the design-build contractor.
Denver Eagle Commuter Rail / Denver RTD / Denver, Colorado	2010	USD 1.6 billion	Design and construction of three separate rail lines, 14 stations and a rail maintenance facility, as well as the provision of 54 commuter rail cars. Passenger service began in 2016. Fluor is an equity investor and the managing partner of the design-build contractor and of the O&M contractor for the 29 year operating period.
Purple Line LRT / Maryland Department of Transportation / Montgomery County and Prince George's County, Maryland	2016	USD 2.3 billion	The project will deliver a new 16.2-mile light rail transit system, including 21 stations and 26 vehicles that will link key economic, academic, and transit centers. The project is currently under construction. Fluor is an equity investor and the managing partner of the design-build contractor and of the O&M contractor for the 30 year operating period.
Right Honourable Herb Gray Parkway / Infrastructure Ontario / Windsor, Ontario	2010	CAD 1.3 billion	Greenfield project to deliver an 11 kilometers (6.8-mile), six-lane, below-grade freeway that includes 11 tunnels. The project was opened to traffic in 2015.

Project / Client / Location	Year Closed	Size	Description
			Fluor is an equity investor, managing partner of the design-build contractor, and a member of the O&M contractor for the 30 year operating period.

*HOCHTIEF LINXS Holding, LLC*

HOCHTIEF LINXS Holding, LLC, a Delaware limited liability company, is a wholly-owned subsidiary of HOCHTIEF PPP Solutions GmbH (“HOCHTIEF”), which is responsible for managing the PPP activities of HOCHTIEF Aktiengesellschaft (“HOCHTIEF AG”), an international provider of construction and construction-related services with a presence in more than 60 countries.

HOCHTIEF’s current committed equity exceeds USD 336 million for its PPP project portfolio with a total investment value of over USD 12.8 billion. Since 2010, HOCHTIEF has closed seven PPP projects in North America, three of which were in conjunction with Flatiron West, Inc. or its affiliates: Presidio Parkway, Northeast Anthony Henday Drive and the New Bridge on the St. Lawrence. These seven projects have total capital costs of USD 4.3 billion and total equity commitments of USD 222 million, HOCHTIEF’s share being USD 76 million.

The table below sets forth HOCHTIEF’s PPP project experience in North America. The size of the project indicates the total project costs during construction.

Project / Client/ Location	Year Closed	Size	Description
Stanton Territorial Hospital / Government of the Northwest Territories / Yellowknife, Northwest Territories, Canada	2015	CAD 287 million	A Design-Build-Finance-Maintain project including the construction of a new 280,000 square feet, 5-story facility with approximately 100 inpatient beds with a three-year construction period and a 30-year operations period. The project is currently under construction and HOCHTIEF is a 25% equity member of the project.
New Bridge on the St. Lawrence / Government of Canada, Infrastructure Canada / Montreal, Québec, Canada	2015	CAD 2.5 billion	A DBFOM availability-based project that will execute a new bridge with its connections (four-year construction period and 30-year O&M contract). The project is currently under construction and HOCHTIEF is a 25% equity member of the project.
Presidio Parkway Project (Phase II) / California Department of Transportation / San Francisco, California, U.S.	2012	USD 365 million	A DBFOM availability-based project (30 year O&M term) replacing a 1.6 mile stretch of heavily trafficked parkway connecting the San Francisco Peninsula to the Golden Gate Bridge. The project is currently in operations and HOCHTIEF is a 50% equity member of the project.
Northeast Anthony Henday Drive / Alberta Transportation / Edmonton, Alberta, Canada	2012	CAD 1.5 billion	A DBFOM availability-based highway project with 17 miles of new six-and eight-lane divided freeway and a contract

Project / Client/ Location	Year Closed	Size	Description
			term of 34 years (30-year O&M term). The project is currently in operations and HOCHTIEF is a 25 % equity member of the project.
Alberta Schools Alternative Procurement Phase 3 / Alberta Infrastructure / Multiple locations, Alberta, Canada	2012	CAD 206 million	A DBFM project with a 30-year availability payment structure involving 12 schools spread over 11 sites in Alberta, Canada, comprising of 710,000 square feet of new building space with a capacity for up to 7,700 students. The project is currently in operations and HOCHTIEF divested its 50% equity share in 2016.
Alberta Schools Alternative Procurement Phase 2 / Alberta Finance / Edmonton and Calgary, Alberta, Canada	2010	CAD 173 million	A DBFM project with a 30-year operations period, delivering 10 schools in Alberta, Canada at multiple locations. The project is currently in operations and HOCHTIEF divested its 50% equity share in 2013.
Ontario Provincial Police Modernization / Infrastructure Ontario / Multiple locations, Ontario, Canada	2010	CAD 282 million	A DBFM project with a 30-year availability payment structure involving 18 provincial police facilities in 16 Ontario communities. The project is currently in operations and HOCHTIEF divested its 50% equity share in 2015.

### Design-Build Contractor

The Borrower has contracted substantially all of the design and construction work to Fluor Enterprises, Inc., Balfour Beatty Infrastructure, Inc., Dragados USA, Inc. and Flatiron West, Inc., each of which, pursuant to the Design-Build Contract, are jointly and severally liable to perform all of the duties and obligations expressed to be duties and obligations of the Design-Build Contractor under the Design-Build Contract (the “Design-Build Contractor Liabilities”). Each of the members of the Design-Build Contractor have entered into a joint venture agreement pursuant to which they have agreed, among other things, to allocate the Design-Build Contractor Liabilities as among themselves as follows:

Design-Build Contractor Member	Percentage
Balfour Beatty Infrastructure, Inc.	30%
Dragados USA, Inc.	20%
Flatiron West, Inc.	20%
Fluor Enterprises, Inc.	30%

For additional information, see “PRINCIPAL PROJECT AGREEMENTS—Design-Build Contract” and APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

#### *Balfour Beatty Infrastructure, Inc.*

Balfour Beatty Infrastructure, Inc. (“Balfour Beatty Infrastructure”), a Delaware corporation, is a wholly-owned subsidiary of Balfour Beatty. For additional information on Balfour Beatty, see “—Equity Members—Balfour Beatty Investments, Inc.”

Balfour Beatty Infrastructure was founded in 1990 and provides heavy civil contracting services in the United States. It offers infrastructure contracting services for various projects, including rail, transit, highways, bridges over land and water, tunnels, wastewater and potable water treatment plants, and design-build projects for municipal, county, state, and federal agencies. Balfour Beatty Infrastructure also provides rail infrastructure construction and maintenance services, including design, signal engineering, construction, and maintenance services to class 1 and regional/short line railroads, industrial railroads, ports, and rail transit authorities. In addition, Balfour Beatty Infrastructure constructs water and wastewater treatment plants for environmental and heavy industrial markets, governmental facilities, and institutional facilities.

The table below indicates a selection of Balfour Beatty Infrastructure's transportation project experiences in the United States. The size of the project indicates the design-build contract price.

Project / Client / Location	Year Closed	Size	Description
Peninsula Corridor Electrification Project / Caltrain / San Francisco to San Jose, California	2016	USD 697 million	A design-build project for the electrification of the 52-mile Caltrain corridor between San Francisco and San Jose. The Peninsula Corridor Electrification Project (PCEP) is a key component of the Caltrain Modernization program. The PCEP will electrify the Caltrain Corridor from San Francisco's 4th and King Caltrain Station to approximately the Tamien Caltrain Station, convert diesel-hauled to Electric Multiple Unit (EMU) trains, and increase service up to six Caltrain trains per peak hour per direction. The Electrification Project is in construction and is expected to be completed in 2021.
Horseshoe Project / Texas Department of Transportation / Dallas, Texas	2013	USD 798 million	Balfour Beatty, in joint venture with Fluor, constructed the Horseshoe Project, which was the first non-concession, design-build project for the Dallas District of the Texas Department of Transportation (TxDOT). The project included replacement of the I-30 and I-35E bridges that cross the Trinity River, including eight new bridges, and reconstruction the U-shaped "Mixmaster" interchange between I-30 and I-35. The project spans 73 miles of roadway and includes 60 retaining walls and included the construction of 37 bridges. Construction was completed in August 2017.
Denver Eagle P3 / Regional Transportation Project / Denver, Colorado	2010	USD 1.6 billion	Joint venture for a design, build, finance, operate, and maintain project for the 36-mile Eagle Commuter Rail Network. The Eagle P3 Commuter Rail project was the first U.S. public-private partnership transit project. The project also includes building three new lines, approximately 50 new electric-power commuter railcars,

Project / Client / Location	Year Closed	Size	Description
			a new commuter rail maintenance facility that was certified LEED Gold, and operation and maintenance of the three lines and vehicles through 2044. Project has been in operations since 2016.
Dallas-Fort Worth International (DFW), Terminal Renewal and Improvement Program (TRIP) / DFW Airport, Texas	2010	USD 745 million	This project was a four-way Joint Venture (Balfour Beatty, Azteca, Russell and CARCON (otherwise known as BARC)). Balfour Beatty Construction Group, Inc. was the managing partner. The project started in January 2010. Construction was completed in September 2017. It consisted of the complete interior demolition and renovation of the Legacy Terminal A (American Airlines), Terminal A garage and DART station. Balfour Beatty worked in the secure airside and landside to replace 39 passenger boarding bridges.
Dulles Airport (IAD) -West ATS Station (Aero Train Systems), Concourse Expansion / Metropolitan Washington Airports Authority / Dulles Airport, Washington, D.C.	2005	USD 143 million	This addition and renovation to Concourse B at Dulles International Airport outside of Washington DC included 12 gate terminal expansions in terminal B. The project also included flight services, underground fueling systems, jetways, and conveyance systems (elevators). Balfour Beatty also constructed a new train station, including three platforms for an elevated APM, rubber wheeled train which connected this terminal with the airport hub, and terminals A, B and C. Construction was completed in October 2008.

*Dragados USA, Inc.*

Dragados USA, Inc. (“DUSA”), a Delaware corporation, began its U.S. operations in 2005 and has grown steadily with the construction of major projects in California, Washington, Texas, New York, Florida, and Puerto Rico. Together with its sister company, Dragados Canada, Inc. (“DCI”), the firm has experience on more than 20 design-build or PPP projects in North America alone, with total construction values well in excess of \$20 billion. This includes two of the most significant transit PPP projects—the CAD 5 billion Eglinton Crosstown Light Rail Transit (LRT) in Toronto, Ontario, Canada and the CAD 1.8 billion Confederation Line (Ottawa LRT) in Ottawa, Ontario, Canada. Other notable PPP projects include the \$1.2 billion I-595 Corridor Improvements Project in Broward County, Florida; the \$815 million SH 288 Toll Lanes Project in Harris County, Texas; and the \$427 million Southern Ohio Veterans Memorial Highway in Scioto County, Ohio.

DUSA has been working in California since 2011 and is safely delivering some of the state’s largest and most complex projects, including the \$1.4 billion California High Speed Rail Construction Package 2-3 Design-Build; the \$560 million Calaveras Dam Replacement; the \$414 million EchoWater Biological Nutrient Removal Water Treatment Project; and the \$240 million Isabella Dam Lake Safety Modification Project Phase 2. For additional information on DUSA and DCI, see “—Design-Build Guarantors—Dragados, S.A.”

*Flatiron West, Inc.*

Flatiron West, Inc. (“Flatiron”), a Delaware corporation and a wholly-owned, direct subsidiary of Flatiron Constructors, Inc., is a heavy civil general contractor that provides infrastructure throughout California for the transportation, energy and water sectors. Flatiron builds roads, bridges, tunnels, rail transit and water/wastewater projects, for both public and private clients, and it delivers projects through a variety of contracting methods, including design-build and PPP.

The table below sets forth a selection of Flatiron’s design-build experience. The size of the project indicates the total project costs during construction.

<b>Project / Client / Location</b>	<b>Year Closed</b>	<b>Size</b>	<b>Description</b>
BART Oakland International Airport Connector APM / Bay Area Rapid Transit District / Oakland, CA	2010	USD 393 million	Flatiron led a joint venture that designed and constructed an automated people mover that linked the Oakland airport to an operating BART station. The design-build project featured an automated guideway transit (AGT) system and fixed facilities, including 3.2 miles of dual-lane guideway, power distribution substation rooms and wayside equipment. The project started in November 2010, reached completion in November 2014 and is currently in operations.
Expo LRT Phase 1 / Exposition Metro Line Construction Authority / Los Angeles, CA	2006	USD 690 million	Flatiron led a joint venture that designed and constructed all LRT systems for the transit line, including stations, a parking structure, civil improvements and utilities. The project included 8.5 miles of twin track light rail, including two elevated stations and four major bridges, 10 passenger stations, a 500-stall parking structure and 1,000 foot cut-and-cover tunnel. The project started in May 2006, was completed in October 2011 and is currently in operations.
Sacramento Airside Airport Terminal Modernization Program – Terminal B and APM / Sacramento County Airport System / Sacramento, CA	2008	USD 288 million	Flatiron and Turner Construction Company formed a line item joint venture that designed and constructed the elevated viaduct structure for the Automated People Mover (APM) system, concourse building (replacing Terminal B), airfield apron and taxiway paving, civil construction, and utilities. The project started in July 2008, was completed in October 2012 and is currently in operations.

*Fluor Enterprises, Inc.*

For information on Fluor Enterprises, including descriptions of transportation projects, see “—Equity Members—Fluor Enterprises, Inc.”

## Design-Build Guarantors

The Design-Build Contractor has provided parent company guarantees in favor of the Borrower from HOCHTIEF USA, Inc., Balfour Beatty LLC, Fluor Corporation and Dragados, S.A., each guaranteeing its respective subsidiary member of the Design-Build Contractor. Since each member of the Design-Build Contractor is jointly and severally liable for performance of the express obligations of the Design-Build Contractor under the Design-Build Contract, each guarantor, by guaranteeing such member's obligations is also guaranteeing all performance and all obligations of the Design-Build Contractor under the Design-Build Contract by its subsidiary member.

### *Balfour Beatty LLC*

Balfour Beatty LLC, a Delaware limited liability company, is a U.S. holding company for Balfour Beatty's U.S. operations, which includes the operating businesses of Balfour Beatty Construction LLC, Balfour Beatty Infrastructure, Inc., and Balfour Beatty Investments, Inc., and the non-operating businesses of Balfour Beatty Management Inc. and BICC Cables Corporation. The operations of these Balfour Beatty LLC subsidiaries include general building construction and construction management; heavy civil and railway engineering and construction; management, development and investment of PPP projects that provide privatized military housing; building management systems and services; development and management of student accommodation facilities; and architectural and program management services. Balfour Beatty LLC is a wholly-owned indirect subsidiary of Balfour Beatty plc headquartered in the United Kingdom.

### *Dragados, S.A.*

Dragados, S.A. ("Dragados"), a Spanish corporation, has more than 70 years of experience and is a world leader in delivering major infrastructure projects either directly or through its subsidiary companies. Collectively, the firm has experience building more than 1,700 kilometers of rail transit, more than 10,500 kilometers of roads and highways, more than 1,500 bridges totaling more than 932 miles in length, more than 3.3 million square meters of airport runways, more than 1 million square meters of airport terminals and utilities, and more than 1,380 kilometers of tunnels.

An overview of Dragados' notable transportation project experience in North America, either directly or through its wholly owned subsidiaries of DUSA and DCI, is shown in the following table. The size is determined by the construction value of the project.

Project/ Client/ Location	Year Closed	Size	Description
Eglinton Crosstown Light Rail Transit / Infrastructure Ontario / Toronto, Ontario, Canada	2015	CAD 5 billion	A DBFM availability-based development that will execute a rail infrastructure over 19.7 kilometers and will provide services through a 30-year contract. The project is in construction.
Confederation Line LRT / City of Ottawa / Ottawa, Ontario, Canada	2013	CAD 1.8 billion	A DBFM availability-based project that will provide rapid, high-quality transit service with the first network of light rail transit lines in Ottawa, through a 35-year contract. The project is in construction.
California High Speed Rail CP 2-3 / California High Speed Rail Authority / Central Valley, California	2015	USD 1.4 billion	A DB project to construct more than 65 miles of high-speed rail civil infrastructure in the counties of Fresno, Kings and Tulare. The project is in construction.

Project/ Client/ Location	Year Closed	Size	Description
Angels Flight / City of Los Angeles / Los Angeles, California	2017	Less than USD 5 million	A revenue-risk project for the Angels Flight Funicular in the City of Los Angeles. The project is in operation.
I-595 Corridor Improvements Project / Florida Department of Transportation/ Broward County, Florida	2009	USD 1.2 billion	A DBFOM availability-based project for a 17-kilometer length of highway located in Broward County, Florida. Construction began in 2009 and was completed in March 2014. The project is in operation.
South Fraser Perimeter Road / British Columbia Ministry of Transportation / British Columbia, Canada	2010	CAD 621 million	A DBFOM availability-based highway project that reached substantial completion six months ahead of schedule. The project is in operation.
Autoroute 30 / Ministre des Transports du Québec / Montreal, Québec, Canada	2008	CAD 1.6 billion	A DBFOM hybrid availability-revenue risk highway project with a 30-year concession period. The project is in operation.
Right Honourable Herb Gray Parkway / Infrastructure Ontario / Windsor, Ontario, Canada	2010	CAD 1.1 billion	A DBFOM availability-based highway project with a 30-year concession agreement). The project is in operation.
Northeast Anthony Henday Drive / Alberta Transportation / Edmonton, Alberta, Canada	2012	USD 1.3 billion	A DBFOM availability-based highway project, with a contract term of 34 years. The project is in operation.
SH-288 Highway / Texas Department of Transportation / Houston, Texas	2016	USD 815 million	A revenue-risk project including the DBFOM of four new toll lanes in the median of a 10.3-mile segment of SH 288 in Harris County, Texas, plus improvements to the two major intersections and operations and maintenance of the existing general purpose lanes and related facilities. The project is in construction.
Southern Ohio Veterans Memorial Highway / Ohio Department of Transportation / Scioto County, Ohio	2015	USD 427 million	A DBFOM availability-based project involving 26 kilometers of new four lane highway in Portsmouth, Ohio. The project is in construction.
New Champlain Bridge / City of Brossard / Montreal, Québec, Canada	2015	USD 2.15 billion	A DBFOM availability-based project that will design-build a new bridge with its connections (four-year construction period). The project is in construction.
SR 99 Alaskan Way Viaduct Replacement Tunnel / Washington Department of	2011	USD 1.47 billion	DB transportation tunnel project that includes construction of a double stacked highway replacement of the Alaskan Way



Project/ Client/ Location	Year Closed	Size	Description
Transportation / Seattle, Washington			Viaduct beneath downtown Seattle in complex soft soil conditions. The tunnel is 9,273 feet long and over 200 feet deep and was bored with a 57.4 diameter Earth Pressure Balance (EPB) Tunnel Boring Machine (TBM).
US 181 Harbor Bridge Replacement Project / Texas Department of Transportation / Corpus Christi, Texas	2015	USD 803 million	A DBM project that includes removal and replacement of the existing Harbor Bridge structure with a new cable-stayed bridge across the harbor with a main span of 1,655 feet and a clearance of 205 feet. In addition to removal and replacement of the bridge, the project will include rerouting of traffic, utility relocation, right-of-way acquisition, public outreach, and improvements to existing roadways and interchanges.

#### *Fluor Corporation*

For information on Fluor, see “—Equity Members—Fluor Enterprises, Inc.”

#### *HOCHTIEF USA, Inc.*

HOCHTIEF USA, Inc., a Delaware corporation, is an indirectly owned, 100% subsidiary of HOCHTIEF AG and is the parent holding company of HOCHTIEF AG’s North American construction business, mainly consisting of The Turner Corporation and Flatiron Construction Corp.

The Turner Corporation, a Delaware corporation, is a construction contractor that is predominantly engaged in general building construction and construction management throughout the United States, with select construction operations abroad.

Flatiron Construction Corp., a Delaware corporation, is engaged in the business of constructing heavy civil, rail, bridge, highway and other transportation, water and infrastructure construction projects using design-build, bid-build, and public private partnership related delivery methods throughout the United States and Canada.

#### **O&M Contractor**

The Borrower has contracted with Bombardier Transportation (Holdings) USA Inc., Fluor Enterprises, Inc., HOCHTIEF Operators Holding, LLC and ACS LINXS O&M Holdings, LLC, each of which, pursuant to the O&M Contract, are jointly and severally liable to perform all of the duties and obligations expressed to be duties and obligations of the O&M Contractor under the O&M Contract (the “O&M Contractor Liabilities”). Each of the members of the O&M Contractor have entered into a joint venture agreement pursuant to which they have agreed, among other things, to allocate the O&M Contractor Liabilities as among themselves as follows:

O&M Contractor Member	Percentage
ACS LINXS O&M Holdings, LLC	12.5%
Bombardier Transportation (Holdings) USA Inc.	55%
Fluor Enterprises, Inc.	20%
HOCHTIEF Operators Holding, LLC	12.5%

For additional information, see “PRINCIPAL PROJECT AGREEMENTS—O&M Contract” and APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT.”

*ACS LINXS O&M Holdings, LLC*

ACS LINXS O&M Holdings LLC, a Delaware limited liability company, is a wholly-owned subsidiary of ACSID, which, along with its Canadian sister company, ACSIC, and their ultimate parent company, ACS Group, has significant global experience operating and maintaining highway, bridge, railway, and social infrastructure projects.

For additional information on ACSID, ACSIC, and ACS Group, see “—Equity Members— ACS LINXS Holdings, LLC.” In addition to participating in the operations and maintenance of the projects listed in the table under “—Equity Members—ACS LINXS Holdings, LLC,” ACSID is also a member of the maintenance contractor for the US 181 Harbor Bridge Replacement Project in Corpus Christi, Texas.

*Bombardier Transportation (Holdings) USA Inc.*

Bombardier, together with its sister companies which are part of Bombardier Transportation, is a global leader in the supply of operations and maintenance services for automated systems, light rail systems, metro systems, commuter and regional rail systems, intercity and high-speed rail systems, and freight locomotives. Bombardier has more than 8,000 operations and maintenance employees worldwide, including over 1,000 at automated people mover (APM) systems in the United States. Globally, these employees operate close to 1,000 trains daily, carrying nearly 450 million passengers per year, and provide asset management services for over 450 kilometers of track, signaling systems, rail assets, signal prioritization equipment, over 240 stations/stops and over 90 depots and maintenance facilities.

In terms of airports, Bombardier has continuously provided maintenance services for the world’s first airport APM system, located at Tampa International Airport, since 1971 and operations and maintenance services for the world’s busiest airport, Hartsfield-Jackson Atlanta International Airport, since the system opened in 1980. Bombardier provides 24/7/365 operations at various airport applications, including at John F. Kennedy International Airport, Denver International Airport, and Newark Liberty International Airport. Bombardier’s APM systems have a proven track record for performance with industry-leading system availability levels. The Bombardier APM system at Phoenix Sky Harbor International Airport, for example, has achieved over 99.5 percent availability each year since the system opened in 2013.

The table below lists a representative sample of APM systems supplied and services by Bombardier Transportation.

Project Name	City	Country	Service	System Vehicle	Vehicle Count	System Opened	Years Experience
<b>Hartsfield-Jackson Atlanta International Airport</b>	Atlanta	USA	Operations & Maintenance	INNOVIA APM 100	59	1980	37
<b>Dallas Fort Worth International Airport</b>	Dallas	USA	Maintenance	INNOVIA APM 200	64	2005	12
<b>Denver International Airport</b>	Denver	USA	Operations & Maintenance	INNOVIA APM 100	31	1994	23
<b>Dubai International Airport</b>	Dubai	UAE	Operations & Maintenance	INNOVIA APM 300	18	2015	2

<b>Project Name</b>	<b>City</b>	<b>Country</b>	<b>Service</b>	<b>System Vehicle</b>	<b>Vehicle Count</b>	<b>System Opened</b>	<b>Years Experience</b>
<b>Frankfurt Airport</b>	Frankfurt	Germany	Operations & Maintenance	INNOVIA APM 100	18	1994	23
<b>George Bush Intercontinental Airport</b>	Houston	USA	Operations & Maintenance	INNOVIA APM 100	16	1999	18
<b>Leonardo da Vinci International Airport</b>	Rome	Italy	Operations & Maintenance	INNOVIA APM 100	4	1999	18
<b>Madrid-Barajas Adolfo Suarez International Airport</b>	Madrid	Spain	Operations & Maintenance	INNOVIA APM 100	19	2004	13
<b>McCarran International Airport</b>	Las Vegas	USA	Maintenance	INNOVIA APM 100	16	1984	34
<b>Munich Airport</b>	Munich	Germany	Operations & Maintenance	INNOVIA APM 300	12	2016	1
<b>Orlando International Airport</b>	Orlando	USA	Maintenance	INNOVIA APM 100	24	1981	36
<b>Phoenix Sky Harbor International Airport</b>	Phoenix	USA	Operations & Maintenance	INNOVIA APM 200	18	2013	4
<b>Pittsburgh International Airport</b>	Pittsburgh	USA	Maintenance	INNOVIA APM 100	6	1992	25
<b>Sacramento International Airport</b>	Sacramento	USA	Operations & Maintenance	INNOVIA APM 100	2	2011	6
<b>San Francisco International Airport</b>	San Francisco	USA	Operations & Maintenance	INNOVIA APM 100	38	2003	14
<b>Tampa International Airport</b>	Tampa	USA	Maintenance	INNOVIA APM 100	16	1971	46
<b>Newark Liberty International Airport Monorail</b>	Newark	USA	Operations & Maintenance	INNOVIA Monorail 100	18	1996	21
<b>John F. Kennedy International Airport</b>	New York	USA	Operations & Maintenance	INNOVIA Metro 200	32	2003	14

For additional information, see “—Equity Members—Bombardier Transportation (Holdings) USA Inc.”

*Fluor Enterprises, Inc.*

Fluor Enterprises is a member of the Design-Build Contractor and the O&M Contractor, providing a link between the design-build and operations and maintenance phases of the APM Project. For information on Fluor Enterprises, including descriptions of transportation projects, see “—Equity Members—Fluor Enterprises, Inc.”

*HOCHTIEF Operators Holding, LLC*

HOCHTIEF Operators Holding, LLC, a Delaware limited liability company, is an operations holding company owned by HOCHTIEF PPP Solutions North America, Inc., the North American development arm and a subsidiary of HOCHTIEF and is a member of the O&M Contractor. With activities in North America and Europe, HOCHTIEF is responsible for all PPP related activities in connection with the development, investment, operations and long-term asset management of PPP projects and its current portfolio is composed of 22 social infrastructure and 11 transport infrastructure projects.

The table below sets forth a selection of HOCHTIEF’s O&M experience. The size of the project indicates the total project costs during construction.

<b>Project/ Client/ Location</b>	<b>Year Closed</b>	<b>Size</b>	<b>Description</b>
Maliakos Kleidi/ Ministry of Infrastructures, Transport and Networks/ Athens, Greece	2008	EUR 1.1 billion	HOCHTIEF is the lead in the concession company responsible for the operation and maintenance of the 230 kilometers motorway, connecting the two major Greek cities of Athens and Thessaloniki. The scope of this works includes responsibility for all operations, maintenance and rehabilitation activities. The fleet used to complete these works include 14 plow trucks & four plow pick-ups, 12 stand-by subcontractor plow trucks, three operation & maintenance centers, two motorway management centers / tunnel control rooms, four salt shelters. The Project is currently in operations.
Elefsina-Patras-Tsakona / Ministry of Public Works/ Athens, Greece	2008	EUR 2.2 billion	HOCHTIEF is a member of the concession company responsible for the operation and maintenance of the 201 kilometers long motorway. The site includes two Operation & Maintenance Centers (including two Main Traffic Management Centers), four Technical Bases, four salt shelters, four Mainline Toll Plazas (including Customer Service Centers) and six Ramp Toll Plazas. The scope of this works includes responsibility for all operations, maintenance and rehabilitation activities. The project is currently in operations.
Herrentunnel/ Hanseatic City of Lübeck/ Lübeck, Germany	2001	EUR 176 million	HOCHTIEF is the sole operator of this 780-meter-long German road-tunnel underneath the river Trave. It is part of

Project/ Client/ Location	Year Closed	Size	Description
			the national highway Bundesstrasse 75, connecting Lübeck and Travemünde. It is Germany's second toll tunnel and was opened on August 26, 2005. In addition to road and tunnel operations, services include a free shuttle bus for cyclists to access the tunnel. The Herren Tunnel was one of the first PPP projects realized according to the F-model for PPPs for German federal roads. The project is currently in operations.

### **O&M Guarantors**

The O&M Contractor has provided parent company guarantees in favor of the Borrower from ACS Servicios y Concesiones, S.L., Bombardier Transportation, Fluor Corporation and HOCHTIEF, each guaranteeing its respective subsidiary member of the O&M Contractor. Since each member of the O&M Contractor is jointly and severally liable for performance of the express obligations and duties of the O&M Contractor under the O&M Contract, each guarantor, by guaranteeing such member's obligations is also guaranteeing all performance and all obligations of the O&M Contractor under the O&M Contract by its subsidiary member.

*ACS Servicios y Concesiones, S.L.*

ACS LINXS O&M Holdings, LLC is a wholly-owned subsidiary of ACSID, which is an indirect subsidiary of ACS Servicios y Concesiones, S.L., a Spanish company (“ACS O&M Guarantor”). ACS O&M Guarantor is a subsidiary of ACS Group. For additional information on ACS Group, see “—Equity Members— ACS LINXS Holdings, LLC.”

*Bombardier Transportation (Global Holding) UK Limited*

For information on Bombardier Transportation, see “—Equity Members—Bombardier Transportation (Holdings) USA Inc.”

*Fluor Corporation*

For information on Fluor, see “—Equity Members—Fluor Enterprises, Inc.” and “—Design-Build Guarantors—Fluor, Inc.”

*HOCHTIEF PPP Solutions GmbH*

For information on HOCHTIEF, see “—Equity Members—HOCHTIEF LINXS Holding, LLC.”

### **APM Operating System Supplier**

The INNOVIA APM 300 system is a driverless transportation system specially designed to serve airports and dense urban areas. The INNOVIA APM systems are integrated systems that use lightweight, energy efficient, electrical vehicles that have industry-leading system availability levels. The Design-Build Contractor has entered into the APM Operating System Subcontract with Bombardier for the design and construction of the APM Operating System, including the supply of the INNOVIA APM 300 vehicles. See “PRINCIPAL PROJECT AGREEMENTS—APM Operating System Subcontract” and APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT.”

Bombardier Transportation's APM systems provide links at airports and in cities around the world, with thousands of people using these systems daily. The INNOVIA APM technology has nearly 50 years of successful operation, with hundreds of vehicles in operation in systems in North America, Europe, the Middle East and Asia. With over 60 APM and other turnkey systems in operation worldwide, Bombardier Transportation is a complete system provider proven to deliver complex transportation systems with multiple suppliers and partners. For more information, including a list of APM systems supplied and services provided by Bombardier Transportation, see "PROJECT PARTICIPANTS—O&M Contractor—Bombardier Transportation (Holdings) USA Inc."

INNOVIA APM 300 is the third generation of the INNOVIA APM evolution: the vehicle is the evolution of APM 200, and a convergence of proven design concepts from the INNOVIA APM 100 and 200 configurations. The APM200 has been operating in Dallas Fort Worth Airport since 2005. APM 300 has been in revenue service since 2016, and delivered to three clients: Munich International Airport, Dubai International Airport and the Jeddah International Airport. Bombardier has delivered more than 30 APM systems worldwide, including 15 at the world's busiest airports. Globally, Bombardier's running average across 15 active APMs is 99.84%.

Bombardier expects to manufacture the INNOVIA APM 300 cars at a new manufacturing facility in Wuhu, China. The Vehicles will be manufactured by a 50/50 joint venture established by Bombardier Transportation and CRRC Corporation Limited ("CRRC"), a global rail transit supplier. The joint venture initially was based in Nanjing within a larger CRRC manufacturing facility and recently moved to a new facility in Wuhu that is capable of producing 60 APM vehicles per year and increasing production if needed. Bombardier is also looking into and planning for alternative arrangements for the production of the INNOVIA APM cars for the APM Project if the Wuhu facility is not available for any reason including ongoing uncertainty regarding the potential imposition of tariffs on Chinese imports by the U.S. government. Such alternative arrangements include utilization of Bombardier Transportation manufacturing plants located in the United States, Canada, Mexico or India. See "PRINCIPAL PROJECT AGREEMENTS—APM Operating System Subcontract" and APPENDIX C—"REPORT OF THE LENDERS' TECHNICAL ADVISOR."

## **RISK FACTORS**

**THE PURCHASE OF THE SERIES 2018 BONDS IS SUBJECT TO CERTAIN RISKS. EACH PROSPECTIVE INVESTOR IN THE SERIES 2018 BONDS IS ENCOURAGED TO READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY, INCLUDING ALL APPENDICES HERETO. PARTICULAR ATTENTION SHOULD BE GIVEN TO THE RISK FACTORS DESCRIBED BELOW, WHICH, AMONG OTHERS, COULD AFFECT THE PAYMENT OF PRINCIPAL OF AND INTEREST ON THE SERIES 2018 BONDS AND WHICH COULD ALSO AFFECT THE MARKET PRICE OF THE SERIES 2018 BONDS TO AN EXTENT THAT CANNOT BE PRESENTLY DETERMINED. ADDITIONAL RISK FACTORS RELATING TO THE PURCHASE OF SERIES 2018 BONDS ARE DESCRIBED THROUGHOUT THIS OFFICIAL STATEMENT, WHETHER OR NOT SPECIFICALLY DESIGNATED AS RISK FACTORS. SEE ALSO APPENDIX B-1, "CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES – CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES."**

*The following discussion is not meant to be an exhaustive list of the risks and other factors that should be considered in connection with the purchase of the Series 2018 Bonds and does not necessarily reflect the relative importance of the various risks and other factors. Any one or more of the risks described, and others, could adversely affect the Borrower, the Key Subcontractors or the Department, and could lead to substantial decreases in the market value or the liquidity of the Series 2018 Bonds. There can be no assurance that other risk factors will not become material in the future.*

### **The Series 2018 Bonds are Special, Limited Obligations**

The Series 2018 Bonds are limited obligations of the Issuer, payable solely from and secured by the pledge of the Trust Estate under the Indenture. Neither the Issuer, its members, the City, the Department, the State of California, nor any of the State of California political subdivisions, shall be directly, indirectly, contingently or morally obligated to use any other moneys or assets to pay all or any portion of the debt service due on the Series 2018 Bonds, to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment. The Series 2018 Bonds are not a pledge of the faith and credit of the Issuer, its members, the City, the Department, the State of California or any of the State of California political subdivisions nor do the Series 2018 Bonds constitute indebtedness within the meaning of any constitutional or statutory debt limitation. The Issuer has no taxing power. No Issuer member or any person executing the Series 2018 Bonds is liable personally on the Series 2018 Bonds or subject to any personal liability or accountability by reason of their issuance. The Series 2018 Bonds do not constitute or evidence an indebtedness of the City, the Department or a lien or charge on any property or the general revenues of the City or the Department. Neither the faith and the credit nor the taxing power of the City, the Department or any public agency is pledged to the payment of the principal of or interest on the Series 2018 Bonds. Neither the City nor the Department is under any obligation to pay the Series 2018 Bonds.

The Department is only obligated to make certain payments required by the DBFOM Agreement and is not responsible for paying, and is not guaranteeing the payment of, the principal or accreted value of, premium, if any, or interest on the Series 2018 Bonds. The Series 2018 Bonds are not secured by a lien on any properties or improvements of the City or of the Department, or by a pledge of any revenues of the Department. The Department is not a party to any of the documents relating to the Series 2018 Bonds or the APM Project other than the DBFOM Agreement, the Lenders' Direct Agreement and the Department Continuing Disclosure Certificate and is not subject to any of the covenants or other restrictions contained in any of the other documents relating to the Series 2018 Bonds or the APM Project. Except as described in APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES," APPENDIX B-4—"SUMMARY OF THE MASTER SENIOR INDENTURE" and APPENDIX B-5—"SUMMARY OF THE MASTER SUBORDINATE INDENTURE," the Department is not restricted from issuing Additional Senior Bonds, Additional Subordinate Obligations or Third Lien Obligations (each as defined in APPENDIX B-3—"CERTAIN DEFINITIONS") or incurring any other debt which may be supported by or secured by the Department's revenues and the payment of which may be senior to any of the payments to be made by the Department to the Borrower pursuant to the DBFOM Agreement.

**NONE OF THE SERIES 2018 BONDS CONSTITUTES OR EVIDENCES AN INDEBTEDNESS OF THE CITY OR THE DEPARTMENT OR A LIEN OR CHARGE ON ANY PROPERTY OR THE GENERAL REVENUES OF THE CITY OR THE DEPARTMENT. NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY, THE DEPARTMENT, THE STATE OR ANY PUBLIC AGENCY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2018 BONDS. THE DEPARTMENT IS UNDER NO OBLIGATION TO PAY THE SERIES 2018 BONDS. SEE APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES."**

#### **Risks Relating to the Borrower**

##### *The Borrower is a Single Purpose Entity*

The Borrower was formed for the purpose of entering into the DBFOM Agreement and undertaking the APM Project and performing the activities related thereto, including the activities contemplated by the Transaction Documents. The Borrower has no assets other than its rights (i) to the Equity Contributions to be made pursuant to the Transaction Documents, (ii) under the DBFOM Agreement to receive the Milestone Payments, the Additional D&C Payments, the Availability Payments, Termination Compensation and other payments that may become due and owing under the DBFOM Agreement from the Department, and (iii) under the Design-Build Contract and the O&M Contract, the Performance Bond, the Payment Bond, the Liquid Performance Security, the other Material Project Contracts and the Financing Documents. Substantially all of the Borrower's responsibilities in connection with the APM Project (with certain exceptions) are being passed through to the Design-Build Contractor and to the O&M Contractor, and substantially all of the Borrower's rights under the DBFOM Agreement and the other Material Project Contracts will be pledged and assigned as security for the Borrower's financial obligations in connection with the APM Project. No assurance can be given, however, that the funds available to the Trustee pursuant to such rights will be sufficient to make all of the payments to be paid from the Trust Estate, including payments of principal of, interest or premium, if any, on or costs incident to the Series 2018 Bonds.

##### *Conflicting Interests of the Parties*

As in any commercial arrangement, parties may disagree about the appropriate course of action to be taken, particularly if adverse events occur. The Department, the Borrower, the Design-Build Contractor, the O&M Contractor, the APM Operating System Supplier and, within the Design-Build Contractor and the O&M Contractor, the respective members and their respective Guarantors, have different priorities and interests and may have difficulty in resolving disputes should their interests diverge. Similarly, the Department and the Trustee, on behalf of the Owners of the Series 2018 Bonds, and the Collateral Agent or Intercreditor Agent, on behalf of the Secured Parties, may have different interests and priorities following a default or other adverse event under the DBFOM Agreement or any Material Project Contract. Additionally, each of the Design-Build Contractor and O&M Contractor have joint venture agreements which establish the rights, obligations and liabilities of the members of such joint ventures with respect to performing under the applicable Material Project Contracts. No assurance can be given that the Department will be willing or able to take into account the interests of the Owners of the Series 2018 Bonds if an event occurs entitling the Department to terminate or to take other remedial action under the DBFOM Agreement. Each of the Financing Documents specifically incorporates by reference certain DBFOM Agreement terms, subjecting several of the terms of each Financing Document to the requirements of the DBFOM Agreement and the rights of the Department therein. There can be no assurance that in the event of a default under any of the Financing Documents or Material Project Contracts the interests of the Owners of the Series 2018 Bonds and the Department or any other party will align or that the Department will not assert a right under the DBFOM Agreement that is adverse to the interests of the Owners of the Series 2018 Bonds.

##### *Related Party Transactions*

The Borrower's main asset is its rights to receive Milestone Payments, Additional D&C Payments, Availability Payments, Termination Compensation and other payments that may become due and owing under the DBFOM Agreement. Several affiliates of the Borrower are expected to be involved with the construction, start-up and operation and maintenance of the APM Project and the design and production of the Vehicles. Many of the Equity Members, members of the Design-Build Contractor, members of the O&M Contractor, the Design-Build Guarantors and the O&M Guarantors are affiliates and direct or indirect subsidiaries, each of which have assumed a



number of roles in the APM Project. The support and experience of the affiliates of the Borrower is expected to be important to the success of the APM Project; however, the interests of the various affiliates or their commitments to the APM Project under the various Transaction Documents may diverge from one another or from the interests of their parent companies during the term of the DBFOM Agreement. The parties are required to conduct business on an arms-length basis but conflicts of interest may arise between or among any of the Equity Members, members of the Design-Build Contractor, members of the O&M Contractor and the Design-Build Guarantors or the O&M Guarantors. Further, potential conflicts of interest could lead the Borrower or another affiliate to prioritize the interests of the members of the Design-Build Contractor, the O&M Contractor, the APM Operating System Supplier, the Equity Members or other affiliates before the best interests of the Borrower or the Owners of the Series 2018 Bonds. In such circumstance, the Borrower might fail to take actions required under the Transaction Documents such as requiring draws on the Liquid Performance Security or under the Performance Bond, failing to require the Design-Build Contractor to provide a Contingent Letter of Credit or making payments or not assessing deductions to the Design-Build Contractor or O&M Contractor for substandard performance in order to advantage such affiliates. To the extent that the Borrower or its affiliates do not perform their obligations on an arm's-length basis, it could impact the Borrower's ability to comply with the DBFOM Agreement or the other Transaction Documents, which may affect its cash flows and the Borrower's ability to make timely payments of amounts due under the Series 2018 Loan Agreement and, in turn, the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds. See "RELATED PARTY TRANSACTIONS."

The Borrower has indicated that it may enter into written agreements with one or more affiliates to provide technical assistance and management services or expertise such as accounting, human resources and information technology services to the Borrower. The fees and costs of such services may be paid by the Borrower as operating and maintenance expenses, which are paid prior to debt service on the Series 2018 Bonds and any other Senior Secured Obligations, provided that any such technical assistance and management services fees shall be set forth in the Financial Model at the Closing Date, or as set forth in any subsequent operating budget certified by the Lenders' Technical Advisor.

#### *Equity Contributions and Limited Recourse*

The Equity Contributions required to be made by the Equity Members are not required to be made prior to the issuance of the Series 2018 Bonds. While the obligations of each of the Equity Members to make Equity Contributions will be supported by an Equity Letter of Credit or amounts in cash standing to the credit of an Equity Member Cash Collateral Account, the Equity Members may be unable or unwilling to make Equity Contributions and the Equity Letters of Credit may not be honored by the issuing bank or withdrawals from any Equity Member Cash Collateral Account could be stayed during any bankruptcy or insolvency proceeding affecting the Borrower or the depositor of such cash. If any event occurs during the D&C Work requiring additional funding for the APM Project, there will be no recourse by the Borrower to the Equity Members for additional equity in excess of their Unfunded Equity Commitment. See "FINANCING FOR THE PROJECT—Equity Contributions" and "—Equity Members" and "RISK FACTORS—Risks Relating to the Series 2018 Bonds—*Potential Dishonor of Letters of Credit.*"

### **Certain Risks Relating to the Department and the Department's Revenues**

#### *Unsecured Payments of the Department*

The Series 2018 Bonds are payable solely from the Project Revenues of the Borrower. The Borrower's principal source of Project Revenues is payments from the Department under the DBFOM Agreement. The Department's contractual payment obligations to the Borrower under the DBFOM Agreement are unsecured and are expected to be paid from NINTH in the Department's Flow of Funds. See APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Security and Sources of Payments for the Senior Bonds, the Subordinate Obligations and the Third Lien Obligations—Flow of Funds." Whether the Department will have sufficient funds to make payments owed to the Borrower depends on the Airport's ability to generate revenues.

The City operates the Airport as a financially self-sufficient enterprise, through the Department under the supervision of the Board. The Department's operating expenditures are subject to an annual budget for each fiscal year. The Department's obligations to make payments under the DBFOM Agreement are unsecured contractual payment obligations of the Department.

Neither the Department nor the City is obligated to raise rates or take any other action to raise revenues if the Department's revenues are insufficient to meet its contractual payment obligations to the Borrower under the DBFOM Agreement. There are no limits or caps in the DBFOM Agreement on the Department's ability to enter into additional contracts relating to its capital plan for the Airport, or any other function of the Airport. There can be no assurances that the Department's revenues will be sufficient to pay all of its debt and other payment obligations, including under the DBFOM Agreement. Declines in passenger traffic or changes in the way passengers transact with concessionaires at the Airport may adversely affect the commercial operation of concessionaires and alter the mix of revenues at the Airport. While the Department's many agreements with concessionaires at the Airport require the concessionaires at the Airport to pay a minimum annual guarantee, severe financial difficulties could lead to a failure by one or more concessionaires at the Airport and consequently, result in credit risk for the required payments and interruption of such concessionaires' operations. See also APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Financial Condition of the Airlines; Effect of Airline Industry Consolidation; Effect of Airline and Concessionaire Bankruptcies."

Many of these factors are outside the Department's control. Changes in demand, decreases in aviation activity, changes in passenger consumer behavior and developments in vehicle use and mobility and their potential effects on enplaned passenger traffic and revenues at the Airport may result in reduced LAX Revenues and PFC revenues and if the Department is unable to make its required Availability Payments or Milestone Payments due to such declines in revenues, such non-payment may cause a disruption to the APM Project's schedule or a failure by the Department to pay Termination Compensation in whole or in part, which may then adversely affect the Borrower's ability to satisfy payments to be made of principal of, interest or premium, if any, on or costs incident to, the Series 2018 Loan Agreement and, in turn, the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

#### *Risk Factors Relating to the Aviation Industry*

LAX Revenues are dependent primarily on the level of aviation activity and enplaned passenger traffic at the Airport. The level of aviation activity and enplaned passenger traffic at LAX depend upon and are subject to a number of factors and other economic and political conditions; international hostilities; world health concerns; aviation security concerns including criminal and terrorist incidents; federal government mandated security measures that may result in additional taxes and fees, longer passenger processing and wait times and other inconveniences, accidents involving commercial passenger aircraft; airline service and routes; airline fares and competition; airline industry economics, including labor relations, fuel prices, aging aircraft fleets; capacity of and changes to (including any privatization of) the national air traffic control and airport systems; competition from other airports; reliability of air service; business travel substitutes, including teleconferencing, videoconferencing and web-casting; consumer price sensitivity; changes in law and the application thereof and other factors and the capacity, availability and convenience of service at LAX, among others. An outbreak of a disease or similar public health threat that affects travel demand or travel behavior, or travel restrictions or reduction in the demand for air travel caused by an outbreak of a disease or similar public health threat in the future, could have a material adverse impact on the airline industry and result in substantial reductions in and/or cancellations of, bookings and flights. For further detail, see APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Certain Considerations Related to LAX Revenues."

The airline industry is cyclical and subject to competition and variable demand. Historically, airline passenger traffic nationwide has correlated closely with the condition of the U.S. economy and levels of real disposable income. Previous recessions and periods of stagnant economic conditions in the U.S., California and Los Angeles metropolitan area contributed to reduced passenger traffic at LAX. With the globalization of business and the increased importance of international trade and tourism, growth in the U.S. economy has become more closely tied to worldwide economic, political, and social conditions. As a result, international economic conditions, trade balances, currency exchange rates, political relationships, and hostilities are important influences on passenger traffic at U.S. airports, including LAX. Sustained future increases in passenger traffic at LAX will depend on stable international conditions as well as national and global economic growth.

LAX is subject to various laws, rules and regulations adopted by the local, State and federal governments and their agencies. LAX is highly regulated by federal agencies including the FAA, the TSA, Customs and Border Protection and the U.S. Department of Health. Neither the Borrower nor the Department is able to predict the

adoption or amendment of additional laws, rules or regulations, or their effect on the operations or financial condition of the Department.

The operations of LAX are also affected by a variety of contractual, statutory and regulatory restrictions and limitations, including, without limitation, the provisions of the Department's contracts with airlines, the federal acts authorizing the imposition, collection and use of PFCs, and extensive federal legislation and regulations applicable to all domestic airports. It is not possible to predict whether future restrictions or limitations on LAX operations will be imposed, whether future legislation or regulations will affect anticipated federal funding or PFC collections for capital projects for LAX, whether additional requirements will be funded by the federal government or require funding by the City or whether such restrictions or legislation or regulations would adversely affect LAX Revenues.

Many of these factors are outside the Department's control. Changes in demand, decreases in aviation activity, changes in passenger consumer behavior and developments in vehicle use and mobility and their potential effects on enplaned passenger traffic and revenues at the Airport may result in reduced LAX Revenues and PFC revenues and if the Department is unable to make its required payments under the DBFOM Agreement due to such declines in revenues, such non-payment may cause a disruption to the APM Project's schedule or an adverse effect on the Borrower's ability to satisfy payments to be made of principal of, interest or premium, if any, on or costs incident to, the Series 2018 Loan Agreement and, in turn, the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

## **Risks Relating to the Project Agreements**

### *Risks Related to the DBFOM Agreement*

#### Failure to Comply with the DBFOM Agreement; Termination of the DBFOM Agreement

The Borrower's principal asset is its right under the DBFOM Agreement to receive the Milestone Payments, the Additional D&C Payments, the Availability Payments, Compensation Amounts, Termination Compensation and other amounts to be paid by the Department related to the design, construction, operation and maintenance of the APM Project.

The Borrower's failure to comply with the terms and conditions of the DBFOM Agreement may result in the assessment of Deductions for Noncompliance Events or Unavailability Events and the reduction of the payments to the Borrower, any of which would limit the Borrower's ability to make timely payments of amounts due under the Series 2018 Loan Agreement and, in turn, the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds. The accumulation of specified amounts of assessed Noncompliance Points can lead, if not properly remedied, to a Developer Default under the DBFOM Agreement. In the case of certain material or continuing defaults, the Department will have the right to terminate the DBFOM Agreement or, subject to the rights of the Collateral Agent (acting on behalf of the Secured Parties) under a direct agreement by and among the Department, the Borrower and the Collateral Agent, exercise other remedies including its right to step in and perform, at the cost of the Borrower, all or any portion of the Borrower's obligations under the DBFOM Agreement.

In the event of termination of the DBFOM Agreement, the amount of Termination Compensation payable by the Department to the Borrower, or actually received by the Borrower, could be insufficient to make timely or complete payments of amounts due under the Series 2018 Loan Agreement, which could, in turn, affect the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds. See "INTRODUCTION—Security and Sources of Payment for Series 2018 Bonds," "PRINCIPAL PROJECT AGREEMENTS—DBFOM Agreement" and APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT."

#### Delay under the DBFOM Agreement

Pursuant to the terms and conditions of the DBFOM Agreement, the Borrower is required to exercise its best efforts to achieve Passenger Service Availability on or before the Planned Early PSA Date and is obligated to achieve the Passenger Service Availability Date by the Long Stop Date, subject to any extensions of such deadlines for Relief Events pursuant to the DBFOM Agreement. The Department's obligation to pay Availability Payments commences on the Passenger Service Availability Date.

A delay in the completion of the construction of the APM Project may cause a delay in receipt by the Borrower of Milestone Payments and the Availability Payments, thereby adversely impacting the Borrower's ability to make timely payments of amounts due under the Series 2018 Loan Agreement and, in turn, the Issuer's ability to make timely payments of principal of, or interest or premium, if any, on or costs incident to the Series 2018 Bonds.

The DB Long Stop Date under the Design-Build Contract has been established at a date which is approximately two (2) months prior to the Long Stop Date set forth in the DBFOM Agreement. If the Design-Build Contractor does not meet the applicable construction deadlines set forth in the Design-Build Contract, the Borrower may not achieve Passenger Service Availability. If Passenger Service Availability is not achieved by the Long Stop Date, as the Long Stop Date may be extended under the DBFOM Agreement, the Department, subject to the rights of the Collateral Agent (acting on behalf of the Secured Parties) under a direct agreement by and among the Borrower, the Department and the Collateral Agent, may terminate the DBFOM Agreement. The applicable Termination Compensation payable by the Department, or actually received by the Borrower, under such circumstance may not be sufficient to pay in full all obligations under the Series 2018 Bonds. In addition, although the Borrower may be entitled to receive compensation from the Design-Build Contractor through payments of termination damages or liquidated damages under the Design-Build Contract and use such amounts for payments under the Series 2018 Loan Agreement, the Design-Build Contractor's payment obligations under the Design-Build Contract are subject to the cap on liability thereunder and the Design-Build Contractor may fail to pay such termination damages or liquidated damages in their entirety. To the extent that any of the foregoing occurs, the Borrower may have limited ability, or no ability, to make payments pursuant to the Series 2018 Loan Agreement, which in turn, may adversely impact the Issuer's ability to make payments of the principal of, or interest or premium, if any, on or costs incident to the Series 2018 Bonds.

#### Events of Force Majeure; Limited Insurance Coverage; Compensation and Relief Events

The construction, operation and maintenance of the APM Project are at risk of Force Majeure Events, such as war, civil war, armed conflict, strikes (not specific to the APM Project or the Borrower), riots and nuclear, chemical or biological contamination, among other events. Also, construction and operation and maintenance may be stopped or delayed by non-casualty events, including other Relief Events, such as discovery of archaeological artifacts or of threatened or endangered species at, near or on the APM Project right-of-way, certain changes in law, delays in obtaining and renewing certain Governmental Approvals, revocation or revision of certain Governmental Approvals and litigation, among other things. Although the Borrower is entitled to schedule relief and excused from performance obligations for certain events including Force Majeure Events and other Relief Events and to payment relief for Compensation Events (subject to certain limitations), such protection does not cover all events that potentially could interrupt construction of the APM Project or the operation and maintenance of the APM Project and, in certain cases, may result in the termination of the DBFOM Agreement.

In addition, although the Design-Build Contractor, the O&M Contractor and the Borrower are required to obtain and maintain certain insurance, the required policies do not cover damage and delay from all events that potentially could interrupt construction of the APM Project or the operation and maintenance of the APM Project. Insurance policies may not be maintained or be obtainable in amounts that would be sufficient or be paid on time, in all events, to cover all of the costs required to be paid under the DBFOM Agreement, the Series 2018 Loan Agreement and under the Indenture, including payment of the principal of, or interest or premium, if any, on or costs incident to the Series 2018 Bonds. Risks that may not be insurable include a nuclear event, war, known and pre-existing environmental or geological conditions, criminal or intentional acts by the insured, bankruptcy, longshoremen's strikes and insurer insolvency. In addition, changes in federal, state or local design, building and environmental requirements and other changes in law are not risks that are generally insurable. There also can be no assurance that any use by the Design-Build Contractor or the O&M Contractor of insurance proceeds would not be challenged by other creditors, that the Borrower could repair any damage if insurance proceeds were not available or that insurance proceeds could be used to pay amounts owed with respect to the Series 2018 Bonds and the Series 2018 Loan if damaged facilities cannot be repaired or restored.

## **Risks Relating to the Project**

### *Potential Replacement of Any or All of the Design-Build Contractor Members, Design-Build Guarantors, O&M Contractor Members or O&M Guarantors*

Under certain circumstances, one or more of the Design-Build Contractor members, Design-Build Guarantors, O&M Contractor members or O&M Guarantors may be replaced without consent of the Owners of the Series 2018 Bonds. The Borrower is permitted without Lender approval to amend, waive or terminate, prior to the expiration of its term, a Material Project Contract, if such amendment waiver or termination (a) will not have a Material Adverse Effect and (b) if such contract being replaced is the Design-Build Contract or O&M Contract, it (i) is replaced by a replacement agreement between the Borrower and a replacement party of similar or greater creditworthiness and experience as the counterparty (and its guarantors, if applicable) being so replaced or with the prior written consent of the Trustee and the Administrative Agent and (ii) such replacement provides projected economic benefits for the APM Project that are, in light of the material risks and liabilities of such replacement contract taken as a whole, at least as favorable as the economic benefits for the APM Project of continuing under the existing contract, in light of the material risks and liabilities of such existing contract. Due to the Material Adverse Effect limitation, such replacement will be restricted if it would have a material adverse effect on the Borrower's ability to repay amounts owed under the Series 2018 Loan Agreement and, in turn, the Issuer's ability to make timely payments with respect to the Series 2018 Bonds.

Additionally, if a Bankruptcy Event occurs in respect of any Design-Build Contractor member, Design-Build Guarantor, O&M Contractor member or O&M Guarantor, such Bankruptcy Event would constitute an Event of Default under the Series 2018 Loan Agreement, unless (i) such party or guarantee is replaced by a replacement party or guarantee on substantially similar terms or other form of security from another counterparty of similar or greater creditworthiness as the counterparty being so replaced, or with the prior written consent of the Trustee and the Administrative Agent, or (ii) if with respect to the Design-Build Contractor or Design-Build Guarantors, (a) any one or both of Fluor Enterprises and Inc., Dragados USA, Inc., remain as Design-Build Contractor members if the applicable Design-Build Contractor Default is caused by or relates to any Design-Build Contractor member; or (b) any one or both of Fluor Corporation and Dragados, S.A., remain as Design-Build Guarantors, if the applicable Design-Build Contractor Default is caused by or relates to any Design-Build Guarantor, provided that in either case such remaining Fluor or Dragados party is not in breach or default under the applicable Material Project Contract. Any such replacement must be completed within thirty (30) days following delivery of written notice to the Borrower by the Trustee, Administrative Agent or Collateral Agent or such longer period reasonably necessary to effect such replacement, so long as Borrower is diligently pursuing such replacement.

No assurance can be given that any replacement party or remaining Design-Build Contractor members or Design-Build Guarantors, as applicable, will satisfy or be capable of satisfying their obligations under the applicable contract. Thus, termination and replacement of the Design-Build Contract, any Design-Build Guarantee, the O&M Contract or any O&M Guarantee or the insolvency of a Design-Build Contractor member or Design-Build Guarantor could increase the risk of material delay in timely completing the APM Project and/or failure to operate the APM Project in accordance with the terms of the DBFOM Agreement which may in turn result in a delay in payment or, if applicable, reduction of Milestone Payments, the Additional D&C Payments, and Availability Payments to the Borrower and may affect the Borrower's ability to make timely payments of amounts due under the Series 2018 Loan Agreement and, in turn, the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on and costs incident to the Series 2018 Bonds. See "RISK FACTORS—Risks Relating to the Project—Construction Risks and Operating Risks."

### *Pass-Through Risks under the Design-Build Contract and O&M Contract*

The Design-Build Contract is structured to pass through from the Borrower to the Design-Build Contractor substantially all of the Borrower's obligations and risks under the DBFOM Agreement with respect to the D&C Work. The Design-Build Contractor is required to perform all of the D&C Work for a fixed, lump sum amount (subject to adjustments for Compensation Events) and is required to complete the D&C Work by the deadlines specified in the Design-Build Contract. Similarly, the O&M Contract is structured to pass through to the O&M Contractor substantially all of the Borrower's operations, maintenance and rehabilitation obligations and risks under the DBFOM Agreement, for fixed compensation, subject to adjustment in accordance with the terms of the O&M Contract. There can be no assurance, however, that in all cases all of such obligations and risks will be passed through or that events will not occur that result in increases in the compensation payable to the Design-Build

Contractor or the O&M Contractor, or afford either contractor additional time for performance that may not be compensated, reimbursed or other provided for under the DBFOM Agreement. In addition, due to permitted reductions in payments by the Department to the Borrower due to the non-performance by the Design-Build Contractor or the O&M Contractor, may not be fully offset against by Borrower against what the Borrower might owe the Design-Build Contractor or the O&M Contractor under the Design-Build Contract and O&M Contract, respectively, resulting in amounts being due to the Design-Build Contractor or O&M Contractor that are greater than the amounts received by the Borrower under the DBFOM Agreement. Such an imbalance in receipts and payments of funds by the Borrower could result in the Borrower lacking sufficient funds from which to pay amounts due under the Series 2018 Loan Agreement and, in turn, adversely affect the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on Series 2018 Bonds. In some circumstances, the reduction in payments from the Department to the Borrower may exceed amounts for which the Design-Build Contractor or the O&M Contractor are responsible as a result of the caps on liability set forth in the Design-Build Contract and the O&M Contract. Also, the failure to properly perform certain required activities may constitute a Developer Default, which could result in a termination of the DBFOM Agreement. In such events, the Borrower may not receive Availability Payments, Termination Compensation or other amounts from the Department in amounts sufficient to pay amounts due under Series 2018 Loan Agreement and, in turn, adversely affect the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

#### *Risk Factors Relating to Seismic Conditions*

The APM Project is located in seismically active Southern California, and is situated over the Charnock Fault and relatively close to the Overland Fault. While not viewed as an active fault, the Charnock Fault could potentially be the source seismic activity. Minor tremors are relatively common to California and the State is generally shook by two or three earthquakes a year that are capable of causing at least moderate damage. Seismic activity in Los Angeles in particular has been limited to two main focus areas to the north that are over 50 miles from site of the APM Project. However, an earthquake of at least moderate size could result in considerable ground shaking and damage to LAX, potentially disrupting the design and construction or operation and maintenance of the APM Project.

An Earthquake (including any land movement due to seismic activity, including shocks, tremors, volcanic action, tsunami and earth rising or shifting, including any aftershocks or other earthquakes for a period of 168 hours after the initial event) that impacts the performance of the Work but does not cause physical damage to the APM Project constitutes a Non-Compensation Event pursuant to the DBFOM Agreement and may entitle the Borrower to extensions of time and relief from Deductions. An Earthquake that causes physical damage to the APM Project constitutes a Compensation Event pursuant to the DBFOM Agreement. (See "PRINCIPAL PROJECT AGREEMENTS – DBFOM Agreement – *Relief Events*" and APPENDIX B-1—"THE DEPARTMENT—CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES—Seismic Risks; Other Force Majeure Events").

#### *Cyber Security and Cyberattacks*

The APM Train Control System functions on a stand-alone and closed fiberoptic, communication-based network to regulate, control, and monitor the overall system operations and safety protection, including the APM vehicle movement, speed, braking, doors and passenger information and announcement systems. As such, and considering its strategic importance in the mobility of a large number of passengers within a dense airport environment, it could become a target for cyber attacks. The DBFOM Agreement includes cyber-security obligations of the Borrower passed down from the Borrower to the Design-Build Contractor (and in turn to the APM Operating System Supplier) with a view to avoiding pass-down cyber threats and hazards that may disrupt, destroy, or threaten the delivery of critical services. However, a cyberattack circumventing the firewalls and other cyber security measures put in place by the APM System Supplier and maintained by the O&M Contractor remains a possibility. A cyberattack may cause delays in the construction of the APM Project and, once operational, disruptions in service availability which in turn may cause deductions to the Availability Payments payable by the Department to the Borrower impacting the Borrower's ability to make timely payments of amounts due under the Series 2018 Loan Agreement and, in turn, affecting the Issuer's ability to make timely payments of principal of, or interest or premium, if any, on the Series 2018 Bonds.

### *Construction Risks*

The Borrower is obligated to achieve Passenger Service Availability by the Planned Early PSA Date, as it may be extended under certain circumstances (Relief Events) in accordance with the DBFOM Agreement. Pursuant to the Design-Build Contract, the Design-Build Contractor has agreed to comply with certain deadlines set forth in the Design-Build Contract with respect to the Contracted Work required to be undertaken by the Design-Build Contractor under the Design-Build Contract. See APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

#### General.

As with any major construction effort, the construction of the APM Project involves risks that could result in cost overruns, delays or failure to complete the APM Project. Some of the risks to completing the APM Project on time and within budget include shortages of materials and labor, work stoppages, labor disputes, bad weather, earthquakes, floods and other casualties, unforeseen engineering issues, failure of the Department to obtain and maintain the necessary Project ROW or LAWA-Provided Approvals in accordance with the DBFOM Agreement, environmental or geological problems, changes in law, discovery of unidentified geologic or hazardous materials or unidentified utilities, damage to property or personal injuries, third-party litigation, difficulties in obtaining or renewing permits or other federal, state or local government approvals, changes in federal and state or local design or building requirements and permit conditions, any of which could increase the cost of and cause delay to the construction and start-up of the APM Project.

The Design-Build Contract is a fixed-price contract and a number of these risks such as the risks related to Force Majeure Events and Relief Events under the DBFOM Agreement and, except under certain circumstances with respect to excluded obligations under the Design-Build Contract (e.g. Borrower and LAWA obligations), the risks related to completion of the Contracted Work on schedule and on budget have been allocated (except for certain utility risks that the Lenders' Technical Advisor assesses as minor) in whole to the Design-Build Contractor under the Design-Build Contract. Not all of these risks (including Borrower-caused delays), however, have been shifted or can be insured against, and there can be no assurance that the Borrower will have or will be able to obtain sufficient funds, if necessary, to cause the Design-Build Contractor or any replacement contractor to complete the construction of the APM Project within the projected time table or in line with the budget and other assumptions described in this Official Statement.

The Availability Payments are the primary source of revenue expected to be available to pay principal of, or interest or premium, if any, on the Series 2018 Bonds during the O&M Period. The MaxAP is adjusted each year for an escalation factor which is calculated pursuant to a formula described in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments During the O&M Period—*Availability Payments*.” While the adjustment formula is intended to reflect the cost structure of the Borrower, including certain O&M Expenditures, there can be no guarantee that this will adequately match the fixed and variable costs of the Borrower. To the extent that the Borrower's costs grow more than the specified indices, or the cost structure is not adequately reflected in the adjustment formula, there may be insufficient funds available to the Borrower to satisfy its obligations under the Series 2018 Loan Agreement, which in turn may adversely impact the Issuer's ability to make payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

Even though the obligations of each Design-Build Contractor member under the Design-Build Contract is guaranteed by the applicable Design-Build Guarantor under each parent guarantee, the Design-Build Guarantors are subject to the same obligations and can avail themselves of the same rights and defenses as their applicable subsidiary Design-Build Contractor member, including the overall limitations of liability under the Design-Build Contract (subject to the exceptions set forth therein). See “THE PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—Performance Security.”

One of the Design-Build Guarantors, Dragados S.A., is a Spanish corporation. If Dragados S.A. fails to perform its obligations under its parent guarantee, any arbitration award or judicial decision obtained against it in the United States would need to be enforced in the courts of Spain and there can be no assurance that courts in Spain would so enforce any judgment or award or that, if enforced, sufficient funds will be obtained from Dragados S.A. Also, there can be no assurance that sufficient funds will be obtained from any judgment or award against the U.S. Design-Build Guarantors, which are Fluor Corporation, HOCHTIEF USA, Inc., or Balfour Beatty LLC.

### Contractors and Utility Owners.

As described above, the Borrower has passed through to the Design-Build Contractor substantially all of its obligations under the DBFOM Agreement to design and construct the APM Project. In turn, the Design-Build Contractor expects to subcontract certain of its obligations under the Design-Build Contract to third-party subcontractors. However, there can be no assurance that the Design-Build Contractor or the subcontractors will perform their respective obligations under the relevant agreements. Lack of coordination among the Borrower, the Department, the Design-Build Contractor, the Utility Owners or other third parties or related projects under construction by the Department, with respect to completion of the D&C Work or their inspections on schedule, could also result in delays or cost overruns or both. Increased costs that result from delays or change orders caused by actions of the Department, the Borrower, Utility Owners, or other third parties or by Force Majeure Events, changes in applicable Laws or other uncontrollable circumstances may not be covered under the fixed price and schedule set forth in the Design-Build Contract or the entitlement to compensation for Relief Events and may not require payment by the Design-Build Contractor of liquidated damages, to the extent the Design-Build Contractor did not cause or contribute to such event. Although the Borrower may be entitled to schedule relief and/or compensation for certain costs, suffered or incurred as a result of any such Relief Event, no assurance can be given that any of the above will not result in increased costs and delays to the APM Project. See “RISK FACTORS—Risks Relating to the Project Agreements—*Risks Related to the DBFOM Agreement—Events of Force Majeure; Limited Insurance Coverage; Compensation and Relief Events.*”

### Insurance and Liquidated Damages.

Not all risks are insured, and it is not possible to obtain insurance for all Force Majeure Events and other contingencies described in the Design-Build Contract and the DBFOM Agreement. See “RISK FACTORS—*Risks Related to the DBFOM Agreement—Events of Force Majeure; Limited Insurance Coverage; Compensation and Relief Events.*” In addition, the amount of liquidated damages the Design-Build Contractor could be required to pay under the Design-Build Contract for delay is subject to a capped amount that may not be sufficient to cover all of the Borrower’s losses in the event of a delay or a failure to complete the required D&C Work in accordance with the DBFOM Agreement. See “PRINCIPAL PROJECT AGREEMENTS—*Design-Build Contract—Liquidated Damages.*” To secure its obligations to pay liquidated damages, the Design-Build Contractor is required to deliver a letter of credit. At Financial Close, that letter of credit is required to be an amount equal to 3% of the Contract Price. Upon the occurrence of a Contingent Security Triggering Event, the Design-Build Contractor is required to provide additional liquid security to the Borrower or the Borrower may retain amounts received from the Department and due to the Design-Build Contractor, in either case up to 1.90% of the Contract Price. If the APM Project is substantially delayed and Design Build Contractor has failed to deliver additional liquid security for its liquidated obligations, the Borrower may not have enough funds to complete construction or pay its liabilities, including principal and interest Series 2018 Loan Agreement which may, in turn, adversely affect the Issuer’s ability to make timely payments on the Series 2018 Bonds.

In addition, the Design-Build Contractor may be relieved from its obligation to pay liquidated damages in the event the scheduled completion dates are extended due to a Borrower-caused delay subject to the terms set forth in the Design-Build Contract. The Design-Build Contractor also has not waived its rights to contest a demand for payment of liquidated damages. Neither the Design-Build Contractor nor the Design-Build Guarantors nor the issuer of any performance bond or other security is guaranteeing performance by the Design-Build Contractor under the Design-Build Contract under all circumstances and each Design-Build Guarantor or surety may assert as a defense to payment any defenses the Design-Build Contractor claims or has. No assurance can be given that insurance or other funds will be sufficient should delays occur or should the Borrower have payment obligations that are not satisfied by or included in the responsibility of the Design-Build Contractor under the Design-Build Contract.

### Vehicle Supply Risks

The Design-Build Contract requires the Design-Build Contractor to supply the Vehicles for the APM Project. The Design-Build Contractor has entered into the APM Operating System Subcontract with the APM Operating System Supplier, as a subcontractor to the Design-Build Contractor, pursuant to which the APM Operating System Supplier will be required to supply, for a fixed price all adequate and competent labor, supervision, spare parts, tools, equipment, installed and consumable materials, services, testing devices and storage and each and every item of expense necessary for the supply of the Vehicles and to pay liquidated damages (capped at 20% of the Subcontract Price) due to delay in the Subcontracted Work (including the Vehicles) and due to failure



to achieve the milestones provided in the APM Operating System Subcontract. There can be no assurance, however, that the Vehicles will be delivered as required under the APM Operating System Subcontract or that failure of timely delivery of the Vehicles would not adversely affect the ability of the Borrower to comply with the requirements of the DBFOM Agreement. See “PRINCIPAL PROJECT AGREEMENTS—APM Operating System Subcontract” and APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

The APM Operating System Supplier historically has manufactured automated people mover vehicles in Pittsburgh, Pennsylvania. However, the APM Operating System Supplier intends to manufacture the automated people mover vehicles, including those for the APM Project, in China through its 50/50 JV with CRRC (“Puzhen Bombardier Transport Ltd” or “PBTS JV”) the largest rail transit supplier in the world. PBTS JV was based in Nanjing within a larger CRRC manufacturing facility but has recently moved to a new, dedicated facility in Wuhu (about 60 miles from Nanjing) which is capable of producing 60 automated people mover vehicles per year and increasing production if needed to.

PBTS made its first delivery of INNOVIA APM 300 vehicles to the Shanghai Line 8 in China this year. Exporting and importing such vehicles to the United States from China may raise potential risks and challenges, including trade and tariff risks, that the APM Operating System Supplier has not experienced on prior comparable deliveries. Similarly, manufacturing these vehicles in a new facility may also pose additional risks for timely delivery, as new facilities may have commissioning or other unforeseen issues that result in a delay of delivery of the INNOVIA APM 300 vehicles to the APM Project. If the delay in delivery of the INNOVIA APM 300 vehicles is material, the Borrower may not be able to timely achieve Passenger Service Availability. As a result of any such delay or failure by the APM Operating System Supplier to deliver INNOVIA APM 300 vehicles that meet the quality and schedule required by the Project Agreements, the Borrower may have limited ability, or no ability, to make payments pursuant to the Series 2018 Loan Agreement, which may, in turn, adversely affect the Issuer’s ability to make payments of the principal of, or interest or premium, if any, on or costs incident to the Series 2018 Bonds. See APPENDIX C—“REPORT OF THE LENDERS’ TECHNICAL ADVISOR – Section 10.7 – Rolling Stock / Vehicle Design, Manufacturing and Delivery.”

Additionally, the relationship between the United States and China has been variable and at times tense. Recent tariffs levied on China at the direction of the President of the United States and economic responses by China may impact the schedule or ability of the APM Supplier to deliver on time.

### *Operating Risks*

Pursuant to the O&M Contract, the O&M Contractor is undertaking the O&M Activities on a fixed price, lump sum basis. The O&M Payments under the O&M Contract will be the total compensation for all costs and risks associated with the performance by the O&M Contractor of its obligations under the O&M Contract. As such, increased operating costs in respect of the O&M Activities would affect the O&M Contractor, however such increased operating costs would not affect the Borrower. The Borrower will still be responsible for increased operating costs associated with certain excluded obligations under the O&M Contract. Such excluded obligations include insurance costs, day-to-day internal administrative costs, and certain renewal or reconstruction work related to guideway structure, APM’s main steel guide beam, reinforcement concrete paving at the MSF, structures and building structural elements, culverts or sewers and drainage inlets and outlets and retaining walls, and losses or damages to the APM Project that are covered by property insurance required under the O&M Contract. Due to the fixed price nature of the O&M Contract, cost overruns under the O&M Contract will be entirely retained by the O&M Contractor and if material enough, may lead to the O&M Contractor’s insolvency.

As with any infrastructure project of the size and complexity of the portions of the APM Project located within the O&M Limits, operations could be affected by many factors, including breakdown or failure of equipment or processes, performance below expected levels of availability, higher than expected passenger levels, failure to operate to design specifications and in accordance with then-applicable permit requirements, labor disputes, changes in law, inability to obtain necessary Governmental Approvals, safety and security issues, and catastrophic Force Majeure Events. Some but not all of these events can be covered by general liability, business interruption and other operating period insurance. The Department has agreed to bear the risk of some, but not all, of these events under the Relief Event/Force Majeure regime set forth in the DBFOM Agreement, whereby the Department is required to pay certain amounts and/or provide performance relief for Relief Events and/or Force Majeure Events, as applicable. However, the Borrower is not entitled to relief in certain circumstances set forth in the DBFOM Agreement. See

APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events.” If any of these events occur and relief is not afforded to the Borrower under the DBFOM Agreement, such events could significantly increase expenditures for O&M Work and cause the Borrower to have insufficient resources to meet its financial obligations, including the payment under the Series 2018 Loan Agreement which may, in turn, adversely affect the Issuer’s ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

Although certain Noncompliance Points and Deductions during the O&M Period are passed down to the O&M Contractor to the extent related to the O&M Activities, the accumulation of Noncompliance Points and Deductions for certain breaches by the Borrower or failures in the performance of its obligations under the Contract Documents, as specified in the DBFOM Agreement, may result in a reduction in the amount of Availability Payments paid by the Department to the Borrower under the DBFOM Agreement. See “PRINCIPAL PROJECT AGREEMENT—The DBFOM Agreement” and APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT.” The deductions from Availability Payments for any one month can accrue in an amount equal to the entire Availability Payment otherwise due for such month. During any three (3) consecutive month period during an operating year (a “Quarter”) (only four Quarters in each operating year) such deductions in aggregate cannot exceed 40% of the Availability Payments due for that Quarter. Any excess deductions are required to be carried over to the subsequent Quarter and deducted from the first month of the subsequent Quarter’s Availability Payment. See “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT —Availability Payments” for more details. Such Noncompliance Deductions may also materially reduce the amount of any Termination Compensation expected to be payable to the Borrower from the Department. Any such reduction in Availability Payments would reduce the amount available to pay expenditures for O&M Work and other expenses and may adversely impact the Borrower and its ability to make timely payments of amounts due under the Series 2018 Loan Agreement and, in turn, the Issuer’s ability to make timely payments of the principal of, or interest or premium, if any, on and costs incident to the Series 2018 Bonds. Further, the accumulation of such Noncompliance Points beyond certain thresholds specified in the DBFOM Agreement, unless timely cured, would be a Developer Default and could lead to termination of the DBFOM Agreement, with termination compensation which could be insufficient to pay all of the principal and interest on the Series 2018 Loan Agreement which may, in turn, adversely affect the Issuer’s ability to make timely payments of the principal of, or interest or premium, if any, on Series 2018 Bonds.

Even though the obligations of each O&M Contractor member under the O&M Contract is guaranteed by the subsidiary O&M Guarantor under each parent guarantee, the O&M Guarantors are subject to the same obligations and can avail themselves of the same rights and defenses as their applicable subsidiary O&M Contractor member, including the overall limitations of liability under the O&M Contract (subject to the exceptions set forth therein). See APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Performance Security.”

Certain of the O&M Guarantors are foreign corporations. Accordingly, if any O&M Guarantor fails to perform its obligations under its parent guarantee, any arbitration award or judicial decision obtained against it in the United States would need to be enforced in the courts of Spain, England or Germany, as applicable, and there can be no assurance that courts in such countries will enforce any judgment or award or that, if enforced, sufficient funds will be obtained from such O&M Guarantors. Also, there can be no assurance that sufficient funds will be obtained from any judgment or award against the Fluor Corporation.

#### *Environmental and Permitting Risks*

##### Environmental Contamination or Conditions.

Environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), impose liability on owners or operators for the clean-up costs associated with remediating contaminated property. The Borrower could become liable for certain claims for remediation of pre-existing contamination existing on or under the APM Project area or with respect to additional properties, as well as future contamination associated with the APM Project. See APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction—Hazardous Materials Management.”

Under the DBFOM Agreement, the Borrower is obligated to assume all of the Department’s obligations with respect to the existing environmental approvals for the APM Project (with the exception of those obligations

that are expressly excluded from the Borrower's scope of Work) and generally complying with all Environmental Laws, including remediation and management of environmental conditions. Under the Design-Build Contract, the Design-Build Contractor is, with certain limited exceptions, assuming all obligations of the Borrower (except as otherwise assumed by the Department) with respect to compliance with all Environmental Laws and the performance of any remediation and the management of the APM Project in response to any such remediation.

The presence of hazardous material contamination at or near the APM Project could cause construction delays in order to enable investigation and remediation of such conditions. Provided the Borrower conducted an investigation of site conditions at the applicable portion of the Site in accordance with the DBFOM Agreement, the Borrower can seek relief in connection with the discovery of Pre-Existing Hazardous Materials within the D&C Limits that (i) render use of the APM Project unsafe or potentially unsafe absent assessment, containment and/or remediation, or (ii) are required by applicable Law to be recycled, treated or stored, but excluding from the foregoing any Hazardous Materials that are known to the Borrower as of the Setting Date or that would have become known to Borrower based on a reasonable investigation of the area and information available to the Borrower as of the Setting Date, and any Hazardous Materials within Additional Properties and Temporary Areas.

Any of the above risks could require substantial expenditures or delay Project completion or both, which could adversely impact the Borrower's cash flow, its ability to comply with the DBFOM Agreement and adversely affect the Borrower's ability to make timely payments of amounts due under the Series 2018 Loan Agreement and, in turn, affect the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

#### Changes in Environmental Laws.

The laws and regulations governing environmental protection have changed significantly over recent years and are expected to continue to change. Regulations governing, among other things, air pollution, noise abatement and control, wetlands mitigation, hazardous waste, solid waste, water quality and threatened and endangered species may become more stringent in the future, possibly requiring additional compliance and having a material and adverse effect on the design, construction or operation of the APM Project.

The DBFOM Agreement provides relief from adverse cost or schedule effects of Qualifying Changes in Law. Changes in Environmental Laws may, however result in uncompensated increased construction costs, delays in construction or increased compliance costs, which could adversely impact the Borrower's cash flow, its ability to comply with the DBFOM Agreement and to make timely payments of amounts due under the Series 2018 Loan Agreement, which could, in turn, affect the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on or costs incident to the Series 2018 Bonds.

#### Permits and Permitting Requirements; Litigation

Governmental Approvals of many kinds are required to be obtained for the construction and operation of the APM Project. The issuance of such Governmental Approvals may include public notice and comment, hearings, or administrative or judicial appeals. Governmental Approvals may be appealed if they have not been issued in compliance with law, and there are various remedies available to governmental agencies and to the public if the APM Project is constructed without appropriate Governmental Approvals or is constructed other than in compliance with the Governmental Approvals. See "RISK FACTORS—Risks Relating to the Project Agreements—*Judicial Challenge*" and "LITIGATION—The Department."

The Department is responsible for obtaining the LAWA-Provided Approvals pursuant to the DBFOM Agreement, and the Borrower is to obtain all of the other Governmental Approvals required for the APM Project. Under the Design-Build Contract, the Design-Build Contractor is, with certain limited exceptions, assuming the Borrower's responsibility under the DBFOM Agreement for obtaining, furnishing, paying the cost of and maintaining in full force and effect all Governmental Approvals required for the timely construction of the APM Project and for complying with and paying the cost of compliance with all Environmental Laws applicable to the construction of the APM Project.

The design of the APM Project is not complete and the terms of existing and expected Governmental Approvals could change as the APM Project specifications or environmental or species conditions change during the design process, and delays could ensue particularly if any required Governmental Approvals would require public hearings or are otherwise challenged. The Borrower expects that all Governmental Approvals required for the APM

Project that are not yet obtained will be obtained as required for timely construction of the APM Project. However, in some cases, the issuance of these Governmental Approvals, including any terms and conditions, is subject to the discretion of the issuer thereof, and such Governmental Approvals are subject to administrative and judicial appeal. No assurance can be given that the Borrower or the Design-Build Contractor will be able to obtain all required Governmental Approvals by the time they are necessary for construction or operation (as applicable) of the APM Project. If not timely obtained, or if issued with restrictive terms and conditions, the need for these Governmental Approvals or for satisfying any conditions thereunder could cause delays in the construction of the APM Project.

The construction schedule for the APM Project assumes that Governmental Approvals will be obtained in accordance with a schedule that anticipates a conventional permitting process without significant appeals, delays, imposition of unexpected conditions, unexpected changes in environmental or species conditions, finalization of or modifications to the APM Project design. Any material delay in obtaining or renewing Governmental Approvals, imposition of an unexpected material condition on a Governmental Approval, unexpected changes in environmental conditions or conditions relating to threatened and endangered species or modification of the APM Project design required as a result of the Governmental Approvals process could increase the costs of constructing the APM Project or delay its completion.

Certain of these risks and their associated costs and delays are allocated to the Department under the DBFOM Agreement or to the Design-Build Contractor under the Design-Build Contract. However, there are procedural and other limitations on the liability of the Design-Build Contractor (including the aggregate liability cap) under the Design-Build Contract, and, if the Design-Build Contractor is not liable or does not pay for such costs or delays, such costs will be borne by the Borrower, affecting its cash flows and its ability to make timely payments of amounts due under the Series 2018 Loan Agreement and, in turn, the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds. See APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events" and APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—*Force Majeure Events*."

#### *Judicial Challenge*

The APM Project is to be designed, constructed, financed, operated and maintained in accordance with the DBFOM Agreement, including in compliance with certain Government Approvals. However, there may be opposition to the APM Project and no assurance can be given that any future efforts to oppose the APM Project, including in the form of litigation, will not be successful, and if successful, that such efforts would not materially delay, impair or preclude the Borrower's ability to make timely payments of amounts due under the Series 2018 Loan Agreement and, in turn, the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

On June 30, 2017 petitioners TPS Parking Management, LLC, doing business as The Parking Spot, and TPS Parking Century, LLC filed a petition for writ of mandate against the City and the Department (the "Petition"). Among other things, the Petition (i) alleges that the environmental review process for LAMP was inadequate and that the LAMP Environmental Impact Report did not adequately address, disclose, evaluate and potentially mitigate various environmental impacts and (ii) seeks to set aside the approvals related to the LAMP, injunctive relief, and to require the City and the Department to revise the LAMP Environmental Impact Report to evaluate and disclose alleged deficiencies. The litigation is currently focusing on compilation of the administrative record; a trial date has not been set and a motion seeking injunctive relief has not been filed. The Department describes the status of the litigation in APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Litigation." The Department states that it is not possible to predict the outcome of this matter and whether this matter will result in delays or cost increases to Department's LAMP projects, including the APM Project. To the extent such litigation is successful and the Finding of No Significant Impact and Record of Decision for the LAMP program is invalidated, the APM Project will no longer have one its fundamental environmental approvals. If such outcome were to occur, it would likely cause a material delay in the Borrower's ability to complete the APM Project by the deadlines under the DBFOM Agreement.

The LAMP Environmental Impact Report and associated Record of Decision constitute LAWA-Provided Approvals under the DBFOM Agreement and are required to be provided by the Department. If the litigation were resolved against the Department, the Borrower may be able to claim schedule and compensation relief, as such court ruling may constitute a failure by the Department to provide the LAWA-Provided Approvals due to a legal order by

a court prohibiting the prosecution of the Work causing a delay to the Critical Path which is a Compensation Event under the DBFOM Agreement.

If a court ruling in favor of the Parking Spot's Petition results in the DBFOM Agreement being found to be void, voidable and/or unenforceable or impossible to perform in its entirety, such court ruling could provide a sufficient basis for a termination of the DBFOM Agreement. Such a final court order, the timeframe for which cannot be predicted, would likely constitute a notice of termination under the DBFOM Agreement and the DBFOM Agreement would be automatically terminated without further notification by either party. Upon a Termination Due to Court Ruling, the Department would be required to pay Termination Compensation in amount including the Lenders' Liabilities; however, due to certain deductions permitted under the DBFOM Agreement, it is still possible that such Termination Compensation may not be sufficient for the Borrower to repay the Series 2018 Bonds in full. See "CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Department Payments Upon Early Termination." For a further discussion of litigation involving the Department, see APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES."

While neither the Borrower nor the Issuer or the Department is aware of any other legal or judicial proceedings currently pending in relation to the APM Project or the Series 2018 Bonds, there is no assurance that any judicial or administrative actions or investigations challenging the issuance of the Series 2018 Bonds, the design, construction, financing, operation and maintenance of the APM Project, the granting of any permits and approvals required in connection therewith or any of the other transactions contemplated by this Official Statement will not be filed or commenced in the future or, if they are filed or commenced, that they will not adversely affect the commencement or timely completion of the APM Project, or the ability of the Borrower to make payments pursuant to the Series 2018 Loan Agreement in the amounts and at the times required to enable the Issuer to pay debt service on the Series 2018 Bonds or other payments required under the Indenture with respect to the Series 2018 Bonds.

#### *Changes in Governing Laws*

The APM Project is subject to various laws and regulations, including among others, laws governing environmental protection, which may change from time to time. The APM Project and the Borrower's business, financial condition and results of operations may be adversely affected by changes in such laws or regulations. Under the DBFOM Agreement, only Qualifying Changes in Law entitle the Borrower to compensation and any other Change in Law may entitle the Borrower to schedule and performance relief, but no compensation. To the extent that the Borrower is required to expend additional funds not contemplated in the base case financial projections in order to be in compliance with any new or amended regulations or laws, and the Borrower is not entitled to compensation under the DBFOM Agreement, such unanticipated expenditures could negatively impact the Borrower's cash flow. Although a Change in Law qualifies as a Non-Compensation Event under the DBFOM Agreement, entitling the Borrower to schedule and relief for obligations under the DBFOM Agreement that it is prevented from performing, such relief may be insufficient. To the extent that the Borrower requires additional time in order to be in compliance with any new or amended regulations or laws, and as a result, the APM Project is delayed and no or limited schedule relief is provided by the Department under the DBFOM Agreement, the Borrower may suffer a delay in the commencement of operation of the APM Project. Depending on the extent of the delay, under certain circumstances, this delay could result in a breach of the Borrower's obligations under the DBFOM Agreement and may give rise to a right of the Department to terminate the DBFOM Agreement. To the extent that any of the foregoing occurs, the Borrower may have limited ability, or no ability, to make payments pursuant to the Series 2018 Loan Agreement, thereby adversely impacting the Issuer's payments of the debt service on the Series 2018 Bonds or other payments required under the Indenture with respect to the Series 2018 Bonds or the Borrower's payments under the Design-Build Loan Facility. In addition, in the event of a termination of the DBFOM Agreement as result of any of the foregoing events, the amount of termination compensation payable by the Department to the Borrower may not be sufficient to pay all of the then outstanding obligations under the Series 2018 Bonds. Additionally, a Qualifying Change in Law (other than City ordinances) may entitle the Department or the Borrower to terminate the DBFOM Agreement for an Extended Delay Event. Such termination would entitle the Borrower to be paid Termination Compensation in amount that would include full payment for Lenders' Liabilities, subject to certain deductions which may cause the Borrower to have insufficient funds to pay all of the then outstanding obligations under Series 2018 Loan Agreement and, in turn, adversely affect the Issuer's ability to make timely payments of the principal of, or interest or premium, if any, on the Series 2018 Bonds.

## **Risks Relating to the Series 2018 Bonds**

### *Bankruptcy and Insolvency Risks*

The enforceability of the rights and remedies of the Owners pursuant to the terms and conditions of the Series 2018 Bonds and the Indenture, of the Secured Parties under the terms and conditions of the Security Documents, and of the Borrower pursuant to the terms and conditions of the DBFOM Agreement and the other Material Project Contracts, in each case, may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar state and federal laws affecting creditors' rights currently existing or that may be enacted in the future. If the Issuer, the City or another counterparty were to commence or be forced into bankruptcy or similar proceedings, either by operation of law or through entry of an order, the enforcement of certain rights, including those relating to the payment of moneys due under an agreement could be temporarily or permanently stayed or enjoined, in addition, certain rights under the Material Project Contracts could be altered, amended or discharged resulting in the Issuer, the Department or such other party, as applicable, no longer being required to perform its obligations pursuant to the Indenture or the applicable Material Project Contract, as applicable, or the court could authorize the rejection of one or more of such agreements by a debtor, where permitted under applicable law, thereby depriving the Owners or the Borrower, as applicable, of its rights thereunder, including the rights and remedies available to the Owners pursuant to the Indenture and the right of the Borrower to operate the APM Project and collect Milestone Payments, Additional D&C Payments and Availability Payments.

If the Borrower becomes the subject of a federal bankruptcy proceeding, the operation of the automatic stay pursuant to 11 USC §§ 362 and 922 (or in a case under Chapter 9 of the Bankruptcy Code), under certain circumstances, may stay the Borrower, the Trustee and the Collateral Agent, as applicable from taking any action against a debtor or the debtor's property (as such term is defined under the Bankruptcy Code and applicable case law, including, but not limited to, any contract rights, tangible and intangible property, choate or inchoate rights, along with other forms of possession or ownership that are traditionally viewed as property under applicable non-bankruptcy law), unless an order granting relief from the automatic stay is obtained prior to taking any action to enforce any of their respective rights and remedies under the DBFOM Agreement, the Series 2018 Loan Agreement, the Collateral Agency and Accounts Agreement or any other Financing Document, including declaring the Department to be in default under the DBFOM Agreement, attempting to recover amounts due but unpaid from the Department, terminating the DBFOM Agreement, accelerating the due dates of any payments due from the Borrower under the Series 2018 Loan Agreement, evicting the Borrower and taking possession of the APM Project or realizing against any Collateral provided by the Borrower under the Security Documents or altering any rights under any agreement between the debtor and any party.

While the commencement of a bankruptcy or similar proceeding seeking the Borrower's liquidation, a reorganization or similar relief, or the Borrower's admission that it is unable to pay its debts, each constitutes a termination event under the DBFOM Agreement, pursuant to the provisions of the Bankruptcy Code, including the provisions of 11 USC §§ 365 and 922, there is a risk that such default may not be enforceable and that any rights which may be enforced in respect of such default, may be limited pursuant to the provisions of the Bankruptcy Code. Additionally, under federal bankruptcy law, there is a risk that post-petition revenues may not be subject to the Secured Parties' pre-petition security interest. The occurrence of a proceeding under the Bankruptcy Code, may cause a delay in the enforcement proceedings or may limit or modify the rights and remedies available to the Owners and/or the Borrower.

See APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Enforceability of Remedies; Limitation on Remedies. "

In the case of counterparties organized under the laws of a foreign jurisdiction (such as certain DB Guarantors and O&M Guarantors) any bankruptcy or insolvency proceedings or proceedings to enforce such parties' obligations under the initial Financing Documents to which they are a party could be initiated in Spain, Germany, England or other applicable jurisdictions. Such multi-jurisdictional proceedings are typically complex and costly for creditors, may involve the application of laws which differ materially from applicable state and federal laws in the United States and often result in a diminution of recoveries, substantial uncertainty and delay in the enforcement of creditors' rights. Moreover, any judgment obtained in the United States (whether from a state or federal court) against such counterparties may not be collectible in the United States.

### *Limitations on Enforceability*

Foreclosure on the Collateral on the Owners' behalf may be subject to perfection and priority issues, the need for third party approvals and consents (for example, in respect of certain approvals of replacement parties and consents to certain enforcement actions under the Intercreditor Agreement (as described further below), direct agreements between the Collateral Agent and the Department, the Design-Build Contractor, the guarantors of the Design-Build Contractor, the O&M Contractor or the guarantors of the O&M Contractor, as applicable) and to practical problems associated with the realization of the Owners' security interest in the Collateral. The enforcement of the security interest with respect to the Collateral may not provide sufficient funds to repay all amounts due on the Series 2018 Bonds and the other then outstanding Senior Secured Obligations. The Collateral will be shared with the holders of other senior debt including the Bank Lenders, the Hedge Providers and the holders of any other Permitted Senior Secured Indebtedness that the Borrower incurs in the future. This sharing of collateral increases the risk that the proceeds from a foreclosure on the Collateral will not be sufficient to repay the Series 2018 Bonds. In addition, in an enforcement action, the Owners will share the Senior Debt Service Reserve Account with the holders of other Senior Secured Indebtedness then outstanding, which may include the Bank Lenders, Hedge Providers and providers of other Permitted Senior Secured Indebtedness that the Borrower may incur in the future. See "RISK FACTORS—Risks Relating to the Series 2018 Bonds—*Additional Senior Secured Obligations*" herein for a further discussion regarding the Borrower's ability to incur additional Senior Secured Obligations.

In addition, since the Borrower's principal asset is its rights under the DBFOM Agreement, the Design-Build Contract, the Design-Build Guarantees, the O&M Contract, the O&M Guarantees and the APM Operating System Subcontract (through the APM Operating System Subcontract Direct Agreement), there are practical limitations on the exercise of remedies in respect thereof, including through the exercise of the rights and remedies available under the Lenders' Direct Agreement. In respect of the Lenders' Direct Agreement, any transfer of the Borrower's rights, including pursuant to a foreclosure, is subject to the prior approval of the Department. Moreover, any transferee must meet certain requirements established by the DBFOM Agreement, including having available to it appropriate qualifications, technical competence and resources (including financial resources) to perform the obligations of the Borrower under the DBFOM Agreement. The transfer of the Borrower's rights under each of the Design-Build Guarantees and the O&M Guarantees is subject to certain terms and conditions, contained in such guarantees. Thus, as a practical matter, the Borrower's creditors (including the Owners of the Series 2018 Bonds) will have limitations on their ability to replace the Borrower as the developer under the DBFOM Agreement, the Borrower as developer under the Design-Build Contract, the Borrower as the beneficiary under the Design-Build Guarantees, the Borrower as developer under the O&M Contract, the Borrower as the beneficiary under the O&M Guarantees, and the Design-Build Contractor under the APM Operating System Subcontract. Finally, each Design-Build Guarantor, in accordance with its applicable Design-Build Guarantee, is required to guarantee all of such Design-Build Guarantor's subsidiary members' obligations under the Design-Build Contract, which such member is jointly and severally liable for all of the duties and obligations expressed to be duties and obligations of the Design-Build Contractor under the Design-Build Contract, the Interface Agreement and the Design-Build Lenders' Direct Agreement, and each O&M Guarantor, in accordance with its applicable Design-Build Guarantee, is required to guarantee all of such O&M Guarantor's subsidiary members' obligation, which such member is jointly and severally liable for all of the duties and obligations expressed to be duties and obligations of the O&M Contractor under the O&M Contract, the Interface Agreement and the O&M Lenders' Direct Agreement. As such, to the extent that one of the guarantors is financially unable to comply with its obligations under its Design-Build Guarantee, or O&M Guarantee, the other guarantors will be contractually obligated to cover any shortfall. No assurance can be provided, however, that upon the occurrence of any such shortfall, the remaining guarantors will have sufficient financial resources available to cover the full amount of the shortfall. See "THE PRINCIPAL PROJECT AGREEMENTS—DBFOM Agreement," "PRINCIPAL PROJECT AGREEMENTS—Design-Build Contract" and "PRINCIPAL PROJECT AGREEMENTS—O&M Contract." Under California law, in certain circumstances, a guarantor may be relieved from its obligations under a guarantee, where a creditor is deemed to have taken any action that materially prejudices a guarantor. While express and specific waivers, like those included in the Design-Build Guarantees and O&M Guarantees, are generally enforceable under California law, it is possible, based on current statutory and associated case law, that such waivers would not be deemed enforceable by a California court. Such lack of enforceability may cause the Design-Build Guarantees or O&M Guarantees to be unenforceable in whole or in part, and the Borrower and Owners would in such circumstances be unable to seek performance of the applicable guarantor's obligations and as a result may impact the Borrower's ability to make payments of amounts due to Owners of the Series 2018 Bonds.

### *Waivers of Events of Default*

The Indenture permits 35% of the Owners of the Series 2018 Bonds to instruct the Trustee to waive any Indenture Event of Default other than a payment default (which may not be waived without the consent of 100% of the Owners of the Series 2018 Bonds). The ability of 35% of the Owners of the Series 2018 Bonds to waive an Indenture Event of Default means that a minority of the Owners of the outstanding principal amount of the Series 2018 Bonds may waive the rights of the majority of the Owners of the outstanding principal amount of the Series 2018 Bonds to enforce remedies under the Financing Documents. A waiver of such an Indenture Event of Default may prejudice all Owners of the Series 2018 Bonds from taking certain enforcement actions with regard to such Indenture Event of Default, including taking unilateral action under the Intercreditor Agreement upon the occurrence of a Fundamental Event of Default. See “RISK FACTORS—Risks Relating to the Series 2018 Bonds—*Waivers of Events of Default*.” Failure to take action in the event of an Indenture Event of Default may materially affect the ability of the Owners of the Series 2018 Bonds to protect their interests, negotiate a resolution of any disputes on favorable terms and ultimately reduce the recovery realized to repay the Series 2018 Bonds.

### *Intercreditor Agreement and Rights of Senior Creditors*

#### Senior Creditor Permitted Actions

Each Senior Creditor is permitted to take certain actions without consent and, in a bankruptcy, without notice of any other Senior Creditor. Those actions are summarized under “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement” and include the right to direct the Intercreditor Agent and Collateral Agent to take an ICA Enforcement Action in the event of a Borrower Bankruptcy Event or Fundamental Event of Default or exercise cure rights under the Lenders' Direct Agreement upon a LAW A Notice under such Agreement (excluding initiating an involuntary bankruptcy proceeding against the Borrower unless approved by the Required Senior Creditors). The ability of Senior Creditors to direct an ICA Enforcement Action in the event of a Borrower Bankruptcy Event, or exercise cure rights action under the Lenders' Direct Agreement, is not subject to the standstill period described below. The Bank Lenders may have interests that differ from those of the Owners of the Series 2018 Bonds and the actions of the Bank Lenders after a Borrower Bankruptcy Event or any other ICA Enforcement Action may materially affect the ability of the Owners of the Series 2018 Bonds to protect their interests, negotiate a resolution of any disputes on favorable terms and ultimately reduce the recovery realized to repay the Series 2018 Bonds.

#### Unilateral Rights of the Bank Lenders

The Intercreditor Agreement provides that upon the occurrence of certain Fundamental Events of Default, each class of Senior Creditors may unilaterally direct the Intercreditor Agent and the Intercreditor Agent will give notice to the Collateral Agent to foreclose or take other enforcement actions with respect to the Collateral. Certain defaults under the Design Build Loan Facility and the Series 2018 Loan Agreement constitute Fundamental Events of Default and are described in more detail under the heading “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—Fundamental Events of Default” and EXHIBIT D-9—“FUNDAMENTAL EVENTS OF DEFAULT UNDER THE INTERCREDITOR AGREEMENT.” Upon the occurrence of a Fundamental Event of Default or the issuance of a LAW A Notice under the Lenders' Direct Agreement, the Intercreditor Agreement provides each of the Administrative Agent, on behalf of the Bank Lenders, and the Trustee, on behalf of the Owners of the Series 2018 Bonds, the ability to act unilaterally regarding an ICA Enforcement Action. The actions of the Bank Lenders exercising Fundamental Enforcement Rights may materially affect the ability of the Owners of the Series 2018 Bonds to protect their interests, negotiate a resolution of any disputes on favorable terms and ultimately reduce the recovery realized to repay the Series 2018 Bonds.

If, upon triggering an ICA Enforcement Action, the occurrence of a Fundamental Event of Default, the Bank Lenders direct the Intercreditor Agent to direct the Collateral Agent to take an ICA Enforcement Action, the Intercreditor Agent is required to provide the Owners of the Series 2018 Bonds with notice of the Bank Lenders' intent to unilaterally direct an ICA Enforcement Action. Prior to taking any unilateral ICA Enforcement Action, the Collateral Agent must allow a Standstill Period to expire, as described further in “FINANCING FOR THE APM PROJECT—Intercreditor Agreement.” During the Standstill Period, the Required Senior Creditors pursuant to an Intercreditor Vote, may alter or stop any exercise of Fundamental Enforcement Rights. In certain circumstances, the interests of the Bank Lenders and the Owners of the Series 2018 Bonds may diverge and the Bank Lenders may direct the Intercreditor Agent to instruct the Collateral Agent to take an ICA Enforcement Action that the Owners of



the Series 2018 Bonds might not have instituted on their own behalf and might not be in the best interests of the Owners of the Series 2018 Bonds. While the Intercreditor Agreement requires that the proceeds of any ICA Enforcement Action be shared pro rata in respect of the Senior Secured Obligations (except as to Segregated Collateral), Owners of the Series 2018 Bonds should be aware that upon triggering an ICA Enforcement Action, the Bank Lenders may institute an ICA Enforcement Action that is not in the best interests of the Owners of the Series 2018 Bonds and the Owners of the Series 2018 Bonds must take proactive and coordinated action in order to reverse or halt such actions of the Bank Lenders. Accordingly, were the Bank Lenders to take a unilateral action, the rights of the other Senior Creditors could be impaired and the Owners of the Series 2018 Bonds could realize less than they might otherwise realize had solely the Owners of the Series 2018 Bonds been able to determine the appropriate actions to be taken.

### Intercreditor Voting

#### *Limitations on Senior Creditors during a Bankruptcy Proceeding*

At all times, following a Borrower Bankruptcy Event, the Secured Creditors are entitled to take the following action.

No party to the Intercreditor Agreement is permitted in any way to support or vote in favor of or in connection with a plan of reorganization, plan of liquidation, agreement of composition or other type of plan of arrangement proposed in or in connection with any Borrower Bankruptcy Event without first obtaining the consent of the Required Banks and Required Bondholders. These provisions give the Bank Lenders certain significant veto rights in relation to Bankruptcy Events and the Bank Lenders' goals and objectives may be different from those of the Owners of the Series 2018 Bonds and this may result in the Owners of the Series 2018 Bonds in any Borrower Bankruptcy Event or related enforcement proceedings realizing significantly less than they might otherwise realize in such proceeding on the obligations due to them pursuant to the Series 2018 Bonds then outstanding.

The Intercreditor Agreement imposes several conditions that will apply in the event that any Owner of the Series 2018 Bonds intended to provide debtor in possession financing to the Borrower. These conditions place certain restrictions on any Owners of the Series 2018 Bonds that wish to provide debtor in possession financing to the Borrower. These restrictions include a restriction on the ability to roll-up or otherwise include or refinance certain prepetition debt as part of any debtor in possession financing. This restriction may reduce the effectiveness of Owners' ability to participate in any Bankruptcy Proceedings through the issuance of postpetition financing and therefore restrict their ability to protect their interests and maximize recovery on the obligations due under the Series 2018 Bonds. The Bank Lenders are subject to the same restrictions as the Owners of the Series 2018 Bonds with respect to a debtor in possession financing.

The Owners of the Series 2018 Bonds may not be permitted or may be limited in their right to file motions, objections and other pleadings and to appear and/or be heard in any Bankruptcy Proceedings. The restrictions could limit the ability of the Owners of the Series 2018 Bonds to protect their interests and could reduce the recovery of the Owners of the Series 2018 Bonds on the obligations due to them pursuant to the Series 2018 Bonds then outstanding in a bankruptcy.

#### *Additional Senior Secured Obligations*

The Borrower will be permitted, in certain circumstances, to incur additional senior debt, which may adversely impact the repayment of the Series 2018 Bonds. The Indenture permits the Issuer to incur, in specific circumstances and subject to certain requirements, certain additional senior indebtedness. See APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Other Permitted Senior Secured Obligations,” for a description of the applicable circumstances related to such incurrence of additional senior debt. Any Additional Senior Bonds incurred would be payable (through amendments to the existing Series 2018 Loan Agreement or additional Loan Agreements between the Borrower and the Issuer) from the Project Revenues received by the Borrower on a pari passu basis with the Series 2018 Bonds and would also share on an equal basis in the Collateral, including certain Termination Compensation payable pursuant to the DBFOM Agreement following a termination thereof. Therefore, to the extent that the Borrower's revenues are insufficient to make payments on all of the Borrower's outstanding senior debt, such insufficiency may negatively impact the payment of principal, interest, or premium, if any, on the Series 2018 Bonds. Furthermore, if other Permitted Senior Secured Indebtedness is incurred, during any foreclosure action with respect to the Collateral or in the case of an early termination of the

DBFOM Agreement, Owners of the Series 2018 Bonds will be required to share the proceeds of the Collateral or any Termination Compensation payable to the Borrower, as applicable, with a larger group of Senior Creditors, proportionally reducing any claim that the Owners of the Series 2018 Bonds may have to such proceeds or the relevant Termination Compensation.

#### *Potential Inadequacy of Funding Sources; Failure of Bank Lenders to Fund*

The Borrower plans to finance a portion of the construction of the APM Project using funding from a variety of sources other than the Series 2018 Bonds, including the capital contributions of the Equity Members, the proceeds of the Design-Build Loan Facility and interest on the proceeds of the Series 2018 Bonds. The failure of the Bank Lenders to fund their obligations could adversely affect the Borrower's ability to pay Project Costs and complete construction of the APM Project while the Borrower attempts to procure alternative financing. There can be no assurance that the Borrower will be able to obtain any such alternative financing on commercially acceptable terms or at all. To the extent that all or a portion of the funds expected to be received is on a date later than is currently contemplated or, with respect to the Design-Build Facility, the Borrower is unable to satisfy certain draw conditions which vary from those set forth in the Series 2018 Loan Agreement, the Borrower's ability to complete the APM Project may be limited or delayed, potentially adversely impacting the Issuer's repayment of the Series 2018 Bonds. Pursuant to the Financial Model, Milestone Payment 6 and the Equity Members' capital contributions are expected to be used to repay the Design-Build Loan Facility Obligations. In the event of a Funding Insufficiency, the Equity Members may be required to make capital contributions to the APM Project earlier than projected in the Financial Model (see "FINANCING FOR THE APM PROJECT—*Equity Contributions of the Equity Members*"). If equity is contributed early to cover unexpected Project Costs, there may be insufficient funding available for completion of the APM Project and repayment of the Design-Build Loan Facility Obligations. The Borrower's delay or inability to complete the APM Project may give the Department the right to terminate the DBFOM Agreement, which may adversely affect the Borrower's ability to satisfy its payment obligations pursuant to the Series 2018 Loan Agreement and, as a result, impair the Issuer's ability to service the Series 2018 Bonds and repay the principal and interest due on the Series 2018 Bonds.

#### *Risks Related to Alternative Interest Rate Basis*

The Design-Build Loan Facility Credit Agreement permits the Borrower and the lenders thereunder to replace LIBOR with an alternative interest rate basis if LIBOR is no longer available. In such event, there can be no assurance that the Borrower's interest rate hedging arrangements will adopt such new interest rate basis applicable to the Design-Build Loan Facility, or fully protect the Borrower against interest rate risk arising from any difference in the interest rate basis applicable under such hedging arrangements. The Financial Conduct Authority of the United Kingdom is expected to phase out LIBOR by the end of 2021.

#### *Potential Dishonor of Letters of Credit*

Each of the Equity Members is required to provide an Equity Letter of Credit to support its obligations to make Equity Contributions (if it does not cash collateralize such obligation through its Applicable Equity Member Cash Collateral Account). In addition, each of the Design-Build Contractor and the O&M Contractor is obligated to provide to the Borrower one or more letters of credit to secure performance of its respective obligations under the Design-Build Contract or the O&M Contract, as applicable.

There can be no assurance that the issuer of any Equity Letter of Credit or any other letter of credit to be provided for the benefit of the Equity Members or the Borrower will honor its letter of credit in accordance with its terms, or that such issuers would not become subject to a bankruptcy or that other circumstances might arise that prevent such issuers from honoring their obligations under such Equity Letters of Credit or any other letters of credit. There can also be no assurance that the beneficiary of any Equity Letter of Credit or any other letter of credit provided pursuant to the terms of the Material Project Contracts will timely enforce its rights under such letters of credit prior to expiration thereof or that, pursuant to a power of attorney, the Collateral Agent will be recognized as a beneficiary under any such letter of credit.

#### *Uncertainties of Forecasts and Assumptions*

The information in this Official Statement includes certain assumptions, forecasts and projections. Demonstration of compliance with certain of the covenants contained in the Indenture, the Collateral Agency and

Accounts Agreement, the other Financing Documents and in the DBFOM Agreement may also be based upon assumptions and projections. Such assumptions, forecasts and projections and any forecasts and projections that may be contained in any future certificate required under the DBFOM Agreement, the Series 2018 Loan Agreement, the Indenture, the Collateral Agency and Accounts Agreement or any other Financing Document are not necessarily indicative of future performance, and actual results are likely to differ, perhaps materially, from those projected. None of the Borrower, the Issuer, the Equity Members or their affiliates, the Department or any other party assumes any responsibility for the accuracy of such projections. In addition, certain assumptions with respect to future business and financing decisions are subject to change. No representation is made or intended, nor should any representation be inferred, with respect to the likely existence of any particular future set of facts or circumstances, and prospective purchasers of the Series 2018 Bonds are cautioned not to place undue reliance upon the projections contained in this Official Statement or upon requirements for future projections. If actual results are less favorable than the results projected or if the assumptions used in preparing the projections prove to be incorrect, the Department's ability to make the payments required by the DBFOM Agreement and in turn the Borrower's ability to make payments pursuant to the Series 2018 Loan Agreement in the amounts and at the times required to enable the Issuer to pay debt service on the Series 2018 Bonds or other payments required under the Indenture with respect to the Series 2018 Bonds may be materially and adversely affected.

#### *Ratings of Bonds*

Fitch has assigned a preliminary credit rating to the Series 2018 Bonds and S&P has assigned a credit rating to the Insured Bonds. The ratings of the Series 2018 Bonds are not recommendations to purchase, hold or sell the Series 2018 Bonds, and the ratings do not comment on the market price or suitability of the Series 2018 Bonds for a particular investor. The ratings of the Series 2018 Bonds may not remain for any given period of time and may be lowered or withdrawn depending on, among other things, the rating agency's assessment of the Borrower's and/or the Department's financial strength.

#### *Market Liquidity*

The Series 2018 Bonds constitute a new issue with no established trading market. Although the Underwriters have informed the Issuer and the Borrower that the Underwriters currently intend to make a market for the Series 2018 Bonds, the Underwriters are not obligated to do so, and they may discontinue any such market-making at any time without prior notice. No assurance can be given as to the development or liquidity of any market for the Series 2018 Bonds. If an active public market does not develop, the market price and liquidity of the Series 2018 Bonds may be adversely affected.

#### *No Interest in Real Property*

Under the DBFOM Agreement, the Borrower has not been granted any right, title or interest in or to any real property (other than contractual rights of access to the subject lands). Because of this lack of interest in the real property, the Collateral does not include any real property pledged as security to secure repayment of the Series 2018 Bonds. Note that pursuant to the DBFOM Agreement, the Borrower has a contractual right, subject to the terms and conditions of the Contract Documents, to enter onto the Site (and engage in the activities contemplated in the DBFOM Agreement) for the purposes of performing its obligations under the DBFOM Agreement only.

### **Risks Relating to AGM**

In the event the Issuer fails to make regularly scheduled payments of the principal of and interest on any Insured Bonds when the same become due, the Trustee on behalf of owners of such Insured Bonds shall have the right to make a claim under the Policy for such payments. There can be no assurance that AGM will have sufficient revenues to enable it to make timely payments on such Insured Bonds. Moreover, the Policy does not insure the principal of or interest on the Insured Bonds coming due by reason of acceleration, optional redemption or mandatory/extraordinary redemption, nor does it insure the payment of any redemption premium payable upon the optional redemption of the Insured Bonds.

So long as the Insured Bonds are outstanding and AGM is not in default under the Policy, AGM shall be deemed the owner of the Insured Bonds for purposes of all actions relating to the Insured Bonds which require or permit the consent, direction or request of the owners of the Insured Bonds.

In the event that AGM does not make scheduled payments of principal and interest on the Insured Bonds as such payments become due, such Insured Bonds will be payable solely from moneys received by the Trustee pursuant to the Indenture. See “BOND INSURANCE” herein for further information concerning AGM and the Policy.

The ratings on the Insured Bonds are dependent on the ratings of AGM. AGM’s current ratings are predicated upon, among other things, a level of reserves in excess of the levels required by the various state agencies regulating insurance companies and an assessment by the rating agencies of potential future claims against these reserves. The level of reserves maintained by AGM and the assessment by rating agencies of potential future claims and the adequacy of reserves to meet these claims could change over time and this could result in a downgrading of the ratings on the Insured Bonds. AGM is not contractually bound to maintain its present level of reserves in the future or to increase them in order to maintain its present ratings.

### **Risks Relating to Tax Matters**

As discussed under the caption “TAX MATTERS,” interest on the Series 2018 Bonds could become includable in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2018 Bonds as a result of a failure of the Issuer, the Department, or the Borrower to comply with certain provisions of the Code, the U.S. Treasury regulations promulgated thereunder, or certain other guidance issued by the IRS and courts. In addition, the law relating to the Series 2018 Bonds is subject to change by legislation and judicial or administrative decision, in each case, possibly with retroactive effect. No ruling has been sought or obtained from the IRS with respect to the treatment of the Series 2018 Bonds or the property financed or refinanced with proceeds of the Series 2018 Bonds under current law, and there can be no assurance that interest on the Series 2018 Bonds will continue to be exempt from tax for federal income tax purposes. Potential investors should consult their tax advisors concerning the tax implications of the purchase, ownership or disposition of the Series 2018 Bonds.

## PRINCIPAL PROJECT AGREEMENTS

*The following is a summary of selected provisions of certain principal documents relating to the APM Project and is not a full statement of the terms of each of such agreements. Accordingly, the following summaries are qualified in their entirety by reference to such agreements and are subject to the full text of such agreements. A copy of each of the agreements is available, free of charge, from the Borrower or the Trustee upon request by a bona fide prospective investor. The following summary should be read in conjunction with the section "RISK FACTORS." See also APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—Certain Considerations Related to LAX Revenues." Unless otherwise stated, any reference in this Official Statement to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and, if applicable, in effect as of the date hereof. For a more detailed summary of the principal provisions of the DBFOM Agreement, see APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT." For a more detailed summary of the principal provisions of the Design and Construction Contract, see APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT." For a more detailed summary of the principal provisions of the O&M Contract, see APPENDIX D-7—"SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT."*

### **DBFOM Agreement**

The information under the caption "DBFOM Agreement" is not provided by the Department, but derived from information provided by the Borrower. The Department has not reviewed or approved and is not responsible for, and makes no representation, warranty or certification as to the adequacy or accuracy of the information set forth under the caption "DBFOM Agreement" and is not responsible for any statements made herein. The Department disclaims any responsibility for the information set forth under the caption "DBFOM Agreement."

#### *Overview*

Pursuant to the DBFOM Agreement, the Department has granted to the Borrower the right, and the Borrower has agreed, to design, build, finance, operate and maintain the APM Project, including supply of the APM Operating System, performance of Renewal Work and handback of the APM Project at the end of the Term (as described below), and to perform such other activities relating to the foregoing for the APM Project that are not retained by the Department.

#### *Term*

The Term will end 30 years after the Financial Close Date, subject to the right of the parties to terminate the DBFOM Agreement early in accordance with the DBFOM Agreement.

#### *Provisions Relating to Financing of the Borrower's Obligations*

##### Responsibility for Financing

The Borrower is solely responsible for obtaining and repaying, at its own cost and risk and without recourse to the City or the Department, all financing necessary for the Work that is the Borrower's responsibility under the Contract Documents.

##### Security

The Borrower may grant security interests in or assign all (but not a portion of) the right, title and interest of the Borrower in, to, under or derived from the DBFOM Agreement and the other Contract Document to Lenders for purposes of securing the Project Debt, subject to the terms of such Contract Documents.

### Lenders' Rights under the Lenders' Direct Agreement

The rights of the Department to terminate the DBFOM Agreement or enforce under any Performance Bond or Payment Bond or certain other enforcement rights, due to a Developer Default are subject to the terms of the Lenders' Direct Agreement.

### Refinancing

For all Refinancings other than Exempt Refinancings and Rescue Refinancings, the Department's prior written approval is required.

The Department is entitled to receive 50 percent of any Refinancing Gain attributable to a Refinancing other than an Exempt Refinancing. The parties are required to negotiate in good faith to determine the method by which the Department may receive its portion of the Refinancing Gain, if applicable, which includes one or a combination of (a) a single lump sum payment or (b) a credit or payment to the Department by the Borrower that effectively reduces the Availability Payments over the remaining Term.

### Equity and Debt Requirements through the Passenger Service Availability

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

### *Management Systems, Oversight & Independent Engineer*

#### Project Management Plan; O&M Management Plan

The Borrower is required to develop the Project Management Plan and the O&M Management Plan, in accordance with the applicable requirements of the Technical Provisions and Good Industry Practice, including those requirements applicable to quality assurance and quality control.

The Borrower is required to submit to the Department, in accordance with the procedures and timeline described in the relevant Technical Provisions, each component part, plan and other documentation of the Project Management Plan and O&M Management Plan, and any proposed changes or additions to or revisions of any such component part, plan or other documentation. The Project Management Plan PMP Approval must be approved prior to NTP 2 and the Borrower is not permitted to commence any aspect of the D&C Work before approval of the relevant component parts, plans and other documentation of the Project Management Plan applicable to such D&C Work. The Borrower is not permitted to commence any aspect of the O&M Work before approval of the relevant component parts, plans and other documentation of the O&M Management Plan applicable to such O&M Work.

### Oversight & Testing

The Department has the right at all times to conduct monitoring, inspecting, sampling, measuring, spot-checking, reviewing, attending, observing, testing, investigating, auditing and conducting any other ongoing oversight respecting any part or aspect of the APM Project or the Work ("Oversight").

Whenever the Department or its representatives are present on the Site (including the APM Operating System assembly facility) and production facilities, including while conducting Oversight, they are required to abide by the applicable Contractor's reasonable, non-discriminatory safety policies and practices and to take appropriate measures to avoid unreasonable interference with normal construction activity or normal operation and maintenance activity.

### Independent Engineer

Following Financial Close, the parties are required to select an Independent Engineer to verify whether the conditions to Passenger Service Availability and Final Completion have been met (see APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction—Completion”), to make a recommendation regarding the Handback Reserve and to verify in accordance whether the Handback Requirements have been met (see APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Handback”). The Independent Engineer is to be appointed jointly by the parties and will act independently from and not as an agent of either party.

### *General Borrower Obligations*

### Governmental Approvals

The Department is responsible for obtaining the Final Environmental Impact Report under CEQA and the FAA Finding/Record of Decision under NEPA for the LAX Landside Access Modernization Program, each as listed in Exhibit 8 of the DBFOM Agreement (the “Department-Provided Approvals”). The parties agree under the DBFOM Agreement that, as of the Effective Date, all such Department-Provided Approvals have been issued. The Borrower is required to obtain all other Governmental Approvals required for the APM Project and the Work and, subject to certain exceptions, bears the cost of obtaining such approvals as well as the risk of any delay in obtaining such approvals and of any conditions imposed on performance of the Work by such approvals.

### Access by the Department

The Borrower is required to provide the Department, the Department’s representatives and the Independent Engineer with (a) safe and unrestricted access to the Site and the APM Project at all times, and (b) safe access during normal business hours to the Borrower’s project offices, operations buildings and Temporary Areas (including the APM Operating System assembly facility and production facilities).

### Coordination

The Borrower is prohibited from interfering with the work of or causing any delay to any other contractors that may be carrying out work within the Site or in the land adjoining or near the Site and is required to allow them reasonable access to the Site, provided that temporary interruption to the work of any such contractors is permitted where agreed to in advance in accordance with applicable City Taskforce and other procedures referred to in the DBFOM Agreement or where such temporary interruption is reasonably necessary in accordance with Law and Good Industry Practice to respond to emergencies.

### Interfacing Projects

The Borrower is required to coordinate APM Project design and construction activities with certain Related Projects that are not the Borrower’s responsibility, but which may interfere with the Work, and to sequence the Work so as to mitigate interference with the operations of other contractors engaged on Related Projects. The Borrower is also required to comply with the specified interface obligations included in Exhibit 10 to the DBFOM Agreement in respect of certain of the key Related Projects.

### Cooperation Agreements

The Borrower is also required to comply with the Cooperation Agreements entered into between the Department and Los Angeles County Metropolitan Transportation Authority and the City of Los Angeles Departments, respectively, throughout performance of the Work. At the Borrower’s request, the Department is obliged to provide reasonable assistance to the Borrower in obtaining cooperation and coordination from the parties to the Cooperation Agreements and in enforcing rights, remedies and warranties that the Department may have against any such parties.

### Safety Compliance

The Department may from time to time issue Safety Compliance Orders to the Borrower with respect to the APM Project to implement Safety Compliance (including improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement, changes in configuration, or procedures implemented to correct a specific safety condition or risk that the Department has reasonably determined but excluding a safety condition or risk that exists by reason of a failure by the Borrower). Except in the case of an Emergency, the Department is required to consult with the Borrower before issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts and the availability of the Borrower resources to fund the Safety Compliance work. Subject to the provisions of the DBFOM Agreement, issuance by the Department of a Safety Compliance Order constitutes a Compensation Event.

### Law Enforcement Services and Incident Response

The Borrower is required to ensure that the Airport Police and other law enforcement agencies have necessary access to the APM Project to carry out their duties, power and jurisdiction. The Department does not have any liability or obligation to the Borrower arising out of, relating to or resulting from the failure of the Airport Police or any other law enforcement agency to provide services, or any of their, or their respective agents' or employees', acts, omissions, negligence or misconduct in providing services.

### Alternative Technical Concepts

The Borrower included certain Alternative Technical Concepts within its Proposal pursuant to the terms of the RFP. If the Borrower cannot obtain any approval required to implement Alternative Technical Concepts, fails to satisfy any such condition or fails in any other way to implement the approved Alternative Technical Concept, it is required to comply with the corresponding baseline requirements (unmodified by the Alternative Technical Concept) at its cost, without any additional compensation, time extension or other basis for any Claim. To the extent an Alternative Technical Concept represented additional Work or higher-quality materials from what is otherwise required by the Contract Documents and resulted in a total net increase in amounts payable by the Department under the Contract Documents (accounting both for costs incurred during the D&C Period and the O&M Period), the Department is entitled to a credit for the net present value of the reduced cost.

### Warranties

The D&C Work includes certain Non-O&M Facilities for which the Borrower is not required to perform operations and maintenance during the O&M Period. (See APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction—Non-O&M Facilities"). The Borrower warrants each Non-O&M Facility against Non-O&M Facilities Defects during the period commencing on Non-O&M Facility Occupancy Readiness of the Non-O&M Facility and ending two years thereafter.

The Borrower is required to obtain from its Contractors representations, warranties, guarantees and obligations in accordance with Good Industry Practice for work of similar scope and scale, which extend not only to the Borrower but also to the Department and any Utility Owner or Authority Having Jurisdiction for whom Work is being performed.

The Borrower is also required to provide, or obtain and ensure performance under as if the Borrower provided, warranties and guarantees, for all Work performed for Utility Owners and Authorities Having Jurisdiction, for a minimum of one year after the date of acceptance of such work by the Utility Owner or Authority Having Jurisdiction, as applicable (or such longer term as agreed), for the benefit of such Utility Owner or Authority Having Jurisdiction. The Borrower is also required to provide to the applicable Utility Owner or Authority Having Jurisdiction any warranties or guarantees required under the Cooperation Agreements, with the Department, identified as a third-party beneficiary of the right to enforce, all such warranties and guarantees of such work.



### Title

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

### *Design and Construction*

#### General Design and Construction Obligations

The Borrower is required to: (a) expeditiously and diligently progress performance of the D&C Work, (being all Work to be performed in order to achieve Final Completion, including Design Work and Construction Work) with the goal of achieving Passenger Service Availability by the Planned Early PSA Date; (b) carry out or do all things necessary to perform the D&C Work and design and construct the APM Project in accordance with the Contract Documents and Good Industry Practice; (c) ensure that the APM System is fit for its intended function and uses and meets the requirements of the Contract Documents; (d) provide maintenance and other services in connection with its obligation to have full charge and care of the Site and the D&C Work; (e) ensure adequate materials, equipment and resources are available to ensure compliance with the requirements of the Contract Documents; (f) ensure all materials and equipment are of good quality and new, unless otherwise expressly stated; (g) ensure the APM Project will be free of defects, including design defects, errors and omissions; (h) ensure the Site is kept in a neat and clean condition at all times; (i) cooperate with the Department and Authorities Having Jurisdiction in all matters relating to the D&C Work, including their review, inspection and oversight of D&C Work; (j) remove and replace Nonconforming Work and/or materials or otherwise remedy such Nonconforming Work and/or materials in an acceptable manner in accordance with the Contract Documents and (k) pay all direct and indirect costs for all Utility services required to perform and complete the D&C Work in accordance with the requirements of the Contract Documents.

#### Acquisition of Real Property

The Department is required to provide the Borrower with rights of access to the Project ROW properties within the D&C Limits as identified in the relevant Technical Provisions by the dates specified in the Property Acquisition Schedule.

If the Borrower identifies any property that is not subject to the above obligations of the Department but that the Borrower seeks to add to the Project ROW to accommodate the Borrower's particular design or for the Borrower's convenience in performing the Work, then the Borrower may submit to the Department a request for acquisition of additional property interests and related documentation in accordance with the Technical Provisions. The Borrower is responsible for the cost to acquire Additional Properties, together with all costs and expenses incurred by the Department in connection with acquiring Additional Properties, and bears all risk of delays related to acquisition of Additional Properties.

The Borrower is solely responsible for acquisition of any temporary interests in property that the Borrower determines is necessary, desirable or advisable to obtain in connection with the APM Project or the Work.

#### Site Conditions

The Borrower acknowledges and agrees that (a) it has investigated and satisfied itself as to the conditions affecting the D&C Work; (b) it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including information publicly available or provided by the Department; and (c) any failure by the Borrower to acquaint itself with the available information relating to the conditions affecting the D&C Work will not relieve the Borrower from responsibility for estimating properly the difficulty or cost of successfully performing the D&C Work.

### Utilities

The Borrower is required to coordinate with Utility Owners and coordinate and cause each Utility Adjustment necessary to accommodate the APM Project or the Work to be completed in accordance with the Project Schedule and the requirements of the Contract Documents.

If a Utility Owner performs all or any part of the Utility Adjustments the Borrower is required to coordinate, monitor and otherwise undertake the necessary efforts to cause such Utility Owner to perform such work timely, in coordination with the Work, and in compliance with the Contract Documents.

All costs of Utility Work performed by Borrower-Related Entities, all payments owing to Utility Owners for Utility Work performed by such owners that is within the scope of the Utility Owners' Costs Account not to exceed \$50 million, and all costs of Incidental Utility Work, are the responsibility of the Borrower. The Department is not responsible for Utility Work costs except as specifically provided in the Contract Documents.

If a Utility Owner requests that the Department permit the Borrower to perform work relating to Utility Betterments as a part of the Work, at the Utility Owner's expense, and if the Department's Authorized Representative approves any such request, the Borrower is required to perform such work, with the right to receive additional payment by direct payment from the Utility Owner.

The Borrower is required to establish and fund at Financial Close a Utility Owners' Costs Account in the amount of \$50 million. The Borrower may use the funds in the Utility Owners' Costs Account to pay a Utility Owner that wishes to perform Utility Work indicated as Utility Owner's responsibility in the Technical Provisions, subject to the satisfaction of certain conditions, including the Department's approval of such scope of work and price. If, as of Final Completion, the Utility Owners' Costs Account has not been fully expended, the Department may recover the remaining balance by: (a) reducing Milestone Payment 6 and/or any Availability Payment due and owing from the Department to the Borrower; (b) invoicing the Borrower for such amount, as a lump sum payment; and/or (c) setting off such amount against any other amount due and owing from the Department to the Borrower.

### Hazardous Materials Management

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

The Borrower has duties under the DBFOM Agreement to identify, avoid, minimize and mitigate adverse monetary and non-monetary impacts to the APM Project and to the Department relating to Hazardous Materials.

The Borrower is also required to manage all Pre-Existing Hazardous Materials encountered in connection with the APM Project, in compliance with applicable Law, subject to the risk allocations set forth in the DBFOM Agreement. (See APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction—Hazardous Materials Management—Risk Allocation").

### Completion

The Borrower is required to exercise its best efforts to achieve Passenger Service Availability on or before the Planned Early PSA Date. Passenger Service Availability means that all D&C Work is complete (except for APM System Punch List items that do not affect normal and safe use and operation of the APM System and any D&C Work that, by its nature, is to be performed after the Passenger Service Availability Date), and all other prerequisites for start of passenger service have been met. Failure to achieve Passenger Service Availability by the Long Stop Date is a Developer Default.

The Independent Engineer's Certificate of Passenger Service Availability may be issued only after satisfaction of the conditions to Passenger Service Availability as described in APPENDIX D-5—"SUMMARY OF

CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction—*Completion—Passenger Service Availability.*”

Promptly after achieving Passenger Service Availability, the Borrower is required to perform all remaining D&C Work. In order for the Independent Engineer to issue a Certificate of Final Completion, it must determine that the conditions to Final Completion (as described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction—*Final Completion*”) are satisfied.

Non-Conforming Work

The Borrower is required to perform all Work in conformity with the Contract Documents. If the Borrower has not performed the Work in conformity with the Contract Documents, then, in addition to any other remedies available to the Department, the Department may direct the Borrower to, and the Borrower is required to, remove and replace or otherwise remedy the Nonconforming Work, without entitlement to make a claim for time, money or other relief in connection with such Work.

Non-O&M Facilities

The D&C Work includes facilities for which the Borrower is not required to perform operations and maintenance during the O&M Period. These facilities will be turned over to the Department (or the Authorities Having Jurisdiction, as applicable) upon receipt of the Certificate of Non-O&M Facility Occupancy Readiness. The Non-O&M Facilities include, among other items, certain CCTV cameras installed on guideway columns, certain parking garages, certain roadways and pedestrian facilities, and certain IT infrastructure for the Department's use.

Promptly after achieving Non-O&M Facility Occupancy Readiness with respect to a Non-O&M Facility, the Borrower is required to perform all remaining Work to achieve Non-O&M Facility Final Acceptance.

Responsibility for Loss or Damage

The Borrower is required to take every reasonable precaution against Loss or damage to any part of the APM Project from any cause, whether arising from the performance or nonperformance of the D&C Work. The Borrower must repair, restore and replace (a) Losses or damages to such D&C Work occasioned by any cause and (b) any Losses or damages to Department property other than the D&C Work caused by any Borrower-Related Entity.

*Operation and Maintenance*

General Operation and Maintenance Obligations

The Borrower is responsible for performance of O&M Work in accordance with requirements specified in the Contract Documents, including the relevant Technical Provisions. O&M Work means Work to be performed during the O&M Period, including Technology Enhancements, Operations Work, Maintenance Work, supply of the Renewal Work, but excluding any D&C Work remaining to be performed following Passenger Service Availability.

The Borrower is required to ensure that:

- (a) all O&M Work is performed in accordance with all applicable Laws, Governmental Approvals and Good Industry Practice, as it may evolve over time;
- (b) the APM System remains safe, fit for use for the intended functions, meets the requirements of the Contract Documents, remains free of defects and meets the minimum performance standards for operations, as specified in the Technical Provisions throughout the O&M Period;

(c) all materials and equipment furnished are of good quality and new and all APM Operating System components and related consumables obtained during the O&M Period are of good quality, new and fit for their intended purpose; and

(d) all O&M Work is performed in accordance with the Department-approved plans required pursuant to the Technical Provisions.

#### Renewal Work

The DBFOM Agreement requires the Borrower to diligently perform Renewal Work as and when necessary to comply with the Contract Documents, to achieve full design life for each asset, supporting reliable and quality-service operations and availability.

The Borrower is required to prepare and submit to the Department for review and approval an Asset Management Plan, within 90 days before the beginning of the first full calendar year of the O&M Period and thereafter updated annually. The Borrower is required to use the Asset Management Plan, as updated from time to time, as the principal guide for scheduling and performing Renewal Work but may also perform Renewal Work not identified in such plan as necessary to maintain compliance with the Contract Documents, subject to the Department's agreement to the scheduling of such other Renewal Work.

If at any time the Department determines that the Borrower has failed to perform the Renewal Work in accordance with the then current Asset Management Plan and applicable Technical Provisions, and performance of such Renewal Work is required to ensure continued performance of the APM Project in accordance with the Contract Documents, subject to the required notice periods, the Department has the right to perform and complete such Renewal Work at the expense and for the account of the Borrower, and to deduct the costs of such action from payments otherwise payable to the Borrower by the Department.

#### Responsibility for Loss or Damage

The Borrower is required to take reasonable precautions against loss or damage to the APM System and other improvements and assets within the O&M Limits and to repair, restore and replace all Losses or damages to the APM System.

If any repair, restoration or replacement of the APM Project is required due to Vandalism, the Borrower will be responsible for the first \$250,000 of costs incurred in the aggregate per calendar year to perform such repair, restoration or replacement, except (a) the Borrower is solely responsible for all costs incurred to perform any repair, restoration or replacement of the Maintenance & Storage Facility and the Traction Power Substation and (b) the Borrower is not responsible for Vandalism-related damage to the ITF East Plaza Improvements (as described in its Proposal).

#### *Deductions and Noncompliance Points System*

A Noncompliance Point system is to be used during the D&C Period and the O&M Period, to measure the Borrower's performance levels and trigger certain remedies. The Borrower is required to establish and maintain an electronic database for recording and tracking Noncompliance Occurrences and Noncompliance Events and to provide the Department with full access to such database, including the ability to enter Noncompliance Occurrences.

Exhibit 4C (Noncompliance Occurrence Tables) of the DBFOM Agreement identifies certain breaches or failures by the Borrower in performance of its obligations under the Contract Documents (each, a "Noncompliance Occurrence"). A Noncompliance Occurrence becomes a "Noncompliance Event" if the Borrower has not rectified such occurrence within the applicable Rectification Period (if any); or following the expiration of a Rectification Period, the Borrower has not rectified such occurrence within any further Interval of Recurrence.

A Noncompliance Event will result in either or both the assessment of Noncompliance Points and the assessment of Noncompliance Deductions in each case as indicated in the Noncompliance Occurrence Tables.

However, no Noncompliance Points may be assessed for Noncompliance Events that occur during the first 90 days following the Passenger Service Availability Date, subject to certain specified events (relating to downtime, shutdowns and major service degradations) for which Noncompliance Points will be assessed at no more than 50 percent of the maximum number of Noncompliance Points applicable to the Noncompliance Event.

All Noncompliance Points assessed in connection with failures to achieve inclusivity requirements during the D&C Period and 50 percent of the balance of Noncompliance Points assessed during the D&C Period, may be carried forward and used by the Department to calculate, after the Passenger Service Availability Date, accumulated Noncompliance Points for the purposes of triggering increased oversight or a Developer Default.

In addition to Noncompliance Points, Noncompliance Events also result in Deductions from Monthly Availability Payments. The Department also has certain rights to increase Oversight, “step-in” rights and rights to require the Borrower to replace the O&M Contractor relating to accumulation of Noncompliance Points.

The Department may assess twice the applicable number of Noncompliance Points with respect to any period for which the event resulting in the assessment of Noncompliance Points occurs on certain holidays and other specified dates.

Subject to certain restrictions, the Department has the right to replace Noncompliance Occurrences in the O&M Period Noncompliance Occurrence Table by removing a Noncompliance Occurrence and adding in its place an alternate Noncompliance Occurrence provided that such replacement may not result in an increase to the maximum aggregate Noncompliance Points assessable pursuant to the Noncompliance Points system.

#### *Payments to the Borrower*

The DBFOM Agreement provides for the Borrower to be compensated by the Department pursuant to the DBFOM Agreement through Milestone Payments, Additional D&C Payments and Availability Payments. See “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT” for a description of these payments.

Pursuant to the DBFOM Agreement the Department has also established certain allowances from which the Department is required to make payments to the Borrower for the Borrower’s performance of certain types of Work. To the extent that the Borrower incurs amounts for such Work (as further described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—LAWA Allowances”) in excess of the applicable LAWA Allowance, such amounts are required to be paid by the Department pursuant to a Change Order.

#### *Intellectual Property Rights*

Except for Developer Intellectual Property and Third-Party Intellectual Property, title to any Intellectual Property to the extent made, conceived, prepared or reduced to practice as part of the Work, incorporated into the APM Project vests in the Department at the earliest of creation, conception, preparation or reduction to practice.

The Borrower grants to the Department an irrevocable, perpetual, nonexclusive, transferable, fully paid-up right and license to use, exploit, manufacture, distribute, reproduce, adapt and display the Developer Intellectual Property in connection with the APM Project, Proposal or Work.

The Borrower is required to use commercially reasonable efforts to secure perpetual, nonexclusive, transferable, irrevocable, unconditional, royalty-free license(s) in the name of the Department to use, exploit, manufacture, distribute, reproduce, adapt and display the Third-Party Intellectual Property in connection with the APM Project, Proposal or Work, and is required to pay any and all royalties and license fees required to be paid for any Intellectual Property incorporated into the Project Intellectual Property.

In lieu of delivering the IP Materials directly to the Department, the Borrower may elect to deposit the IP Materials in escrow with a neutral depository. The IP Materials are required to be released and delivered to the Department upon (a) expiry of the Term; (b) early termination of the DBFOM Agreement for Developer Default; (c)

failure by the Borrower to provide services as necessary to permit continued use of any Developer Intellectual Property for the APM Project; or (d) termination of the DBFOM Agreement for any reason other than expiry of the Term or Developer Default, but only in accordance with the terms of the IP Materials Access Agreement.

### *Insurance*

#### Required Insurances

The Borrower is required to procure or cause to be procured and keep in effect certain Insurance Policies during the D&C Period and the O&M Period as specified in Section 10.1 and Exhibit 7 to the DBFOM Agreement. Unless the Department approves otherwise in writing, or otherwise stated in the DBFOM Agreement, each Insurance Policy must be procured from an insurer authorized to do business in the State and have a current policyholder's management and financial size category rating of not less than A-:VII according to A.M. Best's Financial Strength Rating and Financial Size Category.

Except to the extent expressly provided otherwise in the Contract Documents, the Borrower will be responsible for paying all insurance deductibles, and the Department has no liability for deductibles, self-insured retentions or claim amounts exceeding the required policy limits.

Each Insurance Policy is required to expressly provide that its coverage is primary and noncontributory with respect to all named and City Additional Insureds.

As soon as they become available, the Borrower is required to deliver to the Department (a) a true and complete copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy and all related endorsements and (b) satisfactory evidence of payment of the applicable premium. If the Borrower has not provided the Department with proof of coverage and payment within ten days after request by the Department, the Department may (i) upon five days written notice to the Borrower, obtain such an Insurance Policy and the Borrower is required to reimburse the Department for the cost thereof upon demand; and (ii) suspend all or any portion of Work until proof of coverage is provided.

#### Adjustments in Coverage Amounts

At least once every two years during the Term (commencing initially on the Passenger Service Availability Date), the Department and the Borrower are required to review and adjust, as appropriate, the per occurrence and aggregate limits for the Insurance Policies that have stated dollar amounts set forth in Exhibit 7 of the DBFOM Agreement. In determining adjustments, the Borrower and the Department are required to take into account (i) claims and loss experience for the APM Project, (ii) the condition of the APM Project, (iii) the Safety Compliance and Noncompliance Points record for the APM Project and (iv) best practices in the insurance industry.

If a LAWA Change to increase required limits of Insurance Policies results in a net increase in applicable insurance premiums, the Borrower is entitled to the amount of such net increase, provided that to the extent such adjustments are made to reflect the Borrower's performance on the APM Project (including for reasons described in clauses (i), (ii) or (iii)), the Borrower is not entitled to any compensation.

#### Insurance Premium Benchmarking

During the O&M Period the risk and benefit of increases and decreases in insurance premiums is allocated through an insurance benchmarking process and the parties will share the risk and benefit of increases and decreases in the premiums for the minimum required insurances in accordance with the DBFOM Agreement. Premium increases that are caused by Project specific losses, changes in deductions or matters within the control of the Borrower or any Borrower-Related Entity are not subject to the benchmarking exercise or risk sharing. The Department also retains the right to undertake its own independent review.

### Inadequacy and Unavailability of Required Coverages

If the Borrower demonstrates to the Department's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to procure the required insurance coverages, and if despite such diligent efforts and through no fault of the Borrower any of such coverages (or any of the required terms of such coverages, including policy limits) become completely unavailable or unavailable at commercially reasonable rates from insurers meeting the specified financial requirements, the Department is required to consider in good-faith alternative insurance packages and programs that provide coverage as comparable to the required insurances as is possible under then-existing insurance market conditions.

### Application of Insurance Proceeds

All insurance proceeds received for physical-property damage to the APM Project under any Insurance Policies are required to first be applied to repair, restore or replace each part or parts of the APM Project or the Work with respect to which such proceeds were received.

### Property Damage Caused By Earthquake and Terrorism

The Department is required to pay for the Extra Work costs to repair or replace tangible property damage to the APM Project caused by Earthquake or Terrorism. However, the Department is not responsible for tangible property damage to any tools, machinery, equipment, protective fencing, job trailers or other items used in the performance of the Work but not intended for permanent installation into the APM Project that is caused by Earthquake or Terrorism.

### *Payment and Performance Security*

#### Design and Construction Security Requirements

The Borrower is required to deliver to the Department one or more payment bonds with an aggregate value equal to the sum of Milestone Payments 1 through 5 and one or more performance bonds with an aggregate value equal to the sum of Milestone Payments 1 through 5, in each case in the required form and issued by an Eligible Surety. Each payment bond and performance bond is required to include a multiple obligee rider naming the City as an additional obligee and may also name the Collateral Agent as an additional obligee, unless the Borrower elects to procure the bonds directly rather through its contractors. See "RISK FACTORS—Risks Relating to the Project—Construction Risks—Insurance and Liquidated Damages."

#### Operations and Maintenance Security Requirements

If the Borrower obtains security for payment and/or performance from any APM Fixed Facilities O&M Provider or APM Operating System O&M Provider, then it is required to deliver to the Department (a) a certified copy of the payment and/or performance security; (b) in the case of a letter of credit, documentation naming the City as a transferee beneficiary and providing for transfer of such facility to City in certain circumstances; (c) in the case of a bond, a dual-obligee rider naming City an additional obligee under the bond, on the same terms as described above for the design and construction bonds; and (d) in the case of a guaranty, the documentation described below.

### Guarantees

If the Borrower, any Key Contractor, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, then the Borrower is required to deliver to the Department a duplicate original of such guaranty and either (a) cause the Department to be expressly included as a guaranteed party under such guaranty; or (b) upon receipt of written notice from the Department that its rights as a beneficiary are exercisable in accordance with the DBFOM Agreement, such other documents reasonably satisfactory to the Department permitting the Department, subject to the rights of the Collateral Agent under any Lenders' Direct Agreement, to become the transferee beneficiary under such guaranty and to enforce it, and the

guaranty must expressly authorize such transfer without condition and permit draw without presentation of the original guaranty.

So long as the Borrower or a Lender is diligently pursuing remedies under a guaranty, the Department agrees to forbear from (a) exercising remedies under any such guaranty that names the Department as a direct beneficiary and (b) exercising its right to become a beneficiary; provided, however, that if the Developer Default giving rise to exercise remedies under any such guaranty remains uncured at the end of the applicable cure period granted pursuant to the DBFOM Agreement, the Department's obligation to forbear from exercising remedies as a guaranteed party ceases.

#### *Borrower Indemnity*

The Borrower is obliged to fully indemnify and hold harmless the City and all other Indemnified Persons from and against any and all claims, causes of action, suits, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any third party, to the extent caused by:

(a) any act, omission, neglect or misconduct of any Borrower-Related Entity in the manner or method of executing the Work satisfactorily or due to the failure to perform the Work;

(b) the failure or alleged failure by any Borrower-Related Entity to comply with the Governmental Approvals, or any applicable Laws relating to the performance of the Work;

(c) the actual or alleged negligence, willful misconduct or breach of contract of any Borrower-Related Entity in or associated with performance of the Work;

(d) any Borrower-Related Entity's performance of, or failure to perform, any obligation under the Cooperation Agreements;

(e) any and all stop payment notices and/or liens filed by a Contractor in connection with the Work, provided that the Department is not in default in payments owing to the Borrower with respect to such Work;

(f) any Borrower-Related Entity's breach of or failure to perform an obligation that the Department owes to a third party under Law or under any agreement between the Department and a third party, where performance of the obligation is delegated to the Borrower, or the acts or omissions of any Borrower-Related Entity, which render the Department unable to perform or abide by an obligation that the Department owes to a third party under any agreement between the Department and a third party, provided the agreement was previously disclosed or known to the Borrower;

(g) any alleged infringement or other allegedly improper appropriation or use of Intellectual Property in performance of the Work, or arising out of relating to or resulting from any use in connection with the APM Project of methods, processes, designs, information or other items furnished or communicated to the Department or another Indemnified Party under the Contract Documents; provided that this indemnity will not apply to any infringement resulting from the Department's failure to comply with specific written instructions regarding use provided to the Department by the Borrower that are consistent with the Borrower's obligations to convey and license Borrower Intellectual Property under the DBFOM Agreement;

(h) any actual or threatened Release of Hazardous Materials by any Developer-Related Entity and any Developer-Related Entity and any liabilities resulting therefrom;

(i) the fraud, bad faith, willful misconduct, negligence or violation of Law or contract by any Borrower-Related Entity in connection with the Borrower's performance of real-property acquisition services under the Contract Documents;



(j) any fines or penalties imposed on the Department by any Authority Having Jurisdiction arising out of, relating to or resulting from the Borrower's breach of or failure to comply with applicable requirements of the Contract Documents;

(k) except in respect of any possessory interest tax which is determined to be payable by the County of Los Angeles, any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Borrower-Related Entity with respect to any payment for the Work made to or earned by such Borrower-Related Entity under the Contract Documents; and

(l) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Borrower-Related Entity to comply with Good Industry Practice, requirements of the Contract Documents, the Project Management Plan or O&M Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Work, (ii) the intentional misconduct or negligence of any Borrower-Related Entity in connection with the performance of the Work or (iii) unauthorized physical entry onto or encroachment upon another's property by any Borrower-Related Entity in connection with the performance of the Work.

The Borrower is required to indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the Contract Drawings or Reference Documents. Subject to certain Borrower obligations under the DBFOM Agreement, to the extent that errors, omissions, inconsistencies and other defects exist in the Contract Drawings and must be corrected, such correction shall be treated as a LAWA Change.

Subject to the terms of the DBFOM Agreement, the Borrower's indemnity obligations do not extend to any claim, cause of action, suit, investigation, legal or administrative proceeding, demand or Loss to the extent caused by: (a) the active negligence, reckless or willful misconduct, bad faith or fraud of such Indemnified Party; (b) a Relief Event, subject to the Borrower's obligations in respect of such event; or (c) the Department's breach of any of its obligations under the Contract Documents.

### *Changes*

#### LAWA Changes

The Department may, at any time, make changes to the Work, including additions or reductions in the scope of the D&C Work or O&M Work, as it may direct in its sole discretion, each being a LAWA Change.

A Department direction to the Borrower under Part 3, Section 4.1.1 (Special Services) of the Technical Provisions (including among other things, accommodation of site tours, conducting demonstrations of certain features of the APM System especially at the Central Control Facility, conducting emergency management exercises and accommodating special events) will not constitute a LAWA Change to the extent that such direction does not extend the scheduled annual Vehicle-miles operated by more than one percent.

The Borrower is not entitled to any additional compensation, time extension or other relief in connection with a LAWA Change except to the extent granted in accordance with the applicable provisions of Articles 12 or 14 of the DBFOM Agreement relating to LAWA Changes and Relief Events.

The Borrower is not required to implement any LAWA Change to the extent the LAWA Change would result in a breach of Law or breach of any conditions of a Governmental Approval or revocation of any Governmental Approval; require a new Governmental Approval which would not be reasonably obtainable; render any Insurance Policy void or voidable; materially and adversely affect the health and safety of any person; or materially and adversely affect the risk allocation and payment regime under the DBFOM Agreement.

If the Department desires to initiate or evaluate whether to initiate a Change Order, then the Department may issue a Request for Change Proposal. The Request for Change Proposal is required to state the nature, extent and details of the contemplated LAWA Change. As soon as possible, and in any event within 60 days following the Department's delivery to the Borrower of a Request for Change Proposal, the Borrower is required to provide the Department with a Change Proposal. The parties agree to engage in good-faith negotiations to reach agreement on the terms of a change order and the LAWA Change will become effective upon mutual execution of a written change order. If the parties do not agree on a Change Proposal, then the Department may seek to resolve any points of disagreement through the Dispute Resolution Procedures without issuing a Directive Letter, or the Department may issue a Directive Letter. The Directive Letter is required to describe the Work to be performed, the basis for determining compensation, if any, and schedule adjustment, if any. The Directive Letter is also required to either: (a) direct the Borrower to implement a LAWA Change; or (b) state that disputed Work is within the Borrower's original scope of Work or is necessary to comply with the requirements of the Contract Documents.

#### Developer Change Requests & Deviations

The Borrower may submit a Developer Change Request seeking Department approval of: (a) changes to the requirements of the Technical Provisions; (b) changes to the Borrower's Proposal Commitments or Alternative Technical Concepts as attached to the DBFOM Agreement; or (c) adjustments to the D&C Limits.

The Department may accept or reject any Developer Change Request proposed by the Borrower for any reason or for no reason in the Department's sole discretion. If the Department is prepared to accept a Developer Change Request, the parties are required to engage in good-faith negotiations to reach agreement on the terms of a Change Order.

#### Deviations

The Borrower may also request the Department's approval of certain minor changes to the Technical Provisions that do not impact schedule or costs ("***Deviations***"). Deviations may be approved by the Department on a "no-cost" basis and, in such event, does not require a Change Order. Any other change in the requirements of the Contract Documents requires a Change Order.

#### *Relief Events*

##### Procedures for Claiming Relief

Relief Events are defined as Compensation Events and Non-Compensation Events. The nature of the relief will depend upon the type, and timing, of the Relief Event.

As a condition to the Department's granting of any type of relief to the Borrower in connection with the occurrence of a Relief Event, the Borrower must follow the notice and other procedures set forth in the DBFOM Agreement. Time is of the essence in connection with Relief Event notices and Relief Event Claims.

The agreement of the parties as to the specific compensation, time extension and/or other relief to be given the Borrower on account of a Relief Event is required to be evidenced by a written amendment to the Agreement, duly executed by both parties. In the event the parties are unable to agree as to the specific compensation, time extension and/or other relief to be given the Borrower on account of a Relief Event, the Department is required to pay or grant, as applicable, any undisputed portion of compensation, time extension and/or other relief, and either party may refer the matter to the Dispute Resolution Procedures. If the Department rejects the Relief Event Claim, the Borrower may refer the matter to the Dispute Resolution Procedures.

If the Department or the Borrower determines, after engaging in good-faith negotiations, that continuation of such negotiations is not likely to resolve the matters in dispute, then, except as otherwise provided in the delay notification section of the DBFOM Agreement, either party may initiate the Dispute Resolution Procedures.

### Defense to Certain Obligations

Subject to the terms of the DBFOM Agreement, if a Relief Event occurs and for so long as the Relief Event is continuing:

(a) (except in respect of the event of an Earthquake with a magnitude up to and including the ODE level, in which case the Borrower is only entitled to relief to the extent permitted in the Technical Proposals), the Borrower is entitled to: (i) relief from accrual of Noncompliance Points; (ii) relief from Developer Default; and (iii) relief from assessment of Deductions, provided that (in each case) such relief applies only to the extent that the Relief Event would otherwise have caused such accrual, Developer Default or assessment, as the case may be; and

(b) to the extent that the Borrower is unable to comply with the Contract Documents, applicable Laws or Governmental Approvals as a direct result of the Relief Event, the Borrower is excused from such compliance.

### Relief Events During O&M Period

If a Relief Event occurs during the O&M Period, the Base Operating MaxAP portion of the Availability Payment is reduced during the period when the Borrower is entitled to relief as described above under “Defense to Certain Obligations” to align with the percentage of O&M Work actually performed relative to the scope of O&M Work required to be performed had the Relief Event not occurred.

If the Borrower demonstrates to the Department’s reasonable satisfaction that the actual reduction in the Borrower’s operation and maintenance costs of performing the O&M Work is other than as set out in the immediately preceding paragraph, then the reduction in the Base Operating MaxAP portion of the Availability Payment is the actual reduction in costs as demonstrated to the Department’s reasonable satisfaction.

### Extension of Contract Deadlines

Subject to the provisions of the DBFOM Agreement, if a Relief Event Delay occurs during the D&C Period, the Borrower is entitled to an extension of:

(a) the Planned Early PSA Date, solely to the extent that the Relief Event Delay delays achievement of Passenger Service Availability beyond the then current Planned Early PSA Date; and

(b) the Long Stop Date commensurate with the extension of the Planned Early PSA Date.

### Incremental Costs for Compensation Events

Subject to the provisions of the DBFOM Agreement, if a Compensation Event occurs, the Borrower is entitled to receive from the Department Incremental Costs incurred by the Borrower.

### Delayed Payment Compensation

If during the D&C Period, a Compensation Event results in a Relief Event Delay, subject to the provisions of the DBFOM Agreement, the Borrower is entitled to Delayed Payment Compensation in respect of Financing Costs incurred during any MP Delay Period or AP Delay Period. See “SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower.”

### Limitations on Relief

The Borrower is not entitled to any kind of relief whatsoever from a Relief Event to the extent:

(a) that the Relief Event or consequences of the Relief Event arose out of (i) any breach of contract by a Borrower-Related Entity, (ii) any act or omission by a Borrower-Related Entity that is inconsistent with the Contract

Documents or Governmental Approvals, or (iii) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Borrower-Related Entity; or

(b) the Relief Event or consequences of the Relief Event could reasonably have been avoided by any Borrower-Related Entity.

The Borrower may not claim that any Relief Event relieves the Borrower from compliance with any Safety Compliance Order and is not entitled to compensation for any Delay Costs in connection with Earthquake or Terrorism.

Any compensation, time extension or other relief to which the Borrower is entitled in connection with a Relief Event is required to be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Borrower.

Any entitlement of the Borrower to compensation, with respect to a Relief Event, is net of all insurance proceeds received by any Borrower-Related Entity pursuant to any Insurance Policy; any amounts which the Borrower is deemed to have self-insured; and any other insurance proceeds received by any Borrower-Related Entity in connection with the Relief Event.

#### Reduced Relief for Delay in Investigating Site Conditions

The Borrower is not entitled to any extension of Contract Deadlines or to Delayed Payment Compensation for Compensation Events under clause (e) (relating to Pre-Existing Hazardous Materials) or clause (f) (relating to unidentified or misidentified underground utilities) of the definition of Compensation Event, unless the Borrower has conducted, in accordance with Good Industry Practice and the required standards, an investigation of site conditions within 180 days of the later of the Effective Date and the Borrower's access to the property in accordance with the DBFOM Agreement.

#### Relief Event Claims involving Hazardous Materials

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

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

### Method of Payment of Compensation for Compensation Events

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

If the Department chooses to adjust the Availability Payment to compensate the Borrower for any additional compensation due for a Compensation Event, the proposed adjustments to payments between the parties are required to be calculated such that the Borrower is in a no better and no worse position.

### Force Majeure Events

During the occurrence and continuance of any Force Majeure Event, the Department is excused from performing those of its obligations to the extent that the Department is prevented from carrying out such obligations by that Force Majeure Event. However, a Force Majeure Event will not excuse any party from performing its payment obligations under the Contract Documents unless expressly stated otherwise.

If the effects of the *Force Majeure* Event are continuing and the parties are not able to agree to terms for the continued performance within 180 consecutive days after the date of the commencement of the *Force Majeure* Event, then either party may terminate of the DBFOM Agreement. See APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Termination of the DBFOM Agreement – *Termination for Extended Delay.*"

Relief for *Force Majeure* Events is subject to the general limitations on relief in respect of relief Events as discussed above.

### *Default by the Borrower*

#### Developer Defaults

Developer Defaults include the following:

(a) the Borrower fails to satisfy the conditions for commencement of non-construction work within 30 days after the Department's issuance of NTP 1, to begin the D&C Work within ten days following the Department's issuance of NTP 2 or to diligently prosecute the Work to completion in accordance with the Contract Documents;

(b) the Borrower abandons all or a material part of the APM Project;

(c) the Borrower fails to achieve Passenger Service Availability by the Long Stop Date;

(d) the Borrower (i) fails to make any payment owing to the Department under the Contract Documents when due or (ii) fails to deposit other funds into any custodial account, trust account or other reserve or account as required by the Contract Documents;

(e) (i) any representation or warranty in the Contract Documents made by the Borrower is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made, or (ii) any certificate, schedule, report, instrument or other document delivered by or on behalf of the Borrower, any Equity Member, Controlling Affiliate of the Borrower, Prime Contractor or APM Operating System Supplier to the Department as part of the Proposal under the Contract Documents is false in any

material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;

(f) the Borrower fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the Contract Documents for the benefit of relevant parties or fails to comply with any requirement of the Contract Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, retentions or any other such amounts as and when due;

(g) (i) the Borrower makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Contract Documents, the APM Project or the Borrower's Interest in violation of the limitations on assignment or transfer under the DBFOM Agreement, (ii) there occurs an Equity Transfer or a Change of Ownership not permitted under the DBFOM Agreement or (iii) any other violation of the limitations on assignment or transfer under the DBFOM Agreement occurs;

(h) the Borrower fails to timely observe or perform, or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by the Borrower under the Contract Documents, including failure to pay for or perform the Design Work, Construction Work, O&M Work or any portion thereof in accordance with the Contract Documents in any material respect, provided that any failure that constitutes a Noncompliance Event or Noncompliance Occurrence is not considered a default under this clause (h), although such failure may become a Developer Default in accordance with clause (r) or (s) below;

(i) the Borrower, an Equity Member, a Controlling Affiliate of the Borrower, a Prime Contractor, an APM Operating System Supplier or any of their respective partners, members, officers, directors, responsible managing officers or responsible managing employees, has been convicted in a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in California Public Contract Code section 1101, with any public entity, as defined in California Public Contract Code section 1100, provided that, if the conviction relates to an Equity Member, a Controlling Affiliate of the Borrower, a Prime Contractor, an APM Operating System Supplier, or any of their or the Borrower's respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, (i) such Person is involved in the APM Project at the time of such conviction and (ii) the Borrower fails to remove such Person from the APM Project;

(j) the Borrower fails to comply with the Department's order to suspend Work within the time reasonably allowed in such order;

(k) the Borrower commences a voluntary case seeking liquidation, reorganization or other relief with respect to the Borrower or its debts; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(l) an involuntary case is commenced against the Borrower seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such the Borrower or the Borrower's debts; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution or similar process; or seeking like relief, and such involuntary case will not be contested by it in good faith or will remain undismissed and unstayed for a period of 60 days;

(m) the DBFOM Agreement or any of the other Contract Documents is rejected in any voluntary or involuntary case-seeking liquidation, reorganization or other relief with respect to the Borrower or its debts;

(n) any voluntary or involuntary case or other act or event described in clause (k) or (l) occurs (and in the case of an involuntary case will not be contested in good faith or will remain undismissed and unstayed for a period

of 60 days) with respect to (i) any Equity Member, partner or joint venture member of the Borrower (unless said Person has fully met all financial obligations owing to the Borrower in the form of a Committed Investment and payments or transfers of money or property previously made to or for the benefit of the Borrower are not subject to any applicable state or federal law respecting the avoidance or recovery of preferences or fraudulent transfers), or (ii) any Equity Member, partner or joint venture member of the Borrower for whom transfer of ownership or management authority would constitute a Change of Ownership;

(o) the Borrower draws against any custodial account, trust account, allowance or other reserve or account in violation of the Contract Documents or makes a false or materially misleading representation in connection with a draw against any such account, allowance or reserve;

(p) the Borrower fails to comply with any applicable Governmental Approval or Law in any material respect;

(q) any use of the APM Project by any Developer-Related Entity that violates requirements of applicable Governmental Approvals or Laws or otherwise is not permitted under the Contract Documents;

(r) the Borrower receives a total of 400 or more Noncompliance Points over the course of 12 consecutive Months (determined on a rolling basis);

(s) the Borrower receives a total of 1,100 or more Noncompliance Points over the course of 36 consecutive Months (determined on a rolling basis);

(t) three or more Persistent Unavailability Events have occurred in the prior 12 months; or

(u) an APM Operating System Shutdown lasting 96 hours or more has occurred.

#### Cure Period and Remedies

The Borrower has certain rights to receive notice and opportunity to cure before the Department may exercise its right to terminate the DBFOM Agreement. The Department remedies in the event of a Developer Default include, among others: termination of the DBFOM Agreement (as described below under APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Termination of the DBFOM Agreement—*Termination for Developer Default*”); immediate Department entry to cure wrongful use; step-in rights; any and all damages available at law (and the right to deduct and offset such damages from any amounts the Department may owe to the Borrower); the right to make demand upon, draw on and enforce and collect performance security; and suspension of the Work. Certain of the Department’s remedies with respect to Developer Defaults (including termination and step-in) are subject to the rights of the Collateral Agent under the Lenders’ Direct Agreement.

#### *Default by the Department*

#### LAWA Default

LAWA Defaults include the following events or circumstances:

(a) the Department fails to make any payment due to the Borrower under the DBFOM Agreement when due, provided that such payment is not subject to a Dispute;

(b) the Department ceases to be authorized to make any payment to the Borrower under the DBFOM Agreement; or

(c) any representation or warranty made by the Department under the DBFOM Agreement is false, misleading or inaccurate in any material respect when made or omits material information when made.

### Cure Periods and Remedies

The DBFOM Agreement provides the Department with certain rights to receive notice and opportunity to cure LAWA Defaults. The Borrower's remedies in the event of a LAWA Default include, among others: termination of the DBFOM Agreement (as described below); interest on late payments and suspension of Work (for failure to pay undisputed amounts of US\$1 million or more).

#### *Termination of the DBFOM Agreement*

##### Termination for Convenience

The Department may terminate the DBFOM Agreement in whole, but not in part, if the Department determines, in its discretion, that termination is in the Department's best interest.

In the event of a Termination for Convenience, the Department is required, subject to the terms of the DBFOM Agreement, to pay compensation to the Borrower (or to the Collateral Agent), in an amount equal to the Maximum Termination Compensation Amount, calculated as described above in "CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Department Payments upon Early Termination."

##### Termination for Extended Delay

Subject to the terms of the DBFOM Agreement, either party may deliver to the other party notice of its conditional election to terminate the DBFOM Agreement if an Extended Delay Event has occurred and is continuing and, as a direct result of the Extended Delay Event, the Borrower is unable to perform all or substantially all of its obligations under the Contract Documents for a period of 180 consecutive days or more or, if in the O&M Period, all or substantially all of the APM Project has become and remains inoperable for a period of 180 consecutive days or more and such inability to perform or suspension of operations is not attributable to another concurrent non-Extended Delay Event. However, there is no such right to terminate in the case of any Extended Delay Event that results in damage or partial destruction of the APM Project if insurance proceeds are available to fund work required to remedy the effects of the Extended Delay Event and the parties agree to a restoration plan in respect of such work required to remedy the effect of the Extended Delay Event.

If the Department gives notice of conditional election to terminate for Extended Delay, then the Borrower may either accept such notice or give notice to the Department to continue performing its obligations under the DBFOM Agreement. If the Borrower delivers timely notice choosing to continue performing its obligations under the DBFOM Agreement following receipt of a conditional election to terminate for an Extended Delay Event, the DBFOM Agreement will continue in full force and effect and the Department will have no obligation to compensate the Borrower for any costs of restoration, repair or replacement arising out of, relating to or resulting from the Extended Delay but if the Extended Delay commences before the Passenger Service Availability Date, then the provisions of the DBFOM Agreement concerning time extensions (APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—*Extension of Contract Deadlines*") will apply.

If the Borrower gives notice of its conditional election to terminate, then the Department may either accept such notice or elect to continue the DBFOM Agreement in effect if, in its reasonable discretion determines that the APM Project can be completed or re-opened, as applicable, on a commercially reasonable basis. If the Department delivers timely notice choosing to continue the DBFOM Agreement in effect, then the DBFOM Agreement continues in full force and effect and following provisions will apply:

(a) subject to the Borrower's obligation to mitigate, the Department is obligated to pay or reimburse the Borrower an amount equal to (without double-counting): (i) the Incremental Costs directly caused by the Extended Delay Event which are incurred after the date the Borrower delivers its written notice of conditional election to terminate; plus (ii) if the Notice of Conditional Termination is delivered before the Passenger Service Availability Date, an amount equal to the amount of Delayed Payment Compensation (see APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—*Delayed Payment Compensation*"); and



(b) the Borrower's rights and relief in respect of certain obligations (as described in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—*Defense to Certain Obligations*") continues to apply to the Relief Event until the damages produced by such Extended Delay Event are compensated as provided in the DBFOM Agreement and the restoration works are completed.

If termination due to an Extended Delay Event occurs, the Borrower is entitled, subject to the terms of the DBFOM Agreement, to receive compensation equal to Extended Delay/Insurance Unavailability Termination Amount, calculated as described above in "CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Department Payments upon Early Termination."

#### Termination for Insurance Unavailability

If it becomes apparent that insurance required under the Contract Documents is not available as described in the definition of "Insurance Unavailability," the Department may deliver to the Borrower notice of its election to terminate the DBFOM Agreement for Insurance Unavailability.

In the event of a termination for Insurance Unavailability, the Department is required to pay compensation to the Borrower equal to the Extended Delay/Insurance Unavailability Termination Amount.

#### Termination for Developer Default

If the Department issues a notice of termination of the DBFOM Agreement due to a Developer Default, the Borrower is entitled, subject to the terms of the DBFOM Agreement, to receive compensation in an amount equal to the Developer Default Termination Amount, calculated as described above in "CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Department Payments upon Early Termination—*Developer Default Termination Amount*." The calculation of such compensation differs depending on whether the termination occurs before or after the Passenger Service Availability Date.

#### Termination for LAWA Default

If a LAWA Default remains uncured following (a) notice and expiration of the applicable cure period and (b) the Borrower's compliance with certain warning notice requirements, the Borrower has the right to terminate the DBFOM Agreement, effective immediately upon delivery of written notice of termination to the Department. In the event of such termination, the Borrower is entitled, subject to the terms of the DBFOM Agreement, to receive compensation equal to the Maximum Termination Compensation Amount.

#### Termination for Suspension of Work

If the Department issues a suspension order that suspends the Work for a period of 270 days or more, and provided that (a) such suspension is not the result of the negligence, willful misconduct or breach of applicable Law or contract by any Borrower-Related Entity; and (b) the Borrower has delivered a warning notice to the Department at least 15 days before terminating, the Borrower has the right to terminate the DBFOM Agreement, effective immediately upon delivery of written notice of termination to the Department. In the event of such termination, the Borrower is entitled, subject to the terms of the DBFOM Agreement, to receive compensation equal to the Maximum Termination Compensation Amount. The Borrower may not terminate on such grounds if, at the time the Borrower's right to terminate would arise, circumstances exist entitling either Party to terminate in respect of Extended Force Majeure, Insurance Unavailability, Developer Default, Court Ruling or failure of Financial Close to occur.

#### Termination due to Court Ruling

In the event of Termination Due to Court Ruling, the Borrower is entitled, subject to the terms of the DBFOM Agreement, to receive compensation in an amount equal to the amount equal to the Extended Delay/Insurance Unavailability Termination Amount, provided that if the Termination Due to Court Ruling is caused solely by a LAWA Default or a LAWA-Caused Event, the Borrower will be entitled to compensation in the

amount to the Maximum Termination Compensation Amount. See “RISK FACTORS—Risks Relating to the Project—*Judicial Challenge*” for a discussion of current litigation against the Department and the APM Project.”

### *Handback*

#### Handback Condition

Upon the Termination Date, the Borrower is required to surrender the APM Project, including any Upgrades, to the Department, in the condition and meeting all of the requirements of the Handback Requirements, provided that in the event of early termination, the Borrower is only required to comply with the Handback Requirements to the extent that any Renewal Work was scheduled to have been performed before the Early Termination Date.

The parties are required to conduct inspections of the APM Project at the times and according to the terms and procedures specified in the Handback Requirements, for the purposes of:

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

#### Handback Requirements Reserve Account

Beginning five full years before the expected end of the Term, the Borrower is required to establish the Handback Requirements Reserve Account exclusively available for the uses set forth below. The City is required to have a first priority perfected security interest in the Handback Requirements Reserve Account, and the right to receive monthly account statements directly from the depository institution.

In lieu of establishing the Handback Requirements Reserve Account, the Borrower may deliver to the Department Handback Requirements Letters of Credit that name the City as the sole beneficiary.

For each Handback Year, no later than five Business Days following the first day of such Handback Year, the Borrower is required to deposit to the Handback Requirements Reserve Account amounts determined as follows:

(a) if, as of the date of calculation, the MaxAPs projected to be paid to the Borrower, during the period commencing on such date and ending upon the expiry of the Term, is greater than or equal to two times the Handback Reserve Amount calculated on such date, then the Borrower is required to deposit to the Handback Requirements Reserve Account an amount sufficient to ensure that the Handback Requirements Reserve Account balance is equal to the percentage of the Handback Reserve Amount as set forth for the applicable Handback Year in the table below.

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

(b) if, as of the date of calculation, the MaxAPs projected to be paid to the Borrower during the period commencing on such date and ending upon the expiry of the Term are less than two times the Handback Reserve Amount calculated on such date, then the Borrower is required to deposit to the Handback Requirements Reserve Account an amount sufficient to ensure that the Handback Requirements Reserve Account balance is equal to 100 percent of the Handback Reserve Amount calculated on such date.

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

Following completion of the Handback Renewal Work, any remaining Handback Requirements Reserve Balance will be drawn and retained by the Borrower. If the DBFOM Agreement is terminated for any reason before the completion of the Handback Renewal Work, any remaining Handback Requirements Reserve Balance will be drawn and retained by the Department.

#### Department's Right to Self-Perform Handback Requirements and Recover Costs

If the Department determines that the APM Project does not comply with any Handback Requirement, or Handback Renewal Work is not timely or properly performed, then, in addition to the Department's rights under the Contract Documents, the Borrower is liable for the Department's Recoverable Costs incurred in bringing the APM Project into compliance with such Handback Requirement(s).

#### *Contracting and Labor Practices*

##### Key Contracts

The Borrower is not permitted to terminate or permit termination of any Key Contract or permit any substitution, replacement or assignment of any Key Contractor, except with the Department's prior approval; provided, however, that the Department's prior approval is not required in the event of (a) any termination of the DBFOM Agreement where the Department elects not to assume the Borrower's future obligations under such Key Contract, (b) any suspension, debarment, disqualification or removal (distinguished from ineligibility due to lack of financial qualifications) of the Key Contractor or (c) any agreement for voluntary exclusion of the Key Contractor, from bidding, proposing or contracting with any federal, State or local department or agency; and provided, further, that the Department is required to act reasonably with respect to approval of a replacement in the case of material uncured default by the Key Contractor under the Key Contract.

The Borrower is responsible for ensuring that each Key Contract complies with the requirements set forth in Exhibit 14 of the DBFOM Agreement.

##### Prompt Payment to Contractors

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

##### Key Personnel

Subject to certain exceptions, including retirement and disability, unless other approved or directed by the Department, the Borrower is required to retain, employ and utilize the individuals specifically listed in Exhibit 2A-3 (Key Personnel Statement of Availability), and retain, employ and utilize individuals qualified for the positions described in the relevant Technical Provisions to fill Key Personnel positions for the relevant period.

### Inclusivity

The Borrower is required to utilize the services of firms certified as Small Business Enterprise, Local Business Enterprise, Local Small Business Enterprise or Local State Disabled Veteran Business Enterprise firms at specified minimum participation levels for the D&C Work and the O&M Work. (See APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT – Contracting and Labor Practices–*Inclusivity*”).

### Advertising and Business Opportunities

The Department reserves all rights and opportunities relating to advertising and Business Opportunities on the APM Project and, as between the Borrower and the Department, within the O&M Limits.

The Borrower is required to cooperate and grant all necessary access to the Department and any third-party designees authorized by the Department in connection with the Department’s exercise of its rights relating to advertising and Business Opportunities. The Department is required to compensate the Borrower for reasonable costs and expenses incurred directly by the Borrower in installing and maintaining facilities for advertising or Business Opportunities (other than routine maintenance), through a Change Order.

### *Dispute Resolution*

#### General

All Disputes are subject to the Dispute Resolution Procedures set forth in Article 18 to the DBFOM Agreement, except for:

(a) any decision, determination, judgment or other action of the Department that the Contract Documents state is subject to the Department’s sole or absolute discretion (in which case the decision, determination, judgment or other action is final, binding and not subject to dispute resolution and does not constitute a basis for any claim for additional monetary compensation, time extension or any other relief); and

(b) any other matter for which the Contract Documents expressly provide otherwise.

Except where a party is disputing a finding of the Independent Engineer (in which case the conclusions and determinations of the Independent Engineer are provisionally binding upon the parties in respect of any payment obligations, pending any final determination of the Dispute), the Department’s initial determination of Disputes that are subject to the Dispute Resolution Procedures is binding upon the parties pending any final determination of the Dispute.

The Borrower is required to proceed diligently with performance of the Work pending the resolution of any Dispute, including any Work that is the subject of the Dispute, except for any performance the Department determines in writing should be delayed, suspended or terminated as a result of such Dispute.

The parties agree to make good-faith efforts to resolve by amicable negotiations all Disputes arising between the parties before filing a Dispute Submittal as provided in Article 18 of the DBFOM Agreement.

If at the conclusion of any proceedings pursuant to the Dispute Resolution Procedures in the DBFOM Agreement, the Borrower desires to pursue any remaining Disputes, the Borrower is required to file a Government Code Claim in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. The Borrower is required to, as a condition precedent to filing such a claim, comply with the Dispute Resolution Procedures set forth in the DBFOM Agreement.

### *Assignment and Transfer*

#### Restrictions on Equity Transfers and Change of Control

Subject to certain exceptions, any:

(a) Change of Control of the Borrower; or

(b) Equity Transfer that results in any Equity Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in the Borrower that it owned (directly or indirectly) as of the Financial Close Date,

is subject to the Department's prior written approval.

Neither an Equity Transfer to a Prohibited Person, nor a Change of Control that would involve the provision of any amount of Committed Investment directly or indirectly from a Prohibited Person, is permitted at any time.

Where the Department's prior written approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry or grant of other special use, management or control, or for any proposed Equity Transfer or Change of Control and such transaction is proposed at any time during the period ending two years after the Passenger Service Availability Date, the Department may withhold or condition its approval in its sole discretion. Any such decision of the Department to withhold consent is final, binding and not subject to the Dispute Resolution Procedures. After the second anniversary of the Passenger Service Availability Date, the Department is not permitted to unreasonably withhold its approval of an Equity Transfer or Change of Control.

#### Restrictions on Assignment, Subletting and Other Transfers of the Borrower's Interest or the APM Project

The Borrower is not permitted to voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber the Borrower's Interest or any portion thereof without the Department's prior written approval, in its sole discretion, except (a) to Lenders for security or (b) to any Substituted Entity approved by the Department in accordance with the Lenders' Direct Agreement, in each case subject to the conditions set forth in the DBFOM Agreement.

#### Assignment by the Department

The Department may assign all or any portion of its right, title and interest in the Contract Documents, Payment Bonds and Performance Security, guarantees, letters of credit and other security for payment or performance, to (a) any Person that succeeds to the governmental powers and authority of the Department under the Los Angeles City Charter and Los Angeles Administrative Code and (b) others with the prior written consent of the Borrower, which consent cannot be unreasonably withheld if the Department's assignee has a credit rating equal to or better than the Department's senior lien rating at the time of the assignment as measured by a Rating Agency.

#### Assumption

Each transferee of the Borrower's Interest is required to execute and deliver to the Department an assumption agreement in form acceptable to the Department, providing that the transferee takes the Borrower's Interest subject to, and will be bound by, the Project Management Plan, including the Borrower's Design Quality Plan and Construction Quality Plan, the O&M Management Plan, the Key Contracts, the Governmental Approvals, all agreements between the transferor and third parties and all agreements between the transferor and Governmental Entities with jurisdiction over the APM Project or the Work, except to the extent otherwise approved by the Department.

## **Design-Build Contract**

Design and construction work for the APM Project is expected to be undertaken by the Design-Build Contractor pursuant to the Design-Build Contract, dated as of April 11, 2018, between the Borrower and the Design-Build Contractor. The Design-Build Contract includes, on a fixed-price, lump sum, date-certain, turn-key basis, substantially all work and services required or appropriate in connection with the design and construction of the APM Project (including performing the Borrower's obligations with respect to design and construction under the DBFOM Agreement), except to the extent expressly excluded in the Design-Build Contract.

### *Back-to-Back Obligations*

Subject to the terms and conditions of the Design-Build Contract, the Design-Build Contractor is required to assume all costs and expenses arising from the performance of the Contracted Work and, on a back-to-back basis, comply with all of the Borrower's obligations and liabilities set forth in the DBFOM Agreement to the extent that they relate to such Contracted Work.

### *Scope of Work*

The Design-Build Contractor is responsible for the performance of the Contracted Work in accordance with all applicable laws, Governmental Approvals, Good Industry Practice and the requirements specified in the Design-Build Contract and the other DB Documents. The scope of the Contracted Work includes:

Acquisition of Real Property. Under the DBFOM Agreement, the Department is required to provide the Borrower with rights of access to the Project ROW properties within the D&C Limits as identified in the relevant Technical Provisions by the dates specified in the Property Acquisition Schedule. Under the Design-Build Contract, Borrower is required to provide Design-Build Contractor with rights of access to such properties by the dates specified in the relevant Technical Provisions. If the Design-Build Contractor identifies any property that is not subject to the above obligations of the Department but that the Design-Build Contractor seeks to add to the Project ROW to accommodate the Design-Build Contractor's particular design or for the Design-Build Contractor's convenience in performing the Contracted Work, then the Design-Build Contractor may submit to the Borrower a request for acquisition of additional property interests and related documentation in accordance with the relevant Technical Provisions. In addition, Design-Build Contractor is solely responsible for acquisition of any temporary interests in property that Design-Build Contractor determines is necessary, desirable or advisable to obtain in connection with the APM Project or the Contracted Work.

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

Governmental Approvals. The Design-Build Contractor is responsible for obtaining all Governmental Approvals required for the Contracted Work, other than the approvals provided by the Department, and bears the risk of any delay in obtaining such approvals (except as expressly set forth in the Design-Build Contract), as well as the risk of conditions imposed on performance of the Contracted Work by such approvals.

Utilities. The Design-Build Contractor is required to: (a) during the performance of the Contracted Work, coordinate with each utility owner that has a utility within the site or which will be affected in any way by the Contracted Work and coordinate and cause all utility adjustments necessary for the timely construction of the APM

Project to be completed in accordance with the Project Schedule and the requirements of the DB Documents; (b) make all reasonable efforts to design around existing utilities, minimizing impacts; (c) conduct reasonable site investigation and exploration before commencement of Construction Work or renewal work in any particular area to correctly identify all utilities in the area and include in the design all identified utilities to ensure that utility services are not mistakenly disrupted by the Construction Work or the renewal work; (d) submit to the Department and the Borrower utility relocation plans identifying each utility adjustment to the extent related to the Contracted Work, together with the timelines for obtaining utility owner approval and completing each utility adjustment within 180 days of the Design-Build Contractor's access to the property; (e) develop project execution plan(s) for the Contracted Work in accordance with the relevant Technical Provisions showing existing and proposed utility locations (including a composite utility plan) and their relationship to the proposed construction; provide each project execution plan to the applicable utility owner; and determine work responsibility for each utility adjustment to the extent related to the Contracted Work with the applicable utility owner; (f) for utility adjustments to the extent related to the Contracted Work involving the City, Los Angeles County or LA Metro, comply with the Design-Build Contractor's obligations relating to the applicable Cooperation Agreement; (g) obtain necessary permits for each utility adjustment to the extent related to the Contracted Work; (h) obtain utility owner pre-approval of subcontractors and/or suppliers performing certain utility work if required by utility owner; (i) before commencing Construction Work or renewal work on a particular utility adjustment, obtain the relevant utility owner's approval regarding the work to be performed, in accordance with the requirements of the relevant Technical Provisions and Good Industry Practice; (j) if a utility owner performs all or any part of the utility adjustments work, to the extent related to the Contracted Work, coordinate, monitor, and otherwise undertake the necessary efforts to cause such utility owner to perform such work timely, in coordination with the Contracted Work, and in compliance with the DB Documents; provided the Design-Build Contractor shall perform the required utility adjustments work to the extent that the utility owner fails to so perform; and (k) keep the Department and the Borrower informed of any issues with work by utility owners to the extent related to the Contracted Work that may affect the APM Project.

**Hazardous Materials.** Subject to certain exceptions set forth in the Design-Build Contract, the Design-Build Contractor is required to, during the D&C Period and as part of the Contracted Work, perform, or cause to be performed, all hazardous materials management required in connection with the APM Project in accordance with applicable law, Governmental Approvals, the approved environmental protection program, and all applicable provisions of the DB Documents. If the Design-Build Contractor fails to undertake the hazardous materials management required under the Design-Build Contract within a reasonable time after discovery of hazardous materials, taking into consideration the nature and extent of the contamination and action required and the potential impact upon the Design-Build Contractor's schedule for use of and operations on the site, the Department may notify the Borrower and the Design-Build Contractor that it will itself undertake the hazardous materials management or procure a contractor to perform such work, in which case the Department is required to do so in accordance with all applicable environmental laws. The Design-Build Contractor is required to reimburse the Department on a current basis for fines, penalties or other assessments against the Department or the APM Project by Governmental Entities due to the Design-Build Contractor's delay or failure to undertake the hazardous materials management, so long as the Department has performed in accordance with the terms of the DBFOM Agreement. The Design-Build Contractor is also responsible, on behalf of the Borrower, for the management of all pre-existing hazardous materials encountered in connection with applicable law, subject to certain limitations set forth in the Design-Build Contract.

#### *Contract Price and Payments*

The Design-Build Contract provides for a firm, fixed-price, lump sum contract price in the amount of \$1,949,193,818.85. The Contract Price is not subject to adjustment for any reason other than pursuant to a scope change order authorized by the Borrower or that the Design-Build Contractor is entitled to claim as set forth in the Design-Build Contract, or as determined through the dispute resolution procedures under the Design-Build Contract.

The Borrower is required to pay to the Design-Build Contractor certain additional payments, provided that the Design-Build Contractor is not entitled to such amounts unless and until the Design-Build Contractor shall have achieved the minimum D&C Percentage for the payment of the relevant additional payment as provided in the Design-Build Contract. The Design-Build Contractor is not entitled to such additional payments until the Borrower has received the corresponding amounts from the Department pursuant to the DBFOM Agreement. The Borrower is

required to pay to the Design-Build Contractor such additional payments within five business days of receipt of such payments from the Department.

Design-Build Contractor acknowledges and agrees that the following allowances for Design-Build Contractor's performance of the following types of Contracted Work are available under the DBFOM Agreement: (a) an allowance of \$6,000,000 for the required streetscaping, landscaping and improvements within the public realm for the Work, except to the extent (i) such requirements are included elsewhere in the DB Documents, or (ii) such requirements apply to the Traction Power Substation or the maintenance and storage facility; (b) an allowance of \$3,700,000 for hazardous materials management work; (c) an allowance of \$15,000,000 for Art Accommodation and Installation Work; and (d) an allowance of \$118,450,000 for Contracted Work relating to a potential additional Station.

Subject to the terms of the Design-Build Contract, payments of the Contract Price are required to be paid on a monthly basis in accordance with the terms and procedures set forth in the Design-Build Contract. Subject to the application of noncompliance deductions, Monthly Progress Payments shall (except in relation to the initial payment to be made by the Borrower around Financial Close) be based on Design-Build Contractor's progress as measured against the schedule of values provided in the Design-Build Contract, such that the sum of all Monthly Progress Payments equals the Contract Price. Upon satisfaction of the payment conditions set forth in the Design-Build Contract and subject to the application of noncompliance deductions, the Borrower is required to pay the Monthly Progress Payments (other than the Financial Close Payment) to Design-Build Contractor on a monthly basis in accordance with a schedule of values, based on (a) Design-Build Contractor's percentage completion of each item listed in the schedule of values not previously paid, and (b) in the corresponding amounts shown in the schedule of values, provided, however, that the cumulative Monthly Progress Payments, measured from the Financial Close Payment, shall not at any time exceed the corresponding maximum cumulative payments for the relevant month set forth in the Design-Build Contract, less any amounts the Borrower is otherwise entitled under the Design-Build Contract to withhold. For a detailed description of payments and deductions under the Design-Build Contract, see APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Contract Price and Payments."

#### *Equivalent Project Relief*

To the extent that the Borrower has a right, entitlement, remedy or defense under the DBFOM Agreement which relates to the Contracted Work or the rights or obligations of the Design-Build Contractor under the Design-Build Contract, the Design-Build Contractor is entitled to receive the benefit of such rights in accordance with and subject to the equivalent project relief provisions of the Design-Build Contract.

#### *Liquidated Damages*

If the Design-Build Contractor fails to achieve Passenger Service Availability by the Original Planned Early PSA Date, the Design-Build Contractor shall pay to the Borrower \$190,238.59 per day for each day by which Passenger Service Availability is delayed beyond the Original Planned Early PSA Date, but, to avoid duplication with AP Delay Liquidated Damages, excluding any day for which AP Delay Liquidated Damages are owing under the Design-Build Contract. If the Design-Build Contractor fails to achieve Passenger Service Availability by the Planned Early PSA Date, the Design-Build Contractor shall pay to the Borrower \$227,758.78 per day for each day by which Passenger Service Availability is delayed beyond the Planned Early PSA Date. If Final Completion is not achieved on or before the Scheduled Milestone Payment Date for Milestone Payment 6, the Design-Build Contractor shall pay to the Borrower the incremental amount of interest payable with respect to the short term facility due to the delay in achieving Milestone Payment 6, which amount will be at a floating rate for each day that Final Completion is delayed (the Final Completion Delay Costs). The Delay Liquidated Damages will be updated for interest rate adjustment in the amended and restated Design-Build Contract. See "—The Amended and Restated Design-Build Contract."

The aggregate liability of Design-Build Contractor to the Borrower in relation to Delay Liquidated Damages and Final Completion Delay Costs will be limited to 5.17% of the Contract Price. The LD Cap will be updated for interest rate adjustment in the amended and restated Design-Build Contract. See "—The Amended and Restated Design-Build Contract" and APPENDIX C—"REPORT OF THE LENDERS' TECHNICAL ADVISOR."



## *Warranties*

The Design-Build Contractor is required to provide warranties for the Contracted Work which are required to be effective for 12 months after the Passenger Service Availability Date, with the exception of (i) the warranties for Non-O&M Facilities as described below, (ii) the warranties for Utility Owners and Authorities Having Jurisdiction as described below, and (iii) the warranties from the APM Operating System as described below.

Defects. During the applicable warranty period, Design-Build Contractor shall promptly notify the Borrower of any defect of which Design-Build Contractor or any Design-Build Contractor-related entity is or becomes aware. Design-Build Contractor shall, in a timely manner, correct, at its expense, all DB Defects which are notified to Design-Build Contractor or of which it or any Design-Build Contractor-related entity otherwise has knowledge during the applicable warranty period.

Product Warranties. Design-Build Contractor is required to obtain from all subcontractors representations, warranties, guarantees and obligations in accordance with Good Industry Practice for work of similar scope and scale, with respect to design, materials, workmanship, equipment, tools and supplies furnished by all such subcontractors and suppliers, which are required to extend to Design-Build Contractor, the Borrower, the Department and any Utility Owner or Authority Having Jurisdiction for whom Contracted Work is being performed.

APM Operating System Supplier Warranties. The Design-Build Contractor is required to obtain from the APM Operating System Supplier warranties for the APM Operating System which are required to be effective for 24 months after the Passenger Service Availability Date. In addition, Design-Build Contractor is required to provide an epidemic warranty for all epidemic DB defects, which will also be effective for 24 months after the Passenger Service Availability Date.

Latent Defects. Design-Build Contractor shall be responsible for or liable for the costs of the correction of all DB Defects present in the APM Fixed Facilities that could not reasonably have been identified by a competent person acting in accordance with Good Industry Practice during visual inspection(s) of the APM Fixed Facilities no later than three (3) months prior to the end of the warranty period applicable to the APM Fixed Facilities. The latent defects period ends 10 years after the Final Completion Date with respect to the APM Fixed Facilities, and the latent defects period for any other portion of the Contracted Work shall be determined pursuant to California law.

Warranties for Non-O&M Facilities. Design-Build Contractor warrants each Non-O&M Facility against Non-O&M Facilities Defects during the period commencing on Non-O&M Facility Occupancy Readiness of the Non-O&M Facility and ending two years thereafter. Design-Build Contractor is required to perform, at the Design-Build Contractor's sole cost and expense, Non-O&M Facilities Warranty Work for any Non-O&M Facilities Defect that Design-Build Contractor receives notice of, or otherwise has actual knowledge of, within the applicable Non-O&M Facilities Warranty Period.

Warranties for Utility Owners and Authorities Having Jurisdiction. Design-Build Contractor is required to provide, or obtain and ensure performance under as if Design-Build Contractor provided, warranties and guarantees, for all Contracted Work performed for Utility Owners and Authorities Having Jurisdiction, for a minimum of one year after the date of acceptance of such work by the Utility Owner or Authority Having Jurisdiction, as applicable (or such longer term as agreed), for the benefit of such Utility Owner or Authority Having Jurisdiction.

## *Limitation on Liability*

Design-Build Contractor's aggregate liability cap under the Design-Build Contract and the Interface Agreement is: (a) in the period up to and including the Final Completion Date, 35% of the Contract Price, and (b) in the period from the Final Completion Date until the DB Termination Date, the lesser of: (i) the remaining exposure pursuant to (a) above, reduced by liabilities up to and including the Final Completion Date, and (ii) 10% of the Contract Price. Such aggregate liability cap shall not apply to, nor shall the calculation thereof include, certain circumstances set forth in the Design-Build Contract. See APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Limitation on Liability" and APPENDIX C—"REPORT OF THE LENDERS' TECHNICAL ADVISOR."

## *Performance Security*

**Performance and Payment Bonds.** On or prior to Financial Close, Design-Build Contractor is required to obtain or cause to be obtained and delivered to the Borrower one or more payment bonds with an aggregate value equal to the sum of Milestone Payments 1 through 5 under the DBFOM Agreement and one or more performance bonds with an aggregate value equal to the sum of Milestone Payments 1 through 5 under the DBFOM Agreement, in each case in substantially the form attached to the Design-Build Contract and issued by a surety or insurance company meeting the requirements of applicable law, licensed or authorized to do business in the State and rated at least “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “VIII” or better according to A.M. Best’s Financial Size Rating. Each payment bond and performance bond shall include a multiple obligee rider naming the City as an additional obligee and may also name the Collateral Agent as an additional obligee.

**Letters of Credit.** In addition to providing the payment and performance bonds, the Design-Build Contractor is obligated to provide to the Borrower, on or prior to Financial Close, one or more letters of credit (a "Contingent Letter of Credit") with an aggregate amount available to be drawn thereunder equal to three percent (3%) of the Contract Price and reducing to one percent (1%) of the Contract Price following the Final Completion Date, and any remaining letter of credit shall be returned or released to the Design-Build Contractor after the end of the warranty period. Upon the occurrence of any Contingent Security Triggering Event, the Design-Build Contractor shall provide one or more additional letters of credit with an aggregate value equal to (i) the LD Cap, less (ii) the amount of Liquid Performance Security that has been drawn as of the date of the occurrence of the Contingent Security Triggering Event, less (iii) the aggregate outstanding amount of the Liquid Performance Security. If at any time any letter of credit fails to meet the requirements of the Design-Build Contract, Design-Build Contractor shall provide a replacement letter of credit which meets the requirements of the Design-Build Contract, if Design-Build Contractor fails to provide such replacement within 20 Business Days, then the Borrower or the Collateral Agent shall be entitled to draw upon the full amount of the existing letter(s) of credit and hold the proceeds as cash security in accordance with the Design-Build Contract. The Design-Build Contract requires that the letters of credit be issued by a bank or other financial institution with a credit rating of “A3” or better according to Moody’s Investors Services, “A-” or better according to Standard & Poor’s Rating Services, a division of the McGraw-Hill Companies, Inc., “A-” or better according to Fitch, or “A (low)” or better according to DBRS.

Where such Contingent Letter of Credit is not provided within the earlier of (a) 20 Business Days following a Contingent Security Triggering Event, or (b) the date of the next monthly progress payment, the Borrower will be entitled to retain from any amounts due to Design-Build Contractor, a percentage equal to the Contingent Security Amount either (x) divided by six (6) or (y) if there are less than six (6) months remaining before the Planned Early PSA Date, the remaining number of payment dates between the Contingent Security Triggering Event and the Planned Early PSA Date. The Design-Build Contractor will also have the option to replace such retainage amounts with either a letter of credit satisfying the above requirements or treasury securities.

Where the LTA notifies the Borrower that the Design-Build Contractor has accelerated the Contracted Work and that the Passenger Service Availability Date is reasonably likely to occur on or prior to the Planned Early PSA Date, the Borrower will be required to release or pay, as applicable to the Design-Build Contractor any Contingent Letter of Credit or retainage amounts withheld (plus any interest accrued thereon) that was being held by the Borrower.

**Guarantees.** Each Design-Build Guarantor is required to execute and deliver to the Borrower a guaranty, guarantying performance of the obligations of its respective subsidiary Design-Build Contractor member. The rights and benefits of the parent guarantees are assignable, concurrent with a like assignment of the Design-Build Contract, to the Department and/or the Collateral Agent and its designees in accordance with the terms of the DB Lenders’ Direct Agreement. Any guaranty provided under the Design-Build Contract must meet the requirements set forth in the Design-Build Contract and be enforceable by the Borrower or the Department as a transferee beneficiary under certain circumstances specified in the Design-Build Contract. So long as the Design-Build Contractor or, with respect to the Department only, a Lender is diligently pursuing remedies under any such guaranty, each of the Borrower and the Department agrees to forbear from exercising remedies under any such guaranty that names the Borrower or the Department as a direct beneficiary, and exercising its right to become a beneficiary under the Design-Build Contract.

### *Schedule of Performance*

The Design-Build Contractor is required to complete the Contracted Work by the specified deadlines set forth in the Design-Build Contract, subject only to extensions of time arising from (a) any Relief Event, (b) a Borrower-caused delay, or (c) any other circumstances expressly set forth in the Design-Build Contract that extend the Contracted Work deadlines, in each case in accordance with the Design-Build Contract. Design-Build Contractor shall exercise its best efforts to achieve Passenger Service Availability on or before the Planned Early PSA Date, March 31, 2023, as such date may be extended from time to time pursuant to the Design-Build Contract. Promptly after achieving Passenger Service Availability, Design-Build Contractor is required to perform all remaining Contracted Work required to achieve Final Completion.

### *Nonconforming Work*

If Design-Build Contractor has not performed the Contracted Work in conformity with the DB Documents, then, in addition to any other remedies available to the Borrower, the Borrower may direct Design-Build Contractor to, and Design-Build Contractor shall, remove and replace or otherwise remedy the Nonconforming Work, without entitlement to make a claim in connection with such Contracted Work. Promptly after Nonconforming Work is identified, Design-Build Contractor is required to submit a remedial plan to the Borrower, for review and approval, describing the error or defect giving rise to the Nonconforming Work and describing Design-Build Contractor's planned remedial action. The Department or the Borrower (with respect to the Borrower only, prior to the Passenger Service Availability Date) shall have the right to cause Nonconforming Work to be removed, replaced or otherwise remedied and the Borrower shall have the right to withhold or deduct the costs from any monies due or that become due to Design-Build Contractor under the DB Documents upon (a) any failure of Design-Build Contractor to provide a proposed remedial plan as described above and obtain the Department and Borrower's approval thereof, or (b) any failure of Design-Build Contractor to comply with the Department's direction under the DBFOM Agreement or the Borrower's direction under the DBFOM Agreement relating to any safety issue, including safety compliance orders.

### *Subcontractors; Disadvantaged Business Enterprise Participation; Labor Standards*

The Design-Build Contractor is entitled to enter into one or more subcontracts with subcontractors to perform portions of the Contracted Work. The Design-Build Contractor is required to utilize as subcontractors in performance of the Design Work the services of firms certified as Small Business Enterprise, Local Business Enterprise, Local Small Business Enterprise or Local State Disabled Veteran Business Enterprise firms at certain specified minimum participation levels. Further, in performing the Contracted Work, the Design-Build Contractor is required to comply, and require all subcontractors to comply, with all applicable federal and California labor, occupational safety and health laws and orders, including payment of prevailing wages. For a more detailed description of these requirements under the Design-Build Contract, see APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT— Subcontractors; Disadvantaged Business Enterprise Participation; Labor Standards."

### *Insurance*

The Design-Build Contractor shall procure and maintain, or cause to be procured or maintained, the insurance policies identified in the Design-Build Contract as the responsibility of the Design-Build Contractor strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in the Design-Build Contract. The Borrower shall procure and maintain, or cause to be procured or maintained, the insurance policies identified in the Design-Build Contract as the responsibility of the Borrower strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in the Design-Build Contract. All insurance required under the Design-Build Contract shall be procured from insurers that at the time coverage commences are authorized to do business in California and have a current policyholder's management and financial size category rating of not less than A-:VII according to A.M. Best's Financial Strength Rating and Financial Size Category, except as otherwise approved in writing by the Borrower in its reasonable discretion. For a more detailed description of the insurance requirements under the Design-Build Contract, see APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Insurance."

## *Indemnities*

Indemnities by the Design-Build Contractor. Subject to certain limitations on the Design-Build Contractor's indemnification obligations under the Design-Build Contract, the Design-Build Contractor shall indemnify and hold harmless the Indemnified Parties and the Borrower from and against any and all claims, causes of action, suits, investigations, legal or administrative proceedings, demands and losses, in each case if asserted or incurred by or awarded to any third party, to the extent that such amounts are claimed by any Indemnified Party against the Borrower pursuant to the DBFOM Agreement, and to the extent caused by, among other things, any act, omission, neglect or misconduct by any Design-Build Contractor-related entity in the manner or method of executing the Contracted Work satisfactorily or due to the failure to perform the Contracted Work, including (a) any neglect in safeguarding the Contracted Work, (b) use of unacceptable materials in performance of the Contracted Work or other defect in the Contracted Work, (c) faulty, inadequate or improper temporary drainage during construction, (d) the use, misuse, storage or handling of explosives in performance of the Contracted Work, or (e) other breach, alleged breach or violation of the Design-Build Contractor's obligations under the DB Documents or any subcontract.

The Design-Build Contractor shall indemnify and hold harmless each Non-Sub Borrower-Related Entity from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) the Design-Build Contractor's failure to comply with any of its obligations under the Design-Build Contract, other than (i) any such failure that arises from an act or omission of the Department, the Borrower, any Non-Sub Borrower-Related Entity, the O&M Contractor, any O&M Contractor-related entity, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the Design-Build Contract (including as determined pursuant to dispute resolution procedures under the Design-Build Contract) or by applicable law; or (b) negligent acts or omissions, fraud or willful misconduct of the Design-Build Contractor or any Design-Build Contractor-related entity. For a detailed description of the Design-Build Contractor's indemnities under the Design-Build Contract, see APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Indemnities—*Indemnities by the Design-Build Contractor.*"

Indemnities by the Borrower. Subject to certain limitations on the Borrower's indemnification obligations under the Design-Build Contract, the Borrower shall indemnify and hold harmless each Design-Build Contractor-related entity from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) a failure to comply in any material respect with any of its obligations under the Design-Build Contract by the Borrower, other than (i) any such failure that arises from an act or omission of the Department, the Design-Build Contractor, any Design-Build Contractor-related entity, the O&M Contractor, any O&M Contractor-related entity, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the Design-Build Contract (including as determined pursuant to dispute resolution procedures under the Design-Build Contract) or by applicable law; or (b) negligent acts or omissions, fraud or willful misconduct of the Borrower or any Non-Sub Borrower-Related Entity.

## *Changes*

LAWA Changes. Pursuant to the procedures set forth in, and subject to certain restrictions under, the DBFOM Agreement, the Department may at any time make changes to the Work, including additions or reductions in the scope of the Contracted Work, or changes to the requirements applicable to the Contracted Work, as it may direct in its sole discretion. If the Department initiates a LAWA Change, the Design-Build Contractor shall, to the extent such LAWA Change relates to the Contracted Work and as part of the Contracted Work, fulfill the obligations of the Borrower under the DBFOM Agreement with respect to such LAWA Change.

If the Borrower receives a request for change proposal from the Department pursuant to the DBFOM Agreement which relates, in whole or in part to the Contracted Work, it will promptly forward a copy of such request to the Design-Build Contractor. The Borrower may also request a change proposal from the Design-Build Contractor if the Borrower desires to initiate or evaluate whether to initiate a Developer Change with respect to the Contracted Work. The Design-Build Contractor shall provide the Borrower with a change proposal to the extent that the request for change proposal relates to the Contracted Work. The Design-Build Contractor and the Borrower are required to engage in good faith negotiations to reach agreement on the terms of a change order. The Design-

Build Contractor acknowledges in the Design-Build Contract that the Borrower and the Department shall also engage in good faith negotiations pursuant to the DBFOM Agreement, with the Design-Build Contractor's participation subject to the consent of the Department, to reach agreement on the terms of a change order.

If the parties do not agree on a change proposal, then the Borrower may seek to resolve any points of disagreement through the dispute resolution procedures under the Design-Build Contract. The Design-Build Contractor acknowledges in the Design-Build Contract that if the Borrower and the Department do not agree on a change proposal issued to the Department pursuant to the DBFOM Agreement, the Department may (in its discretion) deliver to the Borrower a directive letter or may seek to resolve any points of disagreement through the dispute resolution procedures under the DBFOM Agreement without issuing a directive letter. If the directive letter does not state that the Work constitutes a LAWA Change, the Design-Build Contractor shall proceed with the relevant portion of the Contracted Work as directed but may assert a Relief Event claim in accordance with the procedures under the Design-Build Contract. If the directive letter provides for the implementation of a LAWA Change, the Design-Build Contractor is required to deliver to the Borrower a change proposal and the parties are to subsequently follow the procedures and provisions under the Design-Build Contract relating to the negotiation of change orders.

Scope Changes Initiated by the Borrower. The Borrower may propose (a) a change request pursuant to the DBFOM Agreement, (b) deviations pursuant to the DBFOM Agreement and (c) a change to the Contracted Work. However, the Borrower shall not, without the prior consent of the Design-Build Contractor, initiate any such change proposal that would, singularly or in the aggregate, involve an alteration in the scope of the Contracted Work of such magnitude that it could reasonably be expected to materially impact the Design-Build Contractor's ability to achieve Passenger Service Availability by the Planned Early PSA Date, or to achieve any Milestone by the applicable date, or otherwise materially and adversely affect the Contracted Work. The Design-Build Contractor shall, to the extent applicable, reasonably cooperate with the Borrower in preparing information required by the DBFOM Agreement for seeking the Department's approval of a change proposal.

Scope Changes Initiated by the Design-Build Contractor. By submittal of a Design-Build Contractor change request, the Design-Build Contractor may request the Borrower to obtain the Department's approval of: (a) changes to the requirements of the relevant Technical Provisions; (b) changes to the proposal commitments of the Design-Build Contractor as set forth in the Design-Build Contract; or (c) adjustments to the D&C Limits. Subject to certain exceptions set forth in the Design-Build Contract, the Borrower shall submit any Design-Build Contractor change request to the Department pursuant to the DBFOM Agreement and the provisions of the DBFOM Agreement applicable to a change request from the Borrower shall apply.

### *Relief Events*

Relief Event Process. If a Relief Event occurs, subject to certain limitations and exclusions provided under the Design-Build Contract, the Design-Build Contractor may, in accordance with the process set forth in the Design-Build Contract, seek additional compensation, time extension and/or other relief based on the entitlements for specific Relief Events. Time is of the essence in the Design-Build Contractor's delivery of (a) Relief Event notices and updates thereto; and (b) Relief Event claims and updates thereto. For a detailed description of the process relating to Relief Events, see APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Relief Events—*Relief Event Process*."

Relief Events during Design-Build Early Works. Any Relief Event that affected performance of the Design-Build Early Works shall be deemed to have occurred under the Design-Build Contract. The Design-Build Contractor shall be entitled to submit a corresponding relief event claim under the Design-Build Contract, subject to the limitations and exceptions expressly provided in the Design-Build Contract, and provided that the Design-Build Contractor has complied with the relief event provisions in the Design-Build Contract.

Compensation and Other Relief for Relief Events. If a Relief Event occurs, subject to certain requirements under the Design-Build Contract and any limitations and exceptions expressly provided in the Design-Build Contract, the Design-Build Contractor may be entitled to the following types of relief: (a) defense to certain obligations; (b) extension of contract deadlines, (c) Incremental Costs; and (d) delayed payment compensation. For a detailed description of the types of relief available to the Design-Build Contractor, see APPENDIX D-6—

*“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Relief Events—Compensation and Other Relief for Relief Events.”*

**Mitigation.** The Design-Build Contractor shall take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice. Any compensation, time extension or other relief to which the Design-Build Contractor is entitled under the Design-Build Contract shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Design-Build Contractor.

*Noncompliance Points and Deductions*

The Design-Build Contract identifies certain breaches or failures in performance of obligations by the Design-Build Contractor under the DB Documents. A Noncompliance Occurrence becomes a “Noncompliance Event” if: (a) Design-Build Contractor has not rectified such occurrence within the applicable rectification period (if any); or (b) following the expiration of a rectification period, the Design-Build Contractor has not rectified such occurrence within any further interval of recurrence. A Noncompliance Event will result in the assessment of either or both (a) noncompliance points and (b) noncompliance deductions, in each case as indicated in the DB Noncompliance Occurrence tables. Noncompliance points are a system to measure the Design-Build Contractor’s performance levels during the design and construction phases of the APM Project. In addition to noncompliance points, DB Noncompliance Events may result in the assessment of noncompliance deductions in accordance with the payment provisions of the Design-Build Contract. If the amount of noncompliance deductions calculated in accordance with the Design-Build Contract, combined with the amount of any other adjustments that the Borrower makes to a monthly progress payment in accordance with the terms of the DB Documents, would reduce any monthly progress payment to less than 90% of the applicable monthly progress payment amount, then the excess of such noncompliance deductions amount and any other adjustment amount shall accrue and be added to the noncompliance deduction for the subsequent monthly progress payment until such accrued amount has been deducted in full.

*Termination of the Design-Build Contract*

**Design-Build Contractor Default and Borrower Remedies.** Subject to certain limitations set forth in the Design-Build Contract (including applicable cure periods), the Design-Build Contractor shall be in breach under the Design-Build Contract upon the occurrence of any one or more Design-Build Contractor Defaults. For a detailed list of all Design-Build Contractor Defaults under the Design-Build Contract, see APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the Design-Build Contract—*Design-Build Contractor Default and Borrower Remedies.*”

If any Design-Build Contractor Default occurs and has not been cured within the applicable cure period, the Borrower may terminate the Design-Build Contract upon notice to the Design-Build Contractor. As a consequence of any termination for Design-Build Contractor Default, the Design-Build Contractor shall pay to the Borrower compensation, which if the DBFOM Agreement is also terminated, equals, among other amounts, Direct Losses incurred by Borrower in connection with the terminations of the DBFOM Agreement and the Design-Build Contract, including amounts due and payable under the DBFOM Agreement and the Financing Documents that would not have been payable at that time but for the terminations of the DBFOM Agreement and the Design-Build Contract, as further calculated in accordance with the Design-Build Contract. Where the DBFOM Agreement is not terminated, then the Design-Build Contractor must also pay, among other amounts, amounts necessary for Borrower to procure the performance of the Contracted Work by a replacement contractor. The Department, under the DBFOM Agreement, and the Borrower, under the Design-Build Contract also, have respective step-in rights and suspension rights for the APM Project under certain circumstances. In addition, the Department may make demand upon and enforce the performance bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to the Department under the DBFOM Agreement with respect to such Design-Build Contractor Default in any order. For a detailed description of the Department’s and the Borrower’s remedies for a Design-Build Contractor Default, see APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the Design-Build Contract—*Design-Build Contractor Default and Borrower Remedies.*”

Developer DB Default and Design-Build Contractor Remedies. Subject to certain limitations set forth in the Design-Build Contract (including applicable cure periods), the Borrower shall be in breach under the Design-Build Contract upon the occurrence of any one or more Developer DB Defaults. For a detailed list of all Developer DB Defaults under the Design-Build Contract, see APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the Design-Build Contract— Developer DB Default and Design-Build Contractor Remedies.”

If a Developer DB Default remains uncured following (i) notice and expiration of the applicable cure period, and (ii) the Design-Build Contractor’s compliance with the applicable warning requirements, the Design-Build Contractor shall have the right to terminate the Design-Build Contractor upon notice to the Borrower. In the event of such termination, the Borrower shall pay to the Design-Build Contractor compensation calculated in accordance with the Design-Build Contract. Subject to the DB Lenders’ Direct Agreement, Design-Build Contractor may suspend the Contracted Work if the Borrower fails to make any payment due to the Design-Build Contractor under the Design-Build Contract when due, provided that such payment is not subject to a dispute.

Termination Following Termination of the DBFOM Agreement for Convenience, Insurance Unavailability, Court Ruling or LAWA Default. Upon any termination of the DBFOM Agreement for convenience, condemnation, insurance unavailability, court ruling or LAWA Default of the DBFOM Agreement, the Borrower shall pay to the Design-Build Contractor compensation calculated in accordance with the Design-Build Contract.

Termination for Extended Delay Events. Either party may deliver to the other party notice of its conditional election to terminate the Design-Build Contract if a Force Majeure Event, a Qualifying Change in Law (other than City ordinances), an earthquake or tidal wave that causes physical damage to the APM Project or terrorism has occurred and certain other conditions set forth in the Design-Build Contract have been met. The Borrower shall not have the right to terminate the Design-Build Contract as a result of any Extended Delay Event unless the DBFOM Agreement is also terminated. If the Department delivers a notice of conditional termination to the Borrower pursuant to the DBFOM Agreement, the Borrower shall have the option either to accept such notice or to continue with the Design-Build Contract. The Design-Build Contractor acknowledges the options available to the Borrower and to the Department if it delivers a notice of conditional termination to the other party pursuant to the DBFOM Agreement. The Design-Build Contractor may issue an equivalent claim notice in relation to the Borrower’s rights pursuant to the DBFOM Agreement. If either the Department or the Borrower accepts, or is deemed to accept, the other party’s conditional election to terminate, then the Design-Build Contract is deemed terminated on an early termination date that is 30 days after the date of acceptance or deemed acceptance of the conditional election to terminate, and the Borrower shall pay to the Design-Build Contractor compensation calculated in accordance with the Design-Build Contract.

Termination Following Termination of the DBFOM Agreement for Developer Default. Upon any termination of the DBFOM Agreement for Developer Default that is not caused by a Design-Build Contractor Default, the Design-Build Contract shall terminate on the effective date of such termination and the Borrower shall pay to the Design-Build Contractor compensation calculated in accordance with the Design-Build Contract.

Termination Following Termination of the DBFOM Agreement for Suspension of Work. Upon any termination of the DBFOM Agreement for suspension of Work, the Design-Build Contract shall terminate on the effective date of such termination, and the Borrower shall pay to the Design-Build Contractor compensation calculated in accordance with the Design-Build Contract.

Miscellaneous Compensation Provisions. To the extent that any termination compensation calculated pursuant to the Design-Build Contract is calculated to be less than zero, then such termination compensation will be deemed to equal zero.

#### *Amended and Restated Design-Build Contract*

The Borrower and the Design-Build Contractor have agreed to a draft amended and restated Design-Build Contract, to be executed and delivered on or prior to Financial Close, which is anticipated to result in certain changes to the terms and conditions of the Design-Build Contract.

Such changes include the Delay Liquidated Damages amounts and LD Cap described in “—Liquidated Damages,” which will be updated as of Financial Close to reflect an interest rate adjustment (see APPENDIX C—“REPORT OF THE LENDERS’ TECHNICAL ADVISOR” for the updated Delay Liquidated Damages amounts and LD Cap). For a description of liquidated damages in the Design-Build Contract, see APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Liquidated Damages.”

The foregoing is a summary of certain provisions of the draft amended and restated Design-Build Contract and is not a full statement of the terms of such agreement. Accordingly, the foregoing summary is qualified in its entirety by reference to such agreement and is subject to the full text of the final agreement to be executed on or prior to Financial Close. A copy of such agreement will be available following its execution, free of charge, upon request from the Borrower or the Trustee.

## **O&M Contract**

Operations and maintenance work for the APM Project will be undertaken by the O&M Contractor, pursuant to the O&M Contract, dated as of April 11, 2018, between the Borrower and the O&M Contractor.

### *Back-to-Back Obligations*

Subject to the terms and conditions of the O&M Contract, the O&M Contractor is required to assume all costs and expenses arising from the performance of the O&M Activities and, on a back-to-back basis, comply with all of the Borrower’s obligations and liabilities set forth in the DBFOM Agreement to the extent that they relate to such O&M Activities.

### *Scope of O&M Activities*

The O&M Contractor is responsible for the performance of the O&M Activities in accordance with all applicable laws, Governmental Approvals, Good Industry Practice and the requirements specified in the O&M Documents. The scope of the O&M Activities includes:

Governmental Approvals. The O&M Contractor is responsible for obtaining all Governmental Approvals required for the O&M Activities, other than the approvals provided by the Department, and bears the risk of any delay in obtaining such approvals (except as expressly set forth in the O&M Contract), as well as the risk of conditions imposed on performance of the O&M Activities by such approvals.

Security and Incident Response. The O&M Contractor is responsible for protecting the APM System from damage and providing safe operation of the APM System throughout the O&M Period.

Utilities. Throughout the O&M Period, utility owners will apply for additional utility permits to install new utilities that may cross or longitudinally occupy the O&M Limits, or to modify, repair, upgrade, relocate or expand existing utilities within the O&M Limits. In such circumstances, the O&M Contractor is required to: (a) assist the Borrower and the Department in providing comments regarding such permit applications; (b) make available upon request the most recent APM Project design information and/or record documents, as applicable, to the applicants; (c) assist each applicant with information regarding the location of other proposed and existing utilities; and (d) use commercially reasonable efforts to coordinate work schedules with such applicants as appropriate to avoid interference, if possible, with the O&M Activities by applicants’ activities. The O&M Contractor is also required to monitor utilities and utility owners within the O&M Limits for compliance with applicable utility permits, easements, and applicable law, and to use diligent efforts to obtain the cooperation of each utility owner having utilities within the O&M Limits.

Hazardous Materials. Subject to certain exceptions set forth in the O&M Contract, the O&M Contractor is required to perform, or cause to be performed, all hazardous materials management required in connection with the APM Project in accordance with applicable law, Governmental Approvals, the approved environmental protection program, and all applicable provisions of the O&M Contract and the other O&M Documents. If the O&M Contractor fails to undertake the hazardous materials management required under the O&M Contract within a



reasonable time after discovery of hazardous materials, taking into consideration the nature and extent of the contamination and action required and the potential impact upon the O&M Contractor's schedule for use of and operations on the site, the Department may notify the Borrower and the O&M Contractor that it will itself undertake the hazardous materials management or procure a contractor to perform such work, in which case the Department is required to do so in accordance with all applicable environmental laws. The O&M Contractor is required to reimburse the Department on a current basis for fines, penalties or other assessments against the Department or the APM Project by Governmental Entities due to the O&M Contractor's delay or failure to undertake the hazardous materials management, so long as the Department has performed in accordance with the terms of the DBFOM Agreement. The O&M Contractor is also responsible, on behalf of the Borrower, for the management of all pre-existing hazardous materials encountered in connection with applicable law, subject to certain limitations set forth in the O&M Contract.

Renewal Work. The O&M Contractor is required to diligently perform renewal work as and when necessary to comply with the O&M Documents, to achieve full design life for each asset, supporting reliable and quality service operations and availability.

Handback. The O&M Contractor is required to diligently perform and complete all renewal work required to be performed and completed before the termination of the O&M Contract, based on the required adjustments and changes to the asset management plan resulting from the inspections and analysis under the handback requirements. Upon the termination of the O&M Contract, the O&M Contractor is required to surrender the APM Project, including any upgrades, to the Borrower, in the condition and meeting all of the handback requirements. If the Department determines that the APM Project does not comply with any handback requirement, or if handback renewal work is not timely or properly performed, then, in addition to the Borrower's rights under the O&M Documents, the O&M Contractor is required to, subject to the limitations on liability provided in the O&M Contract, indemnify the Borrower for any liability to the Department for the Department's recoverable costs incurred in bringing the APM Project into compliance with such handback requirements. The O&M Contract sets forth the procedures relating to the calculation of the handback reserve amount and the mechanics of the handback requirements reserve account and the handback requirements letters of credit.

#### *Payments to the O&M Contractor*

In consideration of the O&M Contractor performing its obligations under the O&M Contract, and subject to the terms and conditions of the O&M Contract, the Borrower is required to pay the O&M Contractor monthly performance payments and rehabilitation payments. The Borrower may make deductions from O&M Payments in accordance with the payment mechanism of the O&M Contract. In addition, in consideration of such mobilization activities undertaken by the O&M Contractor pursuant to the O&M Contract, the Borrower is required to pay the O&M Contractor mobilization payments. The Borrower may also pay the O&M Contractor additional mobilization payments relating to a potential additional station.

Whenever a provision in the O&M Contract provides that any compensation payable to the O&M Contractor, or any relief from deductions to the O&M Payments, is subject to the pay-if-paid provisions of the O&M Contract, the O&M Contractor's entitlement to such compensation or relief from deductions under the O&M Contract is conditional upon and will only be provided by the Borrower to the O&M Contractor to the extent that the Borrower actually receives the corresponding amount of compensation or relief from deductions from the Department under the DBFOM Agreement. See APPENDIX D-7—"SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor—Pay-If-Paid Provisions."

#### *Equivalent Project Relief*

To the extent that the Borrower has a right, entitlement, remedy or defense under the DBFOM Agreement which relates to the O&M Activities or the rights or obligations of the O&M Contractor under the O&M Contract, the O&M Contractor is entitled to receive the benefit of such rights in accordance with and subject to the equivalent project relief provisions of the O&M Contract.

### *Limitations on Liability*

The maximum aggregate liability of the O&M Contractor to the Borrower under the O&M Contract, including for default, breach, negligence, indemnity obligations or otherwise in connection with the O&M Activities, arising during any calendar year during the O&M Term, up to and but not including the Termination Event Date (as defined below), shall not exceed the liability cap for that calendar year. The liability cap (a) for any calendar year ending on or before the end of the first 12 months of the O&M Period is equal to 100% of the Service Fee Reference Amount for the first calendar year of the O&M Period and (b) for any calendar year ending after the end of the first 12 months of the O&M Period, up to but not including the Termination Event Date, is equal to 100% of the Service Fee Reference Amount for the preceding calendar year.

If, at any time, the O&M Contractor has incurred liability under the O&M Contract or otherwise in connection with the O&M Activities in an aggregate amount that exceeds 150% of the average Service Fee Reference Amount over the O&M Period, the O&M Contractor may terminate the O&M Contract by giving 90 calendar days' written notice to the Borrower. Such termination shall be deemed to be a termination of the O&M Contract for an O&M Contractor Default.

If by reason of an O&M Contractor Default: (a) the O&M Contract is terminated, or (b) the O&M Contract is subject to termination but has not been terminated by the Borrower, the maximum aggregate liability of the O&M Contractor to the Borrower on the occurrence of the events referred to in the limitations on liability above, and in respect of any and all losses, events, costs, expenses or claims flowing therefrom or accruing thereafter, shall not exceed an amount equal to 150% of the Service Fee Reference Amount for the 12-month period ending on the Termination Event Date. Such limitation on liability shall not be reduced on account of any liabilities incurred by the O&M Contractor prior to the Termination Event Date.

Each of the foregoing limitations on liability is subject to certain exceptions set forth in the O&M Contract. See APPENDIX D-7—"SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Limitations on Liability."

### *Performance Security*

Letters of Credit. Thirty days prior to the Passenger Service Availability Date, the O&M Contractor is required to deliver to the Borrower, and thereafter maintain, an irrevocable, direct pay standby letter of credit or multiple letters of credit, or any other form of liquid security reasonably acceptable to the Borrower and the Collateral Agent, securing the performance of the obligations of the O&M Contractor under the O&M Contract and in an aggregate amount equal to 40% of the Service Fee Reference Amount payable to the O&M Contractor in the first 12 months following the Passenger Service Availability Date. For the remainder of the O&M Term, upon each anniversary date of the delivery by the O&M Contractor of such letters of credit, such letters of credit must be replaced or renewed by the O&M Contractor by the delivery to the Borrower prior to each such anniversary date of a replacement for such letters of credit (or a renewal of the previous letters of credit) in an aggregate amount equal to 40% of the Service Fee Reference Amount payable for the immediately following 12-month period. The O&M Contract requires that the letters of credit be issued by a financial institution with a credit rating of "A3" or better according to Moody's Investors Services, "A-" or better according to Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc., or "A-" or better according to Fitch, and with an office in New York, New York or Los Angeles, California at which the letter of credit can be presented for payment, or if such financial institution does not have an office in any of such cities at which the letter of credit may be presented for payment, then it must accept presentation of the letter of credit, sight draft and certificate by facsimile transmission to a location in the United States. In addition, the City is required to be a transferee beneficiary under the letters of credit, and the letters of credit will be transferable to the City in certain circumstances specified in the DBFOM Agreement.

Guarantees. Each O&M Guarantor is required to execute and deliver to the Borrower a guaranty, guarantying performance of the obligations of the O&M Contractor by its respective subsidiary O&M Contractor member. The rights and benefits of the parent guarantees are assignable, concurrent with a like assignment of the O&M Contract, to the Collateral Agent and its designees in accordance with the terms of the O&M Lenders' Direct Agreement. Any guaranty provided under the O&M Contract must meet the requirements set forth in the DBFOM

Agreement and be enforceable by the Department as a transferee beneficiary under certain circumstances specified in the DBFOM Agreement. So long as the Borrower or a Lender is diligently pursuing remedies under a guaranty, the Department has agreed under the DBFOM Agreement to forbear from exercising remedies under any such guaranty that names the Department as a direct beneficiary, and exercising its right to become a beneficiary under the DBFOM Agreement.

### *Insurance*

The O&M Contractor shall procure and maintain, or cause to be procured or maintained, the insurance policies identified in the O&M Contract as the responsibility of the O&M Contractor strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in the O&M Contract. Subject to certain exceptions set forth in the O&M Contract, all insurance required under the O&M Contract shall be procured from insurers that at the time coverage commences are authorized to do business in California and have a current policyholder's management and financial size category rating of not less than A-:VII according to A.M. Best's Financial Strength Rating and Financial Size Category. All insurance coverage required to be provided by the Borrower or the O&M Contractor, as applicable, with certain exceptions set forth in the O&M Contract, shall apply specifically and exclusively for the APM Project and extend to all aspects of the O&M Activities, with coverage limits dedicated solely to the APM Project, except as otherwise specified in the O&M Contract. For a more detailed description of the insurance requirements under the O&M Contract, see APPENDIX D-7—"SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Insurance."

### *Indemnities*

Indemnities by the O&M Contractor. Subject to certain limitations on the O&M Contractor's indemnification obligations under the O&M Contract, the O&M Contractor shall indemnify and hold harmless the Indemnified Parties and the Borrower from and against any and all claims, causes of action, suits, investigations, legal or administrative proceedings, demands and losses, in each case if asserted or incurred by or awarded to any third party, to the extent that such amounts are claimed by any Indemnified Party against the Borrower pursuant to the DBFOM Agreement, and to the extent caused by, among other things, any act, omission, neglect or misconduct by any O&M Contractor-related entity in the manner or method of executing the O&M Activities satisfactorily or due to the failure to perform the O&M Activities, including (a) any neglect in safeguarding the O&M Activities, (b) use of unacceptable materials in performance of the O&M Activities, (c) faulty, inadequate or improper temporary drainage during construction, (d) the use, misuse, storage or handling of explosives in performance of the O&M Activities, or (e) other breach, alleged breach or violation of the O&M Contractor's obligations under the O&M Contract, the O&M Documents or any subcontract.

Subject to the provisions on limitations on liability under the O&M Contract, the O&M Contractor shall indemnify and hold harmless each Non-Sub Borrower-Related Entity from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) the O&M Contractor's failure to comply with any of its obligations under the O&M Contract, other than (i) any such failure that arises from an act or omission of the Department, the Borrower, any Non-Sub Borrower-Related Entity, the Design-Build Contractor, any Design-Build Contractor-related entity, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the O&M Contract (including as determined pursuant to the dispute resolution procedures under the O&M Contract); or (b) negligent acts or omissions, fraud or willful misconduct of the O&M Contractor or any O&M Contractor-related entity. For a detailed description of the O&M Contractor's indemnities under the O&M Contract, see APPENDIX D-7—"SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Indemnities—*Indemnities by the O&M Contractor.*"

Indemnities by the Borrower. Subject to certain limitations on the Borrower's indemnification obligations under the O&M Contract, the Borrower shall indemnify and hold harmless each O&M Contractor-related entity from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) a failure to comply in any material respect with any of its obligations under the O&M Contract by the Borrower, other than (i) any such failure that arises from an act or omission of the Department, the Design-Build Contractor, any Design-Build Contractor-related entity, the O&M Contractor, any O&M Contractor-related entity or a Relief Event, including any Compensation Event or Non-Compensation Event, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the O&M Contract

(including as determined pursuant to the dispute resolution procedures under the O&M Contract) or by applicable law; or (b) grossly negligent acts or omissions, fraud or willful misconduct of the Borrower or any Non-Sub Borrower-Related Entity.

### *Changes*

LAWA Changes. Pursuant to the procedures set forth in, and subject to certain restrictions under, the DBFOM Agreement, the Department may at any time make changes to the Work, including additions or reductions in the scope of the O&M Activities, or changes to the requirements applicable to the O&M Activities, as it may direct in its sole discretion. If the Department initiates such LAWA Change, the O&M Contractor shall, to the extent applicable to the O&M Activities and as part of the O&M Activities, fulfill the obligations of the Borrower under the DBFOM Agreement with respect to such LAWA Change.

If the Borrower receives a request for change proposal from the Department pursuant to the DBFOM Agreement which relates, in whole or in part to the O&M Activities, it will promptly forward a copy of such request to the O&M Contractor. The Borrower may also request a change proposal from the O&M Contractor if the Borrower desires to initiate or evaluate whether to initiate a Developer Change Order. The O&M Contractor shall provide the Borrower with a change proposal to the extent that the request for change proposal relates to the O&M Activities. The O&M Contractor and the Borrower are required to engage in good faith negotiations to reach agreement on the terms of a change order. The O&M Contractor acknowledges in the O&M Contract that the Borrower and the Department shall also engage in good faith negotiations pursuant to the DBFOM Agreement, with the O&M Contractor's participation subject to the consent of the Department, to reach agreement on the terms of a change order.

If the parties do not agree on a change proposal, then the Borrower may seek to resolve any points of disagreement through the dispute resolution procedures under the O&M Contract. The O&M Contractor acknowledges in the O&M Contract that if the Borrower and the Department do not agree on a change proposal issued to the Department pursuant to the DBFOM Agreement, the Department may (in its discretion) deliver to the Borrower a directive letter. If the directive letter does not state that the Work constitutes a LAWA Change, the O&M Contractor shall proceed with the relevant portion of the O&M Activities as directed but may assert a Relief Event claim in accordance with the procedures under the O&M Contract. If the directive letter provides for the implementation of a LAWA Change, the O&M Contractor is required to deliver to the Borrower a change proposal and the parties are to subsequently follow the procedures and provisions under the O&M Contract relating to the negotiation of change orders.

Scope Changes Initiated by the Borrower. The Borrower may propose a change request pursuant to the DBFOM Agreement. However, the Borrower (a) shall not, without prior consent of the O&M Contractor, initiate any change request that would, singularly or in the aggregate, involve an alteration in the scope of the O&M Activities of such magnitude that it could reasonably be expected to materially and adversely affect the O&M Activities or (b) otherwise initiate any change order that relates to the O&M Activities without first consulting with the O&M Contractor. The O&M Contractor shall reasonably cooperate with the Borrower in preparing information required under the DBFOM Agreement to seek the Department's approval of a change request.

Scope Changes Initiated by the O&M Contractor. By submittal of an O&M Contractor change request, the O&M Contractor may request the Borrower to seek the Department's approval of: (a) changes to the requirements of the relevant Technical Provisions; or (b) changes to proposal commitments under the DBFOM Agreement. Subject to certain exceptions set forth in the O&M Contract, the Borrower shall submit any O&M Contractor change request to the Department pursuant to the DBFOM Agreement and the provisions of the DBFOM Agreement applicable to a change request from the Borrower shall apply.

### *Relief Events*

Relief Event Process. If a Relief Event occurs, subject to certain limitations and exclusions provided under the O&M Contract, the O&M Contractor may, in accordance with the process set forth in the O&M Contract, seek additional compensation, time extension and/or other relief based on the entitlements for specific Relief Events. Time is of the essence in the O&M Contractor's delivery of (a) Relief Event notices and updates thereto; and (b)

Relief Event claims and updates thereto. For a detailed description of the process relating to Relief Events, see APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Relief Events—*Relief Event Process*.”

Compensation and Other Relief for Relief Events. If a Relief Event occurs, subject to certain requirements under the O&M Contract and any limitations and exceptions expressly provided in the O&M Contract, the O&M Contractor may be entitled to the following types of relief: (a) defense to certain obligations; and (b) Incremental Costs. For a detailed description of the types of relief available to the O&M Contractor, see APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Relief Events—*Compensation and Other Relief for Relief Events*.”

Mitigation. The O&M Contractor shall take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice. Any compensation, time extension or other relief to which the O&M Contractor is entitled under the O&M Contract shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the O&M Contractor.

#### *Noncompliance Points and Deductions*

The O&M Contract identifies certain breaches or failures in performance of obligations by the O&M Contractor under the O&M Documents. A Noncompliance Occurrence becomes an O&M Noncompliance Event if: (a) the O&M Contractor has not rectified such occurrence within the applicable rectification period (if any); or (b) following the expiration of a rectification period, the O&M Contractor has not rectified such occurrence within any further interval of recurrence. An O&M Noncompliance Event will result in the assessment of either or both (a) noncompliance points and (b) noncompliance deductions, in each case as indicated in the O&M Noncompliance Occurrence tables. Noncompliance points are a system to measure the O&M Contractor’s performance levels during the operations and maintenance phases of the APM Project. In addition to noncompliance points, O&M Noncompliance Events may result in the assessment of noncompliance deductions and unavailability deductions in accordance with the payment provisions of the O&M Contract.

#### *Termination of the O&M Contract*

O&M Contractor Default and Borrower Remedies. Subject to certain limitations set forth in the O&M Contract (including applicable cure periods), the O&M Contractor shall be in breach under the O&M Contract upon the occurrence of any one or more O&M Contractor Defaults. For a detailed list of all O&M Contractor Defaults under the O&M Contract, see APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—*O&M Contractor Default and Borrower Remedies*.”

If any O&M Contractor Default occurs and has not been cured within the applicable cure period, the Borrower may terminate the O&M Contract upon notice to the O&M Contractor. As a consequence of any termination for O&M Contractor Default, the O&M Contractor shall pay to the Borrower, among other amounts, compensation equal to Direct Losses incurred by the Borrower in connection with the terminations of the DBFOM Agreement and the O&M Contract, including amounts due and payable under the DBFOM Agreement and the Financing Documents that would not have been payable at that time but for the terminations of the DBFOM Agreement and the O&M Contract as further calculated in accordance with the O&M Contract. Where the DBFOM Agreement is not terminated, then the O&M Contractor must also pay, among other amounts, amounts necessary for Borrower to procure the performance of the Contracted Work by a replacement contractor. The Department, under the DBFOM Agreement, and the Borrower, under the O&M Contract also have respective step-in rights and suspension rights for the APM Project under certain circumstances. In addition, the Borrower may make demand upon and enforce the parent guarantees, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to the Borrower with respect to such O&M Contractor Default in any order. For a detailed description of the Department’s and the Borrower’s remedies for an O&M Contractor Default, see APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—*O&M Contractor Default and Borrower Remedies*.”

Developer O&M Default and O&M Contractor Remedies. Subject to certain limitations set forth in the O&M Contract (including applicable cure periods), the Borrower shall be in breach under the O&M Contract upon the occurrence of any one or more of the following events or conditions: (a) the Borrower fails to make any payment due to the O&M Contractor under the O&M Contract when due, provided that such payment is not subject to a dispute; (b) breach or breaches by the Borrower of any of its material obligations under the O&M Contract (other than any breach or breaches that constitute Developer O&M Default under clause (a) or (c)); or (c) any representation or warranty made by the Borrower under the O&M Contract is false, misleading or inaccurate in any material respect when made or omits material information when made.

If a Developer O&M Default remains uncured following (a) notice and expiration of the applicable cure period, and (b) the O&M Contractor's compliance with the applicable warning requirements, the O&M Contractor shall have the right to terminate the O&M Contractor upon notice to the Borrower. In the event of such termination, the Borrower shall pay to the O&M Contractor compensation calculated in accordance with the O&M Contract. The O&M Contractor may also suspend performance of the O&M Activities (a) based on the Borrower's failure to pay undisputed amounts owing to the O&M Contractor of \$1,000,000 or more if such amounts are payable by the Department to the Borrower under the DBFOM Agreement, or (b) otherwise based on the Borrower's failure to pay undisputed amounts owing to the O&M Contractor of \$500,000.

Termination Following Termination of the DBFOM Agreement for Convenience, Insurance Unavailability, Court Ruling or LAWA Default. Upon any termination of the DBFOM Agreement for convenience, condemnation, insurance unavailability, court ruling or LAWA Default of the DBFOM Agreement, the Borrower shall pay to the O&M Contractor compensation calculated in accordance with the O&M Contract.

Termination for Extended Delay Events. Either party may deliver to the other party notice of its conditional election to terminate the O&M Contract if a Force Majeure Event, a Qualifying Change in Law (other than City ordinances), an earthquake or tidal wave that causes physical damage to the APM Project or terrorism has occurred and certain other conditions set forth in the O&M Contract have been met. If the O&M Contractor delivers a notice of conditional termination to the Borrower, the Borrower shall have the option either to accept such notice or to continue with the O&M Agreement. The O&M Contractor acknowledges the options available to the Borrower and to the Department if it delivers a notice of conditional termination to the other party pursuant to the DBFOM Agreement. The O&M Contractor may issue an equivalent claim notice in relation to the Borrower's rights pursuant to the DBFOM Agreement. If either the Department or the Borrower accepts, or is deemed to accept, the other party's conditional election to terminate, then the O&M Contract is deemed terminated on an early termination date that is 30 days after the date of acceptance or deemed acceptance of the conditional election to terminate, and the Borrower shall pay to the O&M Contractor compensation calculated in accordance with the O&M Contract.

Termination Following Termination of the DBFOM Agreement for Developer Default. Upon any termination of the DBFOM Agreement for Developer Default that is not caused by an O&M Contractor Default, and subject to the Department's step-in rights under the Direct Agreement, the O&M Contract shall terminate on the effective date of such termination and the Borrower shall pay to the O&M Contractor compensation calculated in accordance with the O&M Contract.

Termination Following Termination of the DBFOM Agreement for Suspension of Work. Upon any termination of the DBFOM Agreement for suspension of Work that is not caused by an O&M Contractor Default, the O&M Contract shall terminate on the effective date of such termination, and the Borrower shall pay to the O&M Contractor compensation calculated in accordance with the O&M Contract.

Miscellaneous Compensation Provisions. To the extent that any termination compensation calculated pursuant to the O&M Contract is calculated to be less than zero, then such termination compensation will be deemed to equal zero.

## Interface Agreement

The Borrower, the Design-Build Contractor and the O&M Contractor entered into the Interface Agreement on April 11, 2018 in order to commit to each other to work cooperatively and to effectively administer and determine any interrelation and/or conflict between the Contracted Work and the O&M Activities.

The parties agreed to cooperate to give effect to the purpose and intent of the Interface Agreement and agreed generally, among other things, that: (a) each of the Design-Build Contractor and the O&M Contractor undertakes not to unreasonably withhold or delay any approval, consent, agreement, information or response it is required to provide under its respective contract and which is required by the other contractor to the extent that the same is relevant to the discharge of its obligations under its respective contract and the Interface Agreement; (b) the Borrower undertakes not to unreasonably withhold or delay any approval, consent, agreement, information or response under the Interface Agreement to the extent the same is required for the discharge of a contractor's obligations under the Interface Agreement; and (c) each of the Design-Build Contractor and the O&M Contractor shall cause Design-Build Contractor-related entities and O&M Contractor-related entities, respectively, to work cooperatively and not to interfere with, obstruct, impede or delay one another in the performance of their obligations under their respective contracts, provided that the Design-Build Contractor and the O&M Contractor shall not be required to act in breach of their respective contracts.

The Interface Agreement sets forth certain specific obligations as between the parties, including the following: (a) each of the Design-Build Contractor and the O&M Contractor shall provide the other contractor with reasonable assistance with applying for and obtaining applicable Governmental Approvals; (b) the Design-Build Contractor shall provide the O&M Contractor with access to current construction and commissioning schedules and shall afford the O&M Contractor the opportunity to attend design/build progress meetings and design meetings; (c) the parties shall cooperate with each other to the extent that both contractors seek equivalent project relief under their respective contract in respect of the same matter, event or circumstance; (d) upon request by the Borrower, each of the Design-Build Contractor and the O&M Contractor shall contribute to and coordinate the preparation of a change proposal or a change request pursuant to the DBFOM Agreement in respect of any proposed LAWA Change that relates to both contractors' scope of work under their respective contract; (e) the contractors shall cooperate and work with each other in connection with the transition from the Design-Build Contractor to the O&M Contractor of care and control of, and responsibility for, the site and the infrastructure; (f) the contractors shall discuss how to implement any management or remediation plan for any hazardous materials for which each contractor is responsible for under its respective contract; and (g) by the Passenger Service Availability Date, the Design-Build Contractor is required to deliver to the O&M Contractor spare parts as set forth and in accordance with the Interface Agreement.

In order to provide effective dialogue between the parties as to all issues and concerns relating to any conflict, areas of any potential conflict or other concerns as between the parties with respect to their various rights and obligations under the DBFOM Agreement, the Design-Build Contract, the O&M Contract and the Interface Agreement, the parties have established an interface committee and shall maintain such interface committee during the term of the Interface Agreement. Any and all disputes arising under or relating to the Interface Agreement shall be pursued through the interface committee and, if necessary, through the dispute resolution procedures set forth in the Interface Agreement.

The O&M Contractor and the Design-Build Contractor provide reciprocal indemnities, indemnifying each other for any and all direct losses that either Key Contractor may suffer, receive or incur as a result of a failure of either Key Contractor to comply with the provisions of the Interface Agreement.

The Design-Build Contractor's and the O&M Contractor's obligations to the Borrower under the Interface Agreement are guaranteed under parent guarantees, which are described in APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Performance Security—Guarantees" and APPENDIX D-7—"SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Performance Security—Guarantees."

## **APM Operating System Subcontract**

Design and construction work for the APM Operating System will be undertaken by Bombardier pursuant to the Bombardier Subcontract, dated as of April 11, 2018, between the Design-Build Contractor and Bombardier. The APM Operating System Subcontract includes, on a fixed-price, lump-sum, date-certain, turn-key basis, substantially all work and services required or appropriate in connection with the design, supply, installation and integration of the APM Operating System, except to the extent expressly excluded in the APM Operating System Subcontract.

### *Back-to-Back Obligations*

Subject to the terms and conditions of the APM Operating System Subcontract, Bombardier is required to assume all costs and expenses arising from the performance of the Subcontracted Work and, on a back-to-back basis, comply with all of the Design-Build Contractor's obligations and liabilities set forth in the Design-Build Contract (including all obligations, liabilities and risks of the Borrower under the DBFOM Agreement that are passed through to the Design-Build Contractor and any deductions or penalties levied against the Design-Build Contractor under the terms of the Design-Build Contract subject to the relevant caps under the APM Operating System Subcontract), to the extent that they relate to the Subcontracted Work or the acts and omissions of Bombardier or any other Bombardier-Related Entity.

### *Scope of Work*

Bombardier is responsible for the performance of the Subcontracted Work in accordance with applicable laws, Governmental Approvals, Good Industry Practice, the requirements of the Design-Build Contract applicable to the Subcontracted Work, the requirements of the DBFOM Agreement applicable to the Contracted Work, and the other requirements specified in the APM Operating System Subcontract and the other BT Documents. Without limiting the foregoing, the Subcontracted Work includes: (a) the design, supply, installation and integration of the Subcontracted Work; and (b) obtaining all Governmental Approvals required to perform the Subcontracted Work.

### *Payment of Subcontract Price*

Bombardier provides for a firm, fixed-price, lump sum subcontract price in the amount of \$219,452,244, inclusive of applicable tax, but exclusive of certain sales tax. Payments of the Subcontract Price shall be paid on the basis of completion of the payment milestones. Design-Build Contractor has no obligation to finance Bombardier's performance except for payment of the Subcontract Price.

**Noncompliance Deductions.** To the extent that any noncompliance deductions under the Design-Build Contract are incurred by Design-Build Contractor as a result of the Subcontracted Work or any act or omission of Bombardier or any Bombardier-Related Entity, such deductions shall be correspondingly made by Design-Build Contractor from milestone payments payable to Bombardier under the APM Operating System Subcontract. Subject to the terms and conditions of the APM Operating System Subcontract, the amount of the noncompliance deduction under the APM Operating System Subcontract will be equal to the portion of the corresponding noncompliance deduction under the Design-Build Contract that results from the Subcontracted Work or any act or omission of Bombardier or any Bombardier-Related Entity.

### *Equivalent Project Relief*

Design-Build Contractor has certain rights, entitlements, remedies and defenses available to it under the Design-Build Contract and the Interface Agreement that relate to the Subcontracted Work or to the rights or obligations of Bombardier under the APM Operating System Subcontract. Bombardier is entitled to the benefit of DB Rights in connection with the Subcontracted Work.



### *Delay in Subcontracted Work*

Delay Damages. With respect to any delay in the Subcontracted Work or any delay to Design-Build Contractor caused by Bombardier or any other Bombardier-Related Entity, Bombardier is required to pay to Design-Build Contractor: (a) the amount of any liquidated damages levied against Design-Build Contractor under the Design-Build Contract and (b) Design-Build Contractor's direct losses arising out of such delay (whether or not liquidated damages against Design-Build Contractor under the Design-Build Contract have been assessed, but without double counting) including any acceleration costs or extended APM Project-specific costs incurred by Design-Build Contractor in mitigating the effects of Bombardier's delay. The daily rate of BT Delay Liquidated Damages shall not exceed the following amounts: (i) for days 1 to 30 that liquidated damages are levied under the Design-Build Contract, a maximum of \$200,000 per day, (ii) for days 31 to 60 that liquidated damages are levied under the Design-Build Contract, a maximum of \$125,000 per day, (iii) for days 61 to 365 that liquidated damages are levied under the Design-Build Contract, a maximum of \$100,000 per day. Design-Build Contractor shall be entitled to draw upon the BT Delay Reserve Account (or any letter of credit provided by Bombardier pursuant to the APM Operating System Subcontract) in order to pay any BT Delay Liquidated Damages. Any amounts remaining in the BT Delay Reserve Account and not required to meet Bombardier's liability for BT Delay Liquidated Damages shall be released to Bombardier on the third business day after the Passenger Service Availability Date.

Milestone Delay Payments. If Bombardier fails to achieve a Subcontracted Work milestone by the corresponding Subcontracted Work milestone payment date (other than to the extent caused by a Design-Build Contractor act, a Relief Event or a Milestone Force Majeure Event but, in the case of a Milestone Force Majeure Event, provided that Bombardier has provided notice to Design-Build Contractor, within a reasonable time after knowledge of the occurrence of such event), then Bombardier shall pay to Design-Build Contractor the amount of \$5,000 for each day by which the relevant Subcontracted Work milestone is delayed beyond the corresponding Subcontracted Work milestone payment date up to a maximum aggregate amount equal to 5% of the Subcontract Price. Milestone Delay Payments shall be paid by Bombardier monthly in arrears on the first business day of the calendar month after the calendar month in which they are incurred and shall be released to Bombardier if the delay in achieving the Subcontracted Work milestone has not caused BT Delay Liquidated Damages to be incurred.

For a more detailed description of liquidated damages under the APM Operating System Subcontract, see APPENDIX D-8—"SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Delay in Subcontracted Work."

### *BT Defects*

Bombardier is required to provide warranties with respect to (a) defects in the APM Operating System, and (b) epidemic defects, during the period beginning on the Passenger Service Availability Date and ending 24 months after the Passenger Service Availability Date. During the applicable BT Warranty Period, Bombardier shall promptly notify Design-Build Contractor of any defect of which Bombardier or any Bombardier-Related Entity is or becomes aware. Bombardier shall, in a timely manner, correct, at its expense, all defects which are notified to Bombardier or of which it or any Bombardier-Related Entity otherwise has knowledge during the applicable BT Warranty Period. Bombardier shall use reasonable efforts to conduct such work at such times so as to minimize disruption to operation of the APM Project. For a more detailed description, see APPENDIX D-8—"SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—BT Defects."

### *Limitations on Liability*

The aggregate liability of Bombardier to Design-Build Contractor in relation to BT Delay Liquidated Damages (including, for greater certainty, BT Delay Liquidated Damages paid out of the BT Delay Reserve Account) will be limited to an amount equal to 20% of the Subcontract Price. The maximum aggregate liability of Bombardier, including for default, breach, negligence, whether in contract, tort, or any other legal theory, any Delay Damages, indemnity obligations or otherwise in connection with the Subcontracted Work, shall be limited to an amount equal to 150% of the Subcontract Price. Any delay damages paid by Bombardier (including, for greater certainty, any amounts drawn by Design-Build Contractor in order to pay any BT Delay Liquidated Damages) shall count toward both the Delay Cap and the Liability Cap. See APPENDIX D-8—"SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Limitations on Liability."

## *Performance Security*

**Guarantees.** Bombardier is required to deliver to the Design-Build Contractor a parent guaranty pursuant to which the Bombardier Guarantor guarantees performance of the APM Operating System Subcontract by Bombardier. The parent guaranty delivered is required to be released and returned to Bombardier after Bombardier complies with all of its obligations under the APM Operating System Subcontract. The rights and benefits of the parent guaranty are assignable, concurrent with a like assignment of the APM Operating System Subcontract, to the Department, the Borrower and/or the Collateral Agent.

**Payment and Performance Bonds.** Bombardier is required to deliver to the Design-Build Contractor a payment and performance bond (or separate payment and performance bonds) in an amount equal to 55% of the Subcontract Price. The payment and performance bond (or separate payment and performance bonds) delivered is required to be reduced to an amount equal to 27.5% of the Subcontract Price within two Business Days after achievement of Passenger Service Availability and, subject to Bombardier providing the warranty bond in accordance with the APM Operating System Subcontract, shall be released and returned to Bombardier after the achievement of Final Completion. Bombardier shall cause to be delivered to the Design-Build Contractor, on or before the date of release of the payment and performance bond (or separate payment and performance bonds), a warranty bond in form and substance satisfactory to Design-Build Contractor, acting reasonably, in an amount equal to 5% of the Subcontract Price. The warranty bond shall be released and returned to Bombardier after the end of the last BT Warranty Period to expire.

**Letters of Credit.** Bombardier is required to deliver to the Design-Build Contractor a letter of credit from a permitted letter of credit provider or other form of liquid security (in a form acceptable to the Design-Build Contractor) with an aggregate amount available to be drawn thereunder equal to 20% of the Subcontract Price. The letter of credit is required to be reduced to an amount equal to 2.5% of the Subcontract Price within two Business Days after achievement of Passenger Service Availability and released and returned to Bombardier after achievement of Final Completion.

## *Indemnities*

**Indemnities by Bombardier.** Subject to certain limitations on Bombardier's indemnification obligations under the APM Operating System Subcontract, Bombardier shall indemnify and hold harmless Indemnified Parties and the Design-Build Contractor from and against any and all claims, causes of action, suits, investigations, legal or administrative proceedings, demands and losses, in each case if asserted or incurred by or awarded to any third party, to the extent that such amounts are claimed against the Design-Build Contractor pursuant to the Design-Build Contract, and to the extent caused by, among other things, any act, omission, neglect or misconduct by any Bombardier-Related Entity in the manner or method of executing the Subcontracted Work satisfactorily or due to the failure to perform the Subcontracted Work, including: (a) any neglect in safeguarding the Subcontracted Work, (b) use of unacceptable materials in performance of the Subcontracted Work or other defect in the Subcontracted Work, or (c) other breach, alleged breach or violation of Bombardier's obligations under the BT Documents or any APM Operating System Subcontract.

Bombardier shall indemnify and hold harmless the Design-Build Contractor from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) Bombardier's failure to comply with any of its obligations under the APM Operating System Subcontract, other than (i) any such failure that arises from an act or omission of the Department, the Borrower, any Non-Sub Borrower-Related Entity, the Design-Build Contractor, any Design-Build Contractor-related entity, the O&M Contractor, any O&M Contractor-related entity or a Relief Event, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the APM Operating System Subcontract (including as determined pursuant to the dispute resolution procedures under the APM Operating System Subcontract); or (b) negligent acts or omissions, fraud or willful misconduct of Bombardier or any Bombardier-Related Entity. For a detailed description of the Design-Build Contractor's indemnities under the APM Operating System Subcontract, see APPENDIX D-8—"SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Indemnities—*Indemnities by Bombardier.*"

Indemnities by Design-Build Contractor. The Design-Build Contractor shall indemnify and hold harmless Bombardier from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) the Design-Build Contractor's failure to comply with any of its obligations under the APM Operating System Subcontract, other than (i) any such failure that arises from an act or omission of the Department, the Borrower, any Non-Sub Borrower-Related Entity, the O&M Contractor, any O&M Contractor-related entity, Bombardier, any Bombardier-Related Entity or a Relief Event, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the APM Operating System Subcontract (including as determined pursuant to the dispute resolution procedures under the APM Operating System Subcontract); or (b) negligent acts or omissions, fraud or willful misconduct of the Design-Build Contractor or any Design-Build Contractor-related entity.

#### *Inclusivity*

Bombardier is required to provide reasonable cooperation requested by the Design-Build Contractor in relation to the inclusivity requirements specified in the Design-Build Contract or otherwise in accordance with applicable law, as such requirements are applicable to the Subcontracted Work.

#### *Delivery and Shipment*

Bombardier will be responsible for delivering the Vehicles and other components of the Subcontracted Work to and from the test sites, if required, and to the project site at LAX airport and in accordance with the baseline schedule set forth in the APM Operating System Subcontract.

#### *Title*

Full legal title to each Vehicle and all other components of the Subcontracted Work shall pass to, and become the sole property of, the Department, free and clear of all security interests and all other claims whatsoever, in accordance with the DBFOM Agreement.

#### *Insurance*

Bombardier shall, at its sole cost, obtain and maintain in force for the duration of the BT Term, unless otherwise specified in the APM Operating System Subcontract, insurance of the following types, as further described in and with limits not less than those set forth in the APM Operating System Subcontract: workers' compensation insurance, commercial general liability insurance, automobile liability insurance and marine cargo/transit insurance. Bombardier shall be responsible for each Vehicle, all Subcontracted Work performed and equipment and materials furnished to or by Bombardier under the APM Operating System Subcontract until (i) each Vehicle is delivered to the site and simultaneously accepted or (ii) the equipment and materials are delivered to site and simultaneously accepted. In the event of loss, damage or destruction of such work, equipment or materials, Bombardier at its sole expense shall promptly repair, restore or replace such to the satisfaction of the Design-Build Contractor. For a more detailed description of the insurance requirements under the APM Operating System Subcontract, see APPENDIX D-8—"SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Insurance."

#### *Intellectual Property*

Bombardier acknowledges in the APM Operating System Subcontract that, except for Developer Intellectual Property (which, for greater certainty, includes Bombardier Intellectual Property) and third party intellectual property, title to any Intellectual Property to the extent made, conceived, prepared or reduced to practice as part of the Work, incorporated into the APM Project, including any improvements, modifications, enhancements or derivative works to or of the LAWA Intellectual Property shall vest in the Department at the earliest of creation, conception, preparation or reduction to practice. Bombardier has granted to the Design-Build Contractor an irrevocable, perpetual, non-exclusive, transferable (solely to the Borrower, a permitted assignee of the Borrower under the Design-Build Contract, the Department or a permitted assignee of the Department under the DBFOM Agreement), fully paid-up right and license to use, exploit, manufacture, distribute, reproduce, adapt and display the

Bombardier Intellectual Property, including any Technology Enhancements that are Bombardier Intellectual Property, in connection with the APM Project, Proposal or Subcontracted Work. The rights granted under the APM Operating System Subcontract shall survive the termination, expiration or cancellation of the APM Operating System Subcontract or any rights related thereto. For a more detailed description of the intellectual property provisions under the APM Operating System Subcontract, see APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Intellectual Property.”

### *Changes*

If the Design-Build Contractor receives a Department Request for Change Proposal or a Borrower request for change proposal pursuant to the Design-Build Contract which relates, in whole or in part, to the Subcontracted Work, the Design-Build Contractor shall forward a copy of such request to Bombardier. The Design-Build Contractor may also request a change proposal from Bombardier if the Design-Build Contractor desires to initiate or evaluate whether to initiate a BT Change, provided that the Design-Build Contractor shall not initiate any BT Change that would be in breach of the relevant provisions of the APM Operating System Subcontract. Bombardier shall provide the Design-Build Contractor with a change proposal to the extent that the Request for Change Proposal relates to the Subcontracted Work.

Following the Design-Build Contractor’s receipt of Bombardier’s change proposal and the Design-Build Contractor’s further assessment of the cost, schedule and other impacts of the contemplated change, Bombardier and the Design-Build Contractor, giving due consideration to such assessments and entitlements available (subject to the relevant equivalent project relief provisions, as applicable, with respect to a Department Request for Change Proposal or a Borrower request for change proposal) or any net cost and/or schedule savings, shall engage in good faith negotiations to reach agreement on the terms of a change order. A change will become effective upon mutual execution by the Design-Build Contractor and Bombardier of a written change order.

If the Design-Build Contractor and Bombardier do not agree on a change proposal issued in response to a Department Request for Change Proposal or Borrower request for change proposal, then the Design-Build Contractor may seek to resolve any points of disagreement through the dispute resolution procedures under the APM Operating System Subcontract. Bombardier acknowledges that if the Borrower and the Department do not agree on a Change Proposal issued to the Department pursuant to the DBFOM Agreement, the Department may (in its discretion) deliver to the Borrower a directive letter. If the Design-Build Contractor and Bombardier do not agree on a change proposal issued in response to a request for change proposal under the APM Operating System Subcontract, the Design-Build Contractor may (in its discretion) deliver to Bombardier a directive letter. If such directive letters provides for the implementation of a LAWA Change or a BT Change, Bombardier shall deliver to the Design-Build Contractor a change proposal and the parties are to subsequently follow the procedures and provisions under the APM Operating System Subcontract relating to the negotiation of change orders.

### *Termination*

**Bombardier Default and Design-Build Contractor Remedies.** Subject to certain limitations set forth in the APM Operating System Subcontract (including applicable cure periods), Bombardier shall be in breach under the APM Operating System Subcontract upon the occurrence of any one or more Bombardier Defaults. For a detailed list of all Bombardier Defaults under the APM Operating System Subcontract, see APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Termination—*Bombardier Default and Design-Build Contractor Remedies.*”

If any Bombardier Default occurs and has not been cured within the applicable cure period, the Design-Build Contractor may terminate the APM Operating System Subcontract upon notice to Bombardier. In the event of such termination, Bombardier shall make payment to the Design-Build Contractor in accordance with the APM Operating System Subcontract, taking into account whether the Design-Build Contract has also been terminated. The Design-Build Contractor, under the APM Operating System Subcontract, and/or the Department, under the DBFOM Agreement also have respective step-in rights and suspension rights under certain circumstances. For a detailed description of the Design-Build Contractor’s and the Department’s remedies for a Bombardier Default, see APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Termination—*Bombardier Default and Design-Build Contractor Remedies.*”

Design-Build Contractor BT Default and Bombardier Remedies. Subject to certain limitations set forth in the APM Operating System Subcontract, the Design-Build Contractor shall be in breach under the APM Operating System Subcontract upon the occurrence of any one or more Design-Build Contractor BT Defaults. For a detailed list of all Design-Build Contractor BT Defaults under the APM Operating System Subcontract, see APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Termination—*Design-Build Contractor BT Default and Bombardier Remedies.*”

If a Design-Build Contractor BT Default remains uncured following notice and expiration of the applicable cure period, if any, Bombardier may, subject to the BT Lenders’ Direct Agreement, terminate the APM Operating System Subcontract upon notice to the Design-Build Contractor. In the event of such termination, Design-Build Contractor shall make payment to Bombardier in accordance with the APM Operating System Subcontract. Bombardier may suspend the Subcontracted Work if the Design-Build Contractor fails to make any payment due to Bombardier under the APM Operating System Subcontract when due, provided that such payment is not subject to a dispute under the APM Operating System Subcontract, Design-Build Contract or the DBFOM Agreement.

Termination of the APM Operating System Subcontract Following Termination of the Design-Build Contract. Upon any termination of the Design-Build Contract (a) following termination of the DBFOM Agreement for convenience, insurance unavailability, court ruling for LAWA Default, (b) for Extended Delay Events and (c) following termination of the DBFOM Agreement for suspension of Work, the Design-Build Contractor shall make payment to Bombardier in accordance with the APM Operating System Subcontract.

Upon any termination of the Design-Build Contract (a) following termination of the DBFOM Agreement for Developer Default and (b) for Developer DB Default that, in each case, is not caused by a Bombardier Default, the Design-Build Contractor shall make payment to Bombardier in accordance with the APM Operating System Subcontract.

Upon any termination of the Design-Build Contract for Design-Build Contractor Default that is not caused by a Bombardier Default, the Design-Build Contractor shall make payment to Bombardier in accordance with the APM Operating System Subcontract.

Miscellaneous Compensation Provisions. To the extent that any termination compensation under the APM Operating System Subcontract calculated pursuant to the APM Operating System Subcontract is calculated to be less than zero, then such termination compensation shall be deemed to equal zero.

#### *Spare Parts*

Six months prior to the Passenger Service Availability Date, Bombardier is required to deliver to the Design-Build Contractor spare parts listed in the APM Operating System Subcontract, under the specifications provided for in the APM Operating System Subcontract. The Design-Build Contractor may, by written notice to Bombardier, implement changes to such spare parts and the amounts thereof upon notice, and provided that, as a result of such changes, the aggregate value of the spare parts does not exceed \$4,732,840. Bombardier shall not use any such spare parts to rectify BT Defects unless Bombardier promptly replenishes the supply of spare parts used. Bombardier shall compensate the Design-Build Contractor for any reasonable costs it incurs as a result of Bombardier’s use of such spare parts.

## TECHNICAL ADVISOR REPORT

### **Infrata**

For a complete copy of the Technical Advisor Report, see APPENDIX C—“REPORT OF THE LENDERS’ TECHNICAL ADVISOR.”

Infrata Limited (“Infrata” or the “LTA”) prepared the Lenders' Technical Due Diligence Financial Close Report, dated May 24, 2018 (the “Technical Advisor Report”), included in this Official Statement as APPENDIX C, which reviews the technical aspects of the APM Project and supporting information provided by the Equity Members. The Technical Advisor Report provides (i) an analysis of the technical aspects of the APM Project and (ii) summarizes (A) certain key provisions of the DBFOM Agreement, the Interface Agreement, the Design-Build Contract, the O&M Contract, the APM Operating System Subcontract, and other key subcontracts under the Design-Build Contract and (B) the capabilities of the Borrower, the Design-Build Contractor, the APM Operating System Supplier and the O&M Contractor. The Technical Advisor Report does not provide a detailed review of all the technical aspects in relation to the APM Project. Infrata reviewed various documents related to the APM Project, including the Technical Provisions, geotechnical studies and various independent analyses provided by other consultants on behalf of the Department. Subject to the terms of the engagement letter with the LTA and only if explicitly provided with reliance, recipients of this summary may only rely on the full Technical Advisor Report and not on this summary. Where there are any differences between the full Technical Advisor Report and this summary, the full Technical Advisor Report shall prevail. Infrata opinions included therein are from the perspective of potential APM Project lenders.

### **Overview**

Infrata was appointed by a consortium (“LINXS”) led by the Equity Members to act as the Lenders' Technical Advisor. In connection with such appointment, Infrata has, among other things, prepared a report that reviews the basic elements of the APM Project; the organization and capabilities of the parties involved in the APM Project; construction costs and schedule; the contractual, design, construction, rolling stock supply, operation and maintenance obligations related to the APM Project; certain provisions set forth in the Material Project Contracts, including those related to Noncompliance Points; and certain other requirements for the APM Project. Certain key conclusions made by Infrata related to these areas of review are detailed below.

The Technical Advisor Report and this summary are subject in all respect to the assumptions, qualifications and limitations described therein. See APPENDIX C—“REPORT OF THE LENDERS’ TECHNICAL ADVISOR.”

### **APM Project Participants**

Infrata concludes that all team members have established working relationships through their prior and successful experience working together. In the opinion of the LTA, LINXS has demonstrated itself to be an organized and integrated team, with the maintenance and operations teams participating from the outset in the development of design and construction.

Infrata considers that having to replace the Design-Build Contractor is rather unlikely, but that the removal of one or more of members of the Design-Build Contractor is a more likely scenario in reality. Infrata concludes that given the relatively standard nature of the construction elements of the APM Project and the significant portion of the works to be subcontracted, that any one “last man standing” contractor could complete the APM Project in case of a termination of any other Design-Build Contractor member or members.

The LTA has considered the Los Angeles construction market alongside the APM Project scope of works in order to assess the feasibility of replacing one or two Design-Build Contractor members. The LTA opines that should a replacement Design-Build Contractor member be required, there are several with the experience to

undertake the scope of activities required, including those who previously bid on the APM Project alongside LINXS.

### **Certain Project Documents**

Infrata opines that the DBFOM Agreement is consistent in both form and strategy with similar public private partnership projects that have reached financial close in the US. Reasonable risk-sharing positions have been taken by the Department with regards to termination, delay and compensation reliefs, land acquisition, environmental and utilities risks.

Infrata further opines that the payment mechanism is similar to other equivalent rail or automated people mover project's payment mechanism structures seen elsewhere with the emphasis placed on maintaining a good user experience in respect of the automated people mover vehicles staying on time. An assessment of the Noncompliance Points shows them to be inside any termination thresholds. During the O&M Period the limiting case for deductions is Noncompliance Occurrences rather than Unavailability and an assessment of potential worst case deductions by the LTA is in line with LINXS' valuations. The escalation basket of indices would appear appropriate and broadly aligned to operating and maintenance costs to be incurred.

With respect to the Design-Build Contract, Infrata opines that such agreement includes customary provisions for public-private partnership projects of this nature and further opines that the Design-Build Contract provides for back-to-back obligations in respect of the D&C Work. The LTA opines that the Design-Build Contractor scope is adequately passed down from the Borrower's obligations specified under or in connection with the DBFOM Agreement.

Infrata concludes that the performance security to be provided by the Design-Build Contractor is generally typical of that seen in similar agreements, and that the liquid security package is sufficient to cover liquidated damages the Design-Build Contractor might incur due to a delay of twelve months to the scheduled Passenger Service Availability Date. The LTA notes the reduction in the Design-Build Contractor's limit on liability from 35% to 10% at the Final Completion Date, and the LTA states that such procedure occurs in other public private partnership infrastructure contracts. Infrata states the same conclusion regarding the step-down in liquid performance security from 3% to 1% to cover such items as minor repairs to the finished systems during the early part of the O&M Period.

The LTA's analysis has generated a maximum percentage of liability foreseeable under a realistic worst-case scenario of 20.8% of the total Contract Price, which is within the proposed limit on liability in the Design-Build Contract of 35%.

### **Cost and Schedule**

The LTA is satisfied with the approach adopted by the Borrower to develop the APM Project's costs and the level of internal process and governance to validate and sign off the final price. Infrata opines that the Borrower has produced a Contract Price and cost model that is robust and, when compared with benchmark data, adequate to fulfill its requirements under the Design-Build Contract. The LTA advises that pricing approach and allowances by the O&M Contractor were built up from acceptable sources including direct quotations from local sub-contractors. Infrata opines that benchmarking of the APM Project against other equivalent projects places the APM Project within the expected bandwidth and that key rates used for labor have been benchmarked against existing contracts and local market rates and are considered acceptable. Infrata concludes that the allowances for risk and contingencies for the APM Project are within acceptable ranges.

The LTA opines that the Department's scheduling requirements are adequate for the APM Project and do not appear too onerous for a capable contractor like the Design-Build Contractor. The LTA is satisfied that the activities breakdown across the various disciplines are consistent with the Technical Provisions. Governmental Entities' approvals and required review periods have been taken into account in developing the APM Project schedule and the Design-Build Contractor has also reflected the metering of design submissions and review periods. Delivery of the APM vehicles are not on the critical path and over 300 days of float are available after the delivery of the last APM vehicle in the current APM Project schedule. Finally, the LTA opines that there is an adequate

buffer for static and dynamic testing before guideway testing commences. The APM Project schedule also includes a contingency for adverse weather of 65 days over the approximately 4 year construction period (including testing and commissioning).

The LTA notes that all float contained in the schedule is available to both the Department and the Borrower and shall not be considered as time for the exclusive use or benefit of either party. The LTA opines that the requirement to share float is common, albeit that this can lead to further discussions during the construction period on who has best claims over its use.

## **Construction**

Infrata opines that the APM Project structures, some of which are significant in size, are of moderate complexity, consisting mainly of typical reinforced concrete box-section beamed viaducts, with freestanding reinforced concrete station structures, and steel-framed pedestrian bridges. The main APM Project challenges during construction are likely to emerge from co-ordination, traffic management and utilities work. Infrata notes that the Borrower is currently developing and optimizing its phasing plan and construction strategy, which aims to reduce traffic management and utility relocations through the implementation of approved alternative technical concepts.

Infrata advises that the Site lies in a seismic zone and, as is standard for California, the infrastructure is to be designed to recognized seismic standards. Nonetheless, no active faults exist within the Site, and seismic activity in areas adjacent to the APM Project area are historically limited, both in occurrence and magnitude. Infrata concludes that the Borrower's designers have good and local experience of designing to the seismic codes.

## **APM Operating System Subcontract**

The LTA opines that the APM Operating System Subcontract has terms and provisions that are similar and consistent with other projects, including with respect to limitation of liability, pay-if-paid provisions, back-to-back of delay liquidated damages, and applicable defects period. The LTA has observed that the recent history of Bombardier's capabilities in terms of delivering the required vehicles on time and to the relevant execution plan are very good. Similarly, the LTA reported that the APM vehicles are to be manufactured and assembled in China, and such manufacturing will be under strict Bombardier management and supervision, with additional independent supervision from a recognized consultancy that has been used in this field previously by members of LINXS. Furthermore, the LTA opines that there are suitable alternatives available in the other Bombardier facilities in the US, Canada, Mexico or India that would not materially impact the project or the project schedule provided the decision on any changed manufacturing location is made during the initial stages of the APM Project.

## **Operation and Maintenance**

Infrata opines that there are no particularly challenging or unusual features in the DBFOM Agreement for the ongoing O&M Work. Infrata advises further that the O&M Contractor is taking full O&M Work responsibility including lifecycle risk and has assembled a very capable team with vast experience successfully running other automated people mover projects at a similar service level.

Infrata opines that the Handback Requirements are consistent with the Borrower's holistic asset management system approach to provide a high likelihood of meeting the Handback Requirements without further unprogrammed intervention.

## **Approvals and Permits**

Infrata notes that the Department has obtained environmental approval from the Los Angeles Council and that the Federal Aviation Administration has completed their environmental review and has issued a Finding of No Significant Impact and Record of Decision for the APM Project, as part of the LAMP. The LTA notes the permits required to be acquired and permitting process proposed by LINXS which is considered appropriate for a project of this type. See "RISK FACTORS—Risks Relating to the Project—*Judicial Challenge*" for a description of certain litigation and the FEIR.



## RELATED PARTY TRANSACTIONS

On or after the Financial Close Date, the Borrower will reimburse the Equity Members (or affiliates thereof, as applicable) for such parties' services in the development of the APM Project, out-of-pocket and third-party costs incurred in developing the APM Project, negotiating the various Project Documents and for achieving financial close. After closing, the Equity Members, or affiliates thereof, also may provide various staff and operational support (such as accounting, human resources and information technology services) to the Borrower from time to time, for which the Borrower, as applicable, will reimburse salaries and benefits and pay other costs associated with these activities. The fees and costs of such services have not yet been negotiated and may be paid by the Borrower as operating and maintenance expenses, which are paid prior to the Series 2018 Bonds and any other Senior Secured Obligations.

Many of the Equity Members, members of the DB Contractor, members of the O&M Contractor, the Design-Build Guarantors and the O&M Guarantors are affiliates and direct or indirect subsidiaries, each of which have assumed a number of roles in the APM Project. The interests of the various affiliates or their commitments to the APM Project under the various Transaction Documents may diverge from one another or from the interests their parent companies during the term of the DBFOM Agreement. The parties are required to conduct business on an arms-length basis but conflicts of interest may arise between or amongst any of the Equity Members, members of the DB Contractor, members of the O&M Contract, the Design-Build Guarantors or the O&M Guarantors.

An affiliate of HOCHTIEF, Turner Surety and Insurance Brokerage, Inc. ("TSIB") advised the Borrower on insurance matters during the tender process and will be the Borrower's insurance broker for the insurance policies required of the Borrower by the Design-Build Contract. TSIB may be involved in the placement of the O&M period insurance, subject to a competitive selection process.

Balfour Beatty will be providing bonds in the amount of \$127,500 for the Borrower from its surety program in connection with the Borrower's application for its CSLB Class A Engineering License.

Bombardier Transportation (Holdings) USA Inc. is an Equity Member of the Borrower and a member of the O&M Contractor. Bombardier Transportation (Holdings) USA Inc. is a wholly-owned subsidiary of Bombardier Transportation (Global Holding) UK Limited, which is an O&M Guarantor. Bombardier is responsible for the design and construction of the APM operating system, including the supply of the INNOVIA APM 300 vehicles as the APM Operating System Supplier pursuant to the APM Operating System Subcontract. Additionally, the O&M Contractor expects to outsource certain other services to Bombardier Transportation (Holdings) USA Inc. during the O&M Period, and any such additional scope(s) of work will be formalized after the Financial Close Date.

ACS LINXS Holdings, LLC is an Equity Member of the Borrower and an affiliate of (i) Dragados USA, Inc., a member of the Design-Build Contractor, and Dragados, S.A., which is a Design-Build Guarantor and (ii) ACS LINXS O&M Holdings, LLC, a member of the O&M Contractor, and ACS Servicios y Concesiones, S.L., which is an O&M Guarantor.

Balfour Beatty Investments Inc. is an Equity Member of the Borrower and an affiliate of Balfour Beatty Infrastructure, Inc., a member of the Design-Build Contractor, which are each affiliates of Balfour Beatty LLC, a Design-Build Guarantor.

Fluor Enterprises, Inc. is an Equity Member of the Borrower as well as a member of the Design-Build Contractor and the O&M Contractor. Fluor Enterprises, Inc. is a wholly owned subsidiary of Fluor Corporation, which is a Design-Build Guarantor and an O&M Guarantor.

HOCHTIEF LINXS Holding, LLC is an Equity Member of the Borrower and an affiliate of (i) Flatiron West, Inc., a member of the Design-Build Contractor, and HOCHTIEF USA, Inc., which is a Design-Build Guarantor and (ii) HOCHTIEF Operators Holding, LLC, a member of the O&M Contractor, and HOCHTIEF PPP Solutions GmbH, which is an O&M Guarantor.

From time to time, each of the underwriters for the Series 2018 Bonds serves as an underwriter for the City's bonds and other obligations and for the Department's Senior Bonds and Subordinate Bonds. See "UNDERWRITING."

Sumitomo Mitsui Banking Corporation ("Sumitomo"), one of the Bank Lenders, provides two letter of credit facilities to the Department to support the Department's commercial paper program.

Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and Samuel A. Ramirez & Company, Inc., underwriters for the Series 2018 Bonds, also serve as commercial paper dealers for the Department's Subordinate Commercial Paper program, which program is described in APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES."

## LITIGATION

### **The Issuer**

To the knowledge of the Issuer, there is no material litigation pending or threatened against the Issuer concerning the validity of the Series 2018 Bonds or any proceedings of the Issuer taken with respect to the issuance thereof.

At the time of delivery and payment for the Series 2018 Bonds, the Issuer will deliver a certificate substantially to the effect that, to the best knowledge of the Issuer, no litigation or other proceedings are pending or threatened in any court or other tribunal of competent jurisdiction, state or federal (a) to restrain or enjoin the execution or delivery of any of the Series 2018 Bonds or the collection of the Project Revenues pledged under the Indenture, (b) in any way contesting or affecting the authority for the execution and delivery of the Series 2018 Bonds or the validity of the Series 2018 Bonds or the Indenture, or (c) in any way contesting the existence or powers of the Issuer or the title to office of the officers thereto.

### **The Borrower**

There is no pending or, to the Borrower's knowledge, threatened litigation or proceeding against the Borrower or the APM Project, (i) affecting the existence of the Borrower, (ii) in any way contesting or affecting the validity or enforceability of the Borrower's organizational documents, or (iii) contesting in any way the completeness or accuracy of the Official Statement or any supplement or any amendment thereto, and which, in each case (individually or in the aggregate), has a material likelihood of success and, if determined adversely to the Borrower, would reasonably be expected to have a material adverse effect.

There is no pending or, to the Borrower's knowledge, threatened, legal or administrative proceeding (material as to the Borrower) to which the Borrower is a party, or of which property of the Borrower is subject, which will affect the transactions contemplated by this Official Statement or the Transaction Documents or which will affect the validity or enforceability of any Series 2018 Loan Document to which the Borrower is a party, including the Series 2018 Loan Agreement and the Borrower Continuing Disclosure Agreement. See APPENDIX E-1—"FORM OF BORROWER CONTINUING DISCLOSURE AGREEMENT."

### **The Department**

From time to time, the Department is a party to litigation and is subject to claims arising out of its normal course of business and operations.

#### *TPS Parking Management Litigation*

On June 30, 2017 petitioners TPS Parking Management, LLC, doing business as The Parking Spot, and TPS Parking Century, LLC filed a petition for writ of mandate against the City and the Department (the "Petition"). Among other things, the Petition (i) alleges that the environmental review process for LAMP was inadequate and that the LAMP Environmental Impact Report did not adequately address, disclose, evaluate and potentially mitigate various environmental impacts and (ii) seeks to set aside the approvals related to the LAMP, injunctive relief, and to require the City and the Department to revise the LAMP Environmental Impact Report to evaluate and disclose alleged deficiencies. The litigation is currently focusing on compilation of the administrative record; a trial date has not been set and a motion seeking injunctive relief has not been filed. While the Department believes that the environmental review process for LAMP was adequate and that the LAMP Environmental Impact Report adequately addresses, discloses, evaluates and mitigates environmental impacts, at this time the Department cannot predict the outcome of this matter and/or whether this matter will result in delays or cost increases to LAMP projects, including the APM System.

The LAMP Environmental Impact Report and associated Record of Decision constitute LAWA-Provided Approvals under the DBFOM Agreement and are required thereunder to be provided by the Department. A legal order by a court prohibiting the prosecution of the Work and causing a delay to the Critical Path is a Compensation

Event under the DBFOM Agreement. If the litigation were resolved against the Department, the Borrower may be able to claim schedule and compensation relief, on the basis that such court ruling constitutes a failure by the Department to provide and maintain the LAWA-Provided Approvals.

If a court ruling in favor of the Parking Spot's Petition results in the DBFOM Agreement being found to be void, voidable and/or unenforceable or impossible to perform in its entirety, such court ruling could provide a sufficient basis for a termination of the DBFOM Agreement. Such a final court order, the timeframe for which cannot be predicted, would likely constitute a notice of termination under the DBFOM Agreement and the DBFOM Agreement would be automatically terminated without further notification by either party. Upon a Termination Due to Court Ruling, due to a LAWA Caused Event (if a LAWA Caused Event is found to have occurred) the Department would be required to pay Termination Compensation in an amount equal to the same amount as for Termination for Convenience which includes Lender Liabilities. See "CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Department Payments Upon Early Termination."

At this time, there is no pending litigation relating to the Airport System or the Department's operations or business pertaining thereto that would reasonably be expected to have a material impact on LAX Revenues or the operation of LAX, except as described under APPENDIX B-1—"CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES—LITIGATION REGARDING THE AIRPORT SYSTEM AND THE DEPARTMENT."

## **CONTINUING DISCLOSURE AND OTHER REPORTING REQUIREMENTS**

### **Continuing Disclosure under Rule 15c2-12**

Pursuant to the requirements of the Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. Part 240, § 240.15c2-12) (“Rule 15c2-12”), the Department and the Borrower will each enter into separate Continuing Disclosure Agreements, to be dated as of the date of issuance of the Series 2018 Bonds, to provide certain financial information, other operating data and notices of material events for the benefit of the Owners of the Series 2018 Bonds.

The Issuer has determined that no financial or operating data concerning the Issuer is material to an evaluation of the offering of the Series 2018 Bonds or to any decision to purchase, hold or sell the Series 2018 Bonds and the Issuer will not provide any such information. The Issuer shall have no liability to the Owners of the Series 2018 Bonds or any other person with respect to Rule 15c2-12.

A failure by the Department to comply with the requirements of its Department Continuing Disclosure Certificate does not in and of itself constitute an event of default under the Department Continuing Disclosure Certificate or any Financing Document. Nevertheless, such a failure must be reported in accordance with Rule 15c2-12 and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Series 2018 Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Series 2018 Bonds and their market price. The Borrower has not prior to the date of this Official Statement entered into, and will not prior to the date of issuance of the Series 2018 Bonds enter into (except in connection with the issuance of the Series 2018 Bonds), any obligations pursuant to Rule 15c2-12.

The form of Continuing Disclosure Agreement applicable to the Borrower is attached hereto as APPENDIX E-1—“FORM OF BORROWER CONTINUING DISCLOSURE AGREEMENT.”

The form of Department Continuing Disclosure Certificate is attached hereto as APPENDIX E-2—“FORM OF DEPARTMENT CONTINUING DISCLOSURE CERTIFICATE.”

### **Reporting Requirements under the Series 2018 Loan Agreement**

The Borrower has covenanted pursuant to the terms of the Series 2018 Loan Agreement to comply with the following reporting requirements:

#### *Construction Reporting*

The Borrower shall, or shall cause the Dissemination Agent to file with the MSRB: from the commencement of Work to the Final Completion Date,

(i) a copy of the monthly report submitted to LAWA on the fifteenth (15) day of the month pursuant to the DBFOM Agreement, which report the DBFOM Agreement requires to include: (1) descriptions of the Work performed during the past month, a description of Work planned for the next month and a discussion of any critical issues/decisions affecting the Work, (2) a list of all material contracts in effect, all contracts in effect to which the Borrower is a party, all contracts in effect to which an Affiliate is a party and under which all or a substantial portion of the Affiliates responsibilities or obligations under its contract with the Borrower are delegated to a Subcontractor, all other Subcontracts, (3) a description of any environmental issues that occurred within the site and the resolution, (4) a listing of all non-conformances and corrective actions taken and the status of each whether self-reported or identified by LAWA; and

(ii) a copy of the Lenders’ Technical Advisor monthly report submitted to the Borrower on or about the 15th day of each month, in each case within ten (10) Business Days of each report becoming available.

### *Operating Reporting*

Not later than 45 days after the end of each fiscal quarter of the Borrower following the Passenger Service Availability Date, the Borrower shall provide to EMMA an operating report setting forth (i) the operating data for the APM Project for the previous quarter, including total Project Revenues, total O&M Expenditures and total Renewal Expenditures incurred, (ii) the variances for such period between the actual Project Revenues, actual O&M Expenditures and actual Renewal Expenditures incurred, and the projected Project Revenues, budgeted O&M Expenditures and budgeted Renewal Expenditures, together with a brief narrative explanation of the reasons for any such variance of ten percent 10% or more.

### *Financial Statements*

#### The Borrower

The Borrower shall cause the Dissemination Agent to (i) file with the MSRB or (ii) provide copies thereof to the Trustee of: (A) audited financial statements for the Borrower, within one hundred and twenty (120) days after the end of each fiscal year of the Borrower, (B) unaudited financial statements for Borrower within forty-five (45) days after the end of each fiscal quarter of the Borrower and (C) an annual operating budget not later than thirty (30) days prior to the commencement of each calendar year, in case of clause (A) and (B), prepared in accordance with GAAP and/or IFRS (except as approved by the auditor or the responsible officer, as the case may be, and disclosed therein) and delivered together with certificates from the Borrower certifying to its knowledge that there is no Event of Default.

#### Guarantors

The Borrower shall deliver the following financial information to the Trustee: (A) audited financial statements for each of the O&M Contractor Guarantors within 120 days after the end of each fiscal year of such O&M Contractor Guarantor (or in the case of HOCHTIEF PPP Solutions GmbH, within 180 days of each fiscal year end), and (B) prior to the Sunset Date, as defined in the Design-Build Guarantees, audited financial statements for each of the Design-Build Guarantors within 120 days after the end of each fiscal year of such Design-Build Guarantor (or in the case of Dragados, S.A. and HOCHTIEF USA, Inc., within 150 days after the end of each fiscal year), and in each case prepared in accordance with GAAP and/or IFRS (except as approved by the auditor or the responsible officer, as the case may be, and disclosed therein).

The financial statements to be delivered to pursuant to this subheading will be available, free of charge, from the Borrower or the Trustee upon request by an Owner or prospective investor, and may be delivered as a link to a website containing the same.

### *Notices of Significant Events*

The Borrower will promptly, but in any event within 5 Business Days of the Borrower obtaining knowledge thereof, provide the Trustee and EMMA with:

- (i) details of any litigation in respect of the Borrower, pending or threatened in writing, by or before any arbitrator or Governmental Entity (A) in which the amount involved exceeds \$10 million and is not covered by insurance or (B) a remedy requested in the litigation is the stoppage or delay of the APM Project;
- (ii) details of any event of default or “Default” as defined in, or any material breach (in each case by the Borrower) under, any Material Project Contract and copies of all notices of any such default or termination of any Material Project Contract delivered to the Borrower;
- (iii) notice and details of any Default or Event of Default;
- (iv) notice of any material insurance claims in excess of five million dollars (\$5,000,000);

- (v) notice of any claim by the Borrower under the DBFOM Agreement in respect of the occurrence of a Compensation Event or Relief Event;
- (vi) notice of any suspension of the Work (except to the extent the suspension is permitted under the DBFOM Agreement, in which case no notice is required, and except to the extent the suspension is as a result of an emergency, in which case the Borrower shall provide notice as reasonably promptly as possible following the Borrower's knowledge thereof);
- (vii) notice of any new, or newly discovered historical, material release of hazardous materials; and
- (viii) notice of the occurrence of any other event or condition that would reasonably be expected to have a Material Adverse Effect.

## **LEGAL MATTERS**

Certain legal matters relating to the authorization and validity of the Series 2018 Bonds and the exclusion of the interest on the Series 2018 Bonds from gross income for federal income tax purposes will be subject to the approving opinion of Nixon Peabody LLP, as Bond Counsel. See APPENDIX G—“FORM OF LEGAL OPINION OF BOND COUNSEL.” Certain legal matters will be passed upon for the Issuer by its counsel Jones Hall, A Professional Law Corporation, for the Borrower by its counsel, White & Case LLP, and for the Department by the Office of the City Attorney. Polsinelli LLP has served as Disclosure Counsel to the Department. Certain legal matters will be passed upon for the Underwriters by Ashurst LLP.

The various legal opinions to be delivered concurrently with the delivery of the Series 2018 Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of the expression of professional judgment, of the transaction opined upon, or of the future performance of the parties to the transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction. Except as set forth in APPENDIX G, none of the foregoing law firms are rendering legal opinions on which the Owners of the Series 2018 Bonds are entitled to rely.



## **TAX MATTERS**

### **Federal Income Taxes**

The Code imposes certain requirements that must be met subsequent to the issuance and delivery of the Series 2018 Bonds for interest thereon to be and remain excluded from gross income for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Series 2018 Bonds to be included in gross income for federal income tax purposes retroactive to the date of issue of the Series 2018 Bonds. The Issuer and the Borrower have covenanted in the Indenture and the Series 2018 Loan Agreement, respectively, and the Issuer and the Borrower have agreed in the Tax Regulatory Agreements to maintain the exclusion from gross income of the interest on the Series 2018 Bonds pursuant to Section 103 of the Code. In addition, the Issuer and the Borrower have made certain representations and certifications in the Indenture and the Series 2018 Loan Agreement, respectively, and the Issuer, the Department, and the Borrower have made certain representations and certifications in the Tax Regulatory Agreements. Bond Counsel will not independently verify the accuracy of those certifications and representations.

In the opinion of Nixon Peabody LLP, Bond Counsel, under existing law and assuming compliance with the aforementioned covenant and the accuracy of the aforementioned representations and certifications, interest on the Series 2018 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code, except that no opinion is expressed as to the exclusion of interest from gross income for any period during which such Bond is held by a person who, within the meaning of Section 147(a) of the Code, is a “substantial user” of the facilities financed with proceeds of the Series 2018 Bonds or a “related person.”

Bond Counsel is also of the opinion that such interest on the Series 2018 Bonds is treated as an item of tax preference for purposes of calculating the alternative minimum tax that may be imposed under the Code on corporations with taxable years beginning before January 1, 2018 and on individuals.

### **State Taxes**

Bond Counsel is further of the opinion that interest on the Series 2018 Bonds is exempt from State of California personal income taxes. Bond counsel expresses no opinion as to other California or local tax consequences arising with respect to the Series 2018 Bonds nor as to the taxability of the Series 2018 Bonds or the income therefrom under the laws of any state other than California.

### **Original Issue Discount**

The excess of the principal amount of a maturity of the Series 2018 Bonds over its issue price (i.e., the price at which price a substantial amount of such maturity of the Series 2018 Bonds was sold to the public, excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) (each, a “Discount Bond” and collectively the “Discount Series 2018 Bonds”) constitutes original issue discount which is excluded from gross income for federal income tax purposes to the same extent as interest on the Series 2018 Bonds. Further, such original issue discount accrues actuarially on a constant interest rate basis over the term of each Discount Bond and the basis of each Discount Bond acquired at such issue price by an initial purchaser thereof will be increased by the amount of such accrued original issue discount. The accrual of original issue discount may be taken into account as an increase in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Discount Series 2018 Bonds, even though there will not be a corresponding cash payment. Owners of the Discount Series 2018 Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Discount Series 2018 Bonds.

### **Original Issue Premium**

Series 2018 Bonds sold at prices in excess of their principal amounts are “Premium Series 2018 Bonds.” An initial purchaser with an initial adjusted basis in a Premium Series 2018 Bond in excess of its principal amount will have amortizable bond premium which is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of each Premium Series 2018 Bond based on the purchaser’s yield to maturity (or, in the case of Premium Series 2018 Bonds callable prior to their maturity, over the period to the call date, based on the purchaser’s yield to the call date and giving effect to any call premium). For purposes of determining gain or loss on the sale or

other disposition of a Premium Series 2018 Bond, an initial purchaser who acquires such obligation with an amortizable bond premium is required to decrease such purchaser's adjusted basis in such Premium Series 2018 Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning such Series 2018 Bonds. Owners of the Premium Series 2018 Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Premium Series 2018 Bonds.

### **Ancillary Tax Matters**

Ownership of the Series 2018 Bonds may result in other federal tax consequences to certain taxpayers, including, without limitation, certain S corporations, foreign corporations with branches in the United States, property and casualty insurance companies, individuals receiving Social Security or Railroad Retirement benefits, individuals seeking to claim the earned income credit, and taxpayers (including banks, thrift institutions and other financial institutions) who may be deemed to have incurred or continued indebtedness to purchase or to carry the Series 2018 Bonds. Prospective investors are advised to consult their own tax advisors regarding these rules.

Interest paid on tax-exempt obligations such as the Series 2018 Bonds is subject to information reporting to the Internal Revenue Service (the "IRS") in a manner similar to interest paid on taxable obligations. In addition, interest on the Series 2018 Bonds may be subject to backup withholding if such interest is paid to a registered owner that (a) fails to provide certain identifying information (such as the registered owner's taxpayer identification number) in the manner required by the IRS, or (b) has been identified by the IRS as being subject to backup withholding.

Bond Counsel is not rendering any opinion as to any federal tax matters other than those described in the opinions attached as APPENDIX G—"FORM OF LEGAL OPINION OF BOND COUNSEL." Prospective investors, particularly those who may be subject to special rules described above, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the Series 2018 Bonds, as well as any tax consequences arising under the laws of any state or other taxing jurisdiction.

### **Changes in Law and Post Issuance Events**

Legislative or administrative actions and court decisions, at either the federal or state level, could have an adverse impact on the potential benefits of the exclusion from gross income of the interest on the Series 2018 Bonds for federal or state income tax purposes, and thus on the value or marketability of the Series 2018 Bonds. This could result from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), repeal of the exclusion of the interest on the Series 2018 Bonds from gross income for federal or state income tax purposes, or otherwise. It is not possible to predict whether any legislative or administrative actions or court decisions having an adverse impact on the federal or state income tax treatment of holders of the Series 2018 Bonds may occur. Prospective purchasers of the Series 2018 Bonds should consult their own tax advisors regarding the impact of any change in law on the Series 2018 Bonds.

Bond Counsel has not undertaken to advise in the future whether any events after the date of issuance and delivery of the Series 2018 Bonds may affect the tax status of interest on the Series 2018 Bonds. Bond Counsel expresses no opinion as to any federal, state or local tax law consequences with respect to the Series 2018 Bonds, or the interest thereon, if any action is taken with respect to the Series 2018 Bonds or the proceeds thereof upon the advice or approval of other counsel.

## **RATING**

The Insured Bonds have been assigned a rating of “AA” by S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC (“S&P”) based upon the issuance of the Policy by AGM at the time of delivery of the Series 2018 Bonds. See “BOND INSURANCE.”

Fitch Ratings Inc. (“Fitch”) has assigned a preliminary investment grade rating of “BBB+” to the Series 2018 Bonds. The delivery of an at least equivalent final rating from such rating agencies is a condition to the issuance of the Series 2018 Bonds.

The expected and assigned ratings reflect only the views of Fitch and S&P, respectively, and any desired explanation of the significance of such rating should be obtained from Fitch and S&P, respectively. Generally, a rating agency bases its rating on information and materials furnished to it and on investigations, studies, and assumptions by such rating agency. There is no assurance that such rating will continue for any given period of time or will not be revised downward, suspended, or withdrawn entirely by Fitch or S&P, if, in their respective judgments, circumstances so warrant. Any such lowering, suspension, or withdrawal of the ratings might have an adverse effect upon the market price or marketability of the Series 2018 Bonds. None of the Underwriters, the Issuer, the Borrower, or the Department undertake any responsibility after the issuance of the Series 2018 Bonds to assure the maintenance of the ratings or to oppose any revisions or withdrawal thereof. A rating is not a recommendation to buy, sell, or hold the Series 2018 Bonds and may be subject to revision or withdrawal at any time. Prior to submitting its bid, the Borrower obtained private rating assessments from other rating agencies and after selection elected to seek a rating from Fitch. While the scenarios that were reviewed pre-bid varied from the final structure and security package, none of these early private rating assessments were below investment grade.

## **FINANCIAL ADVISOR**

MUFG Bank, Ltd. (the “Borrower Financial Advisor”) has acted as financial advisor to the Borrower in connection with certain aspects of the issuance of the Series 2018 Bonds. The Borrower Financial Advisor has provided advice on the plan of finance and structure of the issue and has not been engaged, nor has it undertaken, to make an independent verification or to guarantee the accuracy, completeness or fairness of the information contained in this Official Statement.

## UNDERWRITING

The Series 2018 Bonds are being purchased by Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “Representative”), on behalf of itself and the other underwriters listed on the cover of this Official Statement (the “Underwriters”). The Underwriters have agreed, subject to certain conditions, to purchase the Series 2018 Bonds from the Issuer at an aggregate purchase price of \$1,289,504,608.71 (which represents the principal amount of the Series 2018 Bonds, less the Underwriters’ discount and other fees of \$5,178,897.09, plus the net original issue premium of \$113,158,505.80) and to make a public offering of the Series 2018 Bonds at prices that are not higher than the public offering prices or lower than the yields indicated on the inside cover page of this Official Statement.

The Series 2018 Bonds may be offered and sold to certain dealers (including the Underwriters) at prices lower than such public offering prices, and such public offering prices may be changed, from time to time, by the Underwriters. The Underwriters will be obligated to purchase all of the Series 2018 Bonds if any are purchased.

Each Underwriter and its respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. The Underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various investment banking services for the Issuer, the Department, the Borrower and its affiliates, the Equity Members (and affiliates thereof) for which they received or will receive customary fees and expenses.

Under certain circumstances, the Underwriters, the City, and their affiliates may have certain creditor and/or other rights against the Issuer, the Borrower and its affiliates, the Department or the Bank Lenders in connection with such activities. In the various course of their various business activities, the Underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the Issuer, the Borrower or its affiliates, the Department or the Bank Lenders (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the Issuer, the Borrower or its affiliates, the Department or the Bank Lenders. The Underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

From time to time, each of the underwriters for the Series 2018 Bonds serve as an underwriter for the City's bonds and other obligations and for the Department's Senior Bonds and Subordinate Bonds.

Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and Samuel A. Ramirez & Company, Inc. also serve as commercial paper dealers for the Department's Subordinate Commercial Paper program, which program is described in APPENDIX B—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES.”

## **MISCELLANEOUS**

### **Registration of Series 2018 Bonds**

Registration or qualification of the offer and sale of the Series 2018 Bonds (as distinguished from registration of the ownership of the Series 2018 Bonds) is not required under the federal Securities Act of 1933, as amended. THE ISSUER ASSUMES NO RESPONSIBILITY FOR THE QUALIFICATION OR REGISTRATION OF THE SERIES 2018 BONDS FOR SALE UNDER THE SECURITIES LAWS OF ANY JURISDICTION IN WHICH THE SERIES 2018 BONDS MAY BE SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED.

### **Additional Information**

Owners, beneficial owners and prospective investors may request copies of any of the documents referenced or summarized herein. Such copies will be available following the date of delivery of the Series 2018 Bonds, upon delivery of a written request and the payment of reasonable copying, mailing and handling charges to the Trustee, at U.S. Bank National Association, 633 W 5th Street, Los Angeles, California 90071, Attention: Corporate Trust Administration.

### **Official Statement Certification**

The distribution of this Official Statement has been authorized by the board of directors of the Issuer. This Official Statement is not to be construed as an agreement or contract between the Issuer, the Borrower and any purchaser, owner or holder of any Series 2018 Bond.

## APPENDIX A

### DEFINITIONS

Unless otherwise specified, capitalized terms used in this Official Statement will have the meanings set forth below:

“Acceptable Credit Rating” means in the case of any bank, financial institution or trust company, a rating of its senior unsecured debt by at least one (1) Rating Agency at the following level:

- (a) A- or higher by S&P;
- (b) A- or higher by Fitch;
- (c) A3 or higher by Moody's;
- (d) A (low) or higher by DBRS; or
- (e) the equivalent rating from another Rating Agency.

“Acceptable LC Bank” means any bank, financial institution or trust company that has an Acceptable Credit Rating as at the time of issuance, that is authorized to engage in the banking business and is organized under or licensed as a branch or agency under the laws of the United States or any state thereof.

“Acceptable Letter of Credit” means an irrevocable standby letter of credit that is (a) denominated in U.S. Dollars, (b) without recourse to the Borrower, (c) issued by an Acceptable LC Bank, and (d) subject to the ISP98.

“Acceptable Remaining Parties” means, as applicable:

(a) with respect to the Design-Build Contract, (i) Fluor Enterprises, Inc. and Dragados USA, Inc., if the applicable Design-Build Contractor Default is caused by or relates to any Design-Build Contractor member; or (ii) Fluor Corporation and Dragados, S.A., if the applicable Design-Build Contractor Default is caused by or relates to any Design-Build Guarantor, in either case in respect of which the applicable Design-Build Contractor Default has not occurred and which are not otherwise in breach or default of their obligations under the Design-Build Contract or the relevant parent guaranties, as applicable; or

(b) with respect to the APM Operating System Subcontract, Fluor Enterprises, Inc. and Dragados USA, Inc., if the applicable Design-Build Contractor BT Default is caused by or relates to any Design-Build Contractor member, in respect of which the applicable Design-Build Contractor BT Default has not occurred and which are not otherwise in breach or default of their obligations under the Design-Build Contract.

“Acceptable Remaining Party Principle” means, as applicable:

(a) with respect to the Design-Build Contract, the principle that, notwithstanding anything else in the Design-Build Contract, where a particular Design-Build Contractor Default is expressed to be subject to the Acceptable Remaining Party Principle, no Design-Build Contractor Default will occur to the extent that such Design-Build Contractor Default is caused by or relates to any Design-Build Contractor member or Design-Build Guarantor, provided that there are Acceptable Remaining Parties; or

(b) with respect to the APM Operating System Subcontract, the principle that, notwithstanding anything else in the APM Operating System Subcontract, where a particular Design-Build Contractor BT Default is expressed to be subject to the Acceptable Remaining Party Principle, no Design-Build Contractor BT Default will occur to the extent that such Design-Build Contractor BT Default is caused by or relates to any Design-Build Contractor member, provided that there are Acceptable Remaining Parties.

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

“Account Collateral” means all deposit accounts, securities accounts and funds established under the Indenture and funds deposited therein and all monies, funds, instruments, securities and all other property from time to time credited to such deposit accounts, securities accounts and funds; and all deposit accounts and any and all other bank accounts related to such accounts and funds and established pursuant to the Indenture, and all proceeds of any or all of the foregoing (collectively, the “Indenture Account Collateral”) and all Project Accounts, and funds or other property deposited therein and all monies, funds, instruments, securities and all other property from time to time credited to such Project Accounts and all "securities accounts" (within the meaning of Section 8-501 of the UCC), all deposit accounts and any and all other bank accounts related to the Project Accounts and established pursuant to the Collateral Agency and Accounts Agreement, and all proceeds of any or all of the foregoing (collectively, the “Project Accounts Collateral”).

“Accreted Redemption Price” means, with respect to any Original Issue Discount Bonds or Capital Appreciation Bonds, the Accreted Value of the Senior Bonds to be redeemed, plus accrued interest (if any) to, but not including, the redemption date.

“Accreted Value” means, with respect to (a) any Capital Appreciation Bond, as of any Calculation Date, the sum of the initial principal amount of such Senior Bond plus the principal accumulated, compounded and unpaid thereon to, but not including, such Calculation Date, and (b) any Original Issue Discount Bond, as of any Calculation Date, an amount equal to the initial public offering price of such Senior Bond, plus the amount of discounted principal that has accreted thereon from its date of issuance to, but not including, such Calculation Date at the rate on such Senior Bond; provided, however, that if the Calculation Date for the determination of Accreted Value of any Capital Appreciation Bond or Original Issue Discount Bond is not an Interest Payment Date, the Accreted Value of such Senior Bond will be calculated by straight line interpolation of Accreted Value as between the immediately preceding Interest Payment Date and the Accreted Value as of the Calculation Date. As used with respect to any Capital Appreciation Bond or Original Issue Discount Bond, including when used in connection with determining whether the Owners of the requisite principal amount of the Senior Bonds then outstanding have given any request, demand, authorization, direction, notice, consent or waiver, the term “principal” means the Accreted Value thereof, except as used in connection with the authorization and issuance of Senior Bonds and with the order of priority of payments of Senior Bonds after an event of default, in which case “principal” means the initial offering price of a Capital Appreciation Bond or Original Issue Discount Bond.

“ACI” has the meaning specified in “INTRODUCTION—Aviation Activity.”

“ACS Cash Collateral Sub-Account” means the "ACS Cash Collateral Sub-Account" of the Equity Member Cash Collateral Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—*Description of Project Accounts—Equity Member Cash Collateral Account.*”

“ACS Group” has the meaning specified in “PROJECT PARTICIPANTS—Equity Members—*ACS LINXS Holdings, LLC.*”

“ACSIC” has the meaning specified in “PROJECT PARTICIPANTS—Equity Members—*ACS LINXS Holdings, LLC.*”

“ACSID” has the meaning specified in “PROJECT PARTICIPANTS—Equity Members—*ACS LINXS Holdings, LLC.*”

“Actual Insurance Policies” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Insurance—Insurance Premium Benchmarking.”



“Actual Insurance Premiums” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Insurance—Insurance Premium Benchmarking.”

“Additional D&C Payment Certificate” means a certificate prepared by the Lenders' Technical Advisor in the form of Exhibit J to the Collateral Agency and Accounts Agreement.

“Additional D&C Payments” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Additional D&C Payments.”

“Additional D&C Work” has the meaning specified in “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Additional D&C Payments.”

“Additional Financing Documents” means any documents and/or instruments evidencing, documenting, securing or otherwise relating to other Permitted Senior Secured Indebtedness incurred by the Borrower.

“Additional Payments” has the meaning specified in APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2018 LOAN AGREEMENT—Additional Payments.”

“Additional Property(ies)” has the meaning specified in APPENDIX —“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction—Additional Acquisitions” or Appendix D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Scope of Work—Acquisition of Real Property—Additional Properties,” as applicable.

“Additional Senior Bonds” means the Senior Bonds issued pursuant to Section 6.11 of the Indenture.

“Additional Senior Secured Obligations” has the meaning specified in clause (b)(i) of the definition of “Permitted Indebtedness.”

“Additional TVA Mitigation Work” has the meaning specified in “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Additional D&C Payments.”

“Additional TVA O&M Mobilization Payments” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor—Mobilization Payments.”

“Adjusted LIBOR” means, as to any LIBOR Loan for any Design-Build Loan Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBOR for such Design-Build Loan Interest Period divided by (b) one minus the Eurodollar Reserve Percentage.

“Administrative Agent” means Mizuho Bank, Ltd.

“Adverse Action” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*Exercise and Enforcement of Remedies—Enforcement Exceptions*.”

“Affected Lender” means any Bank Lender that:

(a) notifies the Borrower that such Bank Lender is entitled to receive payments under the market disruption or increased costs provisions of the Design-Build Loan Facility Credit Agreement or to be “grossed-up” for tax withholdings under the Design-Build Loan Facility Credit Agreement, or the Borrower is required to effect a mandatory prepayment to a Bank Lender because of a change in applicable law, and such Bank Lender fails to withdraw such notice within ten (10) Business Days after the Borrower’s request for such withdrawal;

(b) fails to fully fund its pro rata share of any advance under the Design-Build Loan Facility Credit Agreement as and when contractually required pursuant to the terms thereof (unless such failure is due to administrative or technical error and payment is made within three (3) Business Days of its due date) or any Bank Lender rescinds or repudiates any Financing Document;

(c) suffers a Rating Event (at any time prior to the Design-Build Loan Facility being advanced in full) or is subject to a Bankruptcy Event;

(d) does not provide its consent or agreement to a request by the Borrower for a waiver, approval or amendment that requires the consent of all of the Lenders pursuant to the provisions of the Design-Build Loan Facility Credit Agreement, the Collateral Agency and Accounts Agreement or the Intercreditor Agreement and the consenting Bank Lenders represent at least seventy-five percent (75%) of all commitments or participation in the Design-Build Loan Facility, as the case may be; or

(e) any Bank Lender has, or has a direct or indirect parent that has, become the subject of a Bail-In Action.

“Affiliate” means:

(a) any Equity Member;

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

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

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

“Agent” means with respect to the Intercreditor Agreement (i) in the case of the Bank Lenders, on and from the Financial Close Date, the Administrative Agent acting on behalf of the Bank Lenders, (ii) in the case of the Owners of the Series 2018 Bonds, the Trustee, acting on behalf of the Owners, (iii) in the case of the Senior Secured Obligations, the Collateral Agent, acting on behalf of the Senior Creditors, (iv) in the case of any series of other Permitted Senior Secured Indebtedness or additional Senior Creditors that become subject to the Intercreditor Agreement, any additional Agent named for such series in the applicable joinder agreement and (v) in the case of the Hedge Providers, the Hedge Providers on their own behalf or any representative or agent representing such banks individually or collectively.

“Aggregate Bank Debt Commitments” means Funded Bank Debt plus available unfunded Design-Build Loan commitments.

“Aggregate Equity Commitment” means, as to each Equity Member, the maximum amount of Equity Contributions that such Equity Member shall make to the Borrower as set forth in the Equity Contribution Agreement.

“Aggregate Hedging Agreement Termination Values” means, the aggregate value under each Hedging Agreement for each Hedge Provider, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreement, (a) for any date on or after the date any Hedging Agreement has been closed out and termination value(s) determined in accordance with such agreement, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for any Hedging Agreement, as determined based upon one or more mid-market or other readily available

quotations provided by any recognized dealer in such Hedging Agreements (which may include a Bank Lender or any Affiliate of a Bank Lender).

“Aggregate OPSSI Commitments” means funded other Permitted Senior Secured Indebtedness plus unfunded available other Permitted Senior Secured Indebtedness commitments.

“Airport Police” means the Los Angeles Airport Police.

“Airport System” has the meaning specified in “INTRODUCTION—The City, the Department and the Los Angeles International Airport.”

“Alternative Rate” has the meaning specified in “FINANCING FOR THE APM PROJECT—Senior Debt—*Design-Build Loan Facility*.”

“Alternative Rate of Interest” means interest paid or payable to any Bank Lender following the events set forth in the fourth and fifth paragraphs of APPENDIX D-4—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD LOAN FACILITY CREDIT AGREEMENT—Interest Rates,” in each case, that exceeds the amount such Bank Lender would have received had such interest been calculated on the basis of the applicable Design-Build Loan Facility interest rate as calculated for the most recent Interest Period for which the LIBOR rate could be determined rather than the rate of interest applicable to the Design-Build Loan outstanding by such Bank Lender.

“Alternative Rate Loan” means a Design-Build Loan that bears interest at the Alternative Rate.

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

“Amortized Redemption Price” means, with respect to Senior Bonds that are not Capital Appreciation Bonds or Original Issue Discount Bonds, the Amortized Value of the Senior Bonds to be redeemed, plus accrued interest to, but not including, the redemption date.

“Amortized Value” means an amount equal to (a) the principal amount of the Senior Bonds to be redeemed, multiplied by (b) the price of such Senior Bonds expressed as a percentage, calculated based on the industry standard method of calculating bond prices assuming (i) the delivery date equal to the redemption date, (ii) the maturity date of such Senior Bonds is the maturity date (taking into account any optional call provision) and (iii) the yield on such Senior Bonds is equal to such Senior Bond’s original offering yield to be set forth within the official statement or the offering memorandum, as applicable.

“Annual Vandalism Deductible” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Operation and Maintenance— Responsibility for Loss or Damage.”

“AP Delay Liquidated Damages” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Liquidated Damages.”

“AP Delay Period” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—Delayed Payment Compensation.”

“APM Fixed Facilities” means the fixed structures that represent permanent improvements to the Site that are necessary for the installation and the integrated operation of the APM Operating System, including but not limited to, guideway structure(s), station structures, equipment room structures, Maintenance & Storage Facility structure, propulsion power substation structures, structures within which the central control facility and

administrative offices related to the APM System may be located, and pedestrian walkways, as described in Part 1 (Scope of Work) of the Technical Provisions.

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

“APM Operating System” has the meaning specified in “INTRODUCTION—The DBFOM Agreement.”

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

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

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

“APM Operating System Subcontract” means that certain APM Operating System Subcontract, dated as of April 11, 2018 (as may be amended, amended and restated, supplemented or otherwise modified from time to time), between Design-Build Contractor and Bombardier.

“APM Operating System Supplier” means, as applicable:

- (a) with respect to the DBFOM Agreement, the Contractor primarily responsible for designing and building the APM Operating System; or
- (b) with respect to the Design-Build Contract, means Bombardier Transportation (Holdings) USA Inc., or any other replacement subcontractor as may be permitted under the Design-Build Contract, primarily responsible for designing and building the APM Operating System.

“APM OPS Warranty Period” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Warranties—APM Operating System Supplier Warranties.”

“APM OS Availability” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Completion—Passenger Service Availability.”

“APM Project” has the meaning specified in “SUMMARY—The Project—The APM Project.”

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

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

“Applied Deduction” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Payments During the O&M Period.”

“Applied O&M Adjustment” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor—O&M Payments.”

“Applicable Equity Member Cash Collateral Account” means (i) the ACS Cash Collateral Sub-Account; (ii) the BBI Cash Collateral Sub-Account; (iii) the BT Cash Collateral Sub-Account; (iv) the Fluor Cash Collateral Sub-Account; and (v) the HT Cash Collateral Sub-Account, each as established and created as a sub-account of the Equity Member Cash Collateral Account in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Equity Member Cash Collateral Account*.”

“Applicable Reserve Letter of Credit” means, with respect to any Reserve Account, an Acceptable Letter of Credit delivered to the Collateral Agent to fund all or a portion of the Applicable Reserve Requirement relating to such Reserve Account in accordance with the terms of the Collateral Agency and Accounts Agreement.

“Applicable Margin” means 0.80% per annum.

“Approved Construction Requisition” means a Construction Requisition Certificate and Technical Advisor Certificate that satisfies the conditions described in pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts.”

“Art Accommodation and Installation Work” means art accommodation and installation services requested by the Department pursuant to task orders.

“Asset Management Plan” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Operation and Maintenance—Renewal Work—Performance of Renewal Work; Asset Management Plan.”

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

“Authorized Denomination” means, with respect to the Series 2018 Bonds, \$5,000 in principal amount and any integral multiple thereof.

“Authorized Representative” means the authorized representative for either the Department or the Borrower identified in Exhibit 3 (Initial Designation of Authorized Representatives) to the DBFOM Agreement or otherwise designated in accordance with the DBFOM Agreement.

“Availability Payment” means the payments to be made by the Department to the Borrower under Section 11.2 (Availability Payments) of the DBFOM Agreement, determined on an annual basis in accordance with Exhibit 4B (Availability Payment Mechanism) to the DBFOM Agreement and payable monthly.

“Balfour Beatty” has the meaning specified in “PROJECT PARTICIPANTS—Equity Members—*Balfour Beatty Investments, Inc.*”

“Balfour Beatty Infrastructure” has the meaning specified in “PROJECT PARTICIPANTS—Design-Build Contractor—*Balfour Beatty Infrastructure, Inc.*”

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bank Lenders” has the meaning specified in “SUMMARY—Financing for the APM Project—*Design-Build Loan Facility*.”

“Bankruptcy Event” means (a) in respect of any Person means, an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person, or of a substantial part of the assets of such Person, under any insolvency law or (ii) the appointment

of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or a substantial part of such Person's assets and, in any case referred to in the foregoing sub clauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or (b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of such Person's assets, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or (iii) make a general assignment for the benefit of creditors, or (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (v) commence a voluntary proceeding under any insolvency law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any insolvency law, or (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing sub clauses (i) through (v), inclusive, of this clause (b), and, in any case referred to in the foregoing sub clauses (i) through (v), such action has not been cured within twenty (20) days thereafter.

"Bank Segregated Collateral" means the Milestone Payment Sub-Account and the Design-Build Loan Mandatory Prepayment Sub-Account and all respective amounts on deposit therein, credited thereto or earnings thereon.

"Base Capital MaxAP" means, initially, \$68,081,612.31, which is the Base Capital MaxAP reflected in the Financial Model for the first Operating Year, as adjusted from time to time in accordance with the DBFOM Agreement.

"Base Case Financial Model" means the Financial Model as approved by the Department and the Borrower as of the Effective Date.

"Base Financial Model" means a mechanically sound financial model, approved by the Model Auditor, forecasting the revenues and expenditures of the APM Project for time periods and based upon assumptions and methodology provided by the Borrower.

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

- (a) the LIBOR swap spot curve as provided by Bloomberg;
- (b) the spot one month U.S. dollar LIBOR spread curve;
- (c) the spot six month U.S. dollar LIBOR spread curve;
- (d) the spot overnight index swap curve;
- (e) the U.S. spot treasury yield curve;
- (f) the Municipal Market Data (MMD) Benchmark, supplied by Thomson Reuters; and
- (g) the Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index (formerly known as the Bond Market Association (BMA) Municipal Swap Index).

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

"Base Operating MaxAP" means, initially, \$28,434,084.03, or the Base Operating MaxAP reflected in the Financial Model stated in January 16, 2018 dollars, as adjusted from time to time in accordance with the DBFOM Agreement.

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

“BBI Cash Collateral Sub-Account” means the “BBI Cash Collateral Sub-Account” of the Equity Member Cash Collateral Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Equity Member Cash Collateral Account*.”

“Benchmarking Date” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Insurance—Insurance Premium Benchmarking.”

“Beneficial Owner” has the meaning specified in “APPENDIX F—DTC – BOOK-ENTRY-ONLY-SYSTEM.”

“Bombardier” means, as applicable, as specified in “PROJECT PARTICIPANTS—Equity Members—Bombardier Transportation (Holdings) USA Inc. or Bombardier Transportation (Holdings) USA Inc., as the subcontractor under the APM Operating System Subcontract.”

“Bombardier Default” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Termination—Bombardier Default and Design-Build Contractor Remedies—Bombardier Default.”

“Bombardier Guarantor” means Bombardier Transportation (Global Holding) UK Limited.

“Bombardier Intellectual Property” means Intellectual Property developed by Bombardier or its affiliates or Bombardier subcontractors either (a) prior to the effective date of the APM Operating System Subcontract, (b) independently of the APM Operating System Subcontract or (c) any Intellectual Property that is authored, created, invented and/or put into practice under and/or for the purposes of the APM Project, is an improvement, continuation or adaptation of Intellectual Property subject to (a) and (b) herein, and is incorporated into the Proposal, APM Project, or Work including Technology Enhancements.

“Bombardier-Related Entity” means:

- (a) Bombardier;
- (b) Bombardier subcontractors;
- (c) any other persons performing any of the Subcontracted Work on behalf of Bombardier;
- (d) any other persons for whom Bombardier may be legally or contractually responsible; and
- (e) the employees, agents, officers, directors, representatives and consultants of any of the foregoing,

but excluding the Borrower and the O&M Contractor.

“Bombardier Transportation” has the meaning specified in “PROJECT PARTICIPANTS—Equity Members—*Bombardier Transportation (Holdings) USA Inc.*”

“Bond Counsel” means Nixon Peabody LLP or other attorneys selected by the Issuer who have nationally recognized expertise in the issuance of municipal securities, the interest on which is excluded from gross income for federal income tax purposes.

“Bond Financing” means any debt financing comprising of bonds, which includes tax-exempt bonds issued by an existing agency that will issue bonds, notes or other evidence of indebtedness (the interest on which is

excludable from gross income for federal income tax purposes under the Code) in connection with the APM Project or taxable capital market instruments.

“Bond Proceeds Account” means the "Bond Proceeds Account" established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Bond Proceeds Account*.”

“Bonds Segregated Collateral” means the Bond Proceeds Account and the Bond Mandatory Prepayment Sub-Account and all respective amounts on deposit therein, credited thereto or earnings thereon.

“BT Cash Collateral Sub-Account” means the "BT Cash Collateral Sub-Account" of the Equity Member Cash Collateral Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Equity Member Cash Collateral Account*.”

“Bond Mandatory Prepayment Sub-Account” means the "Bond Mandatory Prepayment Sub-Account" of the Mandatory Prepayment Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Mandatory Prepayment Account*.”

“Borrower” has the meaning specified in “SUMMARY—The Project—*The APM Project*.”

“Borrower BT Cure Notice” has the meaning specified in APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Priority of Transfers from Project Accounts; Event of Default.”

“Borrower BT Cure Period” has the meaning specified in APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Priority of Transfers from Project Accounts; Event of Default.”

“Borrower Financial Advisor” has the meaning specified in “FINANCIAL ADVISORS.”

“Borrower HoldCo” means LAX Integrated Express Solutions HoldCo, LLC.

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

“Borrower’s Interest” means all right, title and interest of the Borrower in, to, under or derived from the Contract Documents.

“Breakage Costs” means any commercially reasonable prepayment premiums or penalties (including documented LIBOR breakage fees, customary and reasonable trustee, Collateral Agent and Lender fees but excluding any fees related to legal or other consulting costs), make-whole payments or other prepayment amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, payable by or on behalf of, or credited against payments owing to, the Borrower, under any financing agreement or security document or otherwise as a result of the payment (including pre-payment), redemption or acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date (less any breakage benefits), excluding, however, any such amounts included in the principal amount of any Refinancing. The term “Breakage Costs” excludes any such premiums, penalties, payments or other amounts relating to Equity Member Debt.



“Break-Funding Costs” means losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Bank Lender to fund its LIBOR Loans but excluding loss of anticipated profits).

“BT Change” means changes to the Subcontracted Work including additions or reductions in the scope of the Subcontracted Work or changes to the requirements applicable to the Subcontracted Work.

“BT Defect” means any deficiency, defect, error or fault in the Subcontracted Work, to the extent arising out of or resulting from any non-compliance by Bombardier or any Bombardier-Related Entity with the requirements of the APM Operating System Subcontract. For greater certainty, BT Defects include Epidemic BT Defects.

“BT Defect Rectification Work Warranty Period” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—BT Defects.”

“BT Delay Reserve Account” means an interest bearing account to be established by Design-Build Contractor and into which Milestone Delay Payments shall be deposited.

“BT Delay Liquidated Damages” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Delay in Subcontracted Work—Delay Damages.”

“BT Documents” means: (a) the APM Operating System Subcontract, including all exhibits and attachments and the executed originals of exhibits and attachments that are contracts; (b) the relevant Technical Provisions; (c) any amendments to the foregoing; and (d) any change orders under the APM Operating System Subcontract.

“BT Insurance Proceeds” means, solely to the extent that such amounts are included in the calculation of DB Insurance Proceeds pursuant to the Design-Build Contract, all proceeds from insurance payable to Bombardier (or that would have been payable to Bombardier but for Bombardier’s breach of any obligation under the APM Operating System Subcontract to procure or maintain said insurance) on or after the early termination date under the APM Operating System Subcontract.

“BT Lenders’ Direct Agreement” has the meaning specified in clause (vi) of “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Direct Agreements and Consent and Agreements.”

“BT Long Stop Date” means nine months after the Planned Early PSA Date, as such deadline may be extended from time to time under the DBFOM Agreement or the Design-Build Contract.

“BT Milestone Payment” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Payment of Subcontract Price—BT Milestone Payments.”

“BT Subcontractor Breakage Costs” means losses that have been or will be reasonably and properly incurred by Bombardier under the APM Operating System Subcontract or any Bombardier subcontract as a direct result of the termination of the APM Operating System Subcontract (and which shall not include lost profit or lost opportunity), but only to the extent that:

(a) the losses are incurred in connection with the APM Project and with respect to the Subcontracted Work required to be provided or carried out by Bombardier, including:

- (i) any materials or goods ordered or subcontracts placed that cannot be cancelled without such losses being incurred;

- (ii) any expenditure incurred in anticipation of the provision of services or the completion of Subcontracted Work in the future; and
  - (iii) the cost of demobilization including the cost of any relocation of equipment used in connection with the APM Project;
- (b) the losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm's length basis; and
- (c) Bombardier has used its reasonable efforts to mitigate such losses.

“BT Term” means the term of the APM Operating System Subcontract, which shall commence on the date when (a) both Design-Build Contractor and Bombardier have executed the APM Operating System Subcontract and (b) the Design-Build Contract is in full force and effect and shall continue until the BT Termination Date.

“BT Termination Date” means the effective date of any termination of the APM Operating System Subcontract in accordance with the termination provisions under the APM Operating System Subcontract.

“BT Warranty Period” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—BT Defects.”

“Borrower Continuing Disclosure Agreement” means the Continuing Disclosure Agreement entered into by the Department on June 8, 2018, in the form attached APPENDIX E-1—“FORM OF BORROWER CONTINUING DISCLOSURE AGREEMENT.”

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

“Business Opportunity(ies)” has the meaning specified in Appendix D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Advertising and Business Opportunities.”

“Carry Forward O&M Adjustment” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT – Payments to the O&M Contractor—O&M Payments.”

“Calculation Date” means each June 30 and December 31 occurring on or after the Passenger Service Availability Date.

“Calculation Period” means a six month period ending on a Calculation Date.

“Capital Appreciation Bonds” means the Additional Senior Bonds designated Capital Appreciation Bonds in the Supplemental Indenture providing for the issuance of such Additional Senior Bonds and on which interest is compounded and paid at maturity or on prior to redemption.

“CCTV” means closed-circuit television.

“CEQA” has the meaning specified in “THE APM PROJECT—Overview—Non-O&M Facilities—*Environmental Approvals*.”

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

“Certificate of Non-O&M Facility Occupancy Readiness” means the certificate issued by the Department as contemplated in Section 7.9.2 (Non-O&M Facility Occupancy Readiness) of the DBFOM Agreement.

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

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

“Change in Law” means:

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

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

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

- (a) a change in possession of the power to direct or control the management of the Borrower or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;
- (b) an upstream reorganization or transfer of indirect interests in the Borrower so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of the Borrower;
- (c) a change in possession of the power to direct or control the management of the Borrower or a material aspect of its business due solely to a bona fide transaction involving a beneficial interest in a parent organization of an Equity Member if the references, experience or financial statements of the parent organization were not considered or evaluated in the Borrower’s statement of qualification (provided in response to that certain Request for Qualifications to Design, Build, Finance, Operate and Maintain the APM Project, issued by the Department on June 9, 2016, as amended) or Proposal, provided, however, that this exception shall not apply if at the time of the transaction the transferee is suspended or debarred from bidding, proposing or contracting with any federal, State or local department or agency, or is subject to a suspension or debarment proceeding;
- (d) an Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;
- (e) a transfer of interests between (i) managed funds that are under common ownership or control or (ii) the general partner, manager or the parent company of such general partner or manager and any managed funds under common ownership or control with such general partner or manager (or parent company of such general

partner or manager); provided in all cases that the relevant funds and the general partner or manager of such funds (or the parent company of such general partner or manager) have been approved by the Department in writing prior to the date of the DBFOM Agreement;

(f) the exercise of minority veto or voting rights (whether pursuant to applicable Law, by the Borrower's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of the Borrower, provided that if such minority veto or voting rights are exercised pursuant to shareholder or similar agreements, the Department received copies of such agreements on or before the Effective Date; and

(g) the grant of security documents, including the documents identified in the DBFOM Agreement as the "Initial security documents," in strict compliance with Section 4 of the Lenders' Direct Agreement or the exercise of Lender remedies under such security documents, including foreclosure.

"Change Order" means a written change order in connection with a LAWA Change as described in Section 1.3.3 of Exhibit 9 (LAWA Change Procedures and Directive Letters) to the DBFOM Agreement.

"Change Proposal" has the meaning specified in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Changes—Department Request for Change Proposal."

"City" means the City of Los Angeles.

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

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

"Class" means:

- (a) with respect to the Senior Creditors, each of:
  - (i) Bank Lenders (in their capacity as such);
  - (ii) the Owners of the Series 2018 Bonds (in their capacity as such);
  - (iii) each Hedge Provider individually; and
  - (iv) any Additional Senior Creditors that become subject to the Intercreditor Agreement pursuant to a joinder agreement supplementing the Intercreditor Agreement; and
- (b) with respect to any Senior Secured Obligations, each of:
  - (i) the Design-Build Loan Facility Obligations;
  - (ii) the Hedging Termination Obligations;
  - (iii) Series 2018 Bond Obligations; and
  - (iv) other Permitted Senior Secured Indebtedness incurred pursuant to any Additional Senior Secured Obligations or any related Additional Financing Documents (excluding any

additional hedges), which pursuant to any joinder agreement supplementing the Intercreditor Agreement, are to be represented under the Intercreditor Agreement by a common Agent (in its capacity as such for such other Permitted Senior Secured Indebtedness).

“Class Percentage” means, the total percentage of a Class of Senior Creditor's Senior Secured Obligations as calculated in accordance with the following for purposes of determining the threshold required for Required Senior Creditor and an Intercreditor Vote in the Intercreditor Agreement:

(a) Pre-ICA Enforcement Action:

- (i) Owners of the Series 2018 Bonds: the face value outstanding of the Series 2018 Bonds over Total Pre-Enforcement Senior Secured Voting Value;
- (ii) Bank Lenders: Aggregate Bank Debt Commitments over Total Pre-Enforcement Senior Secured Voting Value;
- (iii) Hedge Providers: No voting or initiation of ICA Enforcement Action rights; and
- (iv) Permitted Senior Secured Indebtedness: Aggregate OPSSI Commitments over Total Pre-Enforcement Senior Secured Voting Value.

(b) Post-ICA Enforcement Action:

- (i) Owners of the Series 2018 Bonds: the face value outstanding of the Series 2018 Bonds over Total Post-Enforcement Senior Secured Voting Value;
- (ii) Bank Lenders: Funded Bank Debt over Total Post-Enforcement Senior Secured Voting Value;
- (iii) Hedge Providers: Aggregate Hedging Agreement Termination Values over Total Post-Enforcement Senior Secured Voting Value; and
- (iv) Permitted Senior Secured Indebtedness: aggregate Funded OPSSI Debt over Total Post-Enforcement Senior Secured Voting Value.

“Code” means the Internal Revenue Code of 1986 and the regulations promulgated and rulings issued thereunder, each as amended from time to time, and any successor statute.

“Collateral” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Senior Secured Obligations.”

“Collateral Agency and Accounts Agreement” means that certain Collateral Agency and Accounts Agreement, dated as of June 5, 2018 (as may amended, amended and restated, supplemented or otherwise modified from time to time), among the Borrower, Administrative Agent, the Intercreditor Agent, the Trustee, the Collateral Agent, the Depositary Agent and each other Secured Party that accedes thereto.

“Collateral Agent” means U.S. Bank National Association or its permitted successors pursuant to the Financing Documents.

“Collateral Agent BT Cure Notice” has the meaning specified in APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Priority of Transfers from Project Accounts; Event of Default.”

“Committed Investment” means Equity Investments and Deferred Equity Amounts.

“Compensation Amount” means the amount of compensation to be paid to the Borrower, if any, due to the occurrence of a Compensation Event, which may include Incremental Costs and/or Delayed Payment Compensation, as determined in accordance with the terms of the DBFOM Agreement.

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

- (a) LAWA-Caused Event;
- (b) discovery of paleontological, cultural, archaeological or historical resources within or under the D&C Limits (excluding Additional Properties and Temporary Areas);
- (c) discovery of any threatened or endangered species (regardless of whether the species is listed as threatened or endangered as of the Setting Date) within or under the D&C Limits (excluding Additional Properties and Temporary Areas);
- (d) Release of Hazardous Materials by a Person other than a Borrower-Related Entity that (i) render use of the APM Project unsafe or potentially unsafe absent assessment, containment and/or remediation or (ii) are required by applicable Law to be recycled, treated or stored;
- (e) provided the Borrower conducted an investigation of site conditions at the applicable portion of the Site in accordance with Section 14.1.6.2 (Reduced Relief for Delay in Investigating Site Conditions) of the DBFOM Agreement, discovery of Pre-Existing Hazardous Materials within the D&C Limits that (i) render use of the APM Project unsafe or potentially unsafe absent assessment, containment and/or remediation, or (ii) are required by applicable Law to be recycled, treated or stored, but excluding from the foregoing any Known Hazardous Materials and any Hazardous Materials within Additional Properties and Temporary Areas;
- (f) provided the Borrower conducted an investigation of site conditions at the applicable portion of the Site in accordance with Section 14.1.6.2 (Reduced Relief for Delay in Investigating Site Conditions) of the DBFOM Agreement, discovery of any underground Utility (excluding Service Lines) within the D&C Limits (i) not identified in the Utility Information and which could not have been reasonably inferred as of the Setting Date from the presence of other facilities, such as buildings, meters, junction boxes, manholes or identifying markers, visible during a surface inspection of the Site, or (ii) misidentified in the Utility Information outside of the baseline tolerance of the applicable quality level; any Utility identified as quality level D in the Utility Information with regard to horizontal location or size and any Utility identified as quality level B, C or D in the Utility Information with regard to vertical location shall not be deemed to be misidentified under this clause (f)), but excluding from the foregoing any Utilities within Additional Properties or Temporary Areas);
- (g) discovery of geotechnical conditions:
  - (i) within the D&C Limits (but excluding Additional Properties and Temporary Areas) of an unusual nature and differing materially from those ordinarily encountered on, and generally recognized as inherent in, work of the character provided for in the DBFOM Agreement; or
  - (ii) located at the boring holes identified in the geotechnical data report and differ materially from the conditions indicated at such boring holes in the geotechnical data report;
- (h) Earthquake or tidal wave that causes physical damage to the APM Project;
- (i) Terrorism;
- (j) Qualifying Change in Law;

(k) issuance of a temporary restraining order, injunction or other form of legal order by a court that prohibits or has the effect of prohibiting prosecution of any portion of the Work;

(l) during the O&M Period, permanent and planned power network change in voltage by the Utility Owner supplying electricity to the APM System that has a material adverse effect on operations;

(m) California governor-declared emergency;

(n) issuance of a rule, order or directive from the U.S. Department of Homeland Security or any Governmental Entity regarding specific security threats to the APM Project or LAX, to the extent compliance with such rule, order or direction requires specific changes in the Borrower's normal design, construction, operation or maintenance procedures;

(o) interruptions or suspensions required by Airport Police, emergency response personnel or other public officials;

(p) discovery of latent defects in (i) the Consolidated Rent-A-Car Facility (ConRAC) building; (ii) the terminal vertical cores (which means the portion of a terminal dedicated to the vertical transportation of pedestrians between the terminal levels and the pedestrian walkway); or (iii) the columns constructed by LA Metro between the Southwest Yard Track and the Crenshaw Mainline Track;

(q) issuance by the Department of a Safety Compliance Order;

(r) a Delay to a Utility Adjustment caused by a Utility Owner's failure to complete a task for which the Utility Owner is responsible within the required time period, in each case as specified in Table 25.4-1 (Utility Matrix) of Part 2A of the Technical Provisions, provided that such time period shall commence upon the Borrower's submission to the Utility Owner of a complete and adequate request for completion of that task, including applicable submittals if any, that meet applicable quality requirements, and provided the Borrower has complied with the requirements of Section 7.6.7.1 of the DBFOM Agreement;

(s) a Delay in obtaining a Governmental Approval required from California Department of Transportation, Air Quality Management District or the County of Los Angeles beyond 120 days following the Borrower's submission to the relevant Governmental Entity of a complete and sufficient application for the approval that meets applicable quality requirements;

(t) breach by City or LA Metro of its respective Cooperation Agreement, except for breaches covered by clause (r) of the definition of Compensation Event;

(u) breach by the ITF W Party, the ConRAC Party, a TVC Party, the PARCS Party, or the NELA Party, each as defined in Exhibit 10 (Interface Obligations) to the DBFOM Agreement, of its respective interface obligations as set forth in Exhibit 10 to the DBFOM Agreement;

(v) Logistics Delay Days;

(w) a Delay caused by Los Angeles Department of Water and Power's failure to complete a service by the "Service Date Requested" as specified in Part 2B, 12.3.7.1 (Electrical Service Planning Information) of the Technical Provisions, provided that as of the "Service Date Requested" the Borrower had satisfied the following conditions:

- (i) the Traction Power Substation building and associated transformer, rectifiers and switch gear for the applicable location are fully installed, statically tested and are ready to be energized;
- (ii) the Traction Power segmentation including power and negative return rails, associated cabling, and blue light stations for the applicable location have been installed, statically tested and are ready to be energized;

- (iii) the Traction Power grounding including ground mats, guideway structure, and equipment for the applicable location have been installed and statically tested; and
- (iv) APM Fixed Facilities for the applicable location have been completed and are ready for application of permanent power for testing and commissioning; and

(x) changes in the scope of the Work required to accommodate material modifications of the Final Environmental Impact Report requirements imposed by the Federal Aviation Administration, or its successor entity, as part of its finding/record of decision on the Landside Access Modernization Program National Environmental Policy Act Environmental Assessment.

"Condemnation Proceeds" means all payments and proceeds received by the Borrower as a result of the Taking of any assets or property of the Borrower by any Person pursuant to such Taking or pursuant to a sale of any such assets or property to a purchaser with such power under threat of such a Taking.

"ConRAC" has the meaning specified in "INTRODUCTION—The APM Project."

"Construction Account" means the "Construction Account" established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in "ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Milestone Payment Account*."

"Construction Funds Transfer Date" has the meaning specified in "ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—*Construction Account*."

"Construction Requisition Certificate" means a certificate prepared by the Borrower substantially in the form of Exhibit E to the Collateral Agency and Accounts Agreement containing certain required certifications by the Borrower with respect to a requested transfer of funds from the Construction Account.

"Construction Work" means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver, landscape, equip, test and commission or demolish any structure, building, or other improvement to real property included in the APM Project (including the APM Fixed Facilities and all equipment and other components of the APM System that are affixed to real property within the D&C Limits), but excluding:

- (a) Design Work, professional environmental services and similar services;
- (b) preparing and processing applications for Governmental Approvals;
- (c) coordinating with adjacent property owners and Utility Owners;
- (d) manufacturing and supply of Vehicles (provided that Construction Work includes testing and commissioning of Vehicles at the Site (excluding Temporary Areas)); and
- (e) O&M Work.

"Contingent Letter of Credit" has the meaning specified in APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Performance Security—Letters of Credit."

"Contingent Retainage Amount" means the amount the Borrower will be entitled to retain from the Design-Build Contractor if, where the Design-Build Contractor is required under the Design-Build Contract to provide a Contingent Letter of Credit and such Contingent Letter of Credit is not provided within the earlier of (a) 20 Business Days following a Contingent Security Triggering Event or (b) the date of the next Monthly Progress Payment, which amount will be a percentage equal to the Contingent Security Amount either (x) divided by six (6) or (y) if there are less than six (6) months remaining before the Planned Early PSA Date, the remaining number of payment dates between the Contingent Security Triggering Event and the Planned Early PSA Date.



“Contingent Security Amount” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Performance Security—Letters of Credit.”

“Contingent Security Triggering Event” means, if at any time (“PSA Testing Date”) after the earlier of (a) the date that is 12 months prior to the Planned Early PSA Date and (b) the Initial Bank Draw Date, (i) the aggregate payments actually advanced by the Borrower to the Design-Build Contractor (in accordance with the Design-Build Contract), but excluding the effect of any noncompliance deductions applied to such payments, between the Financial Close Date and the PSA Testing Date are less than or equal to aggregate payments shown in the Base Case Financial Model (as updated for any deductions, Relief Events or change orders) as owing to the Design-Build Contractor from the period beginning on the Financial Close Date and ending six (6) months prior to the PSA Testing Date, or (ii) the Lenders’ Technical Advisor notifies the Borrower that, having due and appropriate regard to all relevant circumstances and having carried out reasonable consultation with the Design-Build Contractor, the Passenger Service Availability Date is not reasonably likely to occur on or prior to the date that is six (6) months following the Planned Early PSA Date.

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

“Contract Deadline” means the Planned Early PSA Date or the Long Stop Date, as the context may require, and “Contract Deadlines” means the Planned Early PSA Date and the Long Stop Date, collectively.

“Contract Documents” has the meaning specified in “THE APM PROJECT—Project Overview— Scope of Work.”

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

“Contract Price” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Contract Price and Payments—Contract Price.”

“Contracted Work” means all Work and all other work required to be furnished and provided, and activities and services required to be performed, by the Design-Build Contractor, and all other obligations of the Design-Build Contractor, under the Design-Build Contract, the Design-Build Early Works Agreement, the IA Additional Requirements, including the responsibility for all deliverables under the Design-Build Contract required to obtain NTP1, NTP2, each Milestone, Passenger Service Availability and Final Completion, but excluding in all cases the DB Excluded Obligations.

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

“Control Agreement” means each of (a) the Blocked Account Control Agreement, dated on or about the Financial Close Date, by and among the Borrower, the Collateral Agent and U.S. Bank National Association as Deposit Account Bank with respect to the Operating Account and the Voluntary Equity Contributions Account and (b) a deposit account control agreement among the Borrower, the Collateral Agent and any Deposit Account Bank with respect to the Operating Account and Voluntary Equity Contributions Account (or, as applicable, other operating accounts or accounts established by the Borrower as set forth in the Collateral Agency and Accounts Agreement) in form and substance reasonably satisfactory to the Intercreditor Agent, pursuant to which the Collateral Agent has "control" within the meaning of Section 9-104 or Section 9-106 of the UCC, as applicable, with respect to the Project Accounts included in the Collateral.

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

“Cooperation Agreements” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM Agreement—General Borrower Obligations—Cooperation Agreements.”

“Contribution Notice” means a notice to be delivered by the Borrower or, upon the occurrence and continuation of an Event of Default under the Design-Build Loan Facility Credit Agreement or the Series 2018 Loan Agreement, by the Collateral Agent to an Equity Member indicating that an Equity Contribution is required to be made by such Equity Member in accordance with the terms of the Equity Contribution Agreement by a certain date (such date to be at least seven (7) Business Days after the date of delivery of such Contribution Notice): (1) in the amount necessary to fund such Equity Member's Percentage Interest of a Funding Insufficiency projected to occur with respect to any Construction Funds Transfer Date pursuant to the terms of the Equity Contribution Agreement, and (2) in the amount of such Equity Member's Unfunded Equity Commitment as of such date as a result of the occurrence and continuance of an such an Event of Default pursuant to the Equity Contribution Agreement.

“Corporate Trust Office” means the corporate trust office of the Trustee located at 633 No. 5th Street, Los Angeles, CA. The Trustee may hereafter designate alternate Corporate Trust Offices and any successor Trustee shall designate its Corporate Trust Office by written notice delivered to the Issuer.

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

“Cost to Complete” means (without double-counting):

(a) those costs (internal and external) that the Department reasonably and properly projects that it will incur in carrying out any process to request tenders from any parties interested in entering into a contract with the Department to achieve Final Completion, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; plus

(b) costs that the Department reasonably and properly projects that it will incur in achieving Final Completion; plus

(c) any other Losses that, but for the termination of the DBFOM Agreement, the Department would not have incurred prior to Final Completion; minus

(d) any insurance proceeds available to the Department for the purposes of achieving Final Completion.

“Critical Day” means, for each year during the Term:

(a) a day that falls within the time period beginning on, and including;

(b) the Friday before Memorial Day (the last Monday of May) through the Tuesday after Memorial Day;

(c) the Friday before Thanksgiving Day (the fourth Thursday of November) through the Monday after Thanksgiving Day (excluding Thanksgiving Day and the day after Thanksgiving Day);

- (d) the Sunday before Christmas Day (December 25th) through January 3rd of the following year; and
- (e) an additional five days per year determined by the Department in its sole discretion and communicated to the Borrower at least 30 days prior to the applicable date.

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

“CRRC” means CRRC Corporation Limited, a Chinese publicly traded rolling stock manufacturer.

“CTA” has the meaning specified in “THE APM PROJECT—Overview—*APM Project Location*.”

“D&C Contract Amount” means \$1,970,066,951.

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

“D&C Percentage” means the value of Design Work, Construction Work and Work relating to the manufacturing and supply of Vehicles and equipment completed at a given point in time divided by the value of the total Design Work, Construction Work and Work relating to the manufacturing and supply of Vehicles and equipment required to be completed to achieve Final Completion. D&C Percentage does not include the value of the Work paid for by the Department through the Additional D&C Payments.

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

“D&C Period Noncompliance Deductions” means a deduction from a Milestone Payment made in accordance with Section 2 of Exhibit 4A (Milestone Payment Mechanism) to the DBFOM Agreement.

“D&C Work” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction—General Design and Construction Obligations.”

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

“DB Contingent Retainage Sub-Account” means the “DB Contingent Retainage Sub-Account” of the Construction Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*DB Contingent Retainage Sub-Account*.”

“DB Contingent Letter of Credit Sub-Account” means the “DB Contingent Letter of Credit Sub-Account” of the Construction Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*DB Contingent Letter of Credit Sub-Account*.”

“DB Defect” means any deficiency, defect, error or fault in the Contracted Work, other than the warranties with respect to the Non-O&M Facilities or the warranties for Utility Owners and Authorities Having Jurisdiction, to the extent arising out of or resulting from any non-compliance by the Design-Build Contractor or any Design-Build Contractor-related entity with the requirements of the Design-Build Contract. For greater certainty, DB Defects include Epidemic DB Defects.

“DB Documents” means: (a) the Design-Build Contract, including all exhibits and attachments and the executed originals of exhibits and attachments that are contracts; (b) the relevant Technical Provisions; (c) any amendments to the foregoing; (d) any change orders under the Design-Build Contract; and (e) the other documents identified as such in the Design-Build Contract.

“DB Excluded Obligations” means:

- (a) financing or procuring the financing of the APM Project, except to the extent of (i) providing, or procuring the provision of, the performance security detailed in the Design-Build Contract and (ii) cooperating with the Borrower to procure the financing of the APM Project in accordance with the Design-Build Contract;
- (b) carrying out the O&M Work;
- (c) procuring or maintaining any insurances other than as expressly set out in the Design-Build Contract;
- (d) any obligations to make payments to the Independent Engineer (except as otherwise provided in the Design-Build Contract);
- (e) meeting the Handback Requirements;
- (f) the Borrower’s day-to-day internal administrative costs (except as otherwise provided in the Design-Build Contract);
- (g) the Borrower’s debt service costs (except as otherwise provided in the Design-Build Contract);
- (h) performing any other obligation which is expressly stated to be the obligation of the Borrower under the Design-Build Contract or which the Contract Documents expressly specify will be undertaken by the Department or by other persons that are not the Non-Sub Borrower-Related Entities;
- (i) responsibility for any hazardous materials after the Passenger Service Availability Date except to the extent resulting from a failure of the Design-Build Contractor to comply with its obligations with respect to hazardous materials prior to Final Completion; or
- (j) except to the extent set out in the IA Additional Requirements, compliance with the relevant Technical Provisions.

“DB Insurance Proceeds” means, solely to the extent that such amounts are included in the calculation of Insurance Proceeds pursuant to the DBFOM Agreement, all proceeds from insurance payable to the Design-Build Contractor (or that would have been payable to the Design-Build Contractor but for the Design-Build Contractor’s breach of any obligation under the Design-Build Contract to procure or maintain said insurance) on or after the early termination date.

“DB Lenders’ Direct Agreement” has the meaning specified in clause (ii) of “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Direct Agreements and Consent and Agreements.”

“DB Long Stop Date” means 10 months after the Planned Early PSA Date, as such deadline may be extended from time to time under the DBFOM Agreement or the Design-Build Contract.

“DB Non-Compliant LC Cash Security Sub-Account” means the “DB Non-Compliant LC Cash Security Sub-Account” of the Construction Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*DB Non-Compliant LC Cash Security Sub-Account*.”

“DB Noncompliance Event” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Noncompliance Points and Deductions.”

“DB Noncompliance Occurrence” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Noncompliance Points and Deductions.”

“DB Power of Attorney” means the power of attorney substantially in the form of Exhibit E to the Design-Build Loan Facility Credit Agreement or that is otherwise acceptable to the Administrative Agent and executed by the Borrower.

“DB Rights” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Equivalent Project Relief.”

“DB Subcontractor Breakage Costs” means losses that have been or will be reasonably and properly incurred by the Design-Build Contractor under the Design-Build Contract or any subcontract as a direct result of the termination of the Design-Build Contract (and which shall not include lost profit or lost opportunity), but only to the extent that:

- (a) the losses are incurred in connection with the APM Project and with respect to the Contracted Work required to be provided or carried out by the Design-Build Contractor, including:
  - (i) any materials or goods ordered or subcontracts placed that cannot be cancelled without such losses being incurred;
  - (ii) any expenditure incurred in anticipation of the provision of services or the completion of Contracted Work in the future; and
  - (iii) the cost of demobilization including the cost of any relocation of equipment used in connection with the APM Project; and
- (b) the losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm’s length basis; and
- (c) the Design-Build Contractor has used its reasonable efforts to mitigate such losses.

“DB Termination Date” means the earlier of:

- (a) the effective date of any termination of the Design-Build Contract in accordance with the termination provisions of the Design-Build Contract; and
- (b) the end of the Design-Build Contractor’s obligations in respect of Latent Defects pursuant to the Design-Build Contract.

“DBFOM Agreement” has the meaning specified in “SUMMARY—The Project—DBFOM Agreement.”

“DCI” has the meaning specified in “PROJECT PARTICIPANTS—Design-Build Contractor— Dragados USA, Inc.”

“Decision Period” means the period of time determined by the Intercreditor Agent and designated in any notice delivered by the Intercreditor Agent to the Agents to make any decision in accordance with the Intercreditor Agreement; provided that (a) subject to clause (b) below, each Decision Period shall end not earlier than 30 days after the date of such notice; provided, further, that the Intercreditor Agent may designate such lesser period (being at least 15 Business Days) as it may consider necessary or advisable in circumstances where the interests of the Senior Creditors or any of them would otherwise be likely to be prejudiced, and (b) any such period of time may be extended by the Trustee for a period not to exceed an additional 15 Business Days (or such longer period as all Parties may otherwise agree in writing) on a one-time basis only for any notice.

“Deduction” means a Noncompliance Deduction or an Unavailability Deduction.

“Default” means any event or condition which with notice, passage of time, the making of a determination or any combination of the foregoing would (if not cured or otherwise remedied) constitute an Event of Default.

“Defeasance Escrow Fund” means any trust account into which money and/or Defeasance Securities are deposited for the purpose of defeasing any Senior Bonds in accordance the Indenture.

“Defeasance Securities” means Permitted Investments which are:

- (a) cash;
- (b) U.S. Treasury Bonds, Notes and Bonds, including State and Local Government Series (“SLGS”);
- (c) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself and CATS, TIGRS and similar securities;
- (d) Resolution Funding Corp. (REFCORP): only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book-entry form;
- (e) pre-refunded municipal bonds rated in the same or a higher rating category than direct obligations of the U.S. Treasury by Moody’s and rated in the same or a higher rating category than direct obligations of the U.S. Treasury by S&P; provided that if the issue is only rated by S&P (i.e., there is no Moody’s rating), then the pre-refunded municipal bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or pre-refunded municipal bonds rated in the same or a higher rating category than direct obligations of the U.S. Treasury; and
- (f) the following obligations issued by the following agencies if such obligations are backed or guaranteed by the full faith and credit of the United States or the full faith and credit of the United States is pledged for the payment of principal of and interest on such obligations:
  - (i) U.S. Export-Import Bank (Eximbank) direct obligations or fully guaranteed certificates of beneficial ownership;
  - (ii) Farmers Home Administration (FmHA) certificates of beneficial ownership;
  - (iii) Federal Financing Bank;
  - (iv) General Services Administration participation certificates;
  - (v) U.S. Maritime Administration Guaranteed Title XI financing;
  - (vi) U.S. Department of Housing and Urban Development (HUD):
    - (A) Project Notes;
    - (B) Local Transportation Enterprise Bonds;
    - (C) New Communities Debentures—U.S. government guaranteed debentures; and
    - (D) U.S. Public Housing Notes and Bonds—U.S. government guaranteed public housing notes and bonds.

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

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

- (b) a structural deterioration of the affected element or any other part of the APM Project;
- (c) damage to a Third Party's property or equipment;
- (d) damage to the environment; and
- (e) failure of the affected element to meet the requirements of the Contract Documents.

"Deferred Equity Amounts" means, on any date, any amount of unfunded cash equity that has been committed to the Borrower (including commitments to provide an Equity Investment or Equity Member Debt) and is shown to be available for use in the Financial Model prior to the Final Completion Date, but only to the extent that the commitment to provide such amount is supported by an irrevocable on-demand letter of credit issued by an eligible letter of credit issuer (which means a financial institution with long term unsecured debt ratings of at least the following, from at least two of the listed major rating agencies: (a) A- by Standard & Poor's Ratings Services; (b) A3 by Moody's Investor Service, Inc.; or (c) A- by Fitch Ratings) naming the Borrower and/or the Collateral Agent as beneficiary and guaranteeing the provision of the committed amount by a date which is not later than the Final Completion Date.

"DEIR" has the meaning specified in "THE APM PROJECT—Overview—Non-O&M Facilities—Environmental Approvals."

"Delay Cap" has the meaning specified in APPENDIX D-8—"SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Limitations on Liability."

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

"Delay Liquidated Damages" means the AP Delay Liquidated Damages and the Fixed Bridge Payments.

"Delayed Financial Close Date" means a date not later than 120 days after the scheduled Financial Close Date.

"Delayed Payment Compensation" has the meaning specified in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—Delayed Payment Compensation."

"Department" has the meaning specified in "SUMMARY—The Project—The APM Project."

"Department Continuing Disclosure Certificate" means the Continuing Disclosure Agreement entered into by the Department on June 8, 2018, in the form attached APPENDIX E-2—"FORM OF DEPARTMENT CONTINUING DISCLOSURE CERTIFICATE."

"Department-Provided Approvals" has the meaning specified in "PRINCIPAL PROJECT DOCUMENTS—DBFOM Agreement—General Borrower Obligations—Governmental Approvals."

"Deposit Account Bank" means (a) U.S. Bank National Association (not in its capacity as Depositary Agent) and (b) any other bank that (i) is organized under the laws of the United States of America or any state thereof, (ii) has an Acceptable Credit Rating and (iii) has a total capital stock and unimpaired surplus of not less than \$1,000,000,000 at which the Borrower elects to maintain the Operating Account and Voluntary Equity Contributions Account and any other Project Account in accordance with the Collateral Agency and Accounts Agreement, and any Person appointed to replace such Person pursuant to the Collateral Agency and Accounts Agreement.

"Depositary Agent" means Mizuho Bank, Ltd., in its capacity as depositary agent and securities intermediary under the Collateral Agency and Accounts Agreement.

“Design-Build Contract” means the Design-Build Contract, dated as of April 11, 2018, as amended or modified from time to time, between LAX Integrated Express Solutions, LLC, and the Design-Build Contractor, and any replacement contract entered into by the Borrower in accordance with the terms of the Financing Documents.

“Design-Build Contractor” means collectively and on a joint and several basis, Balfour Beatty Infrastructure, Inc., Dragados USA, Inc., Flatiron West, Inc. and Fluor Enterprises, Inc.

“Design-Build Contractor BT Default” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Termination—Design-Build Contractor BT Default and Bombardier Remedies—Design-Build Contractor BT Default.”

“Design-Build Contractor Default” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the Design-Build Contract—Design-Build Contractor Default and Borrower Remedies.”

“Design-Build Early Works” means the works performed by the Design-Build Contractor pursuant to the Design-Build Early Works Agreement.

“Design-Build Early Works Agreement” means that certain Design-Build Early Works Agreement, dated as of February 15, 2018 (as may be amended, amended and restated, supplemented or otherwise modified from time to time), between the Borrower and the Design-Build Contractor.

“Design-Build Guarantees” means, collectively, the guarantees dated April 11, 2018 provided by the Design-Build Guarantors in accordance with the Design-Build Contract.

“Design-Build Guarantor” means in respect of Fluor Enterprises, Inc., Fluor Corporation; in respect of Flatiron West, Inc., HOCHTIEF USA, Inc.; in respect of Balfour Beatty Infrastructure, Inc., Balfour Beatty LLC; and in respect of Dragados USA, Inc., Dragados, S.A.

“Design-Build Loan” means one or more loans made by the Bank Lenders to the Borrower pursuant to the Design-Build Loan Facility Credit Agreement.

“Design-Build Loan Facility” means a senior secured term loan facility entered into among, *inter alia*, the Borrower and the Lenders in order to finance certain costs and expenditures associated with the transactions contemplated by the DBFOM Agreement.

“Design-Build Loan Facility Credit Agreement” has the meaning specified in “SUMMARY—Financing for the APM Project—*Design-Build Loan Facility*.”

“Design-Build Loan Facility Obligations” has the meaning specified in “INTRODUCTION—Security and Sources of Payment for the Series 2018 Bonds.”

“Design-Build Loan Interest Period” means the period commencing on (and including) the initial date of disbursement of the Design-Build Loan Facility (in the case of the initial Design-Build Loan Interest Period) or on the last day of the immediately preceding Design-Build Loan Interest Period (in the case of any subsequent Design-Build Loan Interest Period) and ending on (but excluding) the day numerically corresponding to the initial date of disbursement of the Design-Build Loan Facility or such last day (as the case may be) in the immediately succeeding month, following the initial date of disbursement of the Design-Build Loan Facility or such last day; provided, however, that (a) any Design-Build Loan Interest Period that would otherwise extend beyond a Design-Build Loan Payment Date will end on such Design-Build Loan Payment Date, (b) the initial Design-Build Loan Interest Period for any disbursement of the Design-Build Loan Facility made after the initial date of disbursement will end on the last day of the then-current Interest Period for the Disbursement made on the initial Disbursement Date and (c) no Design-Build Loan Interest Period will extend beyond the Design-Build Loan Maturity Date and any Design-Build Loan Interest Period that would otherwise extend beyond the Design-Build Loan Maturity Date will end on the Design-Build Loan Maturity Date.



“Design-Build Loan Mandatory Prepayment Sub-Account” means the “Design-Build Loan Mandatory Prepayment Sub-Account” of the Mandatory Prepayment Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Mandatory Prepayment Account*.”

“Design-Build Loan Maturity Date” has the meaning specified in “FINANCING FOR THE APM PROJECT—Senior Debt—*Design-Build Loan Facility*.”

“Design-Build Loan Payment Date” means (a) each Interest Payment Date for the Design-Build Loan Facility, which, subsequent to Passenger Service Availability, shall occur on a Monthly Transfer Date; (b) each date on which a repayment is to be made on the Design-Build Loan Facility from Milestone Payment 6 in accordance with the Final Milestone Payment Waterfall; and (c) to the extent the Design-Build Loan Facility has not been repaid in accordance with the Final Milestone Payment Waterfall, each Monthly Transfer Date after the End of Funding Date.

“Design Documents” means those documents that manifest the design for the APM Project, at all stages, as developed by the Borrower or any portion, component or element thereof, including design required in connection with the operation and maintenance of the APM Project and Renewal Work, in each case regardless of whether such documents are required by the Contract Documents or are prepared or used by the Borrower in the Design Work. Design Documents include the complete final construction plans (including plan sheets, specifications, technical memoranda, reports, studies, calculations, drawings, elevations, sections, details and diagrams) and specifications needed for performance of Construction Work, which includes all Submittals specified as required to be part of the Final Design or Final Design Documents under the Technical Provisions.

“Design Quality Plan” means the deliverable described in Part 2A, Section 4.2 (General Requirements for the Borrower’s Design Quality Plan (DDQP)) of the Technical Provisions, following approval by the Department.

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

“Developer Change” means a change to the Contracted Work.

“Developer Change Order” means a written order issued by the Borrower directing the O&M Contractor to make changes which the changes clause of the O&M Contract authorizes the Borrower to order with or without the O&M Contractor’s consent, amending the O&M Documents by adding, deleting or modifying the documents to include price, time, work and conditions not previously addressed within the O&M Documents.

“Developer Change Request” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Developer Change Requests & Deviations.”

“Developer DB Default” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the Design-Build Contract—Developer DB Default and Design-Build Contractor Remedies.”

“Developer Default” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Default by Borrower—Developer Default.”

“Developer Default Termination Amount” has the meaning specified in “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Department Payments upon Early Termination—*Developer Default Termination Amount*.”

“Developer Employee and Contractor Breakage Costs” means:

(a) the payment of all wages earned, accrued unused vacation time, and any other payments required to be made by the Borrower to its employees under law, or under the terms and conditions of the Borrower’s employment agreements with its employees as a direct result of the termination of the DBFOM Agreement;

(b) Losses that have been or will be reasonably and properly incurred by Borrower under a Key Contract as a direct result of the termination of the DBFOM Agreement (and which shall not include lost profit or lost opportunity), but only to the extent that:

(i) the Losses are incurred in connection with the APM Project and with respect to the Work required to be provided or carried out, including:

(A) any materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred;

(B) any expenditure incurred in anticipation of the provision of services or the completion of Work in the future; and

(C) the cost of demobilization including the cost of any relocation of equipment used in connection with the APM Project; and

(ii) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm’s length basis; and

(c) Borrower and the relevant Key Contractor have each used their reasonable efforts to mitigate such Losses.

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

“Developer O&M Default” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—Developer O&M Default and O&M Contractor Remedies.”

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

“Deviations” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Developer Change Requests & Deviations - Deviations.”

“DIP Conditions” means:

(a) No pre-petition Senior Secured Obligations may be repaid by conversion into a DIP Facility and the proceeds of a DIP Facility may not be used to repay any pre-petition Senior Secured Obligations;

(b) the Agents must retain their Liens with respect to the Collateral that existed as of the date of the commencement of the applicable Bankruptcy Event (including proceeds thereof arising after the commencement of such Bankruptcy Event);

(c) that the interest rate, carve-out, advance rates, lending limits and sublimits of any DIP Facility are commercially reasonable under the circumstances; and

(d) any of the Senior Creditors may seek adequate protection, to the extent permitted under the Intercreditor Agreement.

“DIP Facility” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*DIP Financing*.”

“DIP Facility Lien” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*DIP Financing*.”

“DIP Lender” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS—Intercreditor Agreement—*DIP Financing*.”

“Direct Agreement” means the collective reference to the Lenders' Direct Agreement, the DB Lenders' Direct Agreement, the O&M Lenders' Direct Agreement and the BT Lenders' Direct Agreement.

“Direct Participant” has the meaning specified in APPENDIX F—“DTC – BOOK-ENTRY-ONLY-SYSTEM.”

“Direction Notice” has the meaning specified in APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Collateral and Remedies—*Enforcement of Remedies*.”

“Directive Letter” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Changes—Department Request for Change Proposal.”

“Discount Bond” has the meaning specified in “TAX MATTERS—Original Issue Discount.”

“Discount Series 2018 Bonds” has the meaning specified in “TAX MATTERS—Original Issue Discount.”

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

“Dispute Resolution Procedures” means the procedures for resolving Disputes set forth in Article 18 (Dispute Resolution Procedures) of the DBFOM Agreement.

“Dispute Submittal” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Dispute Resolution—Resolution by the Parties.”

“Distribution Date” means any Calculation Date, or a date selected by the Borrower occurring within twenty-one (21) days after such Calculation Date.

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

- (a) Any:
- (i) Dividend or other distribution in respect to share or other capital;
  - (ii) Payments or other distributions in reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;
  - (iii) Payments (whether of principal, interest or otherwise) on Equity Member Debt;
  - (iv) Payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it is neither in the ordinary course of business nor on reasonable commercial terms; and
  - (v) Receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms, or

(b) The value to Equity Members realized through the extinguishment of Deferred Equity Amounts as a result of a Refinancing, the extinguished Deferred Equity Amount being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

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

“Distribution Account” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—*Other Accounts*.”

“Dragados” has the meaning specified in “PROJECT PARTICIPANTS—Design-Build Guarantors—Dragados, S.A.”

“DTC” has the meaning specified on the cover page hereto.

“DTCC” has the meaning specified in APPENDIX F—“DTC – BOOK-ENTRY-ONLY-SYSTEM.”

“DUSA” has the meaning specified in “PROJECT PARTICIPANTS—Design-Build Contractor—*Dragados USA, Inc.*”

“Early Termination Date” means the effective date of termination of the DBFOM Agreement prior to the 30th anniversary of the Financial Close Date.

“Early Works” means the work furnished or provided by the Borrower under the Early Works Agreement, as set forth in Appendix 1 (EW Work Plan) of the Early Works Agreement. Early Works excludes permanent Construction Work.

“Early Works Agreement” means that certain Early Works Agreement, dated as of February 15, 2018 (as may be amended, amended and restated, supplemented or otherwise modified from time to time), between the City and the Borrower.

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

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date of execution and delivery of the DBFOM Agreement by both the Department and the Borrower.

“Eligible Surety” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payment and Performance Security—Design and Construction Security Requirements.”

“EMMA” means the Municipal Securities Rulemaking Board’s electronic municipal market access website at [www.emma.msrb.org](http://www.emma.msrb.org).

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

“End of Funding Date” means the date occurring fifteen (15) days following the date of receipt by the Borrower from the Department of Milestone Payment 6.

“Enforcement Action” means any action, whether by judicial proceedings or otherwise, to enforce any of the rights and remedies granted to the Collateral Agent and/or the Secured Parties pursuant to the Security Documents against the Collateral upon the occurrence and during the continuance of an Event of Default.

“Enforcement Exception” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*Exercise and Enforcement of Remedies*—Enforcement Exceptions.”

“Environmental and Hazardous Material Response Plan” means the plan described in Part 2A, Section 13.4.4 (Environmental and Hazardous Material Response Plan) of the Technical Provisions.

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

“Environmental Law(s)” means (a) any Law applicable to the APM Project or the Work regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or health and safety matters, and (b) any requirements and standards that pertain to the protection of the environment, or to the management or Release of Hazardous Materials, contamination of any type whatsoever, or health and safety matters with respect to Hazardous Materials, set forth in any agreements, permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the APM Project or the Work, as each of the foregoing have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof), including those relating to:

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

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

- (c) releases of Hazardous Materials;
- (d) protection of wildlife, endangered, threatened, and sensitive species, wetlands, water courses and water bodies, paleontological, cultural, archaeological and historical resources and natural resources;
- (e) the operation and closure of underground or aboveground storage tanks;
- (f) health and safety of employees and other persons with respect to Hazardous Materials; and
- (g) notification, documentation and record keeping requirements relating to the foregoing.

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

“Epidemic BT Defect” means a BT Defect or BT Defects in any component of the APM Operating System in respect of which the failure rate of such component (or component(s) of the same or substantially the same nature) exceeds or is reasonably likely to exceed 15% measured over a twelve-month rolling basis, with the failure rate expressed and measured by the APM Operating System component(s) over the total population of the APM Operating System component(s). However, for the avoidance of doubt, an Epidemic BT Defect shall exclude any BT Defect or BT Defects which occurs after the expiration of the design life of such APM Operating System component.

“Epidemic DB Defect” means a DB Defect or DB Defects in any component of the APM Operating System in respect of which the failure rate of such component (or component(s) of the same or substantially the same nature) exceeds or is reasonably likely to exceed 15% measured over a 12-month rolling basis, with the failure rate expressed and measured by the APM Operating System component(s) over the total population of the APM Operating System component(s). However, for the avoidance of doubt, an Epidemic DB Defect shall exclude any DB Defect or DB Defects which occurs after the expiration of the design life of such APM Operating System component.

“EPR Certificate” means a certificate prepared by the Lenders' Technical Advisor in the form of Exhibit K to the Collateral Agency and Accounts Agreement.

“Equity Contribution” means an amount contributed, directly or indirectly, by an Equity Member to the Borrower as a cash equity contribution in the Borrower (including a cash contribution by or on behalf of an Equity Member in accordance with the Equity Contribution Agreement), which is deemed made in each case solely upon deposit of such funds into the Equity Contribution Sub-Account.

“Equity Contribution Agreement” means that certain Equity Contribution Agreement, dated as of June 5, 2018 (as may be amended, amended and restated, supplemented or otherwise modified from time to time), among the Borrower, Borrower HoldCo, Fluor Enterprises, Inc., Balfour Beatty Investments, Inc., HOCHTIEF LINXS Holding, LLC, ACS LINXS Holdings, LLC, Bombardier Transportation (Holdings) USA Inc. and the Collateral Agent.

“Equity Contribution Sub-Account” means the "Equity Contribution Sub-Account" of the Construction Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Equity Contribution Sub-Account*.”

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

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

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

(b) the phrase “cash flows” refers to Distributions minus Equity Investments.

“Equity Letter of Credit” means the Acceptable Letters of Credit securing each Equity Member’s obligation to make Equity Contributions under the Equity Contribution Agreement.

“Equity Lock-Up Account” means the “Equity Lock-Up Account” established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Equity Lock-Up Account*.”

“Equity Member Cash Collateral Account” means the “Equity Member Cash Collateral Account” established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Equity Member Cash Collateral Account*.”

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

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

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

“Equity Transfer” means any assignment, mortgage, encumbrance, conveyance, sale or other transfer of equity interest in the Borrower.

“Escalated Benchmark Insurance Premiums” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Insurance—Insurance Premium Benchmarking.”

“Escalation Factor” has the meaning specified in Exhibit 4B to the DBFOM Agreement.

“Euro-Dollar Rate” has the meaning specified in APPENDIX D-4—SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD LOAN FACILITY CREDIT AGREEMENT—Interest Rates.”

“Eurodollar Reserve Percentage” means, for any day during any Design-Build Loan Interest Period, the reserve percentage in effect on such day, whether or not applicable to any Bank Lender, under regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D). The Adjusted LIBOR for each outstanding LIBOR Loan will be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Event of Default” means any of the events specifically identified as an “Event of Default” in any Financing Document.

“Excluded Rehabilitation” means renewal or reconstruction work related to the following, to the extent not resulting from an O&M Contractor Act:

- (a) the guideway structure (including, without limitation, foundations, substructure, superstructure, bearings, and expansion joints);
- (b) the APM’s main steel guide beam (other than switches and related mechanism which, for the avoidance of doubt, shall remain within the O&M Contractor’s responsibility);
- (c) reinforcement concrete paving at the maintenance and storage facility;
- (d) structures (including stations, walkways and the maintenance and storage facility building) and all buildings, structural elements, culverts or sewers and drainage inlets and outlets and retaining walls; and
- (e) losses or damages to the APM Project that are covered by property insurance required under the O&M Contract, except as otherwise agreed to between the Borrower and the O&M Contractor.

“Exempt Refinancing” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Provisions Relating to Financing of Company’s Obligations—Refinancing—Department Approval of Refinancing.”

“Extended Delay Event” has the meaning specified in “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Department Payments upon Early Termination—*Extended Delay/Insurance Unavailability Termination Amount*.”

“Extended Delay/Insurance Unavailability Termination Amount” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Termination of the DBFOM Agreement—Termination for Extended Delay—Compensation for Extended Delay.”

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

“FAA” has the meaning specified in “INTRODUCTION—The City, the Department and the Los Angeles International Airport.”

“FEIR” has the meaning specified in “THE APM PROJECT—Overview—Non-O&M Facilities—*Environmental Approvals*.”

“Final Completion” means, as applicable:

- (a) with respect to the DBFOM Agreement, that all D&C Work is complete and all other prerequisites for Final Completion have been met, as confirmed by the Independent Engineer’s issuance of a certificate; or
- (b) with respect to the Design-Build Contract, that all Contracted Work is complete and all other prerequisites for Final Completion have been met. Final Completion is deemed to have occurred upon satisfaction of all the conditions described in the Design-Build Contract, as confirmed by the Independent Engineer’s issuance of a certificate in accordance with the procedures and within the time frame described in the Design-Build Contract.

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



“Final Completion Delay Costs” means the incremental amount of interest payable by the Design-Build Contractor to the Borrower with respect to the Design-Build Loan Facility to be established by the Borrower at Financial Close due to the delay in achieving Milestone Payment 6 which amount will be at a floating rate for each day that Final Completion is delayed.

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

“Financial Close” means satisfaction by the Borrower of (a) all conditions precedent to the effectiveness of commitments of the Lenders under the Financing Documents; and (b) the conditions set forth in Section 3.2.4 (Conditions Precedent to Financial Close) of the DBFOM Agreement.

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

“Financial Close Deadline” means July 16, 2018.

“Financial Close Payment” means the initial payment of \$100,000,000 identified as such in the schedule of values attached to the Design-Build Contract, minus any amount paid by the Borrower to the Design-Build Contractor under the Design-Build Early Works Agreement in excess of \$36,261,440 and up to the DB Early Works Cap Amount (as defined in the Design-Build Early Works Agreement) following the effective date of the Design-Build Contract pursuant to the Design-Build Early Works Agreement.

“Final Milestone Payment Waterfall” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Milestone Payment Sub-Account*.”

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

“Financial Model Update” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Provisions Related to Financing the Borrower’s Obligation—Updates to the Financial Model—Permitted Updates.”

“Final Project Costs Payment Amount Certificate” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Construction Account*.”

“Final Project Costs Payment Date” means the date on which the final Monthly Progress Payment (as defined in the Design-Build Contract) is due to the Design-Build Contractor pursuant to the Design-Build Contract.

“Financial Proposal” means the Borrower’s plan for financing the APM Project as set forth in the Proposal.

“Financing Costs” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—Delayed Payment Compensation.”

“Financing Documents” means:

- (a) the Indenture;
- (b) any Supplemental Indenture executed with respect to the Senior Bonds;
- (c) the Series 2018 Bonds;
- (d) the Senior Loan Agreement;
- (e) the Design-Build Loan Facility Credit Agreement;

- (f) the Equity Contribution Agreement;
- (g) the Collateral Agency and Accounts Agreement;
- (h) the Security Documents;
- (i) the Hedging Agreements;
- (j) any Additional Financing Documents;
- (k) the Fee Letters; and
- (l) any other agreement, document or instrument relating to the foregoing and designated as a Financing Document in writing by the Borrower and the Intercreditor Agent.

“Fiscal Year” has the meaning specified in “INTRODUCTION—The City, the Department and the Los Angeles International Airport.”

“Fixed Bridge Payments” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Liquidated Damages.”

“Flatiron” has the meaning specified in “PROJECT PARTICIPANTS—Design-Build Contractor—*Flatiron West, Inc.*”

“Flow of Funds” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Flow of Funds Post-Passenger Service Availability.”

“Fluor” has the meaning specified in “PROJECT PARTICIPANTS—Equity Members—*Fluor Enterprises, Inc.*”

“Fluor Cash Collateral Sub-Account” means the "Fluor Cash Collateral Sub-Account" of the Equity Member Cash Collateral Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Equity Member Cash Collateral Account.*”

“Fluor Enterprises” has the meaning specified in “PROJECT PARTICIPANTS—Equity Members—*Fluor Enterprises, Inc.*”

“Force Majeure Event” means the occurrence of:

- (a) war, civil war, invasion, blockade, embargo or violent act of foreign enemy or armed conflict, except Terrorism;
- (b) any strike, lockout, work slowdown or other dispute generally affecting the construction, transit facility maintenance or transit facility operations industry in the State, but excluding any strike, lockout, work slowdown or similar dispute specific to the APM Project, the Borrower or any Contractor;
- (c) any act of riot, insurrection, civil commotion or sabotage that causes direct physical damage to the APM Project or material disruption to the O&M Work, but excluding any act of riot, insurrection, civil commotion or sabotage specific to the APM Project, the Borrower or any Contractor; or
- (d) nuclear, chemical or biological contamination unless the source or cause is caused by a Borrower-Related Entity.

“Fundamental Enforcement Notice” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*Exercise and Enforcement of Remedies—Enforcement Exception.*”

“Fundamental Enforcement Right” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*Exercise and Enforcement of Remedies—Enforcement Exception.*”

“Fundamental Event of Default” means those fundamental Events of Default identified in APPENDIX D-9—“FUNDAMENTAL EVENTS OF DEFAULT UNDER THE INTERCREDITOR AGREEMENT.”

“Funded Bank Debt” means the aggregate principal amount of Design-Build Loan Facility Obligations outstanding under Design-Build Loan Facility Credit Agreement funded.

“Funded OPSSI Debt” means aggregate principal amount outstanding of other Permitted Senior Secured Indebtedness funded.

“Funding Insufficiency” means, as of any date of determination, an amount equal to the greater of (1) zero and (2) the aggregate amount of the Project Costs due and payable (as reasonably determined by the Borrower) minus:

(a) any amounts reserved in the Construction Account and all sub-accounts thereof and, in each case, available to pay such Project Costs in accordance with the Collateral Agency and Accounts Agreement;

(b) any amounts in the Bond Proceeds Account available to pay such Project Costs in accordance with the Collateral Agency and Accounts Agreement;

(c) any amounts in the Operating Account available to pay such Project Costs in accordance with the Collateral Agency and Accounts Agreement; and

(d) any other funds then available to the Borrower to pay such Project Costs, including available insurance proceeds, all other payments owed to the Borrower under any Material Project Contracts (including any amounts available by set off or as liquidated damages) and any other source of funds permitted under the Financing Documents.

“Funding Shortfall” means any circumstance where on any date prior to the Final Completion Date, the aggregate amount of funds available to the Borrower under the Financing Documents and from the Construction Account and all other Project Accounts (which amount, for the avoidance of doubt, shall include all Milestone Payments), the Unfunded Equity Commitment, available insurance proceeds and all other payments owed to the Borrower under any Material Project Contracts (including any amounts available by set off or as liquidated damages) and any other source of funds permitted under the Financing Documents and then available to the Borrower during the Design-Build Period is less than the aggregate of:

(a) the aggregate amount of all Project Costs incurred by the Borrower for the Project prior to the End of Funding Date which, in each case, are due and payable but have not yet been paid;

(b) the aggregate amount of all unpaid Project Costs required to be incurred or that will become due and payable by the Borrower for the Project on or prior to the End of Funding Date; and

(c) the aggregate amount required to fund the reserve accounts on or before the End of Funding Date.

“Funds Transfer Certificate” means a certificate prepared by the Borrower substantially in the form attached to the Collateral Agency and Accounts Agreement, containing the certifications by the Borrower required by the Collateral Agency and Accounts Agreement with respect to a requested transfer of funds from a Project

Account after the Passenger Service Availability Date, unless another form of certificate is required pursuant to the Collateral Agency and Accounts Agreement.

“GAAP” means generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America.

“Good Industry Practice” means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced designer, engineer, constructor, APM Operating System Supplier, other supplier, operator or maintenance provider, as applicable, operating in the United States under the same or similar circumstances and conditions, seeking in good faith to comply with its contractual obligations, the Contract Documents and all applicable Laws and Governmental Approvals in conformance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State. With respect to storm water management for construction activities, Good Industry Practice means “Best Management Practices,” which has the meaning set forth in Storm Water Management For Construction Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA Document 832 R 92-005).

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

“Governmental Entity(ies)” means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity. Governmental Entity includes City, including all City departments, but excludes the Department.

“Government Code Claim” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Dispute Resolution—Litigation of Dispute.”

“Handback” means delivery of the APM Project assets by the Borrower to the Department upon expiration of the Term or Early Termination Date.

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

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

“Handback Requirements” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Handback—Handback Condition.”

“Handback Requirements Letter(s) of Credit” means standby letters of credit naming the City as the sole beneficiary and meeting the terms and conditions set forth in Section 10.3 (Letters of Credit) of the DBFOM Agreement.

“Handback Requirements Reserve Account” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Handback—Handback Requirements Reserve Account.”

“Handback Requirements Reserve Balance” means: (a) if no Handback Requirements Letter of Credit is delivered in accordance with the DBFOM Agreement, all amounts standing to the credit of the Handback Requirements Reserve Account on the Termination Date; or (b) if any Handback Requirements Letter of Credit is delivered in accordance with the DBFOM Agreement, all amounts that would have been standing to the credit of the

Handback Requirements Reserve Account on the Termination Date if no such Handback Requirements Letter of Credit had been delivered.

“Handback Reserve Amount” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Handback—Handback Reserve Amount.”

“Handback Year” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Handback—Handback Requirements Reserve Account.”

“Hazardous Materials” means any (a) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Environmental Law; (b) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that is or becomes listed, regulated, or addressed under any Environmental Law; (c) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever which may give rise to liability under clause (a) or (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a state or federal court; (d) petroleum hydrocarbons excluding de minimis amounts and excluding petroleum hydrocarbon products contained within regularly operated motor vehicles; and (e) hazardous building materials including asbestos or asbestos-containing materials, lead or PCBs in structures and/or other improvements on or in the Site or in subsurface artifacts (other than mineral asbestos naturally occurring in the ground). The term “Hazardous Materials” includes waste as defined in 40 C.F.R. Part 261 and contaminated materials.

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

“Hedge Providers” has the meaning specified in “SUMMARY—Financing for the APM Project—Hedging Agreements.”

“Hedging Agreements” means any agreements entered into, or to be entered into, by the Borrower and a Hedge Provider in respect of any Hedging Transaction.

“Hedging Obligations” means, collectively, (a) all scheduled amounts payable to the Hedge Providers by the Borrower under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), net of all scheduled amounts payable to the Borrower by such Hedge Providers, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedge Providers under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the Hedge Providers to the Borrower under such Hedging Agreements; provided that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Strategy” has the meaning specified in “FINANCING FOR THE APM PROJECT—Senior Debt—*Design-Build Loan Facility*.”

“Hedging Termination Obligations” means the aggregate amount payable to the Hedge Providers by the Borrower upon the early unwind of all or a portion of any Hedging Agreements, net of all amounts payable to the Borrower by such Hedge Providers upon the early unwind of all or a portion of such Hedging Agreements. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“HOCHTIEF” has the meaning specified in “PROJECT PARTICIPANTS—Equity Members—*HOCHTIEF LINXS Holding, LLC.*”

“HOCHTIEF AG” has the meaning specified in “PROJECT PARTICIPANTS—Equity Members—*HOCHTIEF LINXS Holding, LLC.*”

“HT Cash Collateral Sub-Account” means the “HT Cash Collateral Sub-Account” of the Equity Member Cash Collateral Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Equity Member Cash Collateral Account.*”

“IA Additional Requirements” means the requirements provided in the IA Requirements Attachment.

“IA Requirements Attachment” means the “IA Requirements Attachment” document attached to the Interface Agreement.

“ICA Enforcement Action” means any action, subject to Section 5.4 of the Intercreditor Agreement, whether by judicial proceedings or otherwise, to enforce or exercise any of the rights and remedies granted to the Collateral Agent, the Senior Creditors or the other Agents pursuant to the Security Documents or any other Financing Documents against the Collateral or the Borrower, in each case upon the occurrence and during the continuance of an Event of Default, including:

- (a) foreclosure proceedings with respect to the Collateral;
- (b) exercising any rights or remedies under any of the Direct Agreements or Performance Security; or
- (c) seeking to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce a security interest in or realize upon, or take any other action available in respect of, any Collateral, whether under any Security Document, applicable law or otherwise;

but, excluding any Permitted Action.

“Incidental Utility Work” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—General Borrower Obligations—Design and Construction—Utilities—General Obligations in connection with Utility Adjustments.”

“IFRS” means the International Financial Reporting Standards.

“Incremental Costs” means (a) the “Base Incremental Costs” (which has the meaning set forth in Exhibit 13 (Base Incremental Costs and Permitted Markup) to the DBFOM Agreement), if any, incurred by the Borrower in the performance of Extra Work specifically related to, and solely attributable to, a Compensation Event; (b) the permitted mark-up on such Base Incremental Costs in accordance with Exhibit 13 (Base Incremental Costs and Permitted Markup) to the DBFOM Agreement; (c) subject to of the limitations in the DBFOM Agreement, Delay Costs for Compensation Events to the extent that the Compensation Event results in a Relief Event Delay; and (d) the costs to the Borrower of financing any of (a) through (c) including commitment fees and capital costs, interest and hedging costs, lost interest on any of the Borrower’s own capital employed and any financing required pending receipt of payment, which, for each of (a) through (d), could not have been reasonably mitigated by the Borrower or its Contractors. Incremental Costs do not include Delayed Payment Compensation, nor shall any Incremental Costs be included within Delayed Payment Compensation.

“Indebtedness” of any Person means: (a) indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, other than current trade payables incurred in the ordinary course of business, (d) all indebtedness created or arising under any conditional sale or other title

retention agreement with respect to property acquired by such Person, (e) any lease which in accordance with GAAP and/or IFRS is required to be capitalized on the balance sheet of such Person (and the amount of these obligations shall be the amount so capitalized), (f) all obligations, contingent or otherwise, of such Person under acceptances issued or created for the account of such Person, (g) all unconditional obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock or other equity interests of such Person or any warrants, rights or options to acquire such capital stock or other equity interests, (h) all net obligations of such Person pursuant to hedges, (i) all guarantee obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (h) above and (j) all Indebtedness of the type referred to in clauses (a) through (h) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“Indemnified Party(ies)” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Borrower Indemnity.”

“Indenture” means that certain Trust Indenture, dated as of June 5, 2018, by and between the Issuer and the Trustee.

“Indenture Event of Default” has the meaning specified in Appendix D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Defaults and Remedies—*Indenture Events of Default*.”

“Independent Engineer” means the independent engineering consultant retained by the Department and the Borrower in accordance with the DBFOM Agreement.

“Indirect Participants” has the meaning specified in APPENDIX F—“DTC – BOOK-ENTRY-ONLY-SYSTEM.”

“Infrata” or “Lenders' Technical Advisor” or “LTA” has the meaning specified in “TECHNICAL ADVISOR REPORT—Technical Advisor Report (Infrata)—Infrata.”

“Initial Bank Draw Date” means the date on which the initial drawing is made under the Design-Build Loan Facility to be established by the Borrower at Financial Close, and such date shall not be earlier than July 31, 2022, which date shall be subject to adjustments by mutual agreement of the Borrower and the Design-Build Contractor pursuant to an amendment to the Design-Build Contract to be entered into in accordance with the provisions of the Design-Build Contract on or prior to the Financial Close Date to be agreed in good faith between the Borrower and the Design-Build Contractor and subject to the Lenders' Technical Advisor and the Lenders' review and consent.

“Initial Project Schedule” means the preliminary critical path method (which means a method of planning and scheduling a construction project where activities are arranged based on activity relationships) schedule for all D&C Work leading up to and including Passenger Service Availability and Final Completion provided as part of the Borrower's technical proposal (which means the portions of the Proposal other than the Financial Proposal) as adjusted for any changes agreed to by the Department and the Borrower as of the Effective Date, including if applicable changes relating to TVA mitigation as contemplated in the Early Works Agreement.

“Insurance Policy(ies)” means all of the insurance policies the Borrower is required to carry under Exhibit 7 (Insurance Requirements) of the DBFOM Agreement.

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

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

“Insurance Unavailability” means any Insurance Policy coverage required by DBFOM Agreement is deemed unavailable or unavailable at commercially reasonable insurance rates from insurers meeting the requirements of the DBFOM Agreement as described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Insurance - Inadequacy and Unavailability of Required Coverages.”

“Insurer” has the meaning specified in APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Insurance.”

“Invoice” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Contract Price and Payments—Payments.”

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

“Intercreditor Agent” has the meaning specified on the cover page hereof.

“Intercreditor Agreement” means the Intercreditor Agreement, dated as of June 5, 2018, by and between the Collateral Agent, Administrative Agent, Trustee and Intercreditor Agent.

“Intercreditor Vote” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*Actions by Intercreditor Voting.*”

“Interest Payment Date” means (i) for the Series 2018A Bonds, each June 30 and December 31, commencing on December 31, 2018, or if any such day is not a Business Day, then the Business Day succeeding such date, (ii) for the Series 2018B Bonds, each June 1 and December 1, commencing on December 1, 2018, or if any such day is not a Business Day, then the Business Day succeeding such date, (iii) for the Design-Build Loan, the last day of each Design-Build Loan Interest Period, and (iv) for any other Secured Obligations, the date or dates on which interest is payable on such Secured Obligations as set forth in the documents pursuant to which such Secured Obligations were incurred.

“Interface Agreement” means that certain Interface Agreement, dated as of April 11, 2018 (as may be amended, amended and restated, supplemented or otherwise modified from time to time), between the Borrower, the Design-Build Contractor and the O&M Contractor.

“Interpolated Screen Rate” means, with respect to any Design-Build Loan Interest Period, the rate (rounded upwards to the nearest four decimal places) which results from interpolating on a linear basis between:

(a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the such Design-Build Loan Interest Period; and

(b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds such Design-Build Loan Interest Period,



each as of 11:00 a.m., London time, on the date that is two (2) Business Days prior to the commencement of such Design-Build Loan Interest Period.

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

“IP Escrow” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Intellectual Property Rights.”

“IP Escrow Agent” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Intellectual Property Rights.”

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

“IP Materials Access Agreement” means the agreement substantially in the form of Exhibit 19 (Form of IP Materials Access Agreement) to the DBFOM Agreement, by and among the Department, the Borrower, and Bombardier Transportation (Holdings) USA Inc. relating to the terms of release of IP Materials to the Department in the event of early termination of the DBFOM Agreement for any reason other than Developer Default.

“IRS” has the meaning specified in “TAX MATTERS—Ancillary Tax Matters.”

“Issuer” has the meaning specified on the cover page hereof.

“Issuer Annual Fee” means the greater of (i) 1.5 basis points (0.015%) times the principal amount of the Series 2018 Bonds outstanding on the issuance date (for the initial Issuer Annual Fee) or on the first day of the month in which the anniversary of the issuance date occurs (for each subsequent Issuer Annual Fee), or (ii) \$500.

“Issuer Issuance Fee” means the amount equal to 5 basis points of the par amount of the Series 2018 Bonds on the date of issuance.

“ITFs” has the meaning specified in “INTRODUCTION—The APM Project.”

“ITF East Plaza Improvements” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Operation and Maintenance—Responsibility for Loss or Damage.”

“JPA Act” has the meaning specified in “PROJECT PARTICIPANTS—The Issuer.”

“JPA Agreement” has the meaning specified in “PROJECT PARTICIPANTS—The Issuer.”

“Key Contract” means any one of the following:

- (a) all Prime Contracts for Construction Work and Design Work;
- (b) the APM Operating System Contract;
- (c) all Prime Contracts for O&M Work;
- (d) all Prime Contracts for project or program management services; and

(e) all other Prime Contracts with a single Contractor (or a single Contractor and its affiliates) that individually or in the aggregate total in excess of \$25 million on a term (not annual) basis.

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

“Key Contractor” means each Contractor under any Key Contract.

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

“Key Subcontractor” means each subcontractor under any Key Subcontract.

“Key Subcontracts” means all subcontracts with a single subcontractor (or a single subcontractor and its affiliates) that, individually or in the aggregate, total in excess of \$2 million on a term (not annual) basis.

“Known Hazardous Materials” means:

(a) Hazardous Materials that are known to the Borrower as of the Setting Date or that would have become known to the Borrower based on a reasonable investigation of the area and information available to the Borrower as of the Setting Date, consistent with Good Industry Practice; and

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

“LA Metro” means the Los Angeles County Metropolitan Transportation Authority.

“LAMP” has the meaning specified in “THE APM PROJECT—Overview—Background”

“LA/PMD” has the meaning specified in “INTRODUCTION—The City, the Department and the Los Angeles International Airport.”

“Latent Defect” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Warranties—Latent Defects.”

“LAWA Allowances” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—LAWA Allowances.”

“LAWA-Caused Event” means any of the following events:

(a) LAWA Change;

(b) failure of the Department to provide the Borrower with rights of access to a Project ROW property as shown in the Project ROW plans included in Part 5 (Contract Drawings and Engineering Data) of the Technical Provisions by the applicable date specified in Section 7.5.1 (Project ROW Property Acquisition) of the DBFOM Agreement; or (ii) any agreement, easement, right of entry, covenant, condition, restriction or other instrument to which the Project ROW is subject materially interferes with the performance of the Work and such agreement, easement, right of entry, covenant, condition, restriction or other instrument is not included in the Contract Documents and would not have become known to the Borrower as of the Setting Date by undertaking reasonable investigation of publicly available information;

(c) failure of the Department to provide access to the enabling projects identified in Table 21.1-1 (Enabling Projects) at Section 21.1 of Part 2A of the Technical Provisions within the time periods specified in Table 21.1-1;

(d) any suspension of Work order issued (or deemed issued) by the Department under Section 16.2.7.3 of the DBFOM Agreement;

(e) direction from the Department to uncover, remove, and restore Work, if the Department (i) had the opportunity to inspect the Work before it was covered, (ii) orders the Work uncovered after the fact, and (iii) the Work exposed proves acceptable;

(f) failure of 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 the Borrower's right to proceed or act, within the time periods (if any) indicated in the Contract Documents;

(g) failure of the Department to perform or observe any of its material covenants or obligations under the Contract Documents or to comply with Law or Governmental Approvals; or

(h) failure of the Department to provide the LAWA-Provided Approvals as of the Effective Date, any temporary restraining order, injunction or other form of legal order by a court prohibiting or that would have the effect of prohibiting prosecution of the Work and delaying the Critical Path, or any lapse or revocation of same.

"LAWA Change" has the meaning specified in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Changes—LAWA Changes," APPENDIX D-6—"SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Changes—LAWA Changes" or APPENDIX D-7—"SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor—Changes—LAWA Changes," as applicable.

"LAWA Default" has the meaning specified in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Default by the Department—LAWA Default."

"LAWA Intellectual Property" means:

(a) Intellectual Property owned by or licensed to the Department; and

(b) any Intellectual Property authored, created, invented and/or put into practice under and/or for the purposes of the APM Project,

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

"LAWA-Provided Approvals" has the meaning specified in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—General Borrower Obligations—Governmental Approvals."

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

“LAX” has the meaning specified in “SUMMARY—The Project—The APM Project.”

“LAX Revenues” has the meaning specified in APPENDIX B-3 “CERTAIN DEFINITIONS.”

“LD Cap” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Liquidated Damages.”

“Lender(s)” means, with respect to the DBFOM Agreement, each of the holders and beneficiaries of security documents, including any financial guarantor providing Project Debt or any guaranty or credit enhancement in respect thereof, and their respective successors, assigns, participating parties, trustees and agents, including the Collateral Agent.

“Lenders' Direct Agreement” means the Direct Agreement, dated on or about June 8, 2018, by and among LAWA, the Borrower and the Collateral Agent.

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

“Lenders' Long Stop Date” means the date that is two months prior to the Long Stop Date.

“Lenders' Technical Advisor (LTA)” means any engineer or technical advisor appointed by the Lenders pursuant to the Financing Documents.

“Liability Cap” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Limitations on Liability.”

“LIBOR” means, with respect to any Design-Build Loan Interest Period, the applicable Screen Rate; provided that if no Screen Rate is available for such Design-Build Loan Interest Period, then LIBOR means the Interpolated Screen Rate; provided further, that if (a) no Screen Rate is available for U.S. Dollars or (b) no Screen Rate is available for such Design-Build Loan Interest Period and it is not possible to calculate an Interpolated Screen Rate, then LIBOR means the Reference Bank Rate. If any such rate is below zero, LIBOR shall be deemed to be zero.

“LIBOR Loan” means a Design-Build Loan that bears interest at the Euro-Dollar Rate.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), security interest, or preference, priority or other security agreement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or comparable law.

“LINXS” has the meaning specified in “TECHNICAL ADVISOR REPORT—Technical Advisor Report (Infrata)—Overview.”

“Liquid Performance Security” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Performance Security—Letters of Credit.”

“Local Business Enterprise (LBE)” has the meaning set forth in the Department’s Local Business, Local Small Business and Local-State Disabled Veterans Business Enterprise Program.

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

“Local Small Business Enterprise (LSBE)” has the meaning set forth in the Department’s Local Business, Local Small Business and Local-State Disabled Veterans Business Enterprise Program.

“Local-State Disabled Veteran Business Enterprise (DVBE)” has the meaning set forth in the Department’s Local Business, Local Small Business and Local-State Disabled Veterans Business Enterprise Program.

“Long Stop Date” means 12 months after the Planned Early PSA Date.

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

“Loss Proceeds Account” means the “Loss Proceeds Account” established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Loss Proceeds Account*.”

“Major Maintenance Account” or “MMA” means the "Major Maintenance Account" established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Major Maintenance Account*.”

“Majority Bank Lenders” means as of any date, a Bank Lender or Bank Lenders holding greater than fifty percent (50%) of the sum of (a) the aggregate amount of Design-Build Loans then outstanding and (b) the aggregate unused commitments under the Design-Build Loan Facility Credit Agreement. The outstanding Design-Build Loans and unused commitments of any defaulting lender will be disregarded in determining Majority Bank Lenders at any time.

“Majority Owners” means the Owners owning in excess of fifty percent (50%) of the aggregate principal amount of the Senior Bonds then outstanding.

“Maintenance Rectification Costs” means, in respect of any termination of the DBFOM Agreement that occurs after Passenger Service Availability, all Losses that the Department determines it is reasonably likely to incur as a direct result of the termination of the DBFOM Agreement, including (without double counting):

(a) those costs (internal and external) that the Department is reasonably likely to incur as a direct result of carrying out any process to request tenders from any parties interested in entering into a contract with the Department to carry out the O&M Work, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation, and execution of relevant contracts; and

(b) those costs reasonably projected to be incurred by the Department in relation to:

(c) remediation or, if remediation is not possible or would cost more than renewal, renewal of any defective D&C Work or O&M Work;

(d) rectification or cure of any breach of the DBFOM Agreement by the Borrower; and

(e) carrying out of all other matters necessary in order to ensure that within a reasonable period of the Early Termination Date, the APM Project complies with the requirements of the Contract Documents, and has a reasonable prospect of continuing to perform to the same standard and cost that it would have continued to perform at had the DBFOM Agreement not been terminated and the APM Project been in compliance with all of the requirements of the Contract Documents.

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

“Major Maintenance Deficit Amount” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—Major Maintenance Account.”

“Market Disruption Event” means, before close of business in New York on the quotation day for the relevant interest period, the Administrative Agent is unable to determine the LIBOR rate as set out in the definition of that term or the Administrative Agent receives notification from the Bank Lender or, in the event there are additional Bank Lenders, from two or more affected lenders whose aggregate funding commitments in respect of the Design-Build Loan Facility exceed thirty-five percent (35%) of the total amount of the Design-Build Loan Facility that the cost of each of them of funding its participation in the Design-Build Loan Facility would be in excess of the LIBOR rate plus twenty (20) basis points.

“Market Disruption Interest” means any interest paid or payable to any Lender following the occurrence of a Market Disruption Event that exceeds the amount such Lender would have received had such interest been calculated on the basis of the applicable Design-Build Loan Facility interest rate rather than the rate of interest applicable to the loan outstanding by such Lender.

“Mandated Lead Arrangers” means Canadian Imperial Bank of Commerce, New York Branch, Mizuho Bank, Ltd., Sumitomo Mitsui Banking Corporation, the Korea Development Bank, and The Toronto-Dominion Bank.

“Mandatory Prepayment Account” means the “Mandatory Prepayment Account” established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Mandatory Prepayment Account*.”

“Material Adverse Effect” means a material adverse effect on:

- (a) the performance, results of operation or condition (financial or otherwise) of the Borrower;
- (b) the legality, validity or enforceability of a material provision of a Financing Document;
- (c) the validity, perfection or priority of the security created pursuant to the Security Documents; or
- (d) the rights of the Senior Secured Parties under the Financing Documents, including the ability of the Senior Secured Parties to enforce their rights and remedies under the Financing Documents;

provided that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein, (ii) financial, banking, currency or capital markets fluctuations or

conditions, including changes in interest rates, (iii) conditions affecting the transportation industry generally, (iv) any action, omission, change, effect, circumstance or condition contemplated by the Financing Documents or attributable to the execution, performance or announcement of the Financing Documents or the transactions contemplated thereby, or (v) events that are Relief Events.

“Material Project Contracts” means:

- (a) the DBFOM Agreement;
- (b) the Design-Build Contract;
- (c) the Design-Build Guarantees;
- (d) the O&M Contract;
- (e) and the O&M Guarantees,

in each case as amended or replaced in accordance with the terms of the Financing Documents.

“Material Project Party” means each of the Borrower, the Design-Build Contractor, each member of the Design-Build Contractor, the Design-Build Guarantors, the O&M Contractor, each member of the O&M Contractor and the O&M Guarantors.

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

“Maximum Invoice Amount” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Maximum Payments.”

“Maximum Termination Compensation Amount” has the meaning specified in “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Department Payments upon Termination—Maximum Termination Compensation Amount.”

“MDm” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Payments during the O&M Period—Deductions from the Availability Payments.”

“Milestone” means each construction milestone set forth in the Design-Build Contract.

“Milestone Default” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Delay in Subcontracted Work—Milestone Payments.”

“Milestone Delay Payment” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Delay in Subcontracted Work—Milestone Delay Payments.”

“Milestone Force Majeure Event” means:

- (a) an act of war (whether declared or not), hostilities, invasion, act of foreign enemies, terrorism or civil disorder;

(b) ionising radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

(c) pressure waves from devices travelling at supersonic speeds or damage caused by any aircraft or similar device;

(d) a strike or strikes or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not), in each case affecting on a general basis the industry related to the affected services and which is not attributable to any unreasonable action or inaction on the part of Bombardier or any Bombardier-Related Entities;

(e) tempest, earthquake or any other natural disaster of overwhelming proportions;

(f) discontinuation of electricity supply, other than due to an act or omission of Bombardier or any Bombardier-Related Entity; or

(g) other unforeseeable circumstances that are wholly beyond the control of Bombardier, against which it would have been unreasonable for Bombardier to take precautions and which Bombardier cannot avoid even by using its best efforts, which in each case directly causes Bombardier to be unable to comply with all or a material part of its obligations under the APM Operating System Subcontract,

provided that, a Milestone Force Majeure Event shall not include:

(h) any event to the extent caused by (i) Bombardier's failure to comply with any of its obligations under the APM Operating System Subcontract, other than (i) any such failure that arises from an act or omission of the Department, the Borrower any Non-Sub Borrower-Related Entity, Design-Build Contractor, any Design-Build Contractor-related entity, O&M Contractor, any O&M Contractor-related entity or a Relief Event, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the APM Operating System Subcontract (including as determined pursuant to the dispute resolution procedures under the APM Operating System Subcontract); or (b) negligent acts or omissions, fraud or willful misconduct of Bombardier or any Bombardier-Related Entity;

(i) any delay, default or failure (direct or indirect) of a Bombardier subcontractor unless such delay, default or failure results from a Milestone Force Majeure Event listed in paragraphs (a) to (f) above;

(j) any shortages of manpower, products, machinery or equipment unless caused by a Milestone Force Majeure Event listed in paragraphs (a) to (f) above;

(k) any electrical, mechanical or other breakdown of machinery and equipment unless such breakdown is caused by a Milestone Force Majeure Event listed in paragraphs (a) to (f) above;

(l) any transportation accident unless such accident is caused by a Milestone Force Majeure Event listed in paragraphs (a) to (f) above; or

(m) a change in law relating to the location of manufacture of the Vehicles or the fact that the Vehicles are manufactured in, or being delivered from, a particular location.

“Milestone Payment” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Payments during D&C Period—Milestone Payments.”

“Milestone Payment 6” has the meaning specified in “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—General.”



“Milestone Payment Amount” means the amount of a Milestone Payment as indicated in Column C the table included in “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—Milestone Payments—Timing and Quantum of Milestone Payments.”

“Milestone Payment Request” a written request by the Borrower for a Milestone Payment in a format acceptable to the Department.

“Milestone Payment Sub-Account” means the “Milestone Payment Sub-Account” of the Construction Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Milestone Payment Account*.”

“MMPm” or “Maximum Monthly Payment” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Payments during the O&M Period—Availability Payments.”

“Model Auditor” means Operis Business Engineering Limited or any successor thereto selected by the Borrower and reasonably acceptable to the Required Senior Creditors.

“Modifications” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—Certain Procedures Relating to Instructions and Exercises of Discretion—*Amendments to the Financing Documents*.”

“Modification Threshold” has the meaning specified in APPENDIX D-2—“SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2018 LOAN AGREEMENT—Covenants of the Borrower.”

“Month” means, except as specified otherwise, specific calendar months.

“Monthly Disbursements” means a partial payment of the MaxAP (as calculated under Section 1.3 of Part A of Exhibit 4B to the DBFOM Agreement) payable to the Borrower in accordance with Exhibit 4B (Availability Payment Mechanism) to the DBFOM Agreement.

“Monthly Progress Payment” has the meaning specified in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Contract Price and Payments—Payments.”

“Monthly Transfer Date” means the last day of each month occurring after the Passenger Service Availability Date; provided that if such day is not a Business Day, the Monthly Transfer Date shall be the immediately preceding Business Day.

“MP Delay Period” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—Delayed Payment Compensation.”

“Nationally Recognized Rating Agency” means S&P, Moody's, Fitch, DBRS or any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

“NEPA” means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as may be amended.

“Net Cash Flow” means, with respect to any period, (a) aggregate Project Revenues received during such period, less (b) operating and capital expenses, including the cost of any life-cycle maintenance work or federal or state tax liability, in each case paid by the Borrower, during such period (other than (i) the cost of any work funded by funds withdrawn from the Major Maintenance Account, (ii) the cost of any work funded by funds withdrawn from the Handback Requirements Reserve Account, (iii) any draws under any letter of credit or other performance security available for purposes of the Major Maintenance Account or the Handback Requirements Reserve Account, as the case may be, in accordance with the terms of the Collateral Agency and Accounts Agreement and the DBFOM Agreement, respectively, (iv) any costs funded by Insurance Proceeds, or (v) any costs funded by the

principal amount of additional Permitted Indebtedness) less (c) deposits to the Major Maintenance Account and the Handback Requirements Reserve Account made during such period, plus (d) amounts withdrawn or transferred from the Equity Lock-Up Account to be applied to fund any shortfall in the Pre-Enforcement Waterfall after applying available amounts in the Revenue Account in accordance with the Collateral Agency and Accounts Agreement, plus (e) amounts withdrawn from the Major Maintenance Account or the Handback Requirements Reserve Account or drawn from any Letter of Credit or other performance security available for the purposes of the Major Maintenance Account or the Handback Requirements Reserve Account in accordance with the Collateral Agency and Accounts Agreement and the DBFOM Agreement, respectively, during in each case, such period, except to the extent used to pay for any work under (i) or (ii) above or to reimburse the O&M Contractor in accordance with the O&M Contract.

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

- (a) Force Majeure Event;
- (b) Change in Law excluding a Qualifying Change in Law;
- (c) Earthquake or tidal wave that impacts performance of Work at the Site, but excluding earthquakes or tidal waves that cause physical damage to the APM Project;
- (d) fire, explosion or flood directly impacting the physical improvements of the APM Project or performance of Work at the Site;
- (e) during the O&M Period, disruptions due to trespassers or other third party criminal action occurring to the APM System except restricted access areas identified in the plan provided by the Borrower pursuant to Part 2A, Section 8.1 (APM Operating System Safety and Security Programs) of the Technical Provisions and accepted by the Department; and
- (f) adverse weather days in excess of 21 days in the aggregate per calendar year (pro-rated for any partial calendar year).

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

“Noncompliance Event” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Deductions and Noncompliance Points System—Non Compliance Occurrences and Events.”

“Noncompliance Occurrence” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Deductions and Noncompliance Points System—Non Compliance Occurrences and Events.”

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

“Noncompliance Points” means the points that may be assessed in respect of Noncompliance Events in accordance with terms of the DBFOM Agreement.

“Nonconforming Work” means, as applicable:

- (a) with respect to the DBFOM Agreement, any Work (including any product of the Work) that does not conform to the requirements of the Contract Documents, the Governmental Approvals, applicable Law, the

Design Documents or the construction documents (which means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the APM Project included in the Construction Work, in accordance with the Contract Documents), including any Work required to be repaired or replaced under Part 2A, Section 4 (Quality Management) of the Technical Provisions; or

(b) with respect to the Design-Build Contract, any Contracted Work (including any product of the Contracted Work) that does not conform to the requirements of the DB Documents, the relevant Governmental Approvals, applicable Law, the relevant design documents or construction documents, including any Contracted Work required to be repaired or replaced under the relevant Technical Provisions.

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

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

“Non-O&M Facilities Warranty Period” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Warranties—Warranties for Non-O&M Facilities” or APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Warranties—Warranties for Non-O&M Facilities,” as applicable.

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

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

“Non-O&M Facility(ies)” has the meaning specified in “THE APM PROJECT—Overview—Scope of Work.”

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

“Non-O&M Facility Occupancy Readiness” means that all conditions for Non-O&M Facility Occupancy Readiness have been met with respect to a Non-O&M Facility, as confirmed by the Department’s issuance of a Certificate of Non-O&M Facility Occupancy Readiness in accordance with Section 7.9.2 (Non-O&M Facility Occupancy Readiness) of the DBFOM Agreement.

“Non-Sub Borrower-Related Entity” means:

- (a) the Borrower;
- (b) the Equity Members;
- (c) subcontractors (of any tier) (excluding the Design-Build Contractor, any Design-Build Contractor-related entity, the O&M Contractor or any O&M Contractor-related entity);

(d) any other persons (except, for certainty, the Design-Build Contractor, any Design-Build Contractor-related entity, the O&M Contractor, any O&M Contractor-related entity, the Department or the City) performing any of the Work for or on behalf of the Borrower;

(e) any other persons (except, for certainty, the Design-Build Contractor, any Design-Build Contractor-related entity, the O&M Contractor, any O&M Contractor-related entity, the Department, the City or any members of the general public that use or access the APM Project) for whom the Borrower may be legally or contractually responsible; and

(f) the employees, agents, officers, directors, representatives and consultants of any of the foregoing.

“Non-Voting Senior Secured Parties” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*Actions by Intercreditor Voting.*”

“NTP 1” means the written notice issued by the Department to the Borrower in accordance with Section 7.4.3 (Commencement of Non-Construction Work) of the DBFOM Agreement authorizing the Borrower to proceed with non-Construction Work.

“NTP 2” means the written notice issued by the Department to the Borrower in accordance with Section 7.4.4 (Commencement of Construction Work) of the DBFOM Agreement authorizing the Borrower to proceed with Construction Work.

“O&M Activities” means:

(a) the performance of the O&M Work and the Renewal Work in accordance with the DBFOM Agreement (as passed down to the O&M Contractor under the O&M Contract);

(b) the performance of the O&M Contractor’s obligations set out in the IA Requirements Attachment; and

(c) the performance of all other obligations of the O&M Contractor under the O&M Contract,

but in each case, excluding the O&M Excluded Obligations.

“O&M Contract” means the O&M Contract, dated as of April 11, 2018, as amended or modified from time to time, between LAX Integrated Express Solutions, LLC, and the O&M Contractor, and any replacement contract entered into by the Borrower in accordance with the terms of the Financing Documents.

“O&M Contractor” means collectively and on a joint and several basis, Bombardier Transportation (Holdings) USA Inc., Fluor Enterprises, Inc., HOCHTIEF Operators Holding, LLC and ACS LINXS O&M Holdings, LLC.

“O&M Contractor Act” means (a) the O&M Contractor’s failure to comply with any of its obligations under the O&M Contract, other than (i) any such failure that arises from an act or omission of the Department, the Borrower, any Non-Sub Borrower-Related Entity, the Design-Build Contractor, any Design-Build Contractor-related entity, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the O&M Contract (including as determined pursuant to the dispute resolution procedures under the O&M Contract); or (b) negligent acts or omissions, fraud or willful misconduct of the O&M Contractor or any O&M Contractor-related entity.

“O&M Contractor Default” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—O&M Contractor Default and Borrower Remedies.”

“O&M Deductions” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor—O&M Payments.”

“O&M Documents” means any agreement or document relating to the APM Project to which the O&M Contractor or any O&M Guarantor is a party, including: (a) the O&M Contract, including all attachments and the executed originals of attachments that are contracts; (b) the relevant Technical Provisions; (c) any amendments to the foregoing; (d) any change orders under the O&M Contract; and (e) any other documents identified as such in the O&M Contract.

“O&M Excluded Obligations” means:

- (a) financing or procuring the financing of the APM Project, except to the extent of (i) providing, or procuring the provision of, the performance security detailed in the O&M Contract and (ii) cooperating with the Borrower to procure the financing of the APM Project in accordance with the O&M Contract;
- (b) carrying out the Contracted Work;
- (c) procuring or maintaining any insurances other than as expressly set out in the O&M Contract;
- (d) any obligations which are expressly the responsibility of the Borrower or the Design-Build Contractor pursuant to the Interface Agreement;
- (e) the Borrower’s day-to-day internal administrative costs (except as otherwise provided in the O&M Contract);
- (f) the Borrower’s debt service costs (except as otherwise provided in the O&M Contract);
- (g) Excluded Rehabilitation; and
- (h) performing any other obligation which is expressly stated to be the obligation of the Borrower under the O&M Contract or which the DBFOM Agreement expressly specifies will be undertaken by the Department or by other persons that are not Non-Sub Borrower-Related Entities.

“O&M Expenditures” means all actual cash administrative, maintenance and operation costs and expenses (excluding Renewal Expenditures, and payments in respect of Indebtedness) incurred and paid (or if applicable forecast to be incurred and paid) in connection with the operation and maintenance of the APM Project and/or overhead and other administrative or corporate costs and expenses of the Borrower in any particular calendar or the Borrower fiscal year or period to which said term is applicable, including amounts incurred and paid pursuant to the DBFOM Agreement, payments for taxes, insurance, consumables, advertising, marketing, payments under real property agreements pursuant to which the Borrower has rights in the APM Project, payments pursuant to the agreements for the management, operation or maintenance of the APM Project, reasonable legal fees and expenses paid by the Borrower in connection with the management, maintenance or operation of the APM Project or the Borrower, fees paid in connection with obtaining, transferring, maintaining or amending any approvals from any Governmental Entities, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Borrower, and amounts required for the acquisition of any hedge and reasonable general and administrative expenses, all administrative costs, including budgeted overhead and operating expenses, any taxes, assessments or governmental charges payable by the Equity Members in connection with the APM Project, but exclusive in all cases of noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“O&M Guarantees” means collectively, the guarantees dated April 11, 2018 provided by the O&M Guarantors in accordance with the O&M Contract.

“O&M Guarantor” means in respect of Bombardier Transportation (Holdings) USA Inc., Bombardier Transportation (Global Holdings) UK Limited; in respect of Fluor Enterprises, Inc., Fluor Corporation; in respect of

HOCHTIEF Operators Holding, LLC, HOCHTIEF PPP Solutions GmbH; and in respect of ACS LINXS O&M Holdings, LLC, ACS Servicios y Concesiones, S.L.

“O&M Insurance Proceeds” means, solely to the extent that such amounts are included in the calculation of Insurance Proceeds pursuant to the DBFOM Agreement, all proceeds from insurance payable to the O&M Contractor (or that would have been payable to the O&M Contractor but for the O&M Contractor’s breach of any obligation under the O&M Contract to procure or maintain said insurance) on or after the early termination date.

“O&M Lenders’ Direct Agreement” has the meaning specified in clause (iv) of “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Direct Agreements and Consent and Agreements.”

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

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

“O&M Monthly Performance Payments” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor—O&M Payments.”

“O&M Noncompliance Event” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Noncompliance Points and Deductions,” as applicable.

“O&M Noncompliance Occurrence” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Noncompliance Points and Deductions,” as applicable.

“O&M Payments” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor—O&M Payments.”

“O&M Period” means, as applicable:

- (a) with respect to the DBFOM Agreement, that portion of the Term commencing on the Passenger Service Availability Date and ending on the Termination Date; or
- (b) with respect to the O&M Contract, the portion of the O&M Term, commencing on the Passenger Service Availability Date and ending on the earlier of: (a) the effective date of any termination of the O&M Contract in accordance with the termination provisions of the O&M Contract; and (b) the expiry of the Term under the DBFOM Agreement.

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

“O&M Subcontractor Breakage Costs” means losses that have been or will be reasonably and properly incurred by the O&M Contractor under the O&M Contract or any subcontract as a direct result of the termination of the O&M Contract (and which shall not include lost profit or lost opportunity), but only to the extent that:

- (a) the losses are incurred in connection with the APM Project and with respect to the O&M Activities required to be provided or carried out by the O&M Contractor, including:
  - (i) any materials or goods ordered or subcontracts placed that cannot be cancelled without such losses being incurred;

- (ii) any expenditure incurred in anticipation of the provision of services or the completion of O&M Activities in the future; and
- (iii) the cost of demobilization including the cost of any relocation of equipment used in connection with the APM Project;
- (b) the losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm's length basis and that otherwise comply with the O&M Contract; and
- (c) the O&M Contractor has used its reasonable efforts to mitigate such losses.

“O&M Term” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Overview.”

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

“Operating Account” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts.”

“Operating Plan” means “APM System Operating Plan (SOP)” as set forth in Part 2C, Section 3.2 (APM System Operating Plan) of the Technical Provisions.

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

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

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

“Original Equity IRR” means the Equity IRR listed in the Base Case Financial Model.

“Original Issue Discount Bonds” means any Senior Bond which is sold at an initial public offering price (as set forth in the bond purchase agreement relating thereto) of less than par.

“Original Planned Early PSA Date” means March 31, 2023, as such date, with respect to the Design-Build Contract, may be subject to an adjustment to a later date by mutual agreement of the Borrower and the Design-Build Contractor pursuant to an amendment to the Design-Build Contract to be entered into in accordance with the provisions of the Design-Build Contract on the Financial Close Date if Financial Close occurs on a date that is later than June 18, 2018 to reflect, on a day for day basis, any delay in achieving Financial Close relative to such date. The Borrower and the Design-Build Contractor have agreed that such amendment to the Design-Build Contract will only be entered into to the extent that a corresponding amendment is made to the DBFOM Agreement at Financial Close.

“Outstanding” means all Senior Bonds that have been executed and delivered, except:

- (a) any Senior Bond on which all principal of and interest due or to become due has been paid at maturity;

(b) any Senior Bond on which the Redemption Price due or to become due has been paid in accordance with the redemption provisions applicable to such Senior Bond;

(c) Senior Bonds in lieu of which other Senior Bonds have been executed and delivered pursuant to the provisions of the Indenture relating to the transfer and exchange of Senior Bonds or the replacement of mutilated, lost, stolen or destroyed Senior Bonds;

(d) Senior Bonds that have been canceled by the Trustee or that have been surrendered to the Trustee for cancellation;

(e) Senior Bonds on which all of the principal, interest or Redemption Price is due and for which the Trustee holds moneys sufficient to pay the principal, interest or Redemption Price for the benefit of the Owner thereof pursuant to the Indenture;

(f) Senior Bonds that have been defeased pursuant to Article XI of the Indenture;

(g) for purposes of any consent, vote or other action to be taken by the Owners of a specified percentage of Senior Bonds under the Indenture or the Series 2018 Loan Agreement, all Senior Bonds held by or for the account of the Issuer or by any person controlling, controlled by or under common control with the Issuer, unless all Senior Bonds are held by the Issuer or by any person controlling, controlled by or under common control with the Issuer; and

(h) for purposes of any consent, vote or other action to be taken by the Owners of a specified percentage of Senior Bonds under the Indenture or the Series 2018 Loan Agreement, all Senior Bonds held by or for the account of the Borrower or by any person controlling, controlled by or under common control with the Borrower.

“Oversight” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Management Systems, Oversight & Independent Engineer—Oversight and Testing.”

“Owner” means the registered owner of any Senior Bond as shown in the registration records of the Trustee.

“Passenger Service” means operation of the APM System carrying passengers.

“Passenger Service Availability” means that all D&C Work is complete (except for APM System Punch List items that do not affect normal and safe use and operation of the APM System and any D&C Work that, by its nature, is to be performed after the Passenger Service Availability Date), and all other prerequisites for start of Passenger Service have been met. Passenger Service Availability is deemed to have occurred upon satisfaction of all the conditions for the APM Project in Exhibit 15E (Conditions to Passenger Service Availability) to the DBFOM Agreement, as confirmed by the Independent Engineer.

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

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

“Payment Milestone” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Payment of Subcontract Price—BT Milestone Payments.”

“Percentage Interest” means, as it relates to each Equity Member and ownership of Borrower HoldCo, (a) with respect to ACS LINXS Holdings, LLC, 18%, (b) with respect to Balfour Beatty Investments, Inc., 27%, (c) with respect to Bombardier Transportation (Holdings) USA Inc., 10%, (d) with respect to Fluor Enterprises, Inc.,



27% and (e) with respect to HOCHTIEF LINXS Holding, LLC, 18%, or such other figure as results following a transfer of any membership interests in HoldCo by a member of HoldCo to the extent permitted or otherwise waived under the DBFOM Agreement and the Financing Documents.

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

“Permitted Action” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*Senior Creditor Permitted Actions*.”

“Permitted Dispositions” means any of the following: (a) the replacement of obsolete, worn out or defective property in the ordinary course of business, (b) the sale, transfer or other disposition of Permitted Investments, (c) the sale, transfer or other disposition of any assets in a transaction that constitutes Permitted Indebtedness, (d) the disposition of surplus property not required for the operation of the APM Project in the ordinary course of business, or (e) the sale, lease, assignment, transfer or other disposition of any of Borrower’s property, business or assets having a value not exceeding \$5 million in the aggregate in any fiscal year; or (f) the sale, lease, assignment, transfer or other disposition of any of Borrower’s property, business or assets in the ordinary course of business or contemplated by or permitted under the DBFOM Agreement or other Material Project Contracts; provided that, with respect to clause (e), such property (if not being reasonably promptly replaced by suitable replacement property) is not required for Borrower to comply with its Project commitments.

“Permitted Indebtedness” means:

(a) any Indebtedness of Borrower under the Financing Documents in effect as of the Financial Close Date;

(b) prior to the repayment of the Design-Build Loan Facility Obligations in full, any of (iii) through (vii) below and following such repayment of the Design-Build Loan Facility Obligations, any of (i) through (vii) below:

(i) “Additional Senior Secured Obligations” subject to the satisfaction of the following terms and conditions:

(A) To pay for completion of the APM Project or: if (I) Lenders’ Technical Advisor certifies that additional debt to complete the construction of the APM Project is necessary and that the proceeds, together with other funds available to complete the APM Project are expected to be sufficient to complete the construction of the APM Project; and (II) the aggregate amount of Additional Senior Secured Obligations incurred pursuant to this clause (A) may not exceed five percent (5%) percent of the original principal amount of the Series 2018 Bonds.

(B) To pay to refurbish, upgrade, modify, expand or add to the APM Project, in connection with any LAWA Change, Directive Letter, safety compliance order, Relief Event or to meet other costs necessary for the purpose of complying with the requirements of the DBFOM Agreements: if (I) no Event of Default has occurred and is continuing, (II) the incurrence of such Additional Senior Secured Obligations shall not result in a downgrade of the credit ratings for the Series 2018 Bonds from the then-existing rating, (III) the Lenders’ Technical Advisor confirms that the proceeds of such Additional Senior Secured Obligations, together with other available funds, shall be sufficient for the proposed purpose; and (IV) for each Calculation Period ending on a Calculation Date on and after the first Calculation Date after the delivery of such proposed Additional Senior Secured Obligations and through the period ending on the maturity date of the then outstanding Secured Obligations, the Total Debt Service Coverage Ratio, calculated and certified by the Borrower will be projected to be at least 1:15:1.00, taking the proposed Additional Senior Secured Obligations into account.

(C) To refinance, replace or refund any or all of the Senior Secured Obligations: if the Borrower certifies, that (I) senior debt service, after the incurrence of such Additional Senior Secured Obligations, in each year of the remaining term of the Series 2018 Bonds is forecast to be not more than the senior debt service forecast for such year in the initial forecast for the APM Project prepared as of the Financial Close Date using the Base Financial Model, or (II)(x) for each Calculation Period ending on a Calculation Date on and after the first Calculation Date after the delivery of such proposed Additional Senior Secured Obligations and through the period ending on the maturity date of the then outstanding Secured Obligations, the Total Debt Service Coverage Ratio, calculated and certified by the Borrower will be projected to be at least 1.15:1.00, taking the proposed Additional Senior Secured Obligations into account, (y) the Additional Senior Secured Obligations shall not result in a downgrade of the credit ratings for the Series 2018 Bonds from the then-existing rating, and (z) if all the then outstanding Secured Obligations are to be refunded, prepaid or defeased prior to maturity, all necessary instructions or arrangements shall have been made in order to give effect to such refunding, prepayment or defeasance,

provided that, in each case, the holders of such Additional Senior Secured Obligations will be bound by the terms of the Intercreditor Agreement and the agent or trustee (or financing party or financing parties, if there is no such agent or trustee) with respect to such Additional Senior Secured Obligations will have executed and delivered a “Joinder Agreement” (as defined in the Intercreditor Agreement) to the Intercreditor Agreement.

- (ii) Senior secured indebtedness (other than the indebtedness under the Indenture) otherwise incurred in connection with the APM Project, and hedging arrangements in respect thereto, which has been approved by the Majority Owners and the Majority Bank Lenders;
- (iii) Subordinated Indebtedness fully subordinate to the Senior Secured Obligations in accordance with the Subordination Terms may be incurred (a) in an aggregate amount not to exceed \$5 million (excluding Indebtedness under any subordinated debt owing to any Affiliate of the Borrower) and hedging arrangements related to such subordinate Indebtedness (“Permitted Subordinated Indebtedness,” and if such Permitted Subordinated Indebtedness is secured with respect to the Collateral, such secured Indebtedness being “Permitted Subordinated Secured Indebtedness”); provided that all such Indebtedness (excluding Indebtedness under any subordinated debt owing to any Affiliate of the Borrower) (i) is subject to intercreditor arrangements reasonably satisfactory to the Majority Owners and the Majority Bank Lenders and (ii) shall not have any “springing lien” rights to become pari passu with the Senior Secured Obligations and (b) excluding Indebtedness under any subordinated debt owing to any Affiliate of the Borrower solely with respect to clauses (i) through (iv) below, if (i) no Event of Default has occurred and is continuing, (ii) the incurrence of such subordinated Indebtedness shall not result in a downgrade of the credit ratings for the Series 2018 Bonds from the then-existing rating, (iii) the Lenders’ Technical Advisor confirms that, after giving effect to such incurrence, amounts projected to be expended in the Borrower’s operating and maintenance budget and lifecycle projections will continue to be satisfied; (iv) the Borrower certifies to the Intercreditor Agent that the backward-looking Total DSCR for each twelve (12)-month period (beginning on the first day of the first month after the incurrence of the subordinated Indebtedness), is forecasted to be at least 1.15:1.00 for each year of the remaining term of the Series 2018 Bonds after giving effect to such subordinated Indebtedness; and (v) no holder of any Permitted Subordinated Secured Indebtedness shall be an Affiliate of the Borrower;
- (iv) [reserved];
- (v) Purchase money obligations (a) in an amount not to exceed \$5 million incurred to finance discrete items of equipment not comprising an integral part of the APM Project that extend to, and are secured by, only the equipment being financed, as long as such indebtedness does not

exceed the purchase price paid for such equipment and (b) if (i) no Event of Default has occurred and is continuing, (ii) the incurrence of such purchase money obligations shall not result in a downgrade of the credit ratings for the Series 2018 Bonds from the then-existing rating, (iii) the Lenders' Technical Advisor confirms that, after giving effect to such incurrence, amounts projected to be expended in the Borrower's operating and maintenance budget and lifecycle projections will continue to be satisfied; and (iv) Borrower certifies to the Intercreditor Agent that the backward-looking Total DSCR for each twelve (12)-month period (beginning on the first day of the first month after the incurrence of the additional purchase money obligations), is forecasted to be at least 1.10:1.00 for each year of the remaining term of the Series 2018 Bonds after giving effect to such money obligations;

- (vi) Current accounts payable arising, and accrued expenses incurred, in the ordinary course of business which are payable in accordance with customary practices that are not overdue by more than ninety (90) days (unless subject to a good faith contest); and
- (vii) Reimbursement obligations of the Borrower incurred in connection with the issuance of any letter of credit or bond insurance policy in connection with the APM Project and permitted by the Contract Documents and Financing Documents.

"Permitted Investments" means:

(a) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) Investments in commercial paper maturing within two hundred and seventy (270) days from the date of acquisition thereof and having, at such date of acquisition, a rating of P-1 (or higher) according to Moody's, A-1 (or higher) according to S&P, R-1 (low) (or higher) according to DBRS, or its equivalent from another Nationally Recognized Rating Agency;

(c) Investments in certificates of deposit, banker's acceptances and time deposits maturing or redeemable six (6) months from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any state thereof or any United States branch of a commercial bank organized under the laws of any State of the European Union which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) Investment agreements, including guaranteed investment contracts, repurchase agreements and forward delivery agreements, that are obligations of an entity whose senior long term debt obligations, deposit rating or claims-paying ability are rated, or guaranteed by an entity whose obligations are rated, (at the time the investment is entered into) not lower than A2 by Moody's or its equivalent from another Nationally Recognized Rating Agency;

(e) Money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P, Aaa by Moody's or its equivalent from another Nationally Recognized Rating Agency and (iii) have portfolio assets of at least \$5,000,000,000; or

(f) Any other investments approved by the Intercreditor Agent.

"Permitted Security Interest" means:

- (a) Any Security Interest arising by operation of law or in the ordinary course of business in connection with or to secure the performance of bids, tenders, contracts, leases, statutory obligations, surety bonds or appeal bonds;
- (b) Any mechanic's, materialmen's, workmen's, repairmen's, employees', warehousemen's, carriers' or any like lien or right of set-off arising in the ordinary course of business or under applicable law, securing obligations incurred in connection with the APM Project which are not overdue by more than sixty (60) days or are being contested in good faith;
- (c) Any purchase-money security interests extending only to the asset purchased or right of title retention in connection with the acquisition of assets in the ordinary course of business, including, without limitation, as described in clause (b)(v) of the definition of "Permitted Indebtedness";
- (d) Any Security Interest for taxes, assessments or governmental charges not yet due or being contested in good faith and bonded, if required by applicable law;
- (e) Any Security Interest arising out of judgments or awards fully covered by insurance or with respect to which an appeal or proceeding for review is being prosecuted, enforcement has been stayed or which has been bonded;
- (f) Any Security Interest created pursuant to or contemplated by the Financing Documents or to secure the Series 2018 Bond Obligations, the Permitted Senior Secured Indebtedness or Permitted Subordinated Secured Indebtedness;
- (g) Any right of set-off arising under a Material Project Contract or Financing Document;
- (h) Any other lien granted over assets with a value not exceeding \$5,000,000 (or its equivalent);
- (i) Any Security Interest securing Permitted Indebtedness;
- (j) Any Security Interest incurred or deposit made in the ordinary course of business and required by applicable law in connection with workers' compensation, unemployment insurance or other forms of governmental insurance or benefits;
- (k) Any Security Interest arising solely by virtue of any statutory or common law provision relating to banker's liens, rights to set-off or similar rights;
- (l) Licenses or sublicenses of Intellectual Property granted in the ordinary course of business;
- (m) With respect to rights to property on the APM Project provided by LAWA pursuant to the DBFOM Agreement, any easements, covenants, conditions, rights-of-way or other exceptions or defects or irregularities to title with respect to the APM Project that exists as of the Financial Close Date;
- (n) Any other Security Interest approved in writing by the Majority Owners and the Majority Bank Lenders; or
- (o) Without duplication, any other Security Interest under the Design-Build Loan Facility Credit Agreement.

"Permitted Senior Secured Indebtedness" means any indebtedness of the Borrower described in clauses (b)(i) and (ii) of the definition of "Permitted Indebtedness."

“Permitted Subordinated Indebtedness” means any Indebtedness of the Borrower described in clause (b)(iii) of the definition of “Permitted Indebtedness.”

“Permitted Subordinated Secured Indebtedness” means any Permitted Subordinated Indebtedness of the Borrower that is secured with respect to the Collateral, described in clause (b)(iii) of the definition of “Permitted Indebtedness.”

“Permitted Uses of Proceeds” means any use of proceeds permitted by the Tax Regulatory Agreements.

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

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

“PFC” means passenger facility charge.

“Planned Early PSA Date” means the date by which the Borrower commits to achieving Passenger Service Availability as identified in the Initial Project Schedule, which is March 31, 2023, as such date may be extended from time to time pursuant to Section 14.1.3 (Extension of Contract Deadlines) of the DBFOM Agreement.

“Pledge Agreement” has the meaning specified in “SECURITY FOR THE SECURED OBLIGATIONS—Senior Secured Obligations—Pledge Agreement.”

“Pledged Collateral” has the meaning specified in “SECURITY FOR THE SECURED OBLIGATIONS—Senior Secured Obligations.”

“Pledged Membership Interests” has the meaning specified in “SECURITY FOR THE SECURED OBLIGATIONS—Senior Secured Obligations.”

“Post-Enforcement Waterfall” means the priority of application of funds following the taking of an Enforcement Action as set forth in APPENDIX D-3—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT—Collateral and Remedies—*Application of Proceeds*.”

“Pre-Enforcement Waterfall” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Flow of Funds Post-Passenger Service Availability.”

“Pre-Existing Hazardous Materials” means Hazardous Materials that:

(a) are located in, on or under, or are emanating from, any parcel within the boundaries of the Site as of the date access to such parcel is provided to the Borrower; or

(b) existed in another location as of the date access to such a parcel was provided and thereafter migrated to such parcel,

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

“Prime Contract” means a direct Contract between the Borrower and a Contractor.

“Prime Contractor” means any Contractor that has a direct contract with the Borrower.

"Principal Payment Date" means (i) for the Series 2018 Bonds, the maturity dates set forth in the inside cover page of the Series 2018 Official Statement, or, if any such date is not a Business Day, then the Business Day succeeding such date, (ii) for the Design-Build Loans, the Design-Build Loan Maturity Date and (iii) for any other Secured Obligations, the date or dates on which principal of such Secured Obligations is due and payable as set forth in the documents pursuant to which such Secured Obligations were incurred.

"Proceeds Account" means the "Proceeds Account" established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in "ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Proceeds Account*."

"Proceeds" means "proceeds" as such term is defined in the UCC or under other relevant law and, in any event, shall include, but shall not be limited to, (i) any and all proceeds of, or amounts (in whatsoever form, whether cash, securities, property or other assets) received under or with respect to, any insurance, indemnity, warranty or guaranty payable to the Borrower from time to time, and claims for insurance, indemnity, warranty or guaranty effected or held for the benefit of the Borrower, in each case with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever, whether cash, securities, property or other assets) made or due and payable to the Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Entity (or any person acting under color of Governmental Entity), and (iii) any and all other amounts (in any form whatsoever, whether cash, securities, property or other assets) from time to time paid or payable under or in connection with any of the Collateral (whether or not in connection with the sale, lease or other disposition of the Collateral).

"Prohibited Person" means any Person who is:

(a) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded from participating in procurement or nonprocurement transaction or determined to be a non-responsible bidder or contractor (as such terms are defined or used in the Department's Contractor Responsibility Program set forth in Resolution No. 21601 adopted by the Board of Airport Commissioners);

(b) indicted or convicted of a crime, including misdemeanors, or had a civil suit or administrative judgment rendered against such Person involving the bidding, awarding, or performance of a government contract, a false claim or material misrepresentation to any private or Governmental Entity, or the crime of theft, fraud, embezzlement, perjury, or bribery (as such terms are defined or used in the Department's Contractor Responsibility Program set forth in Resolution No. 21601 adopted by the Board of Airport Commissioners);

(c) identified on the list entitled "Entities Prohibited from Contracting with Public Entities in California per the Iran Contracting Act of 2010" maintained by the Department of General Services;

(d) located within, or doing business or operating from, a country or other territory subject to a general embargo administered by the United States Office of Foreign Assets Control (OFAC);

(e) designated on the OFAC list of "Specially Designated Nationals";

(f) otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC or any other U.S. federal economic sanctions authority or any divestment or sanctions program of the State of California;

(g) a financial institution against which, or a banking institution chartered or licensed in a jurisdiction against which, the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act;

(h) located within or is operating from a jurisdiction that has been designated as a "high-risk and non-cooperative jurisdiction" by the Financial Action Task Force;

(i) a “senior foreign political figure” or a prohibited “foreign shell bank” within the meaning of 31 C.F.R. Section 1010.605; or

(j) engaged in litigation with the City of Los Angeles relating to performance of a contract or business practices (unless the City has first waived (in the City’s sole discretion) by written notice to the transferring equity holder, with a copy to the Borrower, the prohibition on a transfer to such Person during the continuance of the relevant litigation).

“Project Accounts” means, collectively, each of the Securities Accounts, the Operating Account, the Voluntary Equity Contributions Account and such other accounts to be specified as being “Project Accounts” in the Financing Documents, including any sub-accounts thereof (it being understood, for the avoidance of doubt, that the Distribution Account and Handback Requirements Reserve Account do not constitute Project Accounts).

“Project Costs” means all costs and expenses incurred in connection with the design, construction, and financing of the APM Project, including, without limitation, the Contract Price, amounts payable under all construction, engineering, technical and other contracts (including any Technical Assistance and Management Services Agreement) entered into by Borrower in connection with performing its obligations under the DBFOM Agreement, all O&M Expenditures and Renewal Expenditures incurred prior to Final Completion, financing costs, including debt service principal and interest payments, costs of issuance, fees (including fees payable to legal, tax, accounting and other advisors), interest during construction, current interest on the Series 2018 Bonds prior to Final Completion, any amounts payable under any interest rate hedging agreement, initial working capital costs, and funding of reserves (including the Senior Debt Service Reserve Account), all development costs incurred prior to the Financial Close Date and set forth in the Base Financial Model, mobilization payments in respect of O&M Activities (as defined in the O&M Contract), funding of the Utility Owners’ Costs Account, reimbursement of early works amounts to the Department, all administrative costs, including budgeted overhead and operating expenses, any taxes (excluding corporation tax of any Sponsor other than federal, state and local income and franchise taxes as set out in the Base Financial Model on the Financial Close Date), assessments or governmental charges payable by the Sponsors in connection with the APM Project, fees and expenses payable in connection with letters of credit (including in connection with the Equity Letters of Credit), and any fees, administrative costs or expenses and indemnification payments due to (i) the Senior Secured Parties, the Subordinated Secured Parties or other parties under the Financing Documents, (ii) other parties under any documentation relating to any Permitted Senior Secured Indebtedness or Permitted Secured Subordinated Indebtedness, if any, and (iii) the rating agencies for the payment of any rating agency fees and expenses.

“Project Debt” means bona fide indebtedness (including subordinated indebtedness) for or with respect to funds borrowed or obligations incurred (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received, the repayment of which has specified payment dates and is secured by one or more security documents. Project Debt includes principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto and lease financing obligations. Project Debt excludes (a) any indebtedness of the Borrower or any Equity Member of the Borrower that is secured by anything less than the entire the Borrower’s Interest, such as indebtedness secured only by an assignment of economic interest in the Borrower or of rights to cash flow or dividends from the Borrower, (b) debt that constitutes consideration paid for the sale of the economic rights in the Borrower or the Borrower’s Equity Members, and (c) any increase in indebtedness to the extent resulting from an agreement or other arrangement the Borrower enters into after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination giving rise to an obligation of the Department to pay Termination Compensation, including the Borrower’s receipt of a notice of Termination for Convenience and occurrence of the LAWA Default of the type entitling the Borrower to terminate the DBFOM Agreement. In addition, no debt shall constitute Project Debt unless and until the Collateral Agent provides the Department with notice thereof and the related financing agreements and security documents in accordance with the relevant Direct Agreement.

“Project Execution Plan(s)” means a separate, detailed plan regarding (a) the prosecution of Utility Work (including performance of Utility Betterments) for a Utility Owner, or (b) the prosecution of Third Party Work for a Third Party.

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

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

“Project Neutral” means an individual identified on the list attached to the DBFOM Agreement as Exhibit 17 (Project Neutral List) to the DBFOM Agreement, as updated from time to time in accordance with the DBFOM Agreement.

“Project Revenues” means the aggregate amount of all revenues received by the Borrower under the DBFOM Agreement, the interest on any Project Accounts received by the Borrower (to the extent transferred to the Revenue Account), the revenues received by Borrower under any Material Project Contracts, the revenues received by the Borrower from any third parties (including interest income derived from Permitted Investments), the proceeds from any business interruption or delay in start-up insurance, the proceeds of any equity investment in the Borrower other than Equity Contributions, the insurance proceeds, if any, remaining following restoration of the APM Project to its original condition preceding an insurable loss event, amounts transferred to the Revenue Account from the Bond Proceeds Account or the Construction Account and all other amounts received by the Borrower arising or derived from or paid in respect of the APM Project.

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

“Project Schedule” has Borrower’s schedule for the APM Project as more particularly described in Part 2A, Section 3.1.4 (Project Schedule) of the Technical Provisions.

“Projected Lifecycle Costs” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Major Maintenance Account*.”

“Property Acquisition Schedule” means the dates by which the Department is required to provide the Borrower with rights of access to the APM Project ROW properties as specified in Part 2A, Section 20.1 (ROW Conveyance) of the Technical Provisions.

“Proposal” means the Borrower’s response to the RFP.

“Proposed Milestone Payment Date” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Payments during D&C Period—Milestone Payments.”

“Puzhen Bombardier Transport Ltd” or “PBTS JV” has the meaning specified in “RISK FACTORS—Vehicle Risks.”

“Qualifying Change in Law” means:

(a) a Change in Law that is principally directed at and the effect of which is principally borne by the Borrower, including Borrower-Related Entities, or airport owners or operators in the State, except where such change (i) is in response, in whole or in part, to any failure to perform or breach of the Contract Documents, violation of applicable Law or Governmental Approval, or culpable acts or omissions on the part of any Borrower-



Related Entity, (ii) is a directive by the U.S. Department of Homeland Security or comparable State agency, or (iii) is otherwise expressly permitted under the Contract Documents;

(b) a Change in Law for which compliance requires capital expenditures by the Borrower; or

(c) a Change in Law for which compliance requires specific changes in the Borrower's normal operation or maintenance procedures.

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

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

"Rating Event" in respect of a Bank Lender when the senior unsecured debt of such Bank Lender ceases to be rated at or above the following levels by at least one of the rating agencies referred to below: (a) "A-" by S&P; (b) "A3" by Moody's; (c) "A-" by Fitch; or A (low) by DBRS.

"Record Date" has the meaning specified in "THE SERIES 2018 BONDS—Payment of the Series 2018 Bonds."

"Recoverable Costs" means:

(a) The reasonably required costs of any assistance, action, activity or work undertaken by the Department which the Borrower 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 the 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 Office of the City Attorney), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or work, including in connection with defending claims by and resolving disputes with third party contractors; plus

(d) Interest on all the foregoing sums at the late payment rate (which means seven percent per annum), commencing on the date due under the applicable terms of the Contract Documents and continuing until paid.

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

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

"Redemption Price" means the amount due on a Senior Bond on the date on which it is redeemed prior to maturity pursuant to the redemption provisions in the indenture applicable to such Senior Bond. Such term does not include the principal and interest due on Senior Bonds that are Term Bonds on the dates such Senior Bonds are to be

redeemed in accordance with a mandatory sinking fund redemption or mandatory pro rata redemption schedule set forth in the Indenture or a Supplemental Indenture.

“Reference Banks” means each of Canadian Imperial Bank of Commerce, New York Branch, Mizuho Bank, Ltd., Sumitomo Mitsui Banking Corporation, and The Toronto-Dominion Bank, or, in the event that fewer than two of such banks remain Bank Lenders under the Design-Build Loan Facility Credit Agreement at any time, any other commercial bank designated by the Borrower (with the consent of such bank) and approved by the Majority Bank Lenders as constituting a “Reference Bank” under the Design-Build Loan Facility Credit Agreement, in each case, acting in its capacity as a “Reference Bank” under the Design-Build Loan Facility Credit Agreement.

“Reference Bank Rate” means the average of the offered quotation of two or more Reference Banks for U.S. Dollar deposits of amounts comparable to the outstanding principal amount of the Design-Build Loans for which an interest rate is then being determined with maturities comparable to the Interest Period to be applicable to such Design-Build Loans, determined as of 11:00 a.m., London time, on the date that is two Business Days prior to the commencement of such Interest Period.

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

“Refinancing” means:

(a) any amendment, variation, novation, extension, renewal, supplement, refunding, defeasance or replacement of any Project Debt, financing agreement or security document (other than any Equity Member Debt);

(b) any Project Debt incurred by the Borrower in addition to the Project Debt originally incurred to finance the APM Project and Work, in the total face amount at each lien priority, and with the particular Lenders, set forth in the Contract Documents, which Project Debt is evidenced by the documents identified in the DBFOM Agreement as the “Initial financing agreements” and secured by the documents identified in the DBFOM Agreement as the “Initial security documents,” secured or unsecured;

(c) the disposition of any rights or interests in, or the creation of any rights of participation with respect to, Project Debt, financing agreements and security documents or the creation or granting by the Borrower or any Lender of any other form of benefit or interest in either Project Debt, financing agreements and security documents or the Borrower’s Interest whether by way of security or otherwise; or

(d) any other arrangement put in place by the Borrower or another Person which has an effect similar to any of clauses (a) through (c) above.

“Refinancing Data” means the pre-refinancing Financial Model, the post-refinancing Financial Model (each of which has the meaning set forth in Exhibit 5C (Calculation of Refinancing Gain) to the DBFOM Agreement), any interim Financial Models, and all assumptions, calculations and other information supporting the calculation of the Refinancing Gain, including any debt term sheets or other similar documentation relating to the proposed Refinancing.

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

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

“Release Date” means the date on which the Borrower has repaid in full all obligations and amounts outstanding under the Credit Agreement.

“Relevant Event” means any of the events described in Section 4.7.1 (Relevant Events) of the DBFOM Agreement.

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

“Relief Event Claim” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—Claiming Relief.”

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

“Relief Event Notice” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Relief Events—Claiming Relief.”

“Remaining Lifecycle Budgeted Amount” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—Major Maintenance Account.”

“Remedial Plan” has the meaning specified in APPENDIX D-8—“SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Delay in Subcontracted Work—Delay Remediated Plans.”

“Renewal Expenditures” means any amounts payable by the O&M Contractor with respect to the performance of Renewal Work (including work needed to satisfy the relevant Technical Requirements) and Handback Renewal Work, each as defined under the O&M Contract.

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

“Representative” has the meaning specified in “UNDERWRITING.”

“Request for Change Proposal” means a written notice issued by the Department to the Borrower setting forth a proposed LAWA Change and requesting the Borrower’s assessment of cost and schedule impacts thereof, as described in Section 1.1 of Exhibit 9 (LAWA Change Procedures and Directive Letters) to the DBFOM Agreement.

“Request for Proposals (RFP)” means that certain Request for Proposals to Design, Build, Finance, Operate and Maintain the APM Project, issued by the Department on July 28, 2017, as amended.

“Required Banks” means the minimum percentage of Bank Lenders required under the Design-Build Loan Facility Credit Agreement to direct the Administrative Agent.

“Required Bondholders” means the minimum percentage of Owners required under the Series 2018 Loan Agreement to direct the Trustee.

“Required Percentage” means the minimum percentage of Senior Creditors required under such Senior Creditor’s applicable Financing Documents to direct their respective Agent to exercise remedies with respect to the Collateral.

“Required Senior Debt Service Reserve” has the meaning specified in “SUMMARY—Security for the Secured Obligations—Senior Debt Service Reserve Account”.

"Required Senior Creditors" means, at any time, the holders of 50% or more of (1) prior to any Enforcement Action, the face value of the Series 2018 Bonds, plus the aggregate principal amount of disbursements funded by the Bank Lenders under the Design-Build Loan Facility Credit Agreement, plus the available, unfunded commitments by the Bank Lenders under the Design-Build Loan Facility Credit Agreement, plus funded other Permitted Senior Secured Indebtedness, plus unfunded available other Permitted Senior Secured Indebtedness commitments, and (2) following any Enforcement Action, the face value of the Series 2018 Bonds, plus the aggregate principal amount of disbursements funded by the Bank Lenders under the Design-Build Loan Facility Credit Agreement, plus the aggregate principal amount outstanding of other Permitted Senior Secured Indebtedness funded, plus Aggregate Hedging Agreement Termination Values (as such term is defined in the Intercreditor Agreement).

"Rescue Refinancing" has the meaning specified in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Provisions Relating to Financing of the Borrower's Obligations—Refinancing—Department Approval of Refinancings."

"Reserve Account" means each of (i) the Senior Debt Service Reserve Account; (ii) the Major Maintenance Account; and (iii) the Handback Requirements Reserve Account.

"Reserved Rights" means the rights of the Issuer to: (a) enter into Supplemental Indentures as provided in the Indenture; (b) to receive Additional Payments or reimbursement of Issuer costs and expenses as provided in the Indenture, any Supplemental Indenture and/or of the Senior Loan Agreement; (c) be held harmless and indemnified pursuant the Senior Loan Agreement; (d) receive notices and other documents as required under the Indenture, any Supplemental Indenture and/or the Senior Loan Agreement to be delivered to the Issuer; (e) enforce and to give or withhold, in accordance with the Indenture, consent to any amendment, change or modification to: (i) any provision of the Senior Loan Agreement except those provisions set forth in the Indenture and (ii) any other term or provision designated to be a Reserved Right pursuant to any Supplemental Indenture; and (f) give or withhold in accordance with Article IX or X of the Indenture consent to any amendment, change or modification to the Indenture, any Supplemental Indenture and/or the Senior Loan Agreement that has the effect of narrowing or limiting the scope of the Reserved Rights enumerated in the foregoing clauses (a) through (e).

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

"Restricted Payment" has the meaning specified in "ACCOUNTS AND FLOW OF FUNDS—Restricted Payment Conditions."

"Restricted Payment Conditions" has the meaning specified in "ACCOUNTS AND FLOW OF FUNDS—Restricted Payment Conditions."

"Revenue Account" means the "Revenue Account" established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in "ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Revenue Account*."

"RFP" has the meaning specified in "TECHNICAL ADVISOR REPORT—Technical Advisor Report (Infrata)—Infrata."

"Rule 15c2-12" has the meaning specified in "CONTINUING DISCLOSURE AND OTHER REPORTING REQUIREMENTS—Continuing Disclosure under Rule 15c2-12."

“Safety Compliance” means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement, changes in configuration, or procedures implemented to correct a specific safety condition or risk that the Department has reasonably determined to exist by investigation or analysis (excluding a safety condition or risk that exists by reason of the Borrower’s failure to comply with the requirements of the Contract Documents).

“Safety Compliance Order” means a written order or directive from the Department to the Borrower to implement Safety Compliance.

“Scheduled Milestone Payment Date” means the applicable date set forth in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Payments during D&C Period—Milestone Payments.”

“Screen Rate” means, with respect to any Design-Build Loan Interest Period, the rate per annum which appears on the Reuters LIBOR 01 Page (or any page which replaces such page) as the London interbank offered rate for deposits in Dollars with maturities equal to such Design-Build Loan Interest Period at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Design-Build Loan Interest Period.

“Second Lien Intercreditor Agreement” means an intercreditor agreement entered into between the Senior Creditors and the Agents, and any holder or provider of Permitted Subordinated Secured Indebtedness.

“Secured Obligations” means (i) the Senior Secured Obligations and (ii) any obligations of the Borrower in respect of Permitted Subordinated Secured Indebtedness.

“Secured Parties” means, collectively, the Senior Secured Parties and the Subordinated Secured Parties.

“Securities Accounts” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts.”

“Security Agreement” has the meaning specified in “SECURITY FOR THE SECURED OBLIGATIONS—Senior Secured Obligations—Security Agreement.”

“Security Agreement Collateral” has the meaning specified in “SECURITY FOR THE SECURED OBLIGATIONS—Senior Secured Obligations.”

“Security Documents” means the collective reference to (a) the Collateral Agency and Accounts Agreement, (b) the Security Agreement, (c) the Pledge Agreement, (d) the Direct Agreements, (e) each Control Agreement, if any, and (f) any other agreement, document or instrument hereafter entered into or delivered by the Borrower or any other Person which purports to create a Security Interest in favor of the Collateral Agent for the benefit of the Secured Parties.

“Security Interest” means:

(a) any mortgage, pledge, lien charge, assignment, hypothecation, security interest, title retention arrangement, preferential right, trust arrangement or other arrangement having the same or equivalent commercial effect as a grant of security; or

(b) any agreement to create or give any arrangement referred to in paragraph (a) of this definition.

“Segregated Collateral” means the Bank Segregated Collateral or the Bonds Segregated Collateral, in each case as defined in the Security Agreement.

“Series” means the Senior Bonds designated as a separate series in a Supplemental Indenture and any Senior Bonds authenticated and delivered in lieu of or in substitution for such Senior Bonds pursuant to the Indenture.

“Senior Bonds” means collectively, the Series 2018 Bonds and all Additional Senior Bonds.

“Senior Creditors” means the Owners, the Hedge Providers, any Person providing Permitted Senior Secured Indebtedness, and, on and from the Financial Close Date, the Lenders, and, as applicable, the permitted assignees and transferees thereof.

“Senior Debt Service” means scheduled mandatory principal and interest payments on the Series 2018 Bonds, the Design-Build Loan Facility and other Permitted Senior Secured Indebtedness, if any.

“Senior Debt Service Account” means the “Senior Debt Service Account” established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Senior Debt Service Account*.”

“Senior Debt Service Reserve Account” means the “Senior Debt Service Reserve Account” established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Senior Debt Service Reserve Account*.”

“Senior Interest Payment Sub-Account” means the “Senior Interest Payment Sub-Account” of the Senior Debt Service Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Senior Debt Service Account*.”

“Senior Principal Payment Sub-Account” means the “Senior Principal Payment Sub-Account” of the Senior Debt Service Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Senior Debt Service Account*.”

“Senior Secured Obligations” means (i) all obligations of the Borrower now existing or hereafter arising under the Series 2018 Loan Agreement and the other Financing Documents relating to the issuance of the Series 2018 Bonds; (ii) all obligations of the Borrower existing on and from the Financial Close Date or thereafter arising under the Design-Build Loan Facility Credit Agreement and the other Financing Documents relating to the Design-Build Loan Facility; (iii) the Hedging Obligations; and (iv) obligations under any Permitted Senior Secured Indebtedness.

“Senior Secured Parties” means the Trustee, the Administrative Agent, the Collateral Agent, the Intercreditor Agent, the Owners of the Series 2018 Bonds, the Bank Lenders, the Hedge Providers and any holders of (and any representatives of) any other Permitted Senior Secured Indebtedness, if any.

“Senior Secured Segregated Collateral” means the Senior Interest Payment Sub-Account, the Senior Principal Payment Sub-Account and the Senior Debt Service Reserve Account and all respective amounts on deposit therein, credited thereto or earnings thereon.

“Series” means the Senior Bonds designated as a separate series in a Supplemental Indenture and any Senior Bonds authenticated and delivered in lieu of or in substitution for such Senior Bonds pursuant to the Indenture.

“Series 2018A Bonds” has the meaning specified in “SUMMARY—The Offering—Securities Offered.”

“Series 2018A Term Bonds” has the meaning specified in “THE SERIES 2018 BONDS—Redemption—Mandatory Sinking Fund Redemption.”

“Series 2018B Bonds” has the meaning specified in “SUMMARY—The Offering—Securities Offered.”

“Series 2018 Bonds” has the meaning specified in “SUMMARY—The Offering—Securities Offered.”

“Series 2018 Bond Obligations” means all obligations of the Borrower now existing or hereafter arising under the Series 2018 Loan Agreement and the other Financing Documents relating to the issuance of the Series 2018 Bonds.

“Series 2018 Debt Service Fund” has the meaning specified in APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Funds and Accounts—*Establishment of Certain Funds and Accounts.*”

“Series 2018 Interest Account” has the meaning specified in APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Funds and Accounts—Establishment of Certain Funds and Accounts.”

“Series 2018 Loan” means the loan by the Issuer to the Borrower to provide for financing or refinancing of a portion of the costs related to the APM project and the payment by the Borrower to the Issuer of amounts sufficient for the payment of the principal (or Redemption Price) of and the interest on the Series 2018 Bonds and certain related expenses.

“Series 2018 Loan Agreement” means that certain Loan Agreement, dated as of June 5, 2018, by and between the Issuer and Borrower.

“Series 2018 Loan Documents” means the Indenture, the Series 2018 Loan Agreement, the Security Documents, the Lender’s Direct Agreement, the Intercreditor Agreement, any Acceptable Letters of Credit delivered or provided under any of the other Series 2018 Loan Documents and all other agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing.

“Series 2018 Loan Payments” means the amounts required to be paid by the Borrower in repayment (or prepayment) of the Series 2018 Loan, pursuant to the Series 2018 Loan Agreement.

“Series 2018 Principal Account” has the meaning specified in APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Funds and Accounts—*Establishment of Certain Funds and Accounts.*”

“Series 2018 Rebate Fund” has the meaning specified in APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Funds and Accounts—*Establishment of Certain Funds and Accounts.*”

“Series 2018 Redemption Account” has the meaning specified in APPENDIX D-1—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—Funds and Accounts—Establishment of Certain Funds and Accounts.”

“Service Fee Reference Amount” means with respect to any 12-month period the total O&M Monthly Performance Payment payable in that period plus the average annual rehabilitation payment under the O&M Contract over the O&M Period, in each case indexed in accordance with the provisions of the DBFOM Agreement. References in this definition to the O&M Monthly Performance Payment are to the maximum O&M Monthly Performance Payment payable in respect of such 12-month period (prior to any O&M Period deductions) and exclusive of taxes.

“Service Line(s)” means a utility line, the function of which is to connect directly the improvements on an individual property (e.g., a commercial building or an industrial warehouse) to another utility line located off such

property, which other utility line connects more than one such individual line to a larger system, as well as any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a Governmental Entity's local lighting and electrical systems, traffic control systems, street lights, communications systems and/or irrigation systems.

"Setting Date" means October 9, 2017.

"Shared Collateral" means, at any time, Collateral in which the holders of two or more series of Senior Secured Obligations (or their respective Agents) hold a valid and perfected security interest at such time. If more than two series of Senior Secured Obligations are outstanding at any time and the holders of less than all series of Senior Secured Obligations hold a valid and perfected security interest in any Collateral at such time, then such Collateral shall constitute Collateral for those series of Senior Secured Obligations that hold a valid and perfected security interest in such Collateral at such time and shall not constitute Collateral for any series which does not have a valid and perfected security interest in such Collateral at such time.

"Site" means:

- (a) during the D&C Period, the areas within the D&C Limits and Temporary Areas; and
- (b) during the O&M Period, the areas within the O&M Limits,
- (c) or either of them, as the context may require.

"Small Business Enterprise (SBE)" means the Department's Small Business Enterprise Program.

"Special Record Date" means a special date fixed to determine the names and addresses of Owners of the Series 2018 Bonds for purposes of paying defaulted interest on the Series 2018 Bonds in accordance with the Indenture.

"Specified Default" means a continuing Default with respect to an Event of Default under the following paragraphs set forth in Schedule V of the Design-Build Loan Facility Credit Agreement: (a) relating to payments; (l) relating to Equity Transfers; (m) relating to Equity Contributions and Equity Letters of Credit; (d) relating to insurance, but only to the extent that a failure to insure or maintain insurance or the lapse or termination of insurance would have a Material Adverse Effect; (f), (i), (j) (n) and (o) relating to the unenforceability and termination of Financing Documents, the Design-Build Contract and the O&M Contract; (c) relating to covenant defaults, but only as it relates to the covenants set forth in (b) relating to existence, (f) relating to taxes, and (i) relating to the application of Project Revenues in the Pre-Enforcement Waterfall, (f) relating to mergers/dissolution and (m) relating to abandonment; and (h) relating to judgments; and provided that, that, in the case of any other covenant specified in Article 9 (Covenants) of the Design-Build Loan Facility Credit Agreement, only one draw will be permitted during the period that such Default is continuing.

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

"Standstill Period" has the meaning specified in "SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*Enforcement Exceptions*."

"State" means the State of California.

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

"Subcontract Price" has the meaning specified in APPENDIX D-8—"SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT—Payment of Subcontract Price—Subcontract Price."



“Subcontracted Work” means the design, supply, installation and integration of the APM Operating System (including any obligations which are the responsibility of Bombardier as set out in the attachments to the APM Operating System Subcontract relating to the work breakdown structure, cybersecurity implementation, and preliminary documents but excluding any obligations with respect to the APM Operating System which are the responsibility of Design-Build Contractor as set out in the attachments to the APM Operating System Subcontract relating to the work breakdown structure and cybersecurity implementation, and all other work required to be furnished and provided, and activities and services required to be performed, by Bombardier under the APM Operating System Subcontract.

“Subcontractor” means each Contractor that is not a Prime Contractor.

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

“Subordinated Debt Service Account” means the “Subordinated Debt Service Account” established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Subordinated Debt Service Account*.”

“Substituted Entity” means a Third Party proposed by the Collateral Agent and approved by the Department under a Direct Agreement to act in the Borrower’s stead and not merely as a step-in party (which means (a) the Collateral Agent, a Lender or any entity that is wholly owned by a Lender or group of Lenders, or (b) any Person approved by the Department as a Substituted Entity; in each case where such Person is not a Restricted Person), in each case where such Person is (a) a Suitable Substitute and (b) not a restricted person (which means a Person that, after exhaustion of all rights of appeal, is suspended or debarred from bidding, proposing or contracting with any federal or State department or agency, or any Person whose managing member, general partner or controlling investor of such Person has been so suspended or debarred).

“Subordinated Interest Payment Sub-Account” means the “Subordinated Interest Payment Sub-Account” of the Subordinated Debt Service Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Subordinated Debt Service Account*.”

“Subordinated Principal Payment Sub-Account” means the “Subordinated Principal Payment Sub-Account” of the Subordinated Debt Service Account established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement and as described in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—*Subordinated Debt Service Account*.”

“Subordination Terms” means the subordination terms attached as Exhibit L to the Collateral Agency and Accounts Agreement.

“Suitable Substitute” means a Person, approved in writing by the Department in accordance with the Lenders’ Direct Agreement that:

- (a) has the legal capacity, power and authority to become the party to and perform the obligations of the Borrower under the DBFOM Agreement;
- (b) is in compliance with the Department’s rules and regulations, and has adopted written policies regarding organizational conflicts of interest consistent with the Department’s conflicts of interest policy;
- (c) has ensured that all of its subcontractors are in compliance with the Department’s rules and regulations;

(d) has adopted written policies regarding organizational conflicts of interest consistent with the Department's conflicts of interest policy;

(e) employs individuals having the appropriate qualifications, experience and technical competence to timely perform the Borrower's obligations under the Contract Documents, the Key Contracts and the escrow agreements relating to the escrow of the Financial Model and Cost and Pricing Data and the IP Escrows; and

(f) otherwise has available resources (including committed financial resources and subcontracts) sufficient to enable it to perform the obligations of the Borrower under the Contract Documents, the Key Contracts and the escrow agreements relating to the escrow of the Financial Model and Cost and Pricing Data and the IP Escrows.

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

"Supermajority Bank Lenders" means as of any date, a Bank Lender or Bank Lenders holding greater than sixty-six and two-thirds percent (66 and 2/3%) of the sum of (a) the aggregate amount of Design-Build Loans then outstanding and (b) the aggregate unused commitments under the Design-Build Loan Facility Credit Agreement. The outstanding Design-Build Loans and unused commitments of any defaulting lender will be disregarded in determining Supermajority Bank Lenders at any time.

"Supplemental Indenture" means any indenture supplementing or amending the Indenture or another supplemental indenture that is executed and delivered pursuant to Article IX of the Indenture.

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

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

"Tax-Exempt Senior Bond" means each Series 2018 Bond and any other Senior Bond designated as a Tax-Exempt Senior Bond in the Supplemental Indenture authorizing the issuance of such Senior Bond.

"Tax Regulatory Agreements" means, with respect to the Series 2018 Bonds and each Series of Additional Senior Bonds on which the Issuer intends the interest to be excluded from gross income for federal income tax purposes, (a) the agreement or other instrument and the certificates attached thereto that set forth the expectations and agreements of the Issuer, the Department and the Borrower regarding the investment and use of proceeds of such Senior Bonds and other matters relating to Bond Counsel's opinion regarding the federal income tax treatment of interest on such Senior Bonds, including any instructions delivered by Bond Counsel in connection with such certificate, instrument or opinion; and (b) any amendment or modification of any such agreement, certificate, instrument or instructions that is accompanied by an opinion of Bond Counsel stating that the amendment or modification will not cause interest on any Tax-Exempt Senior Bond to be included in gross income for federal income tax purposes.

"Technical Assistance and Management Services Agreement" or "TAMSA" means any technical assistance and management services agreement entered into between the Borrower and the Equity Members (or affiliates thereof).

"Technical Advisor Report" or "LTA Report" *"SUMMARY—Miscellaneous—Consultants Reports."*

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

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

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

“Term” means the period commencing on the Effective Date and ending on the 30<sup>th</sup> anniversary of the Financial Close Date or earlier date of termination of the DBFOM Agreement.

“Term Bond” means Senior Bonds of a Series which are payable on or before their specified maturity dates from sinking installment payments established pursuant to the Supplemental Indenture for such Series for that purpose and calculated to retire such Senior Bonds on or before their specified maturity dates.

“Termination Compensation” means the measure of compensation owing from the Department to the Borrower upon termination of the DBFOM Agreement prior to the stated expiration of the Term, as determined in accordance with the DBFOM Agreement.

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

“Termination Due to Court Ruling” means , and becomes effective upon: (a) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals to the effect that the DBFOM Agreement is void, voidable, and/or unenforceable or impossible to perform in its entirety for reasons beyond the reasonable control of the Borrower; or (b) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals upholding the binding effect on the Borrower and/or the Department of a Change in Law that causes impossibility of performance of a fundamental obligation by the Borrower or the Department under the Contract Documents or impossibility of exercising a fundamental right of the Borrower or the Department under the Contract Documents.

“Termination Event Date” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Limitations on Liability.”

“Termination for Convenience” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Termination of the DBFOM Agreement—Termination for Convenience.”

“Terrorism” means activities against Persons or property of any nature:

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

“Testing Date” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Description of Project Accounts—Major Maintenance Account.”

“Third Party” means any Person other than the Department and the Borrower, including the City Departments.

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

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

“Total Debt Service Coverage Ratio” or “Total DSCR” means, when required to be applied on a backward-looking basis, for any twelve- (12-) consecutive month period ending on a Calculation Date (or, with respect to any Calculation Date occurring prior to the first anniversary of the Passenger Service Availability Date, for any shorter period from the Passenger Service Availability Date) and (ii) when required to be applied on a forward-looking basis, for any twelve (12) consecutive month period commencing from a Calculation Date, the ratio of A divided by B where:

A = the Net Cash Flow ((i) except for amounts withdrawn or transferred from the Equity Lock-Up Account to the Distribution Account in accordance with the Collateral Agency and Accounts Agreement and (ii) excluding, for purposes of satisfying the Restricted Payment Conditions, the proceeds of any equity investment in the Borrower) for such period; and

B = all Senior Debt Service for the applicable period, plus the netted amount of payments to and from the Borrower under any Hedging Agreements, as applicable.

“Total O&M Adjustment” has the meaning specified in APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor—O&M Payments.”

“Total Post-Enforcement Senior Secured Voting Value” means, following the Intercreditor Agent instructing the Collateral Agent to take any ICA Enforcement Action, the face value outstanding of the Series 2018 Bonds plus other funded debt plus Aggregate Hedging Agreement Termination Values.

“Total Pre-Enforcement Senior Secured Voting Value” means, prior to the Intercreditor Agent having instructed the Collateral Agent to take any ICA Enforcement Action, the aggregate face value outstanding of the Series 2018 Bonds , plus Aggregate Bank Debt Commitments, plus Aggregate OPSSI Commitments.

“Transaction Documents” means the Material Project Contracts and the Financing Documents.

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

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

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

“Trustee” has the meaning specified in “SUMMARY—The Project—The APM Project.”

“Trustee Representative” means, with respect to the Trustee, any officer assigned to the Corporate Trust Office, including any managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary, or any other officer of such Person customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of the applicable agreement, and also, with respect to a particular matter, any other officer, to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of the applicable agreement.

“Trust Estate” has the meaning specified in APPENDIX D-1—“ SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE—SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—*Grant of Trust Estate*.”

“Unavailability Deductions” means a deduction from an Availability Payment made in accordance with Part B of Exhibit 4B (Availability Payment Mechanism) to the DBFOM Agreement for reduced APM OS Availability and/or Station Unavailability, as described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Availability Payments.”

“Underwriters” has the meaning specified in “UNDERWRITING.”

“Unfunded Equity Commitment” means, as of any date of determination, with respect to each Equity Member, the excess, if any, of (x) such Equity Member’s Aggregate Equity Commitment less (y) the amount of any and all Equity Contributions previously made by such Equity Member pursuant to the Equity Contribution Agreement (including Equity Contributions made in cash (including by way of a shareholder loan)) or amounts drawn on any letters of credit securing the obligation of each Equity Member to make Equity Contributions).

“Upgrades” means alterations, improvements, modifications or changes, including capacity improvements, that the Borrower makes to any portion of the APM Project, as originally designed and constructed, at any time after the Passenger Service Availability Date, except as part of ordinary maintenance or Renewal Work. Upgrades may include alterations, improvements, modifications or changes that require an amendment or supplement to the final environmental impact documents for the APM Project or that are to be located outside the boundaries of the original D&C Limits. Upgrades exclude Technology Enhancements and any alterations, improvements, modifications or changes undertaken in the use or development of a Business Opportunity.

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

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

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

“Utility Adjustment” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Utilities—General Obligations in connection with Utility Adjustments.”

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

- (a) any upgrading required for accommodation of the APM Project;
- (b) any upgrading required under the Contract Documents;
- (c) replacement devices or materials that are of equivalent standards although not identical;
- (d) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (e) any upgrading required by applicable Law;
- (f) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); and
- (g) any upgrading required by the Utility Owner’s applicable Utility Adjustment standards.

“Utility Information” means the information identified as Utility Information in Part 5 (Contract Drawings and Engineering Data) of the Technical Provisions, but only to the extent that such information describes underground Utilities that are not Service Lines within the D&C Limits with an identified quality level of A, B, C or D.

“Utility Owner” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Utilities—General Obligations in connection with Utility Adjustments.”

“Utility Owners’ Costs Account” the account required to be established and funded by the Borrower in the amount of \$50 million at Financial Close and to be used in connection with Utility Adjustments performed by Utility Owners.

“Utility Rate Risk Adjustment” has the meaning specified in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—Payments during the O&M Period” or APPENDIX D-7—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor—O&M Payments,” as applicable.

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

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

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

“Vehicle” means a single passenger-carrying unit, or multiple passenger-carrying units when coupled together, that can operate independently in full compliance with the Contract Documents including redundancy.

“VNY” has the meaning specified in “INTRODUCTION—The City, the Department and the Los Angeles International Airport.”

“Voluntary Equity Contributions Account” has the meaning specified in “ACCOUNTS AND FLOW OF FUNDS—Project Accounts.”

“Voting Certification” has the meaning specified in “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS—Intercreditor Agreement—*Certain Procedures Relating to Instructions and Exercises of Discretion.*”

“Withdrawal Certificate” means a certificate prepared by the Borrower in the form of Exhibit H to the Collateral Agency and Accounts Agreement.

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

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

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# **APPENDIX B-1** **CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS** **OF THE CITY OF LOS ANGELES**

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APPENDIX B-2 ANNUAL FINANCIAL REPORT OF LOS ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016

APPENDIX B-3 CERTAIN DEFINITIONS

APPENDIX B-4 SUMMARY OF THE MASTER SENIOR INDENTURE

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APPENDIX B-8 CERTAIN INFORMATION REGARDING THE RETIREMENT PLAN AND PENSION SYSTEMS OF THE CITY OF LOS ANGELES

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The Department of Airports (the “Department”) of the City of Los Angeles, California (the “City”) is only obligated to make certain payments required by the DBFOM Agreement and is not responsible for paying, and is not guaranteeing the payment of, the principal or accreted value of, premium, if any, or interest on the Series 2018 Bonds. The Series 2018 Bonds are not secured by a lien on any properties or improvements of the City of Los Angeles or of the Department, or by a pledge of any revenues of the Department. The Department is not a party to any of the finance documents relating to the Series 2018 Bonds or the APM Project other than the DBFOM Agreement, the Lenders’ Direct Agreement and the Department Continuing Disclosure Certificate and is not subject to any of the covenants or other restrictions contained in any of the other documents relating to the Series 2018 Bonds or the APM Project. Except as described in this Appendix B-1, the Department is not restricted from issuing Additional Senior Bonds, Additional Subordinate Obligations or Third Lien Obligations or incurring any other debt which may be supported by or secured by the Department’s revenues and the payment of which may be senior to any of the payments to be made by the Department to the APM Developer pursuant to the DBFOM Agreement. None of the amounts due to the APM Developer from the Department pursuant to the DBFOM Agreement are secured by any lien on any funds or assets of the City or the Department. See “SECURITY FOR THE SERIES 2018 BONDS AND OTHER SECURED OBLIGATIONS” in the forepart of this Official Statement.

**THE DEPARTMENT HAS NOT PREPARED OR ASSISTED IN THE PREPARATION OF THIS OFFICIAL STATEMENT EXCEPT THAT DEPARTMENT HAS PROVIDED ONLY THE FOLLOWING INFORMATION: (I) IN THE FOREPART OF THE OFFICIAL STATEMENT THE INFORMATION UNDER THE CAPTIONS (A) “SUMMARY— THE PROJECT — THE DEPARTMENT AND LOS ANGELES INTERNATIONAL AIRPORT”; (B) “INTRODUCTION—THE CITY, THE DEPARTMENT AND THE LOS ANGELES INTERNATIONAL AIRPORT”; (C) “INTRODUCTION—AVIATION ACTIVITY”; (D) “THE APM PROJECT—OVERVIEW—AUTHORIZATIONS FOR THE APM PROJECT”; (E) “THE APM PROJECT—OVERVIEW—STATE ENVIRONMENTAL APPROVALS”; (F) “CERTAIN PAYMENTS UNDER THE DBFOM AGREEMENT—UNSECURED PAYMENTS OF THE DEPARTMENT”; (G) “PROJECT PARTICIPANTS—THE DEPARTMENT”; AND (H) THE FIRST PARAGRAPH UNDER “LITIGATION – THE DEPARTMENT – TPS PARKING MANAGEMENT LITIGATION”; AND (II) APPENDIX B-1—“CERTAIN INFORMATION REGARDING THE DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES”; (III) APPENDIX B-2—“ANNUAL FINANCIAL REPORT OF LOS ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016”; (IV) APPENDIX B-3—“CERTAIN DEFINITIONS”; (V) APPENDIX B-4—“SUMMARY OF THE MASTER SENIOR INDENTURE”; (VI) APPENDIX B-5—“SUMMARY OF THE MASTER SUBORDINATE INDENTURE”; (VII) APPENDIX B-6—“AMENDMENTS TO THE MASTER SENIOR INDENTURE”; (VIII) APPENDIX B-7—“AMENDMENTS TO THE MASTER SUBORDINATE INDENTURE”; (IX) APPENDIX B-8—“CERTAIN INFORMATION REGARDING THE RETIREMENT PLAN AND PENSION SYSTEMS OF THE CITY OF LOS ANGELES”; AND (X) APPENDIX E-2—“FORM OF THE DEPARTMENT CONTINUING DISCLOSURE AGREEMENT CERTIFICATE”, AND HAS NOT REVIEWED OR APPROVED AND IS NOT RESPONSIBLE FOR, AND MAKES NO REPRESENTATION, WARRANTY OR CERTIFICATION AS TO THE ADEQUACY OR ACCURACY OF THE INFORMATION SET FORTH ANYWHERE ELSE IN THIS OFFICIAL STATEMENT (INCLUDING ANY INFORMATION CONTAINED IN THIS OFFICIAL STATEMENT, OR IN ANY APPENDIX OBTAINED FROM ANY CONSULTANT OF THE DEPARTMENT OR FROM THE CITY), AND EXCEPT AS NOTED ABOVE, THE DEPARTMENT IS NOT RESPONSIBLE FOR ANY STATEMENTS MADE IN THIS OFFICIAL STATEMENT. THE DEPARTMENT HAS NOT ASSISTED IN THE PUBLIC OFFER, SALE OR DISTRIBUTION OF THE SERIES 2018 BONDS. ACCORDINGLY, EXCEPT AS AFORESAID, THE DEPARTMENT DISCLAIMS ANY RESPONSIBILITY FOR THE INFORMATION SET FORTH IN THIS OFFICIAL STATEMENT OR OTHERWISE MADE AVAILABLE IN CONNECTION WITH THE OFFER, SALE AND DISTRIBUTION OF THE SERIES 2018 BONDS. NONE OF THE SERIES 2018 BONDS CONSTITUTES OR EVIDENCES AN INDEBTEDNESS OF THE CITY OR THE DEPARTMENT OR A LIEN OR CHARGE ON ANY PROPERTY OR THE GENERAL REVENUES OF THE CITY OR THE DEPARTMENT. NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY, THE DEPARTMENT, THE STATE OR ANY PUBLIC AGENCY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2018 BONDS. THE DEPARTMENT IS UNDER NO OBLIGATION TO PAY THE SERIES 2018 BONDS.**

Capitalized terms used but not defined herein have the meanings ascribed to them in forepart of the Official Statement or APPENDIX B-3 – “CERTAIN DEFINITIONS,” as the case may be.

## **THE DEPARTMENT OF AIRPORTS**

### **The City, the Department and the Airport System**

The Department is designated a proprietary department of the City. The City is a municipal corporation and chartered city duly organized and existing under and pursuant to the provisions of the Constitution of the State of California (the “State”) and the Charter of the City of Los Angeles (the “Charter”). The Department’s fiscal year (“Fiscal Year”) currently begins on July 1 and ends on June 30 of the immediately subsequent year. The City operates the Airport System (as defined below) as a financially self-sufficient enterprise, without support from the City’s General Fund, through the Department under the supervision of the Board of Airport Commissioners of the City (the “Board”).

The City, acting through the Department, currently operates two airports in Airport Service Region (as defined below), Los Angeles International Airport (“LAX”) and Van Nuys Airport (“VNY”). The Department voluntarily returned the operating certificate relating to LA/Palmdale Regional Airport (“LA/PMD”) to the Federal Aviation Administration (the “FAA”), but may, upon compliance with certain requirements, request to have the LA/PMD certificate reissued. LAX, VNY and LA/PMD are collectively referred to as the “Airport System.” The Department no longer operates Ontario International Airport (“ONT”).

For a description of LAX, see “LOS ANGELES INTERNATIONAL AIRPORT.”

VNY is a general aviation airport located approximately 20 miles northwest of downtown Los Angeles, in the San Fernando Valley, and occupies approximately 730 acres. VNY is one of the busiest general aviation airports in the United States with over 218,217 operating movements in Fiscal Year 2017 as reported by the FAA. More than 100 businesses are located at VNY, including four fixed-base operators and numerous other aviation service companies. These businesses cater to a variety of private, government and corporate aviation needs. For Fiscal Year 2017, net operating revenues at VNY were approximately \$2.7 million.

LA/PMD is located in the Antelope Valley approximately 60 miles north of LAX. Currently, there is no scheduled service at LA/PMD. The Department owns approximately 17,500 acres of land at and around LA/PMD. The Department has transferred operation, management, and control of the LA/PMD terminal facility to the City of Palmdale, but has retained certain rights for future development of the adjoining 17,500 acres. For Fiscal Year 2017, net operating revenues at LA/PMD were approximately \$587,000.

Further to a Settlement Agreement by and among the City, the Department, the Board, the City of Ontario, and the Ontario International Airport Authority, a joint powers authority of the County of San Bernardino and the City of Ontario (“OIAA”) (the “ONT Settlement Agreement”) relating to litigation filed by the City of Ontario in June 2013 (the “Ontario Litigation”) against the City, the Department, and the Board the City has transferred, assigned and delivered to OIAA the City’s right, title and interest in and to certain of the assets, properties, rights and interests in connection with the Department’s operation of ONT. In connection therewith, the Department has received approximately \$125.5 million, including approximately \$30.0 million from the City of Ontario, approximately \$40.0 million from the unrestricted cash ONT accounts, and a discounted payment of approximately \$55.5 million from OIAA. The Department is to receive an additional \$56.8 million under the ONT Settlement Agreement over a period of approximately 10 years. In connection with the ONT Settlement Agreement and a Staff Augmentation Agreement between the Department and OIAA, the Department provides OIAA with the services of a number of employees subject to reimbursement therefor. The salaries and benefits of these employees were previously allocated to ONT and are now allocated to LAX. Accordingly, for the Fiscal Year ended June 30, 2017, the Department recognized a salaries and benefits expense increase of approximately \$17.4 million due to the inclusion of these OIAA-related salaries and benefits and recognized an employee salary and overhead reimbursement of approximately \$21.0 million from OIAA. See “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Summary of Operating Statements.”

### **Subsidization within the Airport System**

Although the Charter as currently in effect does not require LAX Revenues to be used to make up any deficiencies of any of the other airports in the Airport System, the Department anticipates that LAX Revenues will continue to be used for subsidizing deficiencies incurred in the Airport System. No assurance can be given that major catastrophic liabilities or other unanticipated events will not occur within the Airport System which would

require substantial unanticipated transfers of LAX revenues or that subsidies, if provided to the other airports in the Airport System, will not be substantially higher than they have been in the past.

VNY serves as a reliever airport for LAX. Any VNY subsidy, when provided, is recovered by the Department through an increase in landing fees at LAX. Landing fees at LAX are calculated based on LAX's operating costs and amortization of debt as well as certain costs associated with VNY. In Fiscal Year 2017, LAX provided a subsidy to VNY of approximately \$670,000. In Fiscal Year 2017, LAX provided no subsidy to LA/PMD, which generated operating income of approximately \$587,000. Any subsidy for LA/PMD is not incorporated in LAX landing fees but rather would be paid from discretionary funds and may increase or decrease in the future. See "AIRPORT SYSTEM ENVIRONMENTAL MATTERS – Hazardous Substances."

### **Board of Airport Commissioners**

The Department is governed by the Board, which is comprised of seven members and is in possession, management and control of the Airport System. Each member is appointed by the Mayor of the City (the "Mayor"), subject to confirmation by the City Council, for staggered five-year terms. A Board member continues to hold office following the expiration of his or her term until a replacement has been appointed and confirmed by the City Council of the City ("City Council"). One member is required to live near LAX and one is required to live near VNY. The President and Vice President of the Board are elected by the Board members for one-year terms. The current members of the Board are set forth below:

<b>Member</b>	<b>Occupation</b>	<b>Date of Appointment</b>	<b>Current Term Expires</b>
Sean O. Burton, President	Real Estate Investor	August 2013	June 30, 2019
Valeria C. Velasco, Vice President	Attorney	September 2005	June 30, 2022
Jeffery J. Daar	Attorney	August 2015	June 30, 2020
Gabriel L. Eshaghian	Real Estate Investor	August 2013	June 30, 2019
Beatrice C. Hsu	Business Executive	August 2013	June 30, 2021
Thomas S. Sayles	University Vice President	January 2017	June 30, 2019
Cynthia A. Telles	Civic Leader	August 2013	June 30, 2018 <sup>1</sup>

<sup>1</sup> Commissioner Telles has been reappointed to the Board for a term to expire on June 30, 2023, subject to City Council approval.

The Charter provides that, in the event a Board member has reason to believe that such Board member might have a conflict of interest disqualifying such Board member from acting on a matter and the City Attorney decides that it is probable that a court would hold that a disqualification exists, the matter will be referred to the Board of Referred Powers. The Board of Referred Powers is a City Council committee consisting of five individuals designated by the City Council from time to time.

### **Oversight**

The Charter allows the City Council to review all Board actions. The Charter states that actions of the Board become final at the expiration of five meeting days of the City Council unless the City Council acts within that time, by a two-thirds vote, to bring an action of the Board before the City Council for review or to waive review of the action. If the City Council chooses to assert jurisdiction over the action, the City Council may, by a two-thirds vote, veto the action of the Board within 21 calendar days of voting to bring the matter before it, or the action of the Board is final. An action vetoed by the City Council shall be remanded to the Board which will have the authority it originally held to take action on the matter. In addition, the Charter provides that certain actions of the Board, including the issuance of debt, must also be approved by the City Council.

Additionally, the Department is subject to periodic audits, reviews, inspections and other inquiries by, among others, the City Controller, the FAA, the United States Department of Transportation (the "U.S. DOT"), the Office of the Inspector General, the U.S. and California Environmental Protection Agencies, various water control boards and air quality management districts, the California Coastal Commission and the Department's own auditors. See "CERTAIN FUNDING SOURCES – Grants" and "AIRPORT SYSTEM ENVIRONMENTAL MATTERS – Hazardous Substances."

## Department Management

Responsibility for the implementation of the policies formulated by the Board and for the day-to-day operations of the Airport System rests with the senior management of the Department. The Chief Executive Officer is appointed by the Board, subject to confirmation by the Mayor and the City Council. Subject to civil service rules and regulations, she is empowered to appoint and remove the senior managers. Within each of the various divisions in the Department, there are various sections that are assigned certain responsibilities for the efficient operation and development of the Airport System. As of May 1, 2018 there were 3,896 authorized positions and 4,166 total positions (including temporary positions) for the Airport System. The current principal administrative officers and their positions are named below:

***Deborah Flint, Chief Executive Officer.*** Deborah Flint was appointed Chief Executive Officer in June 2015, and oversees two airports, LAX and VNY as General Manager. Ms. Flint came to the Department from the Port of Oakland where she held the position of aviation director since 2010, being the primary executive responsible for the operation, management and business development of Oakland International Airport (“OAK”). Prior to serving as aviation director at the Port of Oakland, Ms. Flint was the assistant aviation director and led the operation of the airport. Other experiences include leading OAK’s Capital Program in which she coordinated the design, financing and implementation of major airport projects, as well as participated in the issuance of hundreds of millions of dollars in revenue bonds. She also served as acting port executive director of the Port of Oakland (maritime). She began her career with the port in 1992 in port finance and advanced through the port’s Finance and Aviation divisions. Ms. Flint holds a Bachelor of Science degree in business administration from San Jose State University, and attended the Executive Leadership Institute’s Continuing Education in Public Administration program. She was appointed in 2012 to the President’s Advisory Committee on Consumer Protection (aviation). She also serves on the Transportation Research Board’s Airport Cooperative Research Program and the California Airports Council, and is a regional advisor to the Airports Council International World Board.

***Trevor Daley, Deputy Executive Director and Chief of External Affairs.*** Mr. Daley was appointed Chief External Affairs Officer for the Department in 2016. He oversees the Department’s government affairs, public and media relations, and community relations activities. Prior to joining the Department, Mr. Daley served for over 17 years as a trusted advisor and senior aide to U.S. Senator Dianne Feinstein, culminating as the senator’s State Director responsible for four statewide offices and 30 staff members. Prior to joining the senator’s team, Daley was a staff member for Los Angeles City Councilmember Ruth Galanter where, among other assignments, he served as the liaison for VNY. He also facilitated the creation of a new vision for the Sepulveda Boulevard Task Force near LAX. Daley provides advice and volunteer services to local non-profit organizations including the Los Angeles Gay and Lesbian Center, Human Rights Campaign, A Community of Friends, Women Against Gun Violence, The Trevor Project and Project Angel Food. Mr. Daley holds a Bachelor of Arts degree in Sociology from the University of San Francisco.

***Patrick M. Gannon, Deputy Executive Director of Homeland Security and Law Enforcement.*** Mr. Gannon was appointed Chief of Security and Public Safety in 2016. As Chief of Security and Public Safety, Mr. Gannon provides leadership, management oversight and policy direction to all law enforcement and security staff at the Department’s airports; coordinates with other law-enforcement agencies; is responsible for counter-terrorism efforts; and oversees firefighting, emergency medical, and fire-prevention services provided by the Los Angeles Fire Department at LAX. He also participates in airport-wide leadership teams and has responsibility for integrating the law enforcement and homeland security functions with Airport Operations and other aviation staff. Mr. Gannon joined the Department as chief of Airport Police in October 2012 after retiring from the Los Angeles Police Department (“LAPD”) following 34 years of service, of which 12 years were at the executive management level. At the time of his retirement, he was serving as deputy chief and commanding officer of LAPD’s Operations-South Bureau. This bureau serves more than 800,000 residents in South Los Angeles with 1,700 sworn employees and 150 civilian employees. Mr. Gannon successfully completed the Senior Management Institute for Police in Boston and the West Point Leadership Program and holds a bachelor’s degree in Public Administration from California State University, Dominguez Hills and a master’s degree in Public Administration from the University of Southern California.

***Robert Gilbert, Chief Development Officer.*** Mr. Gilbert became Chief Development Officer in November 14, 2016. Mr. Gilbert has over 40 years of global experience in aviation and airport management. Mr. Gilbert has been involved in various levels of automated people mover and light rail connections to airports, from conceptual development to construction, through operations and maintenance. Previously, Mr. Gilbert served as program

manager and led the consultant team for the LAX Master Plan and Environmental Impact Study/Environmental Impact Report. Mr. Gilbert came to the Department after serving as Deputy Executive Director for Facilities at Orlando International Airport and program manager for the airport operational readiness program for King Abdulaziz International Airport in the Kingdom of Saudi Arabia. Mr. Gilbert's other professional experience includes working closely with Chicago's Department of Aviation executive staff as an officer at Landrum & Brown's Chicago office where he was responsible for, among other things, supporting the aviation Department's noise management office, sustainability and environmental programs as well as Chicago O'Hare International Airport's redevelopment initiatives. He holds a Bachelor of Science degree from the United States Air Force Academy and a Master of Public Administration from Troy University.

***Samson Mengistu, Chief Operating Officer.*** Mr. Mengistu was appointed Chief Operating Officer in January 2016. As Chief Operating Officer Mr. Mengistu is responsible for oversight over the Department's activities involving Operations and Emergency Management, Finance and Budget, Administration, Information Technology and Facilities and Maintenance. Mr. Mengistu joined the City in 1989 after working extensively in the property management field. In an early assignment, he established and managed the Department's soundproofing program. Immediately prior to his current position, he served as the Department's Deputy Executive Director for Finance and Administration and as the Department's Acting Executive Director from February to June 2007. Mr. Mengistu was appointed the Department's Deputy Executive Director of Board Relations and Special Programs in 2003, serving as the Board liaison. In addition, he was in charge of the Department's \$500 million Property Acquisition Program and the Risk Management and Procurement Divisions. As Deputy Executive Director for Finance and Administration from 2006 to 2015 he was in charge of the functions of Finance, Comptroller, Board Office, Human Resources, Risk Management and Contract Services. Mr. Mengistu earned a Bachelor of Arts degree in Economics and a Master of Science in Public Administration from California State University, Los Angeles.

***Ryan Yakubik, Deputy Executive Director and Chief Financial Officer.*** Mr. Yakubik was appointed Chief Financial Officer in 2013 and Deputy Executive Director in 2016. He currently oversees all Department financial and accounting functions including financial reporting, rates and charges, grants administration, budget, accounting operations, financial systems and all debt/financing-related functions for the Airport System. He previously served as Director of Capital Development and Budget beginning in October 2007. Mr. Yakubik came to the Department after more than eight years in the financial services industry where he served as a fixed income portfolio manager for institutional clients. He holds a Bachelor of Arts degree in Economics from the University of California at Los Angeles and is a Chartered Financial Analyst.

***Samantha Bricker, Deputy Executive Director, Project Development and Coordination, Environmental Programs Group.*** Ms. Bricker was appointed as Deputy Executive Director, Project Development and Coordination in July 2016. Ms. Bricker is responsible for coordinating with external agencies and stakeholders in support of the Department's Capital Program. She was appointed Executive Director of the Environmental Planning Group in November 2016 which oversees all entitlements and planning, noise program sustainability and environmental compliance for the Department. Before her appointment at the Department, Ms. Bricker was the Chief Operating Officer at the Exposition Metro Line Construction Authority for over 10 years where she oversaw the planning, procurement, real estate program, government and community outreach, finance and budget for the Exposition Light Rail transit project. She holds a Master's degree in Political Science from University of California Los Angeles and a Bachelor's degree in Political Science from Northwestern University.

***Keith Wilschetz, Deputy Executive Director of Operations and Emergency Management.*** Mr. Wilschetz was appointed Deputy Executive Director of Operations and Emergency Management effective January 2017. He is responsible for planning, directing, and coordinating activities related to all landside, terminal, and airside operations, as well as emergency management at LAX and VNY airports. Mr. Wilschetz has over 30 years of experience in airport planning, operations and leadership. He previously served as Director for Airport Planning and Noise Mitigation for the San Diego County Regional Airport Authority, where he directed all airport planning and noise management activities and he led land-use planning for the authority's 16 airports throughout San Diego County, which included four military bases. He previously served as Vice President of Planning at Dallas/Fort Worth International Airport, where he directed strategic, technical, and administrative planning. Mr. Wilschetz also served as a director with Landrum & Brown, Inc., where he worked as Technical Co-Manager on the LAX Master Plan and its related environmental impact studies and coordinated with regional stakeholders, including the California Department of Transportation and the FAA. As part of the firm's Transportation Engineering Consulting Group, he managed strategic planning studies for many airports, including Chicago O'Hare, Ontario International

Airport, Anchorage International, Beijing Capital International, and Puebla International (Mexico). He earned a Master of Science degree in Executive Leadership from the University of San Diego and a Bachelor of Science degree in Aerospace Engineering from the University of Missouri in Rolla. He also is a licensed pilot.

***Cynthia Guidry, Deputy Executive Director, Planning and Development Group.*** Cynthia Guidry manages the Planning and Development Group for the Department, appointed to this position in January 2016. She previously served as Deputy Executive Director of the Capital Programming and Planning Group since 2014 and has led the Department's planning efforts in several accomplishments including airside, landside and terminal projects. Ms. Guidry's staff provides technical expertise and support for facility infrastructure improvements and manages critical systems such as the LAX Central Utility Plant. Ms. Guidry joined the Department in August 2001 and during her tenure has held a number of positions. Ms. Guidry has served as Chief Airport Planner. She is a registered Professional Engineer. Ms. Guidry holds a Bachelor of Science degree in Civil Engineering from the University of California at Irvine and a Master of Business Administration degree from Pepperdine University.

***Justin Erbacci, Deputy Executive Director, Chief Innovation and Commercial Strategy Officer.*** Mr. Erbacci joined the Department in July 2016 as Chief Innovation and Technology Officer. Mr. Erbacci's role was expanded to Chief Innovation and Commercial Strategy Officer in January 2018. He is responsible for the overall information technology ("IT") vision, strategy and operations. His focus is on leveraging innovative technologies and processes to help transform the Airport, as well as implementing commercial strategies to improve the guest experience, enhance the airport terminals and increase revenues. Mr. Erbacci has over 15 years of experience in global IT leadership. He came to the Department from Star Alliance where he was responsible for the development, implementation and operation of all global IT applications, and for leading all Star Alliance customer experience and joint operational activities at the over 1,300 airports where its airlines operated. Additionally, Mr. Erbacci also held IT leadership roles at Credit Suisse and United Airlines. Prior to these companies he worked at various consultancies including Cambridge Management Consultants and Deloitte and Touche. Mr. Erbacci also practiced law as a civil rights defense litigator for the City of Chicago. Mr. Erbacci holds a Master of Business Administration degree from the Vienna School of Economics/University of South Carolina, a Juris Doctor degree from Loyola University of Chicago's School of Law, and a Bachelor of Arts from Loyola University of Chicago.

***Aura Moore, Deputy Executive Director, Chief Information Officer.*** Ms. Moore was appointed Deputy Executive Director and Chief Information Officer in July 2016. She oversees day-to-day IT operations and serves as top technology infrastructure and systems leader at LAX and VNY. Moore draws from a public service career of over 20 years at agencies throughout the City. Her previous positions with the Department included Network Infrastructure Program Manager, IT Project Management Director and Deputy CIO. She also served as Interim CIO prior to her appointment. Ms. Moore created the Office of Airport Technology and Business Systems, a group tasked with strengthening the Department's security, business and airport operations through efficiently delivering large-scale airport technology projects. During her tenure as Interim CIO, she expanded her focus to enhancing the guest experience through implementing self-service technologies and establishing partnerships designed to improve passenger processing. Ms. Moore is credited with modernizing technology infrastructure throughout the LAX campus, where she consolidated surveillance systems and expanded coverage for enhanced security and safety. She also worked to replace manual processes with new systems that have improved airport operational efficiencies. Ms. Moore holds a Master of Science degree in Electrical Engineering from the University of Southern California and a Bachelor of Science in Electrical Engineering from California State University, Long Beach.

***Jake Adams, Interim Deputy Executive Director, LAMP Program executive.*** Mr. Adams is serving as the Interim LAMP Program Executive, after the retirement of Roger Johnson in February 2018. Mr. Adams served the Department from 1994-2011 as part of the Airports Development Group. After providing remote consultation, he returned in 2016 to serve as the Assistant LAMP Program Executive. Mr. Adams has over 23 years of experience in the development and delivery of airport and heavy civil engineering projects. He has led programs and projects from concept through planning, entitlement, design, construction, commissioning, activation, close-out and project delivery. Mr. Adams graduated from Virginia Polytechnic Institute and State University with a Bachelor of Science in Engineering. Mr. Adams is expected to continue to serve as Interim LAMP Program Executive while the search for a replacement is being conducted.

***David Jones, Acting Lead Director, Commercial Development Group.*** In April 2018, the Department's then Chief Commercial Officer retired. The Department is working with an executive search firm to identify a permanent successor and in the interim has named David Jones the Acting Lead Director of the Commercial Development Group reporting to both the Department's COO and CEO during this transition period. Mr. Jones has



worked for the past 10 years in the Department's Commercial Development Group leading airline property leasing and the concessions program at LAX. He holds a Master in Business Administration from the UCLA Anderson School of Management and a Bachelor of Arts degree in Political Science – International Relations from UCLA.

***Raymond S. Ilgunas, General Counsel.*** Mr. Ilgunas is a Managing Sr. Assistant City Attorney and has served as General Counsel to the Department since 2011. He advises the Board, the Department, the Department's Executive Director, the City Council and its subcommittees and the Mayor on legal matters relating to the operation and management of the Airport System. He is responsible for overseeing all cases and contracts relating to the Airport System and providing specialized legal counsel on federal regulatory matters governing airports. Also, as General Counsel he is counsel to the Department's Chief Operating Officer and Finance Division in connection with all Airport System financing issues. Prior to joining the Department, Mr. Ilgunas served as counsel to the Community Redevelopment Agency of the City of Los Angeles (the "CRA/LA"). In this capacity, he provided legal advice to the CRA/LA's Board, its Housing, Management and Budget and Project Review Committees, the Executive Director, City Council and its subcommittees and the Mayor concerning all aspects of redevelopment. Prior to his position at CRA/LA, Mr. Ilgunas held a variety of legal positions serving as counsel to the Land Use, Ethics, General Counsel and Criminal Divisions in the City Attorney's Office. Mr. Ilgunas serves on the ACI-North America and California Airports Council Legal Steering Committees. Mr. Ilgunas holds a Juris Doctorate degree from Loyola Law School, Los Angeles and a Bachelor of Arts degree from Loyola Marymount University.

### **Employees and Labor Relations**

The Department is a civil service organization, which as of May 1, 2018 had 3,896 authorized positions and 4,166 total positions (including temporary positions), of which 3,831 authorized positions and 4,098 total positions were at LAX and 65 authorized positions and 68 total positions were at VNY. This wide range of job classifications is grouped into eight job categories, including Officials and Administrators, Professionals, Technicians, Protective Service, Paraprofessionals, Administrative Support, Skilled Craft and Service Maintenance.

As a municipal organization, the Department's employee and labor relations are governed by applicable State and City civil service rules and regulations as well as 24 separate labor agreements between management and unions ("Memoranda of Understanding"). Most of the Department's employees are covered by the Memoranda of Understanding. The following table lists all Memoranda of Understanding between the Department and labor and management unions as of May 1, 2018.

**TABLE 1**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**MEMORANDA OF UNDERSTANDING**  
**BETWEEN THE CITY AND**  
**EMPLOYEE LABOR ORGANIZATIONS REPRESENTING EMPLOYEES OF THE LOS ANGELES**  
**INTERNATIONAL AIRPORT**

<b>Bargaining Unit</b>	<b>Expires</b>
<b>Service Employees International Union, Local 721</b>	
Equipment Operation and Labor Employees Representation Unit No. 4	June 30, 2018*
Professional Engineering and Scientific Unit No. 8	June 30, 2018*
Service and Craft Representation Unit No. 14	June 30, 2018*
Service Employees Representation Unit No. 15	June 30, 2018*
Supervisory Professional Engineering and Scientific Unit No. 17	June 30, 2018*
Safety/Security Representation Unit No. 18	June 30, 2018*
<b>Municipal Construction Inspectors Association, Inc.</b>	
Inspectors Unit No. 5	June 22, 2019
<b>Los Angeles Professional Managers Association</b>	
Management Employees Unit No. 36	June 30, 2018*
Personnel Director Unit No. 63	June 23, 2018*
<b>American Federation of State, County and Municipal Employees</b>	
Clerical and Support Services Unit No. 3	June 30, 2018*
Executive Administrative Assistants Unit No. 37	June 30, 2018*
<b>Engineers and Architects Association</b>	
Administrative Unit No. 1	June 22, 2019
Supervisory Technical Unit No. 19	June 22, 2019
Supervisory Administrative Unit No. 20	June 22, 2019
Technical Rank and File Unit No. 21	June 22, 2019
<b>Local No. 501, International Union of Operating Engineers</b>	
Plant Equipment Operation and Repair Representation Unit No. 9	June 30, 2018*
<b>Los Angeles City Supervisors and Superintendents Association,</b>	
<b>Laborer's International Union of North America, Local 777</b>	
Supervisory Blue Collar Unit No. 12	June 30, 2018*
<b>Los Angeles/Orange Counties Building and Construction Trades Council</b>	
Building Trades Rank and File Representation Unit No. 2	June 30, 2018*
Supervisory Building Trades and Related Employees Representation Unit No. 13	June 30, 2018*
Use of Union Hiring Halls for Temporary Use of Craft Workers No. 35	On-going
<b>All City Employees Association, Local 2006, AFSCME, Council 36, AFL-CIO</b>	
Professional Medical Services Unit No. 10	June 30, 2018*
<b>Los Angeles Airport Peace Officers Association</b>	
Peace Officers Representation Unit No. 30	June 23, 2018*
<b>Airport Supervisory Police Officers' Association of Los Angeles</b>	
Supervisory Peace Officers' Unit No. 39	June 30, 2018*
<b>Airport Police Command Officers Association of Los Angeles</b>	
Management Peace Officers' Unit No. 40	June 30, 2018*

Source: Department of Airports of the City of Los Angeles.

\* Negotiations pending. The agreement applicable to each employee labor organization remains in effect until a new agreement is reached, subject to termination by either party.

The Human Resources Division of the Department is responsible for counseling employees and managers regarding proper personnel and civil service procedures and rules; representing management in contract negotiations with unions; maintaining a comprehensive strike plan for the Department's various divisions; acting as Skelly/hearing officer in disciplinary meetings; representing management in grievance meetings and arbitration hearings; providing recommendations to management on staffing needs; and providing training to employees and supervisors.

## Retirement Plan

Department employees participate in the Los Angeles City Employees' Retirement System ("LACERS") or Los Angeles Fire and Police Pension Plan ("LAFPP"). In 2016 the Charter was amended to, among other things, provide that new Airport Peace Officers to enroll in LAFPP and allow then current Airport Peace Officers to transfer into LAFPP from LACERS. Airport Peace Officers were permitted to elect to participate in LAFPP beginning in January 2018. The deadline for current Airport Peace Officers to submit their election to join LAFPP was December 13, 2017.

LACERS is a contributory plan, established in 1937 under the Charter, covering most City employees except certain uniformed fire and police personnel and employees of the Department of Water and Power. LAFPP, established in 1899 and incorporated into the Charter in 1923, represents contributory plans covering uniformed fire, police, Harbor police and Airport police. The LACERS and LAFPP plans are the obligation of the City. Under requirements of the Charter, the Department makes contributions to LACERS and LAFPP with respect to its employees in amounts determined by LACERS or LAFPP, as the case may be, and its actuaries. The Department does not participate in the governance or management of LACERS or LAFPP.

The Department's pension cost varies from year to year depending on, among other things, the annual contribution rate determined by LACERS and its actuaries, the total salaries paid to the Department's covered employees and the retirement benefits accruing to those employees. The Department contributed approximately \$73.7 million, \$69.8 million, \$62.2 million, \$58.0 million, and \$54.7 million to LACERS with respect to LAX. In Fiscal Years 2017, 2016, 2015, 2014 and 2013, respectively, the Department contributed approximately \$442,000 to LAFPP in Fiscal Year 2018. For each of these Fiscal Years, the contribution made by the Department equaled 100% of the annual required contribution as calculated by LACERS, LAFPP and their respective actuaries.

In 2012, GASB issued Statement No. 68, Accounting and Financial Reporting for Pensions ("GASB 68"), which applies to governmental entities such as the Department. GASB 68 revised and established new financial reporting requirements for most governments that provide their employees with pension benefits, including the Department. GASB 68, among other things, requires governments providing defined benefit pensions to recognize the difference between pension plans' fiduciary net position (the amount held in a trust for paying retirement benefits, generally the market value of assets) and their long-term obligation for pension benefits as a liability ("Net Pension Liability"), and provides greater guidance on measuring such obligation, including specific guidelines on projecting benefit payments, use of discount rates and use of the "entry age" actuarial cost method. GASB 68 also revised and implemented new note disclosures and required supplementary information. The GASB 68 standards apply to financial reporting but not to the actuarial calculation of annual employer pension contributions, which continue to be determined actuarially by each plan. For Fiscal Year 2017, pursuant to GASB 68, a proportional allocation of the City's Net Pension Liability in the aggregate amount of approximately \$761.2 million was allocated to the Department with respect to LAX. The provisions in GASB 68 became effective for fiscal years beginning after June 15, 2014. GASB 68 addresses the disclosure of pension liability only and does not impose any funding requirements.

Due to LACERS' and LAFPP's smoothing methodology, certain investment losses have not been recognized in the determination of LACERS' and LAFPP's UAAL. Aggregate contributions by the Department to LACERS and LAFPP may increase significantly in the coming Fiscal Years, as contribution rates are subject to change due to changes in market conditions, assumptions and funding methodologies.

Investors are cautioned that information about the City's Net Pension Liability, LACERS and LAFPP, including UAALs, funded ratios and calculations of required contributions, included or referenced in this Appendix, are "forward looking" information. Such "forward looking" information reflects the judgment of LACERS AND LAFPP and their actuaries as to the amount of assets that LACERS and LAFPP will be required to accumulate to fund future benefits over the lives of the currently active employees, vested terminated employees and existing retired employees and beneficiaries. These judgments are based upon a variety of assumptions, one or more of which may prove to be inaccurate and/or be changed in the future.

For information regarding the City's Net Pension Liability, LACERS-related and LAFPP-related unfunded actuarial accrued liabilities, LACERS and LAFPP system assets, LACERS and LAFPP funded ratios and certain of the City's projected contributions to LACERS and LAFPP, related assumptions and other LACERS-related and LAFPP-related information, see APPENDIX B-2 – "ANNUAL FINANCIAL REPORT OF LOS ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS

ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016” and APPENDIX B-8 – “CERTAIN INFORMATION REGARDING THE RETIREMENT PLAN AND PENSION SYSTEMS OF THE CITY OF LOS ANGELES.” The information in APPENDIX B-8 has been obtained from publicly available City documents. The LACERS Reports and LAFPP Reports are available on LACERS’ and LAFPP’s website and contain additional information regarding LACERS and LAFPP assumptions, plan details and investment of plan assets. The Department is relying upon, and has not independently confirmed or verified, the accuracy or completeness of this section, APPENDIX B-8 or the LACERS Reports, LAFPP Reports or other information incorporated by reference therein. See also “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Retirement Plan Funding.”

## **LOS ANGELES INTERNATIONAL AIRPORT**

### **Introduction**

LAX is located approximately 15 miles from downtown Los Angeles on the western boundary of the City. LAX occupies approximately 3,673 acres in an area generally bounded on the north by Manchester Avenue, on the east by Aviation Boulevard, on the south by the Imperial Highway and on the west by the Pacific Ocean. The LAX site, originally known as Mines Field, has been in use as an aviation field since 1928. During World War II it was used for military flights. Commercial airline service started in December 1946, and the present terminal complex was constructed in 1961. In the early 1980s, LAX added domestic and international terminals, parking structures and a second level roadway. LAX offers commercial air service to every major city in the United States and to virtually every major international destination, and is classified by the FAA as a large hub airport.

No airline dominates in shares of enplaned passengers or provides formal “hubbing” activity at LAX. No air carrier accounted for more than 20% of LAX’s total enplanements for Fiscal Year 2017. For Fiscal Year 2017, approximately 79.4% of passengers at LAX represented originating and destination passengers (that is, all passengers beginning or ending their trips at LAX). The remaining approximately 20.6% of passengers represented connections to or from regional markets as well as domestic connections to or from international markets. The level of connecting passengers at LAX is due primarily to: (i) LAX’s role as a major gateway to numerous international markets; (ii) the geographical location of LAX in relation to numerous markets along the west coast of the United States; (iii) the significant number of nonstop flights to and from domestic markets; and (iv) the alliances among airlines serving LAX.

### **Facilities**

The Department maintains facilities occupying approximately 3,673 acres at LAX. The central terminal complex features a decentralized design concept with nine individual terminals constructed on two levels lining a U-shaped two-level roadway (the “Central Terminal Area”). The total terminal area is approximately 5.8 million square feet. Although many of the terminals are physically connected, they function largely as independent terminals with separate ticketing, baggage, security screening checkpoints and passenger processing systems.

Passenger terminal facilities include ticketing and baggage check-in on the upper departure level and baggage claim on the ground level, fronting on the lower-level roadway. Passenger terminal facilities provide access to and from aircraft arrival/departure areas. LAX currently has a total of 113 contact gates in the Central Terminal Area along with a number of remote gate positions for a total of 143 gates. Several of the jet gates accommodate propeller driven aircraft.

The existing airfield consists of four parallel east-west runways configured in two pairs. The north airfield complex includes Runway 6L-24R (8,926 feet) and Runway 6R-24L (10,285 feet). The south airfield complex includes Runway 7R-25L (11,095 feet) and Runway 7L-25R (12,091 feet). All runways are 150 feet wide, except for Runway 7R-25L, which is 200 feet wide. For approaches during Instrument Flight Rules conditions, instrument landing systems are installed on all eight runway ends. The current runway system at LAX can accommodate arrivals and departures of all commercial aircraft currently in service, including the Airbus A380.

Approximately 15,053 public parking spaces are available at LAX in parking lots owned by the Department, including approximately (i) 8,338 parking spaces in eight parking garages in the Central Terminal Area, (ii) 1,693 public parking spaces in parking Lot C, (iii) 2,700 public parking spaces in the Park One surface parking lot located adjacent to Terminal 1, (iv) 2,300 public parking spaces in the Skyview Center surface parking lot and (v) 22 public parking spaces in a cell phone waiting lot. See “USE OF AIRPORT FACILITIES – Concession and Parking Agreements.”

Cargo facilities at LAX provide approximately 2.2 million square feet of building space in 26 buildings on 166 acres of land devoted exclusively to cargo. Rental car company facilities, major commercial airline maintenance hangars and office buildings, a 12-story administration building, a control tower, a central utility plant, two flight kitchens, a fuel farm and FAA and TSA facilities are also located at LAX.

## Air Carriers Serving LAX

The following table sets forth the air carriers serving LAX as of May 1, 2018. See “AIRLINE INDUSTRY INFORMATION.”

**TABLE 2**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**AIR CARRIERS SERVING LAX**  
**AS OF MAY 1, 2018**

<u>Scheduled U.S. Carriers (17)</u>	<u>Foreign Flag Carriers (58)</u>	<u>Nonscheduled Carriers (18)</u>	<u>All-Cargo Carriers (35)</u>
Alaska Airlines <sup>1</sup>	ABC Aerolineas (Interjet)	Amerijet International	ABX Air Inc.
Allegiant Air	Aeroflot*	Ameristar Air Cargo	Aerologic GmbH
American Airlines <sup>‡</sup>	Aer Lingus	Antonov Airlines	Aerotransporte De Carga Union
Boutique Air	AeroMexico*	ASL Airlines Belgium	Aerotransportes Mas De Carga
Compass	Avianca/TACA <sup>†</sup>	CAL Cargo Airlines Ltd.	Air Bridge Cargo Airlines
Delta Air Lines*	Air Canada <sup>†</sup>	Cayman Airways Ltd.	Air China Cargo
Envoy Air	Air China <sup>†</sup>	Clay Lacy Aviation	Air Transport International
Frontier Airlines	Air France*	Cargojet Airways	Ameriflight
Hawaiian Airlines	Air New Zealand <sup>†</sup>	CargoLogicAir	Asiana Cargo
JetBlue Airways	Air Pacific (Fiji Airways)	Hi Fly Transportes Aereos SA	Atlas Air Cargo
Mesa Airlines	Air Tahiti Nui	Lynden Air	Cargolux
MN Airlines (Sun Country)	Alitalia*	Miami Air	Cathay Pacific Cargo
Mokulele Airlines	All Nippon <sup>†</sup>	Silk Way West Airlines	China Airlines Cargo
SkyWest Airlines	Asiana <sup>†</sup>	Skybird Aviation Inc.	China Cargo Airlines
Southwest Airlines	Austrian Airlines <sup>†</sup>	Tampa Cargo	China Southern Cargo
Spirit Airlines	British Airways <sup>‡</sup>	Tatonduk Outfitters (Everts Air Cargo)	Emirates SkyCargo
United Airlines <sup>‡</sup>	Cathay Pacific <sup>‡</sup>	TEM Enterprise (Extra Airways)	Eva Airways Cargo
	China Airlines*	Volga-Dnepr	FedEx
	China Eastern*		Flugfelagid Atlanta Hf
	China Southern*		Gulf & Caribbean Cargo
	Copa <sup>†</sup>		IFL Group
	El Al Israel		Kalitta Air LLC
	Emirates		Kalitta Charters
	Ethiopian Airlines <sup>†</sup>		Korean Cargo
	Etihad Airways		Lan Cargo
	Eva Airways <sup>†</sup>		Lufthansa German
	Hainan Airlines		National Air Cargo Group
	Hong Kong Airlines		Nippon Cargo
			Polar Air Cargo
			Qantas Airways Cargo
			Qatar Airways Cargo
			Singapore Airlines Cargo
			Southern Air
			United Parcel Service
			Western Global Airlines

\* Member of Sky Team Alliance.

<sup>†</sup> Member of Star Alliance.

<sup>‡</sup> Member of One World Alliance.

<sup>1</sup> On April 1, 2016, Alaska Air Group, Inc. (“Alaska Air Group”), Virgin America Inc. (“Virgin America”), and Alpine Acquisition Corp., a wholly-owned subsidiary of Alaska Air Group (“Merger Sub”), entered into an Agreement and Plan of Merger (the “Merger Agreement”), pursuant to which, subject to satisfaction or waiver of the conditions therein, Alaska Air Group will acquire Virgin America by means of a merger of Merger Sub with and into Virgin America (the “Merger”). The Merger was completed on December 14, 2016. A single operating certificate for Virgin America and Alaska Air Group was issued by the FAA on January 11, 2018 and all flights beginning April 24, 2018 operate under the Alaska Air Group brand, however data for the respective airlines is being presented separately until Fiscal Year 2018 data is available.

Source: Department of Airports of the City of Los Angeles.

## Aviation Activity

According to ACI statistics, in calendar year 2017, LAX ranked as the 5<sup>th</sup> busiest airport in the world, a difference of only approximately 871,000 passengers from the fourth busiest airport in the world, and the 2<sup>nd</sup> busiest airport in North America in terms of total number of enplaned passengers, and 13<sup>th</sup> busiest airport in the world and 4<sup>th</sup> busiest airport in North America in terms of total cargo. According to the United States Department of Transportation Origins and Destinations Survey of Airline Passenger Traffic for Fiscal Year 2017, LAX ranked 1<sup>st</sup> nationally in number of domestic origin and destination passengers. The following table shows the air passenger activity, total movements and cargo volume at LAX relative to the world's busiest airports.

**TABLE 3**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**TOP 15 WORLDWIDE RANKINGS – CALENDAR YEAR 2017<sup>(1)</sup>**

Rank	Airport	Total Passengers	Airport	Total Movements	Airport	Total Cargo (metric tons) <sup>2</sup>
1	Atlanta (ATL)	103,902,992	Atlanta (ATL)	879,560	Hong Kong (HKG)	5,049,898
2	Beijing (PEK)	95,786,442	Chicago (ORD)	867,049	Memphis (MEM)	4,336,752
3	Dubai (DXB)	88,242,099	<b>Los Angeles (LAX)</b>	<b>700,362</b>	Shanghai (PVG)	3,824,280
4	Tokyo (HND)	85,408,975	Dallas/Fort Worth (DFW)	654,344	Incheon (ICN)	2,921,691
5	<b>Los Angeles (LAX)</b>	<b>84,557,968</b>	Beijing (PEK)	597,259	Anchorage (ANC)	2,713,230
6	Chicago (ORD)	79,828,183	Denver (DEN)	574,966	Dubai (DXB)	2,654,494
7	London (LHR)	78,014,598	Charlotte (CLT)	553,817	Louisville (SDF)	2,602,695
8	Hong Kong (HKG)	72,663,955	Las Vegas (LAS)	542,994	Tokyo (NRT)	2,336,427
9	Shanghai (PVG)	70,001,237	Amsterdam (AMS)	514,625	Taipei (TPE)	2,269,585
10	Paris (CDG)	69,471,442	Shanghai (PVG)	496,774	Paris (CDG)	2,195,229
11	Amsterdam (AMS)	68,515,425	Paris (CDG)	482,676	Frankfurt (FRA)	2,194,056
12	Dallas/Fort Worth (DFW)	67,092,194	London (LHR)	475,915	Singapore (SIN)	2,164,700
13	Guangzhou (CAN)	65,887,473	Frankfurt (FRA)	475,537	<b>Los Angeles (LAX)</b>	<b>2,158,324</b>
14	Frankfurt (FRA)	64,500,386	Toronto (YYZ)	465,555	Miami (MIA)	2,071,722
15	Istanbul (IST)	63,872,283	Guangzhou (CAN)	465,295	Beijing (PEK)	2,029,584

<sup>(1)</sup> Preliminary.

<sup>(2)</sup> ACI cargo statistics do not match those presented elsewhere in this Appendix B-1 because ACI uses a different methodology for calculating.

Source: ACI Preliminary World Airport Traffic and Results for 2017, April 2018.

As seen in Table 4 which follows, due to the global economic environment and capacity reductions by U.S. and foreign flag carriers, total enplanements and deplanements decreased approximately 9.2% in Fiscal Year 2009 from Fiscal Year 2008. From Fiscal Year 2009 through Fiscal Year 2017, total enplaned and deplaned passengers at LAX increased at a compounded annual growth rate of approximately 4.3%. The fiscal year used for national comparisons is different from the Department's fiscal year. See also "CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Financial Condition of the Airlines; Effect of Airline Industry Consolidation; Effect of Airline and Concessionaire Bankruptcies."

The following table presents historical total revenue operations (landings and takeoffs) and total domestic and international enplanements and deplanements at LAX for Fiscal Years 2008 through 2017.

**TABLE 4**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**AIR TRAFFIC DATA<sup>(1)</sup>**

<b>Fiscal Year</b>	<b>Revenue Operations</b>		<b>Enplanements and Deplanements</b>			<b>Passenger Growth (%)</b>
	<b>Total Operations</b>	<b>Operations Growth (%)</b>	<b>Domestic<sup>(2)</sup></b>	<b>International<sup>(2)</sup></b>	<b>Total<sup>(2)</sup></b>	
2008	631,986	2.2	44,834,824	17,427,929	62,262,753	1.1
2009	541,223	(14.4)	41,245,318	15,301,832	56,547,150	(9.2)
2010	545,752	0.8	42,145,783	15,752,062	57,897,845	2.4
2011	555,319	1.8	44,352,913	16,253,725	60,606,638	4.7
2012	578,876	4.2	45,957,814	16,967,262	62,925,076	3.8
2013	570,865	(1.4)	47,641,025	17,328,077	64,969,102	3.2
2014	597,734	4.7	50,158,762	18,623,420	68,782,182	5.9
2015	608,687	1.8	52,478,217	19,599,402	72,077,619	4.8
2016	627,529	3.1	56,139,431	21,669,709	77,809,140	8.0
2017	662,621	5.6	58,934,038	23,989,829	82,923,867	6.6

<sup>(1)</sup> Due to its date of publication, certain of the information contained in this table is more current than certain of the information contained in the Annual Financial Report of Los Angeles World Airports (Department of Airports of the City of Los Angeles, California) Los Angeles International Airport for the Fiscal Years ended June 30, 2016 and June 30, 2017.

<sup>(2)</sup> Enplaned and deplaned passengers.

Source: Department of Airports of the City of Los Angeles.



Enplanements at LAX for the air carriers with the largest share of enplanements at LAX for the previous five Fiscal Years are shown in the table below.

**TABLE 5**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**HISTORICAL TOTAL ENPLANEMENTS BY AIRLINE<sup>(1)</sup>**  
**(RANKED BY FISCAL YEAR 2017 RESULTS)**

Airline	Fiscal Year 2013		Fiscal Year 2014		Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
	Enplanements	Share <sup>(2)</sup>	Enplanements	Share <sup>(2)</sup>	Enplanements	Share <sup>(2)</sup>	Enplanements	Share <sup>(2)</sup>	Enplanements	Share <sup>(2)</sup>
1 American Airlines <sup>(3)‡</sup>	6,525,651	20.1%	6,665,990	19.4%	6,799,109	18.8%	7,613,660	19.5%	8,002,129	19.2%
2 Delta Airlines <sup>(4)*</sup>	4,171,972	12.8	5,038,929	14.7	6,020,280	16.7	6,550,711	16.8	6,838,256	16.4
3 United Airlines <sup>(5)†</sup>	6,544,226	20.1	6,568,648	19.1	6,225,103	17.2	6,020,563	15.5	6,062,305	14.6
4 Southwest Airlines	3,703,743	11.4	3,796,292	11.1	4,212,706	11.7	4,446,133	11.4	4,843,969	11.6
5 Alaska Airlines <sup>(6)</sup>	1,623,552	5.0	1,741,179	5.1	1,652,816	4.6	1,763,171	4.5	1,799,163	4.3
6 Virgin America <sup>(6)</sup>	1,569,289	4.8	1,657,297	4.8	1,534,368	4.2	1,607,495	4.1	1,725,332	4.1
7 Spirit Airlines	225,908	0.7	369,236	1.1	510,478	1.4	956,783	2.5	1,237,471	3.0
8 JetBlue Airways	424,534	1.3	446,183	1.3	570,938	1.6	675,589	1.7	784,922	1.9
9 Air Canada <sup>†</sup>	459,937	1.4	495,695	1.4	597,050	1.7	660,642	1.7	712,467	1.7
10 Qantas Airways <sup>‡</sup>	575,310	1.8	602,278	1.8	614,333	1.7	596,257	1.5	519,450	1.2
11 Hawaiian Airlines	323,104	1.0	339,177	1.0	422,871	1.2	441,634	1.1	440,721	1.1
12 Aerovias De Mexico*	282,156	0.9	337,368	1.0	402,416	1.1	436,396	1.1	433,813	1.0
13 Volaris	219,494	0.7	249,449	0.7	253,973	0.7	302,444	0.8	351,114	0.8
14 Cathay Pacific Airways	253,131	0.8	284,225	0.8	337,043	0.9	339,240	0.9	329,135	0.8
15 Air New Zealand <sup>†</sup>	324,771	1.0	331,628	1.0	336,537	0.9	335,133	0.9	313,889	0.8
16 Air France*	266,282	0.8	293,305	0.9	288,789	0.8	305,948	0.8	309,367	0.7
17 Frontier Airlines	236,827	0.7	193,216	0.6	172,297	0.5	260,241	0.7	301,653	0.7
18 Westjet	185,415	0.6	215,843	0.6	218,999	0.6	218,886	0.6	299,496	0.7
19 Lufthansa German Airlines <sup>†</sup>	245,700	0.8	262,448	0.8	277,103	0.8	295,623	0.8	296,968	0.7
20 Eva Airways <sup>†</sup>	214,341	0.7	237,182	0.7	270,524	0.7	288,719	0.7	290,206	0.7
Other	4,148,835	12.8	4,206,957	12.3	4,404,035	12.2	4,843,301	12.4	5,710,298	13.7
Airport Total <sup>(2)</sup>	32,524,178	100.0	34,332,525	100.0	36,121,768	100.0	38,958,569	100.0	41,602,124	100.0

\* Member of Sky Team Alliance.

† Member of Star Alliance.

‡ Member of One World Alliance.

(1) For those airlines that (i) were party to a completed merger or acquisition, (ii) have received a single FAA certificate and (iii) have completed operational integration, only the surviving entity is presented and the activity for the airlines that are now a part of the surviving airline are included in the information presented (including in years prior to the such merger or acquisition). Due to its date of publication, certain of the information contained in this table is more current than certain of the information contained in the Annual Financial Report of Los Angeles World Airports (Department of Airports of the City of Los Angeles, California) Los Angeles International Airport for the Fiscal Years ended June 30, 2017 and 2016.

(2) Totals may not add due to rounding.

(3) Includes US Airways, SkyWest and Compass Airlines as American Airlines.

(4) Includes SkyWest and Compass Airlines as Delta.

(5) Includes SkyWest Airlines as United.

(6) On April 1, 2016, Alaska Air Group, Virgin America, and Merger Sub, entered into the Merger Agreement, pursuant to which, subject to satisfaction or waiver of the conditions therein, Air Group will acquire Virgin America by means of a Merger. The Merger was completed on December 14, 2016. A single operating certificate for Virgin America and Alaska Air Group was issued by the FAA on January 11, 2018 and all flights beginning April 24, 2018 operate under the Alaska Air Group brand, however data for the respective airlines is being presented separately until Fiscal Year 2018 data is available.

Source: Department of Airports of the City of Los Angeles.

The following table presents the total revenue landed weight for the air carriers with the largest share of revenue landed weight at LAX for the previous five Fiscal Years.

**TABLE 6**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**TOTAL REVENUE LANDED WEIGHT<sup>(1)</sup>**  
**(RANKED ON FISCAL YEAR 2017 RESULTS)**  
**(000 LBS.)**

Airline	Fiscal Year		Fiscal Year		Fiscal Year		Fiscal Year		Fiscal Year	
	2013	Share <sup>(2)</sup>	2014	Share <sup>(2)</sup>	2015	Share <sup>(2)</sup>	2016	Share <sup>(2)</sup>	2017	Share <sup>(2)</sup>
1 American Airlines <sup>(3) ‡</sup>	8,184,610	16.3%	8,534,591	16.2%	8,416,414	15.3%	9,557,554	16.2%	10,389,870	16.6%
2 Delta Airlines <sup>(4)*</sup>	5,650,964	11.2	6,670,030	12.7	7,479,719	13.6	8,171,783	13.8	8,114,506	12.9
3 United Airlines <sup>(5) †</sup>	7,913,761	15.8	7,947,765	15.1	7,447,619	13.5	7,181,910	12.1	7,121,940	11.4
4 Southwest Airlines	4,641,112	9.2	4,637,202	8.8	4,977,130	9.0	5,203,678	8.8	5,491,352	8.8
5 Federal Express	1,662,347	3.3	1,740,088	3.3	1,795,385	3.3	1,899,029	3.2	2,068,855	3.3
6 Virgin America <sup>(6)</sup>	1,905,138	3.8	2,070,384	3.9	1,860,734	3.4	1,943,146	3.3	2,048,950	3.3
7 Alaska Airlines <sup>(6)</sup>	1,611,321	3.2	1,718,274	3.3	1,658,662	3.0	1,955,974	3.3	1,897,388	3.0
8 Spirit Airlines	237,903	0.5	385,800	0.7	508,438	0.9	987,642	1.7	1,344,172	2.1
9 Qantas Airways <sup>‡</sup>	1,297,898	2.6	1,344,193	2.6	1,390,011	2.5	1,340,695	2.3	1,171,352	1.9
10 Cathay Pacific Airways <sup>‡</sup>	783,011	1.6	893,119	1.7	1,114,834	2.0	1,142,039	1.9	1,135,572	1.8
11 Korean Air <sup>*</sup>	1,190,283	2.4	1,179,599	2.2	1,252,622	2.3	1,132,512	1.9	1,073,416	1.7
12 JetBlue Airways	454,116	0.9	471,412	0.9	643,914	1.2	766,158	1.3	916,512	1.5
13 Air Canada <sup>†</sup>	559,315	1.1	599,464	1.1	734,164	1.3	828,701	1.4	876,755	1.4
14 China Southern Airlines	445,724	0.9	485,980	0.9	530,600	1.0	665,211	1.1	756,903	1.2
15 China Airlines <sup>*</sup>	665,450	1.3	740,766	1.4	752,462	1.4	745,284	1.3	747,304	1.2
16 Asiana Airlines <sup>†</sup>	554,574	1.1	641,538	1.2	655,670	1.2	653,292	1.1	745,578	1.2
17 Eva Airways <sup>†</sup>	606,522	1.2	639,446	1.2	741,350	1.3	748,540	1.3	727,122	1.2
18 Hawaiian Airlines	440,387	0.9	478,332	0.9	662,590	1.2	691,217	1.2	664,592	1.1
19 Lufthansa German Airlines <sup>‡</sup>	516,082	1.0	540,673	1.0	585,469	1.1	646,035	1.1	660,532	1.1
20 Air China <sup>†</sup>	441,634	0.9	437,270	0.8	535,570	1.0	684,047	1.2	635,768	1.0
Other	10,476,154	20.9	10,457,340	19.9	11,285,543	20.5	12,231,733	20.7	14,115,666	22.5
Airport Total <sup>(2)</sup>	50,238,306	100.0	52,613,266	100.0	55,028,900	100.0	59,176,180	100.0	62,704,105	100.0

\* Member of Sky Team Alliance.

† Member of Star Alliance.

‡ Member of One World Alliance.

(1) For those airlines that (i) were party to a completed merger or acquisition, (ii) have received a single FAA certificate and (iii) have completed operational integration, only the surviving entity is presented and the activity for the airlines that are now a part of the surviving airline are included in the information presented (including in years prior to the such merger or acquisition). Due to its date of publication, certain of the information contained in this table is more current than certain of the information contained in the Annual Financial Report of Los Angeles World Airports (Department of Airports of the City of Los Angeles, California) Los Angeles International Airport for the Fiscal Years ended June 30, 2017 and 2016.

(2) Totals may not add due to rounding.

(3) Includes US Airways, SkyWest and Compass Airlines as American Airlines.

(4) Includes SkyWest and Compass Airlines as Delta.

(5) Includes SkyWest Airlines as United.

(6) On April 1, 2016, Alaska Air Group, Virgin America, and Merger Sub, entered into the Merger Agreement, pursuant to which, subject to satisfaction or waiver of the conditions therein, Alaska Air Group will acquire Virgin America by means of a Merger. The Merger was completed on December 14, 2016. A single operating certificate for Virgin America and Alaska Air Group was issued by the FAA on January 11, 2018 and all flights beginning April 24, 2018 operate under the Alaska Air Group brand, however data for the respective airlines is being presented separately until Fiscal Year 2018 data is available.

Source: Department of Airports of the City of Los Angeles.

According to traffic reports submitted to the Department by the airlines, cargo volumes at LAX have increased from approximately 1.97 million tons in Fiscal Year 2008 to approximately 2.3 million tons in Fiscal Year 2017, averaging approximately 1.97 million tons each Fiscal Year, during this period. The following chart provides information concerning cargo traffic at LAX over the last ten Fiscal Years.

**TABLE 7**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**ENPLANED AND DEPLANED CARGO<sup>(1)</sup>**  
**(TONS)**

<b>Fiscal Year</b>	<b>Domestic Cargo</b>	<b>Annual Growth</b>	<b>International Cargo</b>	<b>Annual Growth</b>	<b>Total Cargo</b>	<b>Annual Growth</b>
2008	877,455	(10.1)	1,095,273	(1.0)	1,972,728	(5.2)
2009	728,705	(17.0)	886,594	(19.1)	1,615,299	(18.1)
2010	792,005	8.7	1,067,249	20.4	1,859,253	15.1
2011	791,414	(0.1)	1,101,270	3.2	1,892,685	1.8
2012	807,532	2.0	1,107,499	0.6	1,915,032	1.2
2013	814,920	0.9	1,134,220	2.4	1,949,140	1.8
2014	805,423	(1.2)	1,127,263	(0.6)	1,932,685	(0.8)
2015	838,095	4.1	1,274,616	13.1	2,112,710	9.3
2016	853,422	1.8	1,267,466	(0.6)	2,120,888	0.4
2017	894,193	4.8	1,423,921	12.3	2,318,113	9.3

<sup>(1)</sup> Due to its date of publication, certain of the information contained in this table is more current than certain of the information contained in the Annual Financial Report of Los Angeles World Airports (Department of Airports of the City of Los Angeles, California) Los Angeles International Airport for the Fiscal Years ended June 30, 2017.

Source: Department of Airports of the City of Los Angeles.

See “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES” for discussion of some factors that may impact future aviation activity at LAX. See “USE OF AIRPORT FACILITIES.”

### **Competition**

The region served by LAX (the “Airport Service Region”) includes primary and secondary areas. The primary geographical area served by LAX consists of the Los Angeles-Long Beach-Riverside Combined Statistical Area (“Los Angeles CSA”) as designated by the United States Bureau of the Census and includes the five-county area of Los Angeles, Orange, Riverside, San Bernardino and Ventura counties. There are six air carrier airports within the primary area. According to statistics, LAX is the dominant airport in the primary area, with approximately 77.2% of the total enplaned passengers in Fiscal Year 2017. In Fiscal Year 2017, LAX accounted for approximately 95.2% of LAX’s primary area’s international enplaned passengers.

Three other airports, Ontario International Airport (ONT), Bob Hope Airport (BUR) in Burbank and John Wayne Airport (SNA) in Orange County, provide air service to major domestic markets and together accounted for approximately 14.8% of total enplaned passengers in LAX’s primary area in Fiscal Year 2017. Two other airports, Long Beach Airport (LGB) and Palm Springs Airport (PSP), provide limited air service to destinations outside of the Airport Service Region and accounted for approximately 4.3% of enplaned passengers in LAX’s primary area in Fiscal Year 2017.

The secondary area served by LAX, which includes many of the counties surrounding the Los Angeles CSA, is defined by the location of (and the airline service offered at) other “nearby” air carrier airports. The secondary area comprises seven airports with scheduled air carrier service including Bakersfield’s Meadows Field (BFL), Imperial County Airport (IPL), Carlsbad’s McClellan-Palomar Airport (CRQ), San Diego International Airport (SAN), San Luis Obispo Regional Airport (SBP), Santa Barbara Municipal Airport (SBA), and Santa Maria Municipal Airport (SMX). In addition, Oxnard Airport (OXR) is a general aviation airport located 63 miles to the northwest of LAX.

### **Emergency Management**

The Department has four core groups that are responsible for emergency management: Fire, Law Enforcement, Airport Operations and Emergency Management Division. These core groups are responsible for the

emergency planning for all phases of emergency management: mitigation, preparedness, response and recovery. The roles and responsibilities of each entity within these four groups are defined by Emergency Support Functions in the federal National Incident Management System (“NIMS”), the National Response Framework, the California Standardized Emergency Management System (“SEMS”), FAA Regulation Part 139 (“FAR 139”), the Charter, the Airport Rules and Regulations and other statutes. The “Airport Rules and Regulations” are established pursuant to the Charter in order to, among other things, comply with FAA and TSA regulations which require the Department to establish operational and safety procedures and institute certain secondary measures for airport certification. Emergency management responsibilities for the core groups include: (1) hazard vulnerability analysis, (2) development and maintenance of emergency operations plans, (3) integration with the City’s Emergency Operations Organization and the emergency processes of other City departments and agencies, (4) developing, conducting and coordinating training and exercises, (5) planning for continuity of operations/continuity of government for the Airport System, (6) oversight of implementation for new emergency guidelines, mandates, technology, emergency response and preparedness systems at local, state, federal and international levels concerning airport emergency operations and (7) responding to and activating the Department Operations Center, and sending Department representation to the City Emergency Operations Center for emergency activations.

The Department is required by certain federal, state, City and other directives to develop and maintain a number of airport emergency response plans to ensure protection of lives and property and mitigation measures to lessen the impact on the disruption of business. The Department is also subject to Homeland Security Presidential Directive 5, which requires compliance with the NIMS and the National Response Framework. The State requires compliance with SEMS. Under FAR 139 the Department is required to create, maintain and exercise specific emergency plan components that must be specific to LAX and contained in FAA approved Airport Certification Manuals. These plans set forth emergency procedures to ensure prompt response to emergencies to save lives, minimize the possibility and extent of personal and property damage and ensure recovery of the critical transportation infrastructure. The Department has included these emergency procedures in the Airport Rules and Regulations for LAX. The Department holds emergency plan exercises as required by the FAA, TSA regulations, security directives, FAR 139 mandates and City exercise programs. A yearly security exercise is held under the direction of Airport Police and through the collaborative efforts and participation of airport stakeholders. The Department conducts and participates in a number of additional scheduled exercises with federal, airline and City agencies to exercise and test mitigation, preparedness, response and recovery.

See also “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Security Concerns” and “—Seismic Risks.”

## **CERTAIN FUNDING SOURCES**

### **Department Senior Bonds, Subordinate Obligations and Other Obligations**

See “SECURITY AND SOURCES OF PAYMENT FOR THE SENIOR BONDS, THE SUBORDINATE OBLIGATIONS AND THE THIRD LIEN OBLIGATIONS” and “OUTSTANDING OBLIGATIONS AND DEBT SERVICE SCHEDULE” for a summary of the Department’s current debt structure.

### **Passenger Facility Charges**

Generally, the Passenger Facility Charge (“PFC”) Acts permit public agencies controlling certain commercial service airports to charge each enplaning passenger a facility charge ranging from \$1.00 to \$4.50. The proceeds from passenger facility charges must be used to finance eligible airport-related projects. Eligible airport-related projects approved by the FAA are referred to in this Appendix as “Approved PFC Projects.” Public agencies wishing to impose and use passenger facility charges to finance eligible airport-related projects must apply to the FAA for the authority to do so. The Department has received approval from the FAA to collect a passenger facility charge up to \$4.50 on each enplaning passenger at LAX.

The Department expects to submit additional applications to impose and use passenger facility charges for eligible expenditures including, but not limited to, PFC Eligible Obligations (as defined below). If such applications to impose and use passenger facility charges for eligible expenditures are approved, such approval may extend the date by which such PFC revenues are expected to be collected.

PFC revenues to fund certain Approved PFC Projects are collected by air carriers as part of the price of a ticket and then remitted to the Department. The air carriers are permitted by the PFC Acts (as defined below) to retain a portion of each passenger facility charge collected (currently \$0.11 of each passenger facility charge

collected) as compensation for collecting and handling PFC revenues. PFC revenues received by the Department are net of this collection fee. Since 1993, the Department has received approval from the FAA to impose and use approximately \$4.1 billion of PFC revenues (including investment income) at LAX. Total PFC revenues collected by the Department as of June 30, 2017 were approximately \$2.5 billion. The Department has passenger facility charge collection authority until September 1, 2026.

A portion of the projects in the Capital Program (as defined below) are expected to be funded from passenger facility charges and collections that have not yet been applied for or approved.

PFC revenues may also be used for the payment of debt service on certain portions of Senior Bonds, Subordinate Obligations and/or Third Lien Obligations issued to finance all or a portion of Approved PFC Projects (“PFC Eligible Obligations”). The Department expects to pay a portion of the debt service on the PFC Eligible Obligations with PFC revenues. However, the Department is prohibited from using PFC revenues to pay debt service on PFC Eligible Obligations in excess of the amounts of passenger facility charges approved by the FAA for the Approved PFC Projects. If the actual cost of Approved PFC Projects is less than the amount approved by the FAA, the Department may be required to submit an amendment to the FAA application to reduce the approved amount for applicable projects. The proceeds of the 2008A Senior Bonds, the Series 2009A Senior Bonds, the Series 2010A Senior Bonds, the Series 2010D Senior Bonds, the Series 2015 Senior Bonds and the Series 2016A Subordinate Bonds and the Series 2018B Senior Bonds financed or refinanced Approved PFC Projects and are PFC Eligible Obligations.

Pledged Revenues do not include PFC revenues unless otherwise included in Pledged Revenues pursuant to a Supplemental Senior Indenture. To date, the Department has not elected, and the Department has no current plans to elect, to include PFC revenues in Pledged Revenues nor otherwise pledge PFC revenues to the payment of the Senior Bonds or the Subordinate Obligations. However, the Department expects to use PFC revenues to pay a portion of the debt service on PFC Eligible Obligations. Debt service paid with PFC revenues is not included in the calculation of the rate covenant set forth in the Senior Indenture. Debt service on Additional Senior Bonds expected to be paid from irrevocably committed PFC revenues is not included in the additional bonds test set forth in the Senior Indenture although the Department has not made any such irrevocable commitment of PFC revenues.

No assurance can be given that PFC revenues will actually be received in the amounts or at the times contemplated by the Department. The amount and timing of receipt of actual PFC revenues are expected to vary depending on actual levels of qualified passenger enplanements at LAX. If PFC revenues are not available, the Department may be required to eliminate or scale down projects or incur additional indebtedness, possibly including issuing Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations, to finance such projects. In the event of an airline bankruptcy, it is unclear whether the Department would be afforded the status of a secured creditor with regard to PFC revenues collected or accrued with respect to that airline. The actual amount of PFC revenues received in each Fiscal Year may vary depending on the number of qualifying passenger enplanements at LAX. See “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Considerations Regarding Passenger Facility Charges,” “—Delays and Cost Increases; Future Capital Projects; Additional Indebtedness,” “—Demand for Air Travel, Aviation Activity and Related Matters” and “—Financial Condition of the Airlines; Effect of Airline Industry Consolidation; Effect of Airline and Concessionaire Bankruptcies” and the discussion regarding a number of factors that may impact the number of passenger enplanements and the Department’s receipt of PFC revenues. See also “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program – Capital Program Costs” and “—Passenger Facility Charges” for additional information about the Department’s expected use of PFC revenues.

## **Grants**

Under the Airport Improvement Program (“AIP”) the FAA awards grant moneys to airports around the country for capital improvement projects and airport operating costs. AIP grants include entitlement funds, which are apportioned annually based upon the number of enplaned passengers and total landed weight of all-cargo aircraft at the airport, as well as discretionary funds, which are awarded by the FAA based on a national priority system. Generally, federal grants are paid to the Department on a reimbursement basis when the grant agreement is approved and after eligible expenditures are made. The amount and timing of receipt of actual AIP grant moneys may vary and may not be reimbursed for a significant period of time after the eligible expenditure is made. If AIP grant moneys are not available or timely reimbursed, the Department may be required to eliminate or scale down projects or incur additional indebtedness, possibly including issuing Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations, to finance such projects. The Department has received approximately

\$276.2 million in AIP grants authorized for acceptance by the Board since June 2008. See “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Federal Funding; Impact of Federal Sequestration” and “—Delays and Cost Increases; Future Capital Projects; Additional Indebtedness.”

Pursuant to the Aviation and Transportation Security Act, the Department has been awarded approximately \$256 million of reimbursements from the Department of Homeland Security for the installation of in-line baggage screening systems, of which approximately \$235 million were received and applied to projects completed at LAX and the balance were received and applied to projects completed at ONT. In June 2011, the Board approved the award of approximately \$13.4 million from the TSA for the Department’s Closed Circuit Television Security System at LAX. During Fiscal Year 2017, the Department received approximately \$3 million for security-related reimbursements at LAX.

The Department is subject to periodic compliance reviews by the FAA and the Office of the Inspector General, some of which have included a review of payments made by the Department to the City, to verify the Department’s compliance with applicable federal laws, FAA grant assurances and FAA policies concerning the use of airport revenue and airport revenue diversion. In addition, interested parties such as Airlines for America (formerly known as the Air Transport Association of America) and Aircraft Owners and Pilots Association may initiate U.S. DOT proceedings relating to these types of issues.

A portion of the projects in the Capital Program are expected to be funded from AIP grants that have not yet been applied for or approved.

### **Customer Facility Charges**

Applicable law permits the Department to require the collection by rental car companies of a customer facility charge (“Customer Facility Charge”) at a rate charged on a per-day basis up to \$9 per day (for up to 5 days). Currently, the Department requires rental car companies to collect a Customer Facility Charge at a rate charged on a per-day basis of \$7.50 (for up to 5 days). The Department expects to increase the rate to \$9 per day (for up to 5 days) on July 1, 2022 or sooner.

For the fiscal year ended June 30, 2017, the Department collected approximately \$35.5 million in Customer Facility Charge revenues, which amount reflects revenues from a \$10 Customer Facility Charge per rental car contract. Through June 30, 2017, the Department had collected approximately \$284.0 million in the aggregate of Customer Facility Charge revenues.

The Customer Facility Charges collected by the rental car companies on behalf of the Department are permitted under applicable law to finance, design and construct the CONRAC; to finance, design, construct and operate a common-use transportation system (the “APM System”), as well as acquiring vehicles for use in that system; and to finance, design and construct terminal modifications to accommodate the common-use transportation system.

Pledged Revenues do not include Customer Facility Charge revenues unless otherwise included in Pledged Revenues pursuant to a Supplemental Senior Indenture. To date, the Department has not elected, and the Department has no current plans to elect, to include Customer Facility Charge revenues in Pledged Revenues nor otherwise pledge Customer Facility Charge revenues to the payment of the Senior Bonds, the Subordinate Obligations and/or Third Lien Obligations. The Department expects the Special Facility Bonds or other obligations, if any, issued in connection with the financing of the CONRAC will be secured, in whole or in part, from a pledge of Customer Facility Charges.

For additional discussion regarding Customer Facility Charges, see “USE OF AIRPORT FACILITIES – Concession and Parking Agreements – Rental Cars,” “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program,” “—Certain Other Projects,” “—The Automated People Mover System.”

## **USE OF AIRPORT FACILITIES**

### **General**

The Department permits airlines and other parties to use Airport facilities, and receives payment for the use of Airport facilities, pursuant to a variety of arrangements, all of which are intended to fulfill the Department’s goal of recovering all costs allocable to areas used from the users of such facilities (including, but not limited to, costs for capital, debt service, maintenance and operations, certain airline equipment and infrastructure). Generally these arrangements consist of:

- Air Carrier Operating Permits;
- The Airport Terminal Tariff and the Rate Agreement (as defined below);
- Terminal leases;
- Facilities Use Terms and Conditions;
- Concession and parking agreements;
- Non-exclusive licensing agreements; and
- Various other building and miscellaneous leases including for cargo and hangar facilities.

### **Operating Permits – Landing and Apron Facilities and Landing Fees**

The Department has entered into separate operating permits covering the use of landing and apron facilities with air carriers serving LAX. These operating permits grant operating rights to each airline typically for a ten-year term, and are commonly referred to as the “Air Carrier Operating Permits” or the “ACOPs.” For new ACOPs, the Department is currently authorized to issue ACOPs that expire June 30, 2022, with an option to extend each ACOP for another 10-year term. The ACOPs are terminable by either party on 30 days’ notice. The ACOPs require each airline to pay a landing and apron fee to the Department for each aircraft that uses the landing and apron facilities at LAX, generally equal to the product of (i) the units of maximum gross landed weight of the aircraft, with each unit being 1,000 pounds, multiplied by (ii) the applicable landing or apron fee rate currently in effect. Air carriers that are not a party to an ACOP must still comply with the Airport Rules and Regulations, which require the uninterrupted payment of landing and apron fees and such landing and apron fees are substantially higher than for air carriers that are party to an ACOP. The landing and apron fee rates to be charged during each Fiscal Year are based upon the Department’s then-current budget and are adjusted at the end of each Fiscal Year to reflect the actual expenses incurred. All adjustments for deficiencies are billed when determined and overages are credited to the affected airlines. The Department expects that the ACOPs will be renewed upon their expiration, though no assurances can be given that they will be, or that the terms of the new ACOPs will be the same as the existing terms.

For Fiscal Year 2017, revenues to the Department at LAX from landing fees were approximately \$260.9 million. See “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Management Discussion of Fiscal Year 2017.”

Department Management expects to submit annual landing fee changes to the Board in June 2018. There can be no assurances whether the Board will approve the landing fees as and when presented.

### **Airport Terminal Tariff**

Airlines and businesses involved in aeronautical activities other than governmental activities or concessions (each, an “Aeronautical User”) use terminal space at LAX under the terms of the LAX Passenger Terminal Tariff (the “Airport Terminal Tariff”). The Airport Terminal Tariff has no term or expiration date but is subject to change from time to time by the Board. After consultation with airline representatives regarding the Department’s rates and charges, on September 17, 2012, the Board approved certain changes to the Airport Terminal Tariff, as described below, which became effective on January 1, 2013, in all terminals at LAX; provided, however, the Airport Terminal Tariff expressly does not apply to Terminal 4 unless and until all airlines using Terminal 4 are subject to the rate methodology adopted on September 17, 2012. The Department has entered into a lease for the use of terminal space in Terminal 4 with American Airlines that expires in December 2024. Under this lease, rental rates are not charged pursuant to the Airport Terminal Tariff, rather rental rates on terminal premises and on ground areas are adjusted periodically, typically every five years, by mutual agreement or, if the parties are not able to agree, then by a process directed at establishing a rent based on the then-current fair rental value. American Airlines is required to pay operation and maintenance charges based on the methodology of the Airport Terminal Tariff. American Airlines is a party to a Rate Agreement; however, the Rate Agreement rates do not apply to the space leased by American Airlines in Terminal 4. The rental rates under all other terminal leases are governed by the Airport Terminal Tariff.

Department Management expects to submit to the Board in June 2018, and thereafter the City Council, a new lease with American Airlines which is expected to include, among other things: rental rates to be charged pursuant to the Airport Terminal Tariff; obligations for American Airlines to undertake renovations to its leased terminals; and subject to certain conditions, Department obligations to purchase from American Airlines certain

improvements. There can be no assurances whether the Board or the City Council will approve the any new lease with American Airlines as and when presented.

Terminal rates under the Airport Terminal Tariff are designed to recover all costs, including administrative and access costs, allocable to terminal space used by Aeronautical Users. Under the Airport Terminal Tariff, Aeronautical Users are required to pay to the Department:

- Terminal Buildings Charge – A charge based on an equalized rate calculated by the Department by dividing the total of all capital and maintenance and operation costs allocated by the Department to the passenger facilities at LAX by the total rentable areas in the terminals.
- FIS Fee – A fee based on an equalized rate calculated by the Department by dividing the total of all capital and maintenance and operation costs allocated by the Department to Federal Inspection Services (“FIS”) areas at LAX by the number of international passengers passing through the FIS facilities.
- Common Use Area Fees and Charges – Fees and charges based on rates calculated by the Department based on airlines’ use of common areas in the terminals, such as hold rooms, baggage claim systems and ticket counters.
- Terminal Special Charges – Fees based on rates calculated by the Department for use by the Aeronautical Users of certain equipment and services at LAX that are not otherwise billed to Aeronautical Users through the rates and charges described above, such as, in certain terminals custodial services, outbound baggage system maintenance, terminal airline support systems and loading bridge capital and maintenance.

Aeronautical Users subject to the Airport Terminal Tariff are required to provide a performance guaranty which is at least three times the sum of the estimated monthly installments of the Terminal Buildings Charge and other amounts.

For Fiscal Year 2017, revenues to the Department at LAX from terminal rentals were approximately \$436.4 million. See “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Management Discussion of Fiscal Year 2017.”

### **Rate Agreement**

In connection with the negotiation of the terms of the Airport Terminal Tariff, to resolve certain litigation that was then pending and potential future litigation regarding the Department’s rate setting methodology, and to provide phase-in of the new rates and charges for airlines, the Department offered the airlines (including certain consortiums that have been formed to manage specified terminal facilities at LAX) a Rate Agreement (the “Rate Agreement”). All airlines serving LAX have executed Rate Agreements. The Rate Agreements expire in 2022.

Pursuant to the Rate Agreements, each applicable airline (a “Signatory Airline”) consented to and waived its right to challenge the application of the Airport Terminal Tariff rate methodology approved by the Board in September 2012. The Terminal Building Rate is charged pursuant to the Airport Terminal Tariff. The FIS rate is charged pursuant to the Airport Terminal Tariff, as described above, without discount.

The Rate Agreement permits the Department to charge the Signatory Airlines for, among other things, the recovery of certain types of capital costs or operations and maintenance expenses, including those costs related to ground access for vehicles and pedestrians, such as airside and landside access, and Airport access generally. Through annual updates to the rates and charges under the Rate Agreement the Department is entitled to collect from Signatory Airline a significant portion of the capital costs and operation and maintenance expenses related to the Capital Program.

Beginning in calendar year 2014, the Department provided Signatory Airlines a credit for a portion of the concession revenues generated in these terminals at LAX. The amount of these credits in Fiscal Year 2017 was approximately \$33.9 million. These credits result in a reduced Terminal Building Rate (and a corresponding reduction in revenues derived from the Terminal Building Rate) and a reduced FIS rate paid by the Signatory Airlines.

Under the Rate Agreement, the Department is required to establish a Terminal Renewal and Improvement Fund (the “TRIF”). The TRIF is required to be funded from annual net revenues from the application of the Airport Terminal Tariff. Amounts deposited in the TRIF are required to be used by the Department to fund, together with debt and grant funding, terminal related capital improvements. Deposits into the TRIF may not exceed \$125 million



annually or a maximum unused fund balance amount of \$500 million. This limit is subject to annual consumer price index increases. The Department is permitted to collect and amortize charges associated with capital projects funded from TRIF deposits, however, such collection and amortization is required to be deferred for five years after the projects are placed in service. On July 13, 2017, in accordance with the Rate Agreement, the Department transferred the entire balance of approximately \$148.9 million of the TRIF to the Airport Revenue Fund for financing terminal related capital improvements.

Under the Rate Agreement, beginning in calendar year 2014, 50% of the funds in the TRIF, that are not otherwise committed to projects, in excess of the TRIF limit described above, are required to be deposited in a Revenue Sharing Fund. As of July 13, 2017, \$4.7 million of TRIF funds were in excess of the limits described above and deposited in the Revenue Sharing Fund. The remaining excess funds may be used by the Department for any lawful purpose. Amounts deposited in the Revenue Sharing Fund are required to be distributed to the Signatory Airlines as a credit against any amount due in the following priority: first, against Terminal rents and second, against landing fees.

### **Land and Other Non-Terminal Building Rentals**

In addition to terminal leases, under a variety of leases, permits and other use agreements, the Department rents certain cargo, maintenance and other building facilities (“Land Rentals”) and ancillary land facilities at LAX (“Other Building Rentals”). The rental rates and other terms for Land Rentals and Other Building Rentals vary. See “—Facilities Use Terms and Conditions.”

In Fiscal Year 2017, revenues to the Department at LAX from Land Rentals were approximately \$98.6 million and revenues to the Department at LAX from Other Building Rentals were approximately \$57.0 million. See “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Management Discussion of Fiscal Year 2017.”

### **Department Acquisition of Certain Terminal Improvements; Credits**

In connection with certain terminal leases, certain Aeronautical Users have agreed to undertake renovations to their leased terminals. These renovations may include (i) proprietary renovations, which generally include branded improvements to the terminal and other improvements unique to the Aeronautical User’s operational needs; (ii) Aeronautical User renovations, which generally include non-proprietary improvements to the terminal usable by any Aeronautical User operating in the terminal (“Aeronautical User Improvements”); and (iii) terminal renovations, which generally include improvements to the terminal that are allocated to the public areas (“Terminal Improvements”). Terminal renovations may also include provision for certain relocations of terminal users to enable the terminal renovations.

Under the Department’s terminal leases, subject to certain conditions, the Department has agreed to purchase from Aeronautical Users certain Aeronautical User Improvements in the aggregate amount of approximately \$1.1 billion (of which as of June 30, 2017, approximately \$813.4 million have not been purchased) and the Department has the option to purchase from Aeronautical Users certain Terminal Improvements in the aggregate principal amount of approximately \$873.9 million (of which as of June 30, 2017, approximately \$531.2 million have not been purchased). If the Department does not exercise the option to purchase the Terminal Improvements, it may be required under the applicable terminal lease to issue to the applicable Aeronautical User a credit in an amount to reimburse the applicable Aeronautical User for costs related to such Terminal Improvements and imputed interest. If such credits are issued, the credits may be issued and amortized on a straight line basis over the period from the date on which the Department could exercise the option to purchase the Terminal Improvements through the end of the terminal lease or such date as the Department extinguishes the credit through cash payment. The Department retains the option to purchase the Terminal Improvements and related credits at any time during the term of the terminal lease.

The Department, pursuant to the Department’s terminal leases, also may be required to issue credits to certain Aeronautical Users responsible for the cost of relocating other terminal users to facilitate the Terminal renovations, for the cost of such relocations. The amounts of these credits may vary depending on the scope of the required relocations. As of June 30, 2017, the Department had agreed to issue approximately \$74.7 million of relocation rental credits (of which, as of June 30, 2017, approximately \$71.2 million remain outstanding). Pursuant to the Department’s terminal leases, Department’s exposure to the application of these rental credits is scheduled to end prior to June 30, 2018.

Credits are applied as an offset against amounts otherwise due to the Department by such Aeronautical Users as charges for use of LAX facilities, including amounts owed pursuant to the Airport Terminal Tariff and landing fees. Because these credits are applied as an offset to amounts owed to the Department by such Aeronautical Users, the Department receives less money from these Aeronautical Users than such Aeronautical Users would otherwise provide absent the credit. Thus, although the credits are not secured by any pledge of or lien on the Department's revenues, the effect of using such credits is the creation of a higher payment priority for such credits than for the Senior Bonds, the Subordinate Obligations or any Third Lien Obligations. See "OUTSTANDING OBLIGATIONS AND DEBT SERVICE SCHEDULE – Other Obligations – Credits."

The Department is in negotiations with certain Aeronautical Users regarding new terminal leases that may contain terms similar to those described above. If the Department enters into any such new leases, the Department may agree to be obligated or have the right to purchase from such Aeronautical Users the applicable Aeronautical User Improvements, the cost of which purchase may be material and financed with the issuance of Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations when such acquisition is made.

The acquisition of certain Aeronautical User Improvements and Terminal Improvements under terminal leases are part of the Capital Program, and certain terminal acquisition projects, including their capital and operating costs, financing and estimated revenue impacts, have been included in the financial forecasts discussed in this Appendix. See "AIRPORT AND CAPITAL PLANNING – Capital Development."

### **Facilities Use Terms and Conditions**

Facilities Use Terms and Conditions apply to users of certain Department owned space at LAX that are not subject to a lease or the Airport Terminal Tariff, principally certain buildings in the airfield and off-Airport facilities. Facilities Use Terms and Conditions have no term or expiration date but are subject to change from time to time by the Board and include a basic per square foot charge, subject to periodic adjustment to fair market rental value. If the Department determines that any portion of the facilities to which the Facilities Use Terms and Conditions apply are being underutilized, the Department may, upon the satisfaction of certain requirements, accommodate other users in such space. Facilities Use Terms and Conditions require users to provide a performance guaranty which is at least three times the sum of the amount of the initial estimated monthly installments of base charges and other additional amounts.

### **Concession and Parking Agreements**

The Department has entered into numerous agreements with parking operators, terminal commercial managers, duty free concessionaires, food and beverage concessionaries, retail concessionaires and others.

#### ***Parking***

The Department has entered into various parking operation and management agreements with ABM Onsite Services-West, Inc., LAZ Parking California, LLC ("LAZ") and Colliers International Real Estate Management Services (CA) (together, the "Parking Management Companies"), whereby the Parking Management Companies will provide parking facility management and operational services with respect to Department-owned parking structures and parking lots. Under these agreements the Parking Management Companies are compensated for the provision of services through various monthly management and service fees and, where applicable, are required to remit the gross revenues from the parking facilities, on a daily basis, to the Department. These agreements may be terminated by the Department upon 90 days' notice.

The Department owns the property adjacent to Terminal 1, which is operated as the Park One parking lot (the "Park One Property"). In connection with the purchase of the Park One Property, the Department assumed an operating lease with PNF-LAX, Inc. (the "PNF Lease") which expires December 31, 2029. Under the PNF Lease, the Department receives escalating annual revenues. In Fiscal Year 2017, the Department received approximately \$9.5 million, inclusive of base rent and percentage rent on gross revenues after certain thresholds are met. Under the PNF Lease, the Department has the ability to reduce the Park One Property as needed for future projects.

For Fiscal Year 2017, parking revenues to the Department at LAX were approximately \$96.7 million. See "FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Management Discussion of Fiscal Year 2017."

### ***Rental Cars***

Approximately 40 rental car companies operate within 2 miles of LAX, with vehicle rental sites located off-airport. Twelve rental car companies (the “Concessionaire Rental Car Companies”) operating at LAX provide free shuttle services between LAX and their respective locations and are permitted to pick up and drop off their customers directly from the airline terminals. The Concessionaire Rental Car Companies are each required to pay annually to the Department either a minimum annual guaranty or a concession fee, as set forth in the agreements with the Concessionaire Rental Car Companies. The agreements with the Concessionaire Rental Car Companies are scheduled to expire in February 2019. The Department in its sole discretion may extend the term of such agreements for one remaining additional one-year period. The agreements also permit a Concessionaire Rental Car Company to terminate its agreement at various intervals after January 1, 2017 in the event that the Department and the Concessionaire Rental Car Companies are unable to agree on certain terms related to the planning, programming, financing and other matters related to a consolidated rental car facility (the “CONRAC”) or if certain other events related to environmental approvals related to the CONRAC and Customer Facility Charge collections do not occur.

The Department requires non-Concessionaire Rental Car Companies that service LAX to enter into a non-exclusive license agreement. Subject to the terms of the non-exclusive license agreement non-Concessionaire Rental Car Companies are required to have their customers transported on LAX buses to and from a non-concessionaire rental car site located on West Century Boulevard, near Airport Boulevard. The non-exclusive license agreements expire on January 31, 2019 and are subject to termination by the Department upon 60 days’ notice. Non-Concessionaire Rental Car Companies are required to pay \$6,000 per month, which fees may be adjusted twice each year upon 30 days’ notice.

For Fiscal Year 2017, the Concessionaire Rental Car Companies paid approximately \$87.4 million in concession fees to the Department. The Department collected Customer Facility Charges for Fiscal Year 2017 of approximately \$32.6 million at LAX. Pledged Revenues do not include Customer Facility Charge revenues unless otherwise included in Pledged Revenues pursuant to a Supplemental Senior Indenture. The Department has not included Customer Facility Charge revenues in Pledged Revenues pursuant to any Supplemental Senior Indenture.

See “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program – CONRAC” and “CERTAIN FUNDING SOURCES – Passenger Facility Charges” for additional information about Customer Facility Charges, the Proposed CLA, Rental Car MOUs and the CONRAC and financing thereof.

### ***Duty Free Concessions***

The Department entered into a duty free merchandise concession agreement with DFS Group L.P. (“DFS”) for the design, construction, development and operation of duty free and duty paid merchandise concession at all terminals at LAX (the “DFS Concession Agreement”). The initial term of the DFS Concession Agreement is scheduled to expire in September 2024. Under certain circumstances, the Department has the right to extend the DFS Concession Agreement for three consecutive one year extension terms. Under the DFS Concession Agreement, DFS is required to make initial capital investments for initial improvements to its premises of approximately \$25 million and make mid-term capital investments for refurbishment of its premises of approximately \$17 million. The DFS Concession Agreement provides that the Department will receive from DFS the greater of a minimum annual guarantee or performance rent comprised of percentage rent (based on the application of certain percentages to gross sales of various categories of products) and contingent rent (10% of gross sales in excess of \$175 million). Under the DFS Concession Agreement, the minimum annual guaranty is the greater of (i) \$30 million, provided that in the second year of the DFS Concession Agreement, such amount will be increased based on the consumer price index, (ii) a percentage of the prior year’s rent payment, unless, in certain circumstances, international enplaned passengers at LAX have decreased below certain thresholds, and (iii) commencing in the third year of the DFS Concession Agreement, \$6.25 per international enplaned passenger, subject to annual consumer price index increases. DFS is required to provide a performance guaranty in an amount equal to 25% of its minimum annual guaranty.

For Fiscal Year 2017, revenues to the Department at LAX from duty free sales were approximately \$76.1 million. See “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Management Discussion of Fiscal Year 2017.”

### ***Terminal Commercial Manager Concessions***

The Department has entered into terminal commercial manager concession agreements with Westfield Airports, LLC (“Westfield”), for concession development in TBIT and Terminals 1, 2, 3 and 6 (the “Westfield Concession Agreements”). Pursuant to the Westfield Concession Agreements, Westfield serves as a developer and manager of retail, specialty retail, food and beverage and other passenger services in the applicable terminals and space, including selecting concessionaires, subject to Department approval. Under the Westfield Concession Agreements, Westfield is required to develop concession and related spaces, market and promote the concessionaires, negotiate and administer contracts with each concessionaire, and monitor and manage concessionaire performance. The term of each Westfield Concession Agreement is comprised of a development period and an operational period. The Westfield Agreements are currently scheduled to expire as follows:

Terminal	Scheduled Expiration
1	June 2032
2	January 2032
3	June 2029
6	September 2030
TBIT	January 2032
MSC	January 2032

Under the Westfield Concession Agreements, Westfield and its concessionaires are required to make initial capital investments in initial premises improvements in an aggregate amount of approximately \$160.5 million, initial capital investments in initial non-premises improvements in an aggregate amount of approximately \$74.5 million and capital investments in mid-term premises improvements in an aggregate amount of approximately \$32.1 million. When all of the terminal space has been delivered to Westfield, the Department is to receive from Westfield the greater of an aggregate minimum annual guaranty of approximately \$34.7 million (for Calendar Year 2015 the minimum annual guaranty was approximately \$18.2 million) or percentage rent comprised of base percentage rent (a percentage of Westfield’s revenues less certain allowances for improvements and management fees) and contingent percentage rent (a certain percentage of Westfield’s revenues in excess of certain benchmarks). Beginning in January 2014, each minimum annual guaranty is subject to increase based on the consumer price index and a percentage of the prior year’s percentage rent and to decrease based on certain reductions in passenger enplanements. Under the Westfield Concession Agreements, Westfield is required to provide performance guaranties in the initial aggregate amounts of \$2 million, which amounts are required to increase to two months minimum annual guaranty, but not less than \$3 million. The Department may terminate (a) Westfield Agreement No.1 in the thirteenth year of operation and (b) Westfield Agreement No. 2 in the tenth year of operation, in each case if Westfield does not meet certain performance targets, subject to certain buy-out payments for Westfield’s investment in improvements. In December 2017, an affiliate of Westfield announced that Westfield Corp. is being sold to Unibail-Rodamco in a transaction that is anticipated to close during 2018, subject to receipt of approvals and satisfaction of various conditions.

For Fiscal Year 2017, revenues to the Department at LAX from the terminal commercial manager was approximately \$43.3 million. See “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Management Discussion of Fiscal Year 2017.”

### ***Advertising Sponsorship and New Media Concession***

The Department entered into a Terminal Media Operator Concession Agreement (“TMO Agreement”) with JCDecaux Airport, Inc. (“JCDecaux”), effective February 2014. Pursuant to the TMO Agreement, JCDecaux serves as terminal media operator for the development and operation of certain advertising, sponsorship and other media concession locations within LAX. Under the TMO Agreement JCDecaux is granted the right to, among other things, market certain advertising and digital activation opportunities, develop and manage advertising displays, sponsorship activations and other media elements display locations at LAX. Under the TMO Agreement, JCDecaux is, subject to Department review, required to undertake certain development activities relating to advertising displays and other media elements in TBIT and in other portions of the Airport. The TMO Agreement is scheduled to expire in December 2020. The Department, under certain circumstances and in its sole discretion, may extend the term of the TMO Agreement for one additional period of three years. Subject to certain conditions provided in the TMO Agreement, JCDecaux is required to make an initial investment in certain improvements for the purpose of its sponsorship activations, advertising displays or other media elements equal to \$18.5 million. Additionally,

JCDecaux is also required to make additional investments in certain improvements for the purpose of its sponsorship activations, advertising displays or other media elements equal to \$3.5 million over the remainder of the initial term of the TMO Agreement. The annual concession fees payable from JCDecaux to the Department under the TMO Agreement are based on a series of formulas set forth in the TMO Agreement and consist of, among other things, certain fees derived from certain minimum guarantees and/or certain fees derived from a percentage of gross revenues from advertising, media and sponsorship activities. For Fiscal Year 2017, JCDecaux was required to pay to the Department not less than an advertising minimum annual guaranty in the amount of approximately \$22.2 million and a sponsorship minimum annual guaranty in the amount of approximately \$5.3 million. Each of these minimum annual guaranties is subject to increases on an annual basis.

In Fiscal Year 2017, revenues to the Department at LAX from the TMO Agreement were approximately \$27.5 million. See “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Management Discussion for Fiscal Year 2017.”

### ***Transportation Network Companies***

In August 2015, the Department approved non-exclusive license agreements (“TNC Agreements”) with various transportation network companies (“TNCs”) which connect passengers with approved drivers who provide transportation using their own vehicles and pay for the service through a mobile application. TNCs include Uber and Lyft, and other similarly situated companies. The Department’s TNC Agreements allow each company’s approved drivers access to designated Airport property in connection with the provision of transportation services for airport customers, employees, and passengers with their personal baggage. Subject to the terms of the TNC Agreements, TNCs are required (except in limited circumstances) to pick-up or drop-off passengers only on the Central Terminal Area upper departure level and are only allowed to use Airport property within the designated TNC airport assignment area and designated TNC staging areas at the Airport. The TNC Agreements are subject to termination by the Department upon 7 days’ notice by the Department or upon 30 days’ written notice by the TNC. Under the TNC Agreements, TNCs are required to pay the Department a monthly license fee equal to the greater of \$25,000 or the product of (i) the number of trips conducted by the TNC’s vehicles in one calendar month and (ii) the trip fee then in effect. The current trip fee approved by the Board is \$4.00 for each drop-off or pick-up at the Airport. The Department cannot predict the impact of TNCs on revenues from parking, other ground transportation services or rental cars. For Fiscal Year 2017, TNCs recorded nearly 7.5 million pick-ups/drop-offs at LAX resulting in approximately \$33.7 million in revenue for the Department.

### ***Food and Beverage Concessions***

The Department has entered into concession agreements with a number of food and beverage concessionaires for concessions at Terminals 4, 5, 7, 8 and the commuter facilities at LAX (the “Food and Beverage Concession Agreements”). The Food and Beverage Concession Agreements provide that the Department will receive from each concessionaire a concession fee equal to the greater of a minimum annual guaranty or a percentage of gross receipts. The aggregate minimum annual guaranty under the Food and Beverage Concession Agreements is approximately \$13.8 million. Under the Food and Beverage Concession Agreements, each concessionaire is required to make initial capital investments for initial improvements to such concessionaire’s premises, aggregating approximately \$37.9 million, and additional mid-term capital investments for refurbishment of the applicable premises, aggregating approximately \$7.5 million. Each food and beverage concessionaire is required to provide a performance guaranty in an amount equal to 25% of the applicable minimum annual guaranty. The Food and Beverage Concession Agreements are scheduled to expire in June 2023.

For Fiscal Year 2017, revenues to the Department at LAX for food and beverage concessions were approximately \$23.2 million. See “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Management Discussion of Fiscal Year 2017.”

### ***Retail Concessions***

The Department has entered into concession agreements with a number of retail concessionaires for concessions at Terminals 4, 5, 7 and 8 at LAX (the “Retail Concession Agreements”). The Retail Concession Agreements provide that the Department will receive from each concessionaire a concession fee equal to the greater of a minimum annual guaranty or a percentage of gross receipts. The aggregate minimum annual guaranty under the Retail Concession Agreements is approximately \$7.5 million. Under the Retail Concession Agreements, each concessionaire is required to make initial capital investments for initial improvements to such concessionaire’s premises, aggregating approximately \$10.8 million, and additional mid-term capital investments for refurbishment

of the applicable premises, aggregating approximately \$2.1 million. Each concessionaire is required to provide a performance guaranty in an amount equal to 25% of the applicable minimum annual guaranty. The Retail Concession Agreements are scheduled to expire in June 2023.

For Fiscal Year 2017, revenues to the Department at LAX from Retail Concession Agreements were approximately \$11.1 million. See “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Management Discussion of Fiscal Year 2017.”

## **FINANCIAL AND OPERATING INFORMATION CONCERNING LAX**

### **Summary of Operating Statements**

The following table summarizes the financial results from operations for LAX for Fiscal Years 2013 through 2017. See APPENDIX B-2 – “ANNUAL FINANCIAL REPORT OF LOS ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016.”

**TABLE 8**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**HISTORICAL OPERATING STATEMENTS**  
**(DOLLARS IN THOUSANDS)<sup>(1)</sup>**

	2013 <sup>(2)</sup>	2014 <sup>(2)</sup>	Fiscal Year 2015 <sup>(2)</sup>	2016 <sup>(2)</sup>	2017
Operating revenues:					
Aviation revenue					
Landing fees	\$ 216,359	\$ 222,608	\$ 227,518	\$ 238,491	\$ 260,971
Building rentals	257,251	315,764	365,296	462,667	493,382
Other aviation revenue <sup>(3)</sup>	84,934	90,154	95,042	102,766	105,599
Concession revenue	304,139	331,311	354,082	398,692	441,623
Airport sales and services	808	853	2,047	2,838	3,241
Other operating revenue	1,982	1,039	1,815	1,158	23,873 <sup>(8)</sup>
Total operating revenue	\$ 865,473	\$ 961,729	\$ 1,045,800	\$ 1,206,612	\$ 1,328,689
Operating expenses:					
Salaries and benefits	\$ 338,004	\$ 356,726	\$ 374,018	\$ 387,595	\$ 438,153 <sup>(9)</sup>
Contractual services	162,661	161,771	174,745	182,659	203,277
Administrative expense	1,126	(1,768) <sup>(4)</sup>	2,890	3,288	2,905
Materials and supplies	47,908	45,726	46,102	46,062	43,830
Utilities	32,472	39,089	38,355	36,181	36,043
Advertising and public relations	3,421	3,915	4,606	4,095	2,988
Other operating expenses	3,838	4,567	4,682	3,999	15,304 <sup>(10)</sup>
Total operating expenses before depreciation and amortization	\$ 589,430	\$ 610,027	\$ 645,398	\$ 663,879	\$ 742,500
Income from operations before depreciation and amortization	\$ 276,043	\$ 351,702	\$ 400,402	\$ 542,733	\$ 586,189
Depreciation and amortization	(134,500)	(141,795)	(178,035)	(226,439)	(298,176)
Operating Income	\$ 141,543	\$ 209,907	\$ 222,367	\$ 316,294	\$ 288,013
Non-Operating revenues/(expenses):					
Passenger facility charges	\$ 124,610	\$ 132,809	\$ 137,855	\$ 150,409	\$ 163,869
Customer facility charges	27,295	28,675	29,347	31,996	32,545
Interest income	25,231	20,413	20,327	19,638	23,327
Change in fair value of investments	(22,793) <sup>(5)</sup>	1,799	(2,021)	13,776	(20,738)
Other non-operating revenue <sup>(3)</sup>	12,067	11,122	8,618	17,985	15,743
Interest expense	(93,610)	(133,694)	(166,919)	(182,386)	(193,469)
Bond expense	(2,003)	(1,703)	(2,488)	(3,764)	(2,516)
Other non-operating expenses	(55)	(225)	(7,071) <sup>(6)</sup>	(3,026)	23
Net non-operating revenues/(expenses)	\$ 70,742	\$ 59,196	\$ 17,648	\$ 44,628	\$ 18,784
Income before capital grants, and inter-agency transfers	\$ 212,285	\$ 269,103	\$ 240,015	\$ 360,922	\$ 306,797
Federal grants	12,264	24,674	30,964	49,255	87,762
Inter-agency transfers	(2,126)	6,329	5,303	5,116	1,856
Transfer of residual operation from ONT	--	--	--	--	104,125 <sup>(8)</sup>
Change in net position	222,423	300,106	276,282	415,293	500,540
Net position, beginning of period	\$ 3,828,380	\$ 4,044,923	\$ 4,345,029	\$ 4,053,417	\$ 4,468,710
Change in accounting principle and removal of net pension obligation	(5,880)	--	(567,894) <sup>(7)</sup>	--	--
Net position, end of period	\$ 4,044,923	\$ 4,345,029	\$ 4,053,417	\$ 4,468,710	\$ 4,969,250

<sup>(1)</sup> Totals may not add due to rounding.

<sup>(2)</sup> Restated. Certain reclassifications have been made to conform to fiscal year 2017 presentation.

<sup>(3)</sup> Includes reimbursement of security-related expenses; TSA revenue pertaining to law enforcement officers and canines presented in non-operating revenue.

<sup>(4)</sup> Fiscal Year 2014 negative Administrative expenses primarily due to an adjustment of approximately \$4.7 million for allowance for uncollectible accounts. See Note 1 to APPENDIX B-2 - "ANNUAL FINANCIAL REPORT OF LOS ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016."

- <sup>(5)</sup> The annualized rates of return of the Treasury Pool reserve and core portfolio for Fiscal Year 2013 were approximately 0.15% and approximately 0.23% respectively, compared to prior Fiscal Year rates of approximately 2.38% and approximately 0.21%. The net change in investment rates was translated to the downward year end net adjustment of the fair value of investment securities.
- <sup>(6)</sup> Includes approximately \$6.948 million adjustment to Fund Balance.
- <sup>(7)</sup> Primarily comprised of the proportional allocation of the City's Net Pension Liability. See "THE DEPARTMENT OF AIRPORTS – Retirement Plan."
- <sup>(8)</sup> Fiscal Year 2017 Other Operating Revenue includes employee salary and overhead reimbursement of approximately \$21.0 million from OIAA pursuant to a Staff Augmentation Agreement. As described in Note 17 of the notes to the Annual Financial Report, the Department transferred the assets and liabilities of ONT to OIAA as contemplated by the ONT Settlement Agreement on November 1, 2016. As a result of the transfer, the Department recognized a transfer of residual operation from ONT of approximately \$104.1 million.
- <sup>(9)</sup> Fiscal Year 2017 salaries and benefits expense increased by approximately \$50.6 million or approximately 13.0% partially due to the inclusion of OIAA's salaries and benefits of approximately \$17.4 million subsequent to the OIAA transfer on November 1, 2016 as described in Note 17 of the notes to the Annual Financial Report.
- <sup>(10)</sup> Fiscal Year 2017 increase in other operating expense was mainly due to the accrual and payment of approximately \$3.7 million property taxes for the Park One parking lot pursuant to the lease covering the fiscal years from 2014 to 2017.

Source: Department of Airports of the City of Los Angeles.



## **Management Discussion of Fiscal Year 2017**

Total operating revenue at LAX for Fiscal Year 2017 was approximately \$1.3 billion, an increase of approximately \$122 million, or approximately 10.1%, from Fiscal Year 2016. Landing fee revenue at LAX for Fiscal Year 2017 was approximately \$260.9 million, an increase of approximately \$22.5 million, or approximately 9.4%, from Fiscal Year 2016. Building rental revenue at LAX for Fiscal Year 2017 was approximately \$493.4 million, an increase of approximately \$30.7 million, or approximately 6.6%, from Fiscal Year 2016. The increases in building rental revenue were primarily due to the improvements and refurbishments in the terminals, scheduled rate increases, and new and renegotiated leases signed with the airlines and other tenants. Concession revenue at LAX for Fiscal Year 2017 was approximately \$441.6 million, an increase of approximately \$42.9 million, or approximately 10.8%, from Fiscal Year 2016. The increases in concession revenue were due to a combination of an increase in TNC revenue as a result of a full year of TNC operations in Fiscal Year 2017 as compared to only six months operations in Fiscal Year 2016, increased international passenger levels which resulted in increased duty free revenues, and increased advertising revenues. Other operating revenue at LAX, including airport sales and services and other aviation and operating revenue, for Fiscal Year 2017 was approximately \$132.7 million, an increase of approximately \$25.9 million, or approximately 24.3%, from Fiscal Year 2016. The increase in other operating revenue was primarily due to employee salary reimbursement (including overhead costs) of approximately \$21.0 million from OIAA. The Department does not expect OIAA employee salary reimbursements to continue beyond August 1, 2018.

Operating expenses before depreciation and amortization at LAX for Fiscal Year 2017 were approximately \$742.5 million, an increase of approximately \$78.6 million, or approximately 11.8%, from Fiscal Year 2016. Salaries and benefit expenses at LAX for Fiscal Year 2017 were approximately \$438.1 million, an increase of approximately \$50.6 million, or approximately 13.0%, from Fiscal Year 2016. The increases in salaries and benefit expenses were partially due to the inclusion of ONT's salaries and benefits of approximately \$17.4 million subsequent to the ONT transfer on November 1, 2016, bargaining agreements with employee unions, recognition of GASB 68 non-cash pension expense (of approximately \$17.2 million) and increases in allowances for workers compensation claims. Contractual services expenses at LAX for Fiscal Year 2017 were approximately \$203.3 million, an increase of approximately \$20.6 million, or approximately 11.3%, from Fiscal Year 2016. The increases in contractual services expenses were primarily due to higher city services charges, higher legal services expenses, and higher operations and emergency management expenses. Materials and supplies expenses at LAX for Fiscal Year 2017 were approximately \$43.8 million, a decrease of approximately \$2.2 million, or approximately 4.8%, from Fiscal Year 2016. Other operating expenses at LAX, including administrative expenses, utilities, advertising and public relations and other operating expense, for Fiscal Year 2017 were approximately \$57.2 million, an increase of approximately \$9.7 million, or approximately 20.3%, from Fiscal Year 2016. The increase in other operating expense was mainly due to the accrual and payment of property taxes for the Park One parking lot.

For Fiscal Year 2017, the net position of the Department with respect to LAX was approximately \$4.97 billion, an increase of approximately \$500.5 million, or approximately 11.2%, from Fiscal Year 2016.

For Fiscal Year 2017, pursuant to GASB 68, a proportional allocation of the City's Net Pension Liability, together with other pension liability adjustments, in the aggregate amount of approximately \$761.2 million were allocated to the Department with respect to LAX. GASB 68 addresses the disclosure of pension liability only and does not impose any funding requirements. The Department expects that its contributions to LACERS and LAFPP will continue to increase, in amounts that may be significant.

### **Top Revenue Providers and Sources**

The following table sets forth the top ten revenue providers at LAX for Fiscal Year 2017.

**TABLE 9**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**TOP TEN REVENUE PROVIDERS**  
**FISCAL YEAR 2017**  
**(DOLLARS IN THOUSANDS)<sup>(1) (2)</sup>**

1.	American Airlines <sup>(3)‡</sup>	\$	144,405
2.	United Air Lines <sup>†</sup>		141,473
3.	Delta Air Lines <sup>*</sup>		119,938
4.	DFS Group		73,982
5.	Southwest Airlines		65,613
6.	Tom Bradley Int'l Terminal Equipment		47,749
7.	Westfield		47,030
8.	Alaska Airlines <sup>(4)</sup>		33,256
9.	JCDecaux		29,521
10.	Rasier <sup>(5)</sup>		25,407

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\* Member of Sky Team Alliance.

† Member of Star Alliance.

‡ Member of One World Alliance.

(1) Excludes revenue from the federal government. The amounts in this table reflect those amounts billed by the Department to the applicable revenue providers as of June 30, 2017. Excludes rental credits, if any.

(2) For airlines that (i) were party to a completed merger or acquisition, (ii) have received a single FAA certificate and (iii) have completed operational integration, only the surviving entity is presented and the activities for the airlines that are now a part of the surviving airline are included in the information presented.

(3) Includes SkyWest and Compass Airlines as American Eagle/Envoy Air.

(4) On April 1, 2016, Alaska Air Group, Virgin America, and Merger Sub, entered into the Merger Agreement, pursuant to which, subject to satisfaction or waiver of the conditions therein, Alaska Air Group will acquire Virgin America by means of a Merger. The Merger was completed on December 14, 2016. A single operating certificate for Virgin America and Alaska Air Group was issued by the FAA on January 11, 2018, however data for the respective airlines are being presented separately until Fiscal Year 2018 data is available.

(5) Doing business on the Uber app.

Source: Department of Airports of the City of Los Angeles.

The following table sets forth top ten revenue sources at LAX for Fiscal Year 2017.

**TABLE 10**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**TOP TEN REVENUE SOURCES**  
**FISCAL YEAR 2017<sup>(1)</sup>**  
**(DOLLARS IN THOUSANDS)**

1.	Terminal Rentals	\$ 436,381
2.	Landing Fees	260,971
3.	Land Rentals <sup>(2)</sup>	98,563
4.	Auto Parking	96,697
5.	Rental Cars <sup>(3)</sup>	87,433
6.	Food, Beverage, Gift, News and Terminal Commercial Managers	77,555
7.	Duty Free Sales	76,066
8.	Other Building Rentals <sup>(4)</sup>	57,001
9.	Transportation Network Companies	33,678
10.	Advertising	27,977

<sup>(1)</sup> The amounts in this table reflect those amounts received by the Department from the applicable revenue sources as of June 30, 2017.

<sup>(2)</sup> Consists primarily of rental revenue derived from the ancillary land facilities at LAX.

<sup>(3)</sup> Excludes Customer Facility Charges which are not included in Pledged Revenues.

<sup>(4)</sup> Consists primarily of rental revenue derived from cargo, maintenance and other building facilities at LAX.

Source: Department of Airports of the City of Los Angeles.

## **Budgeting Process**

Each year, Department Management submits the Department's proposed budget to the Board for adoption. The final budget is adopted by the Board prior to the beginning of the fiscal year. The Chief Executive Officer of the Department also submits the Department's proposed budget to the Mayor for informational purposes only, and for information purposes only, the Mayor includes the Department's proposed budget as a part of the overall City budget. Neither the Mayor nor the City Council may amend or otherwise change the adopted budget; however, see "THE DEPARTMENT OF AIRPORTS – Oversight." Department Management expects to submit a Fiscal Year 2019 LAX Operating Budget to the Board in June 2018. There can be no assurances whether the Fiscal Year 2019 LAX Operating Budget will materially deviate from the Fiscal Year 2018 LAX Operating Budget (described below) or whether the Board will approve the Fiscal Year 2019 LAX Operating Budget as and when presented. Certain of the Department's payment obligations under the DBFOM Agreement (e.g., APM Operations and Maintenance Payments), like the Department's other contractual obligations, are subject to the Board approving the appropriation of funds required for the DBFOM Agreement and the annual budgeting process described herein. See also, "AIRPORT AND CAPITAL PLANNING – The Automated People Mover System – The Automated People Mover Agreement."

### ***Fiscal Year 2018 Budget***

Department management developed the Fiscal Year 2018 LAX Operating Budget after considering a number of factors including recent years' operating revenue and expense trends, LAX passenger traffic projections, the Department's capital projects, including the issuance of additional debt to finance the Department's capital projects, and other Departmental goals. Staff from each of LAX's divisions prepared and submitted their preliminary budgets within the constraints defined by budget staff and submitted additional requests for review in January 2017. Budget hearings were conducted in February and March 2017 with Operating Budget staff and the Department's deputy executive directors to discuss past trends and changes in future needs. The Department's executive management reviewed the resulting budget and additional requests and made adjustments based on expenditure priority and operational need. The Board formally adopted the Fiscal Year 2018 Operating Budget in June 2017.

The Fiscal Year 2018 LAX Operating Budget projects operating revenues of approximately \$1.4 billion, approximately 5.6% higher than budgeted in the Fiscal Year 2017 LAX Operating Budget. The Department projects LAX aviation revenues of approximately \$928.6 million, approximately 4.9% higher than budgeted in the Fiscal Year 2017 LAX Operating Budget. As a significant portion of LAX aviation revenues are derived through cost

recovery formulas used in calculation of airfield and terminal rates and charges, the Department projects higher LAX aviation revenues due to, among other things, increased operating expenses and debt service in the airfield and terminal cost centers. The Fiscal Year 2018 LAX Operating Budget projects non-aviation operating revenues of approximately \$457.7 million, approximately 6.9% higher than budgeted in the Fiscal Year 2017 LAX Operating Budget, as redeveloped terminal concessions, entry of transportation network companies and increased levels of passenger traffic contribute to greater terminal concession and ground transportation revenues. The Fiscal Year 2018 LAX Operating Budget projects operating expenses of approximately \$790.9 million, approximately 6.2% higher than the Fiscal Year 2017 LAX Operating Budget. The Fiscal Year 2018 LAX Operating Budget does not include appropriations for the Capital Program or other capital improvement projects. Department Management will be required to seek approval from the Board for appropriations of funds for certain projects on a project-by-project basis. See “AIRPORT AND CAPITAL PLANNING.” Under the Fiscal Year 2018 LAX Operating Budget, the Department has budgeted approximately \$442.8 million for salaries, benefits and other payroll expenses for the Department’s employees at LAX (representing an increase of approximately 4.4% from the Fiscal Year 2017 LAX Operating Budget) and approximately \$70.1 million for payments to the City for fire service, supplemental police assistance and other support services and personnel costs at LAX. Amounts budgeted for these expenses represent approximately 64.9% of the Department’s operating budget at LAX for Fiscal Year 2018. Personnel increases are attributable to additional resources to manage increasing vehicular traffic and passenger volume and supplemental staffing to provide operational support to effectively manage the delivery of the Capital Program. Contractual services, including payments for services provided by the City, as discussed above, are budgeted in the Fiscal Year 2018 LAX Operating Budget at approximately \$230.8 million (representing an increase of approximately 10.5% from the Fiscal Year 2017 LAX Operating Budget). See also “THE DEPARTMENT OF AIRPORTS – Employees and Labor Relations” and “—Retirement Plan.” The following table sets forth a summary of the operating budget at LAX for Fiscal Year 2018.

**TABLE 11**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**SUMMARY OF OPERATING BUDGET**  
**FISCAL YEAR 2018<sup>(1)</sup>**  
**(DOLLARS IN MILLIONS)**

Operating revenues:	
Aviation revenue	
Landing fees	\$ 276.5
Building rentals	543.0
Land rentals	100.2
Other aviation revenue	8.9
Concession revenue	452.0
Airport sales and services	3.7
Miscellaneous revenue	2.1
Total operating revenue	<u>\$ 1,386.3</u>
Operating expenses:	
Salaries and benefits	\$ 442.8
Contractual services	230.8
Materials and supplies	52.5
Utilities	42.7
Advertising and public relations	3.9
Other operating expenses	18.2
Total operating expenses	<u>\$ 790.9</u>
Income from operations before depreciation and amortization	\$ 595.4

<sup>(1)</sup> Totals may not add due to rounding.  
Source: Department of Airports of the City of Los Angeles.

## Debt Service Coverage

The following table shows historical debt service coverage on the Senior Bonds and the Subordinate Obligations for Fiscal Years 2013 through 2017.

**TABLE 12**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**HISTORICAL DEBT SERVICE COVERAGE**  
**FISCAL YEARS 2013-2017<sup>(1)</sup>**  
**(DOLLARS IN THOUSANDS)**

	2013	2014	2015	2016	2017
Pledged Revenues <sup>(2)</sup>					
Total Operating Revenues <sup>(3)</sup>	\$ 865,473	\$ 961,729	\$ 1,045,800	\$ 1,206,612	\$ 1,328,689 <sup>(10)</sup>
Interest Income <sup>(4)</sup>	1,400	10,189	9,700	18,313	3,139
Build America Bonds Subsidy <sup>(5)</sup>	7,965	7,728	7,719	7,761	7,613
Non-Operating TSA Revenue <sup>(3)</sup>	1,253	5,012	2,895	2,139	3,287
Total Pledged Revenues	\$ 876,091	\$ 984,658	\$ 1,066,114	\$ 1,234,825	\$ 1,342,728
LAX Maintenance and Operations Expenses <sup>(6)</sup>	(587,948)	(608,722)	(645,091)	(660,656)	(725,190) <sup>(10)</sup>
Net Pledged Revenues <sup>(7)</sup>	\$ 288,143	\$ 375,936	\$ 421,023	\$ 574,169	\$ 617,538
Senior Bond Aggregate Annual Debt Service <sup>(8)</sup>	\$ 45,486	\$ 62,560	\$ 110,237	\$ 92,210	\$ 131,059
Senior Bond Debt Service Coverage Ratio	6.33x	6.01x	3.82x	6.23x	4.71x
Subordinate Obligations Debt Service <sup>(9)</sup>	\$ 49,904	\$ 52,067	\$ 55,439	\$ 62,305	\$ 82,063
Subordinate Obligations Debt Service Coverage Ratio	4.86x	6.02x	5.61x	7.74x	5.93x
Total Debt Service Coverage Ratio	3.02x	3.28x	2.54x	3.72x	2.90x

<sup>(1)</sup> Derived from unaudited financial statements.

<sup>(2)</sup> As defined in the Senior Indenture.

<sup>(3)</sup> TSA Revenue – Law Enforcement Officers and Canine reclassified from Operating Revenue to Non-Operating Revenue.

<sup>(4)</sup> Interest income excludes interest income from PFC revenues, Customer Facility Charges and construction funds.

<sup>(5)</sup> Represents cash subsidy payments from the United States Treasury received in connection with the Series 2009C Subordinate Bonds and the Series 2010C Subordinate Bonds. See “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Federal Funding; Impact of Federal Sequestration.”

<sup>(6)</sup> As defined in the Senior Indenture. Excludes depreciation and expenses of LAX payable from sources other than Pledged Revenues.

<sup>(7)</sup> As defined in the Senior Indenture. Equals Pledged Revenues less LAX Maintenance and Operations Expenses.

<sup>(8)</sup> Net of approximately \$34.4 million, \$96.5 million, \$91.0 million, \$124.0 million and \$118.0 million of PFC revenues used in Fiscal Years 2013, 2014, 2015, 2016 and 2017, respectively to pay debt service on Senior Bonds. Presentations of the use of PFC revenues to pay debt service on Senior Bonds in this table differ from those in the audited financial statements of the Department due to differences in accounting practices.

<sup>(9)</sup> Also includes actual debt service with respect to the Subordinate Commercial Paper Notes.

<sup>(10)</sup> See Table 8 and “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Management Discussion of Fiscal Year 2017” regarding changes in Total Operating Revenues and LAX Maintenance and Operations Expenses, respectively.

Source: Department of Airports of the City of Los Angeles.

## Investment Practices of the City Treasurer

All moneys held in the Airport Revenue Fund are currently invested by the City Treasurer in investments authorized by State law. The City Treasurer invests temporarily idle cash for the City, including that of the Department, as part of a pooled investment program (the “Pool”) which combines general receipts with special funds for investment purposes and allocates interest earnings on a pro rata basis when the interest is earned and distributes interest receipts based on the previously established allocations. Below is a summary of assets of the Pool as of June 30, 2017:

**TABLE 13**  
**CITY OF LOS ANGELES POOLED INVESTMENT FUND<sup>(1)</sup>**  
**ASSETS AS OF JUNE 30, 2017**  
**(Dollars in Millions)**

<b>Description</b>	<b>Market Value<sup>(2)</sup></b>	<b>% of Total</b>	<b>Department Market Value<sup>(3)</sup></b>	<b>LAX Market Value<sup>(4)</sup></b>
Bank Deposits	\$ 274	3.0%	\$ 55	\$ 55
Commercial Paper	1,183	12.9	237	236
Corporate Notes	190	2.1	38	38
U.S. Federal Agencies/Munic/Supras	821	8.9	164	164
Total Short-Term Core Portfolio:	\$ 2,468	26.8	\$ 494	\$ 493
Corporate Notes	1,250	13.6	251	250
U.S. Federal Agencies/Munic/Supras	684	7.4	137	137
U.S. Treasuries	4,722	51.4	946	943
Asset-Backed Securities	70	0.8	14	14
Total Long-Term Reserve Portfolio	\$ 6,726	73.2	\$ 1,348	\$ 1,344
Total Cash & Pooled Investments	\$ 9,194	100.0%	\$ 1,842	\$ 1,837

(1) Derived from unaudited financial statements; based on General Portfolio Asset Holdings provided by the Office of Finance.

(2) Total amount held by the City in the Pool, including the funds of other departments.

(3) The Department's share of the Pool, including restricted assets; allocated by Financial Reporting Division of the Department.

(4) Inclusive of restricted cash; fund not segregated from other funds in the Pool; allocated by Financial Reporting Division of the Department.

Source: Office of Finance, City of Los Angeles and Department of Airports of the City of Los Angeles, California.

The average life of the investment portfolio in the Pool as of June 30, 2017 was approximately 2.0 years.

The City's treasury operations are managed in compliance with the California State Government Code and a statement of investment policy which sets forth permitted investment vehicles, liquidity parameters and maximum maturity of investments. The City Treasurer indicates that the City does not invest in structured and range notes, securities that could result in zero interest accrual if held to maturity, variable rate, floating rate or inverse floating rate investments and mortgage-derived interest or principal-only strips. See also Note 3 – APPENDIX B-2 – “ANNUAL FINANCIAL REPORT OF LOS ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016.”

### **Risk Management and Insurance**

The Senior Indenture requires that the Department maintain insurance or qualified self-insurance against such risks at LAX as are usually insured at other major airports, to the extent available at reasonable rates and upon reasonable terms and conditions. The Department is not required under the Senior Indenture to carry insurance against losses due to seismic activity and has obtained a waiver of insurance from FEMA and the State Department of Insurance, which means that the Department would be eligible for reimbursement as and if available from FEMA in the event of earthquake losses. The Department has purchased insurance to cover catastrophic property, flood, wind and earthquake losses up to \$25 million. The deductible for this coverage is 5% per insured structure. The Department is self-insured for these catastrophic losses in excess of \$25 million.

The Department carries commercial aviation general liability insurance with coverage limits of \$1.3 billion for losses arising out of liability for airport operations. The deductible on the commercial aviation liability coverage is \$10,000 per occurrence with an annual \$500,000 aggregate deductible. This aviation liability coverage incorporates a foundation of comprehensive in-house claims management program, incremental claims analysts and adjusters and both outside and inside defense counsel. The liability coverage has endorsements of coverage for all third-party claims and suits, on premises automobile coverage, employment personal injury coverage, errors and omissions coverage and hangar and aircraft owner's liability coverage.

The Department carries general all-risk property insurance with coverage limits of \$2.5 billion for all Department properties. The deductible on this coverage is \$100,000 per occurrence, no aggregate. The Department's insurance also incorporates a property insurance special endorsement that provides coverage for property losses resulting from acts of terrorism for declared foreign acts of terrorism. Coverage under this endorsement parallels the general all-risk limits of \$2.5 billion. The Department's insurance coverage also incorporates a property insurance special endorsement that provides for coverage for "boiler and machinery" losses up to a covered limit of \$250 million and property insurance special endorsement that provides coverage for "business interruption" losses to the Airport System resulting from a covered property peril. Coverage for business interruption is included with full policy limits of \$525 million and the deductible is 6 hours from initial declared interruption.

The Department has also purchased a war and allied perils (also referred to as terrorism insurance) endorsement with coverage of up to \$1.0 billion with a deductible of \$10,000 per occurrence and an annual \$500,000 aggregate deductible. War and allied perils coverage extends to both foreign acts of terrorism and domestic acts of terrorism. Coverage under the War and Allied Perils endorsement may be terminated at any time by the underwriters and terminates automatically upon the outbreak of war (whether there has been a declaration of war or not) between any two or more of the following: France, the People's Republic of China, the Russian Federation, the United Kingdom or the United States, and certain provisions of the endorsement are terminated upon the hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force.

The Department maintains an insurance reserve fund, pursuant to Board policy. This fund has been established to fund uninsured or under-insured losses or where insurance capacity is unavailable or excessive in cost relative to coverage. This reserve fund would provide primary funding for catastrophic losses with respect to all three airports in the Airport System. As of May 1, 2018, there was approximately \$114.7 million in this fund.

Pursuant to the State Labor Code, the State Department of Industrial Relations has provided the City a Certificate of Consent to Self-Insure in connection with its workers' compensation liability. See Note 10 to APPENDIX B-2 – "ANNUAL FINANCIAL REPORT OF LOS ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016." Additionally, the Department annually conducts a comprehensive review of its active loss prevention program and risk profile for both general liability and property/casualty perils. This on-going program seeks to identify, eliminate or mitigate the loss or peril before it becomes a loss or claim. This review of its program may include benchmarking surveys with other similar domestic U.S. airports as well as examination of probable loss expectancy, exposure studies that incorporate past losses and statistical probabilities of future losses. The results of such reviews are used to establish insurance for coverage perils and limits of coverage.

## **AIRPORT AND CAPITAL PLANNING**

The Department is undertaking a multi-billion dollar capital development program at LAX. The following is a discussion of the Department's capital development program (see "—Capital Development") and certain sources of financing (see "—Financing the Capital Program").

### **Capital Development**

The Department reviews and assesses capital needs biennially on a formal basis, and continuously on an informal basis, taking into account improved information regarding the condition and/or requirements of new and existing facilities, updated cost estimates for contemplated projects, new opportunities for investments or acquisitions that arise from time to time, current and forecast traffic levels, and changes within the industry that may influence the cost of the Department's capital development projects.

The Department manages its capital development planning with a variety of tools, including a multi-year comprehensive planning tool (the "Capital Improvement Program"), which, among other things, is a list of capital development projects compiled based on prioritized needs and affordability, is used to inform decision makers and stakeholders of proposed capital expenditures and opportunity costs, and is designed to assist with the development of long term funding plans. The Capital Improvement Program is designed to be updated periodically as capital projects are programmed for implementation. The Board's periodic review of the Capital Improvement Program does not constitute project or program approval of appropriations for their funding. Capital development projects require specific Board action and may require environmental review.

The Department's capital development projects include various terminal projects, airfield and apron projects, access projects and other projects, to, among other things, modernize terminals, make long-term improvements to passenger access, and accommodate contemporary and future aircraft designs, all to address forecast passenger growth. The Department is employing various strategies (including, among others, the design-build-finance-operate-maintain arrangements described under the captions "– The Automated People Mover System" and "– Certain Other Projects;" design-bid-build arrangements; design-build arrangements; and terminal acquisitions described under the caption "AIRPORT AND CAPITAL PLANNING – Department Acquisition of Certain Terminal Improvements; Credits) to design, build and finance multiple facilities concurrently while prudently managing risk.

#### ***LAX Landside Access Modernization Program***

To continue the extensive upgrading and modernization of LAX and to address increasing levels of traffic congestion at and around LAX, the Department is working to redevelop the ground access system to LAX. As part of the overall modernization of LAX, the Department has proposed to implement the LAX Landside Access Modernization Program ("LAMP") to, among other things, improve access options and the travel experience for passengers; shift the location where different modes of traffic operate within the CTA and on the surrounding street network; and provide a direct connection to the Los Angeles County Metropolitan Transportation Authority ("Metro") rail and transit system. By implementing LAMP, the Department seeks to provide more travel time certainty, reduce traffic congestion and improve air quality in and around LAX. LAMP includes several individual components, including, among others, the APM System, intermodal transportation facilities, the CONRAC, pedestrian walkway connections to the passenger terminals within the CTA, and roadway improvements. Upon implementation, the APM System would offer passengers an opportunity to bypass the existing roadway loop in the CTA. Departing passengers would be able to access the APM System from the intermodal transportation facilities, the CONRAC, or future Metro station.

#### ***The Capital Program and Other Projects***

The Department's capital development projects and plans are organized into the following categories for purposes of discussion in this Appendix.

- The Department's "Capital Program" which includes (1) projects already underway but not yet completed at LAX, and (2) future projects forecast to be completed within the Department's current planning horizon. The Capital Program includes those projects that are certain enough in terms of their scope, cost, approval, funding sources and/or other commercial arrangements, if any, to be included in a forecast, including the APM System. Certain Capital Program projects are subject to further planning efforts, environmental approvals, and/or necessary Board or other required approvals.

The Department plans to undertake certain Capital Program projects, or portions thereof, if demand at LAX warrants and such projects meet Department financial benchmarks, which may include the availability of moneys from expected funding sources, market conditions, proposed capital structures for design-build-finance-operate-maintain arrangements, airline costs per enplaned passenger, debt service coverage considerations and such other matters and may be determined from time to time.

- "Other Projects" which include projects that are being considered by the Department to, among other things, address current challenges to landside access at LAX. However, as of the date of this Appendix, the specific scopes, costs, approvals, funding sources, and/or commercial arrangements have not advanced sufficiently to permit the Department to fully estimate the costs, funding plans and commercial arrangements for purposes of the financial forecasts provided to investors. Large components of the Other Projects may include, for example, the CONRAC; additional or replacement terminal facilities and passenger airline gates; and certain other infrastructure and Airport development projects including but not limited to future pick-up and drop-off locations for commercial vehicles that currently access the Central Terminal Area on adjacent roadways and parking facilities for passengers and employees; and certain parking projects to support these potential projects

The Department is in the process of defining, planning and/or undertaking environmental review of certain of the Other Projects. While these Other Projects proceed through various stages of definition, each of the Other Projects remains subject to substantial changes including in scope, timing of implementation, cost, funding (including defining the funding sources, lien for priorities for any debt financing and other elements of the funding mix) and approvals.



See “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Delays and Cost Increases; Future Capital Projects; Additional Indebtedness” for a discussion of certain additional factors that may impact the delivery and financing of the Capital Program and Other Projects.

*The “Capital Program” for the purposes of this Appendix does not include any Other Projects.*

## **Financing the Capital Program**

### ***Capital Program Costs***

In connection with the Department’s Official Statements for its most recent issuances of Senior Bonds and Subordinate Bonds, WJ Advisors LLC (the “Airport Consultant”) prepared a Report of the Airport Consultant dated February 21, 2018 (the “Report of the Airport Consultant”). The Report of the Airport Consultant includes, among other things, descriptions and/or analysis of the Capital Program and funding thereof and forecasts of Department debt service through Fiscal Year 2024. The Department’s most recent Official Statement dated March 21, 2018 and the Report of the Airport Consultant prepared in connection therewith included a forecast of the Capital Program, which at that time was expected to cost approximately \$9.6 billion in the aggregate.

Neither of the aforementioned Official Statements nor the Report of the Airport Consultant is incorporated into this Appendix. The Report of the Airport Consultant has not been updated, nor has the Department obtained any third party reports, for purposes of this Appendix or the Official Statement.

On May 3, 2018, Department staff presented a report to the Board regarding, among other things, the intention of Department staff to bring additional capital projects for Board consideration, and to add such capital projects to future forecasts. As of the date of the Board presentation, Department staff estimated that the cost of these additional projects may be up to \$2.3 billion in the aggregate and that such additional projects would be expected to be funded with approximately \$1.5 billion in proceeds from future Additional Senior Bonds or Additional Subordinate Obligations, with the balance from Department funds. Cost estimates include permitting, entitlement, design, engineering, construction, escalation for inflation and contingency amounts.

Overall, the Capital Program is expected to be financed with a combination of grants, PFC revenues, Department and other funds, the proceeds of Existing Senior Bonds and Existing Subordinate Bonds and Additional Senior Bonds and/or Additional Subordinate Obligations, and may be financed with the proceeds of Third Lien Obligations. Some or all of the funding sources for certain projects of the Capital Program have already been secured, although certain TSA and AIP grants and approvals for passenger facility charge collections have not yet been realized. The estimated costs of, and the projected schedule for, the Capital Program are subject to a number of uncertainties. In addition, it is possible that the Department may pursue projects not incorporated in the Capital Program. The Department may ultimately decide not to proceed with certain Capital Projects or may proceed with them on a different schedule, resulting in different results than those included in financial forecasts.

See “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Delays and Cost Increases; Future Capital Projects; Additional Indebtedness,” and “USE OF AIRPORT FACILITIES – Airport Terminal Tariff.”

### ***Grants***

A portion of the Capital Program is expected to be financed with federal and other grants. Projects included in the Capital Program are expected to be financed from AIP and TSA grants in the amount of approximately \$211.8 million. See “CERTAIN FUNDING SOURCES – Grants.”

### ***Passenger Facility Charges***

A portion of the Capital Program is expected to be financed with PFC revenues on a pay-as-you-go basis in the amount of approximately \$261.5 million. See “CERTAIN FUNDING SOURCES – Passenger Facility Charges” for additional information about the Department’s expected use of PFC revenues.

### ***Department and Other Funds***

A portion of the Capital Program is expected to be financed with Department funds, funds deposited in the TRIF pursuant to the Rate Agreements, grants other than AIP and TSA grants, airline and other tenant contributions and other Department revenue sources. Projects included in the Capital Program are expected to be financed from Department funds and other funds including grants other than AIP and TSA grants in the amount of approximately \$3.9 billion. See “USE OF AIRPORT FACILITIES,” “CERTAIN FUNDING SOURCES,” and “FINANCIAL

AND OPERATING INFORMATION CONCERNING LAX” for additional information about the Department funds available for funding the Capital Program

### ***Debt Financing***

A portion of the Capital Program project costs are expected to be financed with approximately \$7.5 billion of proceeds of Senior Bonds and Subordinate Obligations, as described below, approximately:

- \$1.7 billion of proceeds of previously issued Senior Bonds and Subordinate Obligations; and
- \$5.8 billion of proceeds of Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations.

### **The Automated People Mover System**

#### ***The Automated People Mover Agreement***

On April 11, 2018 the Department and LAX Integrated Express Solutions, LLC (the “APM Developer”), which is comprised of Fluor Enterprises, Inc., Balfour Beatty Investments, Inc., ACS Infrastructure Development, Inc., HOCHTIEF PPP Solutions GmbH, and Bombardier Transportation (Holdings) USA Inc., among others, entered into a Design-Build-Finance-Operate-Maintain Agreement (the “DBFOM Agreement”) for the purposes of developing, financing, operating and maintaining of an automated people mover (“APM”) system at LAX (collectively, the “APM System”). The Department’s objectives for the APM System include, among others, improving the passenger experience at LAX; reducing traffic congestion in and around LAX; connecting LAX to regional public transportation infrastructure, including rail, roadways and buses; and manage lifecycle costs of the APM System. Under the DBFOM Agreement, the Department grants the APM Developer the exclusive right, during a 30 year term, to design, build, finance, operate and maintain the APM System.

The DBFOM Agreement provides that the APM Developer will be entitled to receive a series of milestone payments from the Department as partial compensation for the APM Developer’s performance of the work required to design and construct the APM System (each such payment, a “Milestone Payment”), the APM Capital Availability Payments and the APM Operations and Maintenance Payments. For additional information regarding the DBFOM Agreement, the Milestone Payments, the APM Capital Availability Payments and the APM Operations and Maintenance Payments, see the forepart of this Official Statement.

In addition to the foregoing, and for the purposes of the Department’s financial forecasting, the Department has assumed, that, among other things:

- Milestone Payments will be funded with the proceeds of Additional Subordinate Bonds.
- APM Capital Availability Payments will be (i) treated as unsecured obligations of the Department and will be payable after: LAX Maintenance and Operation Expenses; obligations related to the Senior Bonds, the Subordinate Obligations and any Third Lien Obligations; and deposits into the LAX Maintenance and Operation Reserve Account (or funded NINTH under the Flow of Funds) and (ii) funded from, among other sources, airline rates and charges, PFC revenues, Customer Facility Charge revenues, certain rental car revenues and other remaining nonairline revenues.
- APM Operations and Maintenance Payments will be treated as LAX Maintenance and Operation Expenses under the Master Senior Indenture.
- Pledged Revenues will increase due to, among other things, the Department’s ability, through the Rate Agreement, to charge the Signatory Airlines for, among other things, the recovery of certain types of capital costs or operations and maintenance expenses associated with the APM System and that, following completion of the APM System a significant portion of the APM System operating expenses and capital costs would be allocable to airline cost centers.
- The Department may seek and obtain approval from the FAA to impose additional passenger facility charges and use certain of those PFC revenues to pay a portion of PFC-eligible expenditures related to annual APM System capital costs.
- Customer Facility Charge collections in excess of Customer Facility Charge amounts required to pay the capital costs for the CONRAC, if any, will be made available to pay certain capital costs of the APM

System and the CTS Contribution (as defined below) will be available to pay capital and operating costs of the APM system.

There can be no assurances whether the Department estimates and expectations will be attained.

In connection with the Board approval of the Department's entry into the DBFOM Agreement, the Board also approved a long-term appropriation of Department funds for the payment of the Milestone Payments and the APM Capital Availability Payments for the duration, and subject to the terms, of the DBFOM Agreement. Generally, the Milestone Payments and the APM Capital Availability Payments represent the capital costs associated with the construction and maintenance of the APM System. With regard to the Department's other payment obligations under the DBFOM Agreement (e.g., APM Operations and Maintenance Payments), the Department expects that each year it will budget and seek approval from the Board for the payment of those amounts through the annual budgeting process, as the Department regularly does for those other contractual obligations requiring the Board's approval, as described under the caption "FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Budgeting Process."

See "CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Delays and Cost Increases; Future Capital Projects; Additional Indebtedness." For more information regarding the DBFOM Agreement and the APM System, see the forepart of this Official Statement and APPENDIX D-5— "SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT". The information referenced in the preceding sentence has been provided by the APM Developer. The Department has not reviewed or approved, is not responsible for, and makes no representation, warranty or certification as to the adequacy or accuracy of, is relying upon, and has not independently confirmed or verified, the accuracy or completeness of, such information or the other information incorporated by reference therein.

### **Certain Other Projects**

Large components of the Other Projects (and thus not part of the Capital Program described) above may include, for example, proposed landside projects at LAX including the CONRAC; additional or replacement terminal facilities and passenger airline gates; and certain other infrastructure and airport development projects including but not limited to other future pick-up and drop-off locations for commercial vehicles that currently access the Central Terminal Area on adjacent roadways and parking facilities for passengers and employees; and certain parking projects to support these potential projects. The Department's initial order of magnitude estimates of costs of the Other Projects related to the landside access modernization, if undertaken, are in the range of approximately \$1.4 billion to approximately \$1.8 billion. The Department is unable to accurately estimate the costs related to the Other Projects consisting of other terminal and infrastructure improvements at this time, but the potential costs of such projects, if undertaken, are likely significant.

The cost (including defining the funding sources, lien for priorities for any debt financing and other elements of the funding mix), scope, and timing for the Other Projects are uncertain, and associated financial impacts have not been included in any financial forecast. The actual and total costs (including defining the funding sources, lien for priorities for any debt financing and other elements of the funding mix) of any such projects are not known at this time. If additional projects are undertaken and other financing sources are not available, the Department may issue Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations, to finance such projects, and may elect to divert financial and other resources to such projects. As a result, actual results could differ materially from a financial forecast.

Potential sources of funding for these Other Projects may include some or all of the following: (i) Federal funds, (ii) PFC revenues (for any portion of these Other Projects that may become an Approved PFC Project), (iii) Customer Facility Charges or debt supported by Customer Facility Charges, (iv) net proceeds of LAX Special Facility Obligations, (v) net proceeds of Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations, (vi) Department funds, (vii) funds from developers and/or derived from a design-build-finance-operate-maintain arrangement or variant thereof, (viii) funds derived from concession agreements with developers, under which the developer concessionaires may pay rent plus a percentage of revenues derived from the applicable facility, if any, and/or (ix) other sources.

The estimated costs of and the projected schedule for these Other Projects are subject to a number of uncertainties and may be updated from time to time. The ability of the Department to complete these Other Projects may be adversely affected by various factors including: (i) estimating variations, (ii) design and engineering variations, (iii) changes to the scope, scheduling or phasing of the projects, (iv) delays in contract awards, (v)

material and/or labor shortages, (vi) unforeseen site conditions, (vii) adverse weather conditions, earthquakes or other casualty events, (viii) contractor defaults, (ix) labor disputes, (x) unanticipated levels of inflation, (xi) inability of concessionaires, airlines, developers or other transaction participants to obtain financing, (xii) environmental issues, and (xiii) bidding conditions through the Department's procurement process. No assurance can be made that these Other Projects will not cost more than the Department's initial order-of-magnitude cost estimates. Schedule delays or cost increases could result in the need to issue Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations, the expenditure of additional Department funds, the diversion of financial and other resources to such projects and may result in increased costs to the airlines operating at the Airport.

See "CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Delays and Cost Increases; Future Capital Projects; Additional Indebtedness" for a discussion of certain additional factors that may impact the delivery and financing of the Other Projects.

### *The CONRAC*

While the CONRAC is an Other Project and has not advanced sufficiently to permit the Department to finalize the estimate of costs, funding plans and commercial arrangements for purposes of financial forecasting, the agreements related to the CONRAC and the potential funding sources therefor, are important components for the plan of finance for certain Capital Projects. See "—The Automated People Mover System."

The Department has agreed to a series of substantially similar non-binding memoranda of understanding (the "Rental Car MOUs") with a number of rental car companies serving the Airport with respect to, among other things, the proposed development of the CONRAC and the negotiation of a concession and lease agreement (the "Proposed CLA"). Under the Rental Car MOUs, the terms of the Proposed CLA would facilitate the delivery by the Department of the CONRAC and operationally necessary related improvements using a design-build-finance-operate-maintain arrangement (the "CONRAC Development Agreement") with a third-party developer (the "CONRAC Developer").

The Rental Car MOUs contain a proposed plan of finance for the CONRAC that contemplates that the CONRAC costs will be paid from, among other things, the adoption and collection of a Customer Facility Charge at a rate charged on a per-day basis up to \$9 per day (for up to 5 days) which rate is expected to take effect on July 1, 2022 or sooner. This preliminary plan of finance also contemplates the potential issuance of CONRAC Special Facility Bonds. That portion of the APM System that is attributable to the CONRAC is referred to as the common-use transportation system (the "CTS"). Generally, under the Rental Car MOUs it is contemplated that Customer Facility Charge revenues will be used to make the CONRAC Milestone Payments (as defined below) and any debt service payments with respect to CONRAC Special Facility Bonds. Under the Rental Car MOUs, upon completion of construction of the CONRAC, the rental car companies, subject to the terms of the Proposed CLA, would also be required to pay to the Department certain CTS costs to pay a portion of the cost of the APM System (the "CTS Contribution"), privilege fees and rent, CONRAC operation and maintenance costs and tenant improvement costs.

On April 25, 2018, the Department issued its final CONRAC Developer Request for Proposals (the "CONRAC RFP"). The CONRAC RFP includes, among other things, a form of the CONRAC Development Agreement. Under the CONRAC Development Agreement, and subject to certain limitations in the CONRAC Development Agreement, the Department would grant to the CONRAC Developer the exclusive right, during a term, to design, build, finance, operate and maintain the CONRAC.

The proposed CONRAC Development Agreement provides that the CONRAC Developer will be entitled to receive a series of milestone payments from the Department as partial compensation for the CONRAC Developer's performance of the work required to design and construct the CONRAC (each such payment, a "CONRAC Milestone Payment").

The proposed form of CONRAC Development Agreement further provides that upon the date of beneficial operation of the CONRAC (the "CONRAC Date of Beneficial Operation"), periodic payments will be made to the CONRAC Developer to compensate the CONRAC Developer for the costs of designing, building and financing a portion of the CONRAC ("CONRAC Capital Availability Payments") and for the cost of operating and maintaining the CONRAC ("CONRAC Operations and Maintenance Payments," together with CONRAC Capital Availability Payments, "CONRAC Availability Payments"). For financial planning purposes, the Department currently expects that (i) the CONRAC Milestone Payments will primarily be funded with proceeds of CONRAC Special Facility Bonds (payable, in whole or in part, from Customer Facility Charge revenues); (ii) the CONRAC Capital

Availability Payments will be funded from Customer Facility Charge revenues; and (iii) the CONRAC Operations and Maintenance Payments will be funded primarily from payments from the rental car companies under the CLAs.

Any CONRAC Development Agreement is subject to final negotiation over the next several months and subject to Board and City Council approval. There can be no assurances (i) that the Department and the CONRAC Developer will successfully negotiate the CONRAC Development Agreement, (ii) that the Board or the City Council will approve the CONRAC Development Agreement, or (iii) whether or when the CONRAC Development Agreement will be executed or whether the terms thereof as finally negotiated will vary from the description thereof contained in this Appendix.

Moreover, there can be no assurances (i) whether or when the Proposed CLAs will be executed or whether the terms thereof as finally negotiated will vary from the description thereof contained in this Appendix; (ii) that the Customer Facility Charges collected by the rental car companies on behalf of the Department will be sufficient to pay amounts related to the required milestone payments, any debt service payments with respect to CONRAC Special Facility Bonds or any other availability payments; or (iii) that the annual amount of Customer Facility Charges in excess of Customer Facility Charges required to pay debt service on Special Facility Bonds and CONRAC capital availability payments plus the CTS Contribution will be sufficient to pay annual capital and operating costs associated with the CTS portion of the APM System. If there are insufficient funds to pay the CTS Contribution or the CTS Contribution is insufficient to pay annual capital and operating costs associated with the CTS portion of the APM System, additional Department funds may be required to fund such annual capital and operating costs. Investors should also consider the preliminary nature of the proposed arrangements relating to the CONRAC and the financing thereof in evaluating the availability of LAX Revenues.

See “CERTAIN INVESTMENT CONSIDERATIONS RELATED TO LAX REVENUES – Delays and Cost Increases; Future Capital Projects; Additional Indebtedness.”

### **AIRPORT SYSTEM ENVIRONMENTAL MATTERS**

Several significant environmental matters have direct and indirect impacts on the Department and LAX, some of which are described below. These include mitigation of aircraft noise impacts and wildlife hazards, hazardous substance cleanup and clean air requirements. In accordance with Department policy, generally the Department’s tenant leases and/or applicable laws provide that tenants are responsible for the costs of remediation of hazardous or other regulated material from Department property and for compliance with applicable laws. However, if a tenant does not comply with these lease requirements and/or applicable laws, and under certain circumstances, the Department could ultimately become responsible for the costs of compliance and/or required environmental cleanup. The timing and aggregate costs of such cleanups cannot be determined at this time, but could be material.

#### **Aircraft Noise Impacts**

In the State, commercial airports operate under operating permits issued by the California Department of Transportation (“Caltrans”). Airports within the State are regulated under the State of California Aeronautics Act. The State does not regulate noise generation from aircraft. However, State regulations, commonly known as Title 21, require an airport proprietor that operates an airport with a noise impact area that exceeds specified airport noise standards to apply for and receive a variance. In order to obtain a variance, among other requirements, the airport proprietor must submit a plan showing how the airport expects to work toward compliance with the noise standards.

Compliance measures include sound insulation of certain incompatible structures to reduce the interior noise levels to acceptable levels, acquisition of incompatible properties located within the noise impact areas and the purchase of noise easements from affected property owners. LAX was granted a three-year noise variance effective February 13, 2011. Since the Department timely submitted an application for a new variance, it continues to operate under the existing variance until Caltrans acts on the Department’s application.

In support of a Noise Mitigation Program, the Department provides funding for land acquisition, residential sound insulation programs, and school sound insulation programs. The goal of these programs is to reduce the number of residences in areas impacted by noise from airport operations through voluntary acquisition of properties and relocation assistance for certain residential neighbors near LAX and acoustic treatment of certain residential dwelling units and targeted school districts. Acoustic treatment generally includes replacing doors and windows, caulking, and additional weather-stripping.

For the period from November 1997 through and including March 31, 2018, the FAA has approved the collection and use of PFC revenues in the amount of approximately \$950.3 million for Noise Mitigation Programs, which included \$30.9 million for reimbursement of eligible expenditures related to the Lennox Schools and approximately \$44.4 million for Inglewood Unified School District's sound insulation programs. On February 21, 2018, the FAA issued a Federal Agency Decision to increase the use of PFC revenues in an amount of \$90 million for Noise Mitigation – Land Acquisition. This pertains to the incurred and anticipated costs for the Voluntary Residential Land Acquisition in the Manchester Square and Belford neighborhoods.

As of March 31, 2018, the Department has expended approximately \$901.7 million of PFC revenues in connection with the residential Noise Mitigation Program and for funding of eligible expenditures related to the Lennox and Inglewood Unified Schools' sound mitigation programs. See "CERTAIN FUNDING SOURCES – Passenger Facility Charges" and "AIRPORT AND CAPITAL PLANNING – Financing the Capital Program."

The Department maintains a Noise Management Section within the Environmental Programs Group which operates the Department's noise monitoring system and prepares and submits periodic reports to Caltrans as required under applicable law.

### **Hazardous Substances**

Airport operations involve the storage and use of a number of materials that are defined as hazardous under various federal, state, and local regulations. Petroleum products, predominantly jet fuel, comprise the majority of hazardous materials used at Department facilities. The majority of these materials are used by the Department's tenants in the normal course of their operations. However, the Department's own operations also include the storage and use of certain hazardous substances. Federal, State and local agencies also exercise responsibility related to the accidental discharge of hazardous materials.

The Department has an Environmental Programs Group tasked with performing soil and groundwater investigations, site remediation monitoring, storm water pollution prevention, Endangered Species Act compliance, wildlife hazard mitigation programs, air quality compliance and managing other environmental compliance programs and projects. The Environmental Programs Group also monitors underground and above-ground storage tanks and hazardous substances, and performs the mandated regulatory reporting on these programs. In the course of such investigations and monitoring, the Department may discover previously unknown contamination. No assurance can be given that the remediation costs for any such contamination will not be material.

The Department conducts annual inspections of tenant and Department operations, regarding compliance with the Department's National Pollutant Discharge Elimination System Storm Water Permit for Industrial Facilities (the "Storm Water Discharge Permit"), issued by the State Water Resources Control Board ("SWRCB"), Los Angeles Regional Water Quality Control Board ("LARWQCB") at LAX. These inspections seek to confirm compliance with the Storm Water Discharge Permit. The Department is also subject to regulation under the Construction Storm Water Permit, the General Industrial Storm Water Permit, the City's Municipal Separate Storm Sewer System (MS4) Permit, storm water City ordinances, the City's Municipal Wastewater Permit, and Industrial Waste Permits for certain sewer discharges. The Department maintains records of all known areas where hazardous materials have been accidentally discharged. The Department works cooperatively with the relevant regulatory agencies to confirm that the responsible tenants are remediating contamination caused by their operations. There are, currently, two major remediation programs in place at LAX. One program involves the release of jet fuel to ground water underlying LAX. The tenant at the time of the release, Continental Airlines (now merged with and into United Airlines), has accepted responsibility for the remediation and active remediation systems are in place at the direction of the LARWQCB.

The Park One Property is also environmentally impacted and the subject of the second major remediation project. From approximately 1941 to 1988, the Park One Property was used for aerospace manufacturing, and included the use of chlorinated solvents. As a result, the soil and groundwater were impacted, including with volatile organic compounds and 1,4-dioxane. The LARWQCB is currently providing regulatory oversight of investigation and remediation of this contamination. In or about 1991, soil remediation activities were conducted on most of the Park One Property. In 1993, the LARWQCB issued a letter stating that contaminated soils in all areas covered by site investigations except the northwest quadrant had been adequately addressed. Currently, the remediation plan for the remaining portion, approximately the northwest quadrant, is being reconsidered by the LARWQCB. As part of the acquisition transaction for the Park One Property, the Department became the assignee under an Indemnity Agreement entered into by Allied-Signal, Inc. (now known as Honeywell International, Inc.

("Honeywell")) which covers, among other things, certain indemnification for soil and groundwater contamination. Honeywell has been investigating the groundwater contamination beneath and offsite from the Park One Property. The Department expects Honeywell to continue its remediation of the soil contamination and investigation of the groundwater contamination and to design and implement requisite groundwater clean-up work. Currently, and from time to time, there are smaller remediation projects in place at LAX.

The Department owns and operates underground storage tanks ("USTs") at LAX (both at the Airport and off site at Skyview) and VNY to provide for the Department owned vehicle and aircraft fueling, emergency generator fueling, waste oil storage, and fuel for the LAX aircraft fire drill site.

The Department has been in a dispute with the Los Angeles County Sanitation District No. 20 ("LACSD 20") regarding a nitrate plume in the groundwater underlying the Department's and LACSD 20's property in Palmdale, which contamination allegedly was caused by the discharge of effluent from the LACSD 20's Palmdale Water Reclamation Plant ("Palmdale WRP"). The Lahontan Regional Water Quality Control Board ("LRWQCB") has issued a Cleanup and Abatement Order in 2003 and subsequently in 2012 issued an Investigative Order to LACSD 20 and the Department. Required reporting to the LRWQCB include technical reports for discharge from the Palmdale WRP and other reports including, among other items, a report addressing feasibility and costs to remove nitrate from water to more stringent levels of 3 mg/l or less, which if required could substantially increase the overall remediation costs. The full extent of the remediation actions that LACSD 20 and the Department may have to take with respect to the groundwater cannot be determined at this time. However, the parties have resolved this matter by agreeing to an Amended and Restated Lease with LACSD 20, which include a \$5 million payment by the Department to limit exposure. The Amended and Restated Lease remains subject to City Council approval. There can be no assurances whether the City Council will approve the Amended and Restated Lease as and when presented.

Other ongoing investigations and assessments are being performed by the Department related to, among other things, fueling assets acquired from bankruptcy of tenants or other means where petroleum may have been released. Smaller scale clean-ups are conducted when hazardous substances are released.

### **Emission Standards**

Air emissions associated with airport activities are governed by a number of federal, State and local regulations. Most notable of these are federal Clean Air Act (the "FCAA") and the California Clean Air Act (the "CCAA"), AB 32, and various SCAQMD rules and regulations. LAX-owned stationary equipment that produces or controls emissions currently operate under a Title V operating permit issued by the SCAQMD.

The Department is subject to various mitigation measures designed to reduce emissions from airport operations at LAX, including, among other measures: provisions for all airline and tenant ground service equipment to meet zero or extremely low emission goals; providing electricity and preconditioned air at all passenger loading gates, allowing aircraft to shut off their auxiliary power units; installing ground power at all cargo operations areas, allowing cargo and maintenance operations to shut off their auxiliary power units; electrification of LAX hangars; conversion of all airport shuttles and vans to alternative fuel vehicles and reducing construction emissions through the use of low polluting construction equipment and exhaust emission controls.

The Department has conducted an extensive air quality analysis and adopted numerous mitigation measures designed to reduce the air quality impacts associated with implementation of the Department's Capital Program. For each project undertaken, the Department must disclose project level air quality environmental impacts under a project specific CEQA study.

AB 32 specifically regulates the release of certain GHG emissions from stationary sources within the State. The Mandatory Reporting requirement under AB 32 requires facilities that generate greater than 10,000 MtCO<sub>2</sub>e per year to report their GHG emissions. The Department owns and operates a cogeneration plant at LAX along with other stationary sources in the facility (e.g., natural gas boilers and heaters). This facility complies in all material respects with all requirements under AB 32. In addition to the AB 32 Mandatory Reporting requirement, the Department must also report its GHG emissions to the United States Environmental Protection Agency. Since 2011, the Department has reported its GHG emissions from these sources in substantial compliance with applicable requirements. The State Attorney General's Office has been using CEQA aggressively to apply the provisions of AB 32 to local and regional plans as well as to projects. Project level CEQA analysis prepared projects at LAX must include an analysis of the project's potential GHG emissions and impacts. Since January 2013, facilities such as LAX that are subject to the Mandatory Reporting requirement under AB 32 are required to comply with the

California Cap-and-Trade Program applicable to certain sources of GHG emissions in the State such as refineries, power plants, industrial facilities and transportation fuels. The California Cap-and-Trade Program includes an enforceable GHG cap that will decline over time. Under the California Cap-and-Trade Program, CARB distributes GHG allowances, which are tradable permits, equal to the emission allowed under the cap. The Department is required to obtain emission allowances for annual emissions at LAX. These emission allowances can be obtained by way of free allocation from CARB, through purchase from the secondary market and CARB auction, and reserve sale. The cost to the Department of obtaining required emissions allowances is dependent on the actual emissions generated at LAX and the price fluctuations through the course of the program, and are expected to be recouped through landing fees at LAX and or LAX terminal rates and charges, as applicable. The impact and consequences of not meeting an annual compliance obligation can include enforcement actions and penalties equivalent to four times the facilities' excess emissions. Various industries throughout the State may seek to purchase emission allowances in order to comply with the Cap-and-Trade Program, which may cause the price of allowances to increase. The emission allowance price has averaged approximately \$15 per MtCO<sub>2</sub>e subject to market conditions. LAX emits on average approximately 47,000 MtCO<sub>2</sub>e annually when fully operational. The Department's purchase of allowances may vary and no assurance can be given that such costs will not be material.

The SCAQMD imposes rules and regulations specifically targeted to various air pollutants and types of operations such as hydrant fueling, private vehicle fueling, power generators, boilers and the use of various volatile organic chemical containing materials. The SCAQMD has also committed to evaluate indirect source rules for airports within its jurisdiction in the upcoming years, however no specific details regarding such evaluation have been developed. The LAX Central Utilities Plant is a co-generation plant providing electricity and cooling/heating to the Central Terminal Area. As a power generating plant, the SCAQMD requires continuous emissions monitoring and stringent environmental oversight. The Department Environmental Programs Group includes an Air Quality Section with three full-time professional staff assigned to maintain compliance with the various rules and regulations.

See also "CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Regulations and Restrictions Affecting LAX" and "LITIGATION REGARDING THE AIRPORT SYSTEM AND THE DEPARTMENT."

## **LITIGATION REGARDING THE AIRPORT SYSTEM AND THE DEPARTMENT**

### **General**

From time to time, the Department is a party to litigation and is subject to claims arising out of its normal course of business and operations. At this time, there is no pending litigation relating to the Airport System or the Department's operations or business pertaining thereto that would reasonably be expected to have a material impact on LAX Revenues or the operation of LAX, except as described under "THE DEPARTMENT OF AIRPORTS – Subsidization within the Airport System," "USE OF AIRPORT FACILITIES," "AIRPORT AND CAPITAL PLANNING," "AIRPORT SYSTEM ENVIRONMENTAL MATTERS" and below.

### **TPS Parking Management Litigation**

On June 30, 2017 petitioners TPS Parking Management, LLC, doing business as The Parking Spot, and TPS Parking Century, LLC filed a petition for writ of mandate against the City and the Department (the "Petition"). Among other things, the Petition (i) alleges that the environmental review process for LAMP was inadequate and that the LAMP Environmental Impact Report did not adequately address, disclose, evaluate and potentially mitigate various environmental impacts and (ii) seeks to set aside the approvals related to the LAMP, injunctive relief, and to require the City and the Department to revise the LAMP Environmental Impact Report to evaluate and disclose alleged deficiencies. The litigation is currently focusing on compilation of the administrative record; a trial date has not been set and a motion seeking injunctive relief has not been filed. While the Department believes that the environmental review process for LAMP was adequate and that the LAMP Environmental Impact Report adequately addresses, discloses, evaluates and mitigates environmental impacts, at this time the Department cannot predict the outcome of this matter and/or whether this matter will result in delays or cost increases to LAMP projects, including the APM System.



## **SECURITY AND SOURCES OF PAYMENT FOR THE SENIOR BONDS, THE SUBORDINATE OBLIGATIONS AND THE THIRD LIEN OBLIGATIONS**

### **Flow of Funds**

Pursuant to Section 635 of the Charter, all fees, charges, rentals and revenue from every source collected by the Department in connection with its possession, management and control of its assets are deposited in the City Treasury to the credit of the Airport Revenue Fund. Pursuant to the Charter and the Master Senior Indenture, the Department has established the LAX Revenue Account in the Airport Revenue Fund and has covenanted to deposit all LAX Revenues in such account and such LAX Revenues will immediately upon receipt thereof become subject to the lien and pledge of the Senior Indenture and the Subordinate Indenture. The Department has notified the City Treasurer of the pledge of, lien on and interest in LAX Revenues granted by the Senior Indenture and the Subordinate Indenture and has instructed the City Treasurer that all such LAX Revenues are to be accounted for separately and apart from all other revenues, funds, accounts or other resources of the Department or the City.

The Master Senior Indenture generally defines “LAX Revenues” to mean, except to the extent specifically excluded therefrom, all income, receipts, earnings and revenues received by the Department from LAX, for any given period, as determined in accordance with generally accepted accounting principles, as modified from time to time, including, but not limited to: (a) rates, tolls, fees, rentals, charges and other payments made to or owed to the Department for the use or availability of property or facilities at LAX; and (b) amounts received or owed from the sale or provision of supplies, materials, goods and services provided by or made available by the Department at LAX, including Facilities Construction Credits, and rental or business interruption insurance proceeds, received by, held by, accrued to or entitled to be received by the Department or any successor thereto from the possession, management, charge, superintendence and control of LAX (or any LAX Airport Facilities or activities or undertakings related thereto) or from any other facilities wherever located with respect to which the Department receives payments which are attributable to LAX Airport Facilities or activities or undertakings related thereto. LAX Revenues include all income, receipts and earnings from the investment of amounts held in the LAX Revenue Account, any Senior Construction Fund or Subordinate Construction Fund allowed to be pledged by the terms of a Supplemental Senior Indenture or Supplemental Subordinate Indenture, any Senior Debt Service Reserve Fund, the Subordinate Reserve Fund, any other Subordinate Debt Service Reserve Fund, and allocated earnings on the Maintenance and Operations Reserve Fund.

The Senior Bonds are limited obligations of the Department payable solely from and secured solely by (a) a pledge of Net Pledged Revenues, and (b) certain funds and accounts held by the Senior Trustee.

The Master Senior Indenture generally defines “Net Pledged Revenues” to mean, for any given period, Pledged Revenues for such period, less, for such period, LAX Maintenance and Operation Expenses.

The Master Senior Indenture generally defines “Pledged Revenues” to mean, except to the extent specifically excluded in the Senior Indenture or under the terms of any Supplemental Senior Indenture (only with respect to the series of bonds issued pursuant to such Supplemental Senior Indenture), LAX Revenues. Pledged Revenues also include any additional revenues designated as Pledged Revenues pursuant to a Supplemental Senior Indenture. To date, the Department has not designated any additional revenues as Pledged Revenues. The following, including any investment earnings thereon, are specifically excluded from Pledged Revenues: (a) any amounts received by the Department from the imposition of ad valorem taxes; (b) gifts, grants and other income (including any investment earnings thereon) otherwise included in LAX Revenues which are restricted by their terms to purposes inconsistent with the payment of debt service on the Senior Bonds or the Subordinate Obligations; (c) Net Proceeds or other insurance proceeds received as a result of damage to or destruction of LAX Airport Facilities or any condemnation award or amounts received by the Department from the sale of LAX Airport Facilities under the threat of condemnation, to the extent the use of such Net Proceeds or other proceeds is restricted by the terms of the policy under which they are paid, to a use inconsistent with the payment of debt service on the Senior Bonds or the Subordinate Obligations; (d) any Transfer (as defined herein); and (e) LAX Special Facilities Revenue (as defined herein). In addition, the following, including any investment earnings thereon, are excluded from Pledged Revenues, unless designated as Pledged Revenues under the terms of a Supplemental Senior Indenture: (i) Senior Swap Termination Payments or Subordinate Swap Termination Payments paid to the Department pursuant to a Senior Qualified Swap or a Subordinate Qualified Swap, as applicable; (ii) Facilities Construction Credits; (iii) passenger facility charges collected with respect to LAX (“PFC revenues”), unless otherwise pledged under the terms of any Supplemental Senior Indenture; (iv) Customer Facility Charges, unless otherwise pledged under the terms of a Supplemental Senior Indenture (provided that only Customer Facility

Charges in respect of LAX may be pledged); (v) unless otherwise pledged, all revenues of the Airport System not related to LAX; and (vi) Released LAX Revenues. Senior Swap Termination Payments, Subordinate Swap Termination Payments, Facilities Construction Credits, PFC revenues, Customer Facility Charges, other revenues of the Airport System not related to LAX and Released LAX Revenues have not been designated as Pledged Revenues under the terms of any Supplemental Senior Indenture or Supplemental Subordinate Indenture.

The Subordinate Obligations are limited obligations of the Department payable solely from and secured solely by (i) a pledge of Subordinate Pledged Revenues, and (ii) certain funds and accounts held by the Subordinate Trustee.

The Master Subordinate Indenture generally defines “Subordinate Pledged Revenues” to mean, for any given period, the Pledged Revenues for such period, less, for such period, the LAX Maintenance and Operation Expenses, less, for such period, the principal and interest coming due and payable on the Outstanding Senior Bonds, less, for such period, deposits to any Senior Debt Service Reserve Fund required pursuant to the Senior Indenture.

The Master Senior Indenture requires that Pledged Revenues credited to the LAX Revenue Account be applied as follows and in the order set forth below:

**FIRST**, to the payment of LAX Maintenance and Operation Expenses for the Airport System that are payable from LAX Revenues, which include payments to the City for services provided by it to LAX;

**SECOND**, to the payment of amounts required to be deposited in any Senior Debt Service Funds for the Senior Bonds pursuant to the Master Senior Indenture and any Supplemental Senior Indenture;

**THIRD**, to the payment of amounts required to be deposited in any Senior Debt Service Reserve Fund pursuant to the Master Senior Indenture and any Supplemental Senior Indenture;

**FOURTH**, to the payment of Subordinate Obligations, pursuant to the Master Subordinate Indenture and any Supplemental Subordinate Indenture;

**FIFTH**, to the payment of amounts required to be deposited in the Subordinate Reserve Fund and any other Subordinate Debt Service Reserve Fund established for the Subordinate Obligations pursuant to any Supplemental Subordinate Indenture;

**SIXTH**, to the payment of Third Lien Obligations, if any;

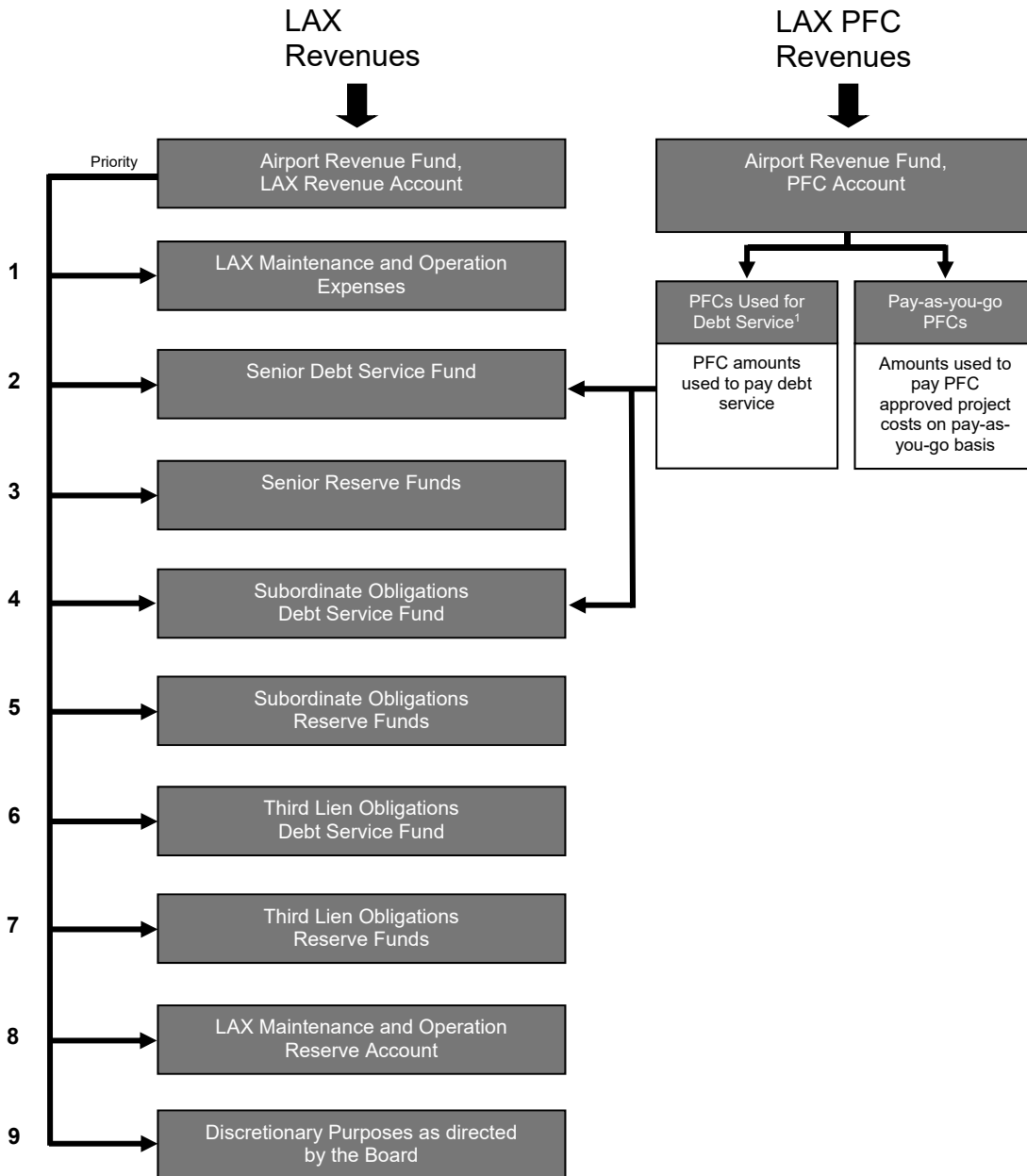
**SEVENTH**, to the payment of any reserve requirement for the Third Lien Obligations, if any;

**EIGHTH**, to the payment of the amounts required to be deposited in the LAX Maintenance and Operation Reserve Account which are payable from LAX Revenues as determined by the Department. The Department has covenanted to fund the Maintenance and Operation Reserve Account each Fiscal Year in an amount which, when added to any moneys in such account, will be equal to not less than 25% nor more than 50% of the budgeted LAX Maintenance and Operation Expenses for the current Fiscal Year; and

**NINTH**, to the payment of such amounts as are directed by the Department for discretionary purposes as authorized by the Charter which include capital projects, defraying the expenses of any pension or retirement system applicable to the employees of the Department, defraying the Maintenance and Operation Expenses of the Airport System, for reimbursement to another department or office of the City on account of services rendered, or materials, supplies or equipment furnished to support purposes of the Department and for any other lawful purpose of the Department, but only to the extent any such purposes relate to LAX.

The following is a graphic description of the flow of funds described above and the flow of PFC revenues. See “—Passenger Facility Charges.”

## FLOW OF LAX REVENUES AND LAX PFC REVENUES



<sup>(1)</sup> Pledged Revenues do not include PFC revenues unless otherwise included in Pledged Revenues pursuant to a Supplemental Senior Indenture. To date, the Department has not elected, and the Department has no current plans to elect, to include PFC revenues in Pledged Revenues nor otherwise pledge PFC revenues to the payment of the Senior Bonds or the Subordinate Obligations. However, the Department expects to use PFC revenues to pay a portion of the debt service on PFC Eligible Obligations (as defined herein). See “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program – Passenger Facility Charges” for additional information about the Department’s expected use of PFC revenues.

With respect to the application of Pledged Revenues described in paragraphs FIRST, EIGHTH and NINTH above (i.e., to fund LAX Maintenance and Operation Expenses, the deposits to the LAX Maintenance and Operation Reserve Account, and for the discretionary purposes as directed by the Board), the Department need apply only such amount of Pledged Revenues pursuant to the provisions of such paragraphs as is necessary, after taking into account

all other moneys and revenues available to the Department for application for such purposes, to pay the amounts required by such paragraphs.

The Senior Indenture provides that, notwithstanding the provisions therein, nothing precludes the Department from making the payments described in paragraphs FIRST through NINTH above from sources other than Pledged Revenues.

The Charter does not require the deposit of moneys in certain funds, including, among others, the LAX Maintenance and Operation Reserve Account; however, the Department, pursuant to the Senior Indenture, has covenanted to continue using moneys on deposit in the LAX Revenue Account as described in the flow of funds detailed above.

### **Senior Bonds**

Following is a summary of certain provisions of the Senior Indenture, including, but not limited to, sections of the Senior Indenture detailing the pledge of Net Pledged Revenues, the rate covenant for the Senior Bonds, debt service deposits for the Senior Bonds, the funding and utilization of the Senior Reserve Fund for the Senior Bonds and the issuance of Additional Senior Bonds. These summaries do not purport to be comprehensive or definitive. See APPENDIX B-3 and APPENDIX B-4 for a more complete description of these provisions of the Senior Indenture.

#### ***Net Pledged Revenues***

The Senior Bonds are limited obligations of the Department payable solely from and secured by a pledge of and first lien on Net Pledged Revenues. The Senior Bonds are also secured by a pledge of and first lien on amounts held in certain funds and accounts pursuant to the Senior Indenture, as further described herein.

THE SENIOR BONDS DO NOT CONSTITUTE OR EVIDENCE AN INDEBTEDNESS OF THE CITY OR A LIEN OR CHARGE ON ANY PROPERTY OR THE GENERAL REVENUES OF THE CITY. NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR ANY PUBLIC AGENCY, OTHER THAN THE DEPARTMENT, TO THE EXTENT OF THE NET PLEDGED REVENUES, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SENIOR BONDS. THE DEPARTMENT HAS NO POWER OF TAXATION. THE SENIOR BONDS CONSTITUTE AND EVIDENCE AN OBLIGATION OF THE DEPARTMENT PAYABLE ONLY IN ACCORDANCE WITH SECTION 609(B) OF THE CHARTER AND ANY OTHER APPLICABLE PROVISIONS THEREOF. NONE OF THE PROPERTIES OF THE AIRPORT SYSTEM IS SUBJECT TO ANY MORTGAGE OR OTHER LIEN FOR THE BENEFIT OF THE OWNERS OF THE SENIOR BONDS. THE DEPARTMENT IS UNDER NO OBLIGATION TO PAY THE SENIOR BONDS EXCEPT FROM FUNDS IN THE LAX REVENUE ACCOUNT OF THE AIRPORT REVENUE FUND AND AS FURTHER SPECIFICALLY PROVIDED IN THE SENIOR INDENTURE.

The Department has covenanted in the Master Senior Indenture not to issue any additional bonds or other obligations with a pledge of or lien on Net Pledged Revenues prior or superior to that of the Senior Bonds. Net Pledged Revenues are available for the equal and proportionate benefit and security of all Senior Bonds.

The Senior Bonds are secured by a pledge of and lien on Net Pledged Revenues on parity with the Existing Senior Bonds and any Additional Senior Bonds. See “OUTSTANDING OBLIGATIONS AND DEBT SERVICE SCHEDULE – Senior Bonds.” The Senior Bonds are not secured by moneys held in any construction funds established under the Senior Indenture.

#### ***Senior Rate Covenant***

Under the Master Senior Indenture, the Department has covenanted that, while any of the Senior Bonds remain Outstanding (but subject to all existing contracts and legal obligations of the Department as of the date of execution of the Master Senior Indenture), it will establish, fix, prescribe and collect rates, tolls, fees, rentals and charges in connection with LAX and for services rendered in connection therewith, so that Pledged Revenues in each Fiscal Year will be at least equal to the payments required in such Fiscal Year to be made pursuant to the paragraphs FIRST through EIGHTH set forth in “—Flow of Funds” above. The Department has further agreed that it will establish, fix, prescribe and collect rates, tolls, fees, rentals and charges in connection with LAX and for services rendered in connection therewith, so that during each Fiscal Year the Net Pledged Revenues, together with any Transfer, will be equal to at least 125% of Senior Annual Debt Service on the Outstanding Senior Bonds for

such Fiscal Year. Any amount of Transfer taken into account as described in the previous sentence cannot exceed 25% of Senior Annual Debt Service on the Outstanding Senior Bonds for such Fiscal Year. "Transfer" means for any Fiscal Year the amount of unencumbered funds on deposit or anticipated to be on deposit, as the case may be, on the first day of such Fiscal Year in the LAX Revenue Account (after all deposits and payments required by paragraphs FIRST through NINTH as described under "Flow of Funds" above, have been made as of the last day of the immediately preceding Fiscal Year).

The Master Senior Indenture provides that if the Department violates the above-described covenants, such violation will not be a default under the Senior Indenture and will not give rise to a declaration of a Senior Event of Default if, within 180 days after the date such violation is discovered, the Department revises the schedule of rates, tolls, fees, rentals and charges insofar as practicable and revises any LAX Maintenance and Operation Expenses insofar as practicable and takes such other actions as are necessary so as to produce Pledged Revenues to cure such violation for future compliance; provided, however, that if the Department does not cure such violation by the end of the second subsequent Fiscal Year succeeding the date such violation is discovered, a Senior Event of Default may be declared under the Senior Indenture. The Department may obtain such recommendations from a Consultant as it deems necessary or appropriate to bring the Department into compliance with such covenants. See "CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Rate Covenant Limitations."

In addition to the requirements of the Master Senior Indenture, the Charter requires the Department to set rates and charges at LAX in an amount sufficient to pay debt service and premiums, if any, due upon the redemption of revenue bonds, in addition to all maintenance and operation expenses at LAX for each Fiscal Year.

Pursuant to the Master Senior Indenture, the Department may exclude from its calculation of Senior Annual Debt Service, for the purpose of determining compliance with the rate covenant described above, the payment of debt service or portions thereof on Senior Bonds whose debt service is payable from amounts not included in Pledged Revenues (including, but not limited to PFC revenues) which have been irrevocably deposited with and held by the Senior Trustee for the payment of debt service on such Senior Bonds. See "—Passenger Facility Charges," "AIRPORT AND CAPITAL PLANNING – Financing the Capital Program – Passenger Facility Charges," and "CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Considerations Regarding Passenger Facility Charges" for additional information about the Department's expected use of PFC revenues.

#### ***Senior Debt Service Deposits***

The Master Senior Indenture provides that the Department will cause the City Treasurer to, not later than five Business Days prior to each Payment Date, transfer from the LAX Revenue Account to the Senior Trustee for deposit in the Senior Debt Service Funds established in respect of each Series of Outstanding Senior Bonds the full amount required to pay the principal of and/or interest on Senior Bonds of that Series due on such Payment Date.

#### ***Senior Reserve Fund***

The Master Senior Indenture established the "Senior Reserve Fund" for all of the Senior Bonds the Department elects to have participate in the Senior Reserve Fund. The Department has elected to have the Existing Senior Bonds participate in the Senior Reserve Fund.

Pursuant to the Master Senior Indenture, the Senior Reserve Fund is required to be funded at all times in an amount equal to the Senior Reserve Requirement. The "Senior Reserve Requirement" equals the least of (i) Senior Maximum Aggregate Annual Debt Service for Reserve Requirement with respect to all Senior Bonds participating in the Senior Reserve Fund, (ii) 10% of the principal amount of all Senior Bonds participating in the Senior Reserve Fund, less the amount of original issue discount with respect to the Senior Bonds participating in the Senior Reserve Fund if such original issue discount exceeded 2% on such Senior Bonds at the time of original sale, and (iii) 125% of the average Senior Aggregate Annual Debt Service for Reserve Requirement with respect to all Senior Bonds participating in the Senior Reserve Fund. In the event the Department issues any Additional Senior Bonds pursuant to a Supplemental Senior Indenture under which the Department elects to have such Additional Senior Bonds participate in the Senior Reserve Fund, the Department will be required to deposit an amount, if any, in the Senior Reserve Fund sufficient to cause the amount on deposit in the Senior Reserve Fund to equal the Senior Reserve Requirement. As of May 16, 2018, the Senior Reserve Requirement is \$260,893,113 and is fully funded with cash and securities.

Moneys or investments held in the Senior Reserve Fund may be used only to pay the principal of and interest on the Senior Bonds participating in the Senior Reserve Fund. Moneys and investments held in the Senior

Reserve Fund are not available to pay debt service on any Senior Bonds for which the Department has decided will not participate in the Senior Reserve Fund, the Subordinate Obligations or any Third Lien Obligations. The Senior Reserve Fund may be drawn upon if the amounts in the respective Senior Debt Service Funds for the Senior Bonds participating in the Senior Reserve Fund are insufficient to pay in full any principal or interest then due on such Senior Bonds. In the event any amounts are required to be withdrawn from the Senior Reserve Fund, such amounts will be withdrawn and deposited pro rata to meet the funding requirements of the Senior Debt Service Funds for the Senior Bonds secured by the Senior Reserve Fund.

The Department may fund all or a portion of the Senior Reserve Requirement with a Senior Reserve Fund Surety Policy. A Senior Reserve Fund Surety Policy may be an insurance policy, surety bond or letter of credit deposited in the Senior Reserve Fund in lieu of or in partial substitution for cash or securities. Any such Senior Reserve Fund Surety Policy must either extend to the final maturity of the Series of Senior Bonds for which the Senior Reserve Fund Surety Policy was issued or the Department must agree, by Supplemental Senior Indenture, that the Department will replace such Senior Reserve Fund Surety Policy prior to its expiration with another Senior Reserve Fund Surety Policy, which will have no adverse effect on ratings, if any, then in effect, on the Senior Bonds, or with cash, and the face amount of the Senior Reserve Fund Surety Policy, together with amounts on deposit in the Senior Reserve Fund, including the face amount of any other Senior Reserve Fund Surety Policy, are at least equal to the Senior Reserve Requirement. As of May 16, 2018, there are no Senior Reserve Fund Surety Policies on deposit in the Senior Reserve Fund. See APPENDIX B-6 — “AMENDMENTS TO THE MASTER SENIOR INDENTURE” for amendments being made to the definition of Senior Debt Service Reserve Fund Surety Policy.

#### ***Additional Senior Bonds***

The Master Senior Indenture provides the Department with flexibility in establishing the nature and terms of any Additional Senior Bonds hereafter issued with a lien and charge on Net Pledged Revenues on parity with the Existing Senior Bonds.

Additional Senior Bonds may be issued under the Master Senior Indenture on parity with the Existing Senior Bonds, provided, among other things, there is delivered to the Senior Trustee either:

(a) a certificate, dated as of a date between the date of pricing of the proposed Additional Senior Bonds being issued and the date of delivery of such proposed Additional Senior Bonds (both dates inclusive), prepared by an Authorized Representative showing that the Net Pledged Revenues, together with any Transfer, for any 12 consecutive months out of the most recent 18 consecutive months immediately preceding the date of issuance of the proposed Additional Senior Bonds or preceding the first issuance of the proposed Senior Program Bonds were at least equal to 125% of Senior Maximum Aggregate Annual Debt Service with respect to all Outstanding Senior Bonds, Unissued Senior Program Bonds and the proposed Additional Senior Bonds, calculated as if the proposed Additional Senior Bonds and the full Senior Authorized Amount of such proposed Senior Program Bonds (as applicable) were then Outstanding; or

(b) a certificate, dated as of a date between the date of pricing of the proposed Additional Senior Bonds being issued and the date of delivery of such proposed Additional Senior Bonds (both dates inclusive), prepared by a Consultant showing that:

(i) the Net Pledged Revenues, together with any Transfer, for the last audited Fiscal Year or for any 12 consecutive months out of the most recent 18 consecutive months immediately preceding the date of issuance of the proposed Additional Senior Bonds or the establishment of a Senior Program, were at least equal to 125% of the sum of the Senior Annual Debt Service due and payable with respect to all Outstanding Senior Bonds (not including the proposed Additional Senior Bonds or the proposed Senior Program Bonds) for such Fiscal Year or other applicable period; and

(ii) for the period from and including the first full Fiscal Year following the issuance of such proposed Additional Senior Bonds during which no interest on such Additional Senior Bonds is expected to be paid from the proceeds thereof through and including the later of (A) the fifth full Fiscal Year following the issuance of such Additional Senior Bonds, or (B) the third full Fiscal Year during which no interest on such Additional Senior Bonds is expected to be paid from the proceeds thereof, the estimated Net Pledged Revenues, together with any estimated

Transfer, for each such Fiscal Year, will be at least equal to 125% of the Senior Aggregate Annual Debt Service for each such Fiscal Year with respect to all Outstanding Senior Bonds, Unissued Senior Program Bonds and the proposed Additional Senior Bonds (calculated as if the proposed Additional Senior Bonds and the full Senior Authorized Amount of such proposed Senior Program Bonds (as applicable) were then Outstanding).

For purposes of subparagraphs (a) and (b) above, the amount of any Transfer taken into account may not exceed 25% of the Senior Annual Debt Service or Senior Aggregate Annual Debt Service, as applicable, on the Outstanding Senior Bonds, Unissued Senior Program Bonds, the proposed Additional Senior Bonds and the full Senior Authorized Amount of such proposed Senior Program Bonds, as applicable, for such applicable Fiscal Year or such other applicable period.

For purposes of subsection (b)(ii) above, in estimating Net Pledged Revenues, the Consultant may take into account (1) Pledged Revenues from Specified LAX Projects or LAX Airport Facilities reasonably expected to become available during the period for which the estimates are provided, (2) any increase in fees, rates, charges, rentals or other sources of Pledged Revenues which have been approved by the Department and will be in effect during the period for which the estimates are provided and (3) any other increases in Pledged Revenues which the Consultant believes to be a reasonable assumption for such period. With respect to LAX Maintenance and Operation Expenses, the Consultant may use such assumptions as the Consultant believes to be reasonable, taking into account: (i) historical LAX Maintenance and Operation Expenses, (ii) LAX Maintenance and Operation Expenses associated with the Specified LAX Projects and any other new LAX Airport Facilities, and (iii) such other factors, including inflation and changing operations or policies of the Department, as the Consultant believes to be appropriate. The Consultant may include in the certificate or in a separate accompanying report a description of the assumptions used and the calculations made in determining the estimated Net Pledged Revenues and may also set forth the calculations of Senior Aggregate Annual Debt Service, which calculations may be based upon information provided by another Consultant.

For purposes of preparing the certificate or certificates described above, the Consultant or Consultants or the Authorized Representative may rely upon financial statements prepared by the Department which have not been subject to audit by an independent certified public accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Authorized Representative will certify as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

Neither of the certificates described above under subparagraphs (a) or (b) will be required if:

(1) the Senior Bonds being issued are for the purpose of refunding then Outstanding Senior Bonds and there is delivered to the Senior Trustee, instead, a certificate of an Authorized Representative showing that Senior Aggregate Annual Debt Service for each Fiscal Year after the issuance of the Refunding Senior Bonds will not exceed Senior Aggregate Annual Debt Service for each Fiscal Year prior to the issuance of such Refunding Senior Bonds;

(2) the Senior Bonds being issued constitute Senior Notes and there is delivered to the Senior Trustee, instead, a certificate prepared by an Authorized Representative showing that the principal amount of the proposed Senior Notes being issued, together with the principal amount of any Senior Notes then Outstanding, does not exceed 10% of the Net Pledged Revenues for any 12 consecutive months out of the most recent 24 months immediately preceding the issuance of the proposed Senior Notes and there is delivered to the Senior Trustee a certificate of an Authorized Representative showing that for each of the Fiscal Years during which the Senior Notes will be Outstanding, and taking into account the debt service becoming due on such Senior Notes, the Department will be in compliance with the rate covenant under the Master Senior Indenture (as described above under “—Senior Rate Covenant”); or

(3) if the Senior Bonds being issued are to pay costs of completing a Specified LAX Project for which Senior Bonds have previously been issued and the principal amount of such Senior Bonds being issued for completion purposes does not exceed an amount equal to 15% of the principal amount of the Senior Bonds originally issued for such Specified LAX Project and reasonably allocable to the Specified LAX Project to be completed as shown in a written certificate of an Authorized Representative and there is delivered to the Senior Trustee (i) a Consultant’s certificate stating that the nature and purpose of such Specified LAX Project has not materially changed and (ii) a certificate of an Authorized Representative to

the effect that (A) all of the proceeds (including investment earnings on amounts in the Construction Fund allocable to such Specified LAX Project) of the original Senior Bonds issued to finance such Specified LAX Project have been or will be used to pay Costs of the Specified LAX Project, (B) the then estimated Costs of the Specified LAX Project exceed the sum of the Costs of the Specified LAX Project already paid plus moneys available in the Construction Fund established for the Specified LAX Project (including unspent proceeds of the Senior Bonds previously issued for such purpose), and (C) the proceeds to be received from the issuance of such Senior Bonds plus moneys available in the Construction Fund established for the Specified LAX Project (including unspent proceeds of the Senior Bonds previously issued for such purpose) will be sufficient to pay the remaining estimated Costs of the Specified LAX Project.

The Department has covenanted in the Master Senior Indenture that so long as any Senior Bonds are Outstanding, it will not, except as specifically provided in Master Senior Indenture, grant any prior or parity pledge of or any security interest in the Net Pledged Revenues or any of the other security which is pledged pursuant to the Master Senior Indenture, or create or permit to be created any charge or lien thereon or any security interest therein ranking prior to or on a parity with the charge or lien of the Senior Bonds (including Additional Senior Bonds) from time to time Outstanding under the Master Senior Indenture. The Department may, as provided in the Master Senior Indenture, grant a lien on or security interest in the Net Pledged Revenues to secure Subordinate Obligations and Third Lien Obligations. The Department may issue bonds for capital improvements at its other airports pursuant to separate indentures, which bonds will not be secured by a pledge of LAX Revenues. In addition, the Department may issue LAX Special Facility Obligations. See “SPECIAL FACILITY FINANCINGS – LAX Special Facility Obligations.”

#### **Subordinate Obligations**

*The Department expects to issue approximately \$450,000,000 of its Los Angeles International Airport Subordinate Revenue Bonds, 2018 Series C in or about July 2018 (the “Series 2018C Subordinate Bonds”). The specific principal amount of the Series 2018C Subordinate Bonds will be determined by the Department at the time the Department and the underwriters for the Series 2018C Subordinate Bonds execute a bond purchase agreement for such transaction. See “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program.”*

Following is a summary of certain provisions of the Subordinate Indenture, including, but not limited to, sections of the Subordinate Indenture detailing the pledge of Subordinate Pledged Revenues, the rate covenant for the Subordinate Obligations, debt service deposits for the Subordinate Obligations, the funding and utilization of the Subordinate Reserve Fund and the issuance of Additional Subordinate Obligations. These summaries do not purport to be comprehensive or definitive. See APPENDIX B-3 and APPENDIX B-5 for a more complete description of these provisions of the Subordinate Indenture.

#### ***Subordinate Pledged Revenues***

Subordinate Bonds are limited obligations of the Department payable solely from and secured by a pledge of and first lien on Subordinate Pledged Revenues. Subordinate Bonds are also secured by a pledge of and first lien on amounts held in certain funds and accounts pursuant to the Subordinate Indenture, as further described herein.

THE SUBORDINATE BONDS DO NOT CONSTITUTE OR EVIDENCE AN INDEBTEDNESS OF THE CITY OR A LIEN OR CHARGE ON ANY PROPERTY OR THE GENERAL REVENUES OF THE CITY. NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR ANY PUBLIC AGENCY, OTHER THAN THE DEPARTMENT, TO THE EXTENT OF THE SUBORDINATE PLEDGED REVENUES, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SUBORDINATE BONDS. THE DEPARTMENT HAS NO POWER OF TAXATION. THE SUBORDINATE BONDS CONSTITUTE AND EVIDENCE AN OBLIGATION OF THE DEPARTMENT PAYABLE ONLY IN ACCORDANCE WITH SECTION 609(B) OF THE CHARTER AND ANY OTHER APPLICABLE PROVISIONS THEREOF. NONE OF THE PROPERTIES OF THE AIRPORT SYSTEM IS SUBJECT TO ANY MORTGAGE OR OTHER LIEN FOR THE BENEFIT OF THE OWNERS OF THE SUBORDINATE BONDS. THE DEPARTMENT IS UNDER NO OBLIGATION TO PAY THE SUBORDINATE BONDS, EXCEPT FROM FUNDS IN THE LAX REVENUE ACCOUNT OF THE AIRPORT REVENUE FUND AND AS FURTHER SPECIFICALLY PROVIDED IN THE SUBORDINATE INDENTURE.



The Subordinate Bonds are secured by a pledge of and lien on Subordinate Pledged Revenues on a parity with the Existing Subordinate Bonds, the Subordinate Commercial Paper Notes, the payment obligations of the Department under the CP Reimbursement Agreements, any Additional Subordinate Bonds and any Additional Subordinate Obligations. See “APPENDIX B-5 SUMMARY OF THE MASTER SUBORDINATE INDENTURE – Grant to Secure Subordinate Obligations; Pledge of Subordinate Pledged Revenues” and “OUTSTANDING OBLIGATIONS AND DEBT SERVICE SCHEDULE – Subordinate Bonds and Subordinate Commercial Paper Notes.” The Subordinate Bonds are not secured by moneys held in any construction funds established under the Subordinate Indenture.

#### ***Subordinate Rate Covenant***

The Department has covenanted in the Master Subordinate Indenture to fulfill the following requirements:

(a) The Department will, while any of the Subordinate Obligations remain Outstanding (but subject to all existing contracts and legal obligations of the Department as of the date of execution of the Master Subordinate Indenture setting forth restrictions relating thereto), establish, fix, prescribe and collect rates, tolls, fees, rentals and charges in connection with LAX and for services rendered in connection therewith, so that Subordinate Pledged Revenues in each Fiscal Year will be at least equal to the following amounts:

(i) the interest on and principal of the Outstanding Subordinate Obligations, as the same become due and payable by the Department in such year;

(ii) the required deposits to any Subordinate Debt Service Reserve Fund (including the Subordinate Reserve Fund) which may be established by a Supplemental Subordinate Indenture;

(iii) the reimbursement owed to any Credit Provider as required by a Supplemental Subordinate Indenture;

(iv) the interest on and principal of any indebtedness required to be funded during such Fiscal Year, other than Special Facility Obligations, Senior Bonds and Outstanding Subordinate Obligations, but including obligations issued with a lien on Subordinate Pledged Revenues, ranking junior and subordinate to the lien of the Subordinate Obligations; and

(v) payments of any reserve requirement for debt service for any indebtedness, other than Senior Bonds and Outstanding Subordinate Obligations, but including obligations issued with a lien on Subordinate Pledged Revenues, ranking junior and subordinate to the lien of the Subordinate Obligations.

(b) The Department has further agreed that it will establish, fix, prescribe and collect rates, tolls, fees, rentals and charges in connection with LAX and for services rendered in connection therewith, so that during each Fiscal Year the Subordinate Pledged Revenues, together with any Transfer, will be equal to at least 115% of Subordinate Annual Debt Service on the Outstanding Subordinate Obligations for such Fiscal Year. For purposes of this paragraph (b), the amount of any Transfer taken into account may not exceed 15% of Subordinate Annual Debt Service on the Outstanding Subordinate Obligations in such Fiscal Year. “Transfer” means for any Fiscal Year the amount of unencumbered funds on deposit or anticipated to be on deposit, as the case may be, on the first day of such Fiscal Year in the LAX Revenue Account (after all deposits and payments required by paragraphs FIRST through NINTH, as described under “Flow of Funds” above, have been made as of the last day of the immediately preceding Fiscal Year),

(c) If the Department violates either covenant set forth in paragraph (a) or (b) above, such violation will not be a default under the Master Subordinate Indenture and will not give rise to a declaration of a Subordinate Event of Default if, within 180 days after the date such violation is discovered, the Department revises the schedule of rates, tolls, fees, rentals and charges insofar as practicable and revises any LAX Maintenance and Operation Expenses insofar as practicable and takes such other actions as are necessary so as to produce Subordinate Pledged Revenues to cure such violation for future compliance; provided, however, that if the Department does not cure such violation by the end of the second subsequent Fiscal Year succeeding the date such violation is discovered, a Subordinate Event of Default may be declared under the Master Subordinate Indenture. The Department may obtain such recommendations

from a Consultant as it deems necessary or appropriate to bring the Department into compliance with said covenants. However, a non-payment of principal of and/or interest on Subordinate Obligations when due would be a Subordinate Event of Default under the Subordinate Indenture. See APPENDIX B-5 – “SUMMARY OF THE MASTER SUBORDINATE INDENTURE – Subordinate Events of Default and Remedies – Subordinate Events of Default.”

In addition to the requirements of the Master Subordinate Indenture, the Charter requires the Department to set rates and charges at LAX in an amount sufficient to pay debt service and premiums, if any, due upon the redemption of revenue bonds, in addition to all maintenance and operation expenses at LAX for each Fiscal Year.

Pursuant to the Master Subordinate Indenture, the Department may exclude from its calculation of Subordinate Aggregate Annual Debt Service, for the purpose of determining compliance with the rate covenant described above, the payment of debt service or portions thereof on Subordinate Obligations whose debt service is payable from amounts not included in Subordinate Pledged Revenues (including, but not limited to PFC revenues) which have been irrevocably deposited with the Subordinate Trustee for the payment of debt service on such Subordinate Obligations. See “—Passenger Facility Charges,” “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program – Passenger Facility Charges” and “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Considerations Regarding Passenger Facility Charges” for additional information about the Department’s expected use of PFC revenues.

#### ***Subordinate Debt Service Deposits***

The Master Subordinate Indenture provides that the Department will cause the City Treasurer, not later than five Business Days prior to each Payment Date, to transfer from the LAX Revenue Account to the Subordinate Trustee for deposit in the Subordinate Debt Service Funds established in respect of each Series of Outstanding Subordinate Obligations the full amount required to pay the principal of and/or the interest on the Subordinate Obligations of that Series due on such Payment Date.

#### ***Subordinate Reserve Fund***

Pursuant to the Fourth Supplemental Subordinate Indenture, a Subordinate Debt Service Reserve Fund (the “Subordinate Reserve Fund”) was established for the Existing Subordinate Bonds and any Additional Subordinate Bonds which the Department elects to have participate in the Subordinate Reserve Fund.

Except as otherwise described below, the Subordinate Reserve Fund is required to be funded at all times in an amount equal to the Subordinate Reserve Requirement. The “Subordinate Reserve Requirement” equals the least of (i) Subordinate Maximum Aggregate Annual Debt Service for Reserve Requirement with respect to all of the Subordinate Obligations participating in the Subordinate Reserve Fund, (ii) 10% of the principal amount of all of the Subordinate Obligations participating in the Subordinate Reserve Fund, less the amount of original issue discount with respect to the Subordinate Obligations participating in the Subordinate Reserve Fund if such original issue discount exceeded 2% on such Subordinate Obligations at the time of its original sale, and (iii) 125% of the average Subordinate Aggregate Annual Debt Service for Reserve Requirement with respect to all of the Subordinate Obligations participating in the Subordinate Reserve Fund. In the event the Department issues any Additional Subordinate Obligations pursuant to a Supplemental Subordinate Indenture under which the Department elects to have such Additional Subordinate Obligations participate in the Subordinate Reserve Fund, the Department will be required to deposit an amount in the Subordinate Reserve Fund sufficient to cause the amount on deposit in the Subordinate Reserve Fund to equal the Subordinate Reserve Requirement. Such deposit to the Subordinate Reserve Fund can be made at the time of issuance of the Additional Subordinate Obligations participating in the Subordinate Reserve Fund or over 12 months following the date of issuance of the Additional Subordinate Obligations that will be participating in the Subordinate Reserve Fund. As of May 16, 2018, the Subordinate Reserve Requirement is equal to \$159,112,962 and is fully funded with cash and securities.

Moneys or investments held in the Subordinate Reserve Fund may be used only to pay the principal of and interest on the Subordinate Obligations participating in the Subordinate Reserve Fund. Moneys and investments held in the Subordinate Reserve Fund are not available to pay debt service on the Senior Bonds, the Subordinate Commercial Paper Notes, any Subordinate Obligations for which the Department has decided will not participate in the Subordinate Reserve Fund or any Third Lien Obligations. The Subordinate Reserve Fund may be drawn upon if the amounts in the respective Subordinate Debt Service Funds for the Subordinate Bonds participating in the Subordinate Reserve Fund are insufficient to pay in full any principal or interest then due on such Subordinate Bonds. In the event any amounts are required to be withdrawn from the Subordinate Reserve Fund, such amounts

will be withdrawn and deposited pro rata to meet the funding requirements of the Subordinate Debt Service Funds for the Subordinate Bonds secured by the Subordinate Reserve Fund.

The Department may fund all or a portion of the Subordinate Reserve Requirement with a Subordinate Debt Service Reserve Fund Surety Policy. A Subordinate Debt Service Reserve Fund Surety Policy may be an insurance policy or surety bond, or a letter of credit, deposited in the Subordinate Reserve Fund in lieu of or in partial substitution for cash or securities. Any such Subordinate Debt Service Reserve Fund Surety Policy must either extend to the final maturity of the Series of Subordinate Obligations for which the Subordinate Debt Service Reserve Fund Surety Policy was issued or the Department must agree, by Supplemental Subordinate Indenture, that the Department will replace such Subordinate Debt Service Reserve Fund Surety Policy prior to its expiration with another Subordinate Debt Service Reserve Fund Surety Policy, or with cash, and the face amount of the Subordinate Reserve Fund Surety Policy, together with amounts on deposit in the Subordinate Reserve Fund, including the face amount of any other Subordinate Debt Service Reserve Fund Surety Policy, are at least equal to the Subordinate Reserve Requirement. Any such Subordinate Debt Service Reserve Fund Surety Policy deposited to the Subordinate Reserve Fund must secure all of the Subordinate Obligations participating in the Subordinate Reserve Fund. There are no current or currently anticipated Subordinate Debt Service Reserve Fund Surety Policies on deposit in the Subordinate Reserve Fund. See APPENDIX B-7 — “AMENDMENTS TO THE MASTER SUBORDINATE INDENTURE” for amendments being made to the definition of Subordinate Debt Service Reserve Fund Surety Policy.

#### ***Additional Subordinate Obligations***

The Master Subordinate Indenture provides the Department with flexibility in establishing the nature and terms of any Additional Subordinate Obligations hereafter issued with a lien and charge on Subordinate Pledged Revenues on parity with the other Subordinate Obligations.

Additional Subordinate Obligations may be issued under the Master Subordinate Indenture on a parity with the Subordinate Obligations provided, among other things, there is delivered to the Subordinate Trustee either:

(a) a certificate, dated as of a date between the date of pricing of the Subordinate Obligations being issued and the date of delivery of such Subordinate Obligations (both dates inclusive), prepared by an Authorized Representative showing that the Subordinate Pledged Revenues, together with any Transfer, for any 12 consecutive months out of the most recent 18 consecutive months immediately preceding the date of issuance of the proposed Subordinate Obligations or preceding the first issuance of the proposed Subordinate Program Obligations were at least equal to 115% of Subordinate Maximum Aggregate Annual Debt Service with respect to all Outstanding Subordinate Obligations, Unissued Subordinate Program Obligations, and the proposed Subordinate Obligations, calculated as if the proposed Subordinate Obligations and the full Subordinate Authorized Amount of such proposed Subordinate Program Obligations (as applicable) were then Outstanding; or

(b) a certificate, dated as of a date between the date of pricing of the Subordinate Obligations being issued and the date of delivery of such Subordinate Obligations (both dates inclusive), prepared by a Consultant showing that:

(i) the Subordinate Pledged Revenues, together with any Transfer, for the last audited Fiscal Year or for any 12 consecutive months out of the most recent 18 consecutive months immediately preceding the date of issuance of the proposed Subordinate Obligations or the establishment of a Subordinate Program, were at least equal to 115% of the sum of the Subordinate Annual Debt Service due and payable with respect to all Outstanding Subordinate Obligations (not including the proposed Subordinate Obligations or the proposed Subordinate Program Obligations) for such Fiscal Year or other applicable period; and

(ii) for the period from and including the first full Fiscal Year following the issuance of such proposed Subordinate Obligations during which no interest on such Subordinate Obligations is expected to be paid from the proceeds thereof through and including the later of: (A) the fifth full Fiscal Year following the issuance of such Subordinate Obligations, or (B) the third full Fiscal Year during which no interest on such Subordinate Obligations is expected to be paid from the proceeds thereof, the estimated Subordinate Pledged Revenues, together with any estimated Transfer, for each such Fiscal Year, will be at least equal to 115% of the Subordinate Aggregate Annual Debt Service for each such Fiscal Year with respect to all Outstanding Subordinate

Obligations, Unissued Subordinate Program Obligations and the proposed Subordinate Obligations calculated as if the proposed Subordinate Obligations and the full Subordinate Authorized Amount of such proposed Subordinate Program Obligations (as applicable) were then Outstanding.

For purposes of subparagraphs (a) and (b) above, the amount of any Transfer taken into account cannot exceed 15% of the Subordinate Annual Debt Service or Subordinate Aggregate Annual Debt Service, as applicable, on the Outstanding Subordinate Obligations, Unissued Program Subordinate Obligations, the proposed Subordinate Obligations and the full Subordinate Authorized Amount of such proposed Subordinate Program Obligations, as applicable, for such applicable Fiscal Year or such other applicable period.

For purposes of subparagraph (b)(ii) above, in estimating Subordinate Pledged Revenues, the Consultant may take into account (1) Pledged Revenues from Specified LAX Projects or LAX Airport Facilities reasonably expected to become available during the period for which the estimates are provided, (2) any increase in fees, rates, charges, rentals or other sources of Pledged Revenues which have been approved by the Board and will be in effect during the period for which the estimates are provided, (3) any other increases in Pledged Revenues which the Consultant believes to be a reasonable assumption for such period. With respect to LAX Maintenance and Operation Expenses, the Consultant may use such assumptions as the Consultant believes to be reasonable, taking into account: (i) historical LAX Maintenance and Operation Expenses, (ii) LAX Maintenance and Operation Expenses associated with the Specified LAX Projects and any other new LAX Airport Facilities, and (iii) such other factors, including inflation and changing operations or policies of the Board, as the Consultant believes to be appropriate. The Consultant will include in the certificate or in a separate accompanying report a description of the assumptions used and the calculations made in determining the estimated Subordinate Pledged Revenues and will also set forth the calculations of Subordinate Aggregate Annual Debt Service, which calculations may be based upon information provided by another Consultant.

For purposes of preparing the certificate or certificates described above, the Consultant or Consultants or the Authorized Representative may rely upon financial statements prepared by the Department which have not been subject to audit by an independent certified public accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Authorized Representative certifies as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

Neither of the certificates described above under subparagraphs (a) or (b) will be required:

(1) if the Subordinate Obligations being issued are for the purpose of refunding then Outstanding Subordinate Obligations and there is delivered to the Subordinate Trustee, instead, a certificate of the Authorized Representative showing that the Subordinate Aggregate Annual Debt Service for each Fiscal Year after the issuance of such Refunding Subordinate Obligations will not exceed the Subordinate Aggregate Annual Debt Service for each Fiscal Year prior to the issuance of such Refunding Subordinate Obligations;

(2) if the Subordinate Obligations being issued constitute Subordinate Notes and there is delivered to the Subordinate Trustee, instead, a certificate prepared by an Authorized Representative showing that the principal amount of the proposed Subordinate Notes being issued, together with the principal amount of any Subordinate Notes then Outstanding, does not exceed 10% of the Subordinate Pledged Revenues for any 12 consecutive months out of the most recent 24 months immediately preceding the issuance of the proposed Subordinate Notes and there is delivered to the Subordinate Trustee a certificate of an Authorized Representative setting forth calculations showing that for each of the Fiscal Years during which the Subordinate Notes will be Outstanding, and taking into account the debt service becoming due on such Subordinate Notes, the Department will be in compliance with the rate covenant under the Master Subordinate Indenture (as described above under “—Subordinate Rate Covenant”); or

(3) if the Subordinate Obligations being issued are to pay costs of completing a Specified LAX Project for which Subordinate Obligations have previously been issued and the principal amount of such Subordinate Obligations being issued for completion purposes does not exceed an amount equal to 15% of the principal amount of the Subordinate Obligations originally issued for such Specified LAX Project and reasonably allocable to the Specified LAX Project to be completed as shown in a written certificate of an Authorized Representative and there is delivered to the Subordinate Trustee (i) a

Consultant's certificate stating that the nature and purpose of such Specified LAX Project has not materially changed and (ii) a certificate of an Authorized Representative to the effect that (A) all of the proceeds (including investment earnings on amounts in the construction fund allocable to such Specified LAX Project) of the original Subordinate Obligations issued to finance such Specified LAX Project have been or will be used to pay costs of the Specified LAX Project, (B) the then estimated costs of the Specified LAX Project exceed the sum of the costs of the Specified LAX Project already paid plus moneys available in the construction fund established for the Specified LAX Project (including unspent proceeds of the Subordinate Obligations previously issued for such purpose), and (C) the proceeds to be received from the issuance of such Subordinate Obligations plus moneys available in the construction fund established for the Specified LAX Project (including unspent proceeds of the Subordinate Obligations previously issued for such purpose) will be sufficient to pay the remaining estimated costs of the Specified LAX Project.

### **Third Lien Obligations**

While the Department has not yet issued any Third Lien Obligations, the Department may, as provided in the Master Senior Indenture, grant a subordinate lien on or subordinate security interest in the Net Pledged Revenues to secure Third Lien Obligations.

"Third Lien Obligation" means any bond, note or other debt instrument issued or otherwise entered into by the Board which ranks junior and subordinate to the Senior Bonds and the Subordinated Obligations and which may be paid from moneys constituting Pledged Revenues only if all LAX Maintenance and Operation Expenses and amounts of principal and interest which have become due and payable on the Senior Bonds and the Subordinated Obligations whether by maturity, redemption or acceleration have been paid in full and the Board is current on all payments, if any, required to be made to replenish the Senior Reserve Fund, any Senior Debt Service Reserve Fund and any debt service reserve fund(s) established for the Subordinated Obligations. "Third Lien Obligations" are not Senior Bonds for purposes of the Master Senior Indenture; provided, however, that the Board may henceforth by Supplemental Senior Indenture elect to have the provisions of the Master Senior Indenture applicable to the Senior Bonds apply to the Third Lien Obligations issued thereunder, except that such Third Lien Obligations will be secured on a junior and subordinate basis to the Senior Bonds and the Subordinated Obligations from the Net Pledged Revenues. No bond, note or other instrument of indebtedness will be deemed to be a "Third Lien Obligation" for purposes of the Master Senior Indenture and payable on a subordinated basis from Net Pledged Revenues unless specifically designated by the Board as a "Third Lien Obligation" in a Supplemental Senior Indenture or other written instrument.

See also "– Flow of Funds," APPENDIX B-3 – "CERTAIN DEFINITIONS," APPENDIX B-4 – "SUMMARY OF THE MASTER SENIOR INDENTURE," and APPENDIX B-5 – "SUMMARY OF THE MASTER SUBORDINATE INDENTURE" for additional information regarding Third Lien Obligations.

### **Passenger Facility Charges**

#### ***Passenger Facility Charges – Pledged Revenues***

Pledged Revenues do not include PFC revenues unless otherwise included in Pledged Revenues pursuant to a Supplemental Senior Indenture. The Department has not elected, and the Department has no current plans to elect, to include PFC revenues in Pledged Revenues. The Department has not pledged PFC revenues to the payment of the Senior Bonds or the Subordinate Obligations, and the Department has no current plans to pledge PFC revenues to the payment of the Senior Bonds or the Subordinate Obligations. Although PFC revenues are not included in Pledged Revenues and have not been pledged to the payment of debt service on the Senior Bonds and/or the Subordinate Obligations, the Department expects to (to the extent approved by the FAA) use PFC revenues to pay a portion of the debt service on certain Senior Bonds and/or certain Subordinate Obligations which are or become PFC Eligible Obligations. For additional information regarding PFC revenues and the Department's expected use of PFC revenues, see "AIRPORT AND CAPITAL PLANNING – Financing the Capital Program – Passenger Facility Charges," and "CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Considerations Regarding Passenger Facility Charges".

#### ***Passenger Facility Charges – Exclusion from Rate Covenant and Additional Bonds Tests***

Debt service paid with PFC revenues is not included in the calculation of the rate covenants set forth in the Master Senior Indenture and the Master Subordinate Indenture. Debt service on Additional Senior Bonds and Additional Subordinate Bonds expected to be paid from irrevocably committed PFC revenues is not included in the

additional bonds tests set forth in the Master Senior Indenture and the Master Subordinate Indenture. As of the date of this Official Statement, the Department has not irrevocably committed any PFC revenues to the payment of debt service on PFC Eligible Obligations.

### **Permitted Investments**

Moneys held by the Senior Trustee under the Senior Indenture, including moneys in the Senior Debt Service Funds (and the accounts therein) and in the Senior Reserve Fund, may be invested as directed by the Department in Senior Permitted Investments, subject to the restrictions set forth in the Senior Indenture and subject to restrictions imposed upon the Department by the Charter. Investments held in the Senior Reserve Fund cannot exceed a maturity of five years.

Moneys held by the Subordinate Trustee under the Subordinate Indenture, including moneys in the Subordinate Debt Service Funds (and the accounts therein) and in the Subordinate Reserve Fund, may be invested as directed by the Department in Subordinate Permitted Investments, subject to the restrictions set forth in the Subordinate Indenture and subject to restrictions imposed upon the Department by the Charter. Investments held in the Subordinate Reserve Fund cannot exceed a maturity of five years.

All moneys held in the Airport Revenue Fund are currently invested by the City Treasurer in investments authorized by State law. Pursuant to State law, the City Treasurer must present an annual investment policy to the City Council for confirmation. The City has provided to the Department its “City of Los Angeles Investment Policy” for the current fiscal year which authorizes the City Treasurer to invest the City’s funds in a manner which maximizes safety, liquidity, yield and diversity. See “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Investment Practices of the City Treasurer.”

### **Events of Default and Remedies; No Acceleration**

Senior Events of Default under the Senior Indenture and related remedies are described in APPENDIX B-4 – “SUMMARY OF THE MASTER SENIOR INDENTURE – Senior Events of Default and Remedies.” The occurrence of a Senior Event of Default does not grant any right to accelerate payment of the Senior Bonds to any of the Senior Trustee, the Subordinate Trustee, or the Holders of the Senior Bonds, or the Subordinate Obligations. The Senior Trustee is authorized to take certain actions upon the occurrence of a Senior Event of Default, including proceedings to enforce the obligations of the Department under the Senior Indenture.

Subordinate Events of Default under the Subordinate Indenture and related remedies are described in APPENDIX B-5 – “SUMMARY OF THE MASTER SUBORDINATE INDENTURE – Subordinate Events of Default and Remedies.” Except as described in the following sentence, the occurrence of a Subordinate Event of Default does not grant any right to accelerate payment of the Subordinate Obligations or the Senior Bonds to any of the Subordinate Trustee, the Senior Trustee, or the Holders of the Subordinate Obligations or Senior Bonds. Pursuant to the CP Reimbursement Agreements, the Department granted to the CP Banks the right to accelerate any payments due the CP Banks upon an event of default under the CP Reimbursement Agreements. The Subordinate Trustee is authorized to take certain actions upon the occurrence of a Subordinate Event of Default, including proceedings to enforce the obligations of the Department under the Subordinate Indenture. See APPENDIX B-5 – “SUMMARY OF THE MASTER SUBORDINATE INDENTURE – Subordinate Events of Default and Remedies – Application of Moneys.” See also “OUTSTANDING OBLIGATIONS AND DEBT SERVICE SCHEDULE – Subordinate Bonds and Subordinate Commercial Paper Notes.”

### **Amendments to the Master Senior Indenture**

On June 1, 2016, pursuant to a Supplemental Senior Indenture, the Department amended certain provisions of the Master Senior Indenture which are more particularly described in APPENDIX B-6 – “AMENDMENTS TO THE MASTER SENIOR INDENTURE” (the “Master Senior Indenture Amendments”).

The Master Senior Indenture Amendments cannot become effective until the earlier of: (a) the date none of the Existing Senior Bonds, other than the Series 2016C Senior Bonds and the Series 2018 Senior Bonds, remain Outstanding (the “Prior Existing Senior Bonds”), or (b) the date the Department receives the written consent of 51% or more of the Bondholders of the Outstanding Prior Existing Senior Bonds (the “Master Senior Indenture Amendments”). The Master Senior Indenture Amendments do not require the consent of the purchasers of Additional Senior Bonds in order to become effective. As of May 16, 2018, the Department has no plans to solicit the written consent of the Bondholders of the Outstanding Prior Existing Senior Bonds, and therefore, in all

likelihood, the Master Senior Indenture Amendments will not become effective until the date the Outstanding Prior Existing Senior Bonds are no longer Outstanding.

#### **Amendments to the Master Subordinate Indenture**

On June 1, 2016, pursuant to a Supplemental Subordinate Indenture, the Department amended certain provisions of the Master Subordinate Indenture, which are more particularly described in APPENDIX B-7 — “AMENDMENTS TO THE MASTER SUBORDINATE INDENTURE” (the “Master Subordinate Indenture Amendments”).

The Master Subordinate Indenture Amendments cannot become effective until the earlier of: (a) the date none of the Existing Subordinate Bonds, other than the Series 2016 Subordinate Bonds, the Series 2017 Subordinate Bonds and the Series 2018A Subordinate Bonds, remain Outstanding (the “Prior Existing Subordinate Bonds”), or (b) the date the Department receives the written consent of 51% or more of the Bondholders of the Outstanding Prior Existing Subordinate Bonds (the “Master Subordinate Indenture Amendments”). The Master Subordinate Indenture Amendments do not require the consent of the purchasers of the Subordinate Bonds in order to become effective.

As of May 16, 2018, the Department has no plans to solicit the written consent of Bondholders of the Outstanding Prior Existing Subordinate Bonds and therefore, in all likelihood, the Master Subordinate Indenture Amendments will not become effective until the date the Outstanding Prior Existing Subordinate Bonds are no longer Outstanding.

### **OUTSTANDING OBLIGATIONS AND DEBT SERVICE SCHEDULE**

#### **Senior Bonds**

Pursuant to the Senior Indenture, the Department has previously issued and, as of May 16, 2018, there were outstanding \$3,391,960,000 aggregate principal amount of Existing Senior Bonds. “Existing Senior Bonds” means the: Los Angeles International Airport, Senior Revenue Bonds, 2009 Series A (the “Series 2009A Senior Bonds”); Los Angeles International Airport, Senior Revenue Bonds, 2010 Series A (the “Series 2010A Senior Bonds”); Los Angeles International Airport, Senior Revenue Bonds, 2010 Series D (the “Series 2010D Senior Bonds” and together with the Series 2010A Senior Bonds, the “Series 2010 Senior Bonds”); Los Angeles International Airport, Senior Revenue Bonds 2012 Series A (the “Series 2012A Senior Bonds”); Los Angeles International Airport, Senior Revenue Bonds 2012 Series B (the “Series 2012B Senior Bonds”); Los Angeles International Airport, Senior Revenue Bonds 2012 Series C (the “Series 2012C Senior Bonds” and, together with the Series 2012A Senior Bonds and the Series 2012B Senior Bonds, the “Series 2012 Senior Bonds”); Los Angeles International Airport, Senior Revenue Bonds 2013 Series A (the “Series 2013A Senior Bonds”); Los Angeles International Airport, Senior Revenue Bonds, 2015 Series A (the “Series 2015A Senior Bonds”); Los Angeles International Airport, Senior Revenue Bonds, 2015 Series B (the “Series 2015B Senior Bonds”); Los Angeles International Airport, Senior Revenue Bonds 2015 Series D (the “Series 2015D Senior Bonds”); Los Angeles International Airport, Senior Revenue Bonds 2015 Series E (the “Series 2015E Senior Bonds” and together with the Series 2015A Senior Bonds, the Series 2015B Senior Bonds and the Series 2015D Senior Bonds, the “Series 2015 Senior Bonds”); Los Angeles International Airport, Senior Refunding Revenue Bonds 2016 Series C (the “Series 2016C Senior Bonds”); and Los Angeles International Airport, Senior Refunding Revenue Bonds 2018 Series B (the “Series 2018B Senior Bonds”). As of the date of this Appendix, the only obligations the Department has issued pursuant to the Senior Indenture, and that are currently outstanding, are the Existing Senior Bonds. The Existing Senior Bonds are secured by a pledge of and lien on Net Pledged Revenues. For purposes of this Appendix, “Senior Bonds” means the Existing Senior Bonds and any additional bonds issued on parity with respect to Net Pledged Revenues with the Existing Senior Bonds under the terms of the Master Senior Indenture (“Additional Senior Bonds”). The following table sets forth information about the Existing Senior Bonds that were outstanding as of May 16, 2018.

**TABLE 14**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**EXISTING SENIOR BONDS**  
**AS OF MAY 16, 2018**

<b>Series</b>	<b>Original Principal Amount</b>	<b>Principal Amount Outstanding</b>	<b>Final Maturity (May 15)</b>
2009A	\$ 310,410,000	\$ 263,775,000	2039
2010A	930,155,000	851,545,000	2040
2010D	875,805,000	827,665,000	2040
2012A	105,610,000	72,510,000	2029
2012B	145,630,000	130,455,000	2037
2012C	27,870,000	9,660,000	2019
2013A	170,685,000	170,685,000	2043
2015A	267,525,000	258,120,000	2045
2015B	47,925,000	46,200,000	2045
2015D	296,475,000	284,815,000	2041
2015E	27,850,000	26,145,000	2041
2016C	226,410,000	223,885,000	2038
2018B	226,500,000	226,500,000	2034
<b>Total</b>	<b>\$ 3,658,850,000</b>	<b>\$ 3,391,960,000</b>	

Source: Department of Airports of the City of Los Angeles.

#### **Subordinate Bonds and Subordinate Commercial Paper Notes**

Pursuant to the Subordinate Indenture, the Department has previously issued and, as of May 16, 2018, there were outstanding \$2,243,555,000 aggregate principal amount of the Existing Subordinate Bonds. “Existing Subordinate Bonds” means the: Los Angeles International Airport, Subordinate Revenue Bonds, Series 2008C (the “Series 2008C Subordinate Bonds”); Los Angeles International Airport, Subordinate Revenue Bonds, 2009 Series C (the “Series 2009C Subordinate Bonds”); Los Angeles International Airport, Subordinate Refunding Revenue Bonds, 2009 Series E (the “Series 2009E Subordinate Bonds” and together with the Series 2009C Subordinate Bonds, the “Series 2009 Subordinate Bonds”); Los Angeles International Airport, Subordinate Revenue Bonds, 2010 Series B (the “Series 2010B Subordinate Bonds”); Los Angeles International Airport, Subordinate Revenue Bonds, 2010 Series C (the “Series 2010C Subordinate Bonds” and together with the Series 2010B Subordinate Bonds, the “Series 2010 Subordinate Bonds”); Los Angeles International Airport, Subordinate Revenue Bonds, 2013 Series B (the “Series 2013B Subordinate Bonds”); Los Angeles International Airport, Subordinate Revenue Refunding Bonds, 2015 Series C (the “Series 2015C Subordinate Bonds”); Los Angeles International Airport, Subordinate Revenue Bonds, 2016 Series A (the “Series 2016A Subordinate Bonds”); Los Angeles International Airport, Subordinate Revenue Bonds, 2016 Series B (the “Series 2016B Subordinate Bonds” and together with the Series 2016A Subordinate Bonds, the “Series 2016 Subordinate Bonds”); Los Angeles International Airport, Subordinate Revenue Bonds, 2017 Series A (the “Series 2017A Subordinate Bonds”); Los Angeles International Airport, Subordinate Revenue Bonds, 2017 Series B (the “Series 2017B Subordinate Bonds” and together with the Series 2017A Subordinate Bonds, the “Series 2017 Subordinate Bonds”); and Los Angeles International Airport, Subordinate Revenue Bonds, 2018 Series A (the “Series 2018A Subordinate Bonds”).

The Subordinate Bonds are secured by a pledge of and lien on Subordinate Pledged Revenues on a parity with the Subordinate Commercial Paper Notes, the payment obligations of the Department under the CP Reimbursement Agreements, the Existing Subordinate Bonds, any additional bonds issued on parity with the Existing Subordinate Bonds under the terms and provisions of the Master Subordinate Indenture (“Additional Subordinate Bonds”) and any other obligations issued or incurred on a parity with respect to Subordinate Pledged Revenues pursuant to the Master Subordinate Indenture (“Additional Subordinate Obligations”). For purposes of this Appendix, “Subordinate Bonds” means the Existing Subordinate Bonds and any Additional Subordinate Bonds; and “Subordinate Obligations” means the Subordinate Bonds, the Subordinate Commercial Paper Notes, the payment obligations of the Department under the CP Reimbursement Agreements and any Additional Subordinate Obligations.



Additionally, pursuant to the Subordinate Indenture, the Department is authorized to issue and to have outstanding, from time to time, up to \$500,000,000 aggregate principal amount of its Subordinate Commercial Paper Notes. As of May 16, 2018, there were Subordinate Commercial Paper Notes outstanding with a maturity value of approximately \$60,802,000. The Department also expects to issue Subordinate Commercial Paper Notes to pay capitalized interest with respect to portions of the Capital Program. The following table sets forth information about the Existing Subordinate Bonds and the Subordinate Commercial Paper Notes that were outstanding as of May 16, 2018. Such table does not reflect the planned issuance of the Series 2018C Subordinate Bonds. Upon the issuance of the Series 2018C Subordinate Bonds, the Series 2018C Subordinate Bonds will be Existing Subordinate Bonds.

**TABLE 15**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**EXISTING SUBORDINATE BONDS AND SUBORDINATE COMMERCIAL PAPER NOTES**  
**AS OF MAY 16, 2018**

<b>Subordinate Obligations</b>	<b>Original Principal Amount</b>	<b>Principal Amount Outstanding</b>	<b>Final Maturity Date</b>
Existing Subordinate Bonds			
- Series 2008C	\$ 243,350,000	\$ 5,905,000	May 15, 2019
- Series 2009C	307,350,000	281,570,000	May 15, 2039
- Series 2009E	39,750,000	8,915,000	May 15, 2020
- Series 2010B	134,680,000	134,680,000	May 15, 2040
- Series 2010C	59,360,000	59,360,000	May 15, 2040
- Series 2013B	71,175,000	65,755,000	May 15, 2038
- Series 2015C	181,805,000	179,300,000	May 15, 2038
- Series 2016A	289,210,000	281,265,000	May 15, 2042
- Series 2016B	451,170,000	450,990,000	May 15, 2046
- Series 2017A	260,610,000	260,610,000	May 15, 2047
- Series 2017B	88,730,000	88,730,000	May 15, 2042
- Series 2018A	426,475,000	426,475,000	May 15, 2048
Total Existing Subordinate Bonds	\$ 2,553,665,000	\$ 2,243,555,000	
Subordinate Commercial Paper Notes			
- Series A <sup>(1)</sup>	-- <sup>(4)</sup>	--	Various <sup>(5)</sup>
- Series B <sup>(2)</sup>	-- <sup>(4)</sup>	19,380,000	Various <sup>(5)</sup>
- Series C <sup>(3)</sup>	-- <sup>(4)</sup>	41,422,000	Various <sup>(5)</sup>
Total Subordinate Commercial Paper Notes		\$ 60,802,000	
Total outstanding Existing Subordinate Bonds and Subordinate Commercial Paper Notes		\$ 2,304,357,000	

<sup>(1)</sup> The Subordinate Commercial Paper Notes Series A (Governmental – Non AMT) may be issued in various Subseries designated Subseries A-1 through A-3.

<sup>(2)</sup> The Subordinate Commercial Paper Notes Series B (Private Activity - AMT) may be issued in various Subseries designated Subseries B-1 through B-3.

<sup>(3)</sup> The Subordinate Commercial Paper Notes Series C (Federally Taxable) may be issued in various Subseries designated Subseries C-1 through C-3.

<sup>(4)</sup> Original Principal Amount of Subordinate Commercial Paper Notes varies.

<sup>(5)</sup> The Subordinate Commercial Paper Notes have rolling maturities of 270 days or less.

Source: Department of Airports of the City of Los Angeles

Each Series of Subordinate Commercial Paper Notes is divided into three Subseries designated Subseries A-1 through A-3, Subseries B-1 through B-3, and Subseries C-1 through C-3. The Subordinate Commercial Paper Notes are issuable in maturities of 1 to 270 days. The Department utilizes the proceeds of Subordinate Commercial Paper Notes to, among other things, finance capital projects at LAX, fund capitalized interest on a portion of the Outstanding Senior Bonds and Subordinate Bonds and to pay maturing Subordinate Commercial Paper Notes.

To provide credit support for the Subordinate Commercial Paper Notes, the Department entered into three separate reimbursement agreements (collectively, the “CP Reimbursement Agreements”) with Sumitomo Mitsui Banking Corporation, acting through its New York Branch, Barclays Bank PLC and Wells Fargo Bank, National Association, respectively (collectively, the “CP Banks”), pursuant to which each CP Bank issued a separate irrevocable transferable direct-pay letter of credit (collectively, the “CP Letters of Credit”). Each CP Letter of Credit provides credit support for the timely payment of the principal of and interest on certain specified Subseries of the Subordinate Commercial Paper Notes as described in more detail in the following table.

<b>CP Bank</b>	<b>Subseries of Subordinate Commercial Paper Notes Supported by CP Letter of Credit</b>	<b>Principal Amount of Subordinate Commercial Paper Notes Supported by CP Letter of Credit</b>	<b>Total Stated Amount of CP Letter of Credit<sup>(1)</sup></b>	<b>CP Letter of Credit Termination Date<sup>(2)</sup></b>
Sumitomo Mitsui Banking Corporation, acting through its New York Branch	A-1, B-1, C-1	\$ 200,000,000	\$ 218,000,000	September 11, 2020
Barclays Bank PLC	A-2, B-2, C-2	\$ 100,000,000	\$ 109,000,000	September 11, 2020
Wells Fargo Bank, National Association	A-3, B-3, C-3	\$ 200,000,000	\$ 218,000,000	September 11, 2020

<sup>(1)</sup> Equal to principal of Subordinate Commercial Paper Notes supported by CP Letter of Credit plus interest on such Subordinate Commercial Paper Notes accruing at a rate of 12% for 270 days based on 360-day year.

<sup>(2)</sup> Unless extended or terminated sooner in accordance with the respective terms of the CP Letter of Credit.

Each CP Letter of Credit only supports the payment of the principal of or interest on the applicable Subseries of Subordinate Commercial Paper Notes.

In the event the Department does not immediately reimburse a CP Bank for a drawing under the applicable CP Letter of Credit, the Department is required pursuant to the applicable CP Reimbursement Agreement to pay all principal of and interest due to the applicable CP Bank as a result of such drawing within five years of the applicable date of the original drawing. Upon the happening of an event of default under a CP Reimbursement Agreement the obligations of the Department to the applicable CP Bank may become immediately due and payable. Events of default under the CP Reimbursement Agreements include, but are not limited to (i) failure to pay principal of or interest on any drawing, advance or other obligations under the applicable CP Reimbursement Agreement, (ii) failure to perform the terms of the applicable CP Reimbursement Agreement, (iii) defaults in any payment of any debt secured by a charge, lien or encumbrance on the Net Pledged Revenues or the Subordinate Pledged Revenues and (iv) certain downgrades of the Senior Bonds. Any obligations of the Department incurred pursuant to the CP Reimbursement Agreements are secured by Subordinate Pledged Revenues on parity with the Existing Subordinate Bonds and the Subordinate Commercial Paper Notes. Redacted copies of the CP Reimbursement Agreements are available on the MSRB's Electronic Municipal Market Access ("EMMA") website.

The Board has appointed Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Loop Capital Markets LLC, BofAML Securities, Inc., Morgan Stanley & Co. LLC, Samuel A Ramirez & Company, Inc., and Wells Fargo Bank, National Association, as dealers with respect to the offering and sale of the Commercial Paper Notes.

### **Debt Service Requirements**

The following table sets forth debt service requirements on the Existing Senior Bonds and the Existing Subordinate Bonds:

**TABLE 16**  
**DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES**  
**LOS ANGELES INTERNATIONAL AIRPORT**  
**SENIOR BONDS AND SUBORDINATE BONDS DEBT SERVICE REQUIREMENTS<sup>(1)</sup>**

<b>Fiscal Year</b>	<b>Total Debt Service on Existing Senior Bonds</b>	<b>Total Debt Service on Existing Subordinate Bonds<sup>(2)</sup></b>	<b>Total Debt Service</b>
2019	\$ 251,193,726	\$ 156,991,905	\$ 408,185,631
2020	250,164,451	156,525,827	406,690,278
2021	250,150,006	159,110,359	409,260,365
2022	250,157,767	159,112,952	409,270,719
2023	250,150,575	157,536,547	407,687,122
2024	253,616,417	157,538,011	411,154,428
2025	253,621,167	156,920,118	410,541,285
2026	253,620,504	157,541,552	411,162,056
2027	253,609,767	157,539,326	411,149,093
2028	253,605,179	157,530,124	411,135,303
2029	253,609,067	157,540,800	411,149,867
2030	253,607,404	157,536,380	411,143,784
2031	253,623,129	157,541,235	411,164,364
2032	253,615,304	157,532,182	411,147,486
2033	253,598,067	157,529,986	411,128,053
2034	253,622,604	157,532,407	411,155,011
2035	259,675,479	157,544,211	417,219,690
2036	259,664,003	157,543,815	417,207,818
2037	260,893,113	157,269,593	418,162,706
2038	245,766,479	157,673,147	403,439,626
2039	238,750,188	153,680,825	392,431,013
2040	244,355,750	148,076,144	392,431,894
2041	59,969,750	129,893,075	189,862,825
2042	27,122,250	124,437,325	151,559,575
2043	27,124,500	110,775,825	137,900,325
2044	20,694,500	106,055,325	126,749,825
2045	20,706,000	101,715,825	122,421,825
2046	--	101,714,638	101,714,638
2047	--	68,268,625	68,268,625
2048	--	43,385,300	43,385,300
<b>Total</b>	<b>\$ 5,706,287,146</b>	<b>\$ 4,239,593,384</b>	<b>\$ 9,945,880,530</b>

<sup>(1)</sup> Totals may not add due to individual rounding. Debt service on the Subordinate Commercial Paper Notes (which may be outstanding from time to time up to \$500 million aggregate principal amount) and payment obligations under the CP Reimbursement Agreements are not reflected in this table. As of May 16, 2018, approximately \$60.8 million of Subordinate Commercial Paper Notes were outstanding. For additional information on these obligations, see “—Subordinate Bonds and Subordinate Commercial Paper Notes” above.

<sup>(2)</sup> Interest on the Series 2009C Subordinate Bonds and the Series 2010C Subordinate Bonds does not reflect the application of the cash subsidy payments the Department expects to receive from the United States Treasury.

Source: Department of Airports of the City of Los Angeles.

**NONE OF THE SENIOR BONDS, THE SUBORDINATE OBLIGATIONS NOR ANY THIRD LIEN OBLIGATIONS CONSTITUTE OR EVIDENCE AN INDEBTEDNESS OF THE CITY OR A LIEN OR CHARGE ON ANY PROPERTY OR THE GENERAL REVENUES OF THE CITY. NEITHER THE FAITH AND THE CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OR ANY PUBLIC AGENCY, OTHER THAN THE DEPARTMENT, TO THE EXTENT OF THE NET PLEDGED REVENUES, IN THE CASE OF THE SENIOR BONDS, AND SUBORDINATE PLEDGED REVENUES, IN THE CASE OF THE SUBORDINATE OBLIGATION IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SENIOR BONDS, OR SUBORDINATE OBLIGATIONS, AS APPLICABLE. THE DEPARTMENT HAS NO POWER OF TAXATION. THE SENIOR BONDS, THE SUBORDINATE OBLIGATIONS AND ANY THIRD LIEN OBLIGATIONS CONSTITUTE AND**

**EVIDENCE AN OBLIGATION OF THE DEPARTMENT PAYABLE ONLY IN ACCORDANCE WITH SECTION 609(B) OF THE CHARTER AND ANY OTHER APPLICABLE PROVISIONS THEREOF. NONE OF THE PROPERTIES OF THE AIRPORT SYSTEM IS SUBJECT TO ANY MORTGAGE OR OTHER LIEN FOR THE BENEFIT OF THE OWNERS OF THE SENIOR BONDS, THE SUBORDINATE OBLIGATIONS OR ANY THIRD LIEN OBLIGATIONS. THE DEPARTMENT IS UNDER NO OBLIGATION TO PAY THE SENIOR BONDS OR THE SUBORDINATE BONDS, EXCEPT FROM FUNDS IN THE LAX REVENUE ACCOUNT OF THE AIRPORT REVENUE FUND AND AS FURTHER SPECIFICALLY PROVIDED IN THE SENIOR INDENTURE OR THE SUBORDINATE INDENTURE, AS APPLICABLE.**

### **Ratings**

S&P Global Ratings, a business division of Standard & Poor's Financial Services LLC ("S&P"), Moody's Investors Service ("Moody's") and Fitch Ratings ("Fitch"), have assigned ratings of "AA," "Aa3," and "AA," respectively, to the Existing Senior Bonds. S&P, Moody's and Fitch, have assigned ratings of "AA-," "A1," and "AA-," respectively, to the Existing Subordinate Bonds. Such ratings reflect only the views of such organizations and any desired explanation of the significance of such ratings, including any outlook thereon, should be obtained from the rating agency furnishing the same, at the following addresses: S&P, 55 Water Street, 38th Floor, New York, New York 10041; Moody's, 7 World Trade Center, 250 Greenwich Street, New York, New York 10007 and Fitch, One State Street Plaza, New York, New York 10004. The Department furnished the rating agencies with certain information and materials concerning the Existing Senior Bonds and the Existing Subordinate Bonds and the Department, some of which is not included in this Appendix. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. There is no assurance that ratings will continue for any given period of time or that such ratings will not be revised downward or withdrawn entirely by rating agencies, if in the judgment of such rating agencies, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Existing Senior Bonds and the Existing Subordinate Bonds.

### **Other Obligations**

#### ***General Obligation Bonds***

The City last issued general obligation bonds for Department purposes in 1956, and those bonds were retired in February 1990. The Board has covenanted in the Senior Indenture not to adopt a resolution determining that Pledged Revenues be used to pay general obligation bonds of the City on a senior lien basis. There are currently no outstanding general obligation bonds of the City for Department purposes issued or authorized but unissued.

#### ***Other Repayment Obligations***

Under certain circumstances the obligation of the Department, pursuant to a written agreement, to reimburse the provider of a Credit Facility or a Liquidity Facility (a "Repayment Obligation") may be secured by a pledge of and lien on Net Pledged Revenues on parity with the Senior Bonds or by a pledge of and lien on Subordinate Pledged Revenues on a parity with the Subordinate Obligations. See "—Subordinate Bonds and Subordinate Commercial Paper Notes" above for additional information about the pledge of and lien on Subordinate Pledged Revenues granted to the CP Banks in connection with the CP Banks' issuance of the CP Letters of Credit.

If a Credit Provider or Liquidity Provider advances funds to pay principal of or interest on or to purchase Senior Bonds, all or a portion of the Department's Repayment Obligation may be afforded the status of a Senior Bond under the Master Senior Indenture. The Department currently does not have any Senior Repayment Obligations outstanding. Additionally, if a Credit Provider or Liquidity Provider advances funds to pay principal of or interest on or to purchase Subordinate Obligations as applicable, all or a portion of the Department's Repayment Obligations may be afforded the status of a Subordinate Obligation under the Master Subordinate Indenture. The Department currently does not have any Subordinate Repayment Obligations outstanding.

#### ***Credits***

The Department from time to time has provided credits to its Aeronautical Users (as defined below) that may be applied as an offset against amounts otherwise due to the Department by such Aeronautical Users as charges for use of LAX facilities, including amounts owed pursuant to the Airport Terminal Tariff or landing fees. Because these credits are applied as an offset to amounts owed to the Department by such Aeronautical Users, the Department receives less money from these Aeronautical Users than such Aeronautical User would otherwise

provide absent the credit. Thus, although the credits are not secured by any pledge of or lien on the Department's revenues, the effect of using such credits is the creation of a higher payment priority for such credits than for the Senior Bonds, Subordinate Obligations and Third Lien Obligations. Credits are discussed in greater detail under "USE OF AIRPORT FACILITIES – Department Acquisition of Certain Terminal Improvements; Credits."

#### ***Payments in Connection with the APM***

As described in more detail under "AIRPORT AND CAPITAL PLANNING – The Automated People Mover System," the DBFOM Agreement provides that the APM Developer will be entitled to receive the Milestone Payments from the Department as partial compensation for the APM Developer's performance of the work required to design and construct the APM System, the APM Capital Availability Payments and the APM Operations and Maintenance Payments. In addition to the foregoing, and for the purposes of the Department's financial forecasting, the Department has assumed, that, among other things: (i) APM Operations and Maintenance Payments will be treated as LAX Maintenance and Operation Expenses under the Master Senior Indenture; and (ii) APM Capital Availability Payments will be treated as unsecured obligations of the Department and will be payable after: LAX Maintenance and Operation Expenses; obligations related to the Senior Bonds, the Subordinate Obligations and any Third Lien Obligations; and deposits into the LAX Maintenance and Operation Reserve Account (or funded NINTH under the Flow of Funds). For additional information regarding the DBFOM Agreement; the amount and timing of the Milestone Payments and the APM Capital Availability Payments; and the APM Operations and Maintenance Payments, see the forepart of this Official Statement.

### **SPECIAL FACILITY FINANCINGS**

#### **LAX Special Facility Obligations**

Pursuant to the Master Senior Indenture, the Department may (i) designate a separately identifiable existing facility or improvement or a planned facility or improvement as a "LAX Special Facility," (ii) pursuant to an indenture other than the Master Senior Indenture and without a pledge of any Pledged Revenues (except as otherwise provided in (iv) below), incur debt primarily for the purpose of acquiring, constructing, renovating or improving, or providing financing or refinancing to a third party to acquire, construct, renovate or improve, such facility or improvement, (iii) provide that the contractual payments derived from or related to such LAX Special Facility, together with other income and revenues available to the Department from such LAX Special Facility to the extent necessary to make certain payments required under the Master Senior Indenture, will be "LAX Special Facilities Revenue" and will not be included as Pledged Revenues, unless otherwise provided in any supplemental indenture, and (iv) provide that the debt so incurred will be an "LAX Special Facilities Obligation" and the principal of and interest thereon will be payable solely from the LAX Special Facilities Revenue and the proceeds of such LAX Special Facilities Obligation set aside exclusively to pay debt service on such LAX Special Facility Obligation (except the Department may, in its sole discretion, determine to make Pledged Revenues or such other moneys not included in Pledged Revenues available (through a specific pledge or otherwise and subject to any covenant or other provisions of the Master Senior Indenture or such other indentures or agreements of the Department) to the payment of principal of and interest on such LAX Special Facility Obligation in such amounts and at such times as may be agreed to by the Department). The Department may from time to time refinance any such LAX Special Facility Obligation with other LAX Special Facility Obligations.

The Department does not currently have any outstanding LAX Special Facility Obligations but may in the future. See "AIRPORT AND CAPITAL PLANNING – Certain Other Projects" and "—Certain Other Projects – The CONRAC."

#### **Conduit Financings**

In addition to the improvements financed or planned to be financed at LAX through the issuance of revenue bonds, interest income, PFC revenues and grants-in-aid, other improvements at LAX have been financed through the issuance of bonds by the Regional Airports Improvement Corporation ("RAIC") and by the California Statewide Communities Development Authority ("CSCDA"). Bonds of RAIC and CSCDA are not obligations of the Department or the City, are not payable from or secured by any pledge of, or lien upon, moneys in the Airport Revenue Fund, and do not rely on the taxing power of the City. RAIC and CSCDA bonds are secured solely by the payment obligations of the airlines or other users of the facilities financed with such bonds and, in the case of RAIC bonds, by leasehold deeds of trust on the financed properties.

Certain of the outstanding RAIC bonds have buy-back rights, whereby the Department may, at any time, purchase the financed facilities by retiring the bonds used to finance those facilities. The Department may from time to time identify leases related to improvements which can be terminated on terms favorable to the Department. Financing for any such lease terminations and any restructuring of third-party debt associated with such lease terminations could be provided by the Department through use of moneys in the Airport Revenue Fund or by issuing Additional Senior Bonds, Additional Subordinate Bonds, Subordinate Commercial Paper Notes or other obligations of the Department. See “USE OF AIRPORT FACILITIES.”

### **CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES**

Prospective investors are urged to read this Appendix in its entirety. The factors set forth in this Appendix, among others, may affect the security for and/or trading value of the Series 2018 Bonds. The information contained in this Appendix speaks only as of the date of this Appendix. The information in this Appendix does not purport to be a comprehensive or exhaustive discussion of all risks or other considerations that may be relevant to any person or entity relying upon any payment derived from LAX Revenues. Other factors may exist which may be material to any person or entity relying upon any payment derived from LAX Revenues based on person’s or entity’s respective individual characteristics. In addition, the order in which the following information is presented is not intended to reflect the relative importance of any such considerations. Additional risk factors relating to, among others, the Department, LAX Revenues, the Capital Program, and the purchase of Series 2018 Bonds are described throughout this Official Statement, whether or not specifically designated as risk factors. Additional risks and uncertainties not presently known, or currently believed to be immaterial, may also materially and adversely affect, among other things, LAX Revenues or any person or entity relying upon any payment derived from LAX Revenues. In addition, although the various risks discussed in this Appendix are generally described separately, any person or entity relying upon any payment derived from LAX Revenues should consider the potential effects of the interplay of multiple risk factors. Where more than one significant risk factor is present, the risk of loss to any person or entity relying upon any payment derived from LAX Revenues. There can be no assurance that other risks or considerations not discussed in this Official Statement are or will not become material in the future.

#### **Demand for Air Travel, Aviation Activity and Related Matters**

Department revenues and PFC revenues depend significantly on the level of aviation activity, enplaned passenger traffic at LAX and passenger spending at airport facilities.

Air travel demand has historically correlated to the national economy, generally, and consumer income and business profits in particular. The long term implications of recent economic and political conditions are unclear. A lack of sustainable economic growth or unexpected events could negatively affect, among other things, financial markets, commercial activity and consumer spending. There can be no assurance that economic and political turmoil or lack of sustainable economic growth will not adversely affect demand for travel.

The level of aviation activity and enplaned passenger traffic at LAX depend upon and are subject to a number of factors including those discussed above and other economic and political conditions; international hostilities; world health concerns; aviation security concerns including criminal and terrorist incidents; federal government mandated security measures that may result in additional taxes and fees, longer passenger processing and wait times and other inconveniences as discussed in more detail under “—Security Concerns” below; accidents involving commercial passenger aircraft; airline service and routes; airline airfares and competition; airline industry economics, including labor relations, fuel prices, aging aircraft fleets and other factors discussed in more detail under “—Financial Condition of the Airlines” below; capacity of and changes to (including any privatization of) the national air traffic control and airport systems; competition from other airports; reliability of air service; business travel substitutes, including teleconferencing, videoconferencing and web-casting; consumer price sensitivity; changes in law and the application thereof and other factors discussed in more detail under “—Changes in Law and the Application Thereof” and the capacity, availability and convenience of service at LAX, among others. An outbreak of a disease or similar public health threat that affects travel demand or travel behavior, or travel restrictions or reduction in the demand for air travel caused by an outbreak of a disease or similar public health threat in the future, could have a material adverse impact on the airline industry and result in substantial reductions in and/or cancellations of, bookings and flights.

In addition to revenues from airlines, the Department derives a substantial portion of its revenues from concessionaires including parking operations, terminal commercial manager concessions, duty free concessions, food and beverage concessions, retail concessions, rental cars and transportation network companies. See “USE OF

AIRPORT FACILITIES – Concession and Parking Agreements.” Declines in passenger traffic or changes in the way passengers transact with concessionaires may adversely affect the commercial operation of concessionaires and alter the mix of revenues at LAX. While the Department’s many agreements with concessionaires require the concessionaires to pay a minimum annual guarantee, severe financial difficulties could lead to a failure by one or more concessionaires and consequently, create risk for the required payments and interruption of such concessionaires operations. See also “—Financial Condition of the Airlines; Effect of Airline Industry Consolidation; Effect of Airline and Concessionaire Bankruptcies.”

Many of these factors are outside the Department’s control. Changes in demand, decreases in aviation activity, changes in passenger consumer behavior and developments in vehicle use and mobility and their potential effects on enplaned passenger traffic and revenues at LAX may result in reduced LAX Revenues and PFC revenues.

Revenues from TNCs are an increasing portion of LAX Revenues and may be contributing to a shift in revenue sources, away from parking, rental cars, taxis and limousines. Emerging technologies, including autonomous vehicles, and new transportation business strategies may contribute to additional shifts in Department revenue sources. There can be no assurances that these shifts will not adversely affect the Department’s revenues.

### **Financial Condition of the Airlines; Effect of Airline Industry Consolidation; Effect of Airline and Counterparty Bankruptcies**

*Financial Condition of the Airlines.* The ability of the Department to generate LAX Revenues depends, in part, upon the financial health of the aviation industry. The economic condition of the industry has historically been volatile, and the aviation industry has undergone significant changes, including mergers, acquisitions, bankruptcies and closures in recent years. Further, the aviation industry is sensitive to a variety of factors, including the cost and availability of labor, fuel, aircraft, supplies and insurance; general economic conditions; international trade; currency values; competitive considerations, including the effects of airline ticket pricing; traffic and airport capacity constraints; governmental regulation, including security and climate change-related regulations; taxes imposed on airlines and passengers; maintenance and environmental requirements; passenger demand for air travel; strikes and other union activities; availability of financing; and disruptions caused by airline accidents, criminal incidents, public health concerns and acts of war or terrorism. See “AIRLINE INDUSTRY INFORMATION.”

Due to the discretionary nature of business and personal travel spending, airline passenger traffic and revenues are influenced by the state of the national economy (see the factors discussed in “—Demand for Air Travel, Aviation Activity and Related Matters” above), other regional and world economies, business profitability, security concerns and other factors. Significant structural changes to the airline industry have occurred in recent years, including reducing or eliminating service on unprofitable routes, reducing airline work forces, implementing pay cuts, streamlining operations and merging with other airlines. Airfares have become easier to compare, which has made pricing and marketing among airlines more competitive. The price of fuel has been a significant cost factor for the airline industry and affects airline earnings. Fuel prices are particularly sensitive to worldwide political instability, economic uncertainties and increased demand from developing economies, production disruption, regulations and weather. Changes in the costs of aviation fuel may have an adverse impact on air transportation industry profitability. Decreased passenger service by a specific airline or a decreased demand for air travel more generally could also adversely affect LAX Revenues, which are sensitive to passenger traffic levels. The Department does not make any representation concerning the financial health of any airline, and no assurance can be given regarding the impact, if any, that future unfavorable events affecting airline users or the airline industry more broadly might have upon LAX Revenues or the Department.

The aviation industry is cyclical and subject to intense competition and variable demand. Traffic volumes are responsive to a number of factors described above under “—Demand for Air Travel, Aviation Activity and Related Matters.” Airline debt levels fluctuate. The airlines are vulnerable to fuel price spikes, labor activity, recession and other external changes (such as change in laws or the application thereof, terrorism, pandemics, military conflicts and natural disasters). As a result, aviation industry-related financial performance, including those concessionaires that rely on airline passenger traffic and revenues for profitability, can fluctuate dramatically from one reporting period to the next. A reduction in the demand for air travel due to unfavorable economic conditions also limits airlines’ ability to raise fares to counteract increased fuel, labor and other costs. Deterioration in either the domestic and/or global economy may therefore have a material impact on revenue in the industry. Future increases in passenger traffic will depend largely on the ability of the U.S. and other countries to sustain growth in economic output and income. There can be no assurances that weak economic conditions or other national and international fiscal concerns would not have an adverse effect on the air transportation industry. Finally, volatility in



the financial and credit markets may have a material adverse effect on the financial condition of airline companies, because such economic conditions could make it difficult for certain airlines to obtain financing on acceptable terms to refinance certain maturing debt and to meet future capital commitments.

***Consolidation of Airline Industry.*** The airline industry continues to evolve as a result of competition and changing demand patterns and it is possible that airlines serving LAX could consolidate operations through acquisition, merger, alliances, and code share sales strategies.

Major domestic airlines have joined or may be forming alliances with other major domestic airlines. Depending on which airlines serving LAX, if any, merge or join alliances, the result may be fewer flights by one or more airlines, which decrease could be significant. Such decreases could result in reduced LAX Revenues, reduced passenger facility charge collections and increased costs for the airlines and concessionaires serving LAX. It is not possible at this time to predict the effect on gate usage at LAX, or the corresponding impact on LAX Revenues, passenger facility charge collections or airline or concessionaires costs, as a result of unknown potential airline consolidations.

***Effect of Contractual Counterparty Bankruptcies.*** A number of airlines and concessionaires (i.e., rental car companies) that served or are currently serving LAX have filed for bankruptcy protection in the past, and may do so in the future. Historically, bankruptcies of airlines operating at LAX have resulted in transitory reductions of service levels, even in cases where such airlines continued to operate in bankruptcy. Future bankruptcies, liquidations or major restructurings of other airlines and/or concessionaires or other contractual counterparties may occur. While it is not possible to predict the impact on LAX of future bankruptcies, liquidations or major restructurings of contractual counterparties, if a contractual counterparty has significant operations or obligations at LAX, its bankruptcy, liquidation or a major restructuring, could have a material adverse effect on revenues of the Department, operations at LAX, the costs to other contractual counterparties to operate at LAX (as, for instance, certain costs allocated to any such airline or concessionaire may be passed on to the remaining airlines or concessionaires under their respective agreements; there can be no assurance that such other contractual counterparties would be financially able to absorb the additional costs) and may result in delays or reductions in payments on under the Senior Bonds, Subordinate Obligations, Third Lien Obligations and the DBFOM Agreement.

In the event of a bankruptcy by a contractual counterparty operating at LAX, the automatic stay provisions of the United States Bankruptcy Code (the “Bankruptcy Code”) could prevent (unless approval of the bankruptcy court was obtained) an action to collect amounts owing by the contractual counterparty to the Department or other actions to enforce the obligations of the contractual counterparty to Department and/or the City (e.g., requirements to make capital investments under the applicable agreements). With the authorization of the Bankruptcy Court, the contractual counterparty may be able to repudiate some or all of its agreements with the Department and/or the City and stop performing its obligations (including payment obligations) under such agreements. The contractual counterparty may be able, without the consent and over the objection of the Department and/or the City, the Senior Trustee, the Subordinate Trustee, the holders of the Senior Bonds, the Subordinate Obligations, any Third Lien Obligations (if issued) and the APM Developer, to alter the terms, including the payment terms, of its agreements with the Department and/or the City, as long as the Bankruptcy Court determines that the alterations are fair and equitable. In addition, with the authorization of the Bankruptcy Court, the contractual counterparty may be able to assign its rights and obligations under any of its agreements with the Department and/or the City to another entity, despite any contractual provisions prohibiting such an assignment. The Senior Trustee, the Subordinate Trustee, the holders of the Senior Bonds, the Subordinate Obligations, Third Lien Obligations (if issued) and the APM Developer, as applicable, may be required under the Bankruptcy Code to return to the contractual counterparty as preferential transfers any money that was used to make payments on the Senior Bonds, the Subordinate Obligations, Third Lien Obligations (if issued) or obligations under the DBFOM Agreement and that was received by the Department from the contractual counterparty during the 90 days immediately preceding the filing of the bankruptcy petition. Claims by the Department and/or the City under any agreement with such contractual counterparty may be subject to further limitations under the Bankruptcy Code.

Pursuant to the Aviation Safety and Capacity Expansion Act of 1990 (P.L. 101-508) (the “1990 PFC Act”) and the Wendel H. Ford Aviation Investment and Reform Act for the 21st Century (P.L. 106-181) (“AIR 21,” and collectively with the 1990 PFC Act, the “PFC Acts”), the FAA has approved the Department’s applications to require the airlines to collect and remit to the Department a passenger facility charge on each enplaning revenue passenger at LAX. See “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program – Passenger Facility Charges.” The PFC Acts provide that PFC revenues collected by the airlines constitute a trust fund held for

the beneficial interest of the eligible agency (i.e., the Department) imposing the PFC revenues, except for any handling fee or retention of interest collected on unremitted proceeds. In addition, federal regulations require airlines to account for passenger facility charge collections separately and to disclose the existence and amount of funds regarded as trust funds for financial statements. The airlines, however, are permitted to commingle passenger facility charge collections with other revenues and are also entitled to retain interest earned on passenger facility charge collections until such passenger facility charge collections are remitted. The bankruptcy courts have not fully addressed such trust arrangements. Therefore, the Department cannot predict how a bankruptcy court might rule on this matter in the event of a bankruptcy filing by one of the airlines operating at LAX. Regardless, the Department could be held to be an unsecured creditor with respect to unremitted PFC revenues held by an airline that has filed for bankruptcy protection. Additionally, the Department cannot predict whether an airline operating at LAX that files for bankruptcy protection would have properly accounted for the PFC revenues owed to the Department or whether the bankruptcy estate would have sufficient moneys to pay the Department in full for the PFC revenues owed by such airline. See “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program – Passenger Facility Charges,” “—Considerations Regarding Passenger Facility Charges” for additional information about the Department’s expected use of PFC revenues.

Customer Facility Charge revenues collected by the rental car companies at LAX may constitute a trust fund held for the beneficial interest of the eligible agency (i.e., the Department) imposing the Customer Facility Charge, except for any handling fee or retention of interest collected on unremitted proceeds. The rental car companies may be permitted to commingle Customer Facility Charge collections with other revenues and may be entitled to retain interest earned on Customer Facility Charge collections until such Customer Facility Charge collections are remitted. The bankruptcy courts have not fully addressed such trust arrangements. Therefore, the Department cannot predict how a bankruptcy court might rule on this matter in the event of a bankruptcy filing by one of the rental car companies operating at LAX. Regardless, the Department could be held to be an unsecured creditor with respect to unremitted Customer Facility Charge revenues held by a rental car company that has filed for bankruptcy protection. Additionally, the Department cannot predict whether a rental car company operating at LAX that files for bankruptcy protection would have properly accounted for the Customer Facility Charge revenues owed to the Department or whether the bankruptcy estate would have sufficient moneys to pay the Department in full for the Customer Facility Charge revenues owed by such rental car company. See “USE OF AIRPORT FACILITIES – Concession and Parking Agreements – Rental Cars,” “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program,” “—Certain Other Projects – The CONRAC” and “—The Automated People Mover System” for additional information about the Department’s expected use of Customer Facility Charge revenues.

With respect to a contractual counterparty in bankruptcy proceedings in a foreign country, the Department is unable to predict what types of orders and/or relief could be issued by foreign bankruptcy tribunals nor the extent to which any such orders would be enforceable in the United States.

Other possible effects of a bankruptcy of a contractual counterparty include, but may not be limited to, delays or reductions in revenues received by the Department and potentially in delays or reductions in payments under the DBFOM Agreement. Regardless of any specific adverse determinations in a contractual counterparty bankruptcy proceeding, the fact of a contractual counterparty bankruptcy proceeding could have an adverse effect on the liquidity and value of the Series 2018 Bonds. The Department has not incurred any material losses from recent contractual counterparty bankruptcies. See also “USE OF AIRPORT FACILITIES” regarding performance guaranties required by the Department.

The Department makes no representation with respect to the continued viability of any of the carriers or contractual counterparties serving LAX, airline service patterns, or the impact of any contractual counterparty failures on the LAX Revenues and passenger facility charge or Customer Facility Charge collections.

See also “AIRLINE INDUSTRY INFORMATION,” “LOS ANGELES INTERNATIONAL AIRPORT – Air Carriers Serving LAX” – Table 2, “—Aviation Activity” – Table 3 and Table 4 and “FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Top Revenue Providers and Sources” – Table 9 and Table 10.

## **Security Concerns**

Concerns about the safety of airline travel and the effectiveness of security precautions may influence passenger travel behavior and air travel demand, particularly in light of existing international hostilities, potential terrorist attacks and world health concerns, including epidemics and pandemics. As a result of terrorist activities,

certain international hostilities and risk of violent crime, the Department has implemented enhanced security measures mandated by the FAA, the Transportation Security Administration (“TSA”), the Department of Homeland Security and Airport management. Current and future security measures may create significantly increased inconvenience, costs and delays at LAX which may give rise to the avoidance of air travel generally and the switching from air to ground travel modes and may adversely affect the Department’s operations, expenditures and revenues.

LAX has been the target of a foiled terrorist bombing plot and has been recognized as a potential terrorist target and has been the scene of a shooting where a TSA officer was killed and several other people were injured. Recent incidents at United States and international airports underscore this risk. LAX is a high profile public facility in a major metropolitan area. The Department cannot predict whether LAX or any of the Department’s other airports will be actual targets of terrorists or other violent acts in the future.

Computer networks and data transmission and collection are vital to the efficient operation of the airline industry. Air travel industry participants, including airlines, the FAA, the TSA, the Department, concessionaires and others collect and store sensitive data, including intellectual property, proprietary business information, information regarding customers, suppliers and business partners, and personally identifiable information of customers and employees. The secure processing, maintenance and transmission of this information is critical to air travel industry operations. Despite security measures, information technology and infrastructure may be vulnerable to attacks by hackers or breached due to employee error, malfeasance or other disruptions. Any such breach could compromise networks and the information stored there could be disrupted, accessed, publicly disclosed, lost or stolen. Any such disruption, access, disclosure or other loss of information could result in disruptions in the efficiency of the air travel industry, legal claims or proceedings, liability under laws that protect the privacy of personal information, regulatory penalties, operations and the services provided, and cause a loss of confidence in the air travel industry, which could ultimately adversely affect Department revenues.

### **Regulations and Restrictions Affecting LAX**

The operations of LAX are affected by a variety of contractual, statutory and regulatory restrictions and limitations including extensive federal legislation and regulations, including, without limitation, the provisions of the Airport Terminal Tariff, terminal leases, the Rate Agreement (as defined herein), various grant assurances, the federal acts authorizing the imposition, collection and use of PFC revenues and extensive federal legislation and regulations applicable to all airports in the United States, all of which are subject to change in at times and in manners that the Department is unable to predict and which could have adverse consequences on the Department and/or the airlines and concessionaires operating at LAX.

In general, federal aviation law requires that airport fees charged to airlines and other Aeronautical Users be reasonable and that to receive federal grant funding, all airport generated revenues must be expended for the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner that are directly and substantially related to air transportation of passengers or property. Although the Department believes it is in compliance with these requirements, the Department faces occasional challenges to the reasonableness of rates charged and payments made. See “AIRPORT AND CAPITAL PLANNING –Financing the Capital Program – Grants.” Further, no assurance can be given that additional challenges relating to the reasonableness of fees charged at LAX or the use of airport generated revenues will not be filed in the future. An adverse determination in a challenge or audit could limit the ability of the Department to charge airlines and other Aeronautical Users rates sufficient to meet the covenants in the Senior Indenture and the Subordinate Indenture which would require the Department to increase rates and fees charged to non-Aeronautical Users, could result in the loss of certain federal funding and could have a material adverse impact on LAX Revenues. Further, federal grants are paid on a reimbursement basis and are subject to audit. Failure to comply with federal statutes and regulations can result in the loss of PFC revenues and federal grants.

Climate change concerns have led to new laws and regulations at the federal and State levels that could have a material adverse effect on the Department’s operations and on airlines operating at LAX. The U.S. Environmental Protection Agency (the “EPA”) has taken steps towards the regulation of greenhouse gas (“GHG”) emissions under existing federal law. Those steps may in turn lead to further regulation of aircraft GHG emissions. On December 14, 2009, the EPA made an “endangerment and cause or contribute finding” under the Clean Air Act, codified at 40 C.F.R.1. In the finding, the EPA determined that the body of scientific evidence supported a finding that six identified GHGs – carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride – cause global warming, and that global warming endangers public health and welfare. The EPA also

found that GHGs are a pollutant and that GHG emissions from motor vehicles cause or contribute to air pollution. This finding requires that the EPA regulate emissions of certain GHGs from motor vehicles. The Clean Air Act regulates aircraft emissions under provisions that are parallel to the requirements for motor vehicle emissions. Accordingly, the EPA may elect or be forced by the courts to regulate aircraft emissions as a result of this endangerment finding. While the EPA has not yet taken any action to regulate GHG emissions from aircraft, regulation may still be forthcoming. On July 5, 2011, the U.S. District Court for the District of Columbia issued an order concluding that the EPA has a mandatory obligation under the Clean Air Act to consider whether the greenhouse gas and black carbon emissions of aircraft engines endanger public health and welfare. The EPA is in the process of making its required determinations. The Department cannot predict what the EPA's findings will be or what effect they will have on the Department or the air traffic at LAX.

In addition to these regulatory actions, other laws and regulations limiting GHG emissions have been adopted by a number of states, including California, and have been proposed on the federal level. California passed Assembly Bill 32, the California Global Warming Solutions Act of 2006 ("AB 32"), which requires the statewide level of GHGs to be reduced to 1990 levels by 2020. On October 20, 2011, the California Air Resources Board ("CARB") made the final adjustments to its implementation of AB 32: the California cap-and-trade program (the "California Cap-and-Trade Program"). In August 2016, Senate Bill 32 was enacted and extends the California Cap-and-Trade Program and CARB to ensure that California-wide GHG emissions are reduced by at least 40% below the California-wide emissions limit not later than December 31, 2030. The Department's annual metric tons of carbon dioxide equivalent ("MtCO<sub>2</sub>e") emissions exceed 25,000 metric tons and therefore the Department is required to participate in the California Cap-and-Trade Program. California Cap-and-Trade Program credits are market based, thus, the annual costs for participation in the program may vary. The California Cap-and-Trade Program may result in rising electricity and fuel costs, which may adversely affect the airlines serving LAX and the Department's operations.

The South Coast Air Quality Management District ("SCAQMD") also imposes rules and regulations specifically targeted to various air pollutants and types of operations such as hydrant fueling, private vehicle fueling, power generators, boilers and the use of various volatile organic chemical containing materials.

See "AIRPORT SYSTEM ENVIRONMENTAL MATTERS."

It is not possible to predict whether future restrictions or limitations on operations at or affecting LAX will be imposed, whether future legislation or regulations will affect anticipated federal funding or passenger facility charge collections for capital projects for LAX or whether such restrictions or legislation or regulations would adversely affect LAX Revenues.

See "CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Changes in Law and Application Thereof."

### **Federal Funding; Impact of Federal Sequestration**

On February 6, 2012, Congress passed a four-year reauthorization bill for the FAA, the FAA Modernization and Reform Act of 2012, which was signed into law on February 14, 2012 by the President. This was the first long-term FAA authorization since the last such authorization expired in 2007. Between 2007 and the 2012 reauthorization, there were 23 short-term extensions of the FAA's authority and a two-week partial shutdown of the FAA in the summer of 2011. On April 27, 2018, the U.S. House of Representatives passed H.R. 4: FAA Reauthorization Act of 2018. H.R. 4, if passed by the U.S. Senate would, among other things, authorize the FAA's programs for five fiscal years, and increase funding for the Airport Improvement Program ("AIP"). The U.S. Senate is considering its own version of FAA reauthorization. The AIP provides federal capital grants to support airport infrastructure, including entitlement grants (determined by formulas based on passenger, cargo, and general aviation activity levels) and discretionary grants (allocated on the basis of specific set-asides and the national priority ranking system). There can be no assurance that the Congress will enact and the President will sign an FAA reauthorization act or provide for an additional extension before the current authorization expires. Failure to adopt such legislation may have a material, adverse impact on the AIP grant program and the Department. In addition, the AIP could be affected by the automatic across-the-board spending cuts, known as sequestration, described in more detail below. The Department is unable to predict the level of available AIP funding it may receive. If there is a reduction in the amount of AIP grants awarded to the Department for LAX, such reduction could (i) increase by a corresponding amount the capital expenditures that the Department would need to fund from other sources (including operating revenues, Additional Senior Bonds, Additional Subordinate Obligations or Third Lien Obligations), (ii) result in

decreases to the Department's Capital Improvement Plan or (iii) extend the timing for completion of certain projects. See "AIRPORT AND CAPITAL PLANNING – Financing the Capital Program – Grants."

Federal funding received by the Department and aviation operations could be adversely affected by the implementation of sequestration – a unique budgetary feature first introduced in the Budget Control Act of 2011, which among other things, reduced subsidy payments to be made to issuers of "direct-pay" bonds, such as Build America Bonds, including the Series 2009C Subordinate Bonds and the Series 2010C Subordinate Bonds. Reductions in the subsidy payment to the Department have ranged from 6.6% to 8.7% of the annual subsidy amount. The Department is unable to predict by what percentage, if any, reductions would be made to Build America Bonds subsidy payments in the future. Sequestration could also adversely affect FAA and TSA budgets, operations and the availability of certain federal grant funds typically received annually by the Department which may cause the FAA or TSA to implement furloughs of its employees and hiring freezes, including air traffic controllers, and result in flight delays and flight cancellations, implement hiring freezes.

The Department is unable to predict future sequestration funding cuts or furloughs of federal employees responsible for federal airport security screening, air traffic control and customs and border protection or the impact of such actions on airline traffic at LAX or the Department's revenues.

See "CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Changes in Law and Application Thereof."

### **Considerations Regarding Passenger Facility Charges**

Pursuant to the PFC Acts, the FAA has approved the Department's applications to require the airlines to collect and remit to the Department a passenger facility charge on each enplaning revenue passenger at LAX. The Department expects to use PFC revenues to pay a portion of the debt service on PFC Eligible Obligations.

Debt service to be paid with PFC revenues is not included in the coverage calculations described in the Senior Indenture or Subordinate Indenture.

No assurance can be given that the Department's authority to collect PFC revenues will be increased or extended. Further, no assurance can be given that PFC revenues will actually be received in the amounts or at the times contemplated by the Department. The amount and timing of receipt of actual PFC revenues may vary depending on actual levels of qualified passenger enplanements at LAX. See "—Demand for Air Travel, Aviation Activity and Related Matters" above.

In addition, the FAA may terminate the Department's ability to impose PFC revenues, subject to informal and formal procedural safeguards, if (a) PFC revenues are not being used for approved projects in accordance with the FAA's approval, the PFC Acts or the regulations promulgated thereunder, or (b) the Department otherwise violates the PFC Acts or regulations. The Department's authority to impose passenger facility charges may also be terminated if the Department violates certain AIP grant assurances and certain provisions of the Airport Noise and Capacity Act of 1990 ("ANCA") and its implementing regulations relating to the implementation of noise and access restrictions for certain types of aircraft. The regulations under ANCA also contain procedural safeguards to ensure that the Department's authority to impose passenger facility charges would not be summarily terminated. No assurance can be given that the Department's authority to impose passenger facility charges will not be terminated by Congress or the FAA, that the passenger facility charge program will not be modified or restricted by Congress or by the FAA so as to reduce PFC revenues available to the Department or that the Department will not seek to decrease the amount of the passenger facility charges to be collected.

In the event the FAA or Congress reduced or terminated the Department's ability to collect PFC revenues, or passenger facility charge collections were otherwise less than anticipated, the Department would need to find other funding sources to pay debt service it expects to pay with PFC revenues. In addition, in such a circumstance the Department might need to find other sources of funding, including issuing Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations, to finance the projects currently being paid for, or projected to be paid for, with PFC revenues.

Financial forecasts and projected airline collections of passenger facility charges are based on the current \$4.50 passenger facility charge level remaining unchanged in the future.

See “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program – Passenger Facility Charges.” See also “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Changes in Law and Application Thereof.”

#### **Delays and Cost Increases; Future Capital Projects; Additional Indebtedness**

The estimated costs of and projected schedule and sources of funding for the Capital Program (including the APM System) and certain other information regarding Other Projects are subject to a number of uncertainties and capital project budgets and financing plans are updated from time to time. The ability of the Department to complete and finance capital projects may be adversely affected by various factors including: (i) estimating variations, (ii) design and engineering variations, (iii) changes to the scope, scheduling or phasing of the projects, (iv) delays in contract awards and/or as a result of the acts or omissions of third-parties, (v) material and/or labor shortages, (vi) unforeseen site conditions, (vii) adverse weather conditions, earthquakes or other casualty events, (viii) contractor defaults, (ix) labor disputes, (x) unanticipated levels of inflation, (xi) inability of concessionaires, airlines, developers or other transaction participants to obtain or maintain financing, (xii) environmental issues, (xiii) bidding conditions through the Department’s procurement process, and (xiv) litigation. No assurance can be made that the existing or future projects will not cost more than the current budget or future budgets for such projects. Schedule delays or cost increases could result in the need to issue Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations, the expenditure of additional Department funds, the diversion of financial and other resources to such projects, and may result in increased costs to the airlines and others operating at the Airport.

In addition, certain funding sources are assumed to be available for the Department’s projects, including the Capital Program. For example, certain of the Department’s expectations are based on assumptions that concessionaires, airlines, developers or other terminal participants will develop for the Department’s eventual acquisition certain elements of the Capital Program and that the Department will receive additional passenger facility charge collection authority, AIP grant funding, TSA funding and Customer Facility Charges for various projects referenced under “AIRPORT AND CAPITAL PLANNING – Financing the Capital Program”. See also “—Considerations Regarding Passenger Facility Charges” above. The relative amount of these funding sources directly affects debt service. No assurances can be given that such development or funding will, in fact, be available, or that the Department will not change its plan of finance. If development funding or other funding sources are not available or the Department changes its plan of finance, the Department may need to expend additional Department funds, eliminate or scale down projects, divert financial and other resources to such projects or incur additional indebtedness, possibly including issuing Additional Senior Bonds, Additional Subordinate Obligations and/or third Lien Obligations, to finance such projects. Such changes could result in actual results, including but not limited to debt service coverage, differing materially from Department expectations.

As described in this Appendix, private developers are expected to have significant roles in the design, financing, construction, maintenance and operation of the APM System and the CONRAC, if any. The Department expects to negotiate the agreement with the selected CONRAC developer, if any, over the next several months. The terms of this arrangement have not been definitively established as of the date of this Appendix. While the Department has required customary assurances of performance by the APM Developer and expects to require customary assurances of performance by the CONRAC developer, if any, and the agreement ultimately executed with the CONRAC developer, if any, may be such that such customary assurances may not protect the Department from significant adverse financial consequences in the event of nonperformance or default by the APM Developer and/or the CONRAC developer.

In addition, the Department intends to undertake future capital projects at LAX. The Department may pursue capital projects and acquisitions beyond the Capital Program currently described in this Appendix. See “AIRPORT AND CAPITAL PLANNING” for a discussion of the Other Projects.

Because the cost, scope and timing for undertaking certain future projects and acquisitions beyond the Capital Program (including the Other Projects) is uncertain, associated financial impacts are not included in financial forecasts. The costs of any such projects are not known at this time. If additional projects are undertaken and other financing sources are not available, the Department may issue Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations to finance such projects, and may elect to divert financial and other resources to such projects. As a result, actual results could differ materially from financial forecasts.

Department management intends, where practical, to implement certain capital projects using a modular and phased approach, so that future projects (or project phases) can be deferred if unanticipated events occur (such as lower than anticipated growth or declines in aviation activity at LAX). The Department may ultimately decide not to proceed with certain capital projects or may proceed with them on a different schedule and/or may need to make alternative arrangements in cases of contractor delays, defaults or inability to perform, resulting in different results than those included in financial forecasts. The Department's ability to finance its Capital Improvement Plan, including the financing of Milestone Payments (as defined below), also depends upon the orderly function of the capital markets which have in the past experienced substantial disruptions. Another disruption may negatively impact the timing and ability of issuers of municipal debt, such as the Department, to access short or long term funding. No assurance can be given that this source of funding will actually be available in the amounts or at the times desired by the Department.

See "AIRPORT AND CAPITAL PLANNING" for a discussion of certain projects the Department is considering undertaking and "LITIGATION REGARDING THE AIRPORT SYSTEM AND THE DEPARTMENT."

### **Seismic Risks; Other Force Majeure Events**

The City is located in a seismically active region of the State. During the past 150 years, the Los Angeles area has experienced several major and minor earthquakes. On January 17, 1994, the Los Angeles area experienced an earthquake that measured 6.7 on the Richter Scale. LAX experienced no disruption of service following that incident. Damage in excess of \$11 million was sustained at VNY and LAX. The Department received funds from the Federal Emergency Management Agency ("FEMA") and from its insurance carrier as a result of the earthquake damage at VNY.

In March 2015, the Uniform California Earthquake Rupture Forecast (the "2015 Earthquake Forecast") was issued by the Working Group on California Earthquake Probabilities. Organizations sponsoring the Working Group on California Earthquake Probabilities include the U.S. Geological Survey, the California Geological Survey, the Southern California Earthquake Center and the California Earthquake Authority. According to the 2015 Earthquake Forecast, the probability of the Southern California region experiencing an earthquake measuring 6 or larger on the Richter Scale by 2044 is approximately 100%, measuring 6.7 or larger on the Richter Scale by 2044 is approximately 95%, measuring 7 or larger on the Richter Scale by 2044 is approximately 76%, measuring 7.5 or larger on the Richter Scale by 2044 is approximately 36%, and measuring 8 or larger on the Richter Scale by 2044 is approximately 7%, and the likelihood of the Los Angeles region experiencing an earthquake measuring 6 or larger on the Richter Scale by 2044 is approximately 96%, measuring 6.7 or larger on the Richter Scale by 2044 is approximately 60%, measuring 7 or larger on the Richter Scale by 2044 is approximately 46%, measuring 7.5 or larger on the Richter Scale by 2044 is approximately 31%, and measuring 8 or larger on the Richter Scale by 2044 is approximately 7%. LAX's facilities and the infrastructure surrounding LAX could sustain extensive damage in a major seismic event, ranging from total destruction of LAX or the surrounding infrastructure to destabilization or liquefaction of the soils, to little or no damage at all.

The Department's ability to generate revenues is also at risk from other force majeure events, such as extreme weather events, droughts, and other natural occurrences, fires, explosions, spills of hazardous substances, strikes and lockouts, terrorist or other attacks, sabotage, or wars, blockades or riots. No assurance can be given that such events will not occur. Although the Department has attempted to mitigate the risk of loss from many of these occurrences by purchasing commercial property and casualty insurance, no assurance can be given that such insurance will always be available in sufficient amounts at a reasonable cost or available at all or that insurers will pay claims in a timely manner or at all.

Any damage to facilities or other properties could adversely affect the Department's revenues or require substantial new capital spending by the Department or others to replace or improve facilities and surrounding infrastructure. The Department carries only limited earthquake insurance as described under "FINANCIAL AND OPERATING INFORMATION CONCERNING LAX – Risk Management and Insurance." The Department is unable to predict when another earthquake or other force majeure event may occur and what impact, if any, it may have on the Department's operations or finances or whether the Department or others will have sufficient resources to rebuild or repair damaged facilities and surrounding infrastructure following a major earthquake or other force majeure event.

## **Capacity of the National Air Traffic Control System; Capacity of LAX**

Demands on the national air traffic control system have, in the past, caused delays and operational restrictions affecting airline schedules and passenger traffic. The FAA is gradually implementing enhanced air traffic management programs, air navigation aids and procedures. Since 2007, airline traffic delays have decreased as a result of reduced numbers of aircraft operations, but, as airline travel increases in the future, flight delays and restrictions may be expected. In addition to any future constraints that may be imposed by the capacity of the national air traffic control system, future growth in airline traffic at LAX will depend on the capacity at LAX itself. In the Southern California Association of Governments (“SCAG”) Regional Transportation Plan, the overall practical capacity of LAX was described as a range of 78.9 to 96.6 million annual passengers.

## **Changes in Law and Application Thereof**

The airline industry is heavily regulated, especially by the federal government, and there are a significant number of governmental agencies and legislative bodies, including the U.S. DOT, FAA, TSA, EPA and others that have the ability to directly or indirectly affect the Department and the airline industry financial and/or operationally.

From time to time, governmental agencies, executives and legislative bodies, have proposed, issued or enacted and may continue to propose, issue and enact legislation, rules, orders and other laws, rules and guidance that have the effect of law, particularly in with respect to Federal aviation regulation, funding, security, immigration, tariffs and trade. The proposal, issuance or enactment of such legislation, rules, orders and other laws, rules and guidance that have the effect of law may have a material effect on the airline industry and the Department. In particular, as noted under “—Federal Funding; Impact of Federal Sequestration,” the Department receives, and the Capital Program is designed with the expectation of receipt of, federal AIP capital grants to support airport infrastructure, including entitlement grants and discretionary grants. As of the date of this Official Statement, there is insufficient information available about the potential governmental action to estimate the impacts, if any, on direct or indirect Federal funding that may impact the aviation industry, airports or local governments or their respective operations, including law enforcement, transportation or other activities. If there is a reduction in the amount of AIP grants awarded to the Department for LAX, such reduction could (i) increase by a corresponding amount the capital expenditures that the Department would need to fund from other sources (including operating revenues, Additional Senior Bonds, Additional Subordinate Obligations and/or Third Lien Obligations), (ii) result in decreases to the Department's Capital Program or (iii) extend the timing for completion of certain projects. Moreover, while enforcement of potential executive orders, laws or regulations could impose additional financial burdens upon the aviation industry, the Department or the City, as of the date of this Appendix, insufficient information is available regarding potential Federal action to estimate the magnitude, if any, of such potential impacts.

## **Enforceability of Remedies; Limitation on Remedies**

Except as described in the following sentence, the occurrence of a Senior Event of Default does not grant any right to accelerate payment of the Senior Bonds or the Subordinate Obligations to any of the Senior Trustee, the Subordinate Trustee or the Holders of the Senior Bonds or the Subordinate Obligations. The Senior Trustee is authorized to take certain actions upon the occurrence of a Senior Event of Default, including proceedings to enforce the obligations of the Department under the Senior Indenture. Except as described in the following sentence, the occurrence of a Subordinate Event of Default does not grant any right to accelerate payment of the Subordinate Obligations or the Senior Bonds to any of the Subordinate Trustee, the Senior Trustee, or the Holders of the Subordinate Obligations or Senior Bonds. Pursuant to the CP Reimbursement Agreements, the Department granted to the CP Banks the right to accelerate any payments due to the CP Banks upon an event of default under the CP Reimbursement Agreements. The Subordinate Trustee is authorized to take certain actions upon the occurrence of a Subordinate Event of Default, including proceedings to enforce the obligations of the Department under the Subordinate Indenture.

The rights and remedies available to the APM Developer, and the obligations incurred by the Department, may become subject to, among other things, the federal bankruptcy code; applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting creditors' rights generally, now or hereinafter in effect; equity principles; limitations on the specific enforcement of certain remedies; the exercise by the United States of America of the powers delegated to it by the Constitution; the reasonable and necessary exercise, in certain circumstances, of the police powers inherent in the sovereignty of the State and its governmental bodies having an interest in serving a significant and legitimate public purpose; and regulatory and judicial actions that are subject to discretion and delay. The foregoing could subject the APM Developer to, among other things, judicial discretion



and interpretation of rights; the automatic stay provisions of the federal bankruptcy code; rejection of significant agreements; avoidance of certain payments to the APM Developer as preferential payments; assignments of certain obligations, including those in favor of the APM Developer; significant delays, reductions in payments and other losses to the APM Developer; an adverse effect on the liquidity and values of payments under the DBFOM Agreement; additional borrowing, which borrowing may have priority over the lien of the Master Subordinate Indenture; alterations to the priority, interest rate, payment terms, collateral, maturity dates, payment sources, covenants (including tax-related covenants) and other terms or provisions of the Master Subordinate Indenture and other obligations.

Legal opinions to be delivered concurrently with the delivery of the DBFOM Agreement will be qualified to the extent that the enforceability of certain legal rights related to the APM Developer may be subject to, among other things, the general principles of equity which permit the exercise of judicial discretion; the sovereign police power of the State of California; the constitutional powers of the United States of America; bankruptcy, insolvency, reorganization, moratorium and other laws that affect the enforcement of creditors' rights generally, as well as, the application of equitable principles of equitable remedies.

See also "OUTSTANDING OBLIGATIONS AND DEBT SERVICE SCHEDULE – Subordinate Bonds and Subordinate Commercial Paper Notes."

### **Rate Covenant Limitations**

The Senior Indenture and the Subordinate Indenture include covenants with respect to the establishment of rates and charges. However, the Senior Indenture and the Subordinate Indenture provide that so long as the Department is taking specified steps to meet the applicable rate covenant, an event of default will not be triggered until the end of the second subsequent Fiscal Year. The ability of the Department to increase rates and charges and to reduce expenses is limited by, among other things, federal law (including the provisions thereof described under "—Regulations and Restrictions Affecting LAX") and certain agreements with airlines and other users of LAX facilities. See "USE OF AIRPORT FACILITIES."

### **Retirement Plan Funding**

As described in more detail under "THE DEPARTMENT OF AIRPORTS – Retirement Plan," Department employees, including Airport Police, currently participate in the Los Angeles City Employees' Retirement System ("LACERS") and under requirements of the Charter, the Department makes contributions to LACERS with respect to its employees in amounts determined by LACERS and its actuaries. See "THE DEPARTMENT OF AIRPORTS – Retirement Plan," regarding changes to the Charter to permit Airport Police to participate in LAFPP (as defined now). The Department's pension cost varies from year to year depending on, among other things, the annual contribution rate determined by LACERS, and if any Airport Police participate in LAFPP in the future, by LAFPP and their respective actuaries, the total salaries paid to the Department's covered employees and the retirement benefits accruing to those employees. For Fiscal Year 2017, pursuant to GASB 68 (as described below), a proportional allocation of the City's Net Pension Liability (as described below) in the aggregate amount of approximately \$761.2 million was allocated to the Department with respect to LAX. The LACERS Actuarial Valuation and Review of Retirement and Health Benefits as of June 30, 2017 ("LACERS Valuation Report" and together with the Los Angeles City Employees' Retirement System, Comprehensive Annual Financial Report for the Fiscal Year ended June 30, 2017, the "LACERS Reports") and the City of Los Angeles Fire and Police Pension Plan Actuarial Expense Study during the period July 1, 2013 through June 30, 2016, the Los Angeles Fire and Police Pension System Financial Statements for the fiscal years ended June 30, 2017 and 2016 and the City of Los Angeles Fire and Police Pension Plan Actuarial Valuation and Review of Retirement and Other Postemployment Benefits as of June 30, 2017 (collectively, the "LAFPP Reports") have reported unfunded actuarial accrued liabilities ("UAAL") for retirement benefits and for health subsidy benefits. Due to LACERS' and LAFPP's smoothing methodology, certain investment losses have not been recognized in the determination of LACERS' or LAFPP's UAAL. Contributions by the Department to LACERS, and if any Airport Police participate in LAFPP in the future, to LAFPP are expected to increase significantly in the coming Fiscal Years, as contribution rates are subject to change due to changes in market conditions, assumptions and funding methodologies. Factors beyond the Department's control, including but not limited to, returns on LACERS, and if any Airport Police participate in LAFPP in the future, to LAFPP plan assets, may affect the Department's retirement and health subsidy benefit expenses and may increase the Department's related funding obligations. These increases may adversely affect the Department's financial condition.

Any person or entity relying upon any payment derived from LAX Revenues is cautioned that information about the City's Net Pension Liability, LACERS and LAFPP, including UAALs, funded ratios and calculations of required contributions, included or referenced in this Appendix, are "forward looking" information. Such "forward looking" information reflects the judgment of LACERS and LAFPP and their respective actuaries as to the amount of assets that LACERS and LAFPP will be required to accumulate to fund future benefits over the lives of the currently active employees, vested terminated employees and existing retired employees and beneficiaries. These judgments are based upon a variety of assumptions, one or more of which may prove to be inaccurate and/or be changed in the future.

For information regarding the City's Net Pension Liability, LACERS-related and LAFPP-related unfunded actuarial accrued liabilities, LACERS and LAFPP system assets, LACERS and LAFPP funded ratios and certain of the City's projected contributions to LACERS and LAFPP, related assumptions and other LACERS-related and LAFPP-related information, see APPENDIX B-2 – "ANNUAL FINANCIAL REPORT OF LOS ANGELES WORLD AIRPORTS (DEPARTMENT OF AIRPORTS OF THE CITY OF LOS ANGELES, CALIFORNIA) LOS ANGELES INTERNATIONAL AIRPORT FOR THE FISCAL YEARS ENDED JUNE 30, 2017 AND 2016" and APPENDIX B-8 – "CERTAIN INFORMATION REGARDING THE RETIREMENT PLAN AND PENSION SYSTEMS OF THE CITY OF LOS ANGELES." The information in APPENDIX B-8 has been obtained from publicly available City documents. The LACERS Reports are available on LACERS' and LAFPP's website and contain additional information regarding LACERS and LAFPP assumptions, plan details and investment of plan assets. The Department is relying upon, and has not independently confirmed or verified, the accuracy or completeness of this section, APPENDIX B-8 or the LACERS Reports, LAFPP Reports or other information incorporated by reference therein.

## **FINANCIAL STATEMENTS**

The audited financial statements of the Department for Fiscal Years 2017 and 2016 are included as part of APPENDIX B-2 attached hereto. The financial statements referred to in the preceding sentence have been audited by Macias, Gini & O'Connell LLP, independent auditors, as stated in its Independent Auditor's Report included in APPENDIX B-2. Macias, Gini & O'Connell LLP was not requested to consent to the inclusion of its report in APPENDIX B-2 and it has not undertaken to update its report or to take any action intended or likely to elicit information concerning the accuracy, completeness or fairness of the statements made in this Official Statement, and no opinion is expressed by Macias, Gini and O'Connell LLP with respect to any event subsequent to the date of its report.

## **CONTINUING DISCLOSURE**

In connection with the issuance of the Series 2018 Bonds, the Department will covenant to provide, or cause to be provided, to the MSRB certain annual financial information and operating data relating to the Department and, in a timely manner, notice of certain listed events for purposes of Rule 15c2-12 adopted by the SEC. See APPENDIX E-2 – "FORM OF DEPARTMENT CONTINUING DISCLOSURE CERTIFICATE." The Department has agreed to provide the foregoing information to MSRB through the Electronic Municipal Market Access (EMMA) website.

## **AIRLINE INDUSTRY INFORMATION**

### **General**

Many of the major scheduled domestic airlines serving LAX, or their respective parent corporations, and many of the foreign airlines serving LAX with American Depositary Receipts ("ADRs") registered on a national exchange, are subject to the information reporting requirements of the Securities Exchange Act of 1934, as amended, and in accordance therewith file reports and other information with the Securities and Exchange Commission (the "SEC"). Certain information, including financial information, concerning such domestic airlines, or their respective parent corporations, and such foreign airlines is disclosed in certain reports and statements filed with the SEC. Such reports and statements can be inspected and copied at the public reference facilities maintained by the SEC, which can be located by calling the SEC at 1-800-SEC-0330. The SEC maintains a web site containing reports, proxy statements and other information regarding registrants that file electronically with the SEC. In addition, each airline is required to file periodic reports of financial aid and operating statistics with the U.S. DOT. Such reports can be inspected at the U.S. DOT's Office of Airline Information, Bureau of Transportation Statistics, Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, and copies of such reports can be obtained from U.S. DOT at prescribed rates.

Foreign airlines serving LAX, or foreign corporations operating airlines serving LAX (unless such foreign airlines have ADRs registered on a national exchange), are not required to file information with the SEC. Such foreign airlines, or foreign corporations operating airlines serving LAX, file limited information only with the U.S. DOT. See “CERTAIN CONSIDERATIONS RELATED TO LAX REVENUES – Demand for Air Travel; Aviation Activity and Related Matters,” “—Financial Condition of the Airlines; Effect of Airline Industry Consolidation; Effect of Airline and Concessionaire Bankruptcies” and “—Security Concerns.”

**The Department undertakes no responsibility for and makes no representation as to the accuracy or completeness of (i) any reports and statements filed with the SEC or U.S. DOT as described in this section or (ii) any material contained on the SEC’s website as described in this section, including, but not limited to, updated information on the SEC website or links to other Internet sites accessed through the SEC’s website. Any such information is not part of this Official Statement nor has such information been incorporated by reference herein, and such information should not be relied upon in deciding whether to invest in the Series 2018 Bonds.**

## **MISCELLANEOUS**

### **Forward-Looking Statements**

The statements contained in this Appendix, including the appendices that are not purely historical, are forward-looking statements, including statements regarding the Department’s or the Board’s expectations, hopes, intentions or strategies regarding the future. Such statements are generally identifiable by the terminology used such as “plan,” “expect,” “estimate,” “budget,” “project,” “forecast,” “will likely result,” “are expected to,” “will continue,” “is anticipated,” “intend” or other similar words. Any person or entity relying upon any payment derived from LAX Revenues should not place undue reliance on forward-looking statements. All forward-looking statements included in this Appendix are based on information available to the Department and the Board on the date hereof, and the Department and the Board assume no obligation to update any such forward-looking statements with new forward-looking statements. It is important to note that the Department’s actual results likely will differ, and could differ materially, from those in such forward-looking statements.

The forward-looking statements herein are based on various assumptions and estimates and are inherently subject to various risks and uncertainties, including risks and uncertainties relating to the possible invalidity of the underlying assumptions and estimates and possible changes or developments in social, economic, business, industry, market, legal and regulatory circumstances and conditions and actions taken or omitted to be taken by third parties, including airlines, customers, suppliers and competitors, among others, and legislative, judicial and other governmental authorities and officials. Assumptions related to the foregoing involve judgments with respect to, among other things, future economic, competitive and market conditions and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond the control of the Department and the Board. Any of such assumptions could be inaccurate and, therefore, there can be no assurance that the forward-looking statements included in this Official Statement will prove to be accurate.

### **Additional Information**

Brief descriptions of the Senior Indenture, the Subordinate Indenture and certain other documents are included in this Official Statement and the appendices to this Appendix. Such descriptions do not purport to be comprehensive or definitive. All references in this Appendix to such documents and any other documents, statutes, laws, reports or other instruments described in this Appendix are qualified in their entirety by reference to each such document, statute, law, report or other instrument. Information contained in this Appendix has been obtained from officers, employees and records of the Department and from other sources believed to be reliable. The information in this Appendix is subject to change without notice, and neither the delivery of this Appendix nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the Department or LAX since the date of this Appendix. This Appendix is not to be construed as a contract or agreement between the Department and purchasers or owners of any of the Series 2018 Bonds. The Department maintains certain websites (including an investor relations website) and social media accounts, the information on which is not part of this Official Statement, is not incorporated by reference in this Appendix and should not be relied upon in deciding whether to rely upon any payment derived from LAX Revenues.

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**APPENDIX B-2**

**ANNUAL FINANCIAL REPORT OF  
LOS ANGELES WORLD AIRPORTS  
(DEPARTMENT OF THE CITY OF LOS ANGELES, CALIFORNIA)  
LOS ANGELES INTERNATIONAL AIRPORT  
FOR THE FISCAL YEAR ENDED JUNE 30, 2017 AND 2016**

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Los Angeles  
International Airport



Department of Airports  
Los Angeles, California

Fiscal years ended June 30, 2017 and 2016









## Board of Airport Commissioners, Elected City Officials, and Los Angeles World Airports Executive Staff

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Sean O. Burton  
President



Valeria C. Velasco  
Vice President



Gabriel L. Eshaghian  
Commissioner



Thomas S. Sayles  
Commissioner



Beatrice C. Hsu  
Commissioner



Jeffery J. Daar  
Commissioner



Cynthia A. Telles  
Commissioner



Deborah Flint  
Chief Executive Officer

### CITY OF LOS ANGELES ELECTED OFFICIALS

Eric Garcetti, Mayor  
Mike Feuer, City Attorney  
Ron Galperin, City Controller

### CITY COUNCIL

Herb J. Wesson, Jr., President, District 10  
Mitchell Englander, President Pro Tempore, District 12  
Nury Martinez, Assistant President Pro Tempore, District 6

Gilbert A. Cedillo, District 1  
Paul Krekorian, District 2  
Bob Blumenfield, District 3  
David E. Ryu, District 4

Paul Koretz, District 5  
Monica Rodriguez, District 7  
Marqueece Harris-Dawson, District 8  
Curren D. Price, Jr., District 9

Mike Bonin, District 11  
Mitch O'Farrell, District 13  
José Huizar, District 14  
Joe Buscaino, District 15

### LOS ANGELES WORLD AIRPORTS EXECUTIVE STAFF

Deborah Flint, Chief Executive Officer  
Samson Mengitsu, Deputy Executive Director, Chief Operating Officer  
Ryan Yakubik, Deputy Executive Director, Chief Financial Officer  
Debbie Bowers, Deputy Executive Director, Chief Commercial Officer  
Samantha Bricker, Deputy Executive Director, Environmental Programs Group  
Michael Christensen, Deputy Executive Director, Facilities Maintenance and Utilities Group  
Trevor Daley, Deputy Executive Director, Chief External Affairs Officer  
Justin Erbacci, Deputy Executive Director, Chief Innovation and Technology Officer  
Patrick Gannon, Deputy Executive Director, Chief of Security and Public Safety  
Robert Gilbert, Deputy Executive Director, Chief Development Officer  
Cynthia Guidry, Deputy Executive Director, Planning and Development Group  
Roger Johnson, Deputy Executive Director, LAMP Program Executive  
Aura Moore, Deputy Executive Director, Chief Information Officer  
Keith Wilschetz, Deputy Executive Director, Operations and Emergency Management  
Raymond Ilgunas, General Counsel



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## Message from the Chief Executive Officer

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I am pleased to present the Annual Financial Report of the Los Angeles International Airport (LAX) for the fiscal year ended June 30, 2017.

Macias Gini & O'Connell LLP, Certified Public Accountants (MGO), audited LAX's financial statements. Based upon its audit, MGO rendered an unmodified opinion that LAX's financial statements, as of and for the fiscal years ended June 30, 2017 and 2016, were fairly presented in conformity with accounting principles generally accepted in the United States of America (GAAP). MGO's report is on pages 1 and 2.

MGO conducted an additional audit to determine LAX's compliance with the requirements described in the *Passenger Facility Charge Audit Guide for Public Agencies* and concluded that LAX complied in all material respects with the requirements that could have a material effect on its passenger facility charge program for the fiscal year ended June 30, 2017. MGO's report is on pages 107 and 108.

MGO also conducted a third audit to determine LAX's compliance with the requirements described in the *California Civil Code Section 1939, as amended by Assembly Bill 2051*, and concluded that LAX complied in all material respects with the requirements that could have a material effect on its customer facility charge program for the fiscal year ended June 30, 2017. MGO's report is on pages 113 and 114.

GAAP requires that management provide a narrative introduction, overview, and analysis to accompany the financial statements in the form of Management's Discussion and Analysis (MD&A). The MD&A is on pages 5 through 33.

The financial condition of LAX depends largely upon the demand for air transportation within the geographical area (the Air Trade Area) served by LAX and management decisions regarding operations and capital investment as they relate to market demand for travel. The Air Trade Area comprises the following five counties: Los Angeles, Orange, Riverside, San Bernardino, and Ventura. LAX is the largest airport in the Air Trade Area. Passenger and cargo traffic at LAX depend on the demographic characteristics and economic activity of the Air Trade Area. LAX is part of a system of Southern California airports - along with Van Nuys Airport and property retained for future aeronautical uses in the City of Palmdale - that are owned and operated by Los Angeles World Airports.

According to Airport Council International (ACI) statistics, in calendar year 2016, LAX ranked as the fourth busiest airport in the world, and second busiest airport in the United States. LAX was named to Skytrax's 2017 list of top 10 most improved airports. The airport offers 737 daily nonstop flights to 100 cities in the U.S. and 1,386 weekly nonstop flights to 88 cities in 44 countries on 73 commercial air carriers. LAX ranks 14th in the world and fifth in the U.S. in air cargo tonnage processed, with more than 2.2 million tons of air cargo valued at over \$101.4 billion. LAX served more than 82.9 million passengers and handled 633,013 passenger flight operations (departures and arrivals) in fiscal year 2017.

Passenger traffic at LAX increased by 6.6% in fiscal year 2017 as compared to fiscal year 2016. Of the 82.9 million passengers that moved in and out of LAX, domestic passengers accounted for 71.1%, while international passengers accounted for 28.9%. Passenger and other traffic activity highlights during the last three fiscal years are discussed in the MD&A.

Deborah Flint  
Chief Executive Officer

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**Los Angeles World Airports**  
 (Department of Airports of the City of Los Angeles, California)  
**Los Angeles International Airport**

**Annual Financial Report**  
**Fiscal Years Ended June 30, 2017 and 2016**

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# Financial Section Contents

Independent Auditor's Report

Management's Discussion and Analysis

Financial Statements

Required Supplementary Information





## Independent Auditor's Report

To the Members of the Board of Airport Commissioners  
City of Los Angeles, California

### Report on the Financial Statements

We have audited the accompanying financial statements of the Los Angeles International Airport (LAX), a department component of Los Angeles World Airports (Department of Airports of the City of Los Angeles, California) (LAWA), an Enterprise Fund of the City of Los Angeles (City), as of and for the fiscal years ended June 30, 2017 and 2016, and the related notes to the financial statements, as listed in the table of contents.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of LAX as of June 30, 2017 and 2016, and the changes in its financial position and its cash flows for the fiscal years then ended in accordance with accounting principles generally accepted in the United States of America.

### Emphasis of Matters

#### Basis of Presentation

As discussed in Note 1, the financial statements of LAX are intended to present the financial position, the changes in financial position, and cash flows of only that portion of the business-type activities and each major fund of the City that is attributable to the transactions of LAX. They do not purport to, and do not, present fairly the financial position of LAWA or the City as of June 30, 2017 and 2016, the changes in their financial position, or, where applicable, their cash flows for the fiscal years then ended in conformity with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

## Independent Auditor's Report (continued)

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### **Other Matters**

#### *Required Supplementary Information*

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 5 to 33, the schedule of LAX's proportionate share of the net pension liability on page 101, and the schedule of contributions - pension on pages 102 to 104 be presented to supplement the financial statements. Such information, although not part of the financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the financial statements, and other knowledge we obtained during our audits of the financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

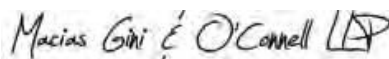
#### *Other Information*

Our audits were conducted for the purpose of forming an opinion on the financial statements of LAX. The accompanying compliance section listed in the table of contents is presented for purposes of additional analysis and is not a required part of the financial statements.

The accompanying Schedule of Passenger Facility Charge Revenues and Expenditures and accompanying notes on pages 109 to 112; and Schedule of Customer Facility Charge Revenues and Expenditures and accompanying notes on pages 115 to 117 (collectively Information) are the responsibility of management and were derived from, and relate directly to, the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the Information is fairly stated in all material respects in relation to the financial statements as a whole.

### **Other Reporting Required by Government Auditing Standards**

In accordance with *Government Auditing Standards*, we have also issued our report dated October 23, 2017, on our consideration of LAX's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering LAX's internal control over financial reporting and compliance.



Los Angeles, California  
October 23, 2017





## Management's Discussion and Analysis

# Los Angeles World Airports

(Department of Airports of the City of Los Angeles, California)

## Los Angeles International Airport

### Management's Discussion and Analysis (Unaudited)

#### June 30, 2017 and 2016

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Los Angeles World Airports (LAWA) is an independent, financially self-sufficient department of the City of Los Angeles, California (City). LAWA is an enterprise fund that owns and operates Los Angeles International Airport (LAX) and Van Nuys Airport (VNY). LAWA also owns approximately 17,750 acres of land located east of USAF Plant 42 in the City of Palmdale, and retains the rights for future development of the Palmdale property. On November 1, 2016, the City transferred, assigned and delivered to Ontario International Airport Authority (OIAA) the City's right, title and interest in and certain of the assets, properties, rights and interests solely used or held solely for use in connection with LAWA's operation of LA/ONT International Airport (ONT) pursuant to the Settlement Agreement described in Note 17 of the notes to the financial statements.

The management of LAWA presents the following narrative overview of LAX's financial activities for the fiscal years ended June 30, 2017 and 2016. This discussion and analysis should be read in conjunction with LAX's financial statements that begin on page 37.

### Using This Financial Report

LAX's financial report consists of this management's discussion and analysis (MD&A), and the financial statements that follow after the MD&A. The financial statements include:

The *Statements of Net Position* present information on all of LAX's assets, deferred outflows of resources, liabilities, and deferred inflows of resources at June 30, 2017 and 2016. The difference between (a) assets and deferred outflows of resources, and (b) liabilities and deferred inflows of resources was reported as net position. Over time, increases and decreases in net position may serve as a useful indicator about whether LAX's financial condition is improving or deteriorating.

The *Statements of Revenues, Expenses and Changes in Net Position* present the results of LAX's operations and information showing the changes in net position for the fiscal years ended June 30, 2017 and 2016. These statements can, among other things, be useful indicators of how LAX recovered its costs through rates and charges. All changes in net position were reported when the underlying events occurred, regardless of the timing of the related cash flows. Thus, revenues and expenses were recorded and reported in these statements for some items that will result in cash flows in future periods.

The *Statements of Cash Flows* relate to the inflows and outflows of cash and cash equivalents resulting from operating, noncapital financing, capital and related financing, and investing activities. Consequently, only transactions that affect LAX's cash and cash equivalents accounts were recorded in these statements. At the end of the statements, a reconciliation is provided to assist in understanding the difference between operating income and cash flows from operating activities.

The *Notes to the Financial Statements* present information that is not displayed on the face of the financial statements. Such information is essential to a full understanding of LAX's financial activities.



## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

### Passenger and Other Traffic Activity Highlights

The following table presents a summary of passenger and other traffic for the last three fiscal years:

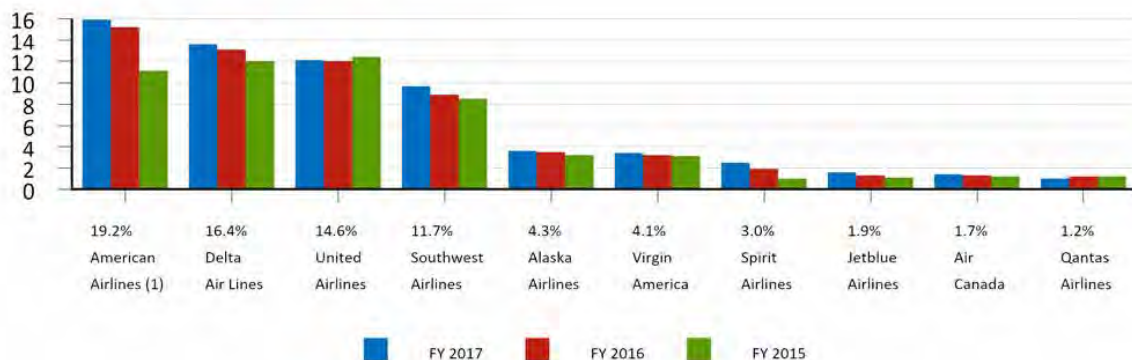
	FY 2017	FY 2016	FY 2015	% Change	
				FY 2017	FY 2016
Total passengers	82,923,839	77,799,530	72,062,730	6.6%	8.0%
Domestic passengers	58,934,016	56,151,106	52,478,111	5.0%	7.0%
International passengers	23,989,823	21,648,424	19,584,619	10.8%	10.5%
Departing passengers	41,602,124	38,952,367	36,114,325	6.8%	7.9%
Arriving passengers	41,321,715	38,847,163	35,948,405	6.4%	8.1%
Passenger flight operations					
Departures	316,704	300,023	291,107	5.6%	3.1%
Arrivals	316,309	299,652	290,920	5.6%	3.0%
Landing weight (thousand lbs)	62,635,426	59,166,582	54,990,272	5.9%	7.6%
Air cargo (tons)					
Mail	107,150	92,675	87,791	15.6%	5.6%
Freight	2,209,063	2,024,248	2,016,438	9.1%	0.4%

*Note: Prior years' data may change because of updated available information, however, in order to remain comparable and consistent with the published data, the passenger and other traffic numbers for prior fiscal years are not changed. Fiscal Year (FY) 2017 traffic data is based on information available on August 1, 2017.*

### Passenger Traffic

The following chart presents the top ten airlines, by number of passengers, for fiscal year 2017 and the comparative passengers for fiscal years 2016 and 2015.

**FY 2017 Top Ten Carriers and Percentage of Market Share**  
(passengers in millions)



(1) American Airlines merged with US Airways and combined data was reported starting FY 2016.

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### **Passenger Traffic, Fiscal Year 2017**

Passenger traffic at LAX increased by 6.6% in fiscal year 2017 as compared to fiscal year 2016. Of the 82.9 million passengers that moved in and out of LAX, domestic passengers accounted for 71.1%, while international passengers accounted for 28.9%. American Airlines ferried the largest number of passengers at 15.9 million with a 4.6% increase in passenger traffic. Delta Air Lines, ranked second with 13.6 million passengers posted a 3.8% increase in passenger traffic. United Airlines, ranked third with 12.1 million passengers posted a 0.8% increase in passenger traffic. Southwest Airlines (9.7 million) and Alaska Airlines (3.6 million) complete the top five air carriers operating at LAX. Air Canada was the top foreign flag carrier with 1.4 million passengers and was ranked ninth overall.

### **Passenger Traffic, Fiscal Year 2016**

Passenger traffic at LAX increased by 8.0% in fiscal year 2016 as compared to fiscal year 2015. Of the 77.8 million passengers that moved in and out of LAX, domestic passengers accounted for 72.2%, while international passengers accounted for 27.8%. American Airlines ferried the largest number of passengers at 15.2 million with a 11.8% increase in passenger traffic. Delta Air Lines, ranked second with 13.1 million passengers posted a 9.2% increase in passenger traffic. United Airlines, ranked third with 12.0 million passengers posted a 3.2% decrease in passenger traffic. Southwest Airlines (8.9 million) and Alaska Airlines (3.5 million) complete the top five air carriers operating at LAX. Air Canada was the top foreign flag carrier with 1.3 million passengers and was ranked ninth overall.

### **Flight Operations, Fiscal Year 2017**

Departures and arrivals at LAX increased by 33,338 flights or 5.6% during fiscal year 2017 when compared to fiscal year 2016. Scheduled and charter were up 33,636 flights, while commuter flights were down 298. Revenue landing pounds were up 5.9%. The top three carriers in terms of landing pounds were American Airlines, Delta Air Lines, and United Airlines. In total, these three airlines contributed 40.8% of the total revenue pounds at LAX.

### **Flight Operations, Fiscal Year 2016**

Departures and arrivals at LAX had an increase of 17,648 flights or 3.0% during fiscal year 2016 when compared to fiscal year 2015. Scheduled and charter were up 19,080 flights, while commuter flights were down 1,432. Revenue landing pounds were up 7.6%. The top three carriers in terms of landing pounds were American Airlines, Delta Air Lines, and United Airlines. In total, these three airlines contributed 42.1% of the total revenue pounds at LAX.

## **Management's Discussion and Analysis (Unaudited)**

**June 30, 2017 and 2016**

(continued)

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### **Air Cargo Operations, Fiscal Year 2017**

Freight and mail cargo at LAX increased by 9.4% in fiscal year 2017 as compared to fiscal year 2016. Freight and mail were up by 184,815 tons and 14,475 tons, respectively. Domestic cargo was up by 42,423 tons or 5.0% and international cargo was up by 156,867 tons or 12.4%. Federal Express was the top air freight carrier accounting for 16.9% of total freight cargo, followed by American Airlines with 4.5%. United Airlines was the top mail carrier accounting for 23.6% of total mail cargo.

### **Air Cargo Operations, Fiscal Year 2016**

Freight and mail cargo at LAX increased by 0.6% in fiscal year 2016 as compared to fiscal year 2015. Freight and mail were up by 7,810 tons and 4,884 tons, respectively. Domestic cargo was up by 14,185 tons or 1.7% and international cargo was down by 1,491 tons or 0.1%. Federal Express was the top air freight carrier accounting for 17.8% of total freight cargo, followed by Delta Air Lines with 4.8%. Delta Air Lines was the top mail carrier accounting for 24.5% of total mail cargo.



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## Overview of LAX's Financial Statements

### Financial Highlights, Fiscal Year 2017

- LAX's assets and deferred outflows of resources exceeded liabilities and deferred inflows of resources at June 30, 2017 by \$5.0 billion.
- Bonded debt had a net increase of \$404.4 million.
- Operating revenue totaled \$1.3 billion.
- Operating expenses (including depreciation and amortization of \$298.2 million) totaled \$1.0 billion.
- Net nonoperating revenue was \$18.8 million.
- Federal and other government grants totaled \$87.8 million.
- LAX's proportionate share of net pension liability (NPL) for the retirement benefits, based on the ratio of LAX's contributions to the City's retirement plan's total contributions, was \$761.2 million as of measurement date June 30, 2016, and reporting date June 30, 2017. NPL, the difference between the total pension liability (TPL) and the retirement plan's net position, is an important measure required by Governmental Accounting Standards Board (GASB) Statements No. 68<sup>1</sup> and 71<sup>2</sup>, to report in the financial statements (see Note 13 of the notes to the financial statements.)
- Net position increased by \$500.5 million.
- As a result of the transfer of ONT assets and liabilities to Ontario International Airport Authority (OIAA) on November 1, 2016 as contemplated by the LA/Ontario International Airport (ONT) Settlement Agreement, LAX recognized a transfer of residual operation from ONT of \$104.1 million (see Note 17 of the notes to the financial statements.)

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<sup>1</sup> GASB Statement No. 68, *Accounting and Financial Reporting for Pensions - an Amendment of GASB Statement No. 27*, issued in June 2012

<sup>2</sup> GASB Statement No. 71, *Pension Transition for Contributions Made Subsequent to the Measurement Date - an Amendment of GASB Statement No. 68*, issued in November 2013

## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

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### Financial Highlights, Fiscal Year 2016

- LAX's assets and deferred outflows of resources exceeded liabilities and deferred inflows of resources at June 30, 2016 by \$4.5 billion.
- Bonded debt had a net increase of \$619.8 million.
- Operating revenue totaled \$1.2 billion.
- Operating expenses (including depreciation and amortization of \$226.4 million) totaled \$890.3 million.
- Net nonoperating revenue was \$44.6 million.
- Federal and other government grants totaled \$49.3 million.
- LAX's proportionate share of NPL for the retirement benefits, based on the ratio of LAX's contributions to the City's retirement plan's total contributions, was \$642.4 million as of measurement date June 30, 2015, and reporting date June 30, 2016. NPL, the difference between the TPL and the retirement plan's net position, is an important measure required by GASB Statements No. 68 and 71, to report in the financial statements (see Note 13 of the notes to the financial statements.)
- Net position increased by \$415.3 million.

## Net Position Summary

A condensed net position summary for fiscal years 2017, 2016, and 2015 is presented below:

### Condensed Net Position (amounts in thousands)

	FY 2017	FY 2016	FY 2015	FY 2017 increase (decrease)	FY 2016 increase (decrease)
<b>Assets</b>					
Unrestricted current assets	\$ 917,431	\$ 925,151	\$ 777,512	\$ (7,720)	\$ 147,639
Restricted current assets	1,920,872	1,741,896	1,590,602	178,976	151,294
Capital assets, net	8,588,837	7,793,002	6,991,500	795,835	801,502
Other noncurrent assets	67,630	5,785	8,550	61,845	(2,765)
<b>Total assets</b>	<b>11,494,770</b>	<b>10,465,834</b>	<b>9,368,164</b>	<b>1,028,936</b>	<b>1,097,670</b>
<b>Deferred outflows of resources</b>					
Deferred charges on debt refunding	38,550	24,179	25,307	14,371	(1,128)
Deferred outflows of resources related to Pension	203,352	127,342	131,114	76,010	(3,772)
<b>Total deferred outflows of resources</b>	<b>241,902</b>	<b>151,521</b>	<b>156,421</b>	<b>90,381</b>	<b>(4,900)</b>
<b>Liabilities</b>					
Current liabilities payable from unrestricted assets	385,024	339,450	304,022	45,574	35,428
Current liabilities payable from restricted assets	212,628	166,609	126,729	46,019	39,880
Noncurrent liabilities	5,335,668	4,940,204	4,335,666	395,464	604,538
Net pension liability	761,187	642,431	566,613	118,756	75,818
<b>Total liabilities</b>	<b>6,694,507</b>	<b>6,088,694</b>	<b>5,333,030</b>	<b>605,813</b>	<b>755,664</b>
<b>Deferred inflows of resources</b>					
Deferred inflows of resources related to Pension	72,915	59,951	138,138	12,964	(78,187)
<b>Total deferred inflows of resources</b>	<b>72,915</b>	<b>59,951</b>	<b>138,138</b>	<b>12,964</b>	<b>(78,187)</b>
<b>Net Position</b>					
Net investment in capital assets	3,742,152	3,262,634	2,952,716	479,518	309,918
Restricted for debt service	423,327	389,217	341,697	34,110	47,520
Restricted for capital projects	782,153	686,080	742,742	96,073	(56,662)
Restricted for operations and maintenance reserve	185,897	179,836	174,228	6,061	5,608
Restricted for federally forfeited property & protested funds	1,463	1,137	1,289	326	(152)
Unrestricted	(165,742)	(50,194)	(159,255)	(115,548)	109,061
<b>Total net position</b>	<b>\$ 4,969,250</b>	<b>\$ 4,468,710</b>	<b>\$ 4,053,417</b>	<b>\$ 500,540</b>	<b>\$ 415,293</b>

## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

### Net Position, Fiscal Year 2017

As noted earlier, net position may serve as a useful indicator of LAX's financial condition. At the close of fiscal years 2017 and 2016, LAX's assets and deferred outflows of resources exceeded liabilities and deferred inflows of resources by \$5.0 billion and \$4.5 billion, respectively, representing an increase of 11.2% or \$500.5 million.

The largest portion of LAX's net position (\$3.7 billion or 75.3%) reflects its investment in capital assets (e.g. land, air easements, buildings, improvements, equipment and vehicles) less accumulated depreciation and any related outstanding debt used to acquire those assets. An additional portion of LAX's net position (\$1.4 billion or 28.0%) represents resources that are subject to various restrictions on how they may be used. Unrestricted net position decreased by \$115.5 million from \$(50.2) million in fiscal year 2016 to \$(165.7) million in fiscal year 2017 primarily due to recognition of \$118.8 million additional net pension liability (NPL) in accordance with GASB Statements No. 68 and 71.

Unrestricted current assets decreased by 0.8%, from \$925.2 million at June 30, 2016 to \$917.4 million at June 30, 2017. Unrestricted current assets consist primarily of cash and pooled investments (including reinvested cash collateral in 2017) held in the City Treasury. Unrestricted cash inflows were from operating activities, investment activities, noncapital grants, and federal grant reimbursements for eligible capital projects. Unrestricted cash outflows were for operating activities, capital acquisitions and transfers to fiscal agents for debt service.

Restricted current assets include cash and investments (including reinvested cash collateral in 2017) held in the City Treasury for future capital projects funded by passenger facility charges (PFCs) and customer facility charges (CFCs). Also included are bond proceeds to be used for capital expenditures as well as bond debt service funds held by fiscal agents. Drawdowns from the amounts held by fiscal agents were used for capital expenditures incurred and for bond principal and interest payments. The increase in year-end investment portfolio held by fiscal agents of \$90.5 million, or 10.9% from \$834.0 million in fiscal year 2016 to \$924.5 million in fiscal year 2017 was mainly due to unspent proceeds of newly issued 2017 series bonds as of June 30, 2017.

LAX's capital assets additions are financed through issuance of revenue bonds, grants from federal agencies, PFCs, CFCs, new airport revenue and existing resources. Interim financing of such acquisition may be provided through the issuance of commercial paper notes. Capital assets, net of depreciation, increased by 10.2%. Ongoing construction and improvements to modernize LAX terminals and facilities were the primary reasons for the increase.

Other noncurrent assets increased by \$61.8 million or 1,069.1%. The increase was primarily due to noncurrent receivable from OIAA of \$47.1 million<sup>3</sup> as a result of the ONT Settlement Agreement described in Note 17 of the notes to the financial statements.

Current liabilities payable from unrestricted assets increased \$45.6 million or 13.4%. This was mainly due to an increase of \$55.0 million, or 295.1% in other current liabilities, offset by a decrease of \$2.9 million, or 1.3% in contracts and accounts payable, and a decrease of \$8.1 million, or 58.8% in obligations under securities lending transactions. The increase in other current liabilities was primarily a result of an increase in customers' advance payments and unapplied credits issued to the airlines of \$25.0 million, and an increase in LAX's share of the City Treasury's year-end pending investment trade of \$29.9 million in fiscal year 2017.

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<sup>3</sup> Total receivable from OIAA was \$56.8 million, with current receivable of \$9.7 million and noncurrent receivable of \$47.1 million.

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Current liabilities payable from restricted assets increased \$46.0 million or 27.6%. This was mainly due to an increase of \$38.8 million or 203.4% in LAX's share of the City Treasury's year-end pending investment trade in fiscal year 2017, an increase of \$11.7 million in current maturities of bonded debt, offset by a decrease of \$10.2 million or 58.4% in obligations under securities lending transactions.

The net increase in noncurrent liabilities was \$514.2 million or 9.2%. The increase was primarily a result of bond issuances of \$677.6 million with net change in premium of \$34.6 million, offset by advance refunding of \$214.1 million, and the shift of \$107.9 million to current bonded debt in fiscal year 2017. The net increase was also attributable to the recognition of additional proportionate share of NPL of \$118.8 million. According to the Governmental Accounting Standards 68 Actuarial Valuation Report based on June 30, 2016 measurement date for employer reporting as of June 30, 2017, the increase in NPL was mainly due to the return on the market value of assets of 0.24% during fiscal year 2016 that was less than the assumption of 7.5% used in the June 30, 2015 valuation.

Total deferred outflows of resources increased \$90.4 million or 59.6%. The increase was mainly due to increase of \$14.4 million or 59.4% in deferred charges on debt refunding, and recognition of \$87.4 million in deferred outflows of resources for differences between projected and actual investment earnings related to pension in fiscal year 2017, offset by decrease of \$15.6 million or 23.9% in deferred outflows of resources for changes of assumptions related to pension.

Total deferred inflows of resources increased \$13.0 million or 21.6%. The increase was mainly due to an increase of \$27.2 million, or 98.2% in deferred inflows of resources for differences between expected and actual experience related to pension, offset by a decrease of \$18.4 million in deferred inflows of resources for differences between projected and actual investment earnings related to pension.

## Management's Discussion and Analysis (Unaudited)


June 30, 2017 and 2016

(continued)

### Net Position, Fiscal Year 2016

As noted earlier, net position may serve as a useful indicator of LAX's financial position. At the close of fiscal years 2016 and 2015, assets and deferred outflows of resources exceeded liabilities and deferred inflows of resources by \$4.5 billion and \$4.1 billion, respectively, representing a 10.2% increase or \$415.3 million.

The largest portion of LAX's net position (\$3.3 billion or 73.0%) reflects its investment in capital assets (e.g. land, air easements, buildings, improvements, equipment and vehicles) less accumulated depreciation and any related outstanding debt used to acquire those assets. An additional portion of LAX's net position (\$1.3 billion or 28.1%) represents resources that are subject to various restrictions on how they may be used. The unrestricted net position (-\$50.2 million or -1.1%) was a result of a positive net position of \$25.6 million offset by the recognition of \$75.8 million additional NPL in accordance with GASB Statements No. 68 and 71.



Unrestricted current assets increased by 19.0%, from \$777.5 million at June 30, 2015 to \$925.2 million at June 30, 2016. Unrestricted current assets consist primarily of cash and pooled investments (including reinvested cash collateral in 2016) held in the City Treasury. Cash inflows were more than outflows during the fiscal year. Unrestricted cash inflows were from operating activities, investment activities, non-capital grants, and federal grant reimbursements for eligible capital projects. Unrestricted cash outflows were for operating activities, capital acquisitions and transfers to fiscal agents for debt service.

Restricted current assets include cash and investments (including reinvested cash collateral in 2016) held in the City Treasury for future capital projects funded by PFCs and CFCs. Also included are bond proceeds to be used for capital expenditures as well as bond debt service funds held by fiscal agents. Drawdowns from the amounts held by fiscal agents were used for capital expenditures incurred and for bond principal and interest payments. The year-end investment portfolio held by fiscal agents increased by 27.6% from \$653.7 million in fiscal year 2015 to \$834.0 million in fiscal year 2016 mainly due to unspent proceeds of newly issued 2016 series bonds as of June 30, 2016.

LAX's capital assets additions are financed through issuance of revenue bonds, grants from federal agencies, PFCs, CFCs, and existing resources. Interim financing of such acquisition may be provided through the issuance of commercial paper notes. Capital assets, net of depreciation, increased by 11.5%. Ongoing construction and improvements to modernize LAX terminals and facilities were the primary reasons for the increase.

The recognition of the current portion of the receivable from the City General Fund of \$2.8 million was the primary reason for the decrease in other noncurrent assets.

Current liabilities payable from unrestricted assets had a net increase of \$35.4 million or 11.7%. This was mainly due to the increase of \$20.1 million, or 9.7% in contracts and accounts payable as a result of the accrued \$34.4 million acquisition of Terminal 1 renovations at year-end; increase of \$9.8 million, or 253.7% in obligations under securities lending transactions, and increase of \$2.6 million or 15.9% other current liabilities. The increase in other current liabilities was mainly due to an increase in LAX's share of the City Treasury's year-end pending investment trade of \$8.3 million, offset by decrease of \$5.4 million in unapplied credits issued to the airlines in FY 2016.

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Current liabilities payable from restricted assets had an increase of \$39.9 million or 31.5% due to the increase of \$14.5 million, or 17.7% in current maturities of bonded debt, increase of \$11.3 million in obligations under securities lending transactions, increase of \$8.3 million in LAX's allocated share of the City Treasury's fiscal year-end pending investment trades, increase of \$2.7 million in accrued interest payable, and increase of \$2.4 million, or 124.8% in contracts and accounts payable in fiscal year 2016. The net increase in noncurrent liabilities was \$680.4 million or 13.9%, as a result of additional bond issuances of \$613.5 million and the recognition of LAX's additional proportionate share of NPL of \$75.8 million in fiscal year 2016.

The total deferred outflows of resources had a net decrease of \$4.9 million or 3.1%. The decrease was mainly due to the decrease of \$17.0 million, or 20.7% in the proportionate share of deferred outflows of resources for changes of assumptions related to pension, and the decrease of \$1.1 million or 4.5% in deferred charges on debt refunding, offset by the increase of \$6.9 million or 14.1% in deferred outflows of resources for contribution after measurement date related to pension, and the increase of \$6.3 million in the deferred outflows of resources for changes in proportion and differences between employer contributions and proportionate share of contributions related to pension.

The total deferred inflows of resources had a net decrease of \$78.2 million or 56.6%. The decrease was mainly due to the decrease of \$85.1 million, or 82.2% in the deferred inflows of resources for differences between projected and actual investment earnings related to pension, and the decrease of \$3.8 million or 21.7% in the the deferred inflows of resources for changes in proportion and differences between employer contributions and proportionate share of contributions related to pension, offset by the increase of \$10.8 million, or 63.7% in the deferred inflows of resources for differences between expected and actual experience related to pension.

## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

### Changes in Net Position Summary

A condensed summary of LAX's changes in net position for fiscal years ended 2017, 2016, and 2015 is presented below:

#### Condensed Changes in Net Position (amounts in thousands)

				FY 2017	FY 2016
				increase	increase
				(decrease)	(decrease)
	FY 2017	FY 2016	FY 2015		
Operating revenue	\$ 1,328,689	\$ 1,206,612	\$ 1,045,800	\$ 122,077	\$ 160,812
Less- Operating expenses	742,500	663,879	645,398	78,621	18,481
Operating income before depreciation and amortization	586,189	542,733	400,402	43,456	142,331
Less- Depreciation and amortization	298,176	226,439	178,035	71,737	48,404
Operating income	288,013	316,294	222,367	(28,281)	93,927
Other nonoperating revenue, net	18,784	44,628	17,648	(25,844)	26,980
Federal and other government grants	87,762	49,255	30,964	38,507	18,291
Inter-agency transfers	1,856	5,116	5,303	(3,260)	(187)
Transfer of residual operation from ONT	104,125	—	—	104,125	—
Changes in net position	500,540	415,293	276,282	85,247	139,011
Net position, beginning of year, as previously reported	4,468,710	4,053,417	4,345,029	415,293	(291,612)
Change in accounting principle	—	—	(567,894)	—	567,894
Net position, beginning of year, as restated	4,468,710	4,053,417	3,777,135	415,293	276,282
Net position, end of year	\$ 4,969,250	\$ 4,468,710	\$ 4,053,417	\$ 500,540	\$ 415,293



## Operating Revenue

LAX derives its operating revenue from several major airport business activities. The following table presents a summary of these business activities during fiscal years 2017, 2016, and 2015:

### Summary of Operating Revenue (amounts in thousands)

				FY 2017	FY 2016
				increase	increase
				(decrease)	(decrease)
	FY 2017	FY 2016	FY 2015		
Aviation revenue					
Landing fees	\$ 261,639	\$ 240,853	\$ 227,518	\$ 20,786	\$ 13,335
Building rentals	493,382	462,667	365,296	30,715	97,371
Land rentals	98,563	96,167	90,478	2,396	5,689
Other aviation revenue	7,036	6,599	4,564	437	2,035
Total aviation revenue	860,620	806,286	687,856	54,334	118,430
Concession revenue	441,623	398,692	354,082	42,931	44,610
Other operating revenue	27,114	3,996	3,862	23,118	134
Total operating revenue before reliever fee	1,329,357	1,208,974	1,045,800	120,383	163,174
Reliever airport fee (landing fees offset)	(668)	(2,362)	—	1,694	(2,362)
Total operating revenue	\$ 1,328,689	\$ 1,206,612	\$ 1,045,800	\$ 122,077	\$ 160,812

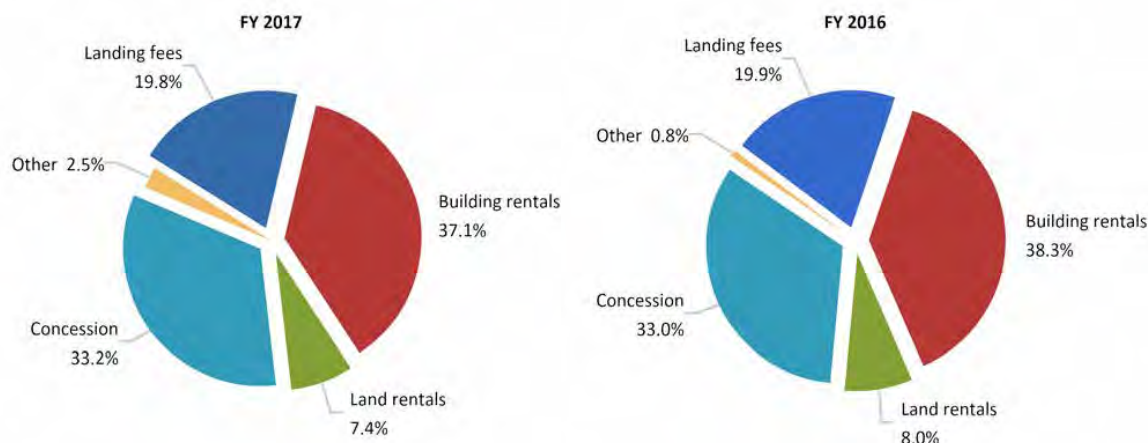
## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

### Operating Revenue, Fiscal Year 2017

The following chart illustrates the proportion of sources of operating revenue, before reliever airport fee, for fiscal years ended June 30, 2017 and 2016. Other aviation and other operating revenue were added and labeled "Other."



For the fiscal year ended June 30, 2017, total operating revenue before reliever airport fees was \$1.3 billion, a \$120.4 million or 10.0% increase from the prior fiscal year. The growth in aviation related revenue was \$54.3 million. Non-aviation revenue had an increase of \$66.0 million, with \$42.9 million increase in concessions, and \$23.1 million increase in other operating revenue.

As described in Note 1i of the notes to the financial statements, landing fees assessed to air carriers at LAX are based on a cost recovery methodology. Rates are set using budgeted expenses and estimates of landed weight. The fees are reconciled at the end of the fiscal year using actual net expenses and actual landed weight, with differences credited or billed to the airlines accordingly. Terminal rental rates at LAX are calculated using a compensatory methodology. Rates are set based on operating and capital costs allocated to the terminal area and charged to users by leased space or activity in common-use areas.

Landing fees for the fiscal year ended June 30, 2017 were up by \$20.8 million, or 8.6%. The increase in landing fees was primarily due to the increase in actual capital and operating expenses allocable to the landing fee cost centers.

Total building rental revenue posted a growth of \$30.7 million, or 6.6%. The increase was primarily attributable to the improvements and refurbishments in the terminals, scheduled rate increases associated with the Terminal Rate Agreement, as well as new and renegotiated leases signed with the airlines and other tenants.

Land rental revenue increased by \$2.4 million or 2.5%. The increase in land rental revenue at LAX was mainly due to an increase in leased areas.

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Total revenue from concessions was \$441.6 million in fiscal year 2017, a 10.8% growth from \$398.7 million in fiscal year 2016. In-terminal concession revenue includes rentals collected from commercial management concessionaires, food and beverage concessionaires; duty free and retail merchants (gifts, news, and novelty items); and concessions for advertising, foreign exchange booths, telecommunications, automated teller machines, luggage cart rental, and security screening services. Off-terminal concession revenue is derived from auto parking, rent-a-car, bus, limousine, taxi services, transportation network company (TNC)<sup>4</sup> and other commercial ground transportation operations.

In-terminal concession revenue during fiscal year 2017 had a net increase of \$13.0 million or 7.0% as compared to fiscal year 2016. The increase was primarily a result of growth in duty free revenues of \$9.8 million, or 14.8% due to increase in international passengers, and increase in advertising revenue of \$1.6 million, or 6.1% due to negotiated increases in the minimum annual guarantee (MAG).

Off-terminal concession revenue in fiscal year 2017 was \$242.9 million as compared to \$213.0 million in fiscal year 2016, an increase of \$29.9 million, or 14.0%. The increase was mainly driven by the increase of TNC revenue of \$24.8 million, or 278.7% from fiscal year 2016. The increase in TNC revenue was the result of a full year of TNC operation in fiscal year 2017 as compared to only six months operations in fiscal year 2016, and the significant growth in ridership driven by the popularity of TNC together with the increase in passenger traffic during fiscal year 2017. TNC revenue-generating operations were launched in late December 2015. Out of the remaining increase of \$5.1 million in off-terminal concession, \$2.6 million was from auto parking, \$4.1 million from rent-a-car, \$1.8 million from flyaway bus service, and offsetting decrease of \$3.4 million from bus, limousine and taxi services.

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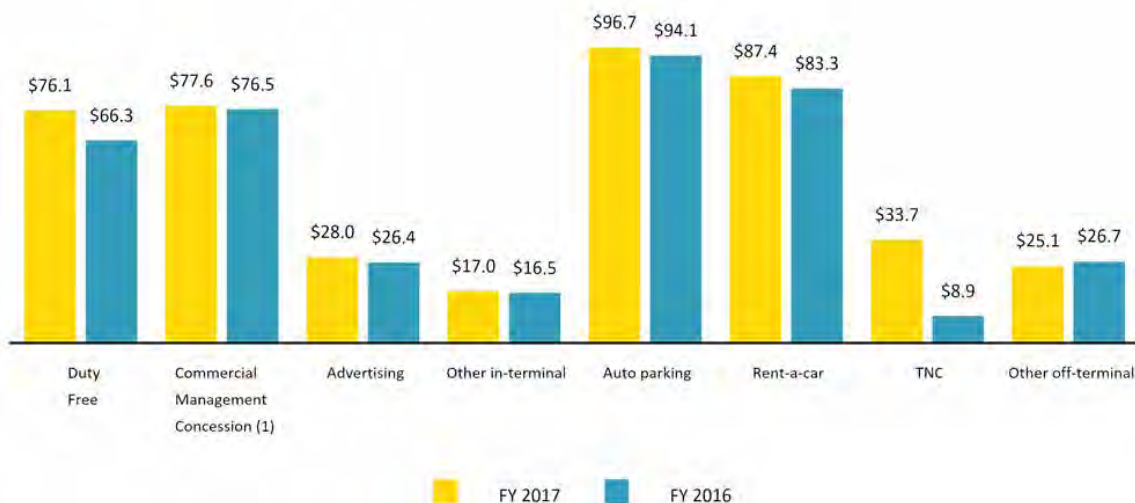
<sup>4</sup> Transportation network companies currently permitted to operate at LAX include Uber and Lyft.

## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

Comparative concession revenue by type for fiscal years 2017 and 2016 are presented in the following chart (amounts in millions).

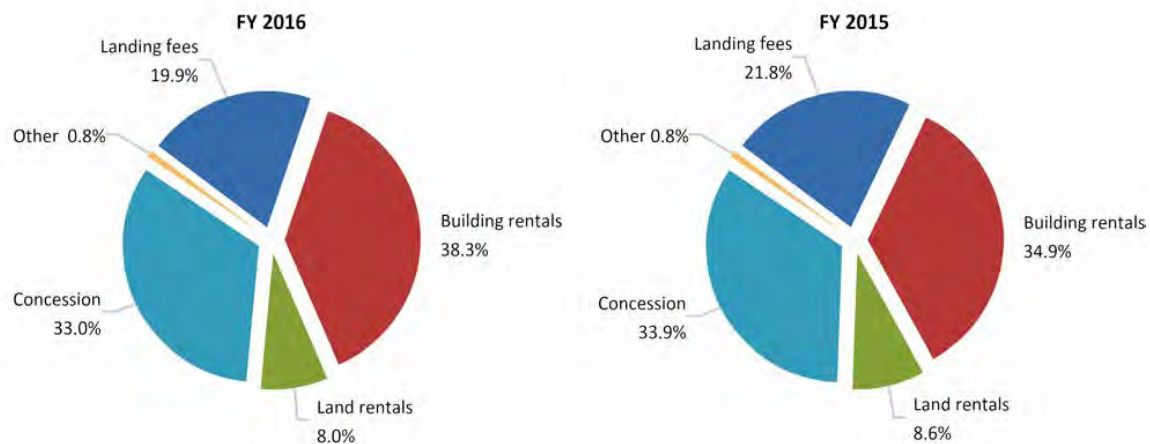


1) Commercial Management Concession revenue includes total revenue from food and beverage concessionaires, gifts and news and commercial management concessionaires.

Other operating revenue increased by \$23.1 million or 578.5% in fiscal year 2017 as a result of the ONT employee salary reimbursement of \$21.0 million from OIAA pursuant to the Staff Augmentation Agreement (SAA) as described in Note 17 of the notes to the financial statements. Pursuant to the SAA, some LAWA staff may remain at ONT for as long as 21 months after the closing of the ONT Settlement Agreement on November 1, 2016. Accordingly, these ONT employee salary reimbursements are expected to continue on a limited duration which will end no later than August 1, 2018.

## Operating Revenue, Fiscal Year 2016

The following chart illustrates the proportion of sources of operating revenue for fiscal years ended June 30, 2016 and 2015. Other aviation and other operating revenue were added and labeled “Other.”



For the fiscal year ended June 30, 2016, total operating revenue before reliever airport fees was \$1.2 billion, a \$163.2 million or 15.6% increase from the prior fiscal year. The growth in aviation related revenue was \$118.4 million. Non-aviation revenue had an increase of \$44.7 million mostly from concessions.

As described in the notes to the financial statements, landing fees assessed to air carriers at LAX are based on a cost recovery methodology. Rates are set using budgeted expenses and estimates of landed weight. The fees are reconciled at the end of the fiscal year using actual net expenses and actual landed weight, with differences credited or billed to the airlines accordingly. Terminal rental rates at LAX are calculated using a compensatory methodology. Rates are set based on operating and capital costs allocated to the terminal area and charged to users by leased space or activity in common-use areas.

Landing fees for the fiscal year ended June 30, 2016 were up from \$227.5 million to \$240.9 million, or 5.9%. Total building rental revenue posted a growth of \$97.4 million, or 26.7%. The increase was primarily attributable to the improvements and refurbishments in the terminals, increased cost recovery with the implementation of the terminal agreement, as well as the new and renegotiated leases signed with the airlines and other tenants. Land rental revenue increased by \$5.7 million mainly due to the increase in leased areas.

## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

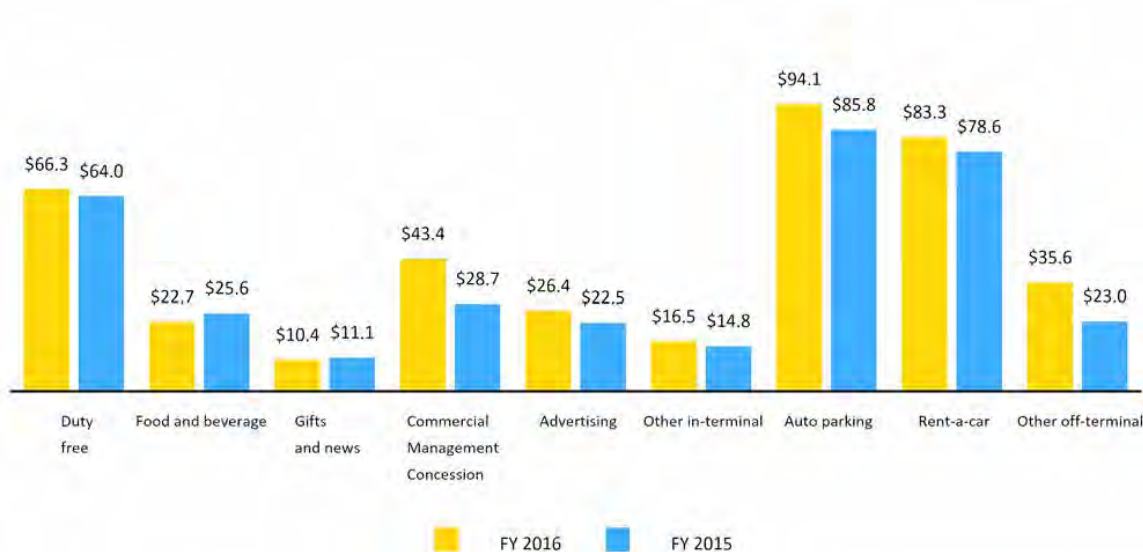
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Total revenue from concessions was \$398.7 million in fiscal year 2016, an 12.6% growth from \$354.1 million in fiscal year 2015. In-terminal concession revenue includes rentals collected from commercial management concessionaires, food and beverage concessionaires; duty free and retail merchants (gifts, news, and novelty items); and concessionaires for advertising, foreign exchange booths, telecommunications, automated teller machines, and luggage cart rental. Off-terminal concession revenue is derived from auto parking, rent-a-car, bus, limousine, taxi services, TNC and other commercial ground transportation operations.

In-terminal concession revenue during fiscal year 2016 had a net increase of \$19.0 million or 11.4% as compared to fiscal year 2015. The concessions benefited from the increased passenger traffic. Duty free revenues increased by \$2.3 million, or 3.6%. Advertising revenue increased by \$3.9 million, or 17.3% as a result of negotiated increases in the MAG. Foreign exchange and telecommunications increased by \$1.7 million, or 20.2%. As discussed in Note 8 of the notes to the financial statements, LAX entered into Terminal Commercial Management Concession Agreements with Westfield Airports, LLC to develop, lease, and manage certain retail food and beverage operations in specific locations at the TBIT, Terminals 1, 2, 3 and 6. Overall, the total revenue from food and beverage concessionaires, gifts and news and commercial management concessionaires showed a net increase of \$11.1 million, or 17.0%.

Off-terminal concession revenue in fiscal year 2016 was \$213.0 million as compared to \$187.4 million in fiscal year 2015, an increase of \$25.6 million, or 13.7%. Of the \$25.6 million increase, \$8.3 million was from auto parking, \$4.7 million from rent-a-car, \$1.5 million from bus, limousine and taxi services, and \$2.2 million from flyaway bus service. New fees charged to TNC added \$8.9 million in fiscal year 2016.

Comparative concession revenue by type for fiscal years 2016 and 2015 are presented in the following chart (amounts in millions).



## Operating Expenses

The following table presents a summary of LAX's operating expenses for the fiscal years ended June 30, 2017, 2016, and 2015. Included in other operating expenses are expenses for advertising and public relations, training and travel, insurance, lease, and other miscellaneous items.

### Summary of Operating Expenses (amounts in thousands)

				FY 2017	FY 2016
				increase	increase
				(decrease)	(decrease)
	FY 2017	FY 2016	FY 2015		
Salaries and benefits	\$ 438,153	\$ 387,595	\$ 374,018	\$ 50,558	\$ 13,577
Contractual services	203,277	182,659	174,745	20,618	7,914
Materials and supplies	43,830	46,062	46,102	(2,232)	(40)
Utilities	36,043	36,181	38,355	(138)	(2,174)
Other operating expenses	25,782	20,738	21,205	5,044	(467)
Operating expenses before depreciation	747,085	673,235	654,425	73,850	18,810
Depreciation	298,176	226,439	178,035	71,737	48,404
Total operating expenses	1,045,261	899,674	832,460	145,587	67,214
Less- allocation to ONT, VNY and PMD	4,585	9,356	9,027	(4,771)	329
Net operating expenses	\$ 1,040,676	\$ 890,318	\$ 823,433	\$ 150,358	\$ 66,885

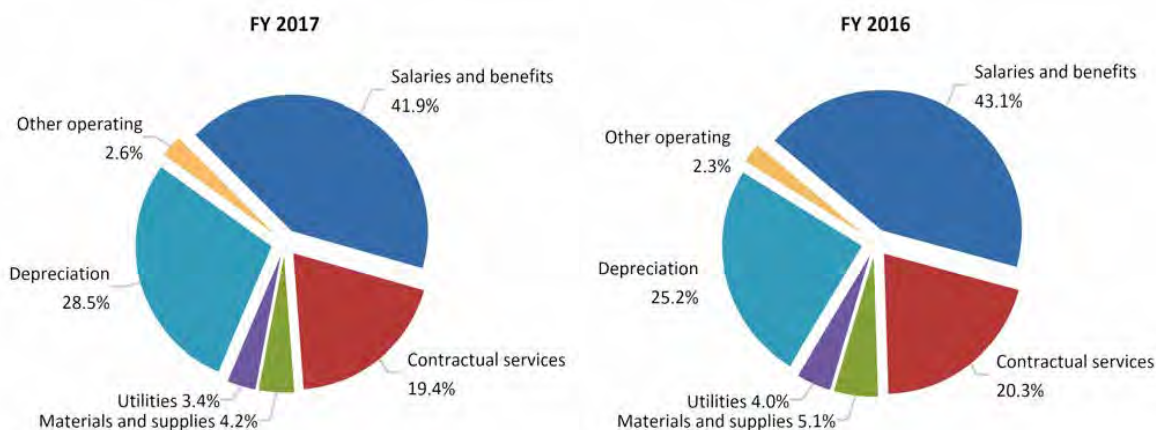
## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

### Operating Expenses, Fiscal Year 2017

The following chart illustrates the proportion of categories of operating expenses, before allocation to other airports, for fiscal years ended June 30, 2017 and 2016.



For the fiscal year ended June 30, 2017, operating expenses before allocation to other airports were \$1.0 billion, a \$145.6 million or 16.2% increase from the prior fiscal year. Expense categories that experienced notable changes were salaries and benefits, up by \$50.6 million, contractual services, up by \$20.6 million, and depreciation, up by \$71.7 million, offset by the decrease in materials and supplies of \$2.2 million and utilities of \$0.1 million.

Salaries and benefits expense increased by \$50.6 million or 13.0%. The increase was partially due to the inclusion of ONT's salaries and benefits of \$17.4 million subsequent to the ONT transfer on November 1, 2016 as described in Note 17 of the notes to the financial statements. Without the ONT's salaries and benefits of \$17.4 million, the actual increase in salaries and benefits would be \$33.2 million or 8.6%. Within this category, salaries and overtime before capitalized charges at LAX had an increase of \$24.0 million or 8.3%. Without the ONT's salaries and overtime of \$12.8 million, the actual increase in salaries and overtime would be \$11.2 million or 3.9%. This increase was mainly due to bargaining agreements with employee unions. The combined increase in pension, healthcare subsidy, and accrued sick and vacation was \$23.9 million, or 20.6%. Without the ONT's pension, healthcare subsidy, and accrued sick and vacation of \$4.3 million, the actual increase would be \$19.6 million or 16.8%. The increase was mainly driven by increase in recognition of GASB 68 non-cash pension expense of \$17.2 million from \$61.2 million to \$78.4 million in fiscal year 2017. Workers' compensation increased by \$1.6 million from \$8.1 million to \$9.7 million in fiscal year 2017.

The increase in contractual service expense was mainly due to higher city services charges of \$12.3 million due to increased cost allocation plan rates for central (personnel, controller, general services) and direct services (fire and police departments); higher legal services expense of \$3.9 million due to claims related to the procurement of Aircraft Rescue and Fire Fighting (ARFF) vehicles, higher operations and emergency management expenses, offset by lower capital planning and engineering services and environmental program expenses in fiscal year 2017.

The increase in other operating expense was mainly due to the accrual and payment of \$3.7 million property taxes for the Park One parking lot pursuant to the lease covering the fiscal years from 2014 to 2017.

The increase in depreciation charges from \$226.4 million to \$298.2 million in fiscal year 2017 was a result of the completion of the associated projects related to Bradley West core renovation, Bradley West Terminal connector, some terminal renovations, TCM improvements, west maintenance facility and CTA curbside development project.



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A 15% burden rate of their operating costs is allocated to the other airports for central services costs that are paid for by LAX. Such central service costs include general administration, financial and human resource services among other costs. Because of the transfer of ONT on November 1, 2016, the allocations to ONT decreased in fiscal year 2017.



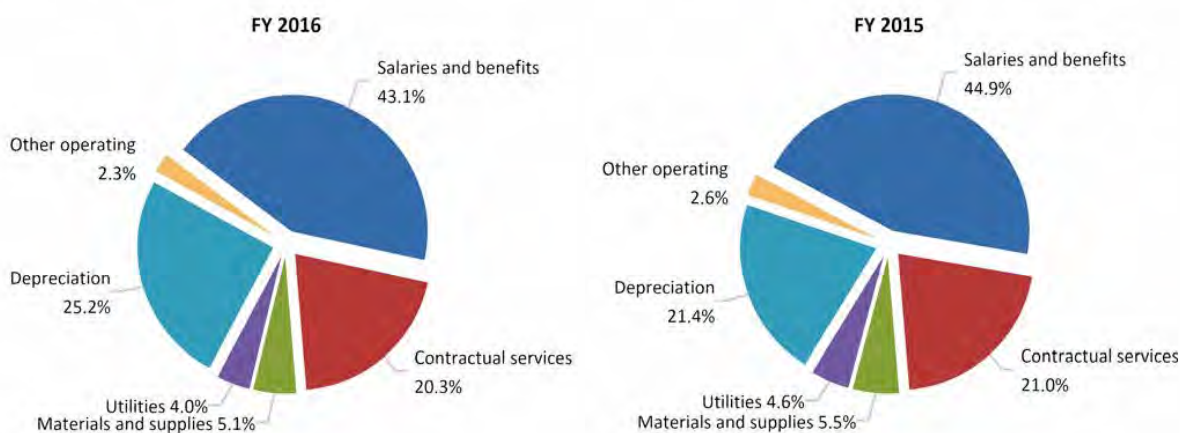
## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

### Operating Expenses, Fiscal Year 2016

The following chart illustrates the proportion of categories of operating expenses, before allocation to other airports, for fiscal years ended June 30, 2016 and 2015. Included in other operating expenses are expenses for advertising and public relations, training and travel, insurance, lease, and other miscellaneous items.



For the fiscal year ended June 30, 2016, operating expenses before allocation to other airports were \$899.7 million, a \$67.2 million or 8.1% increase from the prior fiscal year. Expense categories that experienced notable changes were salaries and benefits, up by \$13.6 million, contractual services, up by \$7.9 million, and depreciation, up by \$48.4 million, offset by the decrease in utilities of \$2.2 million.

Salaries and overtime before capitalized charges had an increase of \$6.7 million or 2.4% due mainly to bargaining agreements with employee unions. The combined increase in retirement contributions, healthcare subsidy, and accrued sick and vacation was \$13.5 million, or 13.1%. The decrease in workers' compensation of \$5.6 million, or 40.8% was mainly due to the decrease in the number of high value cases during fiscal year 2016 as compared to fiscal year 2015. The increase in contractual services was mainly due to higher city services payment, capital planning and engineering services, offset by lower legal services expenses. The increase in depreciation charges from \$178.0 million to \$226.4 million in fiscal year 2016 was due to the completion of the associated projects related to Bradley West, and the replacement of the CUP facilities at LAX. During fiscal year 2016, \$1.8 billion was reclassified from construction work in progress to depreciable capital asset categories.

The decrease in utilities from \$38.4 million to \$36.2 million in fiscal year 2016 was due to the decrease in electricity of \$0.8 million, or 2.9%, and decrease in water charges of \$1.9 million, or 30.9%, offset by the increase of \$0.5 million, or 12.5% in gas and telephone. The decrease in fiscal year 2016 electricity charges was resulted from the operation of a new, more energy efficient CUP. The decrease in water charges was due to a one-time rate adjustment credit of \$0.7 million and efforts to lower water consumption in fiscal year 2016.

Materials and supplies remained at the same spending level at \$46.1 million and other operating expenses decreased by \$0.5 million, or 2.2%. The decrease in other operating expenses was mainly due to a decrease of \$2.7 million as a result of the change in accrued property tax from possessory interest tax instead of real estate tax for the Skyview property; offset by the increase of a legal settlement costs of \$1.3 million to the State Water Resources Control Board relating to monitoring of underground fuel storage tank. Bad debts expenses in fiscal year was \$0.3 million as compared to a reduction in bad debts expenses of \$0.3 million in fiscal year 2015.

Because of the increase in their operating costs, allocations to ONT, VNY, and PMD (the other airports) also increased. A 15% burden rate of their operating costs is allocated to the other airports for central services costs that are paid for by LAX. Such central service costs include general administration, financial and human resource services among other costs.

## Nonoperating Transactions

Nonoperating transactions are activities that do not result from providing services as well as producing and delivering goods in connection with LAX's ongoing operations. The following table presents a summary of these activities during fiscal years 2017, 2016, and 2015.

### Summary of Nonoperating Transactions (amounts in thousands)

	FY 2017	FY 2016	FY 2015	FY 2017 increase (decrease)	FY 2016 increase (decrease)
Nonoperating revenue					
Passenger facility charges	\$ 163,869	\$ 150,409	\$ 137,855	\$ 13,460	\$ 12,554
Customer facility charges	32,545	31,996	29,347	549	2,649
Interest income	23,327	19,638	20,327	3,689	(689)
Net change in fair value of investments	(20,738)	13,776	(2,021)	(34,514)	15,797
Other nonoperating revenue	15,743	17,985	8,618	(2,242)	9,367
	<u>\$ 214,746</u>	<u>\$ 233,804</u>	<u>\$ 194,126</u>	<u>\$ (19,058)</u>	<u>\$ 39,678</u>
Nonoperating expenses					
Interest expense	\$ 193,469	\$ 182,386	\$ 166,919	\$ 11,083	\$ 15,467
Other nonoperating expenses	2,493	6,790	9,559	(4,297)	(2,769)
	<u>\$ 195,962</u>	<u>\$ 189,176</u>	<u>\$ 176,478</u>	<u>\$ 6,786</u>	<u>\$ 12,698</u>
Federal and other government grants	<u>\$ 87,762</u>	<u>\$ 49,255</u>	<u>\$ 30,964</u>	<u>\$ 38,507</u>	<u>\$ 18,291</u>
Inter-agency transfers	<u>\$ 1,856</u>	<u>\$ 5,116</u>	<u>\$ 5,303</u>	<u>\$ (3,260)</u>	<u>\$ (187)</u>
Transfer of residual operation from ONT	<u>\$ 104,125</u>	<u>\$ —</u>	<u>\$ —</u>	<u>104,125</u>	<u>\$ —</u>

## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

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### Nonoperating Transactions, Fiscal Year 2017

As a result of the increase of 6.6% passenger traffic in fiscal year 2017, PFCs increased by \$13.5 million, or 8.9%. CFCs, which are imposed on each car rental transaction collected by car rental concessionaires and remitted to LAX, posted an increase of \$0.5 million, or 1.7% in fiscal year 2017.

Interest income increased by \$3.7 million, or 18.8% from \$19.6 million to \$23.3 million in fiscal year 2017 mainly due to higher average balance of cash and pooled investments held in City Treasury. The net change in fair value of investments reflects the decrease driven by the downward year-end net adjustment to the fair value of investment securities. Interest expenses increased by \$11.1 million, or 6.1% from \$182.4 million to \$193.5 million in fiscal year 2017 mainly due to the net additional issuances of \$463.5 million revenue bonds (after advance refunding) to finance capital improvement projects.

Other nonoperating revenue decreased by \$2.2 million, or 12.5% from \$18.0 million to \$15.7 million in fiscal year 2017. The decrease was mainly due to the offset of \$2.3 million rental income from residential acquisition program with the corresponding acquired assets in fiscal year 2017. Other nonoperating expenses decreased by \$4.3 million, or 63.3% from \$6.8 million to \$2.5 million in fiscal year 2017. The decrease was mainly due to \$1.3 million decrease in bond issuance expenses in fiscal year 2017 and \$3.0 million nonoperating expenses related primarily to an improvement expense adjustment between LAX and VNY in fiscal year 2016.

Federal and other government grants increased by \$38.5 million, or 78.2% from \$49.3 million to \$87.8 million mainly due to the increase of \$36.3 million TSA in-line baggage reimbursement grants from \$1.8 million in fiscal year 2016 to \$38.1 million in fiscal year 2017.

As described in Note 17 of the notes to the financial statements, LAWA transferred the assets and liabilities of ONT to OIAA as contemplated by the ONT Settlement Agreement on November 1, 2016. As a result of the transfer, LAX recognized a transfer of residual operation from ONT of \$104.1 million.

### Nonoperating Transactions, Fiscal Year 2016

As a result of the increase of 8.0% passenger traffic in fiscal year 2016, PFCs increased by \$12.6 million, or 9.1%. CFCs, which are imposed on each car rental transaction collected by car rental concessionaires and remitted to LAX, posted an increase of \$2.7 million, or 9.0% in fiscal year 2016.

Interest income decreased slightly due to slightly lower average balance of cash and pooled investments held in City Treasury. The net change in fair value of investments reflects the increase driven by the upward year-end net adjustment to the fair value of investment securities. The other nonoperating revenue increased by \$9.4 million, or 108.7% in fiscal year 2016. This was mainly due to increase of \$1.0 million in sales of property and equipment, increase of \$5.1 million from the favorable litigation settlement relating to the Runway 25L Relocation and Center Taxiway Improvement project, and increase of \$2.3 million rental income from residential acquisition program. Interest expenses increased with additional issuances of \$613.5 million revenue bonds in fiscal year 2016 to finance capital improvement projects. The decrease in other nonoperating expenses was mainly due to lower expenses offset by the increase of \$1.3 million bond issuance expenses in fiscal year 2016.

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## Long-Term Debt

As of June 30, 2017, LAX's outstanding long-term debt before unamortized premium and discount was \$5.0 billion. Issuances during the year amounted to \$677.6 million, advance refunding totaled \$214.1 million, and payments for scheduled maturities were \$96.2 million. Together with the unamortized premium and discount, bonded debt of LAX increased by \$404.4 million to a total of \$5.3 billion.

As of June 30, 2016, LAX's outstanding long-term debt before unamortized premium and discount was \$4.6 billion. Issuances during the year amounted to \$613.5 million, and payments for scheduled maturities were \$81.7 million. Together with the unamortized premium and discount, bonded debt of LAX increased by \$619.8 million to a total of \$4.9 billion.

As of June 30, 2017 and 2016, LAX had \$455.1 million and \$418.8 million investments, respectively, held by fiscal agents that are pledged for the payment or security of the outstanding bonds.

As of June 30, 2017 and 2016, the ratings of LAX's outstanding bonds by Standard & Poor's Rating Services, Moody's Investors Service, and Fitch Ratings were as follows: AA, Aa3, and AA respectively for Senior Bonds; AA-, A1, and AA- respectively for Subordinate Bonds.

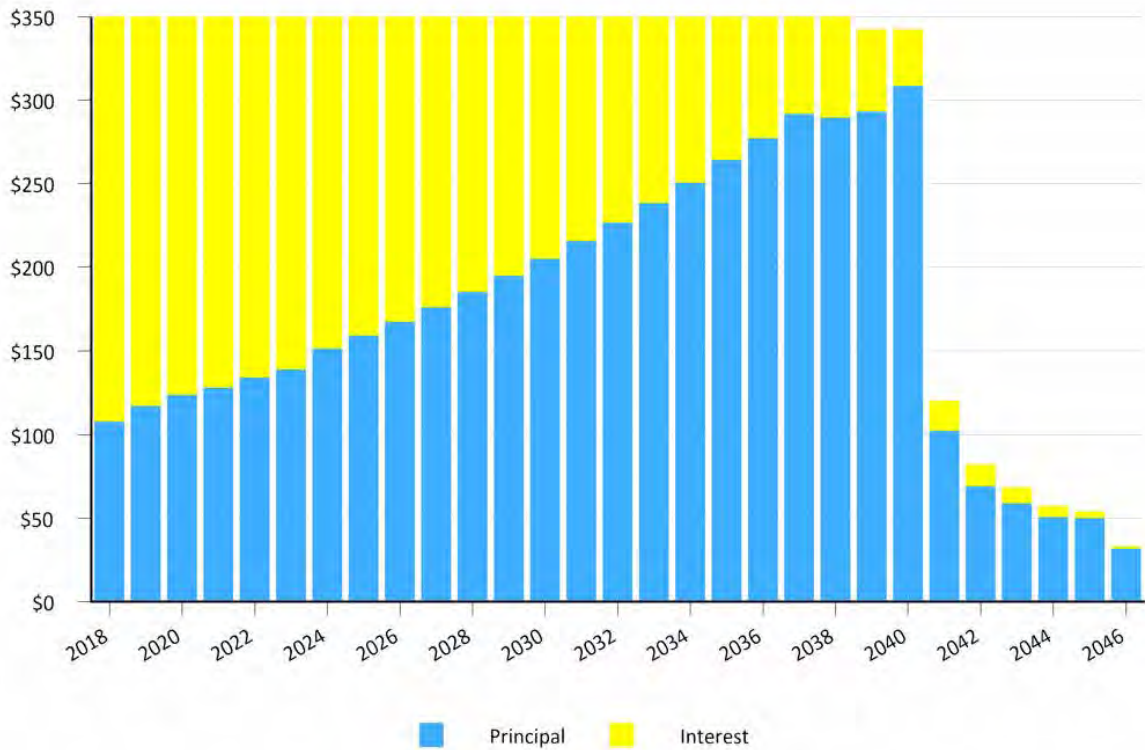
Additional information regarding LAX's bonded debt can be found in Note 6 of the notes to the financial statements.

## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

Outstanding principal, plus scheduled interest as of June 30, 2017, is scheduled to mature as shown in the following chart (amounts in millions).



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## Capital Assets

LAX's investment in capital assets, net of accumulated depreciation, as of June 30, 2017 and 2016 were \$8.6 billion and \$7.8 billion, respectively. This investment, which accounts for 74.7% and 74.5% of LAX's total assets as of June 30, 2017 and 2016, respectively, includes land, air easements, buildings, improvements, equipment and vehicles, emission reduction credits, and construction work in progress.

LAX's policy affecting capital assets can be found in Note 1f of the notes to the financial statements. Additional information can be found in Note 4 of the notes to the financial statements.

### Capital Assets, Fiscal Year 2017

Major capital expenditure activities during fiscal year 2017 included:

- \$512.1 million renovations at Terminals 1 to 8
- \$236.0 million construction of Midfield Satellite Concourse (MSC)
- \$101.0 million construction of runways and taxiways
- \$88.5 million residential acquisition, soundproofing and noise mitigation
- \$78.5 million interior improvements and security upgrades at TBIT and Bradley West
- \$50.1 million preconstruction activities related to Landside Access Modernization Program (LAMP)
- \$34.3 million replacement and improvements of elevators and escalators
- \$34.1 million construction of TBIT baggage handling system
- \$12.4 million in costs related to construction of west maintenance facility
- \$8.7 million Central Terminal Area (CTA) curbside development project and Second Level Roadway Joint and Deck replacement
- \$5.5 million construction activities related to Imperial Cargo Complex

At June 30, 2017, the amounts committed for capital expenditures included \$3.9 million for airfield and runways, \$6.6 million for noise mitigation program, \$53.2 million for terminals and facilities, and \$17.6 million for various other projects.

LAX is in the midst of a multi-billion dollar capital improvements program, which is expected to continue through 2024. Among the projects underway are terminal improvements and upgrades, roadway improvements, runway and taxiway rehabilitation and improvement, utilities and infrastructure components, construction of MSC, and LAMP which includes automated people mover system (APM), consolidated rental car facility (ConRAC) and intermodal transportation facilities (ITF).

## Management's Discussion and Analysis (Unaudited)

June 30, 2017 and 2016

(continued)

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### Capital Assets, Fiscal Year 2016

Major capital expenditure activities during fiscal year 2016 included:

- \$356.4 million renovations at Terminals 1 to 8
- \$166.2 million interior improvements and security upgrades at TBIT and Bradley West
- \$88.7 million construction of MSC
- \$72.6 million construction of runways and taxiways
- \$56.6 million CTA curbside development project and Second Level Roadway Joint and Deck replacement
- \$55.9 million in costs related to construction of west maintenance facility
- \$44.7 million replacement and improvements of elevators and escalators
- \$41.1 million residential acquisition, soundproofing and noise mitigation
- \$18.0 million replacement of Central Utility Plant (CUP) facilities
- \$12.1 million in costs related to various information technology network and systems projects
- \$11.5 million preconstruction activities related to LAMP
- \$7.0 million preconstruction related to ConRAC

At June 30, 2016, the amounts committed for capital expenditures included \$7.1 million for airfield and runways, \$6.6 million for noise mitigation program, \$81.0 million for terminals and facilities, and \$20.1 million for various other projects.

LAX is in the midst of a multi-billion dollar capital improvements program, which is expected to continue through 2024. Among the projects underway are terminal improvements and upgrades, roadway improvements, runway and taxiway rehabilitation and improvement, utilities and infrastructure components, and an APM, a ConRAC and ITF.



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## Landing Fees, Fiscal Year 2018

The airline landing fees for fiscal year 2018, which became effective as of July 1, 2017 are as follows:

Permitted air carriers	Non-permitted air carriers	
\$60.00	\$75.00	For each landing of aircraft having a maximum gross landing weight of 12,500 pounds or less
115.00	144.00	For each landing of aircraft having a maximum gross landing weight of more than 12,500 pounds up to and including 25,000 pounds
3.62	4.53	Per 1,000 pounds of maximum gross landing weight for each landing by an air carrier cargo having a maximum gross landing weight of more than 25,000 pounds
4.60	5.75	Per 1,000 pounds of maximum gross landing weight for each landing by an air carrier passenger having a maximum gross landing weight of more than 25,000 pounds

Landing fee rates were based on budgeted operating expenses and revenues. Reconciliation between actual revenues and expenses and amounts estimated in the initial calculation result in a fiscal year-end adjustment. The resulting net overcharges or undercharges are recorded as a reduction or addition to unbilled receivables.

## Request for Information

This report is designed to provide a general overview of the Los Angeles International Airport's finances. Questions concerning any of the information provided in this report or requests for additional information should be addressed to Ryan P. Yakubik, Chief Financial Officer, Los Angeles World Airports, 1 World Way, Los Angeles, CA 90045.

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# Financial Statements



**Los Angeles World Airports**  
 (Department of Airports of the City of Los Angeles, California)  
**Los Angeles International Airport**

**Statements of Net Position**

**June 30, 2017 and 2016**

(amounts in thousands)

	<b>2017</b>	<b>2016</b>
<b>ASSETS</b>		
Current Assets		
Unrestricted current assets		
Cash and pooled investments held in City Treasury	\$ 769,241	\$ 775,059
Investments with fiscal agents	22,282	16,465
Accounts receivable, net of allowance for uncollectible accounts: 2017 - \$0 ; 2016 - \$1,043	—	10,842
Unbilled receivables	44,245	38,213
Accrued interest receivable	3,435	2,962
Grants receivable	12,322	24,709
Receivable from OIAA	9,674	—
Receivable from City General Fund	2,849	2,766
Due from other agencies	48,020	48,588
Prepaid expenses	4,116	4,164
Inventories	1,247	1,383
Total unrestricted current assets	<u>917,431</u>	<u>925,151</u>
Restricted current assets		
Cash and pooled investments held in City Treasury	967,893	886,107
Investments with fiscal agents , includes cash and cash equivalents: 2017 - \$924,494; 2016 - \$827,836	924,494	833,981
Accrued interest receivable	1,324	1,330
Passenger facility charges receivable	23,881	17,632
Customer facility charges receivable	3,280	2,846
Total restricted current assets	<u>1,920,872</u>	<u>1,741,896</u>
Total current assets	<u>2,838,303</u>	<u>2,667,047</u>
Noncurrent Assets		
Capital assets		
Not depreciated	2,164,208	2,623,721
Depreciated, net	6,424,629	5,169,281
Total capital assets	<u>8,588,837</u>	<u>7,793,002</u>
Other noncurrent assets		
Investments with fiscal agents	17,585	—
Receivable from OIAA, net of current portion	47,110	—
Receivable from City General Fund, net of current portion	2,935	5,785
Total other noncurrent assets	<u>67,630</u>	<u>5,785</u>
Total noncurrent assets	<u>8,656,467</u>	<u>7,798,787</u>
<b>TOTAL ASSETS</b>	<u>11,494,770</u>	<u>10,465,834</u>
<b>DEFERRED OUTFLOWS OF RESOURCES</b>		
Deferred charges on debt refunding	38,550	24,179
Deferred outflows of resources related to Pension	203,352	127,342
<b>TOTAL DEFERRED OUTFLOWS OF RESOURCES</b>	<u>\$ 241,902</u>	<u>\$ 151,521</u>

## Statements of Net Position (continued)

June 30, 2017 and 2016

(amounts in thousands)

	2017	2016
<b>LIABILITIES</b>		
Current Liabilities		
Current liabilities payable from unrestricted assets		
Contracts and accounts payable	\$ 225,492	\$ 228,389
Accrued salaries	17,790	15,133
Accrued employee benefits	5,580	5,357
Estimated claims payable	8,137	7,899
Commercial paper	48,736	50,310
Obligations under securities lending transactions	5,658	13,728
Other current liabilities	73,631	18,634
Total current liabilities payable from unrestricted assets	385,024	339,450
Current liabilities payable from restricted assets		
Contracts and accounts payable	7,831	4,255
Current maturities of bonded debt	107,850	96,200
Accrued interest payable	31,529	29,161
Obligations under securities lending transactions	7,295	17,518
Other current liabilities	58,123	19,475
Total current liabilities payable from restricted assets	212,628	166,609
Total current liabilities	597,652	506,059
Noncurrent Liabilities		
Bonded debt, net of current portion	5,215,626	4,822,900
Accrued employee benefits, net of current portion	41,309	37,158
Estimated claims payable, net of current portion	70,347	66,477
Liability for environmental/hazardous materials cleanup	7,500	12,783
Net pension liability	761,187	642,431
Other long-term liabilities	886	886
Total noncurrent liabilities	6,096,855	5,582,635
<b>TOTAL LIABILITIES</b>	6,694,507	6,088,694
<b>DEFERRED INFLOWS OF RESOURCES</b>		
Deferred inflows of resources related to Pension	72,915	59,951
<b>TOTAL DEFERRED INFLOWS OF RESOURCES</b>	72,915	59,951
<b>NET POSITION</b>		
Net investment in capital assets	3,742,152	3,262,634
Restricted for:		
Debt service	423,327	389,217
Passenger facility charges eligible projects	481,751	435,285
Customer facility charges eligible projects	300,402	250,795
Operations and maintenance reserve	185,897	179,836
Federally forfeited property and protested funds	1,463	1,137
Unrestricted	(165,742)	(50,194)
<b>TOTAL NET POSITION</b>	\$ 4,969,250	\$ 4,468,710

See accompanying notes to the financial statements.

# Los Angeles World Airports

(Department of Airports of the City of Los Angeles, California)

## Los Angeles International Airport

### Statements of Revenues, Expenses and Changes in Net Position

For the Fiscal Years Ended June 30, 2017 and 2016

(amounts in thousands)

	2017	2016
<b>OPERATING REVENUE</b>		
Aviation revenue		
Landing fees	\$ 261,639	\$ 240,853
Reliever airport fee	(668)	(2,362)
Building rentals	493,382	462,667
Land rentals	98,563	96,167
Other aviation revenue	7,036	6,599
Total aviation revenue	859,952	803,924
Concession revenue	441,623	398,692
Other operating revenue	27,114	3,996
Total operating revenue	1,328,689	1,206,612
<b>OPERATING EXPENSES</b>		
Salaries and benefits	438,153	387,595
Contractual services	203,277	182,659
Materials and supplies	43,830	46,062
Utilities	36,043	36,181
Other operating expenses	25,782	20,738
Allocated administrative charges	(4,585)	(9,356)
Total operating expenses before depreciation and amortization	742,500	663,879
Operating income before depreciation and amortization	586,189	542,733
Depreciation and amortization	298,176	226,439
<b>OPERATING INCOME</b>	288,013	316,294
<b>NONOPERATING REVENUE (EXPENSES)</b>		
Passenger facility charges	163,869	150,409
Customer facility charges	32,545	31,996
Interest income	23,327	19,638
Net change in fair value of investments	(20,738)	13,776
Interest expense	(193,469)	(182,386)
Other nonoperating revenue	15,743	17,985
Other nonoperating expenses	(2,493)	(6,790)
Total nonoperating revenue, net	18,784	44,628
<b>INCOME BEFORE CAPITAL GRANTS AND INTER-AGENCY TRANSFERS</b>	306,797	360,922
Federal and other government grants	87,762	49,255
Inter-agency transfers	1,856	5,116
Transfer of residual operation from ONT	104,125	—
<b>CHANGE IN NET POSITION</b>	500,540	415,293
<b>NET POSITION, BEGINNING OF YEAR</b>	4,468,710	4,053,417
<b>NET POSITION, END OF YEAR</b>	\$ 4,969,250	\$ 4,468,710

See accompanying notes to the financial statements.

**Los Angeles World Airports**  
 (Department of Airports of the City of Los Angeles, California)  
**Los Angeles International Airport**

**Statements of Cash Flows**  
**For the Fiscal Years Ended June 30, 2017 and 2016**  
 (amounts in thousands)

	2017	2016
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Receipts from customers	\$ 1,358,315	\$ 1,190,138
Payments to suppliers	(228,509)	(215,447)
Payments for employee salaries and benefits	(418,453)	(385,235)
Payments for City services	(101,008)	(91,234)
Inter-agency receipts for services, net	4,585	9,356
Net cash provided by operating activities	614,930	507,578
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES</b>		
Noncapital grants received	11,351	9,990
Inter-agency transfers in	2,424	6,122
Proceeds from ONT transfer	125,705	—
Net cash provided by noncapital financing activities	139,480	16,112
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>		
Proceeds from sale of revenue bonds and commercial paper notes	502,985	711,782
Principal paid on revenue bonds and commercial paper notes	(101,196)	(81,700)
Interest paid on revenue bonds and commercial paper notes	(243,301)	(219,340)
Revenue bonds issuance costs	(1,156)	(1,561)
Acquisition and construction of capital assets	(1,066,730)	(956,593)
Proceeds from passenger facility charges	157,620	151,815
Proceeds from customer facility charges	32,111	31,734
Capital contributed by federal agencies	100,149	38,445
Net cash used for capital and related financing activities	(619,518)	(325,418)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Interest income	25,307	20,162
Net change in fair value of investments	(20,738)	13,776
Cash collateral received (paid) under securities lending transactions	(18,293)	21,188
Sales of investments	68,715	16,876
(Purchases) of investments held by fiscal agents	(11,440)	(6,145)
Net cash provided by investing activities	43,551	65,857
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	178,443	264,129
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR</b>	2,505,467	2,241,338
<b>CASH AND CASH EQUIVALENTS, END OF YEAR</b>	<u>\$ 2,683,910</u>	<u>\$ 2,505,467</u>



	2017	2016
<b>CASH AND CASH EQUIVALENTS COMPONENTS</b>		
Cash and pooled investments held in City Treasury- unrestricted	\$ 769,241	\$ 775,059
Investments with fiscal agents- unrestricted	22,282	16,465
Cash and pooled investments held in City Treasury- restricted	967,893	886,107
Investments with fiscal agents- restricted	924,494	827,836
Total cash and cash equivalents	<u>\$ 2,683,910</u>	<u>\$ 2,505,467</u>
<b>RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED</b>		
<b>BY OPERATING ACTIVITIES</b>		
Operating income	\$ 288,013	\$ 316,294
Adjustments to reconcile operating income to net cash provided by operating activities		
Depreciation and amortization	298,176	226,439
Change in provision for uncollectible accounts	(1,043)	287
Other nonoperating revenues (expenses), net	3,901	6,076
Changes in operating assets and liabilities and deferred outflows and inflows of resources		
Accounts receivable	11,885	(10,940)
Unbilled receivables	(6,032)	(9,345)
Prepaid expenses and inventories	196	262
Contracts and accounts payable	(20,759)	(19,023)
Accrued salaries	2,657	2,367
Accrued employee benefits	804	709
Other liabilities	19,954	(6,951)
Net pension liability and related changes in deferred outflows and inflows of resources	17,178	1,403
Total adjustments	<u>326,917</u>	<u>191,284</u>
Net cash provided by operating activities	<u>\$ 614,930</u>	<u>\$ 507,578</u>
<b>SIGNIFICANT NONCASH CAPITAL AND RELATED FINANCING ACTIVITIES</b>		
Acquisition of capital assets included in contracts and accounts payable	\$ 145,827	\$ 125,284
Revenue bonds proceeds received in escrow trust fund	224,967	—
Debt defeased and related costs paid through escrow trust fund with revenue bonds	(224,967)	—
Contributions received (used) in relation to capital assets	12,387	(10,706)
Land transferred to ONT	(32,326)	—

See accompanying notes to the financial statements.



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## Index to the Notes to the Financial Statements

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The notes to the financial statements include disclosures that are necessary for a better understanding of the accompanying financial statements. An index to the notes follows:

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# Los Angeles World Airports

(Department of Airports of the City of Los Angeles, California)

## Los Angeles International Airport

### Notes to the Financial Statements

June 30, 2017 and 2016

## 1. Reporting Entity and Summary of Significant Accounting Policies

### a. Organization and Reporting Entity

Los Angeles World Airports (Department of Airports of the City of Los Angeles, California) (LAWA) is an independent, financially self-sufficient department of the City of Los Angeles (the City) established pursuant to Article XXIV, Section 238 of the City Charter. LAWA operates and maintains Los Angeles International Airport (LAX) and Van Nuys Airport (VNY) general aviation airport. In addition LAWA owns approximately 17,750 acres of land located east of United States Air Force Plant 42 in the City of Palmdale and retains the rights for future development of the Palmdale property. On November 1, 2016, the City transferred, assigned and delivered to Ontario International Airport Authority (OIAA) the City's right, title and interest in and certain of the assets, properties, rights and interests solely used or held solely for use in connection with LAWA's operation of LA/ONT International Airport (ONT) pursuant to the Settlement Agreement described in Note 17 of the notes to the financial statements.

LAWA is under the management and control of a seven-member Board of Airport Commissioners (the Board) appointed by the City Mayor and approved by the City Council. Under the City Charter, the Board has the general power to, among other things: (a) acquire, develop, and operate all property, plant, and equipment as it may deem necessary or convenient for the promotion and accommodation of air commerce; (b) borrow money to finance the development of airports owned, operated, or controlled by the City; and (c) fix, regulate, and collect rates and charges for the use of the Airport System. An Executive Director administers LAWA and reports to the Board.

The accompanying financial statements present the net position and changes in net position and cash flows of LAX. These financial statements are not intended to present the financial position and changes in financial position of LAWA or the City, or cash flows of LAWA or the City's enterprise funds.

### b. Basis of Accounting

LAX is reported as an enterprise fund and maintains its records on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (GAAP) as promulgated by the Governmental Accounting Standards Board (GASB). Under this method, revenues are recorded when earned and expenses are recorded when the related liability is incurred. Separate funds are used to account for each of the two airports<sup>5</sup> which referred to above and the Palmdale property.

<sup>5</sup> Excluding ONT airport which was transferred to OIAA on November 1, 2016 as contemplated by the ONT Settlement Agreement described in Note 17 of the notes to the financial statements.

## Notes to the Financial Statements

June 30, 2017 and 2016

(continued)

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### c. Cash, Cash Equivalents, and Investments

LAX's cash, cash equivalents, and investments and a significant portion of its restricted cash and investments are maintained as part of the City's pool of cash and investments. LAX's portion of the pool is presented on the statements of net position as "Cash and Pooled Investments Held in City Treasury." LAX's investments, including its share in the City's investment pool, are stated at fair value based on quoted market prices except for money market investments that have remaining maturities of one year or less at time of purchase, which are reported at amortized cost. Interest earned on such pooled investments is allocated to the participating City funds based on each fund's average daily cash balance during the allocation period.

As permitted by the California Government Code, the City engages in securities lending activities. LAX's share of assets and liabilities arising from the reinvested cash collateral has been recognized in the statements of net position.

LAX considers its unrestricted and restricted cash and investments held in the City Treasury as demand deposits and therefore these amounts are reported as cash equivalents. LAX has funds that are held by fiscal agents. Investments with maturities of three months or less at the time of purchase are considered cash equivalents.

### d. Accounts Receivable and Unbilled Receivables

LAX recognizes revenue in the period earned. Receivables outstanding beyond 90 days are put into the collection process and then referred after 120 days to LAWA's resident City attorneys for possible write-off. An allowance for uncollectible accounts is set up as a reserve by LAWA policy. This policy requires that 2% of outstanding receivables plus 80% of all bankruptcy accounts and all referrals to City Attorney be reserved as uncollectible through a provisional month-end charge to operating expense.

Unbilled receivables balances are the result of revenue accrued for services that exceed \$5,000 each, but not yet billed as of year-end. This accrual activity occurs primarily at year-end when services provided in the current fiscal year period might not get processed through the billing system for up to sixty days into the next fiscal year.

### e. Inventories

LAX's inventories consist primarily of general custodial supplies and are recorded at cost on a first-in, first-out basis.

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**f. Capital Assets**

All capital assets are carried at cost or at estimated fair value on the date received in the case of properties acquired by donation or by termination of leases, less allowance for accumulated depreciation. Maintenance and repairs are charged to operations in the period incurred. Renewals and betterments are capitalized in the asset accounts. LAX has a capitalization threshold of \$5,000 for all capital assets other than internally generated computer software where the threshold is \$500,000.

Preliminary costs of capital projects incurred prior to the finalization of formal construction contracts are capitalized. In the event the proposed capital projects are abandoned, the associated preliminary costs are charged to expense in the year of abandonment.

LAX capitalizes interest costs of bond proceeds used during construction (net of interest earnings on the temporary investment of tax-exempt bond proceeds). Net interest capitalized in fiscal years 2017 and 2016 were \$34.7 million and \$28.2 million, respectively.

Depreciation and amortization are computed on a straight-line basis. The estimated useful lives of the major property classifications are as follows: buildings and facilities, 10 to 40 years; airfield and other improvements, 10 to 35 years; equipment, 5 to 20 years; and computer software, 5 to 10 years. No depreciation is provided for construction work in process until construction is completed and/or the asset is placed in service. Also, no depreciation is taken on air easements and emission reduction credits because they are considered inexhaustible.

**g. Contracts Payable, Accounts Payable, and Other Liabilities**

All transactions for goods and services obtained by LAX from City-approved contractors and vendors are processed for payment via its automated payment system. This procedure results in the recognition of expense in the period that an invoice for payment is processed through the system, or when a vendor first provided the goods and/or services. If the goods and/or services were received or if the invoice was received but not yet processed in the system, an accrual is made manually by journal voucher into the general ledger to reflect the liability to the vendor. When LAX makes agreements that require customers to make cash deposits, these amounts are then reflected as other current liabilities.

## Notes to the Financial Statements

June 30, 2017 and 2016

(continued)

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### **h. Operating and Nonoperating Revenues and Expenses**

LAX distinguishes between operating revenues and expenses, and nonoperating revenues and expenses. Operating revenues and expenses generally result from providing services, and producing and delivering goods in connection with LAX's principal ongoing operations. All revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses. LAX derives its operating revenues primarily from landing fees, terminal space rental, auto parking, and concessions. LAX's major operating expenses include salaries and employee benefits, fees for contractual services including professional services, parking operations and shuttle services, and other expenses including depreciation and amortization, maintenance, insurance, and utilities.

### **i. Landing Fees**

Landing fee rates determine the charges to the airlines each time that a qualified aircraft lands at LAX. The landing fee is calculated annually to recover the costs of constructing, maintaining and operating airfield facilities. Costs recovered through these fees are identified using allocation methods of relevant costs attributable to those facilities. Landing fees are initially set using estimates of cost and activity and are reconciled to actual results following each fiscal year.

### **j. Terminal Rates and Charges**

On September 17, 2012, the Board approved a methodology of calculating rates and charges for airlines and airline consortia using passenger terminals at LAX. The rates, which will recover the costs of acquiring, constructing, operating and maintaining terminal facilities, are as follows: terminal building rate, federal inspection services area (FIS) rate, common use holdroom rate, common use baggage claim rate, common use outbound baggage system rate, common use ticket counter rate, and terminal special charges for custodial services, outbound baggage system maintenance, terminal airline support systems, and loading bridge capital and maintenance.

The rates were effective January 1, 2013 to airlines and airline consortia (signatory airlines) agreeing to the methodology and executing a rate agreement with LAWA. Agreements with signatory airlines terminate on December 31, 2022. The rate agreement provides a Signatory Transitional Phase-in (STP) program that allows for reduced rates during the first five years of the implementation period. In addition, signatory airlines will share in the concession revenue derived from the terminals based on prescribed two-tiered formulas. Tier One Revenue Sharing had the effect of reducing the calculated terminal building rate (beginning calendar year 2014) and FIS rate (beginning calendar year 2016). Tier Two Revenue Sharing was first distributed for calendar year 2016 in fiscal year 2017.

Airlines with existing leases that opt not to sign an agreement under the methodology (non-signatory tenant airlines) will continue to pay rates and charges based on their current leases until they sign the rate agreement. Airlines with no existing leases that opt not to sign the rate agreement (non-signatory tariff airlines) are charged the tariff rates. Non-signatory airlines are not eligible to participate in the STP and revenue sharing programs.



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**k. Concession Revenue**

Concession revenues are generated through LAX terminal concessionaires, tenants or airport service providers who pay monthly fees or rents for using or accessing airport facilities to offer their goods and services to the general public and air transportation community. Payments to LAX are based on negotiated agreements with these parties to remit amounts based on either a Minimum Annual Guarantee (MAG) or on gross receipts. Amounts recorded to revenue are determined by the type of revenue category set up in the general ledger system and integrated with the monthly accounts receivable billing process. Concession revenue is recorded as it is earned. Some tenant agreements require self-reporting of concession operations and/or sales. The tenants' operations report and payment are due to LAX in the month following the activity. The timing of concessionaire reporting and when revenue earned is recorded will determine when or if accruals are required for each tenant agreement.

**l. Unearned Revenue**

Unearned revenue consists of concessionaire rentals and payments received in advance, which will be amortized to revenue on the straight-line basis over the applicable period.

**m. Accrued Employee Benefits**

Accrued employee benefits include estimated liability for vacation and sick leaves. LAX employees accumulate annual vacation and sick leaves in varying amounts based on length of service. Vacation and sick leaves are recorded as earned. Upon termination or retirement, employees are paid the cash value of their accumulated leaves. Accrued employee benefits as of June 30, 2017 and 2016 are as follows (amounts in thousands):

Type of benefit	2017	2016
Accrued vacation leave	\$ 23,986	\$ 21,545
Accrued sick leave	22,903	20,970
Sub-total	\$ 46,889	\$ 42,515
Current portion	(5,580)	(5,357)
Noncurrent portion	\$ 41,309	\$ 37,158

## Notes to the Financial Statements

June 30, 2017 and 2016

(continued)

### n. Deferred Outflows and Inflows of Resources

In addition to assets and liabilities, LAX reports a separate section for deferred outflows of resources and deferred inflows of resources, respectively. Deferred outflows of resources represent a consumption of net position that applies to a future period(s) and won't be recognized as an outflow of resources until then. Deferred inflows of resources represent an acquisition of resources that is applicable to future reporting period(s) that won't be recognized as an inflow of resources until then.

LAX reported deferred charges on debt refunding of \$38.6 million and \$24.2 million for fiscal years 2017 and 2016, respectively, as a result of the implementation of GASB Statement No. 65, *Items Previously Reported as Assets and Liabilities*.

As a result of the implementation of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions - an Amendment of GASB Statement No. 27*, and GASB Statement No. 71, *Pension Transition for Contributions Made Subsequent to the Measurement Date - an Amendment of GASB Statement No. 68*, LAX reported the following deferred outflows and inflows of resources:

Deferred outflows of resources related to pension (amounts in thousands):

	2017	2016
Changes of assumptions related to pension	\$ 49,538	\$ 65,097
Contribution after measurement date related to pension	61,197	55,972
Changes in proportionate share of contribution	5,181	6,273
Differences between projected and actual investment earnings related to pension	87,436	—
Total	<u>\$ 203,352</u>	<u>\$ 127,342</u>

Deferred inflows of resources related to pension (amounts in thousands):

	2017	2016
Differences between expected and actual experience related to pension	\$ 54,878	\$ 27,695
Differences between projected and actual investment earnings related to pension	—	18,375
Changes in proportion and differences between employer contributions and proportionate share of contributions related to pension	18,037	13,881
Total	<u>\$ 72,915</u>	<u>\$ 59,951</u>

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**o. Federal Grants**

When a grant agreement is approved and eligible expenditures are incurred, the amount is recorded as a federal grant receivable and as nonoperating revenue (operating grants) or capital grant contributions in the statements of revenues, expenses, and changes in net position.

**p. Bond Premiums and Discounts**

Bond premiums, discounts, and gains and losses on extinguishment of debt are deferred and amortized over the life of the bonds. At the time of bond refunding, the unamortized premiums or discounts are amortized over the life of the refunded bonds or the life of the refunding bonds, whichever is shorter. Bonds payable is reported net of the applicable bond premium or discount.

LAX amortizes bond premiums or discounts using the effective interest method. The effective interest method allocates bond interest expense over the life of the bonds in such a way that it yields a constant rate of interest, which in turn is the market rate of interest at the date of issue of bonds. With effective interest method, the amortization of bond premiums or discounts is calculated using the effective market interest rate at the time of issuances versus the coupon rate used in straight-line method.

**q. Net Position**

The financial statements utilize a net position presentation. Net position is categorized as follows:

- *Net Investment in Capital Assets* - This category groups all capital assets into one component of net position. Accumulated depreciation and the outstanding balances of debt that are attributable to the acquisition, construction, or improvement of these assets reduce the balance in this category.
- *Restricted Net Position* - This category presents restricted assets reduced by liabilities and deferred inflows of resources related to those assets. Those assets are restricted due to external restrictions imposed by creditors, grantors, contributors, or laws or regulations of other governments and restrictions imposed by law through constitutional provisions or enabling legislation. At June 30, 2017 and 2016, net positions of \$968.1 million and \$865.9 million, respectively, are restricted by enabling legislation.
- *Unrestricted Net Position* - This category represents net position of LAX that is not restricted for any project or other purpose.

**r. Use of Restricted/Unrestricted Net Position**

When an expense is incurred for purposes of which both restricted and unrestricted resources are available, LAX's policy is to apply restricted resources first.

## **Notes to the Financial Statements**

### **June 30, 2017 and 2016**

(continued)

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#### **s. Use of Estimates**

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect amounts in the financial statements and accompanying notes. Actual results could differ from the estimates.



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## 2. New Accounting Standards

Implementation of the following GASB statements is effective fiscal year 2017.

Issued in June 2015, GASB Statement No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement No. 68, and Amendments to Certain Provisions of GASB Statements No. 67 and 68*, establishes requirements for defined benefit pensions that are not within the scope of GASB Statement No. 68 as well as for the assets accumulated for purposes of providing those pensions. In addition, this statement also clarifies the application of certain provisions of GASB Statement No. 68 with regard to the information that is required to be presented as notes to the 10-year schedules of required supplementary information about investment-related factors that significantly affect trends in the amounts reported. This statement has no impact on LAX's financial statements.

Issued in June 2015, GASB Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans* replaces GASB Statement No. 43, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans, as amended*, and GASB Statement No. 57, *OPEB Measurements by Agent Employers and Agent Multiple-Employer Plans*. This statement will improve the usefulness of information about postemployment benefits other than pensions (other postemployment benefits or OPEB) included in the general purpose external financial reports of state and local governmental OPEB plans for making decisions and assessing accountability. This statement has no impact on LAX's financial statements.

Issued in August 2015, GASB Statement No. 77, *Tax Abatement Disclosures*, requires disclosure of tax abatement information about a reporting government's own tax abatement agreements and those that are entered into by other governments and that reduce the reporting government's tax revenues. This statement has no impact on LAX's financial statements.

Issued in December 2015, GASB Statement No. 78, *Pensions Provided Through Certain Multiple-Employer Defined Benefit Pension Plans*, amends the scope and applicability of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions - an Amendment of GASB Statement No. 27*, to exclude pensions provided to employees of state or local governmental employers through certain cost-sharing multiple-employer defined benefit pension plan. This Statement establishes requirements for recognition and measurement of pension expense, expenditures, and liabilities; note disclosures; and required supplementary information for pensions that have the characteristics as defined. This statement has no impact on LAX's financial statements.

Issued in January 2016, GASB Statement No. 80, *Blending Requirements for Certain Component Units-an amendment of GASB Statement No. 14* amends the blending requirements for the financial statement presentation of component units of all state and local governments. The additional criterion requires blending of a component unit incorporated as a not-for-profit corporation in which the primary government is the sole corporate member. This statement has no impact on LAX's financial statements.

Issued in March 2016, GASB Statement No. 82, *Pension Issues-an amendment of GASB Statements No. 67, No. 68, and No. 73* addresses issues regarding (1) the presentation of payroll-related measures in required supplementary information, (2) the selection of assumptions and the treatment of deviations from the guidance in an Actuarial Standard of Practice for financial reporting purposes, and (3) the classification of payments made by employers to satisfy employee (plan member) contribution requirements. LAX implemented this statement.

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

The GASB has issued several pronouncements that have effective dates that may impact future presentations. LAX is evaluating the potential impacts of the following GASB statements on its accounting practices and financial statements.

Issued in June 2015, GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*, addresses accounting and financial reporting for other postemployment benefit (OPEB) that is provided to the employees of state and local governmental employers. This statement establishes standards for recognizing and measuring liabilities, deferred outflows of resources, deferred inflows of resources, and expense. For defined benefit OPEB, this statement identifies the methods and assumptions that are required to be used to project benefit payments, discount projected benefit payments to their actuarial present value, and attribute that present value to periods of employee service. Implementation of this statement is effective fiscal year 2018.

Issued in March 2016, GASB Statement No. 81, *Irrevocable Split-Interest Agreements* requires that a government that receives resources pursuant to an irrevocable split interest agreement recognize assets, liabilities, and deferred inflows of resources at the inception of the agreement. Implementation of this statement is effective fiscal year 2018.

Issued in November 2016, GASB Statement No. 83, *Certain Asset Retirement Obligations* establishes standards of accounting and financial reporting for certain Asset Retirement Obligations (AROs). An ARO is a legally enforceable liability associated with the retirement of a tangible capital asset. A government that has legal obligations to perform future asset retirement activities related to its tangible capital assets should recognize a liability based on the guidance in this statement. This statement establishes criteria for determining the timing and pattern of recognition of a liability and a corresponding deferred outflow of resources for AROs. Implementation of this statement is effective fiscal year 2019.

Issued in January 2017, GASB Statement No. 84, *Fiduciary Activities* establishes criteria for identifying fiduciary activities of all state and local governments. The focus of the criteria generally is on (1) whether a government is controlling the assets of the fiduciary activity and (2) the beneficiaries with whom a fiduciary relationship exists. Implementation of this statement is effective fiscal year 2020.

Issued in March 2017, GASB Statement No. 85, *OMNIBUS 2017*, is to address practice issues that have been identified during implementation and application of certain GASB Statements. This statement addresses a variety of topics including issues related to blending component units, goodwill, fair value measurement and application, and postemployment benefits (pensions and other postemployment benefits (OPEB)). Implementation of this statement is effective fiscal year 2018.

Issued in May 2017, GASB Statement No. 86, *Certain Debt Extinguishment Issues* is to improve consistency in accounting and financial reporting for in-substance defeasance of debt by providing guidance for transactions in which cash and other monetary assets acquired with only existing resources—resources other than the proceeds of refunding debt—are placed in an irrevocable trust for the sole purpose of extinguishing debt. This Statement also improves accounting and financial reporting for prepaid insurance on debt that is extinguished and notes to financial statements for debt that is defeased in substance. Implementation of this statement is effective fiscal year 2018.

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Issued in June 2017, GASB Statement No. 87, *Leases* is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This statement requires recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities. Implementation of this statement is effective fiscal year 2021.



## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

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### 3. Cash and Investments

#### a. Pooled Investments

Pursuant to the California Government Code and the Los Angeles City Council File No. 94-2160, the City Treasurer provides an Annual Statement of Investment Policy (the Policy) to the City Council. The Policy governs the City's pooled investment practices with the following objectives, in order of priority, safety of principal, liquidity, and rate of return. The Policy addresses soundness of financial institutions in which the Treasurer will deposit funds and types of investment instruments permitted under California law.

Each investment transaction and the entire portfolio must comply with the California Government Code and the Policy. Examples of investments permitted by the Policy are obligations of the U.S. Treasury and government agencies, commercial paper notes, negotiable certificates of deposit, guaranteed investment contracts, bankers' acceptances, medium-term corporate notes, money market accounts, and the State of California Local Agency Investment Fund (LAIF).

LAX maintains a portion of its unrestricted and restricted cash and investments in the City's cash and investment pool (the Pool). LAX's share of \$1.7 billion in the Pool represented approximately 20.0% and 19.8% as of June 30, 2017 and 2016, respectively. There are no specific investments belonging to LAX. Included in LAX's portion of the Pool is the allocated investment agreements traded at year-end that were settled in the subsequent fiscal year. LAX's allocated shares for fiscal years 2017 and 2016 were \$102.7 million and \$34.0 million, respectively, and were reported as other current liabilities in the statement of net position. The City issues a publicly available financial report that includes complete disclosures related to the entire cash and investment pool. The report may be obtained by writing to the City of Los Angeles, Office of the Controller, 200 North Main Street, City Hall East Suite 300, Los Angeles, CA 90012, or by calling (213) 978-7200.

#### b. City of Los Angeles Securities Lending Program

The Securities Lending Program (SLP) is permitted and limited under provisions of California Government Code Section 53601. The City Council approved the SLP on October 22, 1991 under Council File No. 91-1860, which complies with the California Government Code. The objectives of the SLP in priority order are: safety of loaned securities and prudent investment of cash collateral to enhance revenue from the investment program. The SLP is governed by a separate policy and guidelines, with oversight responsibility of the Investment Advisory Committee.

The City's custodial bank acts as the securities lending agent. In the event a counterparty defaults by reason of an act of insolvency, the bank shall take all actions which it deems necessary or appropriate to liquidate permitted investment and collateral in connection with such transaction and shall make a reasonable effort for two business days (Replacement Period) to apply the proceeds thereof to the purchase of securities identical to the loaned securities not returned. If during the Replacement Period the collateral liquidation proceeds are insufficient to replace any of the loaned securities not returned, the bank shall, subject to payment by the City of the amount of any losses on any permitted investments, pay such additional amounts as necessary to make such replacement.



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Under the provisions of the SLP, and in accordance with the California Government Code, no more than 20% of the market value of the Pool is available for lending. The City receives cash, U.S. treasury securities, and federal agency issued securities as collateral on loaned securities. The cash collateral is reinvested in securities permitted under the policy. In accordance with the Code, the securities lending agent marks to market the value of both the collateral and the reinvestments daily. Except for open loans where either party can terminate a lending contract on demand, term loans have a maximum life of 90 days. Earnings from securities lending accrue to the Pool and are allocated on a pro rata basis to all Pool participants.

LAX participates in the City's securities lending program through the pooled investment fund. LAX recognizes its proportionate share of the cash collateral received for securities loaned and the related obligation for the general investment pool. At June 30, 2017, LAX's portion of the cash collateral and the related obligation in the City's program was \$13.0 million. LAX's portion of the securities purchased from the reinvested cash collateral at June 30, 2017 was \$13.0 million. Such securities are stated at fair value and reported under the cash and pooled investment held in City Treasury. LAX's portion of the noncash collateral at June 30, 2017 was \$200.3 million. At June 30, 2016, LAX's portion of the cash collateral and the related obligation in the City's program was \$31.3 million. LAX's portion of the securities purchased from the reinvested cash collateral at June 30, 2016 was \$31.3 million. Such securities are stated at fair value and reported under the cash and pooled investment held in City Treasury. LAX's portion of the noncash collateral at June 30, 2016 was \$110.8 million.

During the fiscal years, collateralizations on all loaned securities were within the required 102.0% of market value. The City can sell collateral securities only in the event of borrower default. The lending agent provides indemnification for borrower default. There were no violations of legal or contractual provisions and no borrower or lending agent default losses during the years. There was no credit risk exposure to the City at June 30, 2017 and 2016 because the amounts owed to the borrowers exceeded the amounts borrowed. Loaned securities are held by the City's agents in the City's name and are not subject to custodial credit risk.

**Notes to the Financial Statements**  
**June 30, 2017 and 2016**  
(continued)

**c. Investments with Fiscal Agents**

The investment practices of the fiscal agents that relate to LAX's portfolio are similar as those of the City Treasurer, and have similar objectives. LAX's investments held by fiscal agents are for the following purposes (amounts in thousands):

	2017	2016
Unrestricted, current		
Commercial paper and cash at bank	\$ 22,282	\$ 16,465
Restricted, current and noncurrent		
Bond security funds	455,125	418,783
Construction funds	486,954	415,198
Subtotal	942,079	833,981
Total	\$ 964,361	\$ 850,446

The bond security funds are pledged for the payment or security of certain bonds. These investments are generally short-term securities and have maturities designed to coincide with required bond retirement payments. The construction funds are bond proceeds on deposit with the fiscal agents. They are used to reimburse LAX for capital expenditures incurred or to be incurred.

At June 30, 2017, the investments and their maturities are as follows (amounts in thousands):

		Investment maturities		
		1 to 60	61 to 365	366 days to
	Amount	days	days	over 5 years
Money market mutual funds	\$ 591,046	\$ 591,046	\$ —	\$ —
State of California LAIF	333,448	—	333,448	—
U.S. Treasury securities	17,585	—	—	17,585
Subtotal	942,079	\$ 591,046	\$ 333,448	\$ 17,585
Bank deposit accounts	22,282			
Total	\$ 964,361			

At June 30, 2016, the investments and their maturities are as follows (amounts in thousands):

	Amount	Investment maturities	
		1 to 60 days	61 to 365 days
Money market mutual funds	\$ 318,439	\$ 318,439	\$ —
State of California LAIF	508,832	—	508,832
U.S. Treasury securities	6,145	—	6,145
Subtotal	833,416	<u>\$ 318,439</u>	<u>\$ 514,977</u>
Bank deposit accounts	17,030		
Total	<u>\$ 850,446</u>		

#### Fair Value Measurements

The investments are categorized into its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. These principles recognize a three-tiered fair value hierarchy, as follows:

- Level 1: Investments reflect prices quoted in active markets;
- Level 2: Investments reflect prices that are based on a similar observable asset either directly or indirectly, which may include inputs in markets that are not considered to be active; and
- Level 3: Investments reflect prices based upon unobservable sources.

At June 30, 2017, the investments by fair value level are as follows (amounts in thousands):

	Amount	Fair Value Measurements Using Level 1
Money Market Funds	\$ 591,046	\$ 591,046
U.S. Treasury securities	17,585	17,585
Total investments by fair value level	608,631	<u>\$ 608,631</u>
Investments not subject to fair value hierarchy		
State of California LAIF	333,448	
Bank deposit accounts	22,282	
Total	<u>\$ 964,361</u>	

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

At June 30, 2016, the investments by fair value level are as follows (amounts in thousands):

	Amount	Fair Value Measurements Using Level 1
Money Market Funds by fair value level	\$ 318,439	\$ 318,439
U.S. Treasury securities	6,145	6,145
Total investments by fair value level	324,584	\$ 324,584
Investments not subject to fair value hierarchy		
State of California LAIF	508,832	
Bank deposit accounts	17,030	
Total	\$ 850,446	

**Interest Rate Risk.** LAX adopts the City's policy that limits the maturity of investments to five years for U.S. Treasury and government agency securities. The policy allows funds with longer term investments horizons, to be invested in securities that at the time of the investment have a term remaining to maturity in excess of five years, but with a maximum final maturity of thirty years.

**Credit Risk.** The City's policy requires that a mutual fund must receive the highest ranking by not less than two nationally recognized rating agencies. At June 30, 2017 and 2016, the money market mutual funds were rated AAAM by Standard and Poor's, and Aaa by Moody's.

**Concentration of Credit Risk.** The City's policy does not allow more than 40% of its investment portfolio to be invested in commercial paper and bankers' acceptances, 30% in certificates of deposit and medium term notes, 20% in mutual funds, money market mutual funds or mortgage passthrough securities. The policy further provides for a maximum concentration limit of 10% in any one issuer including its related entities. There is no percentage limitation on the amount that can be invested in the U.S. Treasury and government agencies.

As of June 30, 2017, LAX's investments in the LAIF held by fiscal agents totaled \$333.4 million. The total amount invested by all public agencies in LAIF at that date was \$22.8 billion. The LAIF is part of the State's Pooled Money Investment Account (PMIA). As of June 30, 2017, the investments in the PMIA totaled \$77.6 billion, of which 97.1% is invested in non-derivative financial products and 2.9% in structured notes and asset-backed securities. The weighted average maturity of LAIF investments was 194 days as of June 30, 2017. LAIF is not rated.

As of June 30, 2016, LAX's investments in the LAIF held by fiscal agents totaled \$508.8 million. The total amount invested by all public agencies in LAIF at that date was \$22.7 billion. As of June 30, 2016, the investments in the PMIA totaled \$75.5 billion, of which 97.2% is invested in non-derivative financial products and 2.8% in structured notes and asset-backed securities. The weighted average maturity of LAIF investments was 167 days as of June 30, 2016.

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The Local Investment Advisory Board (the Board) has oversight responsibility for LAIF. The Board consists of five members as designated by State statute. The Pooled Money Investment Board whose members are the State Treasurer, Director of Finance, and State Controller, has oversight responsibility for PMIA. The value of the pool shares in LAIF, which may be withdrawn anytime, is determined on a historical basis, which is different than the fair value of LAX's position in the pool.

The bank deposit accounts are covered by Federal depository insurance up to a certain amount. Financial institutions are required under California law to collateralize the uninsured portion of the deposits by pledging government securities or first trust deed mortgage notes. The collateral is held by the pledging institution's trust department and is considered held in LAX's name.



**Notes to the Financial Statements**  
**June 30, 2017 and 2016**  
(continued)

**4. Capital Assets**

LAX had the following activities in capital assets during fiscal year 2017 (amounts in thousands):

	Balance at July 1, 2016	Additions	Retirement & disposals	Transfers	Balance at June 30, 2017
<b>Capital assets not depreciated</b>					
Land and land clearance	\$ 930,421	\$ —	\$ —	\$ (20,844)	\$ 909,577
Air easements	44,346	—	—	—	44,346
Emission reduction credits	2,853	—	—	217	3,070
Construction work in progress	1,646,101	1,111,511	—	(1,550,397)	1,207,215
Total capital assets not depreciated	2,623,721	1,111,511	—	(1,571,024)	2,164,208
<b>Capital assets depreciated</b>					
Buildings	3,003,008	—	—	562,924	3,565,932
Improvements	3,823,043	3,092	—	974,769	4,800,904
Equipment and vehicles	241,526	11,595	(1,322)	1,421	253,220
Total capital assets depreciated	7,067,577	14,687	(1,322)	1,539,114	8,620,056
<b>Accumulated depreciation</b>					
Buildings	(504,512)	(96,772)	—	—	(601,284)
Improvements	(1,221,362)	(187,824)	—	—	(1,409,186)
Equipment and vehicles	(172,422)	(13,580)	1,302	(257)	(184,957)
Total accumulated depreciation	(1,898,296)	(298,176)	1,302	(257)	(2,195,427)
Capital assets depreciated, net	5,169,281	(283,489)	(20)	1,538,857	6,424,629
<b>Total</b>	<b>\$ 7,793,002</b>	<b>\$ 828,022</b>	<b>\$ (20)</b>	<b>\$ (32,167)</b>	<b>\$ 8,588,837</b>

LAX had the following activities in capital assets during fiscal year 2016 (amounts in thousands):

	Balance at July 1, 2015	Additions	Retirement & disposals	Transfers	Balance at June 30, 2016
<b>Capital assets not depreciated</b>					
Land and land clearance	\$ 840,530	\$ —	\$ (346)	\$ 90,237	\$ 930,421
Air easements	44,346	—	—	—	44,346
Emission reduction credits	5,918	—	—	(3,065)	2,853
Construction work in progress	2,449,829	1,020,763	(760)	(1,823,731)	1,646,101
Total capital assets not depreciated	3,340,623	1,020,763	(1,106)	(1,736,559)	2,623,721
<b>Capital assets depreciated</b>					
Buildings	2,254,956	—	—	748,052	3,003,008
Improvements	3,043,955	2,020	—	777,068	3,823,043
Equipment and vehicles	215,518	8,250	(2,616)	20,374	241,526
Total capital assets depreciated	5,514,429	10,270	(2,616)	1,545,494	7,067,577
<b>Accumulated depreciation</b>					
Buildings	(385,745)	(67,632)	—	(51,135)	(504,512)
Improvements	(1,314,084)	(147,493)	—	240,215	(1,221,362)
Equipment and vehicles	(163,723)	(11,314)	2,615	—	(172,422)
Total accumulated depreciation	(1,863,552)	(226,439)	2,615	189,080	(1,898,296)
Capital assets depreciated, net	3,650,877	(216,169)	(1)	1,734,574	5,169,281
Total	\$ 6,991,500	\$ 804,594	\$ (1,107)	\$ (1,985)	\$ 7,793,002

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

#### 5. Commercial Paper

As of June 30, 2017 and 2016, LAX had outstanding commercial paper (CP) notes of \$48.7 million and \$50.3 million, respectively. The respective average interest rates in effect as of June 30, 2017 and 2016 were 1.07% and 0.55%. The CP notes mature no more than 270 days from the date of issuance. The CP notes were issued as a means of interim financing for certain capital expenditures and redemption of certain bond issues.

LAX entered into a letter of credit (LOC) and reimbursement agreements with the following institutions to provide liquidity and credit support for the CP program: Bank of the West for \$54.5 million to expire on October 2, 2017; Sumitomo Mitsui Bank for \$109.0 million to expire on October 2, 2017; Wells Fargo Bank for \$218.0 million to expire on October 2, 2017; and Barclays Bank PLC for \$163.5 million to expire on January 16, 2018. LAX paid the LOC banks an average annual commitment fee approximately 0.27% on the stated amount of the LOC for fiscal years 2017 and 2016. LOC fees of \$2.0 million and \$1.5 million were paid for fiscal years 2017 and 2016, respectively. Please refer to note 19 of the notes to the financial statements relating to the subsequent extension of the LOC.

LAX had the following CP activity during fiscal year 2017 (amounts in thousands):

	Balance			Balance		
	July 1, 2016	Additions	Reductions	June 30, 2017		
Series B	\$ —	\$ 3,081	\$ —	\$ 3,081		
Series C	50,310	341	(4,996)	45,655		
Total	<u>\$ 50,310</u>	<u>\$ 3,422</u>	<u>\$ (4,996)</u>	<u>\$ 48,736</u>		

LAX had the following CP activity during fiscal year 2016 (amounts in thousands):

	Balance			Balance		
	July 1, 2015	Additions	Reductions	June 30, 2016		
Series C	<u>\$ 50,123</u>	<u>\$ 187</u>	<u>\$ —</u>	<u>\$ 50,310</u>		



## 6. Bonded Debt

Bonds issued by LAX are payable solely from revenues of LAX and are not general obligations of the City.

### a. Outstanding Debt

Outstanding revenue and revenue refunding bonds are due serially in varying annual amounts. Bonds outstanding as of June 30, 2017 and 2016 are as follows (amounts in thousands):

Bond issues	Issue date	Interest rate	Fiscal year of last scheduled maturity	Original principal	Outstanding principal	
					2017	2016
Issue of 2008, Series A	8/6/08	3.750% - 5.500%	2038	\$ 602,075	279,025	506,300
Issue of 2008, Series C	8/6/08	3.000% - 5.250%	2038	243,350	11,540	16,925
Issue of 2009, Series A	12/3/09	2.000% - 5.250%	2039	310,410	270,800	277,570
Issue of 2009, Series C	12/3/09	5.175% - 6.582%	2039	307,350	290,455	299,045
Issue of 2009, Series E	12/3/09	2.000% - 5.000%	2020	39,750	13,055	17,015
Issue of 2010, Series A	4/8/10	3.000% - 5.000%	2040	930,155	870,185	888,025
Issue of 2010, Series B	11/4/10	5.000%	2040	134,680	134,680	134,680
Issue of 2010, Series C	11/4/10	7.053%	2040	59,360	59,360	59,360
Issue of 2010, Series D	11/30/10	3.000% - 5.500%	2040	875,805	837,165	846,125
Issue of 2012, Series A	12/18/12	3.000% - 5.000%	2029	105,610	79,940	87,235
Issue of 2012, Series B	12/18/12	2.000% - 5.000%	2037	145,630	133,480	136,385
Issue of 2012, Series C	12/18/12	3.000% - 5.000%	2019	27,870	15,825	21,755
Issue of 2013, Series A	11/19/13	5.000%	2043	170,685	170,685	170,685
Issue of 2013, Series B	11/19/13	4.625% - 5.000%	2038	71,175	67,650	69,455
Issue of 2015, Series A	2/24/15	2.000% - 5.000%	2045	267,525	262,030	265,780
Issue of 2015, Series B	2/24/15	3.000% - 5.000%	2045	47,925	47,075	47,925
Issue of 2015, Series C	2/24/15	2.000% - 5.000%	2035	181,805	180,165	180,995
Issue of 2015, Series D	11/24/15	5.000%	2041	296,475	290,785	296,475
Issue of 2015, Series E	11/24/15	2.000% - 5.000%	2041	27,850	27,010	27,850
Issue of 2016, Series A	6/1/16	3.000% - 5.000%	2042	289,210	287,605	289,210
Issue of 2016, Series B	1/19/17	4.000% - 5.000%	2046	451,170	451,170	—
Issue of 2016, Series C	12/6/16	1.425% - 3.887%	2038	226,410	226,410	—
Total principal amount				<u>\$ 5,812,275</u>	5,006,095	4,638,795
Unamortized premium					320,461	285,980
Unamortized discount					(3,080)	(5,675)
Net revenue bonds					<u>5,323,476</u>	4,919,100
Current portion of debt					<u>(107,850)</u>	<u>(96,200)</u>
Net noncurrent debt					<u>\$ 5,215,626</u>	<u>\$ 4,822,900</u>

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

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#### b. Pledged Revenue

The bonds are subject to optional and mandatory sinking fund redemption prior to maturity. LAX has agreed to certain covenants with respect to bonded indebtedness. Significant covenants include the requirement that LAX's pledged revenues, as defined in the master senior and subordinate indentures, shall be the security and source of payment for the bonds.

LAX has received approval from the FAA to collect and use passenger facility charges (PFCs) to pay for debt service on bonds issued to finance the Tom Bradley International Terminal (TBIT) Renovations, Bradley West projects and Terminal 6 improvements. Board of Airport Commissioners authorized amounts of \$118.0 million and \$124.0 million were used for debt service in fiscal years 2017 and 2016, respectively.

The total principal and interest remaining to be paid on the bonds is \$8.8 billion. Principal and interest paid during fiscal year 2017 and the net pledged revenues on GAAP basis (as defined in the master senior and subordinate indentures, after application of the \$118.0 million PFCs funds discussed in the preceding paragraph), were \$339.1 million and \$735.5 million, respectively. Advance refunding of LAX Series 2008A was \$214.1 million in fiscal year 2017. Principal and interest paid during fiscal year 2016 and the net pledged revenues on GAAP basis (as defined in the master senior and subordinate indentures, after application of the \$124.0 million PFCs funds discussed in the preceding paragraph), were \$300.8 million and \$698.1 million, respectively.

#### c. Bond Issuances

On December 6, 2016, LAX issued \$226.4 million of LAX senior refunding revenue bonds Series 2016C, and on January 19, 2017, \$451.2 million of LAX subordinate revenue bonds Series 2016B. The Series 2016C bonds were issued at par, and the Series 2016B bonds were sold with premium of \$51.1 million. The 2016C bonds were issued to advance refund and defease a portion of the Series 2008A senior revenue bonds in the amount of \$214.1 million. These transactions resulted in a cash flow savings of \$39.7 million and economic gain of \$24.8 million. The 2016B bonds were issued to fund certain capital projects at LAX.

On November 24, 2015, LAX issued senior lien LAX revenue bonds Series 2015D of \$296.5 million and Series 2015E of \$27.8 million, and on June 1, 2016, LAX subordinate revenue bonds Series 2016A of \$289.2 million. The premium for these issuances totaled \$99.9 million. The bonds were issued to pay for certain capital projects at LAX.

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**d. Principal Maturities and Interest**

Scheduled annual principal maturities and interest are as follows (amounts in thousands):

Fiscal year(s) ending	Principal	Interest	Total
2018	\$ 107,850	\$ 252,230	\$ 360,080
2019	117,280	247,107	364,387
2020	123,460	241,687	365,147
2021	127,810	236,206	364,016
2022	133,905	230,122	364,027
2023 - 2027	792,265	1,043,324	1,835,589
2028 - 2032	1,027,305	814,098	1,841,403
2033 - 2037	1,321,965	522,756	1,844,721
2038 - 2042	1,062,760	177,721	1,240,481
2043 - 2046	191,495	21,893	213,388
Total	<u>\$ 5,006,095</u>	<u>\$ 3,787,144</u>	<u>\$ 8,793,239</u>

**e. Build America Bonds**

LAX Subordinate Revenue Bonds 2009 Series C and 2010 Series C with par amounts of \$307.4 million and \$59.4 million, respectively, were issued as federally taxable Build America Bonds (BABs) under the American Recovery and Reinvestment Act of 2009. LAWA receives a direct federal subsidy payment in the amount equal to 35% of the interest expense on the BABs. The automatic cuts in spending (referred to as “sequestration”) for the federal fiscal years ending September 30, 2017 and September 30, 2016 reduced the subsidy. The interest subsidy on the BABs was \$7.6 million in fiscal year 2017 and \$7.8 million in fiscal year 2016. The subsidy is recorded as a non-capital grant, a component of other nonoperating revenue.

**Notes to the Financial Statements**  
**June 30, 2017 and 2016**  
(continued)

**7. Changes in Long-Term Liabilities**

LAX had the following long-term liabilities activities for fiscal year ended June 30, 2017 (amounts in thousands):

	Balance at			Balance at		Current
	July 1, 2016	Additions	Reductions	June 30, 2017	Portion	
Revenue bonds	\$ 4,638,795	\$ 677,580	\$ (310,280)	\$ 5,006,095	\$ 107,850	
Unamortized premium	285,980	51,142	(16,661)	320,461	—	
Unamortized discount	(5,675)	—	2,595	(3,080)	—	
Net revenue bonds	4,919,100	728,722	(324,346)	5,323,476	107,850	
Accrued employee benefits	42,515	10,181	(5,807)	46,889	5,580	
Estimated claims payable	74,376	12,503	(8,395)	78,484	8,137	
Liability for environmental/ hazardous materials cleanup	12,783	1,580	(6,863)	7,500	—	
Net pension liability	642,431	118,756	—	761,187	—	
Other long-term liabilities	886	—	—	886	—	
Total	\$ 5,692,091	\$ 871,742	\$ (345,411)	\$ 6,218,422	\$ 121,567	

LAX had the following long-term liabilities activities for fiscal year ended June 30, 2016 (amounts in thousands):

	Balance at			Balance at		Current
	July 1, 2015	Additions	Reduction	June 30, 2016	Portion	
Revenue bonds	\$ 4,106,960	\$ 613,535	\$ (81,700)	\$ 4,638,795	\$ 96,200	
Add unamortized premium	198,252	99,858	(12,130)	285,980	—	
Less unamortized discount	(5,950)	—	275	(5,675)	—	
Net revenue bonds	4,299,262	713,393	(93,555)	4,919,100	96,200	
Accrued employee benefits	41,806	5,307	(4,598)	42,515	5,357	
Estimated claims payable	75,559	7,149	(8,332)	74,376	7,899	
Liability for environmental/ hazardous materials cleanup	12,783	—	—	12,783	—	
Net pension liability	566,613	75,818	—	642,431	—	
Other long-term liabilities	886	—	—	886	—	
Total	\$ 4,996,909	\$ 801,667	\$ (106,485)	\$ 5,692,091	\$ 109,456	

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

## 8. Leases and Agreements

### a. Operating Leases and Agreements As Lessor

LAX has entered into numerous rental agreements with concessionaires for food and beverage, gift and news, duty-free, rental car facilities, and advertisements. In general, the agreements provide for cancellation on a 30-day notice by either party; however, they are intended to be long-term in nature with renewal options. Accordingly, these agreements are considered operating leases for purposes of financial reporting.

The agreements provide for a concession fee equal to the greater of a minimum annual guarantee (MAG) or a percentage of gross revenues. Certain agreements are subject to escalation of the MAG. For the fiscal years ended June 30, 2017 and 2016, revenues from such agreements were approximately \$329.8 million and \$291.3 million, respectively. The respective amounts over MAG were \$110.3 million and \$76.6 million.

Minimum future rents or payments under these agreements over the next five years, assuming no material changes from concessionaires' current levels of gross sales, and that current agreements are carried to contractual termination, are as follows (amounts in thousands):

Fiscal year ending	Amount
2018	\$ 177,345
2019	130,071
2020	130,071
2021	34,943
2022	12,073
Total	<u>\$ 484,503</u>

On March 1, 2012, LAWA and Westfield Airports, LLC (Westfield) entered into a Terminal Commercial Management Concession Agreement (3-1-12 Agreement) for Westfield to develop, lease, and manage retail, food and beverage and certain passenger services in specified locations at the Tom Bradley International Terminal (TBIT) and Terminal 2 at LAX for a term of 17 years consisting of two-year development period and fifteen-year operational period. Since then, the Terminal 2 portion has been amended with an expiration date the same as the TBIT portion, which is no later than January 31, 2032. Westfield will select concessionaires subject to LAWA approval. Concession agreements awarded by Westfield shall have a term no longer than ten years. The agreement requires Westfield and its concessionaires to invest no less than \$81.9 million in initial improvements and \$16.4 million in mid-term refurbishments. Such improvements are subject to LAWA approval. The initial non-premises improvements, as defined, shall be acquired by and become the property of LAWA by cash payment to Westfield or the issuance of rent credit.

Under the 3-1-12 Agreement, the MAG will be adjusted each year by the greater of (a) \$210 per square foot escalated by the Consumer Price Index, but not greater than 2.5% for any year, or (b) 85% of the prior year's Percentage Rent (as defined) paid to LAWA beginning January 1, 2014. For any year in which the number of enplaned passengers in TBIT and Terminal 2 is (a) less than the 2011 passenger enplanements, or (b) less than 90% of the prior year's passenger enplanements in these terminals, an additional adjustment to the MAG is calculated on a retroactive basis.

On June 22, 2012, LAWA and Westfield entered into another Terminal Commercial Management Concession Agreement (6-22-12 Agreement) for Westfield to develop, lease, and manage retail, food and beverage and certain passenger services in specified locations at the Terminals 1, 3, and 6. The term of this agreement is 17 years consisting of two-year development period and fifteen-year operational period. Under this agreement, the expiration dates of Terminal 1, 3 and 6 are June 30, 2032, June 30, 2029 and September 30, 2030, respectively. Westfield will select concessionaires subject to LAWA approval. Concession agreements awarded by Westfield shall have a term no longer than ten years. The agreement requires Westfield and its concessionaires to invest no less than \$78.6 million in initial improvements and \$15.7 million in mid-term refurbishments. Such improvements are subject to LAWA approval. The initial non-premises improvements, as defined, shall be acquired by and become the property of LAWA by cash payment to Westfield or the issuance of rent credit.

Under the 6-22-12 Agreement, the MAG will be adjusted each year by the greater of (a) \$240 per square foot escalated by the Consumer Price Index, but not greater than 2.5% for any year, or (b) 85% of the prior year's Percentage Rent (as defined) paid to LAWA. For any year in which the number of enplaned passengers in Terminals 1, 3, and 6 is (a) less than the 2011 passenger enplanements, or (b) less than 90% of the prior year's passenger enplanements in these terminals, an additional adjustment to the MAG is calculated on a retroactive basis beginning January 1, 2014. Please refer to note 19 of the notes to the financial statements relating to a subsequent amendment of the Westfield Agreements.

Minimum future rents under these two agreements with Westfield over the next five years assuming no material changes from concessionaires' current levels of gross sales are estimated as follows (amounts in thousands):

Fiscal year ending	Amount
2018	\$ 37,100
2019	38,028
2020	38,979
2021	39,953
2022	41,458
Total	<u>\$ 195,518</u>

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

LAX also leases land and terminal facilities to certain airlines and others. The terms of these long-term leases range from less than 10 years to 40 years and generally expire between 2017 and 2025. Certain airlines and consortium of airlines also pay maintenance and operating charges (M&O Charges) that include direct and indirect costs allocated to all passenger terminal buildings, other related and appurtenant facilities, and associated land. Rates for M&O Charges are set each calendar year based on the actual audited M&O Charges for the prior fiscal year ending June 30. The land and terminal lease agreements are accounted for as operating leases. For the fiscal years ended June 30, 2017 and 2016, revenues from these leases were \$592 million and \$558.8 million, respectively.

Future rents under these land and terminal lease agreements over the next five years were based on the assumption that current agreements are carried to contractual termination. The estimated future rents are as follows (amounts in thousands):

Fiscal year ending	Amount
2018	\$ 573,052
2019	553,128
2020	540,028
2021	524,457
2022	461,691
Total	<u>\$ 2,652,356</u>

The carrying cost and the related accumulated depreciation of property held for operating leases as of June 30, 2017 and 2016 are as follows (amounts in thousands):

	2017	2016
Buildings and facilities	\$ 4,939,989	\$ 4,022,026
Accumulated depreciation	(838,408)	(697,070)
Net	4,101,581	3,324,956
Land	525,616	556,951
Total	<u>\$ 4,627,197</u>	<u>\$ 3,881,907</u>



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**b. Lease Obligations**

LAX leases office spaces under operating lease agreements that expire through 2032. Lease payments for the fiscal years ended June 30, 2017 and 2016 were \$7.1 million and \$7.6 million, respectively. Future minimum lease payments under the agreements are as follows (amounts in thousands):

Fiscal year(s) ending	Amount
2018	\$ 7,196
2019	7,190
2020	5,676
2021	3,557
2022	3,557
2023-2027	16,899
2028-2032	9,459
Total	<u>\$ 53,534</u>

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

#### 9. Passenger Facility Charges

Passenger Facility Charges (PFCs) are fees imposed on enplaning passengers by airports to finance eligible airport related projects that preserve or enhance safety, capacity, or security of the national air transportation system; reduce noise or mitigate noise impacts resulting from an airport; or furnish opportunities for enhanced competition between or among carriers. Both the fee and the intended projects are reviewed and approved by the Federal Aviation Administration (FAA). Airlines operating at LAX have been collecting PFCs on behalf of LAX. PFCs are recorded as nonoperating revenue and presented as restricted assets in the financial statements. The current PFCs is \$4.50 per enplaned passenger. PFCs collection authorities approved by FAA are \$4.1 billion and \$3.1 billion as of June 30, 2017 and 2016, respectively. LAX has received approval from the FAA to collect and use PFCs to pay for debt service on bonds issued to finance the TBIT Renovations, Bradley West projects and Terminal 6 improvements. Board authorized amounts of \$118.0 million and \$124.0 million were used for debt service in fiscal years 2017 and 2016, respectively.

The following is a summary of projects approved by FAA as of June 30, 2017 and 2016 (amounts in thousands):

	2017	2016
Terminal development	\$ 3,141,679	\$ 2,148,395
Noise mitigation	863,745	863,745
Airfield development and equipment	83,620	83,620
Total	<u>\$ 4,089,044</u>	<u>\$ 3,095,760</u>

PFCs collected and the related interest earnings through June 30, 2017 and 2016 were as follows (amounts in thousands):

	2017	2016
Amount collected	\$ 2,282,374	\$ 2,118,505
Interest earnings	209,050	203,570
Total	<u>\$ 2,491,424</u>	<u>\$ 2,322,075</u>

As of June 30, 2017 and 2016, cumulative expenditures to date on approved PFCs projects totaled \$2.0 billion and \$1.9 billion, respectively.

## 10. Customer Facility Charges

In November 2001, the Board approved the collection of a state-authorized Customer Facility Charge (CFCs) from car rental agencies serving LAX. State law allows airports to collect a fee of \$10.00 per on-airport rental car agency transaction to fund the development of a consolidated car rental facility and common-use transportation system. CFCs are recorded as nonoperating revenue and presented as restricted assets in the financial statements.

CFCs collected and the related interest earnings through June 30, 2017 and 2016 were as follows (amounts in thousands):

	2017	2016
Amount collected	\$ 266,669	\$ 234,124
Interest earnings	17,377	14,404
Total	<u>\$ 284,046</u>	<u>\$ 248,528</u>

As of June 30, 2017 and 2016, cumulative expenditures on approved CFCs projects totaled \$3.0 million.

Under Section 1939 of California Legislature, LAX can change the amount and basis for collecting a CFCs from the current \$10.00 per contract level to a maximum of \$9.00 per transaction day, up to a 5-day maximum. Also, changes made to the amount and basis for collecting the CFCs would have to be initiated by January 1, 2018 by submitting certain information to the State of California (State).

The Landside Access and Modernization Program (LAMP) included proposed landside projects at LAX including a future ConRAC, Intermodal Transportation Facilities (ITF), which may include pick-up and drop-off locations for commercial vehicles that currently access the Central Terminal Area (CTA) on adjacent roadways and parking facilities for passenger and employees; the Automated People Mover (APM) System, and certain parking projects. The proposed ConRAC would be located east of the CTA, and it may include a customer service building, a ready/return area, a vehicle storage area, quick-turnaround facilities, and an area for rental car customers to access and exit the APM system. LAWA expects that the capital costs of a future ConRAC at LAX and portion of the APM system would be paid from annual CFCs revenues that are currently collected from on-airport rental car companies and remitted to LAWA. LAWA has initiated the State process to increase the CFCs rate charged at LAX. Please refer to note 19 of the notes to the financial statements relating to a subsequent Board authorization relating to CFC collection.

## 11. Capital Grant Contributions

Contributed capital related to government grants and other aid totaled \$87.8 million and \$49.3 million in fiscal years 2017 and 2016, respectively. Capital grant funds are primarily provided by the FAA Airport Improvement Program and Transportation Security Administration.

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

#### 12. Related Party Transactions

The City provides services to LAX such as construction and building inspection, fire and paramedic, police, water and power, and certain administrative services. The costs for these services for fiscal years ended June 30, 2017 and 2016 were \$106.1 million and \$94.1 million.

LAX collects parking taxes on behalf of the City's General Fund. The parking taxes collected and remitted during each of fiscal years 2017 and 2016 were \$9.7 million and \$9.3 million, respectively.

LAX shares certain administrative functions with ONT, VNY, and PMD including, but not limited to, legal, human services, and financial services. As described in Note 17 of the notes to the financial statements, ONT was transferred to OIAA on November 1, 2016.

Also, beginning fiscal year 2011, LAX pays VNY annual rent for the use of the land where the Flyaway Terminal resides. The rent is adjusted every July 1 of each year based on the consumer price index. The adjusted rent was \$1.1 million for fiscal years 2017 and 2016. The details are as follows (amounts in thousands):

	FY 2017	FY 2016
Allocated administrative costs		
ONT	\$ 2,048	\$ 6,866
VNY	2,241	2,120
PMD	296	370
Total	4,585	9,356
Land rental	(1,132)	(1,112)
Net	\$ 3,453	\$ 8,244

In December 2009, two cases were settled that related to FAA's audit findings of improper payments by LAX to the City General Fund. The cases involved compliance review by FAA of the transfer of LAX revenue funds to the City General Fund for the implementation of a joint strategic international marketing alliance, and the legality of the transfer of \$43.0 million out of approximately \$58.0 million representing condemnation proceeds received for certain City-owned property taken by the State for use in the construction of the Century Freeway. The settlement calls for a series of semi-annual payments over ten years through June 30, 2019 by the City General Fund to LAX totaling \$17.7 million plus 3.0% interest for a total of \$21.3 million. The installment payments will be offset against billings for actual cost of services provided by the City General Fund to LAX. At June 30, 2017 and 2016, the respective outstanding principal amount of \$2.9 million and \$5.8 million receivable beyond one year were reported under other noncurrent assets. The balance of \$2.9 million was reported as receivable within one year under unrestricted current assets for both June 30, 2017 and 2016.

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## 13. Pension Plan

### a. General Information

#### ***Plan Description***

All full-time employees of LAX are eligible to participate in the Los Angeles City Employees' Retirement System (LACERS), a single-employer defined benefit pension plan (the Pension Plan). LACERS serves as a common investment and administrative agent for City departments and agencies that participate in LACERS. LACERS is under the exclusive management and control of its Board of Administration whose authority is granted by statutes in Article XVI, Section 17 of the California State Constitution, and Article XI of the Los Angeles City Charter. Benefits and benefit changes are established by ordinance and approved by City Council and the Mayor.

All employees who became members of LACERS before July 1, 2013 are designated as Tier 1 members. On or after July 1, 2013, new employees became members of LACERS Tier 2. However, on July 9, 2015, Tier 2 was rescinded and a new tier of benefits was created. As a result, Ordinance 184134 was adopted on January 12, 2016, where all active Tier 2 members were transferred to Tier 1 as of February 21, 2016. Thereafter, new members became Tier 3 members of LACERS.

LACERS' publicly issued financial report, which covers both pension benefits and other postemployment benefits, may be obtained by writing or calling: Los Angeles City Employees' Retirement System, 202 W. First Street, Suite 500, Los Angeles, CA 90012-4401, (800) 779-8328 or LACERS' website <http://lacers.org/aboutlacers/reports/index.html>. As a City department, LAWA shares in the risks and costs with the City. LAX presents the related defined benefit disclosures as a participant in a single employer plan of the City on a cost-sharing basis. As of the completion date of LAX's financial statements, LACERS' financial statements and the Pension Plan's actuarial valuation study for fiscal year 2017 are not yet available.

#### ***Benefits Provided***

LACERS provides for service and disability retirement benefits, as well as death benefits. Members of LACERS have a vested right to their own contributions and accumulated interest posted to their accounts. Generally, after five years of employment, members are eligible for future retirement benefits, which increase with length of service. If a member who has five or more years of continuous City service terminates employment, the member has the option of receiving retirement benefits when eligible or having his or her contributions and accumulated interest refunded. Benefits are based upon age, length of service, and compensation.

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

LACERS Tier 1 members are eligible to retire with unreduced benefits if they have 10 or more years of continuous City service at age 60, or at least 30 years of City service at age 55, or with any years of City service at age 70 or older. Members also are eligible to retire with age-based reduced benefits after reaching age 55 with 10 or more years of continuous City service, or at any age with 30 or more years of City service. Full (unreduced) retirement benefits are determined as 2.16% of the member's average monthly pensionable salary during the member's last 12 months of service, or during any other 12 consecutive months of service designated by the member, multiplied by the member's years of service credit. Members with five years of continuous service are eligible for disability retirement, and the benefits are determined as 1/70 of the member's final average monthly salary for each year of service or 1/3 of the member's final average monthly salary, if greater.

Upon an active member's death, a refund of the member's contributions and, depending on the member's years of service, a limited pension benefit equal to 50% of monthly salary will be paid up to 12 months. Or, if such member was eligible to retire, survivor benefits may be paid to an eligible spouse or qualified domestic partner. Upon a retired member's death, a \$2,500 funeral allowance is paid, and modified or unmodified allowance is continued to an eligible spouse or qualified domestic partner.

LACERS Tier 3 members are eligible to retire with unreduced benefits if they have at least 10 or more years of City service at age 60 or at least 30 years of City service at age 55, provide that five years of service must be continuous. Full unreduced retirement benefits at age 60 with 10 years of City service are determined with a 1.5% retirement factor. Members also are eligible to retire with an age-based reduced benefits before reaching age 60 with 30 or more years of City service with a retirement factor of 2.0%. If the member is age 55 or older with 30 years of service at the time of retirement, his or her retirement allowance will not be subject to reduction on account of age. However, if the member is younger than age 55 with 30 years of service at the time of retirement, his or her retirement allowance will be reduced by the applicable early retirement reduction factor. In addition, LACERS also provides Tier 3 members an enhanced retirement benefits with a 2.0% retirement factor if the member retires at age 63 with at least 10 years of service; or a retirement factor of 2.1% if the member retires at age 63 with 30 years of service. Tier 3 retirement benefits are determined by multiplying the member's retirement factor (1.5% - 2.1%), with the member's last 36 months of final average compensation or any other 36 consecutive months designated by the member, and by the member's years of service credit.

Tier 3 members with five years of continuous service are eligible for disability retirement, and the benefits are determined as 1/70 of the member's final average monthly salary for each year of service or 1/3 of the member's final average monthly salary, if greater. Upon an active member's death, a refund of the member's contributions and, depending on the member's years of service, a limited pension benefit equal to 50% of monthly salary may be paid up to 12 months. Or, if such member was eligible to retire, survivor benefits may be paid to an eligible spouse or qualified domestic partner. Upon a retired member's death, a \$2,500 funeral allowance is paid, and a modified or unmodified allowance is continued to an eligible spouse or qualified domestic partner.

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Retirement allowances are indexed annually for inflation. The LACERS Board of Administration has authority to determine the average annual percentage change in the CPI for the purpose of providing a COLA to the benefits of eligible members and beneficiaries in July. The adjustment is based on the prior year's change of Los Angeles area CPI subject to a maximum of 3.0% for Tier 1 members or 2.0% for Tier 3 members. The excess over the maximum will be banked for Tier 1 members only.

### ***Membership***

As of June 30, 2016, LACERS had 20,078 Tier 1 active vested members; 3,907 and 461 active nonvested Tier 1 and Tier 3 members respectively; 18,357 inactive Tier 1 retired members; 4,677 inactive nonvested members; and 2,218 terminated members not yet receiving benefits. As of June 30, 2015, LACERS had 20,906 and 2,989 active vested and nonvested members, respectively; 4,408 and 17,932 inactive nonvested and inactive retired members, respectively; and 2,099 inactive terminated members not yet receiving benefits. (Note: information for fiscal year 2017 is not yet available on this report issue date).

### ***Member Contributions***

The current contribution rate for most of the Tier 1 members is 11% of their pensionable salary including a 1% increase in the member contribution rate pursuant to the 2009 Early Retirement Incentive Program (ERIP) ordinance for all employees for a period of 15 years (or until the ERIP cost obligation is fully recovered, whichever comes first); and 4% additional contributions in exchange for a vested right to future increases in the maximum retiree medical subsidy pursuant to a 2011 City Council ordinance. As of June 30, 2017 and June 30, 2016, all active Tier 1 members are now paying additional contributions, and are not subject to the retiree medical subsidy cap. The contribution rate for Tier 3 members is 11% of their pensionable salary including 4% of additional contributions in exchange for a vested right to future increases in the maximum retiree medical subsidy. Unlike Tier 1, Tier 3 members do not pay the ERIP contribution, therefore, Tier 3 members' contribution rate will not drop down when Tier 1 members cease to pay the 1% ERIP contribution.

### ***Employer Contributions***

The City contributes to the retirement plan based upon actuarially determined contribution rates adopted by the Board of Administration. Employer contribution rates are adopted annually based upon recommendations received from LACERS actuary after the completion of the annual actuarial valuation. The average employer contribution rates were 23.02% and 20.76% of compensation<sup>6</sup> as of June 30, 2016 (based on the June 30, 2014 valuation) and June 30, 2015 (based on the June 30, 2013 valuation), respectively. (Note: information for fiscal year 2017 is not yet available on this report issue date).

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<sup>6</sup> After adjustments to phase in over five years the impact of new actuarial assumptions (as a result of the June 30, 2011 Triennial Experience Study) on the City's contributions.

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

The total City contributions to LACERS of \$681.0 million and \$652.0 million for the years ended June 30, 2017 and June 30, 2016, respectively, consisted of the following (amounts in thousands):

	2017	2016
Required contributions	\$ 453,356	\$ 440,546
Family death benefit Plan	148	158
Total City contributions	453,504	440,704
Member contributions	227,532	211,345
Total	\$ 681,036	\$ 652,049

The required City contribution of \$453.4 million was equal to 100% of the actuarially determined employer contribution. Member contributions of \$227.5 million were made toward the retirement and voluntary family death benefits for fiscal year 2017.

The required City contribution of \$440.5 million was equal to 100% of the actuarially determined employer contribution. Member contributions of \$211.3 million were made toward the retirement and voluntary family death benefits for fiscal year 2016.

#### ***LAX's Contributions to the Pension Plan***

LAX's contributions to the Pension Plan for the year ended June 30 (amounts in thousands):

	2017	2016
LAX's required contributions to the Pension Plan	\$ 61,197	\$ 55,972

The LAX contributions made to the Pension Plan under the required contribution category in the amounts of \$61.2 million and \$56.0 million for fiscal years 2017 and 2016, respectively, were equal to 100% of the actuarially determined contribution of the employer.



**b. Net Pension Liability, Pension Expenses and Deferred Outflows/Inflows of Resources Related to the Pension Plan**

LACERS' Net Pension Liability (NPL) for fiscal year 2017 was measured as of June 30, 2016 and determined based upon the Plan Fiduciary Net Position (FNP) and Total Pension Liability (TPL) from actuarial valuation as of June 30, 2016. LACERS' NPL for fiscal year 2016 was measured as of June 30, 2015 and determined based upon the FNP and TPL from actuarial valuation as of June 30, 2015.

As of the reporting date June 30, 2017 (measurement date of June 30, 2016) and reporting date June 30, 2016 (measurement date of June 30, 2015), LAX reported its proportionate shares of TPL, FNP and NPL as follows (amounts in thousands):

	Reporting date 6/30/17 Measurement date 6/30/16	Reporting date 6/30/16 Measurement date 6/30/15
<b>LAX's proportionate share:</b>		
Total Pension Liability	\$ 2,361,087	\$ 2,177,306
Plan Fiduciary Net Position	(1,599,900)	(1,534,875)
Net Pension Liability	<u>\$ 761,187</u>	<u>\$ 642,431</u>
Plan Fiduciary Net Position as a percentage of the Total Pension Liability	67.76%	70.49%

LAX's NPL was measured as the proportionate share of the NPL based on the employer contributions made by LAX during fiscal year 2016. The NPL was measured as of June 30, 2016 and determined based upon the Pension Plan's FNP (plan assets) and TPL from actuarial valuations as of June 30, 2016.

Change in LAX's proportionate share of the NPL as of June 30, 2017 (measurement date June 30, 2016) and 2016 (measurement date June 30, 2015) was as follows (amounts in thousands):

	NPL	Proportion
Proportion - Reporting date June 30, 2017 (measurement date June 30, 2016)	\$ 761,187	13.55%
Proportion - Reporting date June 30, 2016 (measurement date June 30, 2015)	\$ 642,431	12.87%
Change - Increase	\$ 118,756	0.68%

Change in LAX's proportionate share of the NPL as of June 30, 2016 (measurement date June 30, 2015) and 2015 (measurement date June 30, 2014) was as follows (amounts in thousands):

	NPL	Proportion
Proportion - Reporting date June 30, 2016 (measurement date June 30, 2015)	\$ 642,431	12.87%
Proportion - Reporting date June 30, 2015 (measurement date June 30, 2014)	\$ 566,613	12.71%
Change - Increase	\$ 75,818	0.16%

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

For the year ended June 30, 2017, LAX recognized pension expense of \$78.4 million. At June 30, 2017, LAX reported deferred outflows of resources and deferred inflows of resources related to pensions from the following resources (amounts in thousands):

	Deferred outflows of resources	Deferred inflows of resources
Pension contributions subsequent to measurement date	\$ 61,197	\$ —
Differences between expected and actual experience	—	54,878
Changes of assumptions	49,538	—
Net difference between projected and actual earnings on pension plan investments	87,436	—
Changes in proportion and differences between employer contributions and proportionate share of contributions	5,181	18,037
Total	<u>\$ 203,352</u>	<u>\$ 72,915</u>

\$61.2 million reported as deferred outflows of resources related to contributions subsequent to the measurement date will be recognized as a reduction of the NPL in the year ended June 30, 2018. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized as pension expense as follows (amounts in thousands):

Fiscal year ending	Amount
2018	\$ 11,525
2019	11,525
2020	35,028
2021	13,450
2022	(2,288)

For the year ended June 30, 2016, LAX recognized pension expense of \$57.4 million . At June 30, 2016, LAX reported deferred outflows of resources and deferred inflows of resources related to pensions from the following resources (amounts in thousands):

	Deferred outflows of resources	Deferred inflows of resources
Pension contributions subsequent to measurement date	\$ 55,972	\$ —
Differences between expected and actual experience	—	27,695
Changes of assumptions	65,097	—
Net difference between projected and actual earnings on pension plan investments	—	18,375
Changes in proportion and differences between employer contributions and proportionate share of contributions	6,273	13,881
Total	<u>\$ 127,342</u>	<u>\$ 59,951</u>

\$56.0 million reported as deferred outflows of resources related to contributions subsequent to the measurement date were recognized as a reduction of the NPL in the year ended June 30, 2017. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized as pension expense as follows (amounts in thousands):

Fiscal year ending	Amount
2017	\$ (2,562)
2018	(2,562)
2019	(2,562)
2020	19,872
2021	(767)

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

#### c. Actuarial Assumptions for the June 30, 2016 Measurement Date for Fiscal Year 2017

The total pension liabilities as of June 30, 2016 and June 30, 2015 determined by actuarial valuations as of June 30, 2016 and June 30, 2015, respectively, using the following actuarial assumptions<sup>7</sup>, applied to all periods included in the measurement:

Inflation:	3.25%
Discount rate:	7.5%
Salary increases:	Ranges from 4.40% to 10.50% based on years of service, including inflation
Investment rate of return:	7.50%, net of pension plan investment expense, including inflation
Post-Retirement Mortality Rates:	
Healthy Members and all Beneficiaries:	RP-2000 Combined Healthy Mortality Table projected with Scale BB to 2020, set back one year for males and with no setback for females.
Disabled Members:	RP-2000 Combined Healthy Mortality Table projected with Scale BB to 2020, set forward seven years for males and set forward eight years for females.
Termination Rates before Retirement: Pre-Retirement Mortality:	RP-2000 Combined Healthy Mortality Table projected with Scale BB to 2020, set back one year for males and with no setback for females.
Retirement Age and Benefit for Inactive Vested Participants:	Pension benefit paid at the later of age 58 or the current attained age. For reciprocals, 4.40% compensation increases per annum.
Exclusion of Inactive Members:	All inactive participants are included in the valuation.
Definition of Active Members:	First day of biweekly payroll following employment for new department employees or immediately following transfer from other city department.
Unknown Data for Members:	Same as those exhibited by members with similar known characteristics. If not specified, members are assumed to be male.
Percent Married/Domestic Partner:	76% of male participants; 50% of female participants.
Age of Spouse:	Male retirees are assumed to be 4 years older than their female spouses. Female retirees are assumed to be 2 years younger than their male spouses.
Service:	Employment service is used for eligibility determination purposes. Benefit service is used for benefit calculation purposes.
Future Benefit Accruals:	1.0 year of service per year.
Other Reciprocal Service:	5% of future inactive vested members will work at a reciprocal system.
Consumer Price Index:	Increase of 3.25% per year; benefit increases due to CPI subject to 3.00% maximum for Tier 1 and 2.00% maximum for Tier 2.
Employee Contribution Crediting Rate:	Based on average of 5-year Treasury note rate. An assumption of 3.25% is used to approximate that crediting rate in this valuation.
Actuarial Cost Method:	Entry Age Cost Method.

<sup>7</sup> The actuarial assumptions used in the June 30, 2016 and June 30, 2015 valuations were based on the results of an experience study for the period from July 1, 2011 through June 30, 2014. They are the same as the assumptions used in the June 30, 2016 funding actuarial valuation for LACERS.

#### d. Discount Rate for Fiscal Year 2017

The discount rate used to measure the total pension liability was 7.50% as of June 30, 2016 and June 30, 2015. The projection of cash flows used to determine the discount rate assumed plan member contributions will be made at the current contribution rate and that employer contributions will be made at rates equal to the actuarially determined contribution rates. For this purpose, only employee and employer contributions that are intended to fund benefits of current plan members and their beneficiaries are included. Projected employer contributions that are intended to fund the service costs for future plan members and their beneficiaries, as well as projected contributions from future plan members, are not included. Based on those assumptions, the Plan's Fiduciary Net Position was projected to be available to make all projected future benefit payments for current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability as of both June 30, 2016 and June 30, 2015.

The long-term expected rate of return on pension plan investments was determined using a building-block method in which expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These returns are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage, adding expected inflation, and subtracting expected investment expenses and a risk margin. The target allocation and projected arithmetic real rates of return for each major asset class, after deducting inflation, but before deducting investment expenses, used in the derivation of the long-term expected investment rate of return assumption are summarized in the following table:

<u>Asset Class</u>	<u>Target Allocation</u>	<u>Long-Term (Arithmetic)</u>
		<u>Expected Real Rate of Return</u>
U.S. Large Cap Equity	20.40%	5.94%
U.S. Small Cap Equity	3.60%	6.64%
Developed	21.75%	6.98%
Emerging Market	7.25%	8.48%
Core Bonds	16.53%	0.71%
High Yield Bonds	2.47%	2.89%
Private Real Estate	5.00%	4.69%
Cash	1.00%	-0.46%
Credit Opportunities	5.00%	3.07%
Public Real Assets	5.00%	3.41%
Private Equity	12.00%	10.51%
Total	100.00%	

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

#### ***Sensitivity of the Proportionate Share of the Net Pension Liability to Changes in the Discount Rate***

The following presents LAX's proportionate share of the NPL as of June 30, 2016 and June 30, 2015, calculated using the discount rate of 7.50%, as well as what LAX's proportionate share of NPL would be if it were calculated using a discount rate that is 1 percentage point lower (6.50%) or 1 percentage point higher (8.50%) than the current rate (amounts in thousands):

	June 30, 2016	June 30, 2015
1% decrease	6.50%	6.50%
Net Pension Liability	\$1,072,834	\$932,617
Current discount rate	7.50%	7.50%
Net Pension Liability	\$761,187	\$642,431
1% increase	8.50%	8.50%
Net Pension Liability	\$501,665	\$400,940

#### ***Pension Plan Fiduciary Net Position***

The Pension Plan's fiduciary net position has been determined on the same basis used by the Pension Plan and the plans basis of accounting, including policies with respect to benefit payments and valuation of investments. Detailed information about LACERS net position is available in the separately issued LACERS financial reports, which can be found on the LACERS website.

#### **e. Payable to the Pension Plan for Fiscal Year 2017**

The City annual costs for the plans are calculated based on the annual required contribution of the employer, an amount actuarially determined in accordance with the parameters of the applicable GASB statements. LAX paid 100% of its annual contributions of \$61.2 million and \$56.0 million to the Pension Plan for fiscal years ended June 30, 2017 and June 30, 2016, respectively. At June 30, 2017 and June 30, 2016, LAX did not have any payable to be reported for the outstanding amount of contributions to the Pension Plan required for the year end.

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## 14. Other Postemployment Benefit Plan (OPEB)

### a. General Information

#### *Plan Description*

LACERS provides other postemployment health care benefits under a Postemployment Health Care Plan to eligible retirees and their eligible spouses/domestic partners who participate in the Pension Plan. Benefits and benefit changes are established by ordinance and approved by the City Council and the Mayor. Under Division 4, Chapter 11 of the City's Administrative Code, certain retired employees are eligible for a health insurance premium subsidy. This subsidy is to be funded entirely by the City. These benefits may also extend to the coverage of other eligible dependent(s). To be eligible for health care benefits, member must: 1) be at least age 55; 2) had at least 10 whole years of service with LACERS; and 3) enrolled in a System-sponsored medical or dental plan or are a participant in the Medical Premium Reimbursement Program (MPRP). Retirees and surviving spouses/domestic partners can choose from the health plans that are available, which include medical, dental, and vision benefits, or participate in the MPRP if he/she resides in an area not covered by the available medical plans. Retirees and surviving spouses/domestic partners receive medical subsidies based on service years and service credit. The dental subsidies are provided to the retirees only, based on service years and service credit.

LACERS' publicly issued financial report, which covers both pension benefits and other postemployment benefits, may be obtained by writing or calling: Los Angeles City Employees' Retirement System, 202 W. First Street, Suite 500, Los Angeles, CA 90012-4401, (800) 779-8328 or LACERS' website <http://lacers.org/aboutlacers/reports/index.html>. As a City department, LAWA shares in the risks and costs with the City. LAX presents the related OPEB benefit disclosures as a participant in a single employer plan of the City on a cost-sharing basis. As of the completion date of LAX's financial statements, LACERS' financial statements and the OPEB's actuarial valuation study for fiscal year 2017 are not yet available.

#### *Benefits Provided*

The maximum subsidies are set annually by the LACERS Board of Administration. Both Tier 1 and Tier 3 members will be eligible for 40% of maximum medical plan premium subsidy for 1 – 10 whole years of service credit, and the eligible members earn 4% per year of service credit for their annual medical subsidy accrual after 10 years of service. Eligible spouses/domestic partners of Pension Plan members are entitled to LACERS' postemployment health care benefits after the retired member's death. During the 2011 fiscal year, the City adopted an ordinance ("Subsidy Cap Ordinance") to limit the maximum medical subsidy at \$1,190 for those members who retire on or after July 1, 2011; however, members who at any time prior to retirement made additional contributions are exempted from the subsidy cap and obtain a vested right to future increases in the maximum medical subsidy at an amount not less than the dollar increase in the Kaiser two-party non-Medicare Part A and Part B premium.

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

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#### *Funding Policy for OPEB*

The City Charter requires periodic employer contributions at actuarially-determined rates that, expressed as percentages of annual covered payroll, are sufficient to accumulate the required assets to pay benefits when due. The required contribution rate for OPEB for the fiscal year ended June 30, 2016, was 5.58% of covered payroll, determined by the June 30, 2014 actuarial valuation. The required contribution rate for OPEB for the fiscal year ended June 30, 2015, was 5.61% of covered payroll, determined by the June 30, 2013 actuarial valuation. (Note: information for fiscal year 2017 is not yet available on this report issue date)

Actuarial valuations of an ongoing plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality, investment returns, and the health care cost trends. The funded status of the plan and the annual required contributions of the employer, determined by the annual actuarial valuations, are subject to continual revisions as actual results are compared with past expectations and new estimates are made about the future.

LACERS switched to the Entry Age cost method beginning from the June 30, 2012 actuarial valuation to determine the required annual contribution amount for OPEB. The required annual contribution amount is composed of two components: normal cost which is the cost of the portion of the benefit that is allocated to a given year, and the payment to amortize the unfunded actuarial accrued liability (UAAL) which is the difference between LACERS actuarial liabilities and actuarial assets.

The components of the UAAL are amortized as a level percent of pay. Based on LACERS funding policy, increases or decreases in the UAAL due to assumption changes are amortized over 20 years, except that health cost trend and premium assumption changes are amortized over 15 years. Plan changes and experience gains and losses are amortized over 15 years, subject to adjustments to comply with GASB requirements on maximum amortization period of 30 years for all layers combined. The amortization periods are closed as each layer of the UAAL is systematically amortized over a fixed period.



### ***Funded Status and Funding Progress***

The following is funded status information for OPEB as of June 30, 2016, and June 30, 2015 (amounts in thousands): (Note: information for fiscal year 2017 is not yet available on this report issue date)

	2016	2015	2014
Actuarial Accrued Liability (AAL)	\$ 2,793,689	\$ 2,646,989	\$ 2,662,853
Actuarial value of assets	2,248,753	2,108,925	1,941,225
Unfunded AAL	<u>\$ 544,936</u>	<u>\$ 538,064</u>	<u>\$ 721,628</u>
Funded ratio	80.49%	79.67%	72.90%
Covered payroll	\$ 1,968,703	\$ 1,907,665	\$ 1,898,064
Unfunded AAL as a percentage of covered payroll	27.68%	28.21%	38.02%

### ***City's Contributions to OPEB***

The City's annual OPEB cost, the percentage of annual OPEB cost contributed to the OPEB plan, and the net OPEB asset (liability) for fiscal year 2016 and the two preceding years for each of the plans are as follows (amounts in thousands): (Note: information for fiscal year 2017 is not yet available on this report issue date).

Year ended	Annual OPEB Cost (AOC)	Percentage of AOC contributed	Net OPEB Asset (Liability)
6/30/2014	\$ 97,841	100%	—
6/30/2015	\$ 100,467	100%	—
6/30/2016	\$ 105,983	100%	—

### ***LAX's Contributions to OPEB***

LAX's contributions to OPEB for the year ended June 30 (amounts in thousands):

	2017	2016
LAX's required contributions to OPEB	<u>\$ 13,225</u>	<u>\$ 13,875</u>

LAX's contributions made for OPEB, in the amounts of \$13.2 million and \$13.9 million for fiscal years 2017 and 2016, respectively, represent 100% of the Annual Required Contribution (ARC) as defined by GASB Statements No. 43<sup>8</sup> and No. 45<sup>9</sup>.

<sup>8</sup> GASB Statement No. 43, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, issued in April 2004

<sup>9</sup> GASB Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefit Plans Other Than Pension*, issued in June 2004.

## Notes to the Financial Statements

June 30, 2017 and 2016

(continued)

### b. Actuarial Methods and Assumptions

Projections of benefits for financial reporting purposes are based on LACERS plan provisions and include the types of benefits provided at the time of each valuation and historical pattern of sharing of benefit costs between the employer and plan members to that point. The actuarial methods and assumptions used include techniques, such as seven-year smoothing of assets and amortization of UAAL over various periods of time depending on the nature of the UAAL, that are designed to reduce the effects of short-term volatility in funding, consistent with the long-term perspective of the calculations.

Valuation Date	June 30, 2016
Actuarial Cost Method	Entry Age Cost Method – level percent of salary.
Amortization Method	Level Percent of Payroll – assuming a 4.00% increase in total covered payroll.
Amortization Period	Multiple layers – closed amortization period. Actuarial gains/losses are amortized over 15 years. Assumption or method changes are amortized over 20 years, except that assumptions specifically related with the Postemployment Health Care benefits and reviewed annually by the LACERS Board are amortized over 15 years. Plan changes, including the 2009 ERIP, are amortized over 15 years. Future ERIPs will be amortized over five years. Any actuarial surplus is amortized over 30 years. The existing layers on June 30, 2012, except those arising from the 2009 ERIP and the two GASB Statements No. 25/27 layers for the Pension Plan, were combined and amortized over 30 years. Health trend and premium assumption changes are amortized over 15 years. Years remaining range from 8 to 26 years.
Asset Valuation Method	Fair value of assets less unrecognized returns in each of the last seven years. Unrecognized return is equal to the difference between the actual market return and the expected return on the fair value, and is recognized over a seven-year period. The actuarial value of assets cannot be less than 60% or greater than 140% of fair value of assets. An Ad Hoc change was made in 2014 to combine the unrecognized returns and losses of prior years as of June 30, 2013 into one layer and recognize it evenly over six years from fiscal year 2013-14 through fiscal year 2018-19.
Actuarial Assumptions:	
Investment Rate of Return	7.50%, net of pension plan investment expense, including inflation
Mortality Table for Retirees	RP-2000 Combined Healthy Mortality Table projected with Scale BB to 2020, set back one year for males and no set back for females.
Mortality Table for Disabled Retirees	RP-2000 Combined Healthy Mortality Table projected with Scale BB to 2020, set seven years for males and set forward eight years for females.
Marital Status	60% of male and 30% of female retirees who receive a subsidy are assumed to be married or have a qualified domestic partner and elect dependent coverage.
Spouse Age Difference	Male retirees are assumed to be four years older than their female spouses. Female retirees are assumed to be two years younger than their male spouses.
Surviving Spouse Coverage	With regard to members who are currently alive, 100% of eligible spouses or domestic partners are assumed to elect continued health coverage after the member's death.
Participation	50% of inactive members are assumed to receive a subsidy for a City approved health carrier. 100% of retirees becoming eligible for Medicare are assumed to be covered by both Parts A and B.
Health Care Cost Trend Rates	Medical Premium Trend Rates to be applied in the following fiscal years, to all health plans. Trend Rate is to be applied to the premium for shown fiscal year to calculate next fiscal year's projected premium.

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## 15. Risk Management

The Risk Management Division administers LAWA's risk and claims management program. by implementing a comprehensive risk identification, assessment, regulation and insurance program. The program addresses key risks that may adversely affect LAWA's ability to meet its business goals and objectives and effectively insures against losses, transfers risk or otherwise mitigates risk losses.

LAWA maintains insurance coverage of \$1.3 billion for general aviation liability perils and \$1.0 billion for war and allied perils (Terrorism). Additional insurance coverage is carried for general all risk property insurance for \$2.5 billion, that includes \$250.0 million sub-limits for boiler and machinery, and \$25.0 million for earthquake. Deductibles for these policies are \$10,000 per claim with a \$500,000 annual aggregate for general liability losses, and \$100,000 per occurrence and no aggregate for general property. Historically, no liability or property claims have reached or exceeded the stated policy limits stated above.

Additionally, LAX maintains catastrophic loss fund for claims or losses that may exceed insurance policy limits or where insurance is not available or viable. Commercial insurance is used where it is legally required, contractually required, or judged to be the most effective way to finance risk. LAWA also monitors contractual transfer of risk by and through insurance review and requirements of contractors, tenants, airlines. For fiscal years 2017, 2016, and 2015, no claims were in excess of LAX's insurance coverage or approached a substantial portion of the overall coverage capacities.

A number of claims/lawsuits were pending against LAX that arose in the normal course of its operations. LAX recognizes a liability for claims and judgments when it is probable that an asset has been impaired or a liability has been incurred and the amount of the loss can be reasonably estimated. The City Attorney provides estimates for the amount of liabilities with a probability of occurring from these lawsuits. The probability weighted liability for litigation and other claims for the fiscal years ended June 30, 2017 and 2016 were \$10.1 million and \$11.7 million, respectively.

LAX is self-insured as part of the City's program for workers' compensation. All workers' compensation cases are processed by the City. Liability and risk are retained by LAX. The actuarially determined accrued liability for workers' compensation includes provision for incurred but not reported claims and loss adjustment expenses. The present value of the estimated outstanding losses was calculated based on a 3% yield on investments. LAX's accrued workers' compensation liabilities at June 30, 2017 and 2016 were \$68.4 million and \$62.7 million, respectively.

**Notes to the Financial Statements**  
**June 30, 2017 and 2016**  
(continued)

The changes in LAX's estimated claims payable are as follows (amounts in thousands):

	June 30		
	2017	2016	2015
Balance at beginning of year	\$ 74,376	\$ 75,559	\$ 68,871
Provision for current year's events and changes in provision for prior years' events	12,503	7,149	14,158
Claims payments	(8,395)	(8,332)	(7,470)
Balance at end of year	\$ 78,484	\$ 74,376	\$ 75,559
Current portion	(8,137)	(7,899)	(8,332)
Noncurrent portion	\$ 70,347	\$ 66,477	\$ 67,227

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## 16. Commitments, Litigations, and Contingencies

### a. Commitments

Commitments for acquisition and construction of capital assets, and purchase of materials and supplies were \$83.1 million and \$124.7 million as of June 30, 2017 and 2016, respectively. Significant amounts were committed for terminals and facilities, airfield and runways, as well as noise mitigation program.

### b. Aviation Security

Concerns about the safety and security of airline travel and the effectiveness of security precautions may influence passenger travel behavior and air travel demand, particularly in the light of existing international hostilities, potential terrorist attacks, and world health concerns, including epidemics and pandemics. As a result of terrorist activities, certain international hostilities and risk of violent crime, LAWA has implemented enhanced security measures mandated by the FAA, the Transportation Security Administration (TSA), the Department of Homeland Security and Airport management. Current and future security measures may create significantly increased inconvenience, costs and delays at LAX which may give rise to the avoidance of air travel generally and the switching from air to ground travel modes and may adversely affect LAWA's operations, expenses and revenues. LAX has been the target of a foiled terrorist bombing plot and has been recognized as a potential terrorist target. Recent incidents at United States and international airports underscore this risk. LAX is a high profile public facility in a major metropolitan area. LAWA cannot predict whether LAX or any of LAWA's other airports will be actual targets of terrorists or other violent acts in the future. Intelligence reports have indicated that LAX was a target of a terrorist bombing plot and continues to be a potential terrorist target. LAX is unable to predict: (a) the likelihood of future incidents of terrorism and other airline travel disruptions; (b) the impact of the aforementioned security issues on its operations and revenues; and (c) financial impact to the airlines operating at LAX.

### c. Environmental Issues

LAX bears full responsibility for the cleanup of environmental contamination on property it owns. However, if the contamination originated based on contractual arrangements, the tenants are held responsible even if they declare bankruptcy. As property owner, LAX assumes the ultimate responsibility for cleanup in the event the tenant is unable to make restitution. Under certain applicable laws, LAX may become liable for cleaning up soil and groundwater contamination on a property in the event that the previous owner does not perform its remediation obligations. LAX accrues pollution remediation liabilities when costs are incurred or amounts can be reasonably estimated based on expected outlays. The liability accrued at June 30, 2017 and 2016 was \$7.5 million and \$12.8 million, respectively. LAX does not expect any further recoveries reducing this obligation.

The State Water Resources Control Board (SWRCB) issued a Notice of Violation (NOV) to LAWA generally alleging violations of underground storage tank (UST) construction, monitoring, and testing laws at facilities where LAWA owns and operates USTs. LAWA owns and/or operates six USTs at LAX. The Board approved a consent judgment settlement with the SWRCB in October 2015 with a total civil penalty amount of \$2.3 million to be paid or suspended on condition that LAWA complies with the terms of the consent judgment.

## Notes to the Financial Statements

### June 30, 2017 and 2016

(continued)

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The California Regional Water Quality Control Board, Lahontan Region (Water Board) issued a Notice of Revised Proposed Cleanup and Abatement Order (Order) to Los Angeles County Sanitation District No. 20 (District) and the City of Los Angeles (City), as Dischargers, with respect to discharges to underground water from the Palmdale Reclamation Plant (Reclamation Plant) owned by the District. The Order states that the discharges have resulted in violations of waste discharge requirements for the Reclamation Plant and prohibitions contained in the Water Quality Control Plan for the Lahontan Region, and that discharges from the Reclamation Plant to unlined ponds and to the Effluent Management Site (owned by the City and now known as the Agricultural Site) have adversely affected and polluted groundwater in the area of the discharges. The Water Board issued an order to the District and LAWA to submit technical reports that include feasibility and costs to remove nitrate from groundwater to certain acceptable levels. The costs and timeframe to perform the Order, along with the apportionment of liability, are uncertain at this time.



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## 17. Transfer of LA/ONT International Airport

The City, LAWA (the Department), the Board, City of Ontario, and Ontario International Airport Authority (OIAA), a joint powers authority of the County of San Bernardino and the City of Ontario, entered into a settlement agreement (ONT Settlement Agreement) relating to litigation filed by the City of Ontario in June 2013 (Ontario Litigation) against the City, the Department, and the Board. As a result of the transfer of the ONT assets and liabilities to OIAA on November 1, 2016 as contemplated by the ONT Settlement Agreement, LAWA recognized a loss of \$225.3 million on the disposal of ONT as a special item, and LAX recognized a transfer of residual operations from ONT of \$104.1 million.

On June 20, 2016, the parties agreed to a Staff Augmentation Agreement (SAA). The SAA contemplated some LAWA staff may remain at ONT for as long as 21 months after the closing. However, it provided the OIAA with the right to declare certain categories of employees redundant and return them to available employment with a City Department. OIAA has exercised that right on several occasions.

The transfer of residual operation from ONT to LAX is presented below (amounts in thousands):

	FY 2017
Proceeds from ONT transfer	\$ 125,705
Receivable from OIAA	56,784
Land transferred to ONT	(32,326)
Personnel related liabilities transferred from ONT	(46,038)
Total	<u>\$ 104,125</u>

## Notes to the Financial Statements

June 30, 2017 and 2016

(continued)

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### 18. Other Matter

#### *City Financial Challenges*

According to the City Administrative Officer's (CAO) year-end Financial Status Report for fiscal year 2017, there was a significant increase in liability claims expenses due to the payment of judgments and settlements. In order to manage the significant amount of judgment and settlement payouts, the CAO proposed a potential issuance of Judgment Obligation Bonds (JOB) with proceeds to be used to reimburse the Reserve Fund (or other City Funds) for advances or loans made to these expenses, and the City Council had adopted a resolution to proceed with the issuance of JOB. In addition, there were additional internal and external challenges including the potential federal funding issue, new labor agreements, and class action lawsuits that may adversely impact the City, the size and/or timing of which cannot be accurately determined at this time. The CAO is closely monitoring the federal appropriations process and any potential impacts to the City, as well as the fiscal impact based on the MOU agreements reached with the bargaining units, and identifying options to mitigate shortfalls to reduce liabilities going forward.

LAWA, as a proprietary department under the City Charter, is vested with the management and control of its assets. The budgetary challenges of the City's General Fund as well as the mitigating measures implemented by the Mayor and City Council do not directly affect LAX's operations. However, auxiliary services provided to LAWA by other City departments may be impacted. In addition, the City's budget challenges may have an adverse effect on the trading value of LAX's outstanding and future bond issues.

### 19. Subsequent Events

On July 26, 2017, LAWA issued LAX subordinate revenue bonds 2017 Series A of \$260.6 million, and 2017 Series B of \$88.7 million. The premium for these issuances totaled \$54.6 million. The bonds were issued to pay and/or reimburse for capital expenditures at LAX.

On August 25, 2017, the Board authorized a three-year letter of credit (LOC) agreement providing total of \$500.0 million principal amount of credit to support LAX's commercial paper program with the following institutions: Sumitomo Mitsui Banking Corporation for \$200.0 million, Wells Fargo Bank for \$200.0 million, and Barclays Bank PLC for \$100.0 million.

On September 20, 2017, the Board authorized issuance of LAX revenue bonds, notes or other obligations, in one or more series in an aggregate amount not to exceed \$2.2 billion through fiscal year 2022 to pay for projected capital projects at LAX and to refund outstanding bonds for debt service savings.

On October 5, 2017, the Board authorized a third amendment to the Terminal Commercial Management Concession Agreement with Westfield Airports, LLC (Westfield) at LAX to add up to 30,000 square feet of concession space in the Midfield Satellite Concourse to the premises and generate a minimum of \$6.4 million concession revenue per year and approximately \$76.8 million in additional concession revenue over the term of the contract.

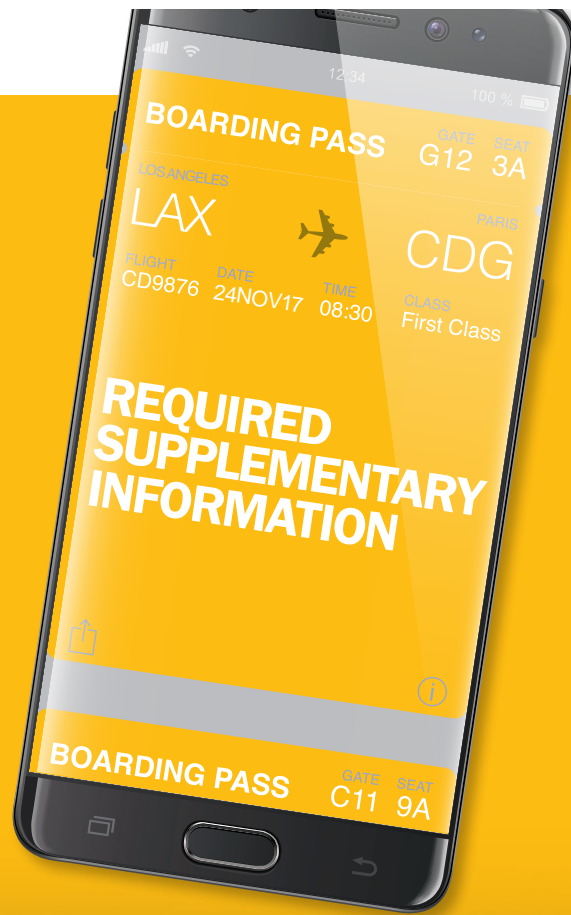


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On October 5, 2017, the Board authorized collection of an updated CFC to fund costs of a consolidated rental car facility (ConRAC) and its share of a common-use transportation system (CTS) at LAX (Projects) pursuant to California Government Code Section 50474.3. The Board authorized the collection of a CFC of \$7.50 per day for the first five days of each car rental contract, effective December 1, 2017, by rental car companies serving LAX. The Board authorized an increase in the CFC daily rate to \$9.00 per day for the first five days of each car rental contract, effective the first day of the month following the commencement of rental car services to the public in the ConRAC, or such other earlier day if the Board determines that it is the best interest of the Projects to collect the increased CFC daily rate of \$9.00 earlier.



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## Required Supplementary Information

**Los Angeles World Airports**  
 (Department of Airports of the City of Los Angeles, California)  
**Los Angeles International Airport**

**Required Supplementary Information**  
**Last Ten Fiscal Years Ended June 30\***  
 (amounts in thousands)

**Schedule of LAX's Proportionate Share of the Net Pension Liability**

Fiscal Year	Proportion of the Net Pension Liability	Proportionate share of the Net Pension Liability	Covered Payroll (2)	Proportionate share of the Net Pension Liability as a percentage of its Covered Payroll	Proportionate share of Pension Plan's Fiduciary Net Position	Proportionate share of Pension Plan's Total Pension Liability	Pension Plan's Fiduciary Net Position as a percentage of the Total Pension Liability
2015	12.71%	\$ 566,613	\$ 229,535	246.85%	\$ 1,498,734	\$ 2,065,347	72.57%
2016	12.87%	\$ 642,431	\$ 235,176	273.17%	\$ 1,534,875	\$ 2,177,306	70.49%
2017	13.55%	\$ 761,187	\$ 256,833	296.37%	\$ 1,599,900	\$ 2,361,087	67.76%

**Notes to schedule:**

1. Changes of assumptions for measurement date June 30, 2014:

The June 30, 2014 calculations reflected various assumptions changes based on the triennial experience study for the period from July 1, 2011 through June 30, 2014. The increase of the Pension Plan's Total Pension Liability is primarily due to the lowered assumed investment rate of return, from 7.75% in fiscal year 2013 to 7.50% in fiscal year 2014, and longer assumed life expectancies for members and beneficiaries.

2. Covered payroll is reported based on measurement period.

\* Since fiscal year 2015 was the first year of implementation, only three years are shown.

**Required Supplementary Information (continued)**  
**Last Ten Fiscal Years Ended June 30\***  
(amounts in thousands)

**Schedule of Contributions - Pension**

	2017	2016	2015
Contractually required contribution (actuarially determined)	\$ 61,197	\$ 55,972	\$ 49,043
Contributions in relation to the actuarially determined contributions	61,197	55,972	49,043
Contribution deficiency (excess)	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>
LAX's covered payroll	\$ 266,780	\$ 256,833	\$ 235,176
LAX's contributions as a percentage of covered payroll	22.94%	21.79%	20.85%

\* Since fiscal year 2015 was the first year of implementation, only three years are shown.

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## Notes to schedule:

Valuation date: Actuarially determined contribution rates are calculated as of June 30, two years prior to the end of the fiscal year in which the contributions are reported.

### Methods and assumptions used to determine contribution rates

Actuarial cost method Entry age actuarial cost method, level percent of salary.

Amortization method Level percent of payroll - assuming a 4.0% increase in total covered payroll.

Amortization period Multiple layers - closed amortization period. Actuarial gains/losses are amortized over 15 years. Assumption or method changes are amortized over 20 years. Plan changes, including the 2009 ERIP, are amortized over 15 years. Future ERIPs will be amortized over five years. Actuarial surplus is amortized over 30 years. The existing layers on June 30, 2012, except those arising from the 2009 ERIP and the two GASB 25/27 layers, were combined and amortized over 30 years.

Asset Valuation Method Market value of assets less unrecognized returns in each of the last seven years. Unrecognized return is equal to the difference between the actual market return and the expected return on the market value, and is recognized over a seven-year period. The actuarial value of assets cannot be less than 60% or greater than 140% of the market value of assets. An ad hoc change was made in 2014 to combine the unrecognized returns and losses of prior years as of June 30, 2013 into one layer and recognize it evenly over six years from fiscal year 2013-14 through fiscal year 2018-19.

**Required Supplementary Information (continued)****Last Ten Fiscal Years Ended June 30\*****(amounts in thousands)****Notes to schedule (continued):**

	Reporting date 6/30/17 Measurement date 6/30/16	Reporting date 6/30/16 Measurement date 6/30/15
Investment rate of return	7.50%	7.50%
Inflation rate	3.25%	3.25%
Real across-the-board salary increase	0.75%	0.75%
Projected salary increases	Ranges from 10.50% to 4.40% based on years of service	Ranges from 10.50% to 4.40% based on years of service
Cost of living adjustment <sup>(1)</sup>	Tier 1: 3.00% Tier 2: 2.00%	Tier 1: 3.00% Tier 2: 2.00%
Mortality	Healthy: RP-2000 Combined Healthy Mortality Table projected with Scale BB to 2020, set back one year for males and with no set back for females	Healthy: RP-2000 Combined Healthy Mortality Table projected with Scale BB to 2020, set back one year for males and with no set back for females

1. Actual increases are contingent upon CPI increases with a 3.00% maximum for Tier 1 and a 2.00% maximum for Tier 2.





BURBERRY

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BOARDING PASS

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COMPLIANCE  
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## Compliance Section Contents

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Schedule of Customer Facility Charge Revenues  
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Certified  
Public  
Accountants

## **Independent Auditor's Report on Compliance with Applicable Requirements of the Passenger Facility Charge Program and Internal Control Over Compliance**

To the Members of the Board of Airport Commissioners  
City of Los Angeles, California

### **Compliance**

We have audited the compliance of Los Angeles International Airport (LAX), a department component of Los Angeles World Airports (Department of Airports of the City of Los Angeles, California) (LAWA), an Enterprise Fund of the City of Los Angeles, with compliance requirements described in the *Passenger Facility Charge Audit Guide for Public Agencies* (Guide), issued by the Federal Aviation Administration, applicable to its passenger facility charge program for the fiscal year ended June 30, 2017.

### **Management's Responsibility**

Compliance with the requirements referred to above is the responsibility of LAX's management.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on LAX's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the Guide. Those standards and the Guide require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the compliance requirements referred to above that could have a material effect on the passenger facility charge program occurred. An audit includes examining, on a test basis, evidence about LAX's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination of LAX's compliance with those requirements.

### **Opinion**

In our opinion, LAX complied, in all material respects, with the compliance requirements referred to above that are applicable to its passenger facility charge program for the fiscal year ended June 30, 2017.

## Independent Auditor's Report on Compliance with Applicable Requirements of the Passenger Facility Charge Program and Internal Control Over Compliance

(continued)

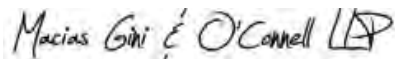
### Internal Control Over Compliance

Management of LAX is responsible for establishing and maintaining effective internal control over compliance with the compliance requirements referred to above. In planning and performing our audit, we considered LAX's internal control over compliance to determine the auditing procedures for the purpose of expressing our opinion on compliance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of LAX's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or combination of deficiencies in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be deficiencies, significant deficiencies, or material weaknesses in internal control over compliance. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the Guide. Accordingly, this report is not suitable for any other purpose.



Los Angeles, California  
October 23, 2017

## Los Angeles World Airports

(Department of Airports of the City of Los Angeles, California)

### Los Angeles International Airport

#### Schedule of Passenger Facility Charge Revenues and Expenditures

For the Fiscal Years Ended June 30, 2017 and 2016

(amounts in thousands)

	Passenger facility charge revenue	Interest earned	Total revenues	Expenditures on approved projects	Under (over) expenditures on approved projects
<b>Program to date as of June 30, 2015</b>	\$ 1,968,096	\$ 197,226	\$ 2,165,322	\$ 1,638,275	\$ 527,047
<b>Fiscal year 2015-16 transactions</b>					
Quarter ended September 30, 2015	34,293	1,436	35,729	139,017	(103,288)
Quarter ended December 31, 2015	33,026	1,747	34,773	35,952	(1,179)
Quarter ended March 31, 2016	38,704	1,517	40,221	40,132	89
Quarter ended June 30, 2016	44,386	1,644	46,030	39,011	7,019
<b>Program to date as of June 30, 2016</b>	2,118,505	203,570	2,322,075	1,892,387	429,688
<b>Fiscal year 2016-17 transactions</b>					
Quarter ended September 30, 2016	37,539	1,366	38,905	29,199	9,706
Quarter ended December 31, 2016	36,475	1,216	37,691	35,160	2,531
Quarter ended March 31, 2017	45,567	1,384	46,951	29,735	17,216
Quarter ended June 30, 2017	44,288	1,514	45,802	51,651	(5,849)
<b>Unexpended passenger facility charge revenues and interest earned June 30, 2017</b>	<u>\$ 2,282,374</u>	<u>\$ 209,050</u>	<u>\$ 2,491,424</u>	<u>\$ 2,038,132</u>	<u>\$ 453,292</u>

See accompanying notes to the schedule of passenger facility charge revenues and expenditures.

## Los Angeles World Airports

(Department of Airports of the City of Los Angeles)

## Los Angeles International Airport

### Notes to the Schedule of Passenger Facility Charge Revenues and Expenditures

### For the Fiscal Years Ended June 30, 2017 and 2016

#### 1. General

The Aviation Safety and Capacity Expansion Act of 1990 (Public Law 101-508, Title II, Subtitle B) authorized the imposition of Passenger Facility Charges (PFCs) and use of the resulting revenue on Federal Aviation Administration (FAA) approved projects.

The current PFC rate is \$4.50 per enplaned passenger. PFCs collection authorities approved by FAA are \$4.1 billion and \$3.1 billion as of June 30, 2017 and 2016, respectively.

The details are as follows (amounts in thousands):

Application number	Charge effective date*	2017 Amount approved for use	2016 Amount approved for use
96-02-U-00-LAX, closed 6/2/03	6/1/1993	\$ 116,371	\$ 116,371
96-03-C-00-LAX, closed 10/1/08	7/1/1993	50,223	50,223
97-04-C-02-LAX	2/1/1998	610,000	610,000
97-04-C-02-LAX	2/1/1998	90,000	90,000
05-05-C-00-LAX	12/1/2005	229,750	229,750
05-05-C-01-LAX	12/1/2005	468,030	468,030
07-06-C-00-LAX	10/1/2009	85,000	85,000
10-07-C-01-LAX	6/1/2012	1,848,284	855,000
11-08-C-00-LAX	3/1/2019	27,801	27,801
13-09-C-00-LAX	6/1/2019	44,379	44,379
14-10-C-00-LAX	10/1/2019	516,091	516,091
15-11-U-00-LAX	3/1/2019	3,115	3,115
Total		\$ 4,089,044	\$ 3,095,760

\* Based on FAA's Final Agency Decision and subject to change with actual collections and future collection authorities approved by FAA.

#### Note:

- In May 1996, FAA approved LAWA's request to transfer a portion of PFCs revenues collected at LAX to fund certain projects at ONT. Accordingly, PFCs revenues totaling \$126.1 million collected at LAX were transferred to ONT.
- In April 2008, FAA approved LAWA's amendment application number 05-05-C-01-LAX for \$468.0 million to pay for debt service on bonds issued to finance the TBIT Renovations, Bradley West projects and Terminal 6 improvements. Board authorized amounts of \$118.0 million and \$124.0 million were used for debt service in fiscal years 2017 and 2016, respectively.
- In June 2017, FAA approved LAWA's amendment request that increased application number 10-07-C-01-LAX to \$1.8 billion to reflect actual bond capital financing and interest.



The general description of the approved projects and the expenditures to date are as follows (amounts in thousands):

Approved projects	Amount approved for collection	Expenditures to date June 30	
		2017	2016
ONT Terminal Development Program	\$ 116,371	\$ 116,371	\$ 116,371
Taxiway C Easterly Extension, Phase II	13,440	13,440	13,440
Remote Aircraft Boarding Gates	9,355	9,355	9,355
Interline Baggage Remodel - TBIT	2,004	2,004	2,004
Southside Taxiways Extension S & Q	9,350	9,350	9,350
TBIT Improvements	4,455	4,455	4,455
ONT Airport Drive West End	3,462	3,462	3,462
ONT Access Control Monitoring System	808	808	808
ONT Taxiway North Westerly Extension	7,349	7,349	7,349
Noise Mitigation - Land Acquisitions	485,000	413,199	412,813
Noise Mitigation - Soundproofing	125,000	125,000	125,000
Noise Mitigation - Other Local Jurisdictions	90,000	90,000	90,000
Apron Lighting Upgrade	1,873	1,412	1,412
South Airfield Improvement Program (SAIP) and NLA Integrated Study	1,381	1,381	1,381
Century Cargo Complex - Demolition of AF3	1,000	880	880
Taxilane C-10 Reconstruction	780	2	2
LAX Master Plan	122,168	75,183	75,183
Aircraft Rescue and Firefighting Vehicles	975	444	444
PMD Master Plan	1,050	—	—
Aircraft Noise Monitoring and Management System	3,450	3,652	3,652
SAIP - Airfield Intersection Improvement	28,000	8,987	8,987
SAIP - Remote Boarding	12,500	8,218	8,218
TBIT Interior Improvements and Baggage Screening System	468,030	336,775	302,351
Implementation of IT Security Master Plan	56,573	32,807	32,816
Residential Soundproofing Phase II	35,000	34,141	34,327
Noise Mitigation - Other Local Jurisdictions Phase II	50,000	51,086	51,086
Bradley West	1,848,284	307,820	243,522
Lennox Schools Soundproofing Program	27,801	21,214	15,294
Inglewood USD Soundproofing Program	44,379	10,000	10,000
Terminal 6 Improvements	210,131	43,377	24,115
Elevators/Escalators/Moving Walkways Replacement	110,000	110,000	88,350
Midfield Satellite Concourse North Project	5,960	5,960	5,960
Central Utility Plant Replacement	190,000	190,000	190,000
Lennox Schools Soundproofing Program - Future Sites	3,115	—	—
Total	\$ 4,089,044	\$ 2,038,132	\$ 1,892,387

**Notes to the Schedule of Passenger Facility Charge Revenues and Expenditures**  
**For the Fiscal Years Ended June 30, 2017 and 2016**  
(continued)

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**2. Basis of Accounting - Schedule of Passenger Facility Charge Revenues and Expenditures**

The accompanying Schedule of Passenger Facility Charge Revenues and Expenditures (Schedule) represents amounts reported to the FAA on the Passenger Facility Charge Quarterly Status Reports. The Schedule was prepared using the accrual basis of accounting.

**3. Excess Project Expenditures**

The expenditures for the Aircraft Noise Monitoring and Management System and the Noise Mitigation - Other Local Jurisdictions Phase II were in excess of authorized amounts. However, in accordance with FAA guidelines, if actual allowable project costs exceed the estimate contained in the PFCs application in which the authority was approved, the public agency may elect to increase the total approved PFCs revenue in that application by 15% or less.







Certified  
Public  
Accountants

## **Independent Auditor's Report on Compliance with Applicable Requirements of the Customer Facility Charge Program and Internal Control Over Compliance**

To the Members of the Board of Airport Commissioners  
City of Los Angeles, California

### **Compliance**

We have audited the compliance of Los Angeles International Airport (LAX), a department component of Los Angeles World Airports (Department of Airports of the City of Los Angeles, California) (LAWA), an Enterprise Fund of the City of Los Angeles, with compliance requirements described in the *California Civil Code Section 1939, as amended by Assembly Bill (AB) 2051*, applicable to its customer facility charge program for the fiscal year ended June 30, 2017.

### **Management's Responsibility**

Compliance with the requirements referred to above is the responsibility of LAX's management.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on LAX's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the *California Civil Code Section 1939, as amended by AB 2051*. Those standards and the *California Civil Code Section 1939, as amended by AB 2051*, require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the compliance requirements referred to above that could have a material effect on the customer facility charge program occurred. An audit includes examining, on a test basis, evidence about LAX's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination of LAX's compliance with those requirements.

### **Opinion**

In our opinion, LAX complied, in all material respects, with the compliance requirements referred to above that are applicable to its customer facility charge program for the fiscal year ended June 30, 2017.

## Independent Auditor's Report on Compliance with Applicable Requirements of the Customer Facility Charge Program and Internal Control Over Compliance

(continued)

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### Internal Control Over Compliance

Management of LAX is responsible for establishing and maintaining effective internal control over compliance with the compliance requirements referred to above. In planning and performing our audit, we considered LAX's internal control over compliance to determine the auditing procedures for the purpose of expressing our opinion on compliance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of LAX's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or combination of deficiencies in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be deficiencies, significant deficiencies, or material weaknesses in internal control over compliance. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the *California Civil Code Section 1939, as amended AB 2051*. Accordingly, this report is not suitable for any other purpose.



Los Angeles, California  
October 23, 2017

## Los Angeles World Airports

(Department of Airports of the City of Los Angeles, California)

### Los Angeles International Airport

#### Schedule of Customer Facility Charge Revenues and Expenditures

For the Fiscal Years Ended June 30, 2017 and 2016

(amounts in thousands)

	Customer facility charge revenue	Interest earned	Total revenues	Expenditures on approved projects	Over revenues collected on approved projects
<b>Program to date as of June 30, 2015</b>	\$ 202,128	\$ 11,789	\$ 213,917	\$ 3,026	\$ 210,891
<b>Fiscal year 2015-16 transactions</b>					
Quarter ended September 30, 2015	8,358	560	8,918	—	8,918
Quarter ended December 31, 2015	7,551	703	8,254	—	8,254
Quarter ended March 31, 2016	7,358	550	7,908	—	7,908
Quarter ended June 30, 2016	8,729	802	9,531	—	9,531
<b>Program to date as of June 30, 2016</b>	234,124	14,404	248,528	3,026	245,502
<b>Fiscal year 2016-17 transactions</b>					
Quarter ended September 30, 2016	8,803	963	9,766	—	9,766
Quarter ended December 31, 2016	7,714	945	8,659	—	8,659
Quarter ended March 31, 2017	7,001	633	7,634	—	7,634
Quarter ended June 30, 2017	9,027	432	9,459	—	9,459
<b>Unexpended customer facility charge revenues and interest earned June 30, 2017</b>	<u>\$ 266,669</u>	<u>\$ 17,377</u>	<u>\$ 284,046</u>	<u>\$ 3,026</u>	<u>\$ 281,020</u>

See accompanying notes to the schedule of customer facility charge revenues and expenditures.

## Los Angeles World Airports

(Department of Airports of the City of Los Angeles, California)

### Los Angeles International Airport

#### Notes to the Schedule of Customer Facility Charge Revenues and Expenditures For the Fiscal Years Ended June 30, 2017 and 2016

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#### 1. General

Assembly Bill (AB) 491 of the 2001-2002 California Legislature (Section 1936) authorized the imposition of Customer Facility Charges (CFCs) and use of CFC revenue to plan, finance, design, and construct on-airport consolidated rental car facilities (ConRAC).

On March 5, 2007, the Board found that the ConRAC proposed by management was sufficiently definitive and authorized the collection of CFCs of \$10.00 on each car rental transaction at LAX. The authorization included a two-year collection period of July 1, 2007 through June 30, 2009. On June 22, 2009, the Board resolved to extend the collection period until a determination is made that the project will not proceed.

On August 25, 2016, AB 2051 of the 2015-2016 California Legislature (Section 1939) repealed Section 1936 relating to rental passenger vehicles, modified definitions and terms for uniformity, and made conforming changes in the Legislature requiring rental companies to collect CFCs for specified purposes and requires airports to provide certain audits and reports regarding those fees to specified committees of the Legislature.

Under Section 1939, LAWA can change the amount and basis for collecting a CFCs from the current \$10.00 per contract level to a maximum of \$9.00 per transaction day, up to a 5-day maximum. Also, changes made to the amount and basis for collecting the CFCs would have to be initiated by January 1, 2018 by submitting certain information to the State of California (State).

The Landside Access and Modernization Program (LAMP) included proposed landside projects at LAX including a future ConRAC, Intermodal Transportation Facilities (ITF), which may include pick-up and drop-off locations for commercial vehicles that currently access the Central Terminal Area (CTA) on adjacent roadways and parking facilities for passenger and employees; the Automated People Mover (APM) System, and certain parking projects. The proposed ConRAC would be located east of the CTA, and it may include a customer service building, a ready/return area, a vehicle storage area, quick-turnaround facilities, and an area for rental car customers to access and exit the APM system. LAWA expects that the capital costs of a future ConRAC at LAX and portion of the APM system would be paid from annual CFCs revenues that are currently collected from on-airport rental car companies and remitted to LAWA. LAWA has initiated the State process to increase the CFCs rate charged at LAX.

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CFCs collected, related interest earnings, and cumulative expenditures to date are summarized as follows (amounts in thousands):

	2017	2016
Amount collected	\$ 266,669	\$ 234,124
Interest earnings	17,377	14,404
Subtotal	284,046	248,528
Expenditures		
ConRAC planning and development costs	3,026	3,026
Unexpended CFCs revenue and interest earnings	\$ 281,020	\$ 245,502

## 2. Basis of Accounting - Schedule of Customer Facility Charge Revenues and Expenditures

The accompanying Schedule of Customer Facility Charge Revenues and Expenditures was prepared using the accrual basis of accounting.





Los Angeles  
International Airport

TM

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As a covered entity under Title II of the Americans With Disability Act, the City of Los Angeles does not discriminate on the basis of disability and, upon request, will provide reasonable accommodation to ensure access to its programs, services and activities.



Department of Airports  
Los Angeles, California

## APPENDIX B-3

### CERTAIN DEFINITIONS

The following are definitions of certain terms used in this Official Statement including the summaries of the Master Senior Indenture and the Master Subordinate Indenture found in Appendices B-4 and B-5.

*“Accreted Value”* means

- (a) with respect to any Capital Appreciation Senior Bonds or Capital Appreciation Subordinate Obligations, as the case may be, as of any date of calculation, the sum of the amount set forth in a Supplemental Senior Indenture or a Supplemental Subordinate Indenture, as the case may be, as the amount representing the initial principal amount of such Capital Appreciation Senior Bonds or Capital Appreciation Subordinate Obligations, as the case may be, plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date, or
- (b) with respect to Original Issue Discount Senior Bonds or Original Issue Discount Subordinate Obligations, as the case may be, as of the date of calculation, the amount representing the initial public offering price of such Original Issue Discount Senior Bonds or Original Issue Discount Subordinate Obligations, as the case may be, plus the amount of the discounted principal which has accreted since the date of issue; in each case the Accreted Value will be determined in accordance with the provisions of the Supplemental Senior Indenture or Supplemental Subordinate Indenture, as the case may be, authorizing the issuance of such Capital Appreciation Senior Bond or Original Issue Discount Senior Bond or Capital Appreciation Subordinate Obligation or Original Issue Discount Subordinate Obligation, as the case may be.

*“Aggregate Required Deposits”* means, for any month, the sum of the Required Deposits under all Supplemental Subordinate Indentures becoming due in such month.

*“Airport Revenue Fund”* means the fund established by and existing pursuant to Section 635(a) of the Charter or any successor provision and maintained separate and apart from all other funds and accounts of the City Treasury.

*“Airport System”* means all airports, airport sites, and all equipment, accommodations and facilities for aerial navigation, flight, instruction and commerce belonging to or pertaining to the City and under the jurisdiction and control of the Department, including Los Angeles International Airport, Van Nuys Airport and LA/Palmdale Regional Airport and any successor entities thereto; and including or excluding, as the case may be, such property as the Board may either acquire or which will be placed under its control, or divest or have removed from its control.

*“Authorized Representative”* means the President of the Board, the Executive Director, the Chief Operating Officer or the Chief Financial Officer or such other officer or employee of the Board or the Department or other person which other officer, employee or person has been designated by the Board or the Department as an Authorized Representative by written notice delivered by the President of the Board, the Executive Director, the Chief Operating Officer or the Chief Financial Officer to the Senior Trustee or the Subordinate Trustee, as the case may be.

*“Balloon Indebtedness”* means, with respect to any Series of Senior Bonds or Subordinate Obligations, as the case may be, twenty five percent (25%) or more of the principal of which matures on the same date or within a Fiscal Year, that portion of such Series which matures on such date or within such Fiscal Year; provided, however, that to constitute Balloon Indebtedness the amount of Senior Bonds or Subordinate Obligations, as the case may be, of a Series maturing on a single date or within a Fiscal Year must equal or exceed 150% of the amount of such Series which matures during any preceding Fiscal Year. For purposes of this definition, the principal amount maturing on any date will be reduced by the amount of such Senior Bonds or Subordinate Obligations, as the case may be, scheduled to be amortized by prepayment or redemption prior to their stated maturity date. A Senior Commercial Paper Program and the Commercial Paper constituting part of such Senior Program will not be Balloon Indebtedness. A Subordinate Commercial Paper Program and the Commercial Paper constituting part of such Subordinate Program will not be Balloon Indebtedness.

*“Board”* means the Board of Airport Commissioners of the City of Los Angeles, California, created under the provisions of the Charter, and any successor to its function.

*“Bond Counsel”* means a firm or firms of attorneys which are nationally recognized as experts in the area of municipal finance and which are familiar with the transactions contemplated under the Senior Indenture and the Subordinate Indenture, as the case may be, and which are acceptable to the Department.

*“Bondholder,” “holder,” “owner” or “registered owner”* means

- (a) for purposes of the Senior Indenture, the person in whose name any Senior Bond or Senior Bonds are registered on the books maintained by the Senior Registrar and will include any Credit Provider or Liquidity Provider to which a Senior Repayment Obligation is then owed, to the extent that such Senior Repayment Obligation is deemed to be a Senior Bond under the provisions of the Senior Indenture; and
- (b) for purposes of the Subordinate Indenture, the person in whose name any Subordinate Obligation or Subordinate Obligations are registered on the books maintained by the Subordinate Registrar and will include any Credit Provider or Liquidity Provider to which a Subordinate Repayment Obligation is then owed, to the extent that such Subordinate Repayment Obligation is deemed to be a Subordinate Obligation under the provisions of the Subordinate Indenture.

*“Business Day”* means a day on which banks located in New York, New York, in Los Angeles, California and in the city in which the principal corporate trust office of the Senior Trustee or the Subordinate Trustee, as the case may be, is located are open, provided that such term may have a different meaning for any specified Series of Senior Bonds if so provided by Supplemental Senior Indenture or any specified Series of Subordinate Obligations if so provided by Supplemental Subordinate Indenture.

*“Capital Appreciation Senior Bonds”* means Senior Bonds all or a portion of the interest on which is compounded and accumulated at the rates and on the dates set forth in a Supplemental Senior Indenture and is payable only upon redemption or on the maturity date of such Senior Bonds. Senior Bonds which are issued as Capital Appreciation Senior Bonds, but later convert to Senior Bonds on which interest is paid periodically will be Capital Appreciation Senior Bonds until the conversion date and from and after such conversion date will no longer be Capital Appreciation Senior Bonds, but will be treated as having a principal amount equal to their Accreted Value on the conversion date.

*“Capital Appreciation Subordinate Obligations”* means Subordinate Obligations all or a portion of the interest on which is compounded and accumulated at the rates and on the dates set forth in a Supplemental Subordinate Indenture and is payable only upon redemption or on the maturity date of such Subordinate Obligations. Subordinate Obligations which are issued as Capital Appreciation Subordinate Obligations, but later convert to Subordinate Obligations on which interest is paid periodically will be Capital Appreciation Subordinate Obligations until the conversion date and from and after such conversion date will no longer be Capital Appreciation Subordinate Obligations, but will be treated as having a principal amount equal to their Accreted Value on the conversion date.

*“Charter”* means the Charter of the City of Los Angeles, as amended from time to time, and any other article or section of the Charter of the City of Los Angeles, as amended from time to time, in which the provisions relating to the Board and the Department are set forth or may hereafter be set forth, and any predecessor provisions thereof which will be deemed to continue in force.

*“Chief Financial Officer”* means the person at a given time who is the chief financial officer of the Department or such other title as the Department may from time to time assign for such position, and the officer or officers succeeding to such position as certified to the Senior Trustee and the Subordinate Trustee by the Department.

*“Chief Operating Officer”* means the person at a given time who is the chief operating officer of the Department or such other title as the Department may from time to time assign for such position, and the officer or officers succeeding to such position as certified to the Senior Trustee and the Subordinate Trustee by the Department.

*“City”* means The City of Los Angeles, California.

*“City Attorney”* means legal counsel to the Board and staff of the Department who otherwise acts as provided for in the Charter.

*“City Treasury”* means the official depository of the City established pursuant to the Charter which is under the control of the Treasurer.



“*Code*” means the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations applicable with respect thereto.

“*Commercial Paper*” means notes of the Department with a maturity of not more than 270 days from the date of issuance and which are issued and reissued from time to time pursuant to a Senior Program or a Subordinate Program, as the case may be, adopted by the Board.

“*Consultant*” means any Independent consultant, consulting firm, engineer, architect, engineering firm, architectural firm, accountant or accounting firm, or other expert recognized to be well-qualified for work of the character required and retained by the Department to perform acts and carry out the duties provided for such consultant in the Senior Indenture or the Subordinate Indenture, as the case may be.

“*Costs*” or “*Costs of a Project*” means all costs of planning, developing, financing, constructing, installing, equipping, furnishing, improving, acquiring, enlarging and/or renovating a Project and placing the same in service and will include, but not be limited to the following: (1) costs of real or personal property, rights, franchises, easements and other interests in property, real or personal, and the cost of demolishing or removing structures and site preparation, infrastructure development, and landscaping and acquisition of land to which structures may be removed; (2) the costs of materials and supplies, machinery, equipment, vehicles, rolling stock, furnishings, improvements and enhancements; (3) labor and related costs and the costs of services provided, including costs of consultants, advisors, architects, engineers, accountants, planners, attorneys, financial and feasibility consultants, in each case, whether an employee of the City or the Department or Consultant; (4) costs of the Department properly allocated to a Project and with respect to costs of its employees or other labor costs, including the cost of medical, pension, retirement and other benefits as well as salary and wages and the allocable costs of administrative, supervisory and managerial personnel and the properly allocable cost of benefits provided for such personnel; (5) financing expenses, including costs related to issuance of and securing of Senior Bonds and Subordinate Obligations, costs of Credit Facilities, Liquidity Facilities, Senior Capitalized Interest, Subordinate Capitalized Interest, the Senior Reserve Fund, any Senior Debt Service Reserve Fund (other than the Senior Reserve Fund), any Subordinate Debt Service Reserve Fund, Senior Trustee’s fees and expenses, and Subordinate Trustee’s fees and expenses; (6) any Senior Swap Termination Payments due in connection with a Series of Senior Bonds or the failure to issue such Series of Senior Bonds, or any Subordinate Swap Termination Payments due in connection with a Series of Subordinate Obligations or the failure to issue such Series of Subordinate Obligations, and (7) such other costs and expenses that can be capitalized under generally accepted accounting principles in effect at the time the cost is incurred by the Department. Costs of a Project will also include (i) the acquisition or refunding of outstanding revenue bonds and obligations of the Department, RAIC bonds and California Statewide Communities Development Authority bonds, including any financing costs with respect thereto, and (ii) the financing and/or refinancing of any other lawful purpose relating to the Department.

“*Credit Facility*” means a policy of municipal bond insurance, a letter of credit, surety bond, line of credit, guarantee, standby purchase agreement, Senior Reserve Fund Surety Policy, a Senior Debt Service Reserve Fund Surety Policy (other than a Senior Reserve Fund Surety Policy), a Subordinate Debt Service Reserve Fund Surety Policy, or other financial instrument which obligates a third party to make payment of or provide funds to the Senior Trustee or the Subordinate Trustee, as the case may be, for the payment of the principal of and/or interest on Senior Bonds or Subordinate Obligations, as the case may be, whether such obligation is to pay in the first instance and seek reimbursement or to pay only if the Department fails to do so.

“*Credit Provider*” means the party obligated to make payment of principal of and interest on the Senior Bonds or the Subordinate Obligations, as the case may be, under a Credit Facility.

“*Customer Facility Charges*” means all amounts received by the Department from the payment of any customer facility fees or charges by customers of automobile rental companies pursuant to the authority granted by Section 1936 of the California Civil Code, as amended from time to time, or any other applicable State law, including all interest, profits or other income derived from the deposit or investment therefor.

“*Department*” means the Department of Airports of the City of Los Angeles, or any successor thereto performing the activities and functions of the department under the Charter.

“*Executive Director*” means the person at a given time who is the executive director of the Department or such other title as the Department may from time to time assign for such position, and the officer or officers succeeding to such position as certified to the Senior Trustee and the Subordinate Trustee by the Department.

*“Facilities Construction Credit”* and *“Facilities Construction Credits”* means the amounts further described in the Master Senior Indenture and the Master Subordinate Indenture resulting from an arrangement embodied in a written agreement of the Department and another person or entity pursuant to which the Department permits such person or entity to make a payment or payments to the Department which is reduced by the amount owed by the Department to such person or entity under such agreement, resulting in a net payment to the Department by such person or entity. The *“Facilities Construction Credit”* will be deemed to be the amount owed by the Department under such agreement which is “netted” against the payment of such person or entity to the Department. *“Facilities Construction Credits”* will include any credits extended to airlines or other users of LAX Airport Facilities related to RAIC projects.

*“Fiscal Year”* means the period of time beginning on July 1 of each given year and ending on June 30 of the immediately subsequent year, or such other similar period as the Department designates as its fiscal year.

*“Fitch”* means Fitch, Inc. and its successors and its assigns, and, if Fitch for any reason no longer performs the functions of a Nationally Recognized Rating Agency, *“Fitch”* will be deemed to refer to any Nationally Recognized Rating Agency designated by the Department (other than Moody’s or S&P).

*“Fourth Supplemental Subordinate Indenture”* means the Fourth Supplemental Subordinate Trust Indenture, dated as of August 1, 2008, by and between the Department and the Subordinate Trustee.

*“Government Obligations”* means

(A) with respect to the Senior Bonds and the Senior Indenture (1) United States Obligations (including obligations issued or held in book-entry form), (2) prerefunded municipal obligations meeting the following conditions: (a) the municipal obligations are not subject to redemption prior to maturity, or the trustee has been given irrevocable instructions concerning their calling and redemption and the issuer has covenanted not to redeem such obligations other than as set forth in such instructions; (b) the municipal obligations are secured by cash and/or United States Obligations, which United States Obligations may be applied only to interest, principal and premium payments of such municipal obligations; (c) the principal of and interest on the United States Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the municipal obligations; (d) the United States Obligations serving as security for the municipal obligations are held by an escrow agent or trustee; (e) the United States Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and (f) the municipal obligations are rated in their highest Rating Category by two or more Rating Agencies, and (3) any other type of security or obligation that the Rating Agencies that then maintain ratings on any of the Senior Bonds have determined to be permitted defeasance securities; and

(B) with respect to the Subordinate Obligations and the Subordinate Indenture, (a) United States Obligations (including obligations issued or held in book-entry form); (b) prerefunded municipal obligations meeting the following conditions: (i) the municipal obligations are not subject to redemption prior to maturity, or the trustee has been given irrevocable instructions concerning their calling and redemption and the issuer has covenanted not to redeem such obligations other than as set forth in such instructions; (ii) the municipal obligations are secured by cash and/or United States Obligations, which United States Obligations may be applied only to interest, principal and premium payments of such municipal obligations; (iii) the principal of and interest on the United States Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the municipal obligations; (iv) the United States Obligations serving as security for the municipal obligations are held by an escrow agent or trustee; (v) the United States Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and (vi) the municipal obligations are rated in their highest Rating Category by one or more of the Rating Agencies; and (c) any other type of security or obligation which the Rating Agencies that then maintain ratings on the Subordinate Obligations to be defeased have determined to be permitted defeasance securities.

*“Implemented”* means,

(a) when used with respect to a Senior Program, a Senior Program which has been authorized and the terms thereof approved by a resolution adopted by the Board and, with respect to which Senior Program, the provisions of the Master Senior Indenture have been complied with; and

(b) when used with respect to a Subordinate Program, a Subordinate Program which has been authorized and the terms thereof approved by a resolution adopted by the Board and, with respect to which Subordinate Program, the provisions of the Master Subordinate Indenture have been complied with.

*“Independent”* means, when used with respect to any specified firm or individual, such a firm or individual who (a) does not have any direct financial interest or any material indirect financial interest in the operations of the Department or the City, other than the payment to be received under a contract for services to be performed, and (b) is not connected with the Department, the City or the Board as an official, officer or employee.

*“LAX Airport Facilities”* or *“LAX Airport Facility”* means a facility or group of facilities or category of facilities which constitute or are part of Los Angeles International Airport (excluding privately owned or leased property, except for any portion thereof which is governmentally owned or leased and which is a source of Pledged Revenues).

*“LAX Maintenance and Operation Expenses”* means, for any given period, the total operation and maintenance expenses of Los Angeles International Airport as determined in accordance with generally accepted accounting principles as in effect from time to time, excluding depreciation expense and any operation and maintenance expenses of Los Angeles International Airport payable from moneys other than Pledged Revenues.

*“LAX Maintenance and Operation Reserve Account”* means the Los Angeles International Airport Maintenance and Operation Reserve Account authorized to be created by Ordinance No. 173,232 and established pursuant to Section 23.10(d)(2) of the Los Angeles Administrative Code.

*“LAX Revenue Account”* means the account established pursuant to the Master Senior Indenture and Section 23.10(a) of the Los Angeles Administrative Code.

*“LAX Revenues”* means, except to the extent specifically excluded herefrom, all income, receipts, earnings and revenues received by the Department from the Los Angeles International Airport, for any given period, as determined in accordance with generally accepted accounting principles, as modified from time to time, including, but not limited to, (1) rates, tolls, fees, rentals, charges and other payments made to or owed to the Department for the use or availability of property or facilities at Los Angeles International Airport, (2) amounts received or owed from the sale or provision of supplies, materials, goods and services provided by or made available by the Department at Los Angeles International Airport, including Facilities Construction Credits, and rental or business interruption insurance proceeds, received by, held by, accrued to or entitled to be received by the Department or any successor thereto from the possession, management, charge, superintendence and control of Los Angeles International Airport (or any LAX Airport Facilities or activities and undertakings related thereto) or from any other facilities wherever located with respect to which the Department receives payments which are attributable to LAX Airport Facilities or activities or undertakings related thereto, all of which is required to be deposited in the Airport Revenue Fund pursuant to the Charter and the LAX Revenue Account pursuant to the Master Senior Indenture. *“LAX Revenues”* include all income, receipts and earnings from the investment amounts held in the LAX Revenue Account, any Senior Construction Fund or Subordinate Construction Fund allowed to be pledged by the terms of a Supplemental Senior Indenture, the Senior Reserve Fund, any Senior Debt Service Reserve Fund, the Subordinate Reserve Fund, any other Subordinate Debt Service Reserve Fund and allocated earnings on the Maintenance and Operation Reserve Fund.

*“LAX Special Facilities”* or *“LAX Special Facility”* means, with respect to Los Angeles International Airport, a facility or group of facilities or improvements or category of facilities or improvements which are designated as an LAX Special Facility or LAX Special Facilities pursuant to the provisions of the Master Senior Indenture. LAX Special Facilities do not include facilities financed by the RAIC.

*“LAX Special Facilities Revenue”* means the contractual payments and all other revenues derived by or available to or receivable by the Department from an LAX Special Facility, which are pledged to secure LAX Special Facility Obligations.

*“LAX Special Facility Obligations”* means bonds or other debt instruments issued pursuant to an indenture other than the Senior Indenture or the Subordinate Indenture to finance LAX Special Facilities and which, except as otherwise provided in the Master Senior Indenture, are not secured by nor payable from a lien on and pledge of the Pledged Revenues but which are secured by revenues derived from LAX Special Facilities located at Los Angeles International Airport.

“*Liquidity Facility*” means a letter of credit, line of credit, standby purchase agreement or other financial instrument, including a Credit Facility, which is available to provide funds with which to purchase Senior Bonds or Subordinate Obligations, as the case may be.

“*Liquidity Provider*” means the entity, including the Credit Provider, which is obligated to provide funds to purchase Senior Bonds or Subordinate Obligations, as the case may be, under the terms of a Liquidity Facility.

“*Los Angeles International Airport*” and “*LAX*” means that portion of the Airport System commonly known by such name which is located in the City of Los Angeles and generally bounded by Westchester Parkway on the north, the San Diego (405) Freeway on the east, Imperial Highway on the south and the Pacific Ocean on the west; including all facilities and property related thereto, real or personal, under the jurisdiction or control of the Department at such location or in which the Department has other rights or from which the Department derives revenues at such location.

“*Mail*” means by first-class United States mail, postage prepaid.

“*Maintenance and Operation Expenses of the Airport System*” means, for any given period, the total operation and maintenance expenses, exclusive of depreciation expense, of the Airport System as determined in accordance with generally accepted accounting principles as modified from time to time.

“*Maintenance and Operation Reserve Fund*” means the fund established by and existing pursuant to Section 635(a) of the Charter or any successor provision and the provisions of the Master Senior Indenture.

“*Master Senior Indenture*” means the Master Trust Indenture, dated as of April 1, 1995, by and between the Department and the Senior Trustee, as amended.

“*Master Subordinate Indenture*” means the Master Subordinate Trust Indenture, dated as of December 1, 2002, by and between the Department and the Subordinate Trustee, as amended.

“*Moody’s*” means Moody’s Investors Service, and its successors and its assigns, and, if Moody’s for any reason no longer performs the functions of a Nationally Recognized Rating Agency, “*Moody’s*” will be deemed to refer to any other Nationally Recognized Rating Agency designated by the Department (other than Fitch or S&P).

“*Nationally Recognized Rating Agency*” means a nationally recognized statistical rating organization identified by the United States Securities and Exchange Commission.

“*Net Pledged Revenues*” means, for any given period, the Pledged Revenues for such period less, for such period, the LAX Maintenance and Operation Expenses.

“*Net Proceeds*” means insurance proceeds received as a result of damage to or destruction of LAX Airport Facilities or any condemnation award or amounts received by the Department from the sale of LAX Airport Facilities under the threat of condemnation less expenses (including attorneys’ fees and expenses and any fees and expenses of the Senior Trustee or the Subordinate Trustee, as the case may be) incurred in the collection of such proceeds or award.

“*Non-Qualified Swap*” means any Swap which is not a Senior Qualified Swap or a Subordinate Qualified Swap.

“*Ordinance No. 173,232*” means the City of Los Angeles Ordinance No. 173,232 which became effective on June 19, 2000.

“*Original Issue Discount Senior Bonds*” means Senior Bonds which are sold at an initial public offering price of less than 95% of their face value and which are specifically designated as Original Issue Discount Senior Bonds by the Supplemental Senior Indenture under which such Senior Bonds are issued.

“*Original Issue Discount Subordinate Obligations*” means Subordinate Obligations which are sold at an initial public offering price of less than face value and which are specifically designated as Original Issue Discount Subordinate Obligations by the Supplemental Subordinate Indenture under which such Subordinate Obligations are issued.

“*Outstanding*” means:

(1) when used with respect to Senior Bonds, all Senior Bonds which have been authenticated and delivered under the Senior Indenture, except:

(a) Senior Bonds cancelled or purchased by the Senior Trustee for cancellation or delivered to or acquired by the Senior Trustee for cancellation and, in all cases, with the intent to extinguish the debt represented thereby;

(b) Senior Bonds deemed to be paid in accordance with the Master Senior Indenture;

(c) Senior Bonds in lieu of which other Senior Bonds have been authenticated under the provisions of the Senior Master Indenture;

(d) Senior Bonds that have become due (at maturity or on redemption, acceleration or otherwise) and for the payment of which sufficient moneys, including interest accrued to the due date, are held by the Senior Trustee or a Senior Paying Agent;

(e) Senior Bonds which, under the terms of the Supplemental Senior Indenture pursuant to which they were issued, are deemed to be no longer Outstanding;

(f) Senior Repayment Obligations deemed to be Senior Bonds under the Master Senior Indenture to the extent such Senior Repayment Obligation arose under the terms of a Liquidity Facility and are secured by a pledge of Outstanding Senior Bonds acquired by the Liquidity Provider; and

(g) for purposes of any consent or other action to be taken by the holders of a specified percentage of Senior Bonds under the Master Senior Indenture, Senior Bonds held by or for the account of the Department or by any person controlling, controlled by or under common control with the Department, unless such Senior Bonds are pledged to secure a debt to an unrelated party;

(2) when used with respect to Subordinate Obligations, all Subordinate Obligations which have been authenticated and delivered under the Subordinate Indenture, except:

(a) Subordinate Obligations cancelled or purchased by the Subordinate Trustee for cancellation or delivered to or acquired by the Subordinate Trustee for cancellation and, in all cases, with the intent to extinguish the debt represented thereby;

(b) Subordinate Obligations deemed to be paid in accordance with the Master Subordinate Indenture;

(c) Subordinate Obligations in lieu of which other Subordinate Obligations have been authenticated under the provisions of the Master Subordinate Indenture;

(d) Subordinate Obligations that have become due (at maturity or on redemption, acceleration or otherwise) and for the payment of which sufficient moneys, including interest accrued to the due date, are held by the Subordinate Trustee or a Subordinate Paying Agent;

(e) Subordinate Obligations which, under the terms of the Supplemental Subordinate Indenture pursuant to which they were issued, are deemed to be no longer Outstanding;

(f) Subordinate Repayment Obligations deemed to be Subordinate Obligations under the Master Subordinate Indenture to the extent such Subordinate Repayment Obligations arose under the terms of a Liquidity Facility and are secured by a pledge of Outstanding Subordinate Obligations acquired by the Liquidity Provider; and

(g) for purposes of any consent or other action to be taken by the holders of a specified percentage of Subordinate Obligations under the Master Subordinate Indenture, Subordinate Obligations held by or for the account of the Department or by any person controlling, controlled by or under common control with the Department, unless such Subordinate Obligations are pledged to secure a debt to an unrelated party.

“*Passenger Facility Charges*” or “*PFCs*” means all or a designated portion of charges collected by the Department pursuant to the authority granted by the Aviation Safety and Capacity Expansion Act of 1990 (P.L. 101-508), the Wendel H. Ford Aviation Investment and Reform Act for the 21st Century (P.L. 106-181) and 14 CFR Part 158, all

as amended from time to time, or any other applicable federal law, in respect of any component of LAX and interest earnings thereon, net of amounts that collecting air carriers are entitled to retain for collecting, handling and remitting such passenger facility charge revenues.

*“Payment Date”* means, with respect to any Senior Bonds or Subordinate Obligations, as the case may be, each date on which interest is due and payable thereon and each date on which principal is due and payable thereon whether by maturity or redemption thereof.

*“Pledged Revenues”* means, except to the extent specifically excluded herein or under the terms of any Supplemental Senior Indenture (only with respect to the Series of Senior Bonds issued pursuant to such Supplemental Senior Indenture), LAX Revenues. “Pledged Revenues” will also include such additional revenues, if any, as are designated as “Pledged Revenues” under the terms of any Supplemental Senior Indenture. The following, including any investment earnings thereon, are specifically excluded from Pledged Revenues: (i) any amounts received by the Department from the imposition of ad valorem taxes, (ii) gifts, grants and other income (including any investment earnings thereon) otherwise included in the definition of “LAX Revenues” which are restricted by their terms to purposes inconsistent with the payment of debt service on the Senior Bonds, (iii) Net Proceeds and other insurance proceeds, to the extent the use of such Net Proceeds or other proceeds is restricted by the terms of the policy under which they are paid to a use inconsistent with the payment of debt service on the Senior Bonds, (iv) any Transfer and (v) LAX Special Facilities Revenue. In addition, the following, including any investment earnings thereon, are specifically excluded from “Pledged Revenues,” unless designated as “Pledged Revenues” under the terms of a Supplemental Senior Indenture: (a) any Senior Swap Termination Payments paid to the Department pursuant to a Senior Qualified Swap or any Subordinate Swap Termination Payments paid to the Department pursuant to a Subordinate Qualified Swap, (b) Facilities Construction Credits, (c) Passenger Facility Charges unless otherwise so pledged under the terms of any Supplemental Senior Indenture, (d) Customer Facility Charges unless otherwise so pledged under the terms of any Supplemental Senior Indenture (provided that only Customer Facility Charges in respect of LAX may be so pledged), (e) unless otherwise so pledged, all revenues of the Airport System not related to Los Angeles International Airport and (f) Released LAX Revenues. Further, interest earnings or other investment earnings on any Senior or Subordinate Construction Fund established by any Supplemental Senior Indenture or Supplemental Subordinate Indenture, as the case may be, are specifically excluded from “Pledged Revenues,” unless otherwise provided for in such Supplemental Senior Indenture or Supplemental Subordinate Indenture, as the case may be.

*“President”* or *“President of the Board”* means the president of the Board or such other title as the Board may from time to time assign for such position.

*“Project”* means any and all facilities, improvements and other expenditures related to the Airport System financed in whole or in part with proceeds of a Series of Senior Bonds or Subordinate Obligations.

*“RAIC”* means the Regional Airports Improvement Corporation, a California nonprofit corporation.

*“Rating Agency”* and *“Rating Agencies”* means Fitch, Moody’s or S&P, or any other Nationally Recognized Rating Agency.

*“Rating Category”* and *“Rating Categories”* means (a) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier, and (b) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

*“Rebate Fund”* means any fund created by the Department pursuant to a Supplemental Senior Indenture or a Supplemental Subordinate Indenture, as the case may be, in connection with the issuance of the Senior Bonds or any Series of Senior Bonds or the Subordinate Obligations or any Series of Subordinate Obligations, as the case may be, for the purpose of complying with the Code and providing for the collection and holding for and payment of amounts to the United States of America.

*“Record Date”* means, with respect to any Series of Senior Bonds or Subordinate Obligations, as the case may be, the record date as specified in the Supplemental Senior Indenture which provides for the issuance of such Series of Senior Bonds or the Supplemental Subordinate Indenture which provides for the issuance of such Series of Subordinate Obligations, as the case may be.

*“Refunding Senior Bonds”* means any Senior Bonds issued pursuant to the Master Senior Indenture to refund or defease all or a portion of any series of Outstanding Senior Bonds, any Subordinated Obligation or any Third Lien Obligation.

*“Refunding Subordinate Obligations”* means any Subordinate Obligations issued pursuant to the Master Subordinate Indenture to refund or defease all or a portion of any Series of Outstanding Subordinate Obligations, any Senior Bonds or any Third Lien Obligations.

*“Regularly Scheduled Swap Payments”* means the regularly scheduled payments under the terms of a Swap which are due absent any termination, default or dispute in connection with such Swap.

*“Released LAX Revenues”* means LAX Revenues in respect of which the following have been filed with the Trustee:

(a) a resolution of the Board describing a specific identifiable portion of LAX Revenues and approving that such LAX Revenues be excluded from the term Pledged Revenues;

(b) either (i) a certificate prepared by an Authorized Representative showing that Net Pledged Revenues for each of the two most recent completed Fiscal Years, after the specific identifiable portion of LAX Revenues covered by the Board’s resolution described in (a) above are excluded, were at least equal to the larger of (A) the amounts needed for making the required deposits and payments pursuant to paragraphs SECOND through EIGHTH described under the caption APPENDIX B-4—“SUMMARY OF THE MASTER SENIOR INDENTURE—Withdrawals from LAX Revenue Account,” or (B) an amount not less than 150% of average Senior Aggregate Annual Debt Service for each Fiscal Year during the remaining term of all Senior Bonds that will remain Outstanding after the exclusion of such specific identifiable portion of LAX Revenues; or (ii) a certificate prepared by a Consultant showing that the estimated Net Pledged Revenues (excluding the specific identifiable portion of LAX Revenues covered in the resolution adopted by the Board described in (a) above) for each of the first three complete Fiscal Years immediately following the Fiscal Year in which the resolution described in (a) above is adopted by the Board, will not be less than the larger of (A) the amounts needed for making the required deposits and payments pursuant to paragraphs SECOND through EIGHTH described under the caption APPENDIX B-4—“SUMMARY OF THE MASTER SENIOR INDENTURE—Withdrawals from LAX Revenue Account,” or (B) an amount not less than 150% of the average Senior Aggregate Annual Debt Service for each Fiscal Year during the remaining term of all Senior Bonds that will remain Outstanding after the exclusion of such specific identifiable portion of LAX Revenues;

(c) an opinion of Bond Counsel to the effect that the exclusion of such specific identifiable portion of revenues from the definition of LAX Revenues and from the pledge and lien of the Master Senior Indenture will not, in and of itself, cause the interest on any Outstanding Senior Bonds to be included in gross income for purposes of federal income tax; and

(d) written confirmation from each of Fitch and Moody’s (provided such Rating Agencies have been requested by the Department to maintain a rating on the Senior Bonds and such Rating Agencies are then maintaining a rating on any of the Senior Bonds) to the effect that the exclusion of such specific identifiable portion of revenues from the pledge and lien of the Master Senior Indenture will not cause a withdrawal or reduction in any unenhanced rating then assigned to the Senior Bonds.

For purposes of subparagraph (b) above, no Transfer will be taken into account in the computation of Net Pledged Revenues.

Additionally, the Department will give written notice to S&P (provided S&P has been requested by the Department to maintain a rating on the Senior Bonds and S&P is then maintaining a rating on any of the Senior Bonds) at least 15 days prior to any specific identifiable portion of LAX Revenues being excluded from the pledge and lien of the Master Senior Indenture as proved in this definition of *“Released LAX Revenues.”*

Upon filing of such documents, the specific identifiable portion of LAX Revenues described in the resolution of the Board will no longer be included in Pledged Revenues and will be excluded from the pledge and lien of the Master Senior Indenture, unless otherwise included in Pledged Revenues and in the pledge and lien of the Master Senior Indenture pursuant to a Supplemental Senior Indenture.

*“Required Deposits”* means, with respect to any Series of Subordinate Obligations, the amount determined in accordance with the terms of the Supplemental Subordinate Indenture under which such Subordinate Obligations are issued and/or incurred, required to be deposited into funds and accounts created under such Supplemental

Subordinate Indenture for the purpose of paying principal and interest on Subordinate Obligations or accumulating funds from which to make such payments and to pay other obligations specifically secured by the Subordinate Pledged Revenues under such Supplemental Subordinate Indenture. On or before the Payment Date, if any, in each month, the Subordinate Trustee will determine the aggregate Required Deposits from the Required Deposits described under each Supplemental Subordinate Indenture.

“*Responsible Officer*” means an officer or assistant officer of the Senior Trustee assigned by the Senior Trustee to administer the Senior Indenture, or an officer or assistant officer of the Subordinate Trustee assigned by the Subordinate Trustee to administer the Subordinate Indenture.

“*S&P*” means S&P Global Ratings, and its successors and assigns, and if S&P for any reason no longer performs the functions of a Nationally Recognized Rating Agency, “*S&P*” will be deemed to refer to any other Nationally Recognized Rating Agency designated by the Department (other than Fitch or Moody’s).

“*Senior Aggregate Annual Debt Service*” means for any Fiscal Year the aggregate amount of Senior Annual Debt Service on all Outstanding Senior Bonds and Unissued Senior Program Bonds. For purposes of calculating Senior Aggregate Annual Debt Service, the following components of debt service will be computed as follows:

(i) in determining the principal due in each year, payment will (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made on Outstanding Senior Bonds, and Unissued Senior Program Bonds in accordance with any amortization schedule established by the governing documents setting forth the terms of such Senior Bonds, including, as a principal payment, the Accreted Value of any Capital Appreciation Senior Bonds or Original Issue Discount Senior Bonds maturing or scheduled for redemption in such year; in determining the interest due in each year, interest payable at a fixed rate will (except to the extent subsection (ii), (iii) or (iv) of this definition applies) be assumed to be made at such fixed rate and on the required payment dates; provided, however, that interest payable on the Senior Bonds will be excluded to the extent such payments are to be paid from Senior Capitalized Interest for such Fiscal Year;

(ii) if all or any portion or portions of an Outstanding Series of Senior Bonds, or Unissued Senior Program Bonds constitute Balloon Indebtedness (excluding Senior Program Bonds or Unissued Senior Program Bonds to which subsection (vi) applies), then, for purposes of determining Aggregate Annual Debt Service, each maturity which constitutes Balloon Indebtedness will, unless otherwise provided in the Supplemental Senior Indenture pursuant to which such Balloon Indebtedness is issued or unless provision (iii) of this definition then applies to such maturity, be treated as if it were to be amortized over a term of not more than 30 years and with substantially level annual debt service payments commencing not later than the year following the year in which such Balloon Indebtedness was issued, and extending not later than 30 years from the date such Balloon Indebtedness was originally issued; the interest rate used for such computation will be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by *The Bond Buyer*, or if that index is no longer published, another similar index selected by the Department, or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Senior Bonds of a corresponding term issued under the Senior Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Bonds bear interest which is or is not excluded from gross income for federal income tax purposes; with respect to any Series of Senior Bonds, Unissued Senior Program Bonds or Senior Program Bonds only a portion of which constitutes Balloon Indebtedness, the remaining portion will be treated as described in (i) above or such other provision of this definition as will be applicable and, with respect to any Series, Unissued Senior Program Bonds or Senior Program Bonds or that portion of a Series thereof which constitutes Balloon Indebtedness, all payments of principal and interest becoming due prior to the year of the stated maturity of the Balloon Indebtedness will be treated as described in (i) above or such other provision of this definition as will be applicable;

(iii) any maturity of Senior Bonds which constitutes Balloon Indebtedness as described in provision (ii) of this definition and for which the stated maturity date occurs within 12 months from the date such calculation is made, will be assumed to become due and payable on the stated maturity date and provision (ii) above will not apply thereto unless there is delivered to the entity making the calculation a certificate of an Authorized Representative stating that the Department intends to refinance such maturity and stating the probable terms of such refinancing and that the debt capacity of the Department is sufficient to successfully complete such refinancing; upon the receipt of such certificate, such Balloon Indebtedness will be assumed to be refinanced in accordance with the probable terms set out in such certificate and such terms will be used for purposes of calculating Senior



Aggregate Annual Debt Service, provided that such assumption will not result in an amortization period longer than or an interest rate lower than that which would be assumed under provision (ii) above;

(iv) if any Outstanding Senior Bonds (including Senior Program Bonds then issued and Outstanding) or any Senior Bonds which are then proposed to be issued constitute Senior Tender Indebtedness, then, for purposes of determining Senior Aggregate Annual Debt Service, Senior Tender Indebtedness will be treated as if (a) the principal amount of such Senior Bonds were to be amortized over a term of not more than 30 years commencing in the year in which such Series is first subject to tender and with substantially level Senior Annual Debt Service payments and extending not later than 30 years from the date such Senior Tender Indebtedness was originally issued, provided, however, notwithstanding the previous provisions of this clause (a), any principal amortization schedule set forth in a Supplemental Senior Indenture (including, but not limited to, any mandatory sinking fund redemption schedule) will be applied to determine the principal amortization of such Senior Bonds; (b) the interest rate used for such computation will be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by *The Bond Buyer*, or if that index is no longer published, another similar index selected by the Department, or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Senior Bonds of a corresponding term issued under the Senior Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Bonds bear interest which is or is not excluded from gross income for federal income tax purposes; and (c) with respect to all principal and interest payments becoming due prior to the year in which such Senior Tender Indebtedness is first subject to tender, such payments will be treated as described in (i) above unless the interest during that period is subject to fluctuation, in which case the interest becoming due prior to such first tender date will be determined as provided in (v) or (vi) below, as appropriate;

(v) if any Outstanding Senior Bonds constitute Variable Rate Senior Indebtedness, including obligations described in subsection (viii)(b) to the extent it applies (except to the extent subsection (ii) or (iii) relating to Balloon Indebtedness or (iv) relating to Senior Tender Indebtedness or subsection (viii)(a) relating to Synthetic Fixed Rate Debt applies), the interest rate used for such computation will be the rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by *The Bond Buyer*, or if that index is no longer published, another similar index selected by the Department or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Senior Bonds of a corresponding term issued under the Senior Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Bonds bear interest which is or is not excluded from gross income for federal income tax purposes;

(vi) with respect to any Senior Program Bonds or Unissued Senior Program Bonds (other than a Senior Commercial Paper Program) (a) debt service on Senior Program Bonds then Outstanding will be determined in accordance with such of the foregoing provisions of this definition as will be applicable, and (b) with respect to Unissued Senior Program Bonds, it will be assumed that the full principal amount of such Unissued Senior Program Bonds will be amortized over a term certified by an Authorized Representative at the time the initial Senior Program Bonds of such Senior Program are issued to be the expected duration of such Senior Program or, if such expectations have changed, over a term certified by an Authorized Representative to be the expected duration of such Senior Program at the time of such calculation, but not to exceed 30 years from the date the initial Senior Program Bonds of such Senior Program are issued and it will be assumed that debt service will be paid in substantially level Senior Annual Debt Service payments over such assumed term; the interest rate used for such computation will be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by *The Bond Buyer*, or if that index is no longer published, another similar index selected by the Department, or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Senior Bonds of a corresponding term issued under the Senior Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Bonds bear interest which is or is not excluded from gross income for federal income tax purposes;

(vii) debt service on Senior Repayment Obligations, to the extent such obligations constitute Senior Bonds under the Master Senior Indenture, will be calculated as provided in Master Senior Indenture;

(viii) (a) for purposes of computing the Senior Aggregate Annual Debt Service of Senior Bonds which constitute Synthetic Fixed Rate Debt, the interest payable thereon will, if the Board elects, be that

rate payable by the Board as provided for by the terms of the Swap or the net interest rate payable by the Board pursuant to offsetting indices, as applicable, or if the Board does not elect such rate, then it will be deemed to be the fixed interest rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the Department or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Senior Bonds of a corresponding term issued under the Master Senior Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Bonds bear interest which is or is not excluded from gross income for federal income tax purposes;

(b) for purposes of computing the Senior Aggregate Annual Debt Service of Senior Bonds with respect to which a Swap has been entered into whereby the Board has agreed to pay the floating variable rate thereunder, no fixed interest rate amounts payable on the Senior Bonds to which such Swap pertains will be included in the calculation of Senior Aggregate Annual Debt Service, and the interest rate with respect to such Senior Bonds will be the sum of that rate as determined in accordance with subsection (v) relating to Variable Rate Senior Indebtedness plus the difference between the interest rate on the Senior Designated Debt and the rate received from the Swap Provider;

(c) for purposes of computing the Senior Aggregate Annual Debt Service of Senior Bonds with respect to which a Swap in the form of an "interest rate cap" (or a similarly structured financial arrangement) has been entered into by the Board, the interest payable thereon will be the lower of (y) the effective capped rate provided by the terms of the Swap and (z) the fixed interest rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the Department or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Senior Bonds of a corresponding term issued under the Master Senior Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Bonds bear interest which is or is not excluded from gross income for federal income tax purposes;

(ix) if moneys, Senior Permitted Investments or any other amounts not included in Pledged Revenues have been used to pay or have been irrevocably deposited with and are held by the Senior Trustee or another fiduciary to pay or Senior Capitalized Interest has been set aside exclusively to be used to pay principal and/or interest on specified Senior Bonds, then the principal and/or interest to be paid from such moneys, Senior Permitted Investments, other amounts not included in Pledged Revenues or Senior Capitalized Interest or from the earnings thereon will be disregarded and not included in calculating Senior Aggregate Annual Debt Service;

(x) with respect to any Senior Commercial Paper Program which has been Implemented and not then terminated or with respect to any Senior Commercial Paper Program then proposed to be Implemented, the principal and interest thereon will be calculated as if the entire Senior Authorized Amount of such Senior Commercial Paper Program were to be amortized over a term of 30 years commencing in the year in which such Senior Commercial Paper Program is Implemented and with substantially level Senior Annual Debt Service payments; the interest rate used for such computation will be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by *The Bond Buyer*, or if that index is no longer published, another similar index selected by the Department, or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed rate Senior Bonds of a corresponding term issued under the Senior Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Senior Bonds bear interest which is or is not excluded from gross income for federal income tax purposes; and

(xi) if Passenger Facility Charges, Customer Facility Charges, state and/or federal grants or other moneys not included in Pledged Revenues have been irrevocably committed or are held by the Senior Trustee or another fiduciary and are to be set aside exclusively to be used to pay principal and/or interest on specified Senior Bonds, then the principal and/or interest to be paid from such Passenger Facility Charges, Customer Facility Charges, state and/or federal grants or other moneys not included in Pledged Revenues or from earnings thereon will be disregarded (unless such Passenger Facility Charges, Customer Facility Charges, state and/or federal grants or other moneys are included in the definition of Pledged Revenues) and not included in calculating Senior Aggregate Annual Debt Service.

*“Senior Aggregate Annual Debt Service For Reserve Requirement”* means the computation of Senior Aggregate Annual Debt Service with respect to all Outstanding Senior Bonds participating in the Senior Reserve Fund or all Outstanding Senior Bonds participating in a separately created Senior Debt Service Reserve Fund, as the case may be, in the then current or any future Fiscal Year with such modifications in the assumptions thereof as is described in this definition. For purposes of determining the Senior Aggregate Annual Debt Service For Reserve Requirement, the annual debt service with respect to any Variable Rate Indebtedness will, upon the issuance of such Series, be calculated on the basis of the assumptions set forth in subsection (v) of the definition of Senior Aggregate Annual Debt Service, and the amount so determined will not require adjustment thereafter except as appropriate to reflect reductions in the outstanding principal amount of such Series. For purposes of the Senior Aggregate Annual Debt Service For Reserve Requirement, the annual debt service requirements assumed at the time of issuance of a Series of Senior Bonds containing Balloon Indebtedness or Senior Tender Indebtedness will not, with respect to such Series, require subsequent increases.

*“Senior Annual Debt Service”* means, with respect to any Senior Bond, the aggregate amount of principal and interest becoming due and payable during any Fiscal Year, and if a Senior Qualified Swap is in effect for such Senior Bond, plus the amount payable by the Department (or the Senior Trustee) under the Senior Qualified Swap in accordance with the terms thereof, less any amount to be received by the Department from the Senior Qualified Swap Provider pursuant to the Senior Qualified Swap, calculated using the principles and assumptions set forth in the definition of Senior Aggregate Annual Debt Service. Principal of and/or interest on Senior Bonds paid during any Fiscal Year with Passenger Facility Charges, Customer Facility Charges, state and/or federal grants, Senior Capitalized Interest or other moneys not included in Pledged Revenues, or from earnings thereon, will be disregarded (unless such Passenger Facility Charges, Customer Facility Charges, state and/or federal grants, Senior Capitalized Interest or other moneys are included in Pledged Revenues) and not included in calculating Senior Annual Debt Service.

*“Senior Authorized Amount”* means, when used with respect to Senior Bonds, including Senior Program Bonds, the maximum Senior Principal Amount of Senior Bonds which is then authorized by a resolution or Supplemental Senior Indenture adopted by the Board pursuant to the Master Senior Indenture to be Outstanding at any one time under the terms of such Senior Program or Supplemental Senior Indenture. If the maximum Senior Principal Amount of Senior Bonds or Senior Program Bonds authorized by a preliminary resolution or form of Supplemental Senior Indenture approved by the Board pursuant to the Master Senior Indenture exceeds the maximum Senior Principal Amount of Senior Bonds set forth in the final resolution of sale adopted by the Board or in the definitive Supplemental Senior Indenture executed and delivered by the Board pursuant to which such Bonds are issued or such Senior Program is established, the Senior Principal Amount of such Senior Bonds or Senior Program Bonds as is set forth in said final resolution of sale or in the definitive Supplemental Senior Indenture as executed and delivered by the Department will be deemed to be the *“Senior Authorized Amount.”* Notwithstanding the provisions of this definition of *“Senior Authorized Amount,”* in connection with clauses (a) and (b) under the section entitled *“—Additional Senior Bonds”* in APPENDIX B-4—*“SUMMARY OF THE MASTER SENIOR INDENTURE”* below and the calculation of Senior Maximum Aggregate Annual Debt Service and Senior Aggregate Annual Debt Service with respect to a Senior Commercial Paper Program, *“Senior Authorized Amount”* will mean the total amount available (utilized and unutilized, if applicable) under a Credit Facility entered into with respect to such Senior Commercial Paper Program and the total amount of Senior Commercial Paper Notes that may be issued pursuant to an Unenhanced Senior Commercial Paper Program.

*“Senior Bond”* or *“Senior Bonds”* means any debt obligation of the Department issued under and in accordance with the provisions of the Master Senior Indenture, including, but not limited to, bonds, notes, bond anticipation notes, commercial paper and other instruments creating an indebtedness of the Department, and obligations incurred through lease or installment purchase agreements or other agreements or certificates of participation therein and Senior Repayment Obligations to the extent provided in the Master Senior Indenture. The term *“Senior Bond”* or *“Senior Bonds”* does not include any Subordinated Obligation or Third Lien Obligation; provided, however, that the Board may provide in a Supplemental Senior Indenture that Subordinated Obligations or Third Lien Obligations may be issued thenceforth pursuant to the Master Senior Indenture having the terms applicable to the Senior Bonds, except that such Subordinated Obligations or Third Lien Obligations will be junior and subordinate in payment of such Subordinated Obligations or Third Lien Obligations from the Net Pledged Revenues. The term *“Senior Bond”* and *“Senior Bonds”* includes Senior Program Bonds.

*“Senior Capitalized Interest”* means proceeds of Senior Bonds or other moneys not included in Pledged Revenues that are deposited with the Senior Trustee in a Senior Debt Service Fund as described in a Supplemental Senior Indenture upon issuance of such Senior Bonds that are to be used to pay interest on Senior Bonds.

*“Senior Commercial Paper Program”* means a Senior Program authorized by the Board pursuant to which Commercial Paper will be issued and reissued from time to time, up to the Authorized Amount of such Senior Program.

*“Senior Construction Fund”* means any of the Senior Construction Funds authorized to be created pursuant to the Master Senior Indenture.

*“Senior Debt Service Fund”* or *“Senior Debt Service Funds”* means a Senior Debt Service Fund or any of the Senior Debt Service Funds required to be created by the Master Senior Indenture.

*“Senior Debt Service Reserve Fund”* means any Senior Debt Service Reserve Fund (other than the Senior Reserve Fund) created by the Department pursuant to a Supplemental Senior Indenture in connection with the issuance of any Series of Senior Bonds and that is required to be funded for the purpose of providing additional security for such Series of Senior Bonds and under certain circumstances to provide additional security for such other designated Series of Senior Bonds issued pursuant to the terms of the Master Senior Indenture and as specified in any Supplemental Senior Indenture.

*“Senior Debt Service Reserve Fund Surety Policy”* means an insurance policy or surety bond, or a letter of credit (other than a Senior Reserve Fund Surety Policy) deposited with the Senior Trustee for the credit of a Senior Debt Service Reserve Fund created for one or more series of Outstanding Senior Bonds in lieu of or partial substitution for cash or securities on deposit therein. Except as otherwise provided in a Supplemental Senior Indenture, the entity providing such Senior Debt Service Reserve Fund Surety Policy will be rated, at the time such instrument is provided, in one of the two highest long-term Rating Categories by both Moody’s if Moody’s is then maintaining a rating on the Senior Bonds and S&P if S&P is then maintaining a rating on the Senior Bonds.

*“Senior Designated Debt”* means a specific indebtedness designated by the Department with the intent that the risks associated with such debt be offset with a Swap, such specific indebtedness to include all or any part of a Series of Senior Bonds.

*“Senior Event of Default”* means any occurrence or event specified as a “Senior Event of Default” in the Senior Indenture. See APPENDIX B-4—“SUMMARY OF THE MASTER SENIOR INDENTURE—Senior Events of Default and Remedies” below.

*“Senior Indenture”* means the Master Senior Indenture, together with all Supplemental Senior Indentures.

*“Senior Investment Agreement”* means an investment agreement or guaranteed investment contract (i) with or guaranteed by a national or state chartered bank or savings and loan, an insurance company or other financial institution whose unsecured debt is rated in the highest short-term Rating Category (if the term of the Investment Agreement is less than three years) or in either of the two highest long-term Rating Categories (if the term of the Investment Agreement is three years or longer) by two or more Rating Agencies or (ii) which investment agreement or guaranteed investment contract is fully secured by obligations described in item (1) or (2) of the definition of Senior Permitted Investments which are (A) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to 105% of the principal amount of the investment, together with the interest accrued and unpaid thereon, (B) held by the Senior Trustee (who may not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Senior Trustee, (C) subject to a perfected first lien on behalf of the Senior Trustee, and (D) free and clear from all third party liens.

*“Senior Maximum Aggregate Annual Debt Service”* means the maximum amount of Senior Aggregate Annual Debt Service with respect to all Senior Bonds, Unissued Senior Program Bonds, the Senior Authorized Amount of all Senior Bonds then proposed to be issued in the then current or any future Fiscal Year.

*“Senior Maximum Aggregate Annual Debt Service For Reserve Requirement”* means the computation of Senior Maximum Aggregate Annual Debt Service with respect to all Outstanding Senior Bonds participating in the Senior Reserve Fund or all Outstanding Senior Bonds participating in a separately created Senior Debt Service Reserve Fund, as the case may be, in the then current or any future Fiscal Year with such modifications in the assumptions thereof as is described in this definition. For purposes of determining the Senior Maximum Aggregate Annual Debt Service For Reserve Requirement, the annual debt service with respect to any Variable Rate

Indebtedness will, upon the issuance of such Series, be calculated on the basis of the assumptions set forth in subsection (v) of the definition of Senior Aggregate Annual Debt Service, and the amount so determined will not require adjustment thereafter except as appropriate to reflect reductions in the outstanding principal amount of such Series. For purposes of the Senior Maximum Aggregate Annual Debt Service For Reserve Requirement, the annual debt service requirements assumed at the time of issuance of a Series of Senior Bonds containing Balloon Indebtedness or Senior Tender Indebtedness will not, with respect to such Series, require subsequent increases.

“*Senior Notes*” means Senior Bonds issued under the provisions of the Master Senior Indenture which have a maturity of one year or less from their date of original issuance and which are not part of a Senior Commercial Paper Program.

“*Senior Paying Agent*” or “*Senior Paying Agents*” means, with respect to the Senior Bonds or any Series of Senior Bonds, the banks, trust companies or other financial institutions or other entities designated in a Supplemental Senior Indenture or a resolution of the Department as the place where such Senior Bonds will be payable.

“*Senior Permitted Investments*” means, to the extent permitted to be invested by the Department by applicable law, the Charter and investment policy of the City, any of the following:

- (1) Government Obligations,
- (2) Obligations, debentures, notes or other evidences of indebtedness issued or guaranteed by any of the following instrumentalities or agencies of the United States of America: Federal Home Loan Bank System; Export Import Bank of the United States; Federal Financing Bank; Government National Mortgage Association; Federal National Mortgage Association; Student Loan Marketing Association; Federal Farm Credit Bureau; Farmers Home Administration; Federal Home Loan Mortgage Corporation; and Federal Housing Administration;
- (3) Direct and general long term obligations of any state, which obligations are rated in either of the two highest Rating Categories by two or more Rating Agencies;
- (4) Direct and general short term obligations of any state, which obligations are rated in the highest Rating Category by two or more Rating Agencies;
- (5) Interest bearing demand or time deposits (including certificates of deposit) or interests in money market portfolios issued by state banks or trust companies or national banking associations that are members of the Federal Deposit Insurance Corporation (“FDIC”) or by savings and loan associations that are members of the FDIC, which deposits or interests must either be (a) continuously and fully insured by FDIC and with banks that are rated in (y) the highest short-term Rating Category by two or more Rating Agencies or (z) either of the two highest long-term Rating Categories by two or more Rating Agencies or (b) fully secured by obligations described in items (1) or (2) of this definition of Senior Permitted Investments, which are (i) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to the principal amount of the investment, (ii) held by the Senior Trustee (who may not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Senior Trustee, (iii) subject to a perfected first lien in favor of the Senior Trustee, and (iv) free and clear from all third party liens;
- (6) Long term or medium term corporate debt guaranteed by any corporation that is rated by two or more Rating Agencies in either of the two highest Rating Categories;
- (7) Repurchase agreements which are (a) entered into with banks or trust companies organized under state law, national banking associations, insurance companies or government bond dealers reporting to, trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York and which either are members of the Security Investors Protection Corporation or with a dealer or parent holding company that has an investment grade rating from two or more of the Rating Agencies, and (b) fully secured by investments specified in items (1) or (2) of this definition of Senior Permitted Investments, which are (i) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at least equal to the amount invested in the repurchase agreements, (ii) held by the Senior Trustee (who may not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Senior Trustee, (iii) subject to a perfected first lien in favor of the Senior Trustee and (iv) free and clear from all third party liens;

(8) Prime commercial paper of a United States corporation, finance company or banking institution rated in the highest short-term Rating Category by two or more Rating Agencies;

(9) Shares of a diversified open end management investment company (as defined in the Investment Company Act of 1940, as amended) or shares in a regulated investment company (as defined in Section 851(a) of the Code) that is (a) a money market fund that has been rated in one of the two highest Rating Categories by one or more of the Rating Agencies, or (b) a money market fund or account of the Senior Trustee or any state or federal bank that is rated in (i) the highest short-term Rating Category by two or more Rating Agencies or (ii) either of the two highest long-term Rating Categories by two or more Rating Agencies, or whose own bank holding company parent is rated in (y) the highest short-term Rating Category by two or more Rating Agencies or (z) either of the two highest long-term Rating Categories by two or more Rating Agencies or that has a combined capital and surplus of not less than \$50,000,000;

(10) Investment Agreements; and

(11) Any other type of investment consistent with City policy in which the Department directs the Senior Trustee to invest provided that there is delivered to the Senior Trustee a certificate of an Authorized Representative stating that each of the Rating Agencies then maintaining a rating on the Senior Bonds has been informed of the proposal to invest in such investment.

*“Senior Principal Amount” or “Senior principal amount”* means, as of any date of calculation, (i) with respect to any Capital Appreciation Senior Bond, the Accreted Value thereof (the difference between the stated amount to be paid at maturity and the Accreted Value being deemed unearned interest), (ii) with respect to any Original Issue Discount Senior Bond, the Accreted Value thereof, unless the Supplemental Senior Indenture under which such Senior Bond was issued will specify a different amount, in which case, the terms of the Supplemental Senior Indenture will control, and (iii) with respect to any other Senior Bonds, the principal amount of such Senior Bond payable at maturity.

*“Senior Program”* means a financing program, including but not limited to a Senior Commercial Paper Program, (i) which is authorized and the terms thereof approved by a resolution adopted by the Board and the items required under the Master Senior Indenture have been filed with the Senior Trustee, (ii) wherein the Board has authorized the issuance, from time to time, of notes, commercial paper or other indebtedness in an Senior Authorized Amount, and (iii) the Senior Authorized Amount of which has met the additional bonds test set forth in Master Senior Indenture and the Outstanding amount of which may vary from time to time, but not exceed the Senior Authorized Amount.

*“Senior Program Bonds”* means Senior Bonds issued and Outstanding pursuant to a Senior Program, other than Unissued Senior Program Bonds.

*“Senior Qualified Swap”* means any Swap (a) whose Senior Designated Debt is all or part of a particular Series of Senior Bonds; (b) whose Swap Provider is a Senior Qualified Swap Provider or has been a Senior Qualified Swap Provider within the 60 day period preceding the date on which the calculation of Senior Annual Debt Service or Senior Aggregate Annual Debt Service is being made; (c) which has a term not greater than the term of the Senior Designated Debt or to a specified mandatory tender or redemption of such Senior Designated Debt; (d) which has been designated in writing to the Senior Trustee by the Department as a Senior Qualified Swap with respect to such Senior Bonds; and (e) which has been approved by S&P, if S&P has an outstanding rating on any Senior Bonds, and Moody’s, if Moody’s has an outstanding rating on the Senior Bonds.

*“Senior Qualified Swap Provider”* means a financial institution (a) whose senior long-term debt obligations, or whose obligations under any Senior Qualified Swap are guaranteed by a financial institution, or subsidiary of a financial institution, whose senior long-term debt obligations, are rated at least “Aa”, in the case of Moody’s and “AA”, in the case of S&P, or the equivalent thereto in the case of any successor thereto, or (b) whose obligations under any Senior Qualified Swap are fully secured by obligations described in items (1) or (2) of the definition of Senior Permitted Investments which are (i) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to 105% of the principal amount of the investment, together with the interest accrued and unpaid thereon, (ii) held by the Senior Trustee (who will not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Senior Trustee, (iii) subject to a perfected first lien on behalf of the Senior Trustee, and (iv) free and clear from all third-party liens..

“*Senior Registrar*” means, with respect to the Senior Bonds or any Series of Senior Bonds, the bank, trust company or other entity designated in a Supplemental Senior Indenture or a resolution of the Board to perform the function of Senior Registrar under the Master Senior Indenture or any Supplemental Senior Indenture, and which bank, trust company or other entity has accepted the position in accordance with the Master Senior Indenture.

“*Senior Repayment Obligations*” means an obligation arising under a written agreement of the Department and a Credit Provider pursuant to which the Department agrees to reimburse the Credit Provider for amounts paid through a Credit Facility to be used to pay debt service on any Senior Bonds or an obligation arising under a written agreement of the Department and a Liquidity Provider pursuant to which the Department agrees to reimburse the Liquidity Provider for amounts paid through a Liquidity Facility to be used to purchase Senior Bonds.

“*Senior Reserve Fund*” means the trust fund created pursuant to the Master Senior Indenture and that is required to be funded for the purpose of providing additional security for the Outstanding Senior Bonds issued pursuant to the terms of the Senior Indenture and as specified in any Supplemental Senior Indenture as participating in the Senior Reserve Fund. As of the date of this Official Statement, all of the Outstanding Senior Bonds participate in the Senior Reserve Fund.

“*Senior Reserve Fund Surety Policy*” means an insurance policy or surety bond, or a letter of credit, deposited with the Senior Trustee for the credit of the Senior Reserve Fund in lieu of or partial substitution for cash or securities on deposit therein. The entity providing such Senior Reserve Fund Surety Policy will be rated, at the time such instrument is provided, in one of the two highest Rating Categories by both Moody’s if Moody’s is then maintaining a rating on the Senior Bonds and S&P if S&P is then maintaining a rating on the Senior Bonds.

“*Senior Reserve Requirement*” means, except as otherwise provided in a Supplemental Senior Indenture, an amount equal to the least of (i) Senior Maximum Aggregate Annual Debt Service For Reserve Requirement for all Series of Senior Bonds participating in the Senior Reserve Fund or for all Series of Senior Bonds participating in a separately created Senior Debt Service Reserve Fund created pursuant to a Supplemental Senior Indenture, as the case may be, (ii) ten percent of the principal amount of the Senior Bonds that have been issued and are participating in the Senior Reserve Fund or the Senior Bonds that have been issued and are participating in a separately created Senior Debt Service Reserve Fund created pursuant to a Supplemental Senior Indenture, as the case may be, less the amount of original issue discount with respect to any Senior Bond if such original issue discount exceeded 2% on such Senior Bond at the time of its original sale and (iii) 125% of the average Senior Aggregate Annual Debt Service For Reserve Requirement for all Series of Senior Bonds participating in the Senior Reserve Fund or for all Series of Senior Bonds participating in a separately created Senior Debt Service Reserve Fund created pursuant to a Supplemental Senior Indenture, as the case may be.

“*Senior Swap Termination Payment*” means an amount payable by the Department or a Qualified Swap Provider, in accordance with a Senior Qualified Swap, to compensate the other party to the Senior Qualified Swap for any losses and costs that such other party may incur as a result of an event of default or the early termination of the obligations, in whole or in part, of the parties under such Senior Qualified Swap.

“*Senior Tender Indebtedness*” means any Senior Bonds or portions of Senior Bonds a feature of which is an option and/or an obligation on the part of the Bondholders, under the terms of such Senior Bonds, to tender all or a portion of such Senior Bonds to the Department, the Senior Trustee, the Senior Paying Agent or other fiduciary or agent or Credit Provider for payment or purchase and requiring that such Senior Bonds or portions of Senior Bonds be purchased if properly presented.

“*Senior Trustee*” means The Bank of New York Mellon Trust Company, N.A., formerly known as The Bank of New York Trust Company, N.A., as successor in interest to BNY Western Trust Company, as successor in interest to U.S. Trust Company of California, N.A., as trustee until a successor replaces it and, thereafter, means such successor.

“*Serial Senior Bonds*” means Senior Bonds for which no sinking installment payments are provided.

“*Serial Subordinate Obligations*” means Subordinate Obligations for which no sinking installment payments are provided.

“*Series*” or “*series*” means (a) with respect to Senior Bonds, Senior Bonds designated as a separate Series by a Supplemental Senior Indenture and, with respect to Senior Program Bonds or a Senior Commercial Paper Program, means the full Senior Authorized Amount of such program, regardless of when or whether issued, unless portions thereof are, by Supplemental Senior Indenture, designated as separate Series; and (b) with respect to

Subordinate Obligations, Subordinate Obligations designated as a separate Series by a Supplemental Subordinate Indenture and, with respect to Subordinate Program Obligations or a Subordinate Commercial Paper Program, means the full Subordinate Authorized Amount of such program, regardless of when or whether issued, unless portions thereof are, by Supplemental Subordinate Indenture, designated as a separate Series.

*“Significant Portion”* means, for purposes of the Master Senior Indenture, any LAX Airport Facilities or portions thereof which, if such facilities had been sold or disposed of by the Department at the beginning of an annual period which includes the month of commencement of the 12-month period ending on the day of such disposition would have resulted in a reduction in Net Pledged Revenues for such annual period of more than 4% when the actual Net Pledged Revenues for such annual period are decreased by the Pledged Revenues directly attributable to such LAX Airport Facilities and increased by the expenses of the Department directly attributable to such LAX Airport Facilities. The Department will notify each of the Rating Agencies that have been requested by the Department to maintain a rating on the Senior Bonds or Subordinate Obligations, and that are then maintaining a rating on any of the Senior Bonds or Subordinate Obligations, prior to the selling or disposing of a Significant Portion of any LAX Airport Facilities or portions thereof.

*“Specified LAX Project”* means a Project at Los Angeles International Airport or a group of alternative Projects which are described in a certificate of an Authorized Representative delivered to the Consultant preparing the certificates described in the additional bonds tests under the Master Senior Indenture and the Master Subordinate Indenture, as the case may be, the revenues and expenses of which Project or of the alternative Projects are to be taken into account by such Consultant in preparing the certificate described in the additional bonds tests under the Master Senior Indenture and the Master Subordinate Indenture, as the case may be.

*“State”* means the State of California.

*“Subordinate Aggregate Annual Debt Service”* means for any Fiscal Year the aggregate amount of Subordinate Annual Debt Service on all Outstanding Subordinate Obligations and Unissued Subordinate Program Obligations. For purposes of calculating Subordinate Aggregate Annual Debt Service, the following components of debt service will be computed as follows:

(a) in determining the principal due in each year, payment will (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made on Outstanding Subordinate Obligations and Unissued Subordinate Program Obligations in accordance with any amortization schedule established by the governing documents setting forth the terms of such Subordinate Obligations, including, as a principal payment, the Accreted Value of any Capital Appreciation Subordinate Obligations or Original Issue Discount Subordinate Obligations maturing or scheduled for redemption in such year; in determining the interest due in each year, interest payable at a fixed rate will (except to the extent subsection (b), (c) or (d) of this definition applies) be assumed to be made at such fixed rate and on the required payment dates; provided, however, that interest payable on the Subordinate Obligations will be excluded to the extent such payments are to be paid from Subordinate Capitalized Interest for such Fiscal Year;

(b) if all or any portion or portions of an Outstanding Series of Subordinate Obligations or Unissued Subordinate Program Obligations constitute Balloon Indebtedness, then, for purposes of determining Subordinate Aggregate Annual Debt Service, each maturity which constitutes Balloon Indebtedness will, unless otherwise provided in the Supplemental Subordinate Indenture pursuant to which such Balloon Indebtedness is issued or unless provision (c) of this definition then applies to such maturity, be treated as if it were to be amortized over a term of not more than 30 years and with substantially level annual debt service payments commencing not later than the year following the year in which such Balloon Indebtedness was issued, and extending not later than 30 years from the date such Balloon Indebtedness was originally issued; the interest rate used for such computation will be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the Department, or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under the Subordinate Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes; with respect to any Series of Subordinate Obligations, Unissued Subordinate Program Obligations or Subordinate Program Obligations,



only a portion of which constitutes Balloon Indebtedness, the remaining portion will be treated as described in (a) above or such other provision of this definition as will be applicable and, with respect to any Series, Unissued Subordinate Program Obligations or Subordinate Program Obligations, or that portion of a Series thereof which constitutes Balloon Indebtedness, all payments of principal and interest becoming due prior to the year of the stated maturity of the Balloon Indebtedness will be treated as described in (a) above or such other provision of this definition as will be applicable;

(c) any maturity of Subordinate Obligations which constitutes Balloon Indebtedness as described in provision (b) of this definition and for which the stated maturity date occurs within 12 months from the date such calculation of Subordinate Aggregate Annual Debt Service is made, will be assumed to become due and payable on the stated maturity date and provision (b) above will not apply thereto unless there is delivered to the entity making the calculation of Subordinate Aggregate Annual Debt Service a certificate of an Authorized Representative stating that the Department intends to refinance such maturity and stating the probable terms of such refinancing and that the debt capacity of the Department is sufficient to successfully complete such refinancing; upon the receipt of such certificate, such Balloon Indebtedness will be assumed to be refinanced in accordance with the probable terms set out in such certificate and such terms will be used for purposes of calculating Subordinate Aggregate Annual Debt Service, provided that such assumption will not result in an interest rate lower than that which would be assumed under provision (b) above and will be amortized over a term of not more than 30 years from the date of refinancing;

(d) if any Outstanding Subordinate Obligations (including Subordinate Program Obligations) or any Subordinate Obligations which are then proposed to be issued constitute Subordinate Tender Indebtedness, then, for purposes of determining Subordinate Aggregate Annual Debt Service, Subordinate Tender Indebtedness will be treated as if (i) the principal amount of such Subordinate Obligations were to be amortized over a term of not more than 30 years commencing in the year in which such Series is first subject to tender and with substantially level Subordinate Annual Debt Service payments and extending not later than 30 years from the date such Subordinate Tender Indebtedness was originally issued, provided, however, notwithstanding the previous provisions of this clause (i), any principal amortization schedule set forth in a Supplemental Subordinate Indenture (including, but not limited to, any mandatory sinking fund redemption schedule) will be applied to determine the principal amortization of such Subordinate Obligations; (ii); the interest rate used for such computation will be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the Department, or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under the Subordinate Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes; and (iii) with respect to all principal and interest payments becoming due prior to the year in which such Subordinate Tender Indebtedness is first subject to tender, such payments will be treated as described in (a) above unless the interest during that period is subject to fluctuation, in which case the interest becoming due prior to such first tender date will be determined as provided in (e) or (f) below, as appropriate;

(e) if any Outstanding Subordinate Obligations constitute Variable Rate Indebtedness, including obligations described in subsection (h)(ii) to the extent it applies (except to the extent subsection (b) or (c) relating to Balloon Indebtedness or (d) relating to Subordinate Tender Indebtedness or subsection (h)(i) relating to Synthetic Fixed Rate Debt applies), the interest rate used for such computation will be the rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the Department, or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under the Subordinate Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes;

(f) with respect to any Subordinate Program Obligations or Unissued Subordinate Program Obligations (other than a Subordinate Commercial Paper Program) (i) debt service on such Subordinate Program Obligations then Outstanding will be determined in accordance with such of the foregoing

provisions of this definition as will be applicable, and (ii) with respect to Unissued Subordinate Program Obligations, it will be assumed that the full principal amount of such Unissued Subordinate Program Obligations will be amortized over a term certified by an Authorized Representative at the time the initial Subordinate Program Obligations of such Subordinate Program are issued to be the expected duration of such Subordinate Program or, if such expectations have changed, over a term certified by an Authorized Representative to the expected duration of such Subordinate Program at the time of such calculation, but not to exceed 30 years from the date of the initial issuance of such Subordinate Program Obligations and it will be assumed that debt service will be paid in substantially level Subordinate Annual Debt Service payments over such assumed term; the interest rate used for such computation will be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the Department, or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under the Subordinate Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes;

(g) debt service on Subordinate Repayment Bonds, to the extent such obligations constitute Subordinate Obligations under the Master Subordinate Indenture, will be calculated as provided in the Master Subordinate Indenture;

(h) (i) for purposes of computing the Subordinate Aggregate Annual Debt Service of Subordinate Obligations which constitute Synthetic Fixed Rate Debt, the interest payable thereon will, if the Department elects, be that rate payable by the Department as provided for by the terms of the Swap or the net interest rate payable by the Department pursuant to offsetting indices, as applicable, or if the Department does not elect such rate, then it will be deemed to be the fixed interest rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the Department, or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under the Master Subordinate Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes;

(ii) for purposes of computing the Subordinate Aggregate Annual Debt Service of Subordinate Obligations with respect to which a Swap has been entered into whereby the Department has agreed to pay the floating variable rate thereunder, no fixed interest rate amounts payable on the Subordinate Obligations to which such Swap pertains will be included in the calculation of Subordinate Aggregate Annual Debt Service, and the interest rate with respect to such Subordinate Obligations will be the sum of that rate as determined in accordance with subsection (e) relating to Variable Rate Indebtedness plus the difference between the interest rate on the Subordinate Designated Debt and the rate received from the Swap Provider;

(iii) for purposes of computing the Subordinate Aggregate Annual Debt Service of Subordinate Obligations with respect to which a Swap in the form of an "interest rate cap" (or a similarly structured financial arrangement) has been entered into by the Department, the interest payable thereon will be the lower of (A) the effective capped rate provided by the terms of the Swap and (B) the fixed interest rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the Department or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under the Master Subordinate Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes;"

(i) with respect to any Subordinate Commercial Paper Program which has been Implemented and not then terminated or with respect to any Subordinate Commercial Paper Program then proposed to be Implemented, the principal and interest thereon will be calculated as if the entire Subordinate Authorized Amount of such Implemented Subordinate Commercial Paper Program were to be amortized over a term of 30 years commencing in the year in which such Subordinate Commercial Paper Program is Implemented and with substantially level annual debt service payments; the interest rate used for such computation will be that rate quoted in The Bond Buyer 25 Revenue Bond Index, or such successor or replacement index, for the last week of the month preceding the date of calculation as published by The Bond Buyer, or if that index is no longer published, another similar index selected by the Department, or if the Department fails to select a replacement index, that rate determined by a Consultant to be a reasonable market rate for fixed-rate Subordinate Obligations of a corresponding term issued under the Subordinate Indenture on the date of such calculation, with no credit enhancement and taking into consideration whether such Subordinate Obligations bear interest which is or is not excluded from gross income for federal income tax purposes;

(j) if moneys, Subordinate Permitted Investments or any other amounts not included in Subordinate Pledged Revenues have been used to pay or have been irrevocably deposited with and are held by the Subordinate Trustee or another fiduciary to pay or Subordinate Capitalized Interest has been set aside exclusively to be used to pay principal and/or interest on specified Subordinate Obligations, then the principal and/or interest to be paid from such moneys, Subordinate Permitted Investments, other amounts not included in Subordinate Pledged Revenues or Subordinate Capitalized Interest or from the earnings thereon will be disregarded and not included in calculating Subordinate Aggregate Annual Debt Service; and;

(k) if Passenger Facility Charges, Customer Facility Charges, state and/or federal grants or other moneys not included in Subordinate Pledged Revenues have been irrevocably committed or are held by the Subordinate Trustee or another fiduciary and are to be set aside exclusively to be used to pay principal and/or interest on specified Subordinate Obligations, then the principal and/or interest to be paid from such Passenger Facility Charges, Customer Facility Charges, state and/or federal grants or other moneys not included in Subordinate Pledged Revenues or from earnings thereon will be disregarded (unless such Passenger Facility Charges, Customer Facility Charges, state and/or federal grants or other moneys are included in Pledged Revenues) and not included in calculating Subordinate Aggregate Annual Debt Service.

*“Subordinate Aggregate Annual Debt Service For Reserve Requirement”* means the computation of Subordinate Aggregate Annual Debt Service for a Subordinate Debt Service Reserve Fund with respect to all Outstanding Subordinate Obligations participating in an identified Subordinate Debt Service Reserve Fund in the then current or any future Fiscal Year, with such modifications in the assumptions thereof as is described in this definition. For purposes of determining the Subordinate Aggregate Annual Debt Service For Reserve Requirement for the respective Subordinate Debt Service Reserve Fund, for a Series of Subordinate Obligations, the annual debt service with respect to any Variable Rate Indebtedness will, upon the issuance of such Series participating in a Subordinate Debt Service Reserve Fund, be calculated on the basis of the assumptions set forth in subsection (e) of the definition of Subordinate Aggregate Annual Debt Service, and the amount so determined will not require adjustment thereafter except as appropriate to reflect reductions in the outstanding principal amount of such Series. For purposes of the Subordinate Aggregate Annual Debt Service For Reserve Requirement, the annual debt service requirements assumed at the time of issuance of a Series of Subordinate Obligations containing Balloon Indebtedness or Subordinate Tender Indebtedness will not, with respect to such Series, require subsequent increases.

*“Subordinate Annual Debt Service”* means, with respect to any Subordinate Obligation, the aggregate amount of principal and interest becoming due and payable during any Fiscal Year, and if a Subordinate Qualified Swap is in effect for such Subordinate Obligation, plus the amount payable by the Department (or the Subordinate Trustee) under the Subordinate Qualified Swap in accordance with the terms thereof, less any amount to be received by the Department from the Subordinate Qualified Swap Provider pursuant to the Subordinate Qualified Swap, calculated using the principles and assumptions set forth in the definition of Subordinate Aggregate Annual Debt Service. Principal of and/or interest on Subordinate Obligations paid during any Fiscal Year with Passenger Facility Charges, Customer Facility Charges, state and/or federal grants, Subordinate Capitalized Interest or other moneys not included in Subordinate Pledged Revenues, or from earnings thereon, will be disregarded (unless such Passenger

Facility Charges, Customer Facility Charges, state and/or federal grants, Subordinate Capitalized Interest or other moneys are included in Pledged Revenues) and not included in calculating Subordinate Annual Debt Service

*“Subordinate Authorized Amount”* means, when used with respect to Subordinate Obligations, including Subordinate Program Obligations, the maximum Subordinate Principal Amount of Subordinate Obligations which is then authorized by a resolution or Supplemental Subordinate Indenture adopted by the Board pursuant to the Master Subordinate Indenture to be Outstanding at any one time under the terms of such Subordinate Program or Supplemental Subordinate Indenture. If the maximum Subordinate Principal Amount of Subordinate Obligations or Subordinate Program Obligations authorized by a preliminary resolution or form of Supplemental Subordinate Indenture approved by the Board pursuant to the Master Subordinate Indenture exceeds the maximum Subordinate Principal Amount of Subordinate Obligations set forth in the final resolution of sale adopted by the Board or in the definitive Supplemental Subordinate Indenture executed and delivered by the Department pursuant to which such Subordinate Obligations are issued or such Subordinate Program is established, the Subordinate Principal Amount of such Subordinate Obligations or Subordinate Program Obligations as is set forth in said final resolution of sale or in the definitive Supplemental Subordinate Indenture as executed and delivered by the Department will be deemed to be the “Subordinate Authorized Amount.” Notwithstanding the provisions of this definition of “Subordinate Authorized Amount,” in connection with the issuance of additional Subordinate Obligations and the calculation of Subordinate Maximum Aggregate Annual Debt Service and Subordinate Aggregate Annual Debt Service with respect to a Subordinate Commercial Paper Program, “Subordinate Authorized Amount” means the total amount available (utilized and unutilized, if applicable) under a Credit Facility entered into with respect to such Subordinate Commercial Paper Program and the total amount of Commercial Paper Notes that may be issued pursuant to an Unenhanced Subordinate Commercial Paper Program.

*“Subordinate Capitalized Interest”* means proceeds of Subordinate Obligations or other moneys not included in Subordinate Pledged Revenue that are deposited with the Subordinate Trustee in a Subordinate Debt Service Fund as will be described in a Supplemental Subordinate Indenture upon issuance of such Subordinate Obligations that are to be used to pay interest on Subordinate Obligations.

*“Subordinate Commercial Paper Notes”* means the commercial paper notes issued on parity with the other Subordinate Obligations from time to time under the terms of the Subordinate Indenture, designated the “Department of Airports of the City of Los Angeles, California, Los Angeles International Airport, Subordinate Revenue Commercial Paper Notes, Series A (Governmental – Non-AMT), Series B (Private Activity - AMT), Series C (Federally Taxable) and Series D (Private Activity – Non-AMT),” which may be issued from time to time pursuant to the Subordinate Indenture in an aggregate principal amount not to exceed \$500,000,000 at any one time.

*“Subordinate Commercial Paper Program”* means a Subordinate Program authorized by the Board pursuant to which Commercial Paper will be issued and reissued from time to time, up to the Authorized Amount of such Subordinate Program.

*“Subordinate Construction Fund”* means any of the Subordinate Construction Funds authorized to be created as provided by the Master Subordinate Indenture.

*“Subordinate Debt Service Fund”* or *“Subordinate Debt Service Funds”* means a Subordinate Debt Service Fund or any of the Subordinate Debt Service Funds required to be created as provided in the Master Subordinate Indenture.

*“Subordinate Debt Service Reserve Fund”* means any Subordinate Debt Service Reserve Fund created by the Department pursuant to a Supplemental Subordinate Indenture in connection with the issuance of any Series of Subordinate Obligations and that is required to be funded for the purpose of providing additional security for such Series of Subordinate Obligations and under certain circumstances to provide additional security for such other designated Series of Subordinate Obligations issued pursuant to the terms of the Master Subordinate Indenture and as specified in any Supplemental Subordinate Indenture.

*“Subordinate Debt Service Reserve Fund Surety Policy”* means an insurance policy or surety bond, or a letter of credit, deposited with the Subordinate Trustee for the credit of the Subordinate Debt Service Reserve Fund created for one or more Series of Outstanding Subordinate Obligations in lieu of or partial substitution for cash or securities on deposit therein. Except as otherwise provided in a Supplemental Subordinate Indenture, the entity providing such Subordinate Debt Service Reserve Fund Surety Policy will be rated, at the time such instrument is provided, in one of the two highest long-term Rating Categories by one or more of the Rating Agencies.

*“Subordinate Designated Debt”* means a specific indebtedness designated by the Department in which such debt will be offset with a Swap, such specific indebtedness to include all or any part of a Series or multiple Series of Subordinate Obligations.

*“Subordinated Obligation”* means any bond, note or other debt instrument issued or otherwise entered into by the Department which ranks junior and subordinate to the Senior Bonds and which may be paid from moneys constituting Pledged Revenues only if all LAX Maintenance and Operations Expenses and amounts of principal and interest which have become due and payable on the Senior Bonds whether by maturity, redemption or acceleration have been paid in full and the Department is current on all payments, if any, required to be made to replenish the Senior Reserve Fund and any Senior Debt Service Reserve Fund. *“Subordinated Obligations”* are not Senior Bonds for purposes of the Master Senior Indenture; provided, however, that the Department may henceforth by Supplemental Senior Indenture elect to have the provisions of the Master Senior Indenture applicable to the Senior Bonds apply to the Subordinated Obligations issued thereunder, except that such Subordinated Obligations will be secured on a junior and subordinate basis to the Senior Bonds from the Net Pledged Revenues. No bond, note or other instrument of indebtedness will be deemed to be a *“Subordinated Obligation”* for purposes of the Master Senior Indenture and payable on a subordinated basis from Net Pledged Revenues unless specifically designated by the Department as a *“Subordinated Obligation”* in a Supplemental Senior Indenture or other written instrument. In connection with any Subordinated Obligation with respect to which a Swap is in effect or proposes to be in, the term *“Subordinated Obligation”* includes, collectively, both such Subordinated Obligation and either such Swap or the obligations of the Department under each such Swap, as the context requires. The term *“Subordinated Obligations”* also includes a Swap or the obligations of the Department under such Swap which has been entered into in connection with a Subordinated Obligation, as the context requires, although none of the Subordinated Obligations with respect to which such Swap was entered into remain outstanding. The term *“Subordinated Obligation”* includes any Senior Swap Termination Payment under a Senior Qualified Swap with respect to any Senior Bonds payable on parity with Subordinated Obligations.

*“Subordinate Event of Default”* means any occurrence or event specified as a “Subordinate Event of Default” in the Subordinate Indenture. See APPENDIX B-5—“SUMMARY OF THE MASTER SUBORDINATE INDENTURE—Subordinate Events of Default and Remedies” below.

*“Subordinate Indenture”* means the Master Subordinate Indenture, together with all Supplemental Subordinate Indentures.

*“Subordinate Investment Agreement”* means an investment agreement or guaranteed investment contract (a) with or guaranteed by a national or state chartered bank or savings and loan, an insurance company or other financial institution whose unsecured debt is rated in the highest short-term Rating Category (if the term of the Subordinate Investment Agreement is less than three years) or in either of the two highest long-term Rating Categories (if the term of the Subordinate Investment Agreement is three years or longer) by one or more of the Rating Agencies, or (b) which investment agreement or guaranteed investment contract is fully secured by obligations described in items (a) and (b) of the definition of Subordinate Permitted Investments which are (i) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to 103% of the principal amount of the investment, together with the interest accrued and unpaid thereon, (ii) held by the Subordinate Trustee (who will not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Subordinate Trustee, (iii) subject to a perfected first lien on behalf of the Subordinate Trustee, and (iv) free and clear from all third-party liens.

*“Subordinate Maximum Aggregate Annual Debt Service”* means the maximum amount of Subordinate Aggregate Annual Debt Service with respect to all Subordinate Obligations, Unissued Subordinate Program Obligations, and the Subordinate Authorized Amount of all Subordinate Obligations then proposed to be issued in the then current or any future Fiscal Year.

*“Subordinate Maximum Aggregate Annual Debt Service For Reserve Requirement”* means the computation of Subordinate Maximum Aggregate Annual Debt Service for a Subordinate Debt Service Reserve Fund with respect to all Outstanding Subordinate Obligations participating in an identified Subordinate Debt Service Reserve Fund in the then current or any future Fiscal Year, with such modifications in the assumptions thereof as is described in this definition. For purposes of determining the Subordinate Maximum Aggregate Annual Debt Service For Reserve Requirement for the respective Subordinate Debt Service Reserve Fund, for a Series of Subordinate Obligations the annual debt service with respect to any Variable Rate Indebtedness will, upon the issuance of such Series participating in an identified Subordinate Debt Service Reserve Fund, be calculated on the

basis of the assumptions set forth in subsection (e) of the definition of Subordinate Aggregate Annual Debt Service, and the amount so determined will not require adjustment thereafter except as appropriate to reflect reductions in the outstanding principal amount of such Series. For purposes of the Subordinate Maximum Aggregate Annual Debt Service For Reserve Requirement, the annual debt service requirements assumed at the time of issuance of a Series of Subordinate Obligations containing Balloon Indebtedness or Subordinate Tender Indebtedness will not, with respect to such Series, require subsequent increases.

*“Subordinate Notes”* means Subordinate Obligations issued under the provisions of the Master Subordinate Indenture which have a maturity of one year or less from their original date of issue and which are not part of a Subordinate Commercial Paper Program.

*“Subordinate Obligation”* or *“Subordinate Obligations”* means any debt obligation of the Department issued as a taxable or tax-exempt obligation under and in accordance with the provisions of the Master Subordinate Indenture, including, but not limited to, bonds, notes, bond anticipation notes, commercial paper and other instruments creating an indebtedness of the Department, and obligations incurred through lease or installment purchase agreements or other agreements or certificates of participation therein and Subordinate Repayment Obligations to the extent provided in the Master Subordinate Indenture. The terms *“Subordinate Obligation”* and *“Subordinate Obligations”* do not include any Third Lien Obligation; provided, however, the Department may provide in a Supplemental Subordinate Indenture that Third Lien Obligations may be issued thenceforth pursuant to the Master Subordinate Indenture having the terms applicable to the Subordinate Obligations, except that such Third Lien Obligations will be junior and subordinate in payment of such Third Lien Obligations from the Subordinate Pledged Revenues. The terms *“Subordinate Obligation”* and *“Subordinate Obligations”* include Subordinate Program Obligations.

*“Subordinate Paying Agent”* or *“Subordinate Paying Agents”* means, with respect to the Subordinate Obligations or any Series of Subordinate Obligations, the banks, trust companies or other financial institutions or other entities designated in a Supplemental Subordinate Indenture or a resolution of the Department as the place where such Subordinate Obligations will be payable.

*“Subordinate Permitted Investments”* means to the extent permitted to be invested by the Department by applicable law, the Charter and investment policy of the City, any of the following:

- (a) Government Obligations;
- (b) obligations, debentures, notes or other evidences of indebtedness issued or guaranteed by any of the following instrumentalities or agencies of the United States of America: Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Financing Bank; Government National Mortgage Association; Federal National Mortgage Association; Student Loan Marketing Association; Federal Farm Credit Bureau; Farmers Home Administration; Federal Home Loan Mortgage Corporation; and Federal Housing Administration;
- (c) direct and general long-term obligations of any state, which obligations are rated in either of the two highest Rating Categories by two or more Rating Agencies;
- (d) direct and general short-term obligations of any state, which obligations are rated in the highest Rating Category by two or more Rating Agencies;
- (e) interest-bearing demand or time deposits (including certificates of deposit) or interests in money market portfolios issued by state banks or trust companies or national banking associations that are members of the Federal Deposit Insurance Corporation (“FDIC”) or by savings and loan associations that are members of the FDIC, which deposits or interests must either be (i) continuously and fully insured by FDIC and with banks that are rated in (y) the highest short-term Rating Category by two or more Rating Agencies or (z) either of the two highest long-term Rating Categories by two or more Rating Agencies or (ii) fully secured by obligations described in items (a) or (b) of this definition of Subordinate Permitted Investments which are (A) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to the principal amount of the investment, (B) held by the Subordinate Trustee (who may not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Subordinate Trustee, (C) subject to a perfected first lien in favor of the Subordinate Trustee, and (D) free and clear from all third party liens;

(f) long-term or medium-term corporate debt guaranteed by any corporation that is rated by two or more Rating Agencies in either of the two highest Rating Categories;

(g) repurchase agreements which are (i) entered into with banks or trust companies organized under state law, national banking associations, insurance companies or government bond dealers reporting to, trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York and which either are members of the Security Investors Protection Corporation or with a dealer or parent holding company that has an investment grade rating from two or more of the Rating Agencies; and (ii) fully secured by investments specified in items (a) or (b) of this definition of Subordinate Permitted Investments which are (A) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at least equal to the amount invested in the repurchase agreements; (B) held by the Subordinate Trustee (who may not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Subordinate Trustee; (C) subject to a perfected first lien in favor of the Subordinate Trustee; and (D) free and clear from all third-party liens;

(h) prime commercial paper of a United States corporation, finance company or banking institution rated in the highest short-term Rating Category by two or more Rating Agencies;

(i) shares of a diversified open-end management investment company (as defined in the Investment Company Act of 1940, as amended) or shares in a regulated investment company (as defined in Section 851(a) of the Code) that is (i) a money market fund that has been rated in one of the two highest Rating Categories by one or more of the Rating Agencies, or (ii) a money market fund or account of the Subordinate Trustee or any state or federal bank that is rated in (A) the highest short-term Rating Category by two or more Rating Agencies or (B) either of the two highest long-term Rating Categories by two or more Rating Agencies, or whose own bank holding company parent is rated in (y) the highest short-term Rating Category by two or more Rating Agencies or (z) either of the two highest long-term Rating Categories by two or more Rating Agencies, or that has a combined capital and surplus of not less than \$50,000,000;

(j) Investment Agreements; and

(k) any other type of investment consistent with City policy in which the Department directs the Subordinate Trustee to invest; provided that there is delivered to the Subordinate Trustee a certificate of an Authorized Representative stating that each of the Rating Agencies then maintaining a rating on the Subordinate Obligations has been informed of the proposal to invest in such investment.

*“Subordinate Pledged Revenues”* means for any given period, the Pledged Revenues for such period less, for such period, the LAX Maintenance and Operation Expenses, less, for such period, the Senior Aggregate Annual Debt Service or the Senior Annual Debt Service, as applicable, on the Outstanding Senior Bonds, less, for such period, deposits to any reserve fund or account required pursuant to Senior Indenture as described under the paragraph labeled THIRD under the caption APPENDIX B-4—“SUMMARY OF THE MASTER SENIOR INDENTURE—Withdrawals from LAX Revenue Account.”

*“Subordinate Principal Amount”* or *“Subordinate principal amount”* means, as of any date of calculation, (a) with respect to any Capital Appreciation Subordinate Obligations, the Accreted Value thereof (the difference between the stated amount to be paid at maturity and the Accreted Value being deemed unearned interest), (b) with respect to any Original Issue Discount Subordinate Obligations, the Accreted Value thereof, unless the Supplemental Subordinate Indenture under which such Subordinate Obligation was issued will specify a different amount, in which case, the terms of the Supplemental Subordinate Indenture will control, and (c) with respect to any other Subordinate Obligations, the principal amount of such Subordinate Obligation payable at maturity.

*“Subordinate Program”* means a financing program identified in a Supplemental Subordinate Indenture, including but not limited to a Subordinate Commercial Paper Program, (a) which is authorized and the terms thereof approved by a resolution adopted by the Board and the items required under the Master Subordinate Indenture have been filed with the Subordinate Trustee, (b) wherein the Board has authorized the issuance, from time to time, of notes, bonds, commercial paper or other indebtedness in a Subordinate Authorized Amount, and (c) the Subordinate Authorized Amount of which has met the additional bonds test set forth in the Master Subordinate Indenture and the Outstanding amount of which may vary from time to time, but not exceed the Subordinate Authorized Amount.

*“Subordinate Program Obligations”* means Subordinate Obligations issued and Outstanding pursuant to a Subordinate Program, other than Unissued Subordinate Program Obligations.

*“Subordinate Qualified Swap”* means any Swap (a) whose Subordinate Designated Debt is all or part of a particular Series of Subordinate Obligations; (b) whose Swap Provider is a Subordinate Qualified Swap Provider or has been a Subordinate Qualified Swap Provider within the 60 day period preceding the date on which the calculation of Subordinate Annual Debt Service or Subordinate Aggregate Annual Debt Service is being made; (c) which has a term not greater than the term of the Subordinate Designated Debt or to a specified mandatory tender or redemption of such Subordinate Designated Debt; (d) which has been designated in writing to the Subordinate Trustee by the Department as a Subordinate Qualified Swap with respect to such Subordinate Obligations; and (e) which has been approved by S&P, if S&P has an outstanding rating on any Subordinate Obligations, and Moody’s, if Moody’s has an outstanding rating on the Subordinate Obligations.

*“Subordinate Qualified Swap Provider”* means a financial institution (a) whose senior long-term debt obligations, or whose obligations under any Subordinate Qualified Swap are guaranteed by a financial institution, or subsidiary of a financial institution, whose senior long-term debt obligations, are rated at least “Aa,” in the case of Moody’s and “AA,” in the case of S&P, or the equivalent thereto in the case of any successor thereto, or (b) whose obligations under a Subordinate Qualified Swap are fully secured by obligations described in items (a) or (b) of the definition of Subordinate Permitted Investments which are (i) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to 105% of the principal amount of the investment, together with the interest accrued and unpaid thereon, (ii) held by the Subordinate Trustee (who will not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Subordinate Trustee, (iii) subject to a perfected first lien on behalf of the Subordinate Trustee, and (iv) free and clear from all third-party liens.

*“Subordinate Registrar”* means, with respect to the Subordinate Obligation or any Series of Subordinate Obligations, the bank, trust company or other entity designated in a Supplemental Subordinate Indenture or a resolution of the Board to perform the function of Subordinate Registrar under the Master Subordinate Indenture or any Supplemental Subordinate Indenture, and which bank, trust company or other entity has accepted the position in accordance with the Master Subordinate Indenture.

*“Subordinate Repayment Obligations”* means an obligation arising under a written agreement of the Department and a Credit Provider pursuant to which the Department agrees to reimburse the Credit Provider for amounts paid through a Credit Facility to be used to pay debt service on any Subordinate Obligations and all other amounts due and owing to a Credit Provider under a Credit Facility, or an obligation arising under a written agreement of the Department and a Liquidity Provider pursuant to which the Department agrees to reimburse the Liquidity Provider for amounts paid through a Liquidity Facility to be used to purchase Subordinate Obligations and all other amounts due and owing to a Liquidity Provider under a Liquidity Facility.

*“Subordinate Reserve Fund”* means the Subordinate Debt Service Reserve Fund of such designation created under the Fourth Supplemental Subordinate Indenture as security for any Subordinate Obligations which may participate in the Subordinate Reserve Fund as provided in Fourth Supplemental Subordinate Indenture.

*“Subordinate Reserve Requirement”* means an amount equal to the least of (a) Subordinate Maximum Aggregate Annual Debt Service for Reserve Requirement for all Subordinate Obligations participating in the Subordinate Reserve Fund, (b) 10% of the principal amount of the Subordinate Obligations that have been issued and are participating in the Subordinate Reserve Fund, less the amount of original issue discount with respect to such Subordinate Obligations if such original issue discount exceeded 2% on such Subordinate Obligations at the time of their original sale, and (c) 125% of the average Subordinate Aggregate Annual Debt Service for Reserve Requirement for all Subordinate Obligations participating in the Subordinate Reserve Fund.

*“Subordinate Swap Termination Payment”* means an amount payable by the Department or a Qualified Swap Provider, in accordance with a Subordinate Qualified Swap, to compensate the other party to the Subordinate Qualified Swap for any losses and costs that such other party may incur as a result of an event of default or the early termination of the obligations, in whole or in part, of the parties under such Subordinate Qualified Swap.

*“Subordinate Tender Indebtedness”* means any Subordinate Obligations or portions of Subordinate Obligations a feature of which is an option and/or an obligation on the part of the holders, under the terms of such Subordinate Obligations, to tender all or a portion of such Subordinate Obligations to the Department, the Subordinate Trustee, the Subordinate Paying Agent or other fiduciary or agent or Credit Provider for payment or



purchase and requiring that such Subordinate Obligations or portions of Subordinate Obligations be purchased if properly presented.

“*Subordinate Trustee*” means U.S. Bank National Association, also known as U.S. Bank, N.A., until a successor replaces it and, thereafter, means such successor

“*Supplemental Senior Indenture*” means any document supplementing or amending the Master Subordinate Indenture or providing for the issuance of Senior Bonds and entered into as provided in the Master Senior Indenture.

“*Supplemental Subordinate Indenture*” means any document supplementing or amending the Master Subordinate Indenture or providing for the issuance of Subordinate Obligations and entered into as provided in the Master Subordinate Indenture.

“*Swap*” means any financial arrangement between the Department and a Swap Provider which provides that (a) each of the parties will pay to the other an amount or amounts calculated as if such amount were interest accruing during the term of the arrangement at a specified rate (whether fixed or a variable rate or measured against some other rate or index) on a Senior Designated Debt or a Subordinate Designated Debt, as the case may be, and payable from time to time or at a designated time or times (whether before, during or after the term of the arrangement); (b) if such amount is to be paid *before* it is deemed to have accrued, the amount paid will reflect the present value of such future amount (i.e., an upfront premium), while an amount to be paid *after* it is deemed to have accrued will reflect the time value of such funds; (c) payment dates and calculated accrual rates need not be the same for each payor, but to the extent payment dates coincide, the arrangement may (but need not) provide that one will pay to the other any net amount due under such arrangement. Swap will include, but not be limited to, (i) caps, floors and collars, (ii) forward rate, future rate, swap (such swap may be based on an amount equal either to the principal amount of such Senior Bonds or Subordinate Obligations as may be designated or a notional principal amount relating to all or a portion of the principal amount of such Senior Bonds or Subordinate Obligations, as applicable), asset, index, price or market-linked transactions or agreements, (iii) other exchange or rate protection transaction agreements, (iv) other similar transactions (however designated), or (v) any combination thereof, or any option with respect thereto, in each case executed by the Department for the purpose of moderating interest rate fluctuations, reducing debt service costs or creating either fixed interest rate Senior Bonds or fixed interest rate Subordinate Obligations, or Variable Rate Indebtedness on a synthetic basis or otherwise.

“*Swap Provider*” means a party to a Swap with the Department.

“*Synthetic Fixed Rate Debt*” means indebtedness issued by the Department which: (a) is combined, as Senior Designated Debt or Subordinate Designated Debt, as the case may be, with a Senior Qualified Swap or a Subordinate Qualified Swap, respectively, and creates, in the opinion of a Consultant, a substantially fixed-rate maturity or maturities for a term not exceeding such maturity or maturities, or (b) consisting of an arrangement in which two inversely related variable-rate securities are issued in equal principal amounts with interest based on off-setting indices resulting in a combined payment which is economically equivalent to a fixed rate.

“*Tax Compliance Certificate*” means the certificate of the Department prepared by Bond Counsel and delivered by the Department at the time of issuance and delivery of any Series or Senior Bonds or Subordinate Obligations, as the case may be, the interest on which is excluded from gross income for federal income tax purposes pursuant to a favorable opinion of such Bond Counsel, making certifications and representations of the Department as to the status of such Senior Bonds or Subordinate Obligations, as the case may be, under the Code.

“*Term Senior Bonds*” means Senior Bonds of a series which are payable on or before their specified maturity dates from sinking installment payments established pursuant to the Supplemental Senior Indenture for such series for that purpose and calculated to retire the Senior Bonds on or before their specified maturity dates.

“*Term Subordinate Obligations*” means Subordinate Obligations of a Series which are payable on or before their specified maturity dates from sinking installment payments established pursuant to the Supplemental Subordinate Indenture for such Series for that purpose and calculated to retire the Subordinate Obligations on or before their specified maturity dates.

“*Third Lien Obligation*” means any bond, note or other debt instrument issued or otherwise entered into by the Board which ranks junior and subordinate to the Senior Bonds and the Subordinated Obligations and which may be paid from moneys constituting Pledged Revenues only if all LAX Maintenance and Operation Expenses and amounts of principal and interest which have become due and payable on the Senior Bonds and the Subordinated Obligations whether by maturity, redemption or acceleration have been paid in full and the Board is current on all

payments, if any, required to be made to replenish the Senior Reserve Fund, any Senior Debt Service Reserve Fund and any debt service reserve fund(s) established for the Subordinated Obligations. “*Third Lien Obligations*” are not Senior Bonds for purposes of the Master Senior Indenture; provided, however, that the Board may henceforth by Supplemental Senior Indenture elect to have the provisions of the Master Senior Indenture applicable to the Senior Bonds apply to the Third Lien Obligations issued thereunder, except that such Third Lien Obligations will be secured on a junior and subordinate basis to the Senior Bonds and the Subordinated Obligations from the Net Pledged Revenues. No bond, note or other instrument of indebtedness will be deemed to be a “*Third Lien Obligation*” for purposes of the Master Senior Indenture and payable on a subordinated basis from Net Pledged Revenues unless specifically designated by the Board as a “*Third Lien Obligation*” in a Supplemental Senior Indenture or other written instrument. In connection with any Third Lien Obligation with respect to which a Swap is in effect or proposes to be in effect, the term “*Third Lien Obligation*” includes, collectively, both such Third Lien Obligation and either such Swap or the obligations of the Board under each such Swap, as the context requires. The term “*Third Lien Obligations*” also includes a Swap or the obligations of the Board under such Swap which has been entered into in connection with a Third Lien Obligation, as the context requires, although none of the Third Lien Obligations with respect to which such Swap was entered into remain outstanding. The term “*Third Lien Obligation*” includes any Senior Swap Termination Payment under a Senior Qualified Swap with respect to any Senior Bonds or Subordinated Obligations payable on parity with Third Lien Obligations.

“*Transfer*” means for any Fiscal Year the amount of unencumbered funds on deposit or anticipated to be on deposit, as the case may be, on the first day of such Fiscal Year in the LAX Revenue Account (after all deposits and payments required by paragraphs FIRST through NINTH described under the caption APPENDIX B-4—“SUMMARY OF THE MASTER SENIOR INDENTURE—Withdrawals from LAX Revenue Account” have been made as of the last day of the immediately preceding Fiscal Year).

“*Treasurer*” means the Treasurer of the City as set forth in the Charter.

“*Unenhanced Senior Commercial Paper Program*” will be a Senior Commercial Paper Program that is authorized to be issued without the support of a Credit Facility, provided such Senior Commercial Paper Program has received at least an investment grade short-term rating from two or more of the Rating Agencies.

“*Unenhanced Subordinate Commercial Paper Program*” will be a Subordinate Commercial Paper Program that is authorized to be issued without the support of a Credit Facility, provided such Subordinate Commercial Paper Program has received at least an investment grade short-term rating from two or more of the Rating Agencies.

“*Unissued Senior Program Bonds*” means the bonds, notes or other indebtedness authorized to be issued pursuant to a Senior Program and payable from Net Pledged Revenues, issuable in an amount up to the Senior Authorized Amount relating to such Senior Program, which have been approved for issuance by the Department pursuant to a resolution adopted by the Board and with respect to which Senior Program the items required pursuant to the Master Senior Indenture have been filed with the Senior Trustee but which have not yet been authenticated and delivered pursuant to the Senior Program documents.

“*Unissued Subordinate Program Obligations*” means the bonds, notes or other indebtedness authorized to be issued pursuant to a Subordinate Program and payable from Subordinate Pledged Revenues, issuable in an amount up to the Subordinate Authorized Amount relating to such Subordinate Program, which have been approved for issuance by the Department pursuant to a resolution adopted by the Board and with respect to which Subordinate Program the items required pursuant to the Master Subordinate Indenture have been filed with the Subordinate Trustee but which have not yet been authenticated and delivered pursuant to the Subordinate Program documents.

“*United States Bankruptcy Code*” means Title 11 U.S.C., Section 101 et seq., as amended or supplemented from time to time, or any successor federal act.

“*United States Obligations*” means direct and general obligations of the United States of America, or obligations that are unconditionally guaranteed as to principal and interest by the United States of America, including, with respect only to direct and general obligations and not to guaranteed obligations, evidences of ownership of proportionate interests in future interest and/or principal payments of such obligations, provided that investments in such proportionate interests must be limited to circumstances wherein: (1) a bank or trust company acts as custodian and holds the underlying United States Obligations; (2) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying United States Obligations; and (3) the underlying United States Obligations are held in a special account separate from the custodian’s general assets and are not available to satisfy any claim of the custodian, any person claiming through

the custodian or any person to whom the custodian may be obligated. “*United States Obligations*” will include any stripped interest or principal portion of United States Treasury securities and any stripped interest portion of Resolution Funding Corporation securities.

“*Variable Rate Indebtedness*” means any Senior Bond, Senior Bonds, Subordinate Obligation or Subordinate Obligations the interest rate on which is not, at the time in question, fixed to maturity, excluding any commercial paper program.

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## **APPENDIX B-4**

### **SUMMARY OF THE MASTER SENIOR INDENTURE**

In addition to certain information contained under the caption “SECURITY AND SOURCES OF PAYMENT FOR THE SENIOR BONDS, THE SUBORDINATE OBLIGATIONS AND THE THIRD LIEN OBLIGATIONS” in the forepart of this Appendix B-1, the following is a summary of certain provisions of the Master Senior Indenture. Such summary is only a brief description of limited provisions of such document and is qualified in its entirety by reference to the full text of the Master Senior Indenture.

#### **Grant to Secure Senior Bonds; Pledge of Net Pledged Revenues**

To secure the payment of the interest, principal and premium, if any, on the Senior Bonds and the performance and observance by the Department of all the covenants, agreements and conditions expressed or implied in the Master Senior Indenture or contained in the Senior Bonds, the Department has pledged and assigned to the Senior Trustee and granted to the Senior Trustee a lien on and security interest in all right, title and interest of the Department in and to all of the following and provides that such lien and security interest will be prior in right to any other pledge, lien or security interest created by the Department in the following: (a) the Net Pledged Revenues, (b) all moneys and securities (excluding moneys and securities on deposit in any Rebate Fund) held from time to time by the Senior Trustee under the Master Senior Indenture, moneys and securities held in the Senior Reserve Fund or any Senior Debt Service Reserve Fund and any Senior Reserve Fund Surety Policy or Senior Debt Service Reserve Fund Surety Policy, provided at any time in satisfaction of all or a portion of the Senior Reserve Requirement, and to the extent provided in any Supplemental Senior Indenture moneys and securities held in any Senior Construction Fund whether or not held by the Senior Trustee, (c) earnings on amounts included in provisions (a) and (b) above (except to the extent excluded from the definition of “Pledged Revenues”), and (d) any and all other funds, assets, rights, property or interests therein, of every kind or description which may from time to time hereafter, by delivery or by writing of any kind, be sold, transferred, conveyed, assigned, pledged, mortgaged, granted or delivered to or deposited with the Senior Trustee as additional security hereunder, for the equal and proportionate benefit and security of all Senior Bonds, all of which, regardless of the time or times of their authentication and delivery or maturity, will, with respect to the security provided by this Granting Clause, be of equal rank without preference, priority or distinction as to any Senior Bond over any other Senior Bond or Senior Bonds, except as to the timing of payment of the Senior Bonds. Any security or Credit Facility provided for specific Senior Bonds or a specific Series of Senior Bonds may, as provided by Supplemental Senior Indenture, secure only such specific Senior Bonds or Series of Senior Bonds and, therefore, will not be included as security for all Senior Bonds under the Master Senior Indenture and moneys and securities held in trust as provided in the Master Senior Indenture exclusively for Senior Bonds which have become due and payable and moneys and securities which are held exclusively to pay Senior Bonds which are deemed to have been paid under the Master Senior Indenture will be held solely for the payment of such specific Senior Bonds.

#### **Additional Senior Bonds**

Additional Senior Bonds may be issued under the Master Senior Indenture on parity with the Outstanding Senior Bonds, provided, among other things, there is delivered to the Senior Trustee either:

- (a) a certificate, dated as of a date between the date of pricing of the proposed Additional Senior Bonds being issued and the date of delivery of such proposed Additional Senior Bonds (both dates inclusive), prepared by an Authorized Representative showing that the Net Pledged Revenues, together with any Transfer, for any 12 consecutive months out of the most recent 18 consecutive months immediately preceding the date of issuance of the proposed Additional Senior Bonds or preceding the first issuance of the proposed Senior Program Bonds were at least equal to 125% of Senior Maximum Aggregate Annual Debt Service with respect to all Outstanding Senior Bonds, Unissued Senior Program Bonds and the proposed Additional Senior Bonds, calculated as if the proposed Additional Senior Bonds and the full Senior Authorized Amount of such proposed Senior Program Bonds (as applicable) were then Outstanding; or
- (b) a certificate, dated as of a date between the date of pricing of the proposed Additional Senior Bonds being issued and the date of delivery of such proposed Additional Senior Bonds (both dates inclusive), prepared by a Consultant showing that:

(i) the Net Pledged Revenues, together with any Transfer, for the last audited Fiscal Year or for any 12 consecutive months out of the most recent 18 consecutive months immediately preceding the date of issuance of the proposed Additional Senior Bonds or the establishment of a Senior Program, were at least equal to 125% of the sum of the Senior Annual Debt Service due and payable with respect to all Outstanding Senior Bonds (not including the proposed Additional Senior Bonds or the proposed Senior Program Bonds) for such Fiscal Year or other applicable period; and

(ii) for the period from and including the first full Fiscal Year following the issuance of such proposed Additional Senior Bonds during which no interest on such Additional Senior Bonds is expected to be paid from the proceeds thereof through and including the later of (A) the fifth full Fiscal Year following the issuance of such Additional Senior Bonds, or (B) the third full Fiscal Year during which no interest on such Additional Senior Bonds is expected to be paid from the proceeds thereof, the estimated Net Pledged Revenues, together with any estimated Transfer, for each such Fiscal Year, will be at least equal to 125% of the Senior Aggregate Annual Debt Service for each such Fiscal Year with respect to all Outstanding Senior Bonds, Unissued Senior Program Bonds and the proposed Additional Senior Bonds (calculated as if the proposed Additional Senior Bonds and the full Senior Authorized Amount of such proposed Senior Program Bonds (as applicable) were then Outstanding).

For purposes of subparagraphs (a) and (b) above, the amount of any Transfer taken into account may not exceed 25% of the Senior Annual Debt Service or Senior Aggregate Annual Debt Service, as applicable, on the Outstanding Senior Bonds, Unissued Senior Program Bonds, the proposed Additional Senior Bonds and the full Senior Authorized Amount of such proposed Senior Program Bonds, as applicable, for such applicable Fiscal Year or such other applicable period.

For purposes of subsection (b)(ii) above, in estimating Net Pledged Revenues, the Consultant may take into account (1) Pledged Revenues from Specified LAX Projects or LAX Airport Facilities reasonably expected to become available during the period for which the estimates are provided, (2) any increase in fees, rates, charges, rentals or other sources of Pledged Revenues which have been approved by the Department and will be in effect during the period for which the estimates are provided and (3) any other increases in Pledged Revenues which the Consultant believes to be a reasonable assumption for such period. With respect to LAX Maintenance and Operation Expenses, the Consultant may use such assumptions as the Consultant believes to be reasonable, taking into account: (i) historical LAX Maintenance and Operation Expenses, (ii) LAX Maintenance and Operation Expenses associated with the Specified LAX Projects and any other new LAX Airport Facilities, and (iii) such other factors, including inflation and changing operations or policies of the Department, as the Consultant believes to be appropriate. The Consultant may include in the certificate or in a separate accompanying report a description of the assumptions used and the calculations made in determining the estimated Net Pledged Revenues and may also set forth the calculations of Senior Aggregate Annual Debt Service, which calculations may be based upon information provided by another Consultant.

For purposes of preparing the certificate or certificates described above, the Consultant or Consultants or the Authorized Representative may rely upon financial statements prepared by the Department which have not been subject to audit by an independent certified public accountant if audited financial statements for the Fiscal Year or period are not available; provided, however, that an Authorized Representative will certify as to their accuracy and that such financial statements were prepared substantially in accordance with generally accepted accounting principles, subject to year-end adjustments.

Neither of the certificates described above under subparagraphs (a) or (b) will be required if:

(1) the Senior Bonds being issued are for the purpose of refunding then Outstanding Senior Bonds and there is delivered to the Senior Trustee, instead, a certificate of an Authorized Representative showing that Senior Aggregate Annual Debt Service for each Fiscal Year after the issuance of the Refunding Senior Bonds will not exceed Senior Aggregate Annual Debt Service for each Fiscal Year prior to the issuance of such Refunding Senior Bonds;

(2) the Senior Bonds being issued constitute Senior Notes and there is delivered to the Senior Trustee, instead, a certificate prepared by an Authorized Representative showing that the principal amount of the proposed Senior Notes being issued, together with the principal amount of any Senior Notes then

Outstanding, does not exceed 10% of the Net Pledged Revenues for any 12 consecutive months out of the most recent 24 months immediately preceding the issuance of the proposed Senior Notes and there is delivered to the Senior Trustee a certificate of an Authorized Representative showing that for each of the Fiscal Years during which the Senior Notes will be Outstanding, and taking into account the debt service becoming due on such Senior Notes, the Department will be in compliance with the rate covenant under the Master Senior Indenture (as described above under “—Senior Rate Covenant” below); or

(3) if the Senior Bonds being issued are to pay costs of completing a Specified LAX Project for which Senior Bonds have previously been issued and the principal amount of such Senior Bonds being issued for completion purposes does not exceed an amount equal to 15% of the principal amount of the Senior Bonds originally issued for such Specified LAX Project and reasonably allocable to the Specified LAX Project to be completed as shown in a written certificate of an Authorized Representative and there is delivered to the Senior Trustee (i) a Consultant’s certificate stating that the nature and purpose of such Specified LAX Project has not materially changed and (ii) a certificate of an Authorized Representative to the effect that (A) all of the proceeds (including investment earnings on amounts in the Construction Fund allocable to such Specified LAX Project) of the original Senior Bonds issued to finance such Specified LAX Project have been or will be used to pay Costs of the Specified LAX Project, (B) the then estimated Costs of the Specified LAX Project exceed the sum of the Costs of the Specified LAX Project already paid plus moneys available in the Construction Fund established for the Specified LAX Project (including unspent proceeds of the Senior Bonds previously issued for such purpose), and (C) the proceeds to be received from the issuance of such Senior Bonds plus moneys available in the Construction Fund established for the Specified LAX Project (including unspent proceeds of the Senior Bonds previously issued for such purpose) will be sufficient to pay the remaining estimated Costs of the Specified LAX Project.

#### **Senior Repayment Obligations Afforded Status of Senior Bonds**

If a Credit Provider or Liquidity Provider makes payment of principal of and/or interest on a Senior Bond or advances funds to purchase or provide for the purchase of Senior Bonds and is entitled to reimbursement thereof, pursuant to a separate written agreement with the Department, but is not reimbursed, the Department’s Senior Repayment Obligation under such written agreement may, if so provided in the written agreement, be afforded the status of a Senior Bond issued under the Master Senior Indenture, and, if afforded such status, the Credit Provider or Liquidity Provider will be the Senior Bondholder and such Senior Bond will be deemed to have been issued at the time of the original Senior Bond for which the Credit Facility or Liquidity Facility was provided and will not be subject to the additional bonds test set forth in the Master Senior Indenture; provided, however, the payment terms of the Senior Bond held by the Credit Provider or Liquidity Provider will be as follows (unless otherwise provided in the Supplemental Senior Indenture pursuant to which the Senior Bonds are issued or in the agreement with the Credit Provider or Liquidity Provider): interest will be due and payable semiannually and principal will be due and payable not less frequently than annually and in such annual amounts as to amortize the principal amount thereof in (i) 30 years or, (ii)(a) if shorter, a term extending to the maturity date of the enhanced Senior Bonds or (b) if later, the final maturity of the Senior Repayment Obligation under the written agreement, and providing substantially level Senior Annual Debt Service payments, using the rate of interest set forth in the written repayment agreement which would apply to the Senior Repayment Obligation as of the date such amortization schedule is fixed. The principal amortized as described in the prior sentence will bear interest in accordance with the terms of the Senior Repayment Obligation. Any amount which comes due on the Senior Repayment Obligation by its terms and which is in excess of the amount treated as principal of and interest on a Senior Bond will be payable from Net Pledged Revenues on a basis subordinate to the payment and/or funding of the Senior Bonds and any reserve funds established with respect to the Senior Bonds. This provision will not defeat or alter the rights of subrogation which any Credit Provider or Liquidity Provider may have under law or under the terms of any Supplemental Senior Indenture. The Senior Trustee may conclusively rely on a written certification by the Credit Provider or Liquidity Provider of the amount of such non reimbursement and that such Senior Repayment Obligation is to be afforded the status of a Senior Bond under the Master Senior Indenture.

#### **Obligations Under Qualified Swap; Non-Qualified Swap**

The obligation of the Department to make Regularly Scheduled Swap Payments under a Senior Qualified Swap with respect to a Series of Senior Bonds may be on a parity with the obligation of the Department to make payments with respect to such Series of Senior Bonds and other Senior Bonds under the Master Senior Indenture,

except as otherwise provided by in the Master Senior Indenture or a Supplemental Senior Indenture with respect to any Senior Swap Termination Payments. The Department may provide in any Supplemental Senior Indenture that Regularly Scheduled Swap Payments under a Senior Qualified Swap will be secured by a pledge of or lien on the Net Pledged Revenues on a parity with the Senior Bonds of such Series and all other Senior Bonds, regardless of the principal amount, if any, of the Senior Bonds of such Series remaining Outstanding. The Senior Trustee will take all action consistent with the other provisions hereof as will be requested in writing by the Senior Qualified Swap Provider necessary to preserve and protect such pledge, lien and assignment and to enforce the obligations of the Department with respect thereto. In the event the action requested to be taken pursuant to the preceding sentence will require the Senior Trustee either to exercise the remedies granted in the Master Senior Indenture or to institute any action, suit or proceeding in its own name, the Senior Qualified Swap Provider will provide to the Senior Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred in connection therewith.

In the event that a Senior Swap Termination Payment or any other amounts other than as described in the previous paragraph are due and payable by the Department under a Senior Qualified Swap, such Senior Swap Termination Payment and any such other amounts will, unless otherwise provided in a Supplemental Senior Indenture, constitute an obligation of the Department payable from Pledged Revenues subordinate to its obligations to pay and/or fund LAX Maintenance and Operation Expenses, the Senior Bonds and any reserve funds established with respect to such Senior Bonds.

Obligations of the Department to make payments, including termination payments, under a Non-Qualified Swap will, unless otherwise provided in a Supplemental Senior Indenture, constitute an obligation of the Department payable from Pledged Revenues subordinate to its obligations to pay and/or fund LAX Maintenance and Operation Expenses, the Senior Bonds and any reserve funds established with respect to such Senior Bonds.

#### **Withdrawals from LAX Revenue Account**

(a) Subject to the provisions of the Master Senior Indenture, the Department will cause the Treasurer to separately account for all of the revenues and expenses of each airport under the jurisdiction of the Board and to deposit all the revenues for each individual airport within the Airport System which are received pursuant to the Charter, in its respective revenue account within the Airport Revenue Fund. The Department has covenanted and agreed that all LAX Revenues, when and as received by or on behalf of the Department, will be deposited by the Department in the LAX Revenue Account and will, immediately upon receipt thereof, become subject to the lien and pledge of the Master Senior Indenture. The Department has notified the Treasurer of the pledge of, lien on, and interest in LAX Revenues granted by the Master Senior Indenture and instructed the Treasurer that all such LAX Revenues, are to be accounted for separately and apart from all other revenues, funds, accounts or other resources of the Department or the City. If the Treasurer fails to comply with such instructions, the Department will separately account for all of the revenues and expenses of each airport under the jurisdiction of the Board.

Earnings on the various funds and accounts created under any Supplemental Senior Indenture will be deposited as provided in such Supplemental Senior Indenture, except that (i) during the continuation of a Senior Event of Default earnings on such funds and accounts will be deposited into the Senior Debt Service Funds created under the respective Supplemental Senior Indentures, (ii) earnings on the Senior Construction Funds may, if so provided by Supplemental Senior Indenture, be retained in such Senior Construction Fund, (iii) pursuant to the provisions of the Master Senior Indenture, earnings on the Senior Reserve Fund may be retained in such fund under the conditions therein described, and (iv) earnings on any Senior Debt Service Reserve Fund may, if so provided by Supplemental Senior Indenture, be retained in such fund.

The sums of Pledged Revenues required by the Master Senior Indenture to be so set aside out of the LAX Revenue Account into the specified accounts will be set aside out of said LAX Revenue Account and not out of any other funds or revenues of the Department or the City, except as expressly authorized or permitted by the Department or the City. An Authorized Representative will direct that such sums be set aside through transfers or payments made at such time and in such amounts as may be necessary to comply with the provisions of this section.

The provisions in the Master Senior Indenture regarding the use of the LAX Revenue Account and the establishment of certain accounts therein are made pursuant to Section 635 of the Charter and are intended to be in full compliance therewith and will be so construed.

(b) The amounts of Pledged Revenues credited to the LAX Revenue Account will first be applied as follows and in the order set forth:



FIRST To the payment of LAX Maintenance and Operation Expenses of the Airport System which are payable from LAX Revenues, which include payment to the City for services provided by it to LAX;

SECOND To the payment of amounts required to be deposited in the Senior Debt Service Funds as described in “—Deposits and Withdrawals from the Senior Debt Service Funds” below;

THIRD To the payment of amounts required to be deposited in the Senior Reserve Fund, pursuant to the Master Senior Indenture, or any Senior Debt Service Reserve Fund created pursuant to a Supplemental Senior Indenture;

FOURTH To the payment of debt service on any indebtedness (other than Outstanding Senior Bonds or Third Lien Obligations), including Subordinated Obligations, if any, but only to the extent a specific pledge of Pledged Revenues has been made in writing to the payment debt service on such indebtedness;

FIFTH To the payment of any reserve requirement for debt service for any indebtedness (other than Outstanding Senior Bonds or Third Lien Obligations), including Subordinated Obligations, if any, but only to the extent a specific pledge of Pledged Revenues has been made in writing to the payment of any such reserve requirement on such indebtedness (see APPENDIX B-4—“SUMMARY OF THE MASTER SUBORDINATE INDENTURE—Deposits and Withdrawals from the Subordinate Debt Service Funds”);

SIXTH To the payment of debt service on any indebtedness (other than Outstanding Senior Bonds or Subordinated Obligations), including Third Lien Obligations, if any, but only to the extent a specific pledge of Pledged Revenues has been made in writing to the payment of debt service on such indebtedness;

SEVENTH To the payment of any reserve requirement for debt service for any indebtedness (other than Outstanding Senior Bonds or Subordinated Obligations), including Third Lien Obligations, if any, but only to the extent a specific pledge of Pledged Revenues has been made in writing to the payment of any such reserve requirement on such indebtedness;

EIGHTH To the payment of the amounts required to be deposited in the LAX Maintenance and Operation Reserve Account which are payable from LAX Revenues as determined by the Department pursuant to the Master Senior Indenture;

NINTH To the payment of such amounts as are directed by the Department for discretionary purposes as authorized by the Charter which include capital projects, defraying the expenses of any pension or retirement system applicable to the employees of the Department, defraying the Maintenance and Operation Expenses of the Airport System, for reimbursement to another department or office of the City on account of services rendered, or materials, supplies or equipment furnished to support purposes of the Department and for any other lawful purpose of the Department, but only to the extent any such purposes relate to LAX.

With respect to the application of Pledged Revenues described in subparagraphs FIRST, EIGHTH and NINTH above, the Department need apply only such amount of Pledged Revenues pursuant to the provisions of such subparagraphs as is necessary, after taking into account all other moneys and revenues available to the Department for application for such purposes, to pay the amounts required by such subparagraphs.

Notwithstanding the provisions of the Master Senior Indenture, nothing in the Master Senior Indenture will preclude the Department from making the payments described in paragraphs FIRST through NINTH above from sources other than Pledged Revenues.

#### **Deposits and Withdrawals from the Senior Debt Service Funds**

***Deposits into the Senior Debt Service Funds.*** The Senior Trustee will, at least fifteen Business Days prior to each Payment Date on any Senior Bond, give the Department notice by telephone, promptly confirmed in writing, of the amount after taking into account Senior Capitalized Interest, if any, on deposit in the Senior Debt Service Funds, required to be deposited with the Senior Trustee to make each required payment of principal and interest due on such Payment Date. With respect to any Series of Senior Bonds, the Supplemental Senior Indenture under which such Senior Bonds are issued may provide for different times and methods of notifying the Department of payment

dates and amounts to accommodate the specific provisions of such Series and, in such event, the terms of such Supplemental Senior Indenture will control.

So long as any of the Senior Bonds are Outstanding, the Authorized Representative will deliver to the Treasurer, at least ten Business Days prior to each Payment Date, as to each Series of Senior Bonds Outstanding, a written demand authenticated by the signature of the Chief Financial Officer requesting that the Treasurer, not later than five Business Days prior to each Payment Date, transfer from the LAX Revenue Account to the Senior Trustee for deposit in the Senior Debt Service Funds established in respect of each Series of Outstanding Senior Bonds the full amount required to pay the principal of and/or interest on Senior Bonds of that Series due on such Payment Date.

On any day on which the Senior Trustee receives funds from the Treasurer to be used to pay principal of or interest on Senior Bonds, the Senior Trustee will, if the amount received is fully sufficient to pay all amounts of principal and interest then due or becoming due on the next Payment Date, deposit such amounts into the respective Senior Debt Service Funds for the Series of Senior Bonds for which such payments were made and any excess funds will be applied to pay all amounts of principal and interest becoming due on any subsequent Payment Dates. Notwithstanding any of the foregoing provisions of this paragraph, no amount need be transferred from the LAX Revenue Account or otherwise deposited into any Senior Debt Service Fund for any Series of Senior Bonds for the payment of principal or interest, respectively, if the amount already on deposit therein and available for such purpose is sufficient to pay in full the amount of principal and/or interest, respectively, coming due on such Senior Bonds on the next succeeding Payment Date.

The Department may provide in any Supplemental Senior Indenture that, as to any Series of Senior Bonds Outstanding, any amounts required to be transferred to and paid into a Senior Debt Service Fund may be prepaid, in whole or in part, by being earlier transferred to and paid into that Senior Debt Service Fund, and in that event any subsequently scheduled transfer, or any part thereof, which has been so prepaid need not be made at the time appointed therefor. In any Supplemental Senior Indenture, the Department may provide that monies in the redemption account allocable to sinking fund installment payments of a Series may, at the discretion of the Department, be applied to the purchase and cancellation of such Series (at a price not greater than par) prior to notice of redemption of such Series. Such Senior Bonds so delivered or previously redeemed or purchased at the direction of the Department will be credited by the Senior Trustee at the principal amount thereof to the next scheduled sinking installment payments on Senior Bonds of such Series and any excess over the sinking installment payment deposit required on that date will be credited against future sinking installment deposits in such manner and order as the Department may determine in its discretion, and the scheduled principal amount of the Senior Bonds to be redeemed by operation of such sinking installment payments will be accordingly modified in such manner as the Department may determine and as specified to the Senior Trustee in writing.

Money set aside and placed in a Senior Debt Service Fund for any Series of Senior Bonds will remain therein until from time to time expended for the aforesaid purposes thereof and will not be used for any other purpose whatsoever, except that any such money so set aside and placed in a Senior Debt Service Fund may be temporarily invested as provided in the Master Senior Indenture, but such investment will not affect the obligation of the Department to cause the full amount required by the terms of this section to be available in a Senior Debt Service Fund at the time required to meet payments of principal of and interest on Senior Bonds of the Series for which it is accumulated. Earnings on such investments upon written request of the Department may be transferred into the LAX Revenue Account, except that during the continuation of an Senior Event of Default, such earnings will remain in the Senior Debt Service Funds created under the respective Supplemental Senior Indentures.

Each Senior Debt Service Fund established to pay principal of and interest on any Series of Senior Bonds will be held by the Senior Trustee or any agent of the Senior Trustee, and amounts to be used to pay principal and interest on such Series, as received by the Senior Trustee or its agent, will be deposited therein and used for such purpose. Accounts and subaccounts will be created by the Senior Trustee or any agent of the Senior Trustee in the various Senior Debt Service Funds as requested in writing by the Authorized Representative and will be held by the Senior Trustee or such agents as will be provided by Supplemental Senior Indenture.

The moneys in each Senior Debt Service Fund established for any issue or Series will be held in trust and applied as provided herein and in the Supplemental Senior Indenture, and pending the application of such amounts in accordance herewith and with the provisions of such Supplemental Senior Indenture will be subject to a lien on and security interest in favor of the holders of the Outstanding Senior Bonds of such Series.

***Withdrawals From Senior Debt Service Funds.*** On each Payment Date for any Outstanding Senior Bonds, the Senior Trustee will pay to the Owners of the Senior Bonds of a given Series from the appropriate Senior Debt Service Fund or Senior Debt Service Funds, an amount equal to the principal and interest becoming due on such Series of Senior Bonds.

On or before a mandatory redemption date from sinking installment payments for Term Senior Bonds of a Series of Senior Bonds, the Senior Trustee will transfer from the Senior Debt Service Fund to the redemption account for such Series an amount which, together with amounts on deposit therein and available for such purpose, is sufficient to make the sinking installment payment due on such mandatory redemption date. On each date on which Term Senior Bonds of a Series are to be mandatorily redeemed from sinking installment payments, the Senior Trustee will pay to the Owners of Senior Bonds of such Series from the redemption account for such Series, an amount equal to the amount of interest and the principal amount of Term Senior Bonds of such Series to be mandatorily redeemed on such date.

On each date on which Senior Bonds of any Series will otherwise become subject to optional or mandatory redemption (other than from sinking installment payments) in accordance with the provisions of any Supplemental Senior Indenture, the Senior Trustee will pay to the Owners of such Senior Bonds from the redemption account, an amount of interest and principal, and premium, if any, on such Senior Bonds to be mandatorily or optionally redeemed on said date. On or before such redemption date, in accordance with the Supplemental Senior Indenture pursuant to which such Senior Bonds are issued, the Department will have or will have caused to be deposited in the redemption account for such Series, an amount which, together with amounts on deposits therein and available for such purpose, is sufficient to pay the redemption price of such Senior Bonds on such redemption date.

The payments made by the Senior Trustee in this section will be made solely to the extent that moneys are on deposit in the appropriate Senior Debt Service Fund.

All money remaining in a Senior Debt Service Fund on the final Payment Date, in excess of the amount required to make provisions for the payment in full of the interest and/or the principal of the Senior Bonds of the Series for which that Senior Debt Service Fund was established or the payment of amounts required to be rebated, pursuant to the Code, to the United States of America with respect to Senior Bonds of that Series, will be returned to the Department and deposited by the Department in the LAX Revenue Account.

The Senior Trustee will, at least two Business Days prior to each Payment Date on any Senior Bond, or as otherwise directed in any Supplemental Senior Indenture, give the Chief Financial Officer notice by telephone, promptly confirmed in writing, of any additional amount required to be deposited with the Senior Trustee to pay the amount required to be paid on such Payment Date in respect of such Senior Bond, in the event the amount then on deposit in any Senior Debt Service Fund is insufficient to pay the amounts due on any Series of Senior Bonds on such Payment Date. With respect to any Series of Senior Bonds, the Supplemental Senior Indenture under which such Senior Bonds are issued may provide for different times and methods of notifying the Department of payment dates and amounts to accommodate the specific provisions of such Series and, in such event, the terms of such Supplemental Senior Indenture will control.

If, on any Payment Date, the Senior Trustee does not have sufficient amounts in the Senior Debt Service Funds (without regard to any amounts which may be available in the Senior Reserve Fund or any Senior Debt Service Reserve Fund) to pay in full with respect to Senior Bonds of all Series all amounts of principal and/or interest due on such date, the Senior Trustee will allocate the total amount which is available to make payment on such day (without regard to any amounts in the Senior Reserve Fund or any Senior Debt Service Reserve Fund) as follows: first to the payment of past due interest on Senior Bonds of any Series, in the order in which such interest came due, then to the payment of past due principal on Senior Bonds of any Series, in the order in which such principal came due, then to the payment of interest then due and payable on the Senior Bonds of each Series due on such Payment Date and, if the amount available will not be sufficient to pay in full all interest on the Senior Bonds then due, then pro rata among the Series according to the amount of interest then due and second to the payment of principal then due on the Senior Bonds and, if the amount available will not be sufficient to pay in full all principal on the Senior Bonds then due, then pro rata among the Series according to the Principal Amount then due on the Senior Bonds.

If the Senior Reserve Fund or any Senior Debt Service Reserve Fund (or a Credit Facility provided in lieu thereof) have been used to make payments on the Senior Bonds secured thereby, then the Department may be required by Supplemental Senior Indenture to replenish the Senior Reserve Fund or any Senior Debt Service

Reserve Fund or reimburse the Credit Provider from Net Pledged Revenues provided that (a) no amount from Net Pledged Revenues may be used for such purpose until all payments of principal of and interest on all Senior Bonds which have become due and payable have been paid in full, (b) the required payments to replenish the Senior Reserve Fund and any Senior Debt Service Reserve Fund or reimburse the Credit Provider will be due in no more than twelve (12) substantially equal monthly installments commencing in the month following any such withdrawal and (c) if the aggregate amount of payments due on any date to replenish the Senior Reserve Fund or any Senior Debt Service Reserve Fund or reimburse the Credit Provider exceeds the amount available for such purposes, the payments made to the Senior Trustee for such purpose will be allocated among the Senior Reserve Fund and any Senior Debt Service Reserve Fund and the Credit Provider pro rata on the basis of the Outstanding Principal Amount of Senior Bonds secured thereby.

Notwithstanding the foregoing, the Department may, by Supplemental Senior Indenture, provide for different provisions and timing of deposits with the Senior Trustee and different methods of paying principal of or interest on Senior Bonds of any Series depending upon the terms of such Series of Senior Bonds and may provide for payment through a Credit Facility with reimbursement to the Credit Provider from the respective Senior Debt Service Fund created for the Series of Senior Bonds for which such Credit Facility is provided.

If Net Pledged Revenues are at any time insufficient to make the deposits required to make payments on the Senior Bonds, the Department may, at its election, pay to the Senior Trustee funds from any available sources with the direction that such funds be deposited into the Senior Debt Service Funds or into a specified account or accounts or subaccount or subaccounts therein.

### **Senior Reserve Fund**

Pursuant to the terms of the Master Senior Indenture, the Department established with the Senior Trustee the "Senior Reserve Fund" for all of the Senior Bonds the Department elects to have participate in the Senior Reserve Fund. The Department has elected to have all of the Outstanding Senior Bonds participate in the Senior Reserve Fund.

Pursuant to the Master Senior Indenture, the Senior Reserve Fund is required to be funded at all times in an amount equal to the Senior Reserve Requirement. The "Senior Reserve Requirement" equals the least of (i) Senior Maximum Aggregate Annual Debt Service for Reserve Requirement with respect to all Senior Bonds participating in the Senior Reserve Fund, (ii) 10% of the principal amount of all Senior Bonds participating in the Senior Reserve Fund, less the amount of original issue discount with respect to the Senior Bonds participating in the Senior Reserve Fund if such original issue discount exceeded 2% on such Senior Bonds at the time of original sale, and (iii) 125% of the average Senior Aggregate Annual Debt Service for Reserve Requirement with respect to all Senior Bonds participating in the Senior Reserve Fund. In the event the Department issues any Additional Senior Bonds pursuant to a Supplemental Senior Indenture under which the Department elects to have such Additional Senior Bonds participate in the Senior Reserve Fund, the Department will be required to deposit an amount, if any, in the Senior Reserve Fund sufficient to cause the amount on deposit in the Senior Reserve Fund to equal the Senior Reserve Requirement.

Moneys or investments held in the Senior Reserve Fund may be used only to pay the principal of and interest on the Senior Bonds participating in the Senior Reserve Fund. Moneys and investments held in the Senior Reserve Fund are not available to pay debt service on the Subordinate Obligations or any Third Lien Obligations. The Senior Reserve Fund may be drawn upon if the amounts in the respective Senior Debt Service Funds for the Senior Bonds participating in the Senior Reserve Fund are insufficient to pay in full any principal or interest then due on such Senior Bonds. In the event any amounts are required to be withdrawn from the Senior Reserve Fund, such amounts will be withdrawn and deposited pro rata to meet the funding requirements of the Senior Debt Service Funds for the Senior Bonds secured by the Senior Reserve Fund.

The Department may fund all or a portion of the Senior Reserve Requirement with a Senior Reserve Fund Surety Policy. Any such Senior Reserve Fund Surety Policy must either extend to the final maturity of the Series of Senior Bonds for which the Senior Reserve Fund Surety Policy was issued or the Department must agree, by Supplemental Senior Indenture, that the Department will replace such Senior Reserve Fund Surety Policy prior to its expiration with another Senior Reserve Fund Surety Policy, which will have no adverse effect on ratings, if any, then in effect, on the Senior Bonds, or with cash, and the face amount of the Senior Reserve Fund Surety Policy, together with amounts on deposit in the Senior Reserve Fund, including the face amount of any other Senior Reserve

Fund Surety Policy, are at least equal to the Senior Reserve Requirement. As of the date of this Official Statement, there are no and there will be no Senior Reserve Fund Surety Policies on deposit in the Senior Reserve Fund.

### **LAX Maintenance and Operation Reserve Account**

The Department has caused the LAX Maintenance and Operation Reserve Account to be maintained with the City Treasury. At the beginning of each Fiscal Year the Department will deposit in the LAX Maintenance and Operation Reserve Account amounts from the LAX Airport Account so that the balance in the LAX Maintenance and Operation Reserve Account as of the first day of such Fiscal Year, will be equal to not less than 25% nor more than 50% of the budgeted LAX Maintenance and Operation Expenses for the current Fiscal Year. Moneys on deposit in the LAX Maintenance and Operation Reserve Account will be used by the Department to pay LAX Maintenance and Operation Expenses in the event there are insufficient moneys in the LAX Revenue Account to make such payments.

### **Additional Security**

The pledge of Net Pledged Revenues and the other security provided in the Granting Clauses of the Master Senior Indenture, secure all Senior Bonds issued under the terms of the Master Senior Indenture on an equal and ratable basis, except as to the timing of such payments. The Department may, however, in its discretion, provide additional security or credit enhancement for specified Senior Bonds or Series of Senior Bonds with no obligation to provide such additional security or credit enhancement to other Senior Bonds.

### **Payment of Principal and Interest**

The Department has covenanted and agreed that it will duly and punctually pay or cause to be paid from the Net Pledged Revenues and to the extent thereof the principal of, premium, if any, and interest on every Senior Bond at the place and on the dates and in the manner set forth the Master Senior Indenture, the Supplemental Senior Indentures and in the Senior Bonds specified, according to the true intent and meaning thereof, and that it will faithfully do and perform all covenants and agreements in the Senior Indenture and in the Senior Bonds contained, provided that the Department's obligation to make payment of the principal of, premium, if any, and interest on the Senior Bonds will be limited to payment from the Net Pledged Revenues, the funds and accounts pledged therefor in the Granting Clauses of the Master Senior Indenture and any other source which the Department may specifically provide for such purpose and no Bondholder will have any right to enforce payment from any other funds of the Department.

### **Senior Lien Obligations Prohibited**

The Department has covenanted that so long as any Senior Bonds are Outstanding under the Senior Indenture, it (i) will not adopt a resolution determining that Pledged Revenues be used to pay general obligation bonds of the City on a senior lien basis, and (ii) will not issue any additional bonds or other obligations with a lien on or security interest granted in Net Pledged Revenues which is senior to the Senior Bonds. Notwithstanding the previous sentence, nothing in the Senior Indenture prohibits the Department from entering into agreements that provide for the granting of Facilities Construction Credits by the Department.

### **Senior Rate Covenant**

The Department has covenanted that, while any of the Senior Bonds remain Outstanding (but subject to all prior existing contracts and legal obligations of the Department as of the date of execution of the Master Senior Indenture), the Department will establish, fix, prescribe and collect rates, tolls, fees, rentals and charges in connection with LAX and for services rendered in connection therewith, so that Pledged Revenues in each Fiscal Year will be at least equal to the payments required in such Fiscal Year to be made pursuant to the paragraphs FIRST through EIGHTH described in subsection (b) under the caption "—Withdrawals from LAX Revenue Account" above. The Department has further agreed that it will establish, fix, prescribe and collect rates, tolls, fees, rentals and charges in connection with LAX and for services rendered in connection therewith, so that during each Fiscal Year the Net Pledged Revenues, together with any Transfer, will be equal to at least 125% of Senior Annual Debt Service on the Outstanding Senior Bonds for such Fiscal Year. Any amount of Transfer taken into account as described in the previous sentence cannot exceed 25% of Senior Annual Debt Service on the Outstanding Senior Bonds for such Fiscal Year.

If the Department violates the covenants described in the previous paragraph, such violation will not be a default under the Senior Indenture and will not give rise to a declaration of a Senior Event of Default if, within 180

days after the date such violation is discovered, the Department revises the schedule of rates, tolls, fees, rentals and charges insofar as practicable and revises any LAX Maintenance and Operation Expenses insofar as practicable and takes such other actions as are necessary so as to produce Pledged Revenues to cure such violation for future compliance; provided, however, that if the Department does not cure such violation by the end of the second subsequent Fiscal Year succeeding the date such violation is discovered, a Senior Event of Default may be declared under the Senior Indenture. The Department may obtain such recommendations from a Consultant as it deems necessary or appropriate to bring the Department into compliance with such covenants.

### **Subordinated Obligations and Third Lien Obligations**

(a) The Department may, from time to time, incur indebtedness which is subordinate to the Senior Bonds and which indebtedness is, in the Master Senior Indenture, referred to as Subordinated Obligations. Such indebtedness will be incurred at such times and upon such terms as the Department determines, provided that:

(i) Any Supplemental Senior Indenture authorizing the issuance of any Subordinated Obligations will specifically state that such lien on or security interest granted in the Net Pledged Revenues is junior and subordinate to the lien on and security interest in such Net Pledged Revenues and other assets granted to secure the Senior Bonds; and

(ii) Payment of principal of and interest on such Subordinated Obligations will be permitted, provided that all deposits required to be made to pay LAX Maintenance and Operation Expenses and to the Senior Trustee to be used to pay debt service on the Senior Bonds or to replenish the Senior Reserve Fund or a Senior Debt Service Reserve Fund are then current in accordance with the Master Senior Indenture.

(b) The Department may, from time to time, incur indebtedness which is subordinate to the Senior Bonds and any Subordinated Obligations and which indebtedness is, in the Master Senior Indenture, referred to as Third Lien Obligations. Such indebtedness will be incurred at such times and upon such terms as the Department determines, provided that:

(i) Any Supplemental Senior Indenture authorizing the issuance of any Third Lien Obligations will specifically state that such lien on or security interest granted in the Net Pledged Revenues is junior and subordinate to the lien on and security interest in such Net Pledged Revenues and other assets granted to secure the Senior Bonds and the Subordinated Obligations; and

(ii) Payment of principal of and interest on such Third Lien Obligations will be permitted, provided that all deposits required to be made to pay LAX Maintenance and Operation Expenses, to the Senior Trustee to be used to pay debt service on the Senior Bonds and to replenish the Senior Reserve Fund or a Senior Debt Service Reserve Fund, and to pay debt service on the Subordinated Obligations and to replenish any debt service reserve fund established for the Subordinated Obligations are then current in accordance with the Master Senior Indenture.

### **LAX Special Facilities and LAX Special Facility Obligations**

The Department is permitted to designate new or existing LAX Airport Facilities as LAX Special Facilities as permitted in this section. The Department may, from time to time, and subject to the terms and conditions set forth below, (i) designate a separately identifiable existing facility or improvement or planned facility or improvement as an "LAX Special Facility," (ii) pursuant to an indenture other than the Senior Indenture and without a pledge of any Pledged Revenues (except as otherwise provided in (iv) below), incur debt primarily for the purpose of acquiring, constructing, renovating or improving or providing financing or refinancing to a third party to acquire, construct, renovate or improve, such facility or improvement, (iii) provide that the contractual payments derived from or related to such LAX Special Facility, together with other income and revenues available to the Department from such LAX Special Facility to the extent necessary to make the payments required by clause (1) of the second succeeding paragraph, be "LAX Special Facilities Revenue" and not included as Pledged Revenues unless otherwise provided in any supplemental indenture, and (iv) provide that the debt so incurred will be an "LAX Special Facility Obligation" and the principal of and interest thereon will be payable solely from the LAX Special Facilities Revenue and the proceeds of such LAX Special Facility Obligation set aside exclusively to pay debt service on such LAX Special Facility Obligation (except the Department may, in its sole discretion, determine to make Pledged Revenues or such other moneys not included in Pledged Revenues available (through a specific pledge or otherwise and subject to any covenants or other provisions of the Master Senior Indenture (including, but not limited to, the additional bonds test and the rate covenant set forth in the Master Senior Indenture) or such other indentures or

agreements of the Department) to the payment of the principal of and interest on such LAX Special Facility Obligation in such amounts and at such times as may be agreed to by the Department). The Department may from time to time refinance any such LAX Special Facility Obligations with other LAX Special Facility Obligations.

LAX Special Facility Obligations will be payable as to principal, redemption premium, if any, and interest solely from (a) LAX Special Facilities Revenue, which will include contractual payments derived by the Department under and pursuant to a contract (which may be in the form of a lease) relating to an LAX Special Facility by and between the Department and another person, firm or corporation, either public or private, as will undertake the operation of an LAX Special Facility, (b) proceeds of such LAX Special Facility Obligations set aside exclusively to pay debt service on such LAX Special Facility Obligations, if any, and (c) such Pledged Revenues or other moneys not included in Pledged Revenues made available by the Department as provided in clause (iv) of the previous paragraph, if any.

No LAX Special Facility Obligations will be issued by the Department unless there has been filed with the Senior Trustee a certificate of an Authorized Representative stating that:

(1) The estimated LAX Special Facilities Revenue pledged to the payment of the LAX Special Facility Obligations, the proceeds of such LAX Special Facility Obligations set aside exclusively to pay debt service on such LAX Special Facility Obligations, if any, and such Pledged Revenues or other moneys made available by the Department pursuant to clause (iv) of the first paragraph of this section, if any, will be at least sufficient, to pay the principal of and interest on such LAX Special Facility Obligations as and when the same become due and payable, all costs of operating and maintaining such LAX Special Facility not paid for by the operator thereof or by a party other than the Department and all sinking fund, reserve or other payments required by the resolution or indenture authorizing the LAX Special Facility Obligations as the same become due; and

(2) With respect to the designation of any separately identifiable existing LAX Airport Facilities or LAX Airport Facility as an "LAX Special Facility" or "LAX Special Facilities", the estimated Pledged Revenues and Net Pledged Revenues, calculated without including the new LAX Special Facilities Revenue, the proceeds of any LAX Special Facility Obligations set aside exclusively to pay debt service on such LAX Special Facility Obligations or any Pledged Revenues or other moneys made available by the Board pursuant to clause (iv) of the first paragraph of this section, if any, and without including any operation and maintenance expenses of the LAX Special Facility as LAX Maintenance and Operation Expenses, will be sufficient so that the Department will be in compliance with the rate covenant set forth in the Master Senior Indenture during each of the first five complete Fiscal Years immediately following the anticipated closing date of such transaction or financing; and

(3) No Senior Event of Default then exists under Master Senior Indenture.

To the extent LAX Special Facilities Revenue received by the Department during any Fiscal Year will exceed the amounts required to be paid pursuant to clause (1) of the immediately preceding paragraph for such Fiscal Year, such excess LAX Special Facilities Revenue, to the extent not otherwise encumbered or restricted, may constitute Pledged Revenues as determined by the Department.

Notwithstanding any other provision of this section, at such time as the LAX Special Facility Obligations issued for an LAX Special Facility including LAX Special Facility Obligations issued to refinance LAX Special Facility Obligations are fully paid or otherwise discharged, all revenues of the Department from such facility will be included as Pledged Revenues.

### **Maintenance and Operation of LAX Airport Facilities**

Subject to the transfer of any LAX Airport Facilities pursuant to the provisions of the Master Senior Indenture, the Department has covenanted that the LAX Airport Facilities will at all times be operated and maintained in good working order and condition and that all lawful orders of any governmental agency or authority having jurisdiction in the premises will be complied with (provided the Department will not be required to comply with any such orders so long as the validity or application thereof will be contested in good faith), and that all licenses and permits necessary to construct or operate any of the LAX Airport Facilities will be obtained and maintained and that all necessary repairs, improvements and replacements of the LAX Airport Facilities will be made, subject to sound business judgment. Subject to the transfer of any LAX Airport Facilities pursuant to the provisions of the Master Senior Indenture, the Department will, from time to time, duly pay and discharge, or cause

to be paid and discharged, except to the extent the imposition or payment thereof is being contested in good faith by the Department, all taxes (if any), assessments or other governmental charges lawfully imposed upon the LAX Airport Facilities or upon any part thereof, or upon the Pledged Revenues, when the same will become due, as well as any lawful claim for labor, materials or supplies or other charges which, if unpaid, might by law become a lien or charge upon the Pledged Revenues or LAX Airport Facilities or any part thereof constituting part of Los Angeles International Airport.

### **Insurance; Application of Insurance Proceeds**

Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions:

(1) the Department will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting Los Angeles International Airport and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Department, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by similar airports;

(2) the Department will procure and maintain reasonable fidelity insurance or bonds on the position of Chief Financial Officer and on any other employees of the Department who handle or are responsible for funds of the Department; and

(3) the Department will place on file with the Senior Trustee annually within 120 days after the close of each Fiscal Year a certificate of an Authorized Representative containing a summary of all insurance policies and self-insured programs then in effect with respect to Los Angeles International Airport and the operations of the Department. The Senior Trustee may conclusively rely upon such certificate and will not be responsible for the sufficiency or adequacy of any insurance required herein or obtained by the Department.

*“Qualified Self Insurance”* will mean insurance maintained through a program of self-insurance or insurance maintained with a fund, company or association in which the Department may have a material interest and of which the Department may have control, either singly or with others. Each plan of Qualified Self Insurance will be established in accordance with law, will provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the Department determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance, and such self-insurance program will be reviewed at least once every 12 months by a Consultant who will deliver to the Department a report on the adequacy of the reserves established thereunder. If the Consultant determines that such reserves are inadequate, he will make a recommendation as to the amount of reserves that should be established and maintained, and the Department will comply with such recommendation unless it can establish to the satisfaction of and receive a certification from a Consultant that a lower amount is reasonable to provide adequate protection to the Department.

If, as a result of any event, any part of an LAX Airport Facility or any LAX Airport Facilities is destroyed or severely damaged, the Department will create within the LAX Revenue Account a special subaccount and will credit the Net Proceeds received as a result of such event of damage or destruction to such subaccount and such Net Proceeds will, within a reasonable period of time taking into account any terms under which insurance proceeds are paid and any insurance restrictions upon the use or timing of the use of insurance proceeds, be used to: (1) repair or replace the LAX Airport Facilities, or portion thereof, which were damaged or destroyed, (2) provide additional revenue producing LAX Airport Facilities, (3) redeem Senior Bonds, or (4) create an escrow fund pledged to pay specified Senior Bonds and thereby cause such Senior Bonds to be deemed to be paid as provided in the Master Senior Indenture; provided, however, that the Department will first deliver to the Senior Trustee a certificate of a Consultant showing that, after taking into account the use of the Net Proceeds for the redemption of such specified Senior Bonds, the rate covenant set forth in the Master Senior Indenture would, nevertheless, be met.

### **Transfer of LAX Airport Facility or LAX Airport Facilities.**

The Department will not, except as permitted below transfer, sell or otherwise dispose of an LAX Airport Facility or LAX Airport Facilities. For purposes of this section, any transfer of an asset over which the Department



retains substantial control in accordance with the terms of such transfer will not, for so long as the Department has such control, be deemed a disposition of an LAX Airport Facility or LAX Airport Facilities.

The Department may transfer, sell or otherwise dispose of LAX Airport Facilities only if such transfer, sale or disposition complies with one or more of the following provisions:

- (a) The property being disposed of is inadequate, obsolete or worn out; or
- (b) The property proposed to be disposed of and all other LAX Airport Facilities disposed of during the 12 month period ending on the day of such transfer (but excluding property disposed of under (a) above), will not, in the aggregate, constitute a Significant Portion, the proceeds are deposited into the LAX Revenue Account to be used as described below and the Department believes that such disposal will not prevent it from fulfilling its obligations under the Senior Indenture; or
- (c) Prior to the disposition of such property, there is delivered to the Senior Trustee a certificate of a Consultant to the effect that notwithstanding such disposition, but taking into account the use of such proceeds in accordance with the expectations of the Department as evidenced by a certificate of an Authorized Representative, the Consultant estimates that Department will be in compliance with the rate covenant set forth in the Master Senior Indenture during each of the five Fiscal Years immediately following such disposition.

LAX Airport Facilities which were financed with the proceeds of obligations the interest on which is then excluded from gross income for federal income tax purposes will not be disposed of, except under the terms of provision (a) above, unless the Department has first received a written opinion of Bond Counsel to the effect that such disposition and the application of any disposition proceeds thereof will not cause the interest on such obligations to become includable in gross income for federal income tax purposes.

No such disposition will be made which would cause the Department to be in default of any other covenant contained in the Master Senior Indenture.

### **Eminent Domain**

If a Significant Portion of any Airport Facility or LAX Airport Facilities are taken by eminent domain proceedings or conveyance in lieu thereof, the Department will create within the LAX Revenue Account a special account and credit the Net Proceeds received as a result of such taking or conveyance to such account and will within a reasonable period of time, after the receipt of such amounts, use such proceeds to (1) replace the LAX Airport Facility or LAX Airport Facilities which were taken or conveyed, (2) provide an additional revenue producing LAX Airport Facility or LAX Airport Facilities, (3) redeem Senior Bonds, or (4) create an escrow fund pledged to pay specified Senior Bonds and thereby cause such Senior Bonds to be deemed to be paid as provided in the Master Trust Indenture.

### **Investments**

Moneys held by the Senior Trustee in the funds and accounts created herein and under any Supplemental Senior Indenture will be invested and reinvested as directed by the Department, in Senior Permitted Investments subject to the restrictions set forth in the Master Senior Indenture and such Supplemental Senior Indenture and subject to the investment restrictions imposed upon the Department by the Charter and the laws of the State. The Department will direct such investments by written certificate (upon which the Senior Trustee may conclusively rely) of an Authorized Representative or by telephone instruction followed by prompt written confirmation by an Authorized Representative; in the absence of any such instructions, the Senior Trustee will, to the extent practicable, invest in Senior Permitted Investments specified in clause (9) of the definition thereof. The Senior Trustee will not be liable for any loss resulting from following the written directions of the Department or as a result of liquidating investments to provide funds for any required payment, transfer, withdrawal or disbursement from any fund or account in which such Senior Permitted Investment is held. The Senior Trustee may buy or sell any Senior Permitted Investment through its own (or any of its affiliates) investment department.

### **Defeasance**

Senior Bonds or portions thereof (such portions to be in integral multiples of the authorized denomination) which have been paid in full or which are deemed to have been paid in full will no longer be secured by or entitled to the benefits of the Master Senior Indenture except for the purposes of payment from moneys or Government Obligations held by the Senior Trustee or a Senior Paying Agent for such purpose. When all Senior Bonds which

have been issued under the Master Senior Indenture have been paid in full or are deemed to have been paid in full, and all other sums payable under the Master Senior Indenture by the Department, including all necessary and proper fees, compensation and expenses of the Senior Trustee, the Senior Registrar and the Senior Paying Agent, have been paid or are duly provided for, then the right, title and interest of the Senior Trustee in and to the Net Pledged Revenues and the other assets pledged to secure the Senior Bonds under the Master Senior Indenture will thereupon cease, terminate and become void, and thereupon the Senior Trustee will cancel, discharge and release the Master Senior Indenture, will execute, acknowledge and deliver to the Department such instruments as will be requisite to evidence such cancellation, discharge and release and will assign and deliver to the Department any property and revenues at the time subject to the Master Senior Indenture which may then be in the Senior Trustee's possession, except funds or securities in which such funds are invested and are held by the Senior Trustee or the Senior Paying Agent for the payment of the principal of, premium, if any, and interest on the Senior Bonds.

A Senior Bond will be deemed to be paid within the meaning of the Master Senior Indenture when payment of the principal, interest and premium, if any, either (a) will have been made or caused to be made in accordance with the terms of the Senior Bonds and the Master Senior Indenture or (b) will have been provided for by depositing with the Senior Trustee in trust and setting aside exclusively for such payment, (i) moneys sufficient to make such payment and/or (ii) noncallable Government Obligations, maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient moneys to make such payment. At such times as Senior Bonds will be deemed to be paid under the Master Senior Indenture, such Senior Bonds will no longer be secured by or entitled to the benefits of the Master Senior Indenture, except for the purposes of payment from such moneys or Government Obligations.

Any deposit under clause (b) of the foregoing paragraph will be deemed a payment of such Senior Bonds. Once such deposit will have been made, the Senior Trustee will notify all holders of the affected Senior Bonds that the deposit required by (b) above has been made with the Senior Trustee and that such Senior Bonds are deemed to have been paid in accordance with the Master Senior Indenture. No notice of redemption will be required at the time of such defeasance or prior to such date as may be required by the Supplemental Senior Indenture under which such Senior Bonds were issued. The Department may at any time, prior to issuing such notice of redemption as may be required by the Supplemental Senior Indenture under which such Senior Bonds were issued, modify or otherwise change the scheduled date for the redemption or payment of any Senior Bond deemed to be paid under the terms of the foregoing paragraph in accordance with the terms of the Senior Bonds or the Master Senior Indenture subject to (a) receipt of an approving opinion of nationally recognized Bond Counsel that such action will not adversely affect the tax exemption of any Senior Bond or Senior Bond then outstanding and (b) receipt of an approving opinion of a nationally recognized accounting firm that there are sufficient moneys and/or Government Obligations to provide for the payment of such Senior Bonds. Notwithstanding anything in this section to the contrary, monies from the trust or escrow established for the defeasance of Senior Bonds may be withdrawn and delivered to the Department so long as the requirements of subparagraphs (a) and (b) above are met prior to or concurrently with any such withdrawal.

### **Senior Events of Default and Remedies**

***Senior Events of Default.*** Each of the following events will constitute and be referred to as a “*Senior Event of Default*”:

- (a) a failure to pay the principal of or premium, if any, on any of the Senior Bonds when the same will become due and payable at maturity or upon redemption;
- (b) a failure to pay any installment of interest on any of the Senior Bonds when such interest will become due and payable;
- (c) a failure to pay the purchase price of any Senior Bond when such purchase price will be due and payable upon an optional or mandatory tender date as provided in the Supplemental Senior Indenture;
- (d) a failure by the Department to observe and perform any covenant, condition, agreement or provision (other than as specified in paragraphs (a), (b) and (c) above) that are to be observed or performed by the Department and which are contained in the Master Senior Indenture or a Supplemental Senior Indenture, which failure, except for a violation under the rate covenant set forth in the Master Senior Indenture which will be controlled by the provisions set forth therein, will continue for a period of 90 days after written notice, specifying such failure and requesting that it be remedied, will have been given to the

Department by the Senior Trustee, which notice may be given at the discretion of the Senior Trustee and will be given at the written request of holders of 25% or more of the Principal Amount of the Senior Bonds then Outstanding, unless the Senior Trustee, or the Senior Trustee and holders of Senior Bonds in a Principal Amount not less than the Principal Amount of Senior Bonds the holders of which requested such notice, will agree in writing to an extension of such period prior to its expiration; provided, however, that the Senior Trustee or the Senior Trustee and the holders of such principal amount of Senior Bonds will be deemed to have agreed to an extension of such period if corrective action is initiated by the Department within such period and is being diligently pursued until such failure is corrected;

(e) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, including without limitation proceedings under Chapter 9 or 11 of the United States Bankruptcy Code (as the same may from time to time be hereafter amended), or other proceedings for relief under any federal or state bankruptcy law or similar law for the relief of debtors are instituted by or against the Department and, if instituted against the Department, said proceedings are consented to or are not dismissed within 60 days after such institution; or

(f) the occurrence of any other Senior Event of Default as is provided in a Supplemental Senior Indenture.

### ***Remedies***

(a) Upon the occurrence and continuance of any Senior Event of Default, the Senior Trustee in its discretion may, and upon the written direction of the holders of 25% or more of the Principal Amount of the Senior Bonds then Outstanding and receipt of indemnity to its satisfaction, will, in its own name and as the Senior Trustee of an express trust:

(i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Senior Bondholders, and require the Department to carry out any agreements with or for the benefit of the Senior Bondholders and to perform its or their duties under the Charter or any other law to which it is subject and this Indenture, provided that any such remedy may be taken only to the extent permitted under the applicable provisions of this Indenture;

(ii) bring suit upon the Senior Bonds;

(iii) commence an action or suit in equity to require the Department to account as if it were the trustee of an express trust for the Senior Bondholders; or

(iv) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Senior Bondholders.

(b) The Senior Trustee will be under no obligation to take any action with respect to any Senior Event of Default unless the Senior Trustee has actual knowledge of the occurrence of such Senior Event of Default.

(c) Except with respect to a Credit Provider or a Liquidity Provider as provided in a Supplemental Senior Indenture or a written agreement between the Department and a Credit Provider or a Liquidity Provider, in no event, upon the occurrence and continuation of a Senior Event of Default, will the Senior Trustee, the Holders of the Senior Bonds, a Credit Provider, a Liquidity Provider or any other party have the right to accelerate the payment of principal of and interest on the Senior Bonds Outstanding.

***Senior Bondholders' Right To Direct Proceedings.*** Anything in the Master Senior Indenture to the contrary notwithstanding, holders of not less than 51% in aggregate Principal Amount of the Senior Bonds then Outstanding will have the right, at any time, by an instrument in writing executed and delivered to the Senior Trustee, to direct the time, method and place of conducting all remedial proceedings available to the Senior Trustee under the Master Senior Indenture to be taken in connection with the enforcement of the terms of the Master Senior Indenture or exercising any trust or power conferred on the Senior Trustee by the Master Senior Indenture; provided that such direction will not be otherwise than in accordance with the provisions of the law and the Master Senior Indenture and that there has been provided to the Senior Trustee security and indemnity satisfactory to the Senior Trustee against the costs, expenses and liabilities to be incurred as a result thereof by the Senior Trustee.

***Limitation on Right To Institute Proceedings.*** No Senior Bondholder will have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust or power under the Master Senior Indenture, or any other remedy under the Master Senior Indenture or on such Senior Bonds, unless such Senior Bondholder or Senior Bondholders previously has given to the Senior Trustee written notice of a Senior Event of Default as hereinabove provided and unless also holders of 25% or more of the Principal Amount of the Senior Bonds then Outstanding will have made written request of the Senior Trustee to do so, after the right to institute such suit, action or proceeding under the Master Senior Indenture will have accrued, and will have afforded the Senior Trustee a reasonable opportunity to proceed to institute the same in either its or their name, and unless there also will have been offered to the Senior Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Senior Trustee will not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Senior Trustee, to be conditions precedent to the institution of such suit, action or proceeding; it being understood and intended that no one or more of the Senior Bondholders will have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Master Senior Indenture, or to enforce any right under the Master Senior Indenture or under the Senior Bonds, except in the manner provided in the Master Senior Indenture, and that all suits, actions and proceedings at law or in equity will be instituted, had and maintained in the manner provided in the Master Senior Indenture and for the equal benefit of all Senior Bondholders.

***Application of Moneys.*** If a Senior Event of Default has occurred and is continuing, all amounts then held or any moneys received by the Senior Trustee, by any receiver or by any Bondholder pursuant to any right given or action taken under the provisions of the Master Senior Indenture (which will not include moneys provided through a Credit Facility, which moneys will be restricted to the specific use for which such moneys were provided), after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Senior Trustee (including attorneys' fees and disbursements), will be applied as follows: (a) first, to the payment to the persons entitled thereto of all installments of interest then due on the Senior Bonds, with interest on overdue installments, if lawful, at the rate per annum as provided in any Supplemental Senior Indenture, as the case may be, in the order of maturity of the installments of such interest and, if the amount available will not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, and (b) second, to the payment to the persons entitled thereto of the unpaid principal amount of any of the Senior Bonds which will have become due with interest on such Senior Bonds at such rate as provided in a Supplemental Senior Indenture from the respective dates upon which they became due and, if the amount available will not be sufficient to pay in full Senior Bonds on any particular date determined to be the payment date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, in each case to the persons entitled thereto, without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the provisions of this section, such moneys will be applied at such times, and from time to time, as the Senior Trustee will determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Senior Trustee will apply such funds, it will fix the date (which will be an interest Payment Date unless it will deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal and interest to be paid on such date will cease to accrue. The Senior Trustee will give notice of the deposit with it of any such moneys and of the fixing of any such date by Mail to all Senior Bondholders and will not be required to make payment to any Senior Bondholder until such Senior Bonds will be presented to the Senior Trustee for appropriate endorsement or for cancellation if fully paid.

#### **The Senior Trustee**

***Duties.*** If a Senior Event of Default has occurred and is continuing, the Senior Trustee will exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The Senior Trustee will perform the duties set forth in the Senior Indenture and no implied duties or obligations will be read into the Senior Indenture against the Senior Trustee. Except during the continuance of a Senior Event of Default, in the absence of any negligence on its part or any knowledge to the contrary, the Senior Trustee

may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Senior Trustee and conforming to the requirements of the Senior Indenture. However, the Senior Trustee will examine the certificates and opinions to determine whether they conform to the requirements of the Senior Indenture.

he Senior Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that: (a) the Senior Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer unless the Senior Trustee was negligent in ascertaining the pertinent facts; and (b) the Senior Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it from Senior Bondholders or the Department in the manner provided in the Senior Indenture.

The Senior Trustee will not, by any provision of the Senior Indenture, be required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

***Notice of Defaults.*** If (i) a Senior Event of Default has occurred or (ii) an event has occurred which with the giving of notice and/or the lapse of time would be a Senior Event of Default and, with respect to such events for which notice to the Department is required before such events will become Senior Events of Default, such notice has been given, then the Senior Trustee will promptly, after obtaining actual notice of such Senior Event of Default or event described in (ii) above, give notice thereof to each Senior Bondholder. Except in the case of a default in payment or purchase on any Senior Bonds, the Senior Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Senior Bondholders.

***Eligibility of Senior Trustee.*** The Senior Indenture will always have a Senior Trustee that is a trust company, banking association or a bank having the powers of a trust company and is organized and doing business under the laws of the United States or any state or the District of Columbia, is authorized to conduct trust business under the laws of the State, is subject to supervision or examination by United States, state or District of Columbia authority and has (together with its corporate parent) a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition.

***Replacement of Senior Trustee.*** The Senior Trustee may resign by notifying the Department in writing prior to the proposed effective date of the resignation. The holders of not less than 51% in aggregate Principal Amount of the Senior Bonds may remove the Senior Trustee by notifying the removed Senior Trustee and may appoint a successor Senior Trustee with the Department's consent. The Department may remove the Senior Trustee, by notice in writing delivered to the Senior Trustee at least 60 days prior to the proposed removal date; provided, however, that the Department will have no right to remove the Senior Trustee during any time when a Senior Event of Default has occurred and is continuing or when an event has occurred and is continuing or condition exists which with the giving of notice or the passage of time or both would be a Senior Event of Default.

No resignation or removal of the Senior Trustee will be effective until a new Senior Trustee has taken office and delivered a written acceptance of its appointment to the retiring Senior Trustee and to the Department. Immediately thereafter, the retiring Senior Trustee will transfer all property held by it as Senior Trustee to the successor Senior Trustee, the resignation or removal of the retiring Senior Trustee will then (but only then) become effective and the successor Senior Trustee will have all the rights, powers and duties of the Senior Trustee under the Senior Indenture.

If the Senior Trustee resigns or is removed or for any reason is unable or unwilling to perform its duties under the Senior Indenture, the Department will promptly appoint a successor Senior Trustee.

If a Senior Trustee is not performing its duties under the Senior Indenture and a successor Senior Trustee does not take office within 60 days after the retiring Senior Trustee delivers notice of resignation or the Department delivers notice of removal, the retiring Senior Trustee, the Department or the holders of not less than 51% in aggregate Principal Amount of the Senior Bonds may petition any court of competent jurisdiction for the appointment of a successor Senior Trustee.

## Amendments and Supplements

***Supplemental Senior Indentures Not Requiring Consent of Senior Bondholders.*** The Department may, from time to time and at any time, without the consent of or notice to the Senior Bondholders, execute and deliver Supplemental Senior Indentures supplementing and/or amending the Master Senior Indenture or any Supplemental Senior Indenture, as follows:

- (a) to provide for the issuance of a Series or multiple Series of Senior Bonds under the provisions of Master Senior Indenture and to set forth the terms of such Senior Bonds and the special provisions which will apply to such Senior Bonds;
- (b) to cure any formal defect, omission, inconsistency or ambiguity in, or answer any questions arising under, the Master Senior Indenture or any Supplemental Senior Indenture, provided such supplement or amendment is not materially adverse to the Senior Bondholders;
- (c) to add to the covenants and agreements of the Department in the Master Senior Indenture or any Supplemental Senior Indenture other covenants and agreements, or to surrender any right or power reserved or conferred upon the Department, provided such supplement or amendment will not adversely affect the interests of the Senior Bondholders;
- (d) to confirm, as further assurance, any interest of the Senior Trustee in and to the Net Pledged Revenues or in and to the funds and accounts held by the Senior Trustee or in and to any other moneys, securities or funds of the Department provided pursuant to the Master Senior Indenture or to otherwise add additional security for the Senior Bondholders;
- (e) to evidence any change made in the terms of any Series of Senior Bonds if such changes are authorized by the Supplemental Senior Indenture at the time the Series of Senior Bonds is issued and such change is made in accordance with the terms of such Supplemental Senior Indenture;
- (f) to comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended, provided such supplement or amendment is not materially adverse to the Senior Bondholders;
- (g) to provide for uncertificated Senior Bonds or for the issuance of coupons and bearer Senior Bonds or Senior Bonds registered only as to principal;
- (h) to qualify the Senior Bonds or a Series of Senior Bonds for a rating or ratings by one or more of the Rating Agencies;
- (i) to accommodate the technical, operational and structural features of Senior Bonds which are issued or are proposed to be issued or of a Senior Program which has been authorized or is proposed to be authorized, including, but not limited to, changes needed to accommodate commercial paper, auction bonds, variable rate or adjustable rate bonds, discounted or compound interest bonds, swaps or other forms of indebtedness which the Department from time to time deems appropriate to incur;
- (j) to accommodate the use of a Credit Facility or Liquidity Facility for specific Senior Bonds or a specific Series of Senior Bonds, provided such supplement or amendment is not materially adverse to the Senior Bondholders;
- (k) to comply with the requirements of the Code as are necessary, in the opinion of Senior Bond Counsel, to prevent the federal income taxation of the interest on the Senior Bonds, including, without limitation, the segregation of Pledged Revenues and Net pledged Revenues into different funds; or
- (l) to modify, alter, amend or supplement this Indenture or any Supplemental Senior Indenture in any other respect which is not materially adverse to the Senior Bondholders.

Before the Department executes, pursuant to this section, any Supplemental Senior Indenture, there will be delivered to the Department and Senior Trustee an opinion of Bond Counsel to the effect that such Supplemental Senior Indenture is authorized or permitted by the Master Senior Indenture, the Charter and, other applicable law, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the Department in accordance with its terms and will not cause interest on any of the Senior Bonds which is then excluded from gross income of the recipient thereof for federal income tax purposes to be included in gross income for federal income tax purposes.

***Supplemental Senior Indentures Requiring Consent of Senior Bondholders.***

(a) Except for any Supplemental Senior Indenture entered into pursuant to the provisions described in “—Supplemental Senior Indentures Not Requiring Consent of Senior Bondholders” above and any Supplemental Senior Indenture entered into pursuant to (b) below, subject to the terms and provisions contained in this paragraph (a) and not otherwise, the holders of not less than 51% in aggregate Principal Amount of the Senior Bonds then Outstanding will have the right from time to time to consent to and approve the execution by the Department of any Supplemental Senior Indenture deemed necessary or desirable by the Department for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in the Master Senior Indenture or in a Supplemental Senior Indenture; provided, however, that, unless approved in writing by the holders of all the Senior Bonds then Outstanding or unless such change affects less than all Series of Senior Bonds and the following subsection (b) is applicable, nothing contained in the Master Senior Indenture will permit, or be construed as permitting, (i) a change in the scheduled times, amounts or currency of payment of the principal of, interest on or Accreted Value of any Outstanding Senior Bonds or (ii) a reduction in the principal amount or redemption price of any Outstanding Senior Bonds or the rate of interest thereon; and provided that nothing contained in the Master Senior Indenture, including the provisions of (b) below, will, unless approved in writing by the holders of all the Senior Bonds then Outstanding, permit or be construed as permitting (iii) the creation of a lien (except as expressly permitted by the Master Senior Indenture) upon or pledge of the Pledged Revenues created by the Master Senior Indenture, ranking prior to or on a parity with the claim created by the Master Senior Indenture, (iv) except with respect to additional security which may be provided for a particular Series of Senior Bonds, a preference or priority of any Senior Bond or Senior Bonds over any other Senior Bond or Senior Bonds with respect to the security granted therefor under the Granting Clauses of the Master Senior Indenture, or (v) a reduction in the aggregate Principal Amount of Senior Bonds the consent of the Senior Bondholders of which is required for any such Supplemental Senior Indenture. Nothing contained in the Master Senior Indenture, however, will be construed as making necessary the approval by Senior Bondholders of the execution of any Supplemental Senior Indenture as authorized in to “—Supplemental Senior Indentures Not Requiring Consent of Senior Bondholders” above, including the granting, for the benefit of particular Series of Senior Bonds, security in addition to the pledge of the Pledged Revenues.

(b) The Department may, from time to time and at any time, execute a Supplemental Senior Indenture which amends the provisions of an earlier Supplemental Senior Indenture under which a Series or multiple Series of Senior Bonds were issued. If such Supplemental Senior Indenture is executed for one of the purposes described under “—Supplemental Senior Indentures Not Requiring Consent of Senior Bondholders” above, no notice to or consent of the Senior Bondholders will be required. If such Supplemental Senior Indenture contains provisions which affect the rights and interests of less than all Series of Senior Bonds Outstanding and the provisions described under “—Supplemental Senior Indentures Not Requiring Consent of Senior Bondholders” above are not applicable, then this subsection (b) rather than subsection (a) above will control and, subject to the terms and provisions contained in this subsection (b) and not otherwise, the holders of not less than 51% in aggregate Principal Amount of the Senior Bonds of all Series which are affected by such changes will have the right from time to time to consent to any Supplemental Senior Indenture deemed necessary or desirable by the Department for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in such Supplemental Senior Indenture and affecting only the Senior Bonds of such Series; provided, however, that, unless approved in writing by the holders of all the Senior Bonds of all the affected Series then Outstanding, nothing contained in the Master Senior Indenture will permit, or be construed as permitting, (i) a change in the scheduled times, amounts or currency of payment of the principal of, interest on or Accreted Value of any Outstanding Senior Bonds of such Series or (ii) a reduction in the principal amount or redemption price of any Outstanding Senior Bonds of such Series or the rate of interest thereon. Nothing contained in the Master Senior Indenture, however, will be construed as making necessary the approval by Senior Bondholders of the adoption of any Supplemental Senior Indenture as authorized pursuant to the provisions as described under “—Supplemental Senior Indentures Not Requiring Consent of Senior Bondholders” above, including the granting, for the benefit of particular Series of Senior Bonds, security in addition to the pledge of the Pledged Revenues.

## **Rights of Credit Provider**

The Master Senior Indenture provides that if a Credit Facility is provided for a Series of Senior Bonds or for specific Senior Bonds, the Department may in the Supplemental Senior Indenture under which such Senior Bonds are issued, provide any or all of the following rights to the Credit Provider as the Department will deem to be appropriate: (a) the right to make requests of, direct or consent to the actions of the Senior Trustee or to otherwise direct proceedings all as provided in the Master Senior Indenture to the same extent and in place of the owners of the Senior Bonds which are secured by the Credit Facility and for such purposes the Credit Provider will be deemed to be the Bondholder of such Senior Bonds; (b) the right to act in place of the owners of the Senior Bonds which are secured by the Credit Facility for purposes of removing a Senior Trustee or appointing a Senior Trustee under the Senior Indenture; and (c) the right to consent to Supplemental Senior Indentures, which would otherwise require the consent of the holders of not less than 51% of the aggregate Principal Amount of the Senior Bonds, entered into pursuant to the provisions described in “—Amendments and Supplements—Supplemental Senior Indentures Requiring Consent of Senior Bondholders” above, except with respect to any amendments described in clauses (a)(i) through (v) and clauses (b)(i) or (ii) described in “—Amendments and Supplements—Supplemental Senior Indentures Requiring Consent of Senior Bondholders” above, which consent of the actual Senior Bondholders will still be required, to the same extent and in place of the owners of the Senior Bonds which are secured by the Credit Facility and for such purposes the Credit Provider will be deemed to be the Bondholder of such Senior Bonds.

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## **APPENDIX B-5**

### **SUMMARY OF THE MASTER SUBORDINATE INDENTURE**

In addition to certain information contained under the captions “SECURITY AND SOURCES OF PAYMENT FOR THE SENIOR BONDS, THE SUBORDINATE OBLIGATIONS AND THE THIRD LIEN OBLIGATIONS” in the forepart of this Appendix B-1, the following is a summary of certain provisions of the Master Subordinate Indenture. Such summary is only a brief description of limited provisions of such document and is qualified in its entirety by reference to the full text of the Master Subordinate Indenture.

#### **Grant to Secure Subordinate Obligations; Pledge of Subordinate Pledged Revenues**

To secure the payment of the interest, principal and premium, if any, on the Subordinate Obligations and the performance and observance by the Department of all the covenants, agreements and conditions expressed or implied in the Master Subordinate Indenture or contained in the Subordinate Obligations, the Department has pledged and assigned to the Subordinate Trustee and granted to the Subordinate Trustee a lien on and security interest in all right, title and interest of the Department in and to all of the following and provided that such lien and security interest will be prior in right to any other pledge, lien or security interest created by the Department in the following: (a) the Subordinate Pledged Revenues, (b) all moneys and securities (excluding moneys and securities on deposit in any Subordinate Rebate Fund) held from time to time by the Subordinate Trustee under the Subordinate Indenture, and to the extent provided in any Supplemental Subordinate Indenture moneys and securities held in any Subordinate Construction Fund whether or not held by the Subordinate Trustee, (c) earnings on amounts included in provisions (a) and (b) of this Granting Clause, and (d) any and all other funds, assets, rights, property or interests therein, of every kind or description which may from time to time hereafter, by delivery or by writing of any kind, be sold, transferred, conveyed, assigned, pledged, mortgaged, granted or delivered to or deposited with the Subordinate Trustee as additional security under the Master Subordinate Indenture, for the equal and proportionate benefit and security of all Subordinate Obligations, all of which, regardless of the time or times of their authentication and delivery or maturity, will, with respect to the security provided by this Granting Clause, be of equal rank without preference, priority or distinction as to any Subordinate Obligation over any other Subordinate Obligation or Subordinate Obligations, except as to the timing of payment of the Subordinate Obligations. Any Subordinate Debt Service Reserve Fund and any Subordinate Debt Service Reserve Fund Surety Policy, provided at any time in satisfaction of all or a portion of the Subordinate Reserve Requirement and any other security, Liquidity Facility or Credit Facility provided for specific Subordinate Obligations, a specific Series of Subordinate Obligations or one or more Series of Subordinate Obligations may, as provided by a Supplemental Subordinate Indenture, secure only such specific Subordinate Obligations, Series of Subordinate Obligations or one or more Series of Subordinate Obligations and, therefore, will not be included as security for all Subordinate Obligations under the Master Subordinate Indenture unless otherwise provided by a Supplemental Subordinate Indenture and moneys and securities held in trust as provided in the Master Subordinate Indenture exclusively for Subordinate Obligations which have become due and payable and moneys and securities which are held exclusively to pay Subordinate Obligations which are deemed to have been paid under the Master Subordinate Indenture will be held solely for the payment of such specific Subordinate Obligations. All amounts held in the funds and accounts created under the Senior Indenture will not be included as security for any Subordinate Obligations under the Master Subordinate Indenture.

#### **Subordinate Repayment Obligations Afforded Status of Subordinate Obligations**

If a Credit Provider or Liquidity Provider makes payment of principal and/or interest on a Subordinate Obligation or advances funds to purchase or provide for the purchase of Subordinate Obligations and is entitled to reimbursement thereof, pursuant to a separate written agreement with the Department, but is not reimbursed, the Department’s Subordinate Repayment Obligation under such written agreement may, if so provided in the written agreement, be afforded the status of a Subordinate Obligation issued under the Master Subordinate Indenture, and, if afforded such status, the Credit Provider or Liquidity Provider will be the Holder of such Subordinate Obligation, and such Subordinate Obligation will be deemed to have been issued at the time of the original Subordinate Obligation for which the Credit Facility or Liquidity Facility was provided and will not be subject to the additional bonds test set forth in the Master Subordinate Indenture; provided, however, the payment terms of the Subordinate Obligation held by the Credit Provider or Liquidity Provider hereunder will be as follows (unless otherwise provided in the Supplemental Subordinate Indenture pursuant to which the Subordinate Obligations are issued or in the agreement with the Credit Provider or Liquidity Provider): (a) interest will be due and payable semiannually and (b)

principal will be due and payable not less frequently than annually and in such annual amounts as to amortize the principal amount thereof in (i) 30 years or, if shorter, (ii)(A) a term extending to the maturity date of the enhanced Subordinate Obligations or (B) if later, the final maturity of the Subordinate Repayment Obligation under the written agreement, and providing substantially level annual debt service payments, using the rate of interest set forth in the written repayment agreement which would apply to the Subordinate Repayment Obligation as of the date such amortization schedule is fixed. The principal amortized as described in the prior sentence will bear interest in accordance with the terms of the Subordinate Repayment Obligation. Any amount which comes due on the Subordinate Repayment Obligation by its terms and which is in excess of the amount treated as principal of and interest on a Subordinate Obligation will be payable from Pledged Revenues on a basis subordinate to the payment and/or funding of LAX Maintenance and Operation Expenses, Senior Bonds, any reserve funds established with respect to Senior Bonds, Subordinate Obligations and any reserve funds established with respect to Subordinate Obligations (including the Subordinate Reserve Fund and any other Subordinate Debt Service Reserve Fund). This provision will not defeat or alter the rights of subrogation which any Credit Provider or Liquidity Provider may have under law or under the terms of any Supplemental Subordinate Indenture. The Subordinate Trustee may conclusively rely on a written certification by the Credit Provider or Liquidity Provider of the amount of such non-reimbursement and that such Subordinate Repayment Obligation is to be afforded the status of a Subordinate Obligation under the Master Subordinate Indenture.

#### **Obligations Under Subordinate Qualified Swap; Non-Qualified Swap**

The obligation of the Department to make Regularly Scheduled Swap Payments under a Subordinate Qualified Swap with respect to a Series of Subordinate Obligations may be on a parity with the obligation of the Department to make payments with respect to such Series of Subordinate Obligations and other Subordinate Obligations under the Master Subordinate Indenture, except as otherwise provided by Supplemental Subordinate Indenture and elsewhere in the Master Subordinate Indenture with respect to any Subordinate Swap Termination Payments. The Department may provide in any Supplemental Subordinate Indenture that Regularly Scheduled Swap Payments under a Subordinate Qualified Swap will be secured by a pledge of or lien on the Subordinate Pledged Revenues on a parity with the Subordinate Obligations of such Series and all other Subordinate Obligations, regardless of the principal amount, if any, of the Subordinate Obligations of such Series remaining Outstanding. The Subordinate Trustee will take all action consistent with the other provisions of the Master Subordinate Indenture as will be requested in writing by the Subordinate Qualified Swap Provider necessary to preserve and protect such pledge, lien and assignment and to enforce the obligations of the Department with respect thereto. In the event the action requested to be taken pursuant to the preceding sentence will require the Subordinate Trustee either to exercise the remedies granted in the Master Subordinate Indenture or to institute any action, suit or proceeding in its own name, the Subordinate Qualified Swap Provider will provide to the Subordinate Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred in connection therewith.

In the event that a Subordinate Swap Termination Payment or any other amounts other than as described in the previous paragraph are due and payable by the Department under a Subordinate Qualified Swap, such Subordinate Swap Termination Payment and any such other amounts will, unless otherwise provided in a Supplemental Subordinate Indenture, constitute an obligation of the Department payable from Pledged Revenues after its obligations to pay and/or fund LAX Maintenance and Operation Expenses, Senior Bonds, any reserve funds established with respect to Senior Bonds, Subordinate Obligations and any reserve funds established with respect to Subordinate Obligations (including the Subordinate Reserve Fund and any other Subordinate Debt Service Reserve Fund).

Obligations of the Department to make payments, including termination payments, under a Non-Qualified Swap will, unless otherwise provided in a Supplemental Subordinate Indenture, constitute an obligation of the Department payable from Pledged Revenues after its obligations to pay and/or fund LAX Maintenance and Operation Expenses, Senior Bonds, any reserve funds established with respect to Senior Bonds, Subordinate Obligations and any reserve funds established with respect to Subordinate Obligations (including the Subordinate Reserve Fund and any other Subordinate Debt Service Reserve Fund).

## **Deposits and Withdrawals from the Subordinate Debt Service Funds**

***Deposits into the Subordinate Debt Service Funds.*** The Subordinate Trustee will, at least fifteen Business Days prior to each Payment Date on any Subordinate Obligation, give the Department notice by telephone, promptly confirmed in writing, of the amount, after taking into account Subordinate Capitalized Interest, if any, on deposit in the Subordinate Debt Service Funds, required to be deposited with the Subordinate Trustee to make each required payment of principal and interest due on such Payment Date. With respect to any Series of Subordinate Obligations, the Supplemental Subordinate Indenture under which such Subordinate Obligations are issued may provide for different times and methods of notifying the Department of payment dates and amounts to accommodate the specific provisions of such Series and, in such event, the terms of such Supplemental Subordinate Indenture will control.

So long as any of the Subordinate Obligations are Outstanding, the Authorized Representative will deliver to the Treasurer, at least ten Business Days prior to each Payment Date, as to each Series of Subordinate Obligations Outstanding, a written demand authenticated by the signature of the Chief Financial Officer requesting that the Treasurer, not later than five Business Days prior to each Payment Date, transfer from the LAX Revenue Account to the Subordinate Trustee for deposit in the Subordinate Debt Service Funds established in respect of each Series of Outstanding Subordinate Obligations the full amount required to pay the principal of and/or interest on Subordinate Obligations of that Series due on such Payment Date.

On any day on which the Subordinate Trustee receives funds from the Treasurer to be used to pay principal of or interest on Subordinate Obligations, the Subordinate Trustee will, if the amount received is fully sufficient to pay all amounts of principal and interest then due or becoming due on the next Payment Date, deposit such amounts into the respective Subordinate Debt Service Funds for the Series of Subordinate Obligations for which such payments were made and any excess funds will be applied to pay all amounts of principal and interest becoming due on any subsequent Payment Dates. Notwithstanding any of the foregoing provisions of this paragraph, no amount need be transferred from LAX Revenue Account or otherwise deposited into any Subordinate Debt Service Fund for any Series of Subordinate Obligations for the payment of principal or interest, respectively, if the amount already on deposit therein and available for such purpose is sufficient to pay in full the amount of principal and/or interest, respectively, coming due on such Subordinate Obligations on the next succeeding Payment Date.

The Department may provide in any Supplemental Subordinate Indenture that, as to any Series of Subordinate Obligations Outstanding, any amounts required to be transferred to and paid into a Subordinate Debt Service Fund may be prepaid, in whole or in part, by being earlier transferred to and paid into that Subordinate Debt Service Fund, and in that event any subsequently scheduled transfer, or any part thereof, which has been so prepaid need not be made at the time appointed therefor. In any Supplemental Subordinate Indenture, the Department may provide that moneys in the redemption account allocable to sinking fund installment payments of a Series may, at the discretion of the Department, be applied to the purchase and cancellation of such Series (a price not greater than par) prior to notice of redemption of such Series. Such Subordinate Obligations so delivered or previously redeemed or purchased at the direction of the Department will be credited by the Subordinate Trustee at the principal amount thereof to the next scheduled sinking installment payments on Subordinate Obligations of such Series and any excess over the sinking installment payment deposit required on that date will be credited against future sinking installment deposits in such manner and order as the Department may determine in its discretion, and the scheduled principal amount of the Subordinate Obligations to be redeemed by operation of such sinking installment payments will be accordingly modified in such manner as the Department may determine and as specified to the Subordinate Trustee in writing.

Money set aside and placed in a Subordinate Debt Service Fund for any Series of Subordinate Obligations will remain therein from time to time expended for the aforesaid purposes thereof and will not be used for any other purpose whatsoever, except that any such money so set aside and placed in a Subordinate Debt Service Fund may be temporarily invested as provided in the Master Subordinate Indenture, but such investment will not affect the obligation of the Department to cause the full amount required by the terms of this Section to be available in a Subordinate Debt Service Fund at the time required to meet payments of principal of and interest on Subordinate Obligations of the Series for which it is accumulated. Earnings on such investments upon written request of the Department may be transferred into the LAX Revenue Account, except that during the continuation of a Subordinate Event of Default, such earnings will remain in the Subordinate Debt Service Funds created under the respective Supplemental Subordinate Indentures.

Each Subordinate Debt Service Fund established to pay principal of and interest on any Series of Subordinate Obligations will be held by the Subordinate Trustee or any agent of the Subordinate Trustee, and

amounts to be used to pay principal and interest on such Series, as received by the Subordinate Trustee or its agent, will be deposited therein and used for such purpose. Accounts and subaccounts will be created by the Subordinate Trustee or any agent of the Subordinate Trustee in the various Subordinate Debt Service Funds as requested in writing by the Authorized Representative and will be held by the Subordinate Trustee or such agents as will be provided by the Supplemental Subordinate Indenture.

The moneys in each Subordinate Debt Service Fund established for any issue, Series will be held in trust and applied as provided in the Master Subordinate Indenture and in the Supplemental Subordinate Indenture, and pending the application of such amounts in accordance with the Master Subordinate Indenture and with the provisions of such Supplemental Subordinate Indenture will be subject to a lien on and security interest in favor of the holders of the Outstanding Subordinate Obligations of such Series.

***Withdrawals From Subordinate Debt Service Funds.*** On each Payment Date for any Outstanding Subordinate Obligations, the Subordinate Trustee will pay to the Owners of the Subordinate Obligations of a given Series from the appropriate Subordinate Debt Service Fund or Subordinate Debt Service Funds, an amount equal to the principal and interest becoming due on such Series of Subordinate Obligations.

On or before a mandatory redemption date from sinking installment payments for Term Subordinate Obligations of a Series of Subordinate Obligations, the Subordinate Trustee will transfer from the Subordinate Debt Service Fund to the redemption account for such Series an amount which, together with amounts on deposit therein and available for such purpose, is sufficient to make the sinking installment payment due on such mandatory redemption date. On each date on which Term Subordinate Obligations of a Series are to be mandatorily redeemed from sinking installment payments, the Subordinate Trustee will pay to the Owners of Subordinate Obligations of such Series from the Redemption Account for such Series, an amount equal to the amount of interest and the principal amount of Term Subordinate Obligations of such Series to be mandatorily redeemed on such date.

On each date on which Subordinate Obligations of any Series will otherwise become subject to optional or mandatory redemption (other than from sinking installment payments) in accordance with the provisions of any Supplemental Subordinate Indenture, the Subordinate Trustee will pay to the Owners of such Subordinate Obligations from the redemption account, an amount of interest and principal, and premium, if any, on such Subordinate Obligations to be mandatorily or optionally redeemed on said date. On or before such redemption date, in accordance with the Supplemental Subordinate Indenture pursuant to which such Subordinate Obligations are issued, the Department will have or will have caused to be deposited in the redemption account for such Series, an amount which, together with amounts on deposit therein and available for such purpose, is sufficient to pay the redemption price of such Subordinate Obligations on such redemption date.

The payments made by the Subordinate Trustee in this section will be made solely to the extent that moneys are on deposit in the appropriate Subordinate Debt Service Fund.

All money remaining in a Subordinate Debt Service Fund on the final Payment Date, in excess of the amount required to make provisions for the payment in full of the interest and/or the principal of the Subordinate Obligations of the Series for which that Subordinate Debt Service Fund was established or the payment of amounts required to be rebated, pursuant to the Code, to the United States of America with respect to Subordinate Obligations of that Series, will be returned to the Department and deposited by the Department in the LAX Revenue Account.

The Subordinate Trustee will, at least two Business Days prior to each Payment Date on any Subordinate Obligation, or as otherwise directed in any Supplemental Subordinate Indenture, give the Chief Financial Officer notice by telephone, promptly confirmed in writing, of any additional amount required to be deposited with the Subordinate Trustee to pay the amount required to be paid on such Payment Date in respect of such Subordinate Obligation, in the event the amount then on deposit in any Subordinate Debt Service Fund is insufficient to pay the amounts due on any Series of Subordinate Obligations on such Payment Date. With respect to any Series of Subordinate Obligations, the Supplemental Subordinate Indenture under which such Subordinate Obligations are issued may provide for different times and methods of notifying the Department of payment dates and amounts to accommodate the specific provisions of such Series and, in such event, the terms of such Supplemental Subordinate Indenture will control.

If, on any Payment Date, the Subordinate Trustee does not have sufficient amounts in the Subordinate Debt Service Funds (without regard to any amounts which may be available in the Subordinate Reserve Fund or any other Subordinate Debt Service Reserve Fund) to pay in full with respect to Subordinate Obligations of all Series all

amounts of principal and/or interest due on such date, the Subordinate Trustee will allocate the total amount which is available to make payment on such day (without regard to any amounts in the Subordinate Reserve Fund or any other Subordinate Debt Service Reserve Fund) as follows: first, to the payment of past due interest on Subordinate Obligations of any Series, in the order in which such interest came due, then to the payment of past due principal on Subordinate Obligations of any Series, in the order in which such principal came due, then to the payment of interest then due and payable on the Subordinate Obligations of each Series due on such Payment Date and, if the amount available will not be sufficient to pay in full all interest on the Subordinate Obligations then due, then pro rata among the Series according to the amount of interest then due and second to the payment of principal then due on the Subordinate Obligations and, if the amount available will not be sufficient to pay in full all principal on the Subordinate Obligations then due, then pro rata among the Series according to the Principal Amount then due on the Subordinate Obligations.

If the Subordinate Reserve Fund or any other Subordinate Debt Service Reserve Funds (or a Credit Facility provided in lieu thereof) have been used to make payments on Subordinate Obligations secured thereby, then the Department may be required by a Supplemental Subordinate Indenture to replenish the Subordinate Reserve Fund or such other Subordinate Debt Service Reserve Fund or reimburse the Credit Provider from Subordinate Pledged Revenues provided that (a) no amount from Subordinate Pledged Revenues may be used for such purpose until all payments of principal of and interest on all Subordinate Obligations which have become due and payable have been paid in full, (b) the required payments to replenish the Subordinate Reserve Fund or any other Subordinate Debt Service Reserve Fund or reimburse the Credit Provider will be due in no more than twelve (12) substantially equal monthly installments commencing in the month following any such withdrawal and (c) if the aggregate amount of payments due on any date to replenish the Subordinate Reserve Fund or such other Subordinate Debt Service Reserve Fund exceeds the amount available for such purpose, the payments made to the Subordinate Trustee for such purpose will be allocated among the Subordinate Reserve Fund or the various Subordinate Debt Service Reserve Funds pro rata on the basis of the Outstanding Principal Amount of Subordinate Obligations secured thereby.

Notwithstanding the foregoing, the Department may, in the Supplemental Subordinate Indenture authorizing such Series of Subordinate Obligations, provide for different provisions and timing of deposits with the Subordinate Trustee and different methods of paying principal of or interest on such Subordinate Obligations depending upon the terms of such Subordinate Obligations and may provide for payment through a Credit Facility with reimbursement to the Credit Provider from the respective Subordinate Debt Service Fund created for the Series of Subordinate Obligations for which such Credit Facility is provided.

If the Subordinate Pledged Revenues are at any time insufficient to make the deposits required to make payments on the Subordinate Obligations, the Department may, at its election, pay to the Subordinate Trustee funds from any available sources with the direction that such funds be deposited into the Subordinate Debt Service Funds or into a specified account or accounts or subaccount or subaccounts therein.

### **Additional Security**

The pledge of Subordinate Pledged Revenues and the other security provided in the Granting Clauses of the Master Subordinate Indenture, secure all Subordinate Obligations issued under the terms of the Master Subordinate Indenture on an equal and ratable basis, except as to the timing of such payments. The Department may, however, in its discretion, provide additional security or credit enhancement for specified Subordinate Obligations or Series of Subordinate Obligations with no obligation to provide such additional security or credit enhancement to other Subordinate Obligations.

### **Payment of Principal and Interest**

The Department covenants and agrees that it will duly and punctually pay or cause to be paid from the Subordinate Pledged Revenues and to the extent thereof the principal of, premium, if any, and interest on every Subordinate Obligation at the place and on the dates and in the manner set forth herein, and in the Supplemental Subordinate Indentures and in the Subordinate Obligations specified, according to the true intent and meaning thereof, and that it will faithfully do and perform all covenants and agreements in the Master Subordinate Indenture and in the Subordinate Obligations contained, provided that the Department's obligation to make payments of the principal of, premium, if any, and interest on the Subordinate Obligations will be limited to payment from the Subordinate Pledged Revenues, the funds and accounts pledged therefor in the Granting Clauses of the Master

Subordinate Indenture and any other source which the Department may specifically provide for such purpose and no Holder will have any right to enforce payment from any other funds of the Department.

### **Junior and Subordinated Obligations**

The Department may, from time to time, incur indebtedness with a lien on Subordinate Pledged Revenues ranking junior and subordinate to the lien of the Subordinate Obligations. Such indebtedness will be incurred at such times and upon such terms as the Department will determine, provided that: (a) any resolution or indenture of the Department authorizing the issuance of any subordinate obligations (including, but not limited to, Third Lien Obligations) will specifically state that such lien on or security interest granted in the Subordinate Pledged Revenues is junior and subordinate to the lien on and security interest in such Subordinate Pledged Revenues and other assets granted to secure the Subordinate Obligations; and (b) payment of principal of and interest on such subordinated obligations (including, but not limited to, Third Lien Obligations) will be permitted, provided that all deposits required to be made to the Subordinate Trustee to be used to pay debt service on the Subordinate Obligations and to replenish the Subordinate Reserve Fund or any other Subordinate Debt Service Reserve Fund, if any, are then current in accordance with the Master Subordinate Indenture.

### **Maintenance and Operation of LAX Airport Facilities**

Except as otherwise provided in the Master Subordinate Indenture or the Master Senior Indenture with respect to the transfer or disposition of LAX Airport Facilities, the Department has covenanted that the LAX Airport Facilities will at all times be operated and maintained in good working order and condition and that all lawful orders of any governmental agency or authority having jurisdiction in the premises will be complied with (provided the Department will not be required to comply with any such orders so long as the validity or application thereof will be contested in good faith), and that all licenses and permits necessary to construct or operate any part of the LAX Airport Facilities will be obtained and maintained and that all necessary repairs, improvements and replacements of the LAX Airport Facilities will be made, subject to sound business judgment. Except as otherwise provided in the Master Subordinate Indenture or the Master Senior Indenture with respect to the transfer or disposition of LAX Airport Facilities, the Department will, from time to time, duly pay and discharge, or cause to be paid and discharged, except to the extent the imposition or payment thereof is being contested in good faith by the Department, all taxes (if any), assessments or other governmental charges lawfully imposed upon the LAX Airport Facilities or upon any part thereof, or upon the LAX Revenues, Pledged Revenues, Net Pledged Revenues or Subordinate Pledged Revenues, when the same will become due, as well as any lawful claim for labor, materials or supplies or other charges which, if unpaid, might by law become a lien or charge upon the LAX Revenues, Pledged Revenues, Net Pledged Revenues or Subordinate Pledged Revenues or LAX Airport Facilities or any part thereof constituting part of the LAX Airport Facilities.

### **Insurance; Application of Insurance Proceeds**

Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions:

(1) the Department will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self-Insurance with respect to the facilities constituting Los Angeles International Airport and public liability insurance in the form of commercial insurance or Qualified Self-Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Department, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by similar airports;

(2) the Department will procure and maintain reasonable fidelity insurance or bonds on the position of Chief Financial Officer and on any other employees of the Board or the Department who handle or are responsible for funds of the Department; and

(3) the Department will place on file with the Subordinate Trustee annually within 120 days after the close of each Fiscal Year a certificate of an Authorized Representative containing a summary of all insurance policies and self-insured programs then in effect with respect to Los Angeles International Airport and the operations of the Department. The Subordinate Trustee may conclusively rely upon such certificate and will not be responsible for the sufficiency or adequacy of any insurance required in the Master Subordinate Indenture or obtained by the Department.

*“Qualified Self-Insurance”* means insurance maintained through a program of self-insurance or insurance maintained with a fund, company or association in which the Department may have a material interest and of which the Department may have control, either singly or with others. Each plan of Qualified Self-Insurance will be established in accordance with law, will provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the Department determines to be reasonable to protect against risks assumed under the Qualified Self-Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self-Insurance, and such self-insurance program will be reviewed at least once every 12 months by a Consultant who will deliver to the Department a report on the adequacy of the reserves established thereunder. If the Consultant determines that such reserves are inadequate, he will make a recommendation as to the amount of reserves that should be established and maintained, and the Department will comply with such recommendation unless it can establish to the satisfaction of and receive a certification from a Consultant that a lower amount is reasonable to provide adequate protection to the Department.

If, as a result of any event, any part of an LAX Airport Facility or any LAX Airport Facilities is destroyed or severely damaged, the Department will create within the LAX Revenue Account a special subaccount and will credit the Net Proceeds received as a result of such event of damage or destruction to such subaccount and such Net Proceeds will, within a reasonable period of time taking into account any terms under which insurance proceeds are paid and any insurance restrictions upon the use or timing of the use of insurance proceeds, be used to: (1) repair or replace the LAX Airport Facilities, or portion thereof, which were damaged or destroyed, (2) provide additional revenue-producing LAX Airport Facilities, (3) redeem Senior Bonds, (4) create an escrow fund pledged to pay specified Senior Bonds and thereby cause such Senior Bonds to be deemed to be paid as provided in the Master Senior Indenture; provided, however, that the Department will first deliver to the Senior Trustee a certificate of a Consultant showing that, after taking into account the use of the Net Proceeds for the redemption of such specified Senior Bonds, the rate covenant set forth in the Master Senior Indenture would, nevertheless, be met, (5) redeem Subordinate Obligations, or (6) create an escrow fund pledged to pay specified Subordinate Obligations and thereby cause such Subordinate Obligations to be deemed to be paid as provided in the Master Subordinate Indenture; provided, however, that the Department will first deliver to the Subordinate Trustee a certificate of a Consultant showing that, after taking into account the use of the Net Proceeds for the redemption of such specified Subordinate Obligations, the rate covenant set forth in the Master Subordinate Indenture would, nevertheless, be met.

#### **Transfer of LAX Airport Facility or LAX Airport Facilities**

The Department will not, except as permitted below transfer, sell or otherwise dispose of an LAX Airport Facility or LAX Airport Facilities. For purposes of this section, any transfer of an asset over which the Department retains substantial control in accordance with the terms of such transfer will not, for so long as the Department has such control, be deemed a disposition of an LAX Airport Facility or LAX Airport Facilities.

The Department may transfer, sell or otherwise dispose of LAX Airport Facilities only if such transfer, sale or disposition complies with one or more of the following provisions:

- (a) The property being disposed of is inadequate, obsolete or worn out; or
- (b) The property proposed to be disposed of and all other LAX Airport Facilities disposed of during the 12-month period ending on the day of such transfer (but excluding property disposed of under (a) above), will not, in the aggregate, constitute a Significant Portion, the proceeds are deposited into the LAX Revenue Account to be used as described below and the Department believes that such disposal will not prevent it from fulfilling its obligations under the Senior Indenture; or
- (c) Prior to the disposition of such property, there is delivered to the Senior Trustee and the Subordinate Obligations a certificate of a Consultant to the effect that notwithstanding such disposition, but taking into account the use of such proceeds in accordance with the expectations of the Department as evidenced by a certificate of an Authorized Representative, the Consultant estimates that Department will be in compliance with the rate covenants set forth in the Master Senior Indenture and the Master Subordinate Indenture during each of the five Fiscal Years immediately following such disposition.

LAX Airport Facilities which were financed with the proceeds of obligations the interest on which is then excluded from gross income for federal income tax purposes will not be disposed of, except under the terms of provision (a) above, unless the Department has first received a written opinion of Bond Counsel to the effect that such disposition and the application of any disposition proceeds thereof will not cause the interest on such obligations to become includable in gross income for federal income tax purposes.

No such disposition will be made which would cause the Department to be in default of any other covenant contained in the Master Senior Indenture or the Master Subordinate Indenture.

### **Investments**

Moneys held by the Subordinate Trustee in the funds and accounts created in the Master Subordinate Indenture and under any Supplemental Subordinate Indenture will be invested and reinvested as directed by the Department, in Subordinate Permitted Investments subject to the restrictions set forth in the Master Subordinate Indenture and such Supplemental Subordinate Indenture and subject to the investment restrictions imposed upon the Department by the Charter and the laws of the State. The Department will direct such investments by written certificate (upon which the Subordinate Trustee may conclusively rely) of an Authorized Representative or by telephone instruction followed by prompt written confirmation by an Authorized Representative; in the absence of any such instructions, the Subordinate Trustee will, to the extent practicable, invest in Subordinate Permitted Investments specified in (i) of the definition thereof.

The Subordinate Trustee will not be liable for any loss resulting from following the written directions of the Department or as a result of liquidating investments to provide funds for any required payment, transfer, withdrawal or disbursement from any fund or account in which such Subordinate Permitted Investment is held.

The Subordinate Trustee may buy or sell any Subordinate Permitted Investment through its own (or any of its affiliates) investment department.

### **Defeasance**

Subordinate Obligations or portions thereof (such portions to be in integral multiples of the authorized denomination) which have been paid in full or which are deemed to have been paid in full will no longer be secured by or entitled to the benefits of the Master Subordinate Indenture except for the purposes of payment from moneys or Government Obligations held by the Subordinate Trustee or a Subordinate Paying Agent for such purpose. When all Subordinate Obligations which have been issued under the Master Subordinate Indenture have been paid in full or are deemed to have been paid in full, and all other sums payable under the Master Subordinate Indenture by the Department, including all necessary and proper fees, compensation and expenses of the Subordinate Trustee, the Subordinate Registrar and the Subordinate Paying Agent, have been paid or are duly provided for, then the right, title and interest of the Subordinate Trustee in and to the pledge of Subordinate Pledged Revenues and the other assets pledged to secure the Subordinate Obligations under the Master Subordinate Indenture will thereupon cease, terminate and become void, and thereupon the Subordinate Trustee will cancel, discharge and release the Master Subordinate Indenture, will execute, acknowledge and deliver to the Department such instruments as will be requisite to evidence such cancellation, discharge and release and will assign and deliver to the Department any property and revenues at the time subject to the Master Subordinate Indenture which may then be in the Subordinate Trustee's possession, except funds or securities in which such funds are invested and are held by the Subordinate Trustee or the Subordinate Paying Agent for the payment of the principal of, premium, if any, and interest on the Subordinate Obligations.

A Subordinate Obligation will be deemed to be paid within the meaning of the Master Subordinate Indenture when payment of the principal, interest and premium, if any, either (a) has been made or caused to be made in accordance with the terms of the Subordinate Obligations and the Master Subordinate Indenture or (b) has been provided for by depositing with the Subordinate Trustee in trust and setting aside exclusively for such payment, (i) moneys sufficient to make such payment and/or (ii) noncallable Government Obligations, maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient moneys to make such payment. At such times as Subordinate Obligations will be deemed to be paid under the Master Subordinate Indenture, such Subordinate Obligations will no longer be secured by or entitled to the benefits of the Master Subordinate Indenture, except for the purposes of payment from such moneys or Government Obligations.

Any deposit under clause (b) of the foregoing paragraph will be deemed a payment of such Subordinate Obligations. Once such deposit has been made, the Subordinate Trustee will notify all Holders of the affected Subordinate Obligations that the deposit required by (b) above has been made with the Subordinate Trustee and that such Subordinate Obligations are deemed to have been paid in accordance with the Master Subordinate Indenture. No notice of redemption will be required at the time of such defeasance or prior to such date as may be required by the Supplemental Subordinate Indenture under which such Subordinate Obligations were issued. The Department may at any time, prior to issuing such notice of redemption as may be required by the Supplemental Subordinate Indenture under which such Subordinate Obligations were issued, modify or otherwise change the scheduled date



for the redemption or payment of any Subordinate Obligation deemed to be paid under the terms of the foregoing paragraph in accordance with the terms of the Subordinate Obligations or the Master Subordinate Indenture subject to (i) receipt of an approving opinion of Bond Counsel that such action will not adversely affect the tax-exemption of any Subordinate Obligation or Subordinate Obligations then Outstanding and (ii) receipt of an approving opinion of a nationally recognized accounting firm that there are sufficient moneys and/or Government Obligations to provide for the payment of such Subordinate Obligations. Notwithstanding anything in this section to the contrary, moneys from the trust or escrow established for the defeasance of Subordinate Obligations may be withdrawn and delivered to the Department so long as the requirements of subparagraphs (i) and (ii) above are met prior to or concurrently with any such withdrawal.

### **Subordinate Events of Default and Remedies**

***Subordinate Events of Default.*** Each of the following events will constitute and is referred to as a “*Subordinate Event of Default*”:

- (a) a failure to pay the principal of or premium, if any, on any of the Subordinate Obligations, when the same will become due and payable at maturity or upon redemption;
- (b) a failure to pay any installment of interest on any of the Subordinate Obligations when such interest will become due and payable;
- (c) failure to pay the purchase price of any Subordinate Obligation when such purchase price will be due and payable upon an optional or mandatory tender date as provided in a Supplemental Subordinate Indenture;
- (d) a failure by the Department to observe and perform any covenant, condition, agreement or provision (other than as specified in paragraphs (a), (b) and (c) above) that are to be observed or performed by the Department and which are contained in the Master Subordinate Indenture or a Supplemental Subordinate Indenture, which failure, except for a violation under the rate covenant set forth in the Master Subordinate Indenture which will be controlled by the provisions set forth therein, will continue for a period of 90 days after written notice, specifying such failure and requesting that it be remedied, will have been given to the Department by the Subordinate Trustee, which notice may be given at the discretion of the Subordinate Trustee and will be given at the written request of Holders of 25% or more of the Principal Amount of the Subordinate Obligations then Outstanding, unless the Subordinate Trustee, or the Subordinate Trustee and the Holders of Subordinate Obligations in a Principal Amount not less than the Principal Amount of Subordinate Obligations the Holders of which requested such notice, agree in writing to an extension of such period prior to its expiration; provided, however, that the Subordinate Trustee or the Subordinate Trustee and the Holders of such principal amount of Subordinate Obligations will be deemed to have agreed to an extension of such period if corrective action is initiated by the Department within such period and is being diligently pursued until such failure is corrected;
- (e) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, including without limitation proceedings under Chapter 9 of the United States Bankruptcy Code (as the same may from time to time be hereafter amended), or other proceedings for relief under any federal or state bankruptcy law or similar law for the relief of debtors are instituted by or against the Department and, if instituted against the Department, said proceedings are consented to or are not dismissed within 60 days after such institution;
- (f) the occurrence of any other Subordinate Event of Default as is provided in a Supplemental Subordinate Indenture; or
- (g) a default in the payment of principal of or interest on any Senior Bonds.

### ***Remedies***

- (a) Upon the occurrence and continuance of any Subordinate Event of Default, the Subordinate Trustee in its discretion may, and upon the written direction of the Holders of 25% or more of the Principal Amount of the Subordinate Obligations then Outstanding and receipt of indemnity to its satisfaction, will, in its own name and as the Subordinate Trustee of an express trust:
  - (i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Subordinate Holders, and require the Department to carry out any agreements with or

for the benefit of the Subordinate Holders and to perform its or their duties under the Charter or any other law to which it is subject and this Indenture, provided that any such remedy may be taken only to the extent permitted under the applicable provisions of the Master Subordinate Indenture;

(ii) bring suit upon the Subordinate Obligations;

(iii) commence an action or suit in equity to require the Department to account as if it were the trustee of an express trust for the Subordinate Holders; or

(iv) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Subordinate Holders.

(b) The Subordinate Trustee will be under no obligation to take any action with respect to any Subordinate Event of Default unless the Subordinate Trustee has actual knowledge of the occurrence of such Subordinate Event of Default.

(c) Except with respect to a Credit Provider or a Liquidity Provider as provided in a Supplemental Subordinate Indenture or a written agreement between the Department and a Credit Provider or a Liquidity Provider (subject to the prior lien on Pledged Revenues granted to the Senior Bonds pursuant to the Senior Indenture), in no event, upon the occurrence and continuation of a Subordinate Event of Default, will the Subordinate Trustee, the Holders of Subordinate Obligations, a Credit Provider, a Liquidity Provider or any other party have the right to accelerate the payment of principal of and interest on the Subordinate Obligations Outstanding.

***Holders' Right To Direct Proceedings.*** Anything in the Master Subordinate Indenture to the contrary notwithstanding, Holders of not less than 51% in aggregate Principal Amount of the Subordinate Obligations then Outstanding will have the right, at any time, by an instrument in writing executed and delivered to the Subordinate Trustee, to direct the time, method and place of conducting all remedial proceedings available to the Subordinate Trustee under the Master Subordinate Indenture to be taken in connection with the enforcement of the terms of the Master Subordinate Indenture or exercising any trust or power conferred on the Subordinate Trustee by the Master Subordinate Indenture; provided that such direction will not be otherwise than in accordance with the provisions of the law and the Master Subordinate Indenture and that there will have been provided to the Subordinate Trustee security and indemnity satisfactory to the Subordinate Trustee against the costs, expenses and liabilities to be incurred as a result thereof by the Subordinate Trustee.

***Limitation on Right To Institute Proceedings.*** No Subordinate Holder will have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust or power hereunder, or any other remedy under the Master Subordinate Indenture or on such Subordinate Obligations, unless such Subordinate Holder or Holders previously has given to the Subordinate Trustee written notice of a Subordinate Event of Default as hereinabove provided and unless also Holders of 25% or more of the Principal Amount of the Subordinate Obligations then Outstanding has made written request of the Subordinate Trustee to do so, after the right to institute such suit, action or proceeding under the Master Subordinate Indenture will have accrued, and will have afforded the Subordinate Trustee a reasonable opportunity to proceed to institute the same in either its or their name, and unless there also will have been offered to the Subordinate Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Subordinate Trustee will not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are thereby declared in every such case, at the option of the Subordinate Trustee, to be conditions precedent to the institution of such suit, action or proceeding; it being understood and intended that no one or more of the Subordinate Holders will have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of the Master Subordinate Indenture, or to enforce any right under the Master Subordinate Indenture or under the Subordinate Obligations, except in the manner provided in the Master Subordinate Indenture, and that all suits, actions and proceedings at law or in equity will be instituted, had and maintained in the manner provided in the Master Subordinate Indenture and for the equal benefit of all Subordinate Holders.

***Application of Moneys.*** If a Subordinate Event of Default will occur and be continuing, all amounts then held or any moneys received by the Subordinate Trustee, by any receiver or by any Subordinate Holder pursuant to any right given or action taken under the provisions of the Master Subordinate Indenture (which will not include moneys provided through a Credit Facility, which moneys will be restricted to the specific use for which such moneys were provided), after payment of the costs and expenses of the proceedings resulting in the collection of

such moneys and of the expenses, liabilities and advances incurred or made by the Subordinate Trustee (including attorneys' fees and disbursements), will be applied as follows: (a) first, to the payment to the persons entitled thereto of all installments of interest then due on the Subordinate Obligations, with interest on overdue installments, if lawful, at the rate per annum as provided in any Supplemental Subordinate Indenture, as the case may be, in the order of maturity of the installments of such interest and, if the amount available will not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, and (b) second, to the payment to the persons entitled thereto of the unpaid principal amount of any of the Subordinate Obligations which have become due with interest on such Subordinate Obligations at such rate as provided in a Supplemental Subordinate Indenture from the respective dates upon which they became due and, if the amount available will not be sufficient to pay in full Subordinate Obligations on any particular date determined to be the payment date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, in each case to the persons entitled thereto, without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the provisions of this section, such moneys will be applied at such times, and from time to time, as the Subordinate Trustee will determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Subordinate Trustee will apply such funds, it will fix the date (which will be an interest Payment Date unless it will deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal and interest to be paid on such date will cease to accrue. The Subordinate Trustee will give notice of the deposit with it of any such moneys and of the fixing of any such date by Mail to all Subordinate Holders and will not be required to make payment to any Subordinate Holder until such Subordinate Obligations will be presented to the Subordinate Trustee for appropriate endorsement or for cancellation if fully paid.

#### **The Subordinate Trustee**

***Duties.*** If a Subordinate Event of Default has occurred and is continuing, the Subordinate Trustee will exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The Subordinate Trustee will perform the duties set forth in the Subordinate Indenture and no implied duties or obligations will be read into the Subordinate Indenture against the Subordinate Trustee. Except during the continuance of a Subordinate Event of Default, in the absence of any negligence on its part or any knowledge to the contrary, the Subordinate Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Subordinate Trustee and conforming to the requirements of the Master Subordinate Indenture. However, the Subordinate Trustee will examine the certificates and opinions to determine whether they conform to the requirements of the Master Subordinate Indenture.

The Subordinate Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that: (a) the Subordinate Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer unless the Subordinate Trustee was negligent in ascertaining the pertinent facts; and (b) the Subordinate Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it from Subordinate Holders or the Department in the manner provided in the Master Subordinate Indenture.

The Subordinate Trustee will not, by any provision of the Master Subordinate Indenture, be required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under the Master Subordinate Indenture, or in the exercise of any of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

***Notice of Defaults.*** If (a) a Subordinate Event of Default has occurred or (b) an event has occurred which with the giving of notice and/or the lapse of time would be a Subordinate Event of Default and, with respect to such events for which notice to the Department is required before such events will become Subordinate Events of Default, such notice has been given, then the Subordinate Trustee will promptly, after obtaining actual notice of such Subordinate Event of Default or event described in (b) above, give notice thereof to each Subordinate Holder. Except in the case of a default in payment or purchase on any Subordinate Obligations, the Subordinate Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Subordinate Holders.

***Eligibility of Subordinate Trustee.*** The Master Subordinate Indenture will always have a Subordinate Trustee that is a trust company, banking association or a bank having the powers of a trust company and is organized and doing business under the laws of the United States or any state or the District of Columbia, is authorized to conduct trust business under the laws of the State, is subject to supervision or examination by United States, state or District of Columbia authority and has (together with its corporate parent) a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition.

***Replacement of Subordinate Trustee.*** The Subordinate Trustee may resign by notifying the Department in writing prior to the proposed effective date of the resignation. The Holders of not less than 51% in aggregate Principal Amount of the Subordinate Obligations may remove the Subordinate Trustee by notifying the removed Subordinate Trustee and may appoint a successor Subordinate Trustee with the Department's consent. The Department may remove the Subordinate Trustee, by notice in writing delivered to the Subordinate Trustee at least 60 days prior to the proposed removal date; provided, however, that the Department will have no right to remove the Subordinate Trustee during any time when a Subordinate Event of Default has occurred and is continuing or when an event has occurred and is continuing or condition exists which with the giving of notice or the passage of time or both would be a Subordinate Event of Default.

No resignation or removal of the Subordinate Trustee will be effective until a new Subordinate Trustee has taken office and delivered a written acceptance of its appointment to the retiring Subordinate Trustee and to the Department. Immediately thereafter, the retiring Subordinate Trustee will transfer all property held by it as Subordinate Trustee to the successor Subordinate Trustee, the resignation or removal of the retiring Subordinate Trustee will then (but only then) become effective and the successor Subordinate Trustee will have all the rights, powers and duties of the Subordinate Trustee under the Subordinate Indenture.

If the Subordinate Trustee resigns or is removed or for any reason is unable or unwilling to perform its duties under the Subordinate Indenture, the Department will promptly appoint a successor Subordinate Trustee.

If a Subordinate Trustee is not performing its duties under the Subordinate Indenture and a successor Subordinate Trustee does not take office within 60 days after the retiring Subordinate Trustee delivers notice of resignation or the Department delivers notice of removal, the retiring Subordinate Trustee, the Department or the Holders of not less than 51% in aggregate Principal Amount of the Subordinate Obligations may petition any court of competent jurisdiction for the appointment of a successor Subordinate Trustee.

## **Amendments and Supplements**

***Supplemental Subordinate Indentures Not Requiring Consent of Holders of Subordinate Obligations.*** The Department may, from time to time and at any time, without the consent of or notice to the Holders of the Subordinate Obligations, execute and deliver Supplemental Subordinate Indentures supplementing and/or amending the Master Subordinate Indenture or any Supplemental Subordinate Indenture, as follows:

- (a) to provide for the issuance of a Series or multiple Series of Subordinate Obligations under the provisions of the Master Subordinate Indenture and to set forth the terms of such Subordinate Obligations and the special provisions which will apply to such Subordinate Obligations;
- (b) to cure any formal defect, omission, inconsistency or ambiguity in, or answer any questions arising under, the Master Subordinate Indenture or any Supplemental Subordinate Indenture, provided such supplement or amendment is not materially adverse to the Subordinate Holders;
- (c) to add to the covenants and agreements of the Department in the Master Subordinate Indenture or any Supplemental Subordinate Indenture other covenants and agreements, or to surrender any right or power reserved or conferred upon the Department, provided such supplement or amendment will not adversely affect the interests of the Subordinate Holders;
- (d) to confirm, as further assurance, any interest of the Subordinate Trustee in and to the pledge of Subordinate Pledged Revenues or in and to the funds and accounts held by the Subordinate Trustee or in and to any other moneys, securities or funds of the Department provided pursuant to the Master Subordinate Indenture or to otherwise add additional security for the Subordinate Holders;
- (e) to evidence any change made in the terms of any Series of Subordinate Obligations if such changes are authorized by a Supplemental Subordinate Indenture at the time the Series of Subordinate

Obligations is issued and such change is made in accordance with the terms of such Supplemental Subordinate Indenture;

(f) to comply with the requirements of the Trust Indenture Act of 1939, as amended from time to time, provided such supplement or amendment is not materially adverse to the Subordinate Holders;

(g) to provide for uncertificated Subordinate Obligations or for the issuance of coupons and bearer Subordinate Obligations or Subordinate Obligations registered only as to principal;

(h) to qualify the Subordinate Obligations or a Series of Subordinate Obligations for a rating or ratings from a Rating Agency;

(i) to accommodate the technical, operational and structural features of Subordinate Obligations which are issued or are proposed to be issued or of a Subordinate Program which has been authorized or is proposed to be authorized, including, but not limited to, changes needed to accommodate commercial paper, auction bonds, variable rate or adjustable rate bonds, discounted or compound interest bonds, swaps or other forms of indebtedness which the Department from time to time deems appropriate to incur;

(j) to accommodate the use of a Credit Facility or Liquidity Facility for specific Subordinate Obligations or a specific Series of Subordinate Obligations, provided such supplement or amendment is not materially adverse to the Subordinate Holders;

(k) to comply with the requirements of the Code as are necessary, in the opinion of Bond Counsel, to prevent the federal income taxation of the interest on the Subordinate Obligations, including, without limitation, the segregation of Pledged Revenues, Net Pledged Revenues and Subordinate Pledged Revenues into different funds; and

(l) to modify, alter, amend or supplement the Master Subordinate Indenture or any Supplemental Subordinate Indenture in any other respect which is not materially adverse to the Subordinate Holders.

Before the Department executes, pursuant to this section, any Supplemental Subordinate Indenture, there will be delivered to the Department and Subordinate Trustee an opinion of Bond Counsel to the effect that such Supplemental Subordinate Indenture is authorized or permitted by the Master Subordinate Indenture, the Act and other applicable law, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the Department in accordance with its terms and will not cause interest on any of the Subordinate Obligations which is then excluded from gross income of the recipient thereof for federal income tax purposes to be included in gross income for federal income tax purposes.

***Supplemental Subordinate Indentures Requiring Consent of Holders of Subordinate Obligations.***

(a) Except for any Supplemental Subordinate Indenture entered into pursuant to the provisions described under “—Supplemental Subordinate Indentures Not Requiring Consent of Holders of Subordinate Obligations” above and any Supplemental Subordinate Indenture entered into pursuant to (b) below, subject to the terms and provisions contained in this section and not otherwise, the Holders of not less than 51% in aggregate Principal Amount of the Subordinate Obligations then Outstanding will have the right from time to time to consent to and approve the execution by the Department of any Supplemental Subordinate Indenture deemed necessary or desirable by the Department for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in the Master Subordinate Indenture or in a Supplemental Subordinate Indenture; provided, however, that, unless approved in writing by the Holders of all the Subordinate Obligations then Outstanding or unless such change affects less than all Series of Subordinate Obligations and the following subsection (b) is applicable, nothing contained in the Master Subordinate Indenture will permit, or be construed as permitting, (i) a change in the scheduled times, amounts or currency of payment of the principal of, interest on or Accreted Value of any Outstanding Subordinate Obligations or (ii) a reduction in the principal amount or redemption price of any Outstanding Subordinate Obligations or the rate of interest thereon; and provided that nothing contained in the Master Subordinate Indenture, including the provisions of (b) below, will, unless approved in writing by the holders of all the Subordinate Obligations then Outstanding, permit or be construed as permitting (iii) the creation of a lien (except as expressly permitted by the Master Subordinate Indenture) upon or pledge of the Subordinate Pledged Revenues created by the Master

Subordinate Indenture, ranking prior to or on a parity with the claim created by the Master Subordinate Indenture, (iv) except with respect to additional security which may be provided for a particular Series of Subordinate Obligations, a preference or priority of any Subordinate Obligation or Subordinate Obligations over any other Subordinate Obligation or Subordinate Obligations with respect to the security granted therefor under the Granting Clauses of the Master Subordinate Indenture, or (v) a reduction in the aggregate Principal Amount of Subordinate Obligations the consent of the Subordinate Holders of which is required for any such Supplemental Subordinate Indenture. Nothing contained in the Master Subordinate Indenture, however, will be construed as making necessary the approval by Subordinate Holders of the execution of any Supplemental Subordinate Indenture as authorized pursuant to the provisions described under “—Supplemental Subordinate Indentures Not Requiring Consent of Holders of Subordinate Obligations” above, including the granting, for the benefit of particular Series of Subordinate Obligations, security in addition to the pledge of the Subordinate Pledged Revenues.

(b) The Department may, from time to time and at any time, execute a Supplemental Subordinate Indenture which amends the provisions of an earlier Supplemental Subordinate Indenture under which a Series or multiple Series of Subordinate Obligations were issued. If such Supplemental Subordinate Indenture is executed for one of the purposes described under “—Supplemental Subordinate Indentures Not Requiring Consent of Holders of Subordinate Obligations” above, no notice to or consent of the Subordinate Holders will be required. If such Supplemental Subordinate Indenture contains provisions which affect the rights and interests of less than all Series of Subordinate Obligations Outstanding and the provisions described under “—Supplemental Subordinate Indentures Not Requiring Consent of Holders of Subordinate Obligations” are not applicable, then this subsection (b) rather than subsection (a) above will control and, subject to the terms and provisions contained in this subsection (b) and not otherwise, the Holders of not less than 51% in aggregate Principal Amount of the Subordinate Obligations of all Series of Subordinate Obligations Outstanding which are affected by such changes will have the right from time to time to consent to any Supplemental Subordinate Indenture deemed necessary or desirable by the Department for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in such Supplemental Subordinate Indenture and affecting only the Subordinate Obligations of such Series; provided, however, that, unless approved in writing by the Holders of all the Subordinate Obligations of all the affected Series then Outstanding, nothing contained in the Master Subordinate Indenture will permit, or be construed as permitting, (i) a change in the scheduled times, amounts or currency of payment of the principal of, interest on or Accreted Value of any Outstanding Subordinate Obligations of such Series or (ii) a reduction in the principal amount or redemption price of any Outstanding Subordinate Obligations of such Series or the rate of interest thereon. Nothing contained in the Master Subordinate Indenture, however, will be construed as making necessary the approval by Holders of the adoption of any Supplemental Subordinate Indenture as authorized pursuant to the provisions described under “—Supplemental Subordinate Indentures Not Requiring Consent of Holders of Subordinate Obligations” above, including the granting, for the benefit of particular Series of Subordinate Obligations, security in addition to the pledge of the Subordinate Pledged Revenues.

#### **Amendments to the Senior Indenture**

The Holders of the Subordinate Obligations have no right to consent to or reject any amendments to the Senior Indenture that require the consent of the holders of the Senior Bonds, except for amendments to the flow of funds that require the consent of the holders of the Senior Bonds.

#### **Rights of Credit Provider**

The Master Subordinate Indenture provides that if a Credit Facility is provided for a Series of Subordinate Obligations or for specific Subordinate Obligations, the Department may in the Supplemental Subordinate Indenture under which such Subordinate Obligations are issued, provide any or all of the following rights to the Credit Provider as the Department deems to be appropriate: (a) the right to make requests of, direct or consent to the actions of the Subordinate Trustee or to otherwise direct proceedings all as provided in the Master Subordinate Indenture to the same extent and in place of the owners of the Subordinate Obligations which are secured by the Credit Facility and for such purposes the Credit Provider will be deemed to be the Bondholder of such Subordinate Obligations; (b) the right to act in place of the owners of the Subordinate Obligations which are secured by the Credit Facility for purposes of removing a Subordinate Trustee or appointing a Subordinate Trustee under the

Subordinate Indenture; and (c) the right to consent to Supplemental Subordinate Indentures, which would otherwise require the consent of the Holders of not less than 51% in aggregate Principal Amount of the Subordinate Obligations, entered into pursuant to the provisions set forth under the caption “—Amendments and Supplements—Supplemental Subordinate Indentures Requiring Consent of Holders of Subordinate Obligations” above, except with respect to any amendments described in subsections (a)(i) through (iv) and (b)(i) or (ii) under the caption “—Amendments and Supplements—Supplemental Subordinate Indentures Requiring Consent of Holders of Subordinate Obligations” above, which consent of the actual Subordinate Holders will still be required, of the Master Subordinate Indenture to the same extent and in place of the owners of the Subordinate Obligations which are secured by the Credit Facility and for such purposes the Credit Provider will be deemed to be the Holder of such Subordinate Obligations.

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**APPENDIX B-6**  
**AMENDMENTS TO THE MASTER SENIOR INDENTURE**

*Following is a description of certain amendments that are being made to the Master Senior Indenture.*

**Master Senior Indenture Amendments**

The Master Senior Indenture Amendments are set forth below. Additions to the Master Senior Indenture are shown in **bold and double underline** and deletions are shown in ~~in strikethrough~~.

**ARTICLE I - Definitions**

- (a) The definition of “Debt Service Reserve Fund Surety Policy”

“Debt Service Reserve Fund Surety Policy” shall mean an insurance policy or surety bond, or a letter of credit (other than a Reserve Fund Surety Policy) deposited with the Trustee for the credit of a Debt Service Reserve Fund created for one or more series of Outstanding Bonds in lieu of or partial substitution for cash or securities on deposit therein. Except as otherwise provided in a Supplemental Indenture, the entity providing such Debt Service Reserve Fund Surety Policy shall be rated, at the time such instrument is provided, in one of the ~~two~~ **three** highest long-term Rating Categories by ~~both Moody’s if Moody’s is then maintaining a rating on the Bonds and S&P if S&P is then maintaining a rating on the Bonds~~ **one or more Rating Agencies, provided that such entity shall not be rated by any Rating Agency in a long-term Rating Category that is lower than the three highest long-term Rating Categories.**

- (b) The definition of “Qualified Swap”

“Qualified Swap” shall mean any Swap (a) whose Designated Debt is all or part of a particular Series of Bonds; (b) whose Swap Provider is **currently** a Qualified Swap Provider or ~~has been~~ **was** a Qualified Swap Provider ~~within the 60 day period preceding the date on which the calculation of Annual Debt Service or Aggregate Annual Debt Service is being made~~ **at the time the Swap was originally entered into by the Board;** (c) which has a term not greater than the term of the Designated Debt or to a specified mandatory tender or redemption of such Designated Debt; **and** (d) which has been designated in writing to the Trustee by the ~~Department~~ **Board** as a Qualified Swap with respect to such Bonds; ~~and (e) which has been approved by S&P, if S&P has an outstanding rating on any Bonds, and Moody’s, if Moody’s has an outstanding rating on the Bonds.~~

- (c) The definition of “Qualified Swap Provider”

“Qualified Swap Provider” shall mean a financial institution (a) whose senior long-term debt obligations, ~~or whose~~ **financial program rating, counterparty rating or claims paying ability, or whose payment** obligations under any Qualified Swap are guaranteed by a financial institution, or subsidiary of a financial institution, whose senior long-term debt obligations, **financial program rating, counterparty rating or claims paying ability**, are rated at least “Aa,” in the case of Moody’s and “AA,” in the case of S&P, ~~or the equivalent thereto in the case of any successor thereto~~ **in one of the top three Rating Categories by each of the Rating Agencies then rating such financial institution,** or (b) whose obligations under any Qualified Swap are fully secured by obligations described in items (1) or (2) of the definition of Permitted Investments which are (i) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to 105% of the principal amount of the investment, together with the interest accrued and unpaid thereon, (ii) held by the Trustee (who shall not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Trustee, (iii) subject to a perfected first lien on behalf of the Trustee, and (iv) free and clear from all third-party liens.

- (d) The definition of “Released LAX Revenues”

“Released LAX Revenues” shall mean LAX Revenues in respect of which the following have been filed with the Trustee:

- (a) a resolution of the Board describing a specific identifiable portion of LAX Revenues and approving that such LAX Revenues be excluded from the term Pledged Revenues;
- (b) either (i) a certificate prepared by an Authorized Board Representative showing that Net Pledged Revenues for each of the two most recent completed Fiscal Years, after the

specific identifiable portion of LAX Revenues covered by the Board's resolution described in (a) above are excluded, were at least equal to the larger of (A) the amounts needed for making the required deposits and payments pursuant to paragraphs SECOND through EIGHTH of Section 4.04 hereof, or (B) an amount not less than 150% of average Aggregate Annual Debt Service for each Fiscal Year during the remaining term of all Bonds that will remain Outstanding after the exclusion of such specific identifiable portion of LAX Revenues; or (ii) a certificate prepared by a Consultant showing that the estimated Net Pledged Revenues (excluding the specific identifiable portion of LAX Revenues covered in the resolution adopted by the Board described in (a) above) for each of the first three complete Fiscal Years immediately following the Fiscal Year in which the resolution described in (a) above is adopted by the Board, will not be less than the larger of (A) the amounts needed for making the required deposits and payments pursuant to paragraphs SECOND through EIGHTH of Section 4.04 hereof, or (B) an amount not less than 150% of the average Aggregate Annual Debt Service for each Fiscal Year during the remaining term of all Bonds that will remain Outstanding after the exclusion of such specific identifiable portion of LAX Revenues; **and**

(c) an opinion of Bond Counsel to the effect that the exclusion of such specific identifiable portion of revenues from the definition of LAX Revenues and from the pledge and lien of this Indenture will not, in and of itself, cause the interest on any Outstanding Bonds to be included in gross income for purposes of federal income tax; ~~and (d) written confirmation from each of Fitch and Moody's (provided such Rating Agencies have been requested by the Department to maintain a rating on the Bonds and such Rating Agencies are then maintaining a rating on any of the Bonds) to the effect that the exclusion of such specific identifiable portion of revenues from the pledge and lien of this Indenture will not cause a withdrawal or reduction in any unenhanced rating then assigned to the Bonds.~~

For purposes of subparagraph (b) above, no Transfer shall be taken into account in the computation of Net Pledged Revenues.

Additionally, the Department shall give written notice to ~~S&P (provided S&P has~~ **each of the Rating Agencies that have** been requested by the Department to maintain a rating on the Bonds and ~~S&P is that are~~ then maintaining a rating on ~~any of the Bonds~~ at least 15 days prior to any specific identifiable portion of LAX Revenues being excluded from the pledge and lien of this Indenture as proved in this definition of "Released LAX Revenues."

Upon filing of such documents, the specific identifiable portion of LAX Revenues described in the resolution of the Board shall no longer be included in Pledged Revenues and shall be excluded from the pledge and lien of this Indenture, unless otherwise included in Pledged Revenues and in the pledge and lien of this Indenture pursuant to a Supplemental Indenture.

(e) The definition of "Reserve Fund Surety Policy"

"Reserve Fund Surety Policy" shall mean an insurance policy or surety bond, or a letter of credit, deposited with the Trustee for the credit of the Reserve Fund in lieu of or partial substitution for cash or securities on deposit therein. The entity providing such Reserve Fund Surety Policy shall be rated, at the time such instrument is provided, in one of the ~~two~~ **three** highest **long-term** Rating Categories by ~~both Moody's if Moody's is then maintaining a rating on the Bonds and S&P if S&P is then maintaining a rating on the Bonds~~ **one or more Rating Agencies, provided that such entity shall not be rated by any Rating Agency in a long-term Rating Category that is lower than the three highest long-term Rating Categories.**

#### **Section 10.03(g)**

Section 10.03(g) is amended to read as follows:

**(g) For the purposes of this Section 10.03, the purchasers of the Bonds of a Series, whether purchasing as underwriters, for resale or otherwise, upon such purchase from the Board, may consent to a modification or amendment permitted by this Section 10.03 in the manner provided herein and with the same effect as a consent given by the Bondholder of such Bonds, except that no proof of ownership shall be required; provided, that this provision of Section 10.03 shall be disclosed**

prominently in the offering document, if any, for each Series of Bonds issued pursuant to this Indenture, provided that, if such consent is given by a purchaser who is purchasing as an underwriter or for resale, the nature of the modification or amendment and the provisions for the purchaser consenting thereto shall be described in the offering document prepared in connection with the primary offering of the Bonds of such Series by the Board.

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**APPENDIX B-7**  
**AMENDMENTS TO THE MASTER SUBORDINATE INDENTURE**

*The following is a description of certain amendments that are being made to the Master Subordinate Indenture.*

**Master Subordinate Indenture Amendments**

The Master Subordinate Indenture Amendments are set forth below. Additions to the Master Subordinate Indenture are shown in **bold and double underline** and deletions are shown in ~~in strikethrough~~.

**ARTICLE I - Definitions**

- (a) The definition of “Debt Service Reserve Fund Surety Policy”

“Debt Service Reserve Fund Surety Policy” shall mean an insurance policy or surety bond, or a letter of credit, deposited with the Trustee for the credit of the Debt Service Reserve Fund created for one or more Series or Subseries of Outstanding Subordinate Obligations in lieu of or partial substitution for cash or securities on deposit therein. Except as otherwise provided in a Supplemental Subordinate Indenture, the entity providing such Debt Service Reserve Fund Surety Policy shall be rated, at the time such instrument is provided, in one of the ~~two~~ **three** highest long-term Rating Categories by one or more of the Rating Agencies, **provided that such entity shall not be rated by any Rating Agency in a long-term Rating Category that is lower than the three highest long-term Rating Categories.**

- (b) The definition of “Qualified Swap”

“Qualified Swap” shall mean any Swap (a) whose Designated Debt is all or part of a particular Series or Subseries of Subordinate Obligations; (b) whose Swap Provider is ~~currently~~ **a Qualified Swap Provider or has been was a Qualified Swap Provider at the time the Swap was originally entered into by the Department** within the 60-day period preceding the date on which the calculation of Annual Debt Service or Aggregate Annual Debt Service is being made; (c) which has a term not greater than the term of the Designated Debt or to a specified mandatory tender or redemption of such Designated Debt; ~~and~~ (d) which has been designated in writing to the Trustee by the Department as a Qualified Swap with respect to such Subordinate Obligations; ~~and (e) which has been approved by S&P, if S&P has an outstanding rating on any Subordinate Obligations, and Moody’s, if Moody’s has an outstanding rating on the Subordinate Obligations.~~

- (c) The definition of “Qualified Swap Provider”

“Qualified Swap Provider” shall mean a financial institution (a) whose senior long-term debt obligations, **financial program rating, counterparty rating or claims paying ability, or whose payment obligations under any Qualified Swap are guaranteed by a financial institution, or subsidiary of a financial institution, whose senior long-term debt obligations, financial program rating, counterparty rating or claims paying ability,** are rated **in one of the top three Rating Categories by each of the Rating Agencies then rating such financial institution** at least “Aa,” in the case of Moody’s and “AA,” in the case of S&P, or the equivalent thereto in the case of any successor thereto, or (b) whose obligations under a ~~any~~ **Qualified Swap** are fully secured by obligations described in items (a) or (b) of the definition of Permitted Investments which are (i) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to 105% of the principal amount of the investment, together with the interest accrued and unpaid thereon, (ii) held by the Trustee (who shall not be the provider of the collateral) or by any Federal Reserve Bank or a depository acceptable to the Trustee, (iii) subject to a perfected first lien on behalf of the Trustee, and (iv) free and clear from all third-party liens.

**Section 10.03(g)**

Section 10.03(g) is amended to read as follows:

**(g) For the purposes of this Section 10.03 the purchasers of the Subordinate Obligations of a Series or Subseries, whether purchasing as underwriters, for resale or otherwise, upon such purchase from the Department, may consent to a modification or amendment permitted by this Section 10.03 in the manner provided herein and with the same effect as a consent given by the Holders of such Subordinate Obligations, except that no proof of ownership shall be required; provided, that this provision of Section 10.03 shall be**

disclosed prominently in the offering document, if any, for each Series or Subseries of Subordinate Obligations issued pursuant to this Indenture, provided that, if such consent is given by a purchaser who is purchasing as an underwriter or for resale, the nature of the modification or amendment and the provisions for the purchaser consenting thereto shall be described in the offering document prepared in connection with the primary offering of the Subordinate Obligations of such Series or Subseries by the Department.

## APPENDIX B-8

### CERTAIN INFORMATION REGARDING THE RETIREMENT PLAN AND PENSION SYSTEMS OF THE CITY OF LOS ANGELES

*The information in APPENDIX B-8 – “CERTAIN INFORMATION REGARDING THE RETIREMENT PLAN AND PENSION SYSTEMS OF THE CITY OF LOS ANGELES” has been obtained from publicly available City documents. The Department is relying upon, and has not independently confirmed or verified the accuracy or the completeness of, the information in Appendix B-8 or the LACERS Reports, LAFPP Reports or other information incorporated by reference therein.*

#### INTRODUCTION

GENERALLY, THE INFORMATION IN THIS SECTION HAS BEEN TRUNCATED FROM MATERIALS PROVIDED BY THE CITY TO ONLY INCLUDE THOSE PORTIONS OF THIS SECTION THAT REFERENCE THE LOS ANGELES CITY EMPLOYEES’ RETIREMENT SYSTEM (“LACERS”) OR THE CITY OF LOS ANGELES FIRE AND POLICE PENSION PLAN (“LAFPP”).

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#### Retirement and Pension Systems

##### General

The City has three single-employer defined benefit pension plans created by the City Charter: the Los Angeles City Employees’ Retirement System (“LACERS”), the City of Los Angeles Fire and Police Pension Plan (“LAFPP”) and, for employees of DWP, the Water and Power Employees’ Retirement, Disability and Death Benefit Insurance Plan (the “Water and Power Plan”). Both LACERS and LAFPP (collectively, the “Pension Systems”) are funded primarily from the City’s General Fund, while the Water and Power Plan is funded by that department’s proprietary revenues.

The Pension Systems provide retirement, disability, death benefits, post-employment healthcare and annual cost-of-living adjustments to plan members and beneficiaries. As required by the City Charter, the actuarial valuations for both Pension Systems are prepared on an annual basis and the applicable actuary recommends contribution rates for the fiscal year beginning after the completion of that actuarial valuation. When approved by the respective boards of administration of the Pension Systems, these become the City’s contribution rates for such years.

The Pension Systems’ annual valuations determine the contribution rate, as a percentage of covered payroll, needed to fund the normal retirement costs accrued for current employment and to amortize any unfunded actuarial accrued liability (“UAAL”). The UAAL represents the difference between the present value of estimated future benefits accrued as of the valuation date and the actuarial value of assets currently available to pay these liabilities. The valuation for each plan is an estimate based on relevant economic and demographic assumptions, with the goal of determining the contributions necessary to sufficiently fund over time the benefits for currently active, vested former members and retired employees and their beneficiaries. Various actuarial assumptions are used in the valuation process, including the assumed rate of earnings on the assets of the plan in the future, the assumed rates of general inflation, salary increases, inflation in health care costs, assumed rates of disability, the assumed retirement ages of active employees, the assumed marital status at retirement, and the post-employment life expectancies of retirees and beneficiaries. As plan experience differs from adopted assumptions, the actual liabilities will be more or less than the liabilities calculated based on these assumptions. The contribution rates in the following year’s valuations are adjusted to take into account actual plan performance in the current and prior years. In addition, each plan performs an experience study every three years and further adjusts its assumptions accordingly.

The valuations incorporate a variety of actuarial methods, some of which are designed to reduce the volatility of contributions from year to year. When measuring the value of assets for determining the UAAL, many pension plans, including the Pension Systems, “smooth” market value gains and losses over a period of years to reduce volatility. These smoothing methodologies result in an actuarial value of assets that are lower or higher than the market value of assets.

Both Pension Systems have adopted asset allocation plans to guide their investments in stocks, bonds, real estate, alternatives and cash equivalents over a three- to five-year period. The asset allocations of the Pension Systems are summarized further below. Market value investment returns for the past 10 fiscal years are shown in the table below. Any return below the actuarial assumed rate of return (lowered to 7.25% for both LACERS and LAFPP as of their June 30, 2017 actuarial valuations) represents an actuarial investment loss, while any return above the assumed rate of return represents an actuarial investment gain.

**Table 22**  
**LOS ANGELES PENSION SYSTEMS**  
**HISTORICAL MARKET VALUE INVESTMENT RETURNS**

<u>Fiscal Year</u>	<u>LACERS</u>	<u>LAFPP</u>
2007-08	(5.7)%	(4.7)%
2008-09	(19.5)	(20.0)
2009-10	12.9	13.7
2010-11	22.6	22.1
2011-12	1.1	1.9
2012-13	14.3	13.0
2013-14	18.4	17.9
2014-15	2.8	4.2
2015-16	0.5	1.2
2016-17	13.3	13.3

Source: City of Los Angeles, the respective Pension Systems.

The City has never issued pension obligation bonds to fund either of its Pension Systems. The City does pre-pay its annual contributions out of the proceeds of its annual issuance of tax and revenue anticipation notes.

This section, **“Retirement and Pension Systems,”** and the following section, **“Other Post-Employment Benefits,”** contain certain information relating to LACERS and LAFPP. The information contained in these sections is primarily derived from information produced by LACERS and LAFPP and their independent actuaries. The City has not independently verified the information provided by LACERS and LAFPP. The comprehensive annual financial reports of the individual Pension Systems, actuarial valuations for retirement and health benefits, and other information concerning LACERS and LAFPP are available on their websites, at [www.lacERS.org/aboutlacERS/reports/index.html](http://www.lacERS.org/aboutlacERS/reports/index.html) and <https://www.lafpp.com/about/financial-reports>, respectively. Information set forth on such websites is not incorporated by reference herein. For additional information regarding the Pension Systems, see also Note 5 in the “Notes to the City’s Basic Financial Statements” in the City’s Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2016.

Investors are cautioned that, in considering information on the Pension Systems, including the amount of the UAAL for retirement and other benefits, the funded ratio, the calculations of normal cost, and the resulting amounts of required contributions by the City, this is “forward looking” information. Such “forward looking” information reflects the judgment of the boards of the respective Pension Systems and their respective actuaries as to the value of future benefits over the lives of the currently active employees, vested terminated employees, and existing retired employees and beneficiaries. These judgments are based upon a variety of assumptions, one or more of which may prove to be inaccurate and/or be changed in the future.

On November 8, 2016, Los Angeles voters approved a Charter amendment that enrolls new Airport Peace Officers into LAFPP and allows current officers to voluntarily transfer into LAFPP from LACERS. Officers electing to transfer into LAFPP must each pay the full costs associated with all prior LACERS years of service, so as not to burden the General Fund; according to an independent actuarial analysis, the Airport Department’s annual cost of providing future retirement benefits for current and new officers joining LAFPP will be 14% to 19% higher than if these same officers were with LACERS. The actual annual cost increase will depend on the number of officers joining LAFPP.

Subsequent to the adoption of the Charter Amendment, the City adopted an ordinance providing an enhanced benefit for Airport Peace Officers that remain in LACERS. As a result of the enhanced benefit, the



contribution rate to LACERS was recalculated and adopted by the Board on March 14, 2017; the entire portion of the enhanced benefit for Airport Peace Officers will be borne exclusively by the Airports Department.

### **Los Angeles City Employees' Retirement System ("LACERS")**

LACERS, established in 1937 under the Charter, is a contributory plan covering most City employees except uniformed fire and police personnel and employees of the Department of Water and Power. As of June 30, 2017, the date of its most recent actuarial valuation, LACERS had 25,457 active members, 18,805 retired members and beneficiaries, and 7,428 inactive members. The number of retired members was significantly increased, and the number of active members significantly decreased, as a result of the City's Early Retirement Incentive Program in Fiscal Year 2009-10. LACERS is funded pursuant to the Entry Age Cost Method, which is designed to produce stable employer contributions in amounts that increase at the same rate as the employer's payroll (i.e., level percent of payroll).

A number of assumptions are made in calculating the actuarial valuation of retirement benefits. The following are some of the key assumptions used by LACERS' actuary, The Segal Company, in preparing LACERS' actuarial report as of June 30, 2017.

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**Table 23**  
**LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM**  
**ACTUARIAL ASSUMPTIONS**  
**As of June 30, 2017**

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Investment rate of return	7.25%
Inflation rate	3.00%
Real across-the-board salary increase (net of inflation)	0.50%
Projected salary increases	Ranges from 3.50% to 10.00%, based on service
Cost of living adjustments for pensioners	3.00% for Tier 1; 2.00% for Tier 3

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Source: Los Angeles City Employees' Retirement System Actuarial Valuation and Review of Retirement and Health Benefits as of June 30, 2017.

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Over the past several years, LACERS has adopted various changes to its actuarial assumptions, including reducing the assumed investment return from 7.75% to 7.50% in 2014, and further reducing its assumed return to 7.25% in 2016, effective July 1, 2017. These new assumptions were reflected in the June 30, 2017 valuation, which will impact the Fiscal Year 2018-19 contribution, and are projected to increase the City's contribution to that system by \$38 million in Fiscal Year 2018-19 based on current payroll assumptions (in addition to \$44 million already projected in the most recent Budget Outlook).

LACERS' actuary (Segal Consulting) recommended further reducing the assumed investment return to 7.00%, which the LACERS Board is anticipated to reconsider in connection with its actuarial valuation as of June 30, 2018.

LACERS' Board uses a market value corridor of 40%. A "corridor" is used in conjunction with asset smoothing, in order to keep the actuarial value of assets within a certain percentage of the market value of assets. For example, if a system has a 40% corridor, the actuarial value of assets must be between 60% and 140% of the market value of assets. Market losses and gains are recognized under a seven-year asset smoothing period, where only 1/7 of annual market gains or losses are recognized in the actuarial value of assets each year. The remaining gains or losses are spread equally over the next six years.

To limit future fluctuations in asset values due to large unrecognized gains reflecting several years of fairly large annual market gains and losses from a volatile market, the LACERS Board adopted a one-time adjustment, as of June 30, 2014, to its current asset smoothing policy by combining the unrecognized gains and losses of the prior years into one layer and spreading it evenly over six years. As of June 30, 2017, there was a total unrecognized net gain of \$2.6 million. The following table shows the original market gains and losses, and the unrecognized gains and losses as of June 30, 2017.

**Table 24**  
**LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM**  
**CALCULATION OF UNRECOGNIZED RETURN DUE TO ASSET SMOOTHING**  
**As of June 30, 2017**

<u>Year Ended June 30</u>	<u>Original Market Gain (Loss)</u>	<u>Portion Not Recognized</u>	<u>Amount Not Recognized</u>
2013	\$ (81,571,421)	2/6	\$ (27,190,474) <sup>(1)</sup>
2014	1,246,285,581	3/7	534,122,392
2015	(707,760,540)	4/7	(404,434,594)
2016	(1,065,023,569)	5/7	(760,731,121)
2017	770,969,472	6/7	660,830,976
<b>Total unrecognized return (loss)</b>			<b>\$ 2,597,179</b>

<sup>(1)</sup> Valuation as of June 30, 2016 recognizes 1/6 of \$81,571,421 combined net deferred loss as of June 30, 2013, with the balance to be recognized over the next two years.

Source: Los Angeles City Employees' Retirement System Actuarial Valuation and Review of Retirement and Health Benefits as of June 30, 2017.

LACERS amortizes components that contribute to its UAAL over various periods of time, depending on how the unfunded liability arose, layering separate, fixed amortization periods. Under current funding policy, actuarial losses and gains are amortized over fixed 15-year periods. Liabilities or surpluses due to assumption changes are funded or credited over 15 and 20 years for retiree health care benefits and retirement benefits, respectively. Liabilities caused by future early retirement incentives will be funded over five years; other benefit changes will be amortized over 15 years.

The table below shows the actuarial value of the City's liability for retirement benefits (excluding retiree health care and other post-employment benefits), the actuarial value of assets available for retirement benefits, and two indicators of funding progress for LACERS, the funded ratio and the ratio of UAAL to annual payroll.

**Table 25**  
**LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM**  
**SCHEDULE OF FUNDING PROGRESS FOR RETIREMENT BENEFITS**  
**ACTUARIAL VALUE BASIS**  
**(\$ in thousands)<sup>(1)</sup>**

<u>Actuarial Valuation As of June 30</u>	<u>Actuarial Value of Assets</u>	<u>Actuarial Accrued Liability (AAL)</u>	<u>Unfunded AAL<sup>(2)</sup></u>	<u>Funded Ratio<sup>(3)</sup></u>	<u>Covered Payroll<sup>(4)</sup></u>	<u>Unfunded AAL as a Percentage Of Covered Payroll<sup>(5)</sup></u>
2008	\$ 9,438,318	\$11,186,404	\$1,748,085	84.4%	\$1,977,645	88.4%
2009	9,577,747	12,041,984	2,464,237	79.5	1,816,171	135.7
2010	9,554,027	12,595,025	3,040,998	75.9	1,817,662	167.3
2011	9,691,011	13,391,704	3,700,693	72.4	1,833,392	201.9
2012	9,934,959	14,393,959	4,458,999	69.0	1,819,270	245.1
2013	10,223,961	14,881,663	4,657,702	68.7	1,846,970	252.2
2014	10,944,751	16,248,853	5,304,103	67.4	1,898,064	279.5
2015	11,727,161	16,909,996	5,182,835	69.4	1,907,665	271.7
2016	12,439,250	17,424,996	4,985,746	71.4	1,968,703	253.3
2017	13,178,334	18,458,188	5,279,851	71.4	2,062,316	256.0

(1) Table includes funding for retirement benefits only. Other Post-Employment Benefits (OPEB) are not included.

(2) Actuarial Accrued Liability minus Actuarial Value of Assets, commonly referred to as UAAL. Positive numbers represent a funded ratio less than 100%.

(3) Actuarial value of assets divided by Actuarial Accrued Liability.

(4) Annual payroll for members of LACERS.

(5) UAAL divided by covered payroll.

Source: Los Angeles City Employees' Retirement System Actuarial Valuation and Review of Retirement and Health Benefits as of June 30, 2017.

The actuarial value of assets is different from the market value of assets as gains and losses are smoothed over a number of years. The following table shows the funding progress of LACERS based on the market value of the portion of system assets allocated to retirement benefits.

**Table 26**  
**LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM**  
**SCHEDULE OF FUNDING PROGRESS FOR RETIREMENT BENEFITS**  
**MARKET VALUE BASIS**  
**(\$ in thousands)<sup>(1)</sup>**

<u>Actuarial Valuation As of June 30</u>	<u>Market Value of Assets</u>	<u>Actuarial Accrued Liability (AAL)</u>	<u>Unfunded Liability<sup>(2)</sup></u>	<u>Funded Ratio (Market Value)<sup>(3)</sup></u>	<u>Covered Payroll<sup>(4)</sup></u>	<u>Unfunded Liability as a Percentage Of Covered Payroll (Market Value)<sup>(5)</sup></u>
2008	\$9,059,551	\$11,186,404	\$2,126,853	81.0%	\$1,977,645	107.5%
2009	7,122,911	12,041,984	4,919,073	59.2	1,816,171	270.9
2010	7,804,223	12,595,025	4,790,802	62.0	1,817,662	263.6
2011	9,186,697	13,391,704	4,205,007	68.6	1,833,392	229.4
2012	9,058,839	14,393,959	5,335,120	62.9	1,819,270	293.3
2013	10,154,486	14,881,663	4,727,177	68.2	1,736,113	272.3
2014	11,791,079	16,248,853	4,457,774	72.6	1,802,931	247.3
2015	11,920,570	16,909,996	4,989,426	70.5	1,835,637	271.8
2016	11,809,329	17,424,996	5,615,667	67.8	1,968,703	285.2
2017	13,180,516	18,458,188	5,277,672	71.4	2,062,316	256.0

<sup>(1)</sup> Table includes funding for retirement benefits only. Other Post-Employment Benefits (OPEB) are not included.

<sup>(2)</sup> Actuarial Accrued Liability minus Market Value of Assets. Positive numbers represent a funded ratio less than 100%.

<sup>(3)</sup> Market value of assets divided by actuarial accrued liability.

<sup>(4)</sup> Annual payroll for members of LACERS.

<sup>(5)</sup> Unfunded liability divided by covered payroll.

Source: Calculated based on data from Los Angeles City Employees' Retirement System Actuarial Valuation reports.

The table below summarizes the City's payments to LACERS over the past five years, including the budgeted payment for Fiscal Year 2017-18. This table includes costs for retirement, as well as for retiree health care (see **"BUDGET AND FINANCIAL OPERATIONS —Other Post-Employment Benefits"**), and other miscellaneous benefits.

**Table 27**  
**LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM**  
**SOURCES AND USES OF CONTRIBUTIONS**  
**(\$ in thousands)<sup>(1)</sup>**

	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>	<u>Adopted Budget 2017-18</u>
<b>Sources of Contributions</b>					
Contributions for Council-controlled Departments	\$367,772	\$411,509	\$434,639	\$459,400	\$450,813
Airport, Harbor Departments, LACERS, LAFPP	<u>83,759</u>	<u>94,209</u>	<u>103,120</u>	<u>106,766</u>	<u>102,214</u>
Total	\$451,531	\$505,718	\$537,759	\$566,166	\$553,027
Percent of payroll – Tier 1	25.33%	26.56%	28.75%	28.16%	27.22%
Percent of payroll – Tier 2	18.32%	19.63%	26.42%		
Percent of payroll – Tier 3				24.96%	24.64%
<b>Uses of Contributions</b>					
Current Service Liability (Normal cost)	\$185,217	\$193,769	\$190,777	\$206,982	\$214,403
UAAL	265,081	305,891	363,929	366,172	359,542
Adjustments <sup>(2)</sup>	<u>1,233</u>	<u>6,058</u>	<u>(16,947)<sup>(4)</sup></u>	<u>(6,988)<sup>(5)</sup></u>	<u>(20,918)<sup>(6)</sup></u>
Total	\$451,531	\$505,718	\$537,759	\$566,166	\$553,027
<sup>(1)</sup> Includes funding for OPEB. <sup>(2)</sup> Includes the excess benefit plan, the family death benefit plan, and the limited term plan fund. Beginning with the 2014-15 payment, the true-up obligation for the prior year is also reflected in this line item. <sup>(3)</sup> Payment for a 2013-14 true-up in the amount of \$5,191,511 (all agencies) was made in 2014-15. <sup>(4)</sup> Adjustments for 2015-16 include the 2014-15 true-up which consists of an \$18,052,498 credit (all agencies), which is partially offset by \$1,105,000 in excess benefit, family death and limited term plan costs. <sup>(5)</sup> Adjustments for 2016-17 include the 2015-16 true-up, which consists of a \$24,031,072 credit (all agencies) and which is partially offset by a \$15,854,076 one-time lump sum payment for the retroactive upgrade of past Tier 2 members to Tier 1, and \$1,189,000 in excess benefit, family death and limited term plan costs. <sup>(6)</sup> Adjustments for 2017-18 include the 2016-17 true-up which consists of a \$22,341,265 credit (all agencies) and \$1,423,000 in excess benefit family death, and limited term plan costs. The entire portion of the City's contribution attributed to the enhanced benefit for the Airport Peace Officers who remain in LACERS will be borne exclusively by the Airports Department. As a result, the final contribution obligation for all agencies has been adjusted accordingly					

Source: City of Los Angeles, Office of the City Administrative Officer.

In 2012, the City Council adopted a new civilian retirement tier ("Tier 2"), which applied to all employees hired on or after July 1, 2013. Subsequently, as part of an agreement with the Coalition of Los Angeles City Unions, both the City and the Coalition agreed to transfer all Tier 2 employees into Tier 1 effective February 21, 2016. Any new employee hired into a position eligible for LACERS members on or after February 21, 2016 will, unless eligible for Tier 1 membership under specific exemptions, be enrolled in a new "Tier 3".

The following table includes a summary of the major plan design changes from Tier 1 to Tier 3.

**Table 28**  
**COMPARISON OF LACERS TIER I AND TIER III PLAN DESIGNS**

<u>Plan Feature</u>	<u>Tier I</u>	<u>Tier III</u>
Normal Retirement (Age / Years of Service ("YOS"))	60 / 10 70 / Any	63 / 30 60 / 10
Early, Unreduced Retirement Eligibility	55 / 30	55 / 30
Normal and Early, Unreduced Benefit Factor	2.16%	1.5% @ 60 / 10 2.0% @ 60 / 30 2.0% @ 55 / 30 2.1% @ 63 / 30
Compensation Used to Determine Retirement Allowance	Highest consecutive 12 months, including most bonuses	Last 36 months prior to retirement, including most MOU bonuses
Maximum Benefit	100%	80%
Employee Contribution Base	6%	7%
Early Retirement Incentive Program Employee Contribution	1% Until 2026 or when ERIP debt is paid, whichever is sooner	N/A
Other Post-Employment Benefits (OPEB), e.g., retiree healthcare Employee Contribution	4%	4%
Maximum Annual COLA	3%	2%
COLA Bank	Yes	No
Survivor Continuance	50%	50%
Death Benefit	\$2,500	\$2,500
Retiree Health Subsidy	Eligible at 55 / 10 Subsidy two-party Kaiser rate Vesting 40% at 10 Years of Service (YOS), 100% at 25 YOS	Eligible at 55 / 10 Subsidy two-party Kaiser rate Vesting 40% at 10 YOS, 100% at 25 YOS
Disability Retirement	More than 5 YOS Maximum 1.43% per YOS and 33% of final compensation Less than 5 YOS, return contributions	More than 5 YOS Maximum 1.43% per YOS and 33% of final compensation Less than 5 YOS, return contributions
Government Service Buyback	Member contribution	Full actuarial cost, maternity and military leave time exempted

Source: City of Los Angeles, Office of the City Administrative Officer

The following table sets forth LACERS' investments and asset allocation targets.

**Table 29**  
**LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM**  
**ASSET CLASS MARKET VALUE AND ALLOCATION**  
**(\$ in million)**  
**As of June 30, 2017**

<u>Asset Class</u>	<u>Market Value</u>	<u>Market Value to Total Fund (%)</u>	<u>Target (%)</u>
U.S. Equity	\$ 4,116	26.2%	24.0%
Non-U.S. Equity	4,910	31.3	29.0
Fixed Income Securities	2,738	17.4	19.0
Credit Opportunities	778	5.0	5.0
Real Assets	1,502	9.7	10.0
Private Equity	1,578	10.0	12.0
Cash	64	0.4	1.0
Total Portfolio	\$15,709	100.0%	100.0%

Source: LACERS Portfolio Performance Review for the Quarter Ending June 20, 2017.

### **Fire and Police Pension Plan ("LAFPP")**

The LAFPP, established in 1899 and incorporated into the Charter in 1923, represents contributory plans covering uniformed fire, police, Department of Harbor police and some Department of Airport police. As of June 30, 2017, the date of its most recent actuarial valuation, the LAFPP had 13,327 active members, 12,8369 retired members and beneficiaries, and 374 vested former members. The LAFPP is funded pursuant to the Entry Age Cost Method, which is designed to produce stable employer contributions in amounts that increase at the same rate as the employer's payroll (i.e., level percent of payroll).

Within the LAFPP, there is a Deferred Retirement Option Plan ("DROP"). This voluntary plan allows members to retire, for pension purposes only, after they are eligible to retire and have completed at least 25 years of service. A member entering DROP continues to work and receive salary and benefits as an active employee, but stops accruing additional salary and service credits for retirement purposes. While in DROP, the member's retirement benefit is deposited into an interest-bearing account that is distributed to the member when he or she leaves City service. Participation in DROP is limited to a maximum of five years. As of June 30, 2017, 1,303 active members participated in DROP.

Six tiers of benefits are provided, depending on the date of the member's hiring. For Tier 1, any UAAL is amortized over a fixed term ending on June 30, 2037. For Tiers 2, 3, and 4, level percent of payroll amortization with multiple layers is used as a percent of total valuation payroll from the respective employer (i.e., City or Harbor Port Police). For Tiers 5 and 6, level percent of payroll with multiple layers is used as a percent of combined payroll for these tiers from the respective employer. A Charter amendment adopted by City voters on March 8, 2011 provided the LAFPP Board with greater flexibility to establish amortization policies. Under the LAFPP Board's current actuarial funding policy, actuarial gains or losses are amortized over 20 years; changes in actuarial assumptions and cost methods are amortized over 20 years; plan amendments are amortized over 15 years; and actuarial funding surpluses are amortized over 30 years. That same Charter amendment created a new tier of retirement benefits (Tier 6) for sworn employees hired after July 1, 2011.

A number of assumptions are made in calculating the actuarial valuation of retirement benefits. The following are some of the key assumptions used by the LAFPP actuary, The Segal Company, in preparing LAFPP's actuarial report.

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**Table 30**  
**LOS ANGELES FIRE AND POLICE PENSION PLAN**  
**Actuarial Assumptions**  
**As of June 30, 2017**

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Investment rate of return	7.25%
Inflation rate	3.00%
Real across-the-board salary increase (net of inflation)	0.50%
Projected salary increases	Ranges from 4.30% to 12.00% based on service
Cost of living adjustments (pensioners)	Based on changes to the Los Angeles area consumer price index. Capped at 3% a year for Tiers 3, 4, 5 and 6, with excess banked for Tiers 5 and 6.

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Source: LAFPP Actuarial Valuation and Review of Pension and Other Postemployment Benefits (OPEB) as of June 30, 2017.

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The LAFPP Board adopted a new triennial experience study on June 1, 2017, which adjusted both economic and demographic assumptions, including a reduction in the assumed rate of investment return from 7.50% to 7.25%. These new assumptions were reflected in the June 30, 2017 valuation, which will impact the Fiscal Year 2018-19 contribution, and are projected to increase the City's contribution to that system by \$84 million in Fiscal Year 2018-19 based on current payroll assumptions (in addition to a \$4 million increase already forecast for that year in the City's most recent budget outlook).

Similar to LACERS, LAFPP has adopted various asset smoothing methods. Generally, market gains or losses are recognized over seven years, so that approximately 1/7 of market losses or gains are recognized each year in the actuarial valuation. Effective July 1, 2008, LAFPP adopted a 40% market corridor, so that the actuarial value of assets must be between 60% and 140% of the market value of assets. If the actuarial value falls below 60% or rises above 140% of market value, the system must recognize the excess returns or losses, respectively, in that year without smoothing. Based on its actuary's recommendation, the LAFPP also adopted an ad hoc adjustment, effective July 1, 2013, combining deferred gain and loss layers representing a net deferred investment gain of \$77.3 million as of June 30, 2013 into a single six-year smoothing layer in to order to reduce year-to-year contribution rate volatility, similar to the adjustment adopted by LACERS.



**Table 31**  
**LOS ANGELES FIRE AND POLICE PENSION PLAN**  
**CALCULATION OF UNRECOGNIZED RETURN DUE TO ASSET SMOOTHING**  
**As of June 30, 2017**

Market value of assets (for Retirement and Health Subsidy Benefits)				\$20,662,406,596
	<u>Original Market</u>	<u>Portion Not</u>	<u>Amount Not</u>	
	<u>Gain (Loss)</u>	<u>Recognized</u>	<u>Recognized</u>	
Calculation of unrecognized return <sup>(1)</sup>				
Year ended June 30, 2017	\$1,050,034,903	6/7	\$900,029,917	
Year ended June 30, 2016	(1,240,953,883)	5/7	(886,395,631)	
Year ended June 30, 2015	(643,447,599)	4/7	(367,684,342)	
Year ended June 30, 2014	1,571,818,656	3/6	673,636,567	
Combined Net Deferred Gain as of June 30, 2013				
<sup>(2)</sup>	77,259,408	2/6	<u>25,753,136</u>	
Total unrecognized return (loss)				345,339,647
Final actuarial value of assets:				<u>\$20,317,066,949</u>
Actuarial value as a percentage of market value:				98.3%
Market value of retirement assets				\$ 18,996,721,329
Valuation value of retirement assets:				\$ 18,679,220,993
Deferred return recognized in each of the next 6 years (for Retirement and Health Subsidy Benefits)				
Amount recognized on June 30, 2018				\$118,226,864
Amount recognized on June 30, 2019				118,226,864
Amount recognized on June 30, 2020				105,350,297
Amount recognized on June 30, 2021				(119,195,224)
Amount recognized on June 30, 2022				(27,274,141)
Amount recognized on June 30, 2023				150,004,987
Subtotal				\$345,339,647
<sup>(1)</sup>	Total return minus expected return on a market value basis. Effective with the calculation for period ended June 30, 2015, both actual and expected returns on market value have been adjusted to exclude administrative expense paid during the plan year.			
<sup>(2)</sup>	Net deferred unrecognized investment gains as of June 30, 2013 have been combined into a single layer to be recognized over the six-year period effective July 1, 2013.			

Source: LAFPP Actuarial Valuation and Review of Pension and Other Post-Employment Benefits (OPEB) as of June 30, 2017.

The table below shows the actuarial value of the City's liability for retirement benefits (excluding retiree health care and other post-employment benefits), the actuarial value of assets available for retirement benefits, and two indicators of funding progress for LAFPP, the funded ratio and the ratio of UAAL to annual payroll.

**Table 32**  
**LOS ANGELES FIRE AND POLICE PENSION PLAN**  
**SCHEDULE OF FUNDING PROGRESS FOR RETIREMENT BENEFITS**  
**ACTUARIAL VALUE BASIS**  
**(\$ in thousands) <sup>(1)</sup>**

<u>Actuarial Valuation As of June 30</u>	<u>Actuarial Value of Assets</u>	<u>Actuarial Accrued Liability (AAL)</u>	<u>Unfunded AAL<sup>(2)</sup></u>	<u>Funded Ratio<sup>(3)</sup></u>	<u>Covered Payroll<sup>(4)</sup></u>	<u>Unfunded AAL as a Percentage Of Covered Payroll<sup>(5)</sup></u>
2008	\$14,153,296	\$14,279,116	\$ 125,820	99.1%	\$1,206,589	10.4%
2009	14,256,611	14,817,146	560,535	96.2	1,357,249	41.3
2010	14,219,581	15,520,625	1,301,044	91.6	1,356,986	95.9
2011	14,337,669	16,616,476	2,278,807	86.3	1,343,963	169.6
2012	14,251,913	17,030,833	2,778,920	83.7	1,341,914	207.1
2013	14,657,713	17,632,425	2,974,712	83.1	1,367,237	217.6
2014	15,678,480	18,114,229	2,435,749	86.6	1,402,715	173.6
2015	16,770,060	18,337,507	1,567,447	91.5	1,405,171	111.5
2016	17,645,338	18,798,510	1,153,172	93.9	1,400,808	82.3
2017	18,679,221	20,411,024	1,731,803	91.5	1,475,539	117.4

<sup>(1)</sup> Table includes funding for retirement benefits only. Other post-employment benefits not included.

<sup>(2)</sup> Actuarial Accrued Liability minus Actuarial Value of Assets, commonly referred to as UAAL. Positive numbers represent an actuarial deficit.

<sup>(3)</sup> Actuarial value of assets divided by actuarial accrued liability.

<sup>(4)</sup> Annual payroll against which UAAL amortized.

<sup>(5)</sup> UAAL divided by covered payroll.

Source: The Fire and Police Pension System Actuarial Valuations.

The following table shows the funding progress of LAFPP based on the market value of the portion of system assets allocated to retirement benefits.

**Table 33**  
**LOS ANGELES FIRE AND POLICE PENSION PLAN**  
**SCHEDULE OF FUNDING PROGRESS FOR RETIREMENT BENEFITS**  
**MARKET VALUE BASIS**  
**(\$ in thousands) <sup>(1)</sup>**

<u>Actuarial Valuation As of June 30</u>	<u>Market Value of Assets</u>	<u>Actuarial Accrued Liability (AAL)</u>	<u>Unfunded (Overfunded) Liability<sup>(2)</sup></u>	<u>Funded Ratio (Market Value)<sup>(3)</sup></u>	<u>Covered Payroll<sup>(4)</sup></u>	<u>Unfunded Liability as a Percentage Of Covered Payroll (Market Value)<sup>(5)</sup></u>
2008	\$13,622,037	\$14,279,116	\$657,079	95.4%	\$1,206,589	54.5%
2009	10,379,786	14,817,146	4,437,360	70.1	1,357,249	326.9
2010	11,535,936	15,520,625	3,984,688	74.3	1,356,986	293.6
2011	13,564,904	16,616,476	3,051,572	81.6	1,343,963	227.1
2012	13,268,687	17,030,833	3,762,146	77.9	1,341,914	280.4
2013	14,729,976	17,632,425	2,902,449	83.5	1,367,237	212.3
2014	16,989,705	18,114,229	1,124,525	93.8	1,402,715	80.2
2015	17,346,554	18,337,507	990,953	94.6	1,405,171	70.5
2016	17,104,276	18,798,510	1,694,234	91.0	1,400,808	120.9
2017	18,996,721	20,411,024	1,414,303	93.1	1,475,593	95.8

<sup>(1)</sup> Table includes funding for retirement benefits only. Other post-employment benefits not included.

<sup>(2)</sup> Actuarial Accrued Liability minus Market Value of Assets. Positive numbers represent a deficit.

<sup>(3)</sup> Market value of assets divided by actuarial accrued liability.

<sup>(4)</sup> Annual payroll against which liability is amortized.

<sup>(5)</sup> UAAL divided by covered payroll.

Source: Calculated based on data from the Fire and Police Pension System Actuarial Valuations.

The table below summarizes the General Fund's payments to LAFPP over the past five fiscal years. This table includes costs for retirement, retiree health care (see **"BUDGET AND FINANCIAL OPERATIONS — Other Post-Employment Benefits"**), and other miscellaneous benefits.

**Table 34**  
**LOS ANGELES FIRE AND POLICE PENSION PLAN**  
**SOURCES AND USES OF CONTRIBUTIONS**  
**(\$ in thousands)**

	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>	<u>Adopted Budget 2017-18</u>
General Fund	<u>\$575,941</u>	<u>\$624,974</u>	<u>\$623,415</u>	<u>\$616,235</u>	<u>\$634,905</u>
Percent of payroll	44.40%	47.94%	46.51%	44.54%	44.26%
Current Service Liability	\$302,040	\$306,625	\$306,841	\$319,458	\$332,409
UAAL/(Surplus)	273,901	318,349	303,580	283,355	288,567
Administrative Costs <sup>(1)(2)</sup>	-	-	12,994	13,422	13,929
Total	<u>\$575,941</u>	<u>\$624,974</u>	<u>\$623,415</u>	<u>\$616,235</u>	<u>\$634,905</u>

<sup>(1)</sup> Beginning in 2015-16, administrative expenses are separately identified in the contribution rate in conjunction with Governmental Accounting Standards Board (GASB 67) reporting. These costs are inclusive of Health and Pension administrative costs.

<sup>(2)</sup> Excess Benefit Plan costs are now credited as part of the Annual Required Contribution (i.e., the costs are included in the contribution rate).

Source: City of Los Angeles, Office of the City Administrative Officer.

The following table sets forth the LAFPP's investments and asset allocation targets as of September 30, 2017.

**Table 35**  
**LOS ANGELES FIRE AND POLICE PENSION PLAN**  
**ASSET CLASS BY MARKET VALUE AND ALLOCATION**  
**(\$ in millions)**  
**As of September 30, 2017**

	<u>Market Value</u>	<u>Percent Allocation</u>	<u>Target (%)</u>
Domestic Large Cap Equity	\$ 5,533.4	25.45%	23.0%
Domestic Small Cap Equity	1,489.9	6.85	6.0
International Developed Markets	3,578.8	16.46	16.0
International Emerging Markets	950.2	4.37	5.0
Domestic Bonds	3,327.6	15.30	17.0
High Yield Bonds	533.5	2.45	3.0
Unconstrained Fixed Income	423.0	1.95	2.0
Real Estate	2,007.6	9.23	10.0
Private Equity	1,921.9	8.84	12.0
Commodities	902.2	4.15	5.0
Cash House Accounts	<u>1,073.8</u>	<u>4.94</u>	<u>1.0</u>
Total	\$21,741.8	100.00%	100.0%

Source: Los Angeles Fire and Police Pension Plan September 30, 2017 Total Portfolio Report.

### Other Post-Employment Benefits

Retired members and surviving spouses and domestic partners of LACERS and LAFPP members are eligible for certain subsidies toward their costs of medical insurance and other benefits. These benefits are paid by the respective retirement system. These retiree health benefits are accounted for as “Other Post-Employment Benefits” (“OPEB”).

The City began making payments to its Pension Systems to pre-fund its OPEB obligations in Fiscal Year 1989-90, in an amount then determined by the Pension Systems and their actuaries. The calculations of OPEB funding requirements are made by the same actuaries that perform the analysis of the Pension Systems’ retirement benefits, and generally rely on the same actuarial assumptions, other than those assumptions such as medical inflation specific to OPEB.

As of June 30, 2017, the unfunded healthcare benefits liabilities of LACERS and the LAFPP are as follows:

**Table 36**  
**LOS ANGELES CITY EMPLOYEE’S RETIREMENT SYSTEM**  
**SCHEDULE OF FUNDING PROGRESS FOR OTHER POST-EMPLOYMENT BENEFITS**  
**(\$ in thousands)**

<u>Actuarial Valuation As of June 30</u>	<u>Actuarial Value of Assets</u>	<u>Actuarial Accrued Liability (AAL)</u>	<u>Unfunded AAL<sup>(1)</sup></u>	<u>Funded Ratio<sup>(2)</sup></u>	<u>Covered Payroll<sup>(3)</sup></u>	<u>Unfunded AAL as a Percentage of Covered Payroll<sup>(4)</sup></u>
2008	\$1,342,920	\$1,928,043	\$585,123	69.7%	\$1,977,645	29.6%
2009	1,342,497	2,058,177	715,680	65.2	1,816,171	39.4
2010	1,425,726	2,233,874	808,148	63.8	1,817,662	44.5
2011	1,546,884	1,968,708	421,824	78.6	1,833,392	23.0
2012	1,642,374	2,292,400	650,027	71.6	1,819,270	35.7
2013	1,734,733	2,412,484	677,751	71.9	1,846,970	36.7
2014	1,941,225	2,662,853	721,628	72.9	1,898,064	38.0
2015	2,108,925	2,646,989	538,065	79.7	1,907,665	28.2
2016	2,248,753	2,793,689	544,935	80.5	1,968,703	27.7
2017	2,438,458	3,005,806	567,348	81.1	2,062,316	27.5

<sup>(1)</sup> Actuarial Accrued Liability minus Actuarial Value of Assets, commonly referred to as UAAL. Positive numbers represent an actuarial deficit.

<sup>(2)</sup> Actuarial value of assets divided by Actuarial Accrued Liability.

<sup>(3)</sup> Annual payroll against which UAAL amortized.

<sup>(4)</sup> UAAL divided by covered payroll.

Source: The City of Los Angeles City Employees’ Retirement System Actuarial Valuations.

**Table 37**  
**OTHER POST-EMPLOYMENT BENEFITS**  
**FIRE AND POLICE PENSION PLAN**  
**(\$ in thousands)**

Actuarial Valuation As of June 30	Actuarial Value of Assets	Actuarial Accrued Liability (AAL)	Unfunded AAL <sup>(1)</sup>	Funded Ratio <sup>(2)</sup>	Covered Payroll <sup>(3)</sup>	Unfunded AAL as a Percentage of Covered Payroll <sup>(4)</sup>
2008	\$ 767,647	\$1,836,840	\$1,069,193	41.8%	\$1,206,589	88.6%
2009	809,677	2,038,659	1,228,982	39.7	1,357,249	90.5
2010	817,276	2,537,825	1,720,549	32.2	1,356,986	126.8
2011	882,890	2,557,607	1,674,717	34.5	1,343,963	124.6
2012	927,362	2,499,289	1,571,927	37.1	1,341,914	117.1
2013	1,013,400	2,633,793	1,620,393	38.5	1,367,237	118.5
2014	1,200,874	2,783,283	1,582,409	43.1	1,402,715	112.8
2015	1,344,333	2,962,703	1,618,370	45.4	1,405,171	115.2
2016	1,480,810	3,079,670	1,598,860	48.1	1,400,808	114.1
2017	1,637,846	3,322,746	1,684,900	49.3	1,475,539	114.2

(1) Actuarial Accrued Liability minus Actuarial Value of Assets, commonly referred to as UAAL. Positive numbers represent an actuarial deficit.

(2) Actuarial value of assets divided by actuarial accrued liability.

(3) Annual payroll against which UAAL amortized.

(4) UAAL divided by covered payroll.

Source: The Fire and Police Pension Plan System Actuarial Valuations.

Historically, plan members did not contribute towards healthcare subsidy benefits; all such costs were funded from the employer's contribution and investment returns thereon. The City negotiated bargaining agreements that require a 4% active employee contribution toward retiree healthcare for its entire civilian workforce and the option of a 2% active employee contribution toward retiree healthcare for its sworn workforce hired before July 1, 2011. Sworn employees hired after July 1, 2011, are members of Tier 6 which requires a 2% contribution toward retiree healthcare. Employees who contribute to retiree healthcare benefits are vested in future subsidy increases authorized by the retirement boards. For those sworn employees that opted not to make an additional contribution toward retiree healthcare, their retiree health subsidy has been frozen and cannot surpass the maximum subsidy level in effect as of July 1, 2011.

Two lawsuits are pending challenging the City's actions relative to freezing OPEB benefits for sworn employees. See "LITIGATION".

### **Projected Retirement and Other Post-Employment Benefit Expenditures**

Typically, the City presents projections of its General Fund contributions to its Pension Systems in the City's Appendix A to its official statements. These projections are developed in connection with the City's adopted budget. With the recent changes in actuarial assumptions described above, most significantly the reduction in the assumed rate of investment earnings, the prior projections are now outdated. As a result, such projections are omitted from this Appendix.

\*\*\*

### **LITIGATION**

The City is routinely a party to a variety of pending and threatened lawsuits and administrative proceedings that may affect the General Fund of the City. The following list of certain newly completed, pending or threatened litigation matters involving the City was prepared by the Office of the City Attorney. For all pending or threatened litigation matters and administrative proceedings not listed below, the City believes, based on current facts and circumstances, that a final determination of such matters, either individually or in the aggregate, should not materially affect the General Fund's financial position. Certain litigation or administrative proceedings discussed

below, if determined in a final and conclusive manner adverse to the City, may, individually or in the aggregate, materially affect the General Fund's financial position.

**THE FOLLOWING LIST HAS BEEN TRUNCATED FROM MATERIALS PROVIDED BY THE CITY TO ONLY INCLUDE LITIGATION ADDRESSED IN AND RELATING TO THE FOREGOING EXCERPTS.**

\*\*\*

1. *Los Angeles Police Protective League and United Firefighters of Los Angeles City v. Board of Fire and Police Pension Commissioners v. City of Los Angeles.* In this case plaintiffs seek a judgment declaring that their letter of agreement with the City requires the Retirement Board to increase the retirees' medical subsidy by the maximum amount allowable per year under the Administrative Code. The City prevailed on a demurrer, but the Court of Appeal reversed and issued a remitter, sending the case back to the trial court to resolve disputed factual issues. A bench trial occurred from September 26 to September 28, 2016. Following the bench trial, the court issued a tentative decision in favor of the plaintiffs. In November 2016, upon remand, the trial court ruled in favor of the plaintiffs' claim with respect to the medical subsidy. The City is appealing the ruling. In the event the trial court's ruling is affirmed by the appeals court, regardless of its appeal options, the City does not expect that such ruling would have a negative financial impact on the City based on current projections because the Retirement Board's actuaries already determine the City's contribution rate based on the highest possible increase in the subsidy for retirees. However, the Retirement Board would lose the flexibility moving forward to increase the retiree's medical subsidy by an amount less than the maximum amount allowable per year under the Administrative Code. The City is currently unable to determine what impact that could have in future years. The plaintiffs also sought a rescission claim to stop contributing to LAFPP, but subsequently dropped such claim.
2. On August 10, 2017, LAPPL filed an additional lawsuit against the LAFPP and the City in Los Angeles Superior Court. The complaint alleges that the LAFPP did not raise the retiree subsidy by the maximum amount of 7% for the fiscal year beginning July 1, 2017. The court has stayed the case pending the outcome of the above case currently on appeal.

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## **APPENDIX C**

### **REPORT OF THE LENDERS' TECHNICAL ADVISOR**

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## LAX APM Project

### Lenders' Technical Due Diligence Financial Close Report

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Prepared for:



Date:

06 June 2018

5 Chancery Lane | London | WC2A 1LG



# LAX APM Project - Lenders' Technical Due Diligence Financial Close Report

Version	Issue Date	Prepared by	Checked by	Approved by
1.0	October 24, 2017	LTA Team	EC	RP
2.0	December 02, 2017	LTA Team	EC	RP
3.0	December 09, 2017	LTA Team	AG	RP
4.0	December 19, 2017	LTA Team	EC	RP
5.0	January 12, 2018	LTA Team	EC	RP
6.0	January 15, 2018	LTA Team	EC	RP
7.0	May 10, 2018	LTA Team	EC	RP
8.0	May 18, 2018	LTA Team	EC	RP
9.0	May 23, 2018	LTA Team	EC	RP
10.0	May 23, 2018	LTA Team	EC	RP
11.0	May 24, 2018	LTA Team	EC	RP
12.0	May 24, 2018	LTA Team	EC	RP
13.0	June 06, 2018	LTA Team	EC	RP
Final	June 07, 2018	LTA Team	EC	RP

## Important Legal Notice

This is a technical report dealing with the contractual and construction aspects of the Project but does not provide a detailed review of all the technical aspects in relation to the LAX APM Project (the Project). It is intended to highlight issues that are considered to have significant commercial implications in relation to the risk to which the prospective Lenders may be exposed. This report, by its very nature, requires a certain amount of simplification of complex technical provisions. The detailed terms of any contractual documentation referred to in this report should be relied upon for their full effect and not any summaries of such terms that may be contained in this report.

The comments made throughout this report are selective and should not be taken as the only areas where the Lenders may be exposed to risk. The assessment of the risks associated with a project of this nature is complex and involves (inter alia) an understanding of the interaction of issues where specialist opinion (for example from the Lenders' legal advisers) is required. Lenders should also satisfy themselves on the ability of the LINXS Consortium and the appointed contractor to achieve completion by the required dates on the basis of the due diligence, reports and advice of the legal and other professional advisers in addition to the advice of Infrata Limited ("Infrata"). For example, reference should be made to insurance advisers in relation to insurance, which is not addressed in any detail in this report. The fact that a matter is not addressed in this report does not mean that it is not material.

This report and the opinions presented herein are subject to the following conditions and limitations:

- It has been prepared in accordance with the scope of Infrata's appointment with its client (the Appointment) and is subject to the terms of that Appointment.
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- It has been compiled through a review of documents and information provided by the Project parties and a review of other publicly available reports and information. Infrata has assumed and relied upon the accuracy and completeness of all of the information provided to us (both written and oral) by the Client and limited visual observation of conditions at the relevant sites or was otherwise publicly available and Infrata has neither attempted independently to verify, nor assumed responsibility for verifying, such information. Infrata has relied upon the assurances of the LINXS Consortium that it is not aware of any facts that would make such information misleading.
- Certain statements made in this report that are not historical facts may constitute estimates, projections or other forward-looking statements. Whilst Infrata believes such forward-looking statements are reasonable and are based on reasonable assumptions as of the date of this report, such forward-looking statements by their nature involve risks and uncertainties that could cause actual results to differ materially from the results predicted. Infrata specifically does not guarantee or warrant any estimate or projection contained in our report.
- Infrata disclaims any undertaking or obligation to advise any person of any change in any matter affecting this report, which may come or be brought to our attention after the date of this report.
- This report has been prepared by Infrata. No individual is personally liable in connection with the preparation of this report. By receiving this report and acting on it, the client, the Lenders and/or any other person to whom reliance has been expressly granted accepts that no individual is personally liable whether in contract, tort, breach of statutory duty or otherwise.

June 2018

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# EXECUTIVE SUMMARY

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Infrata Limited has been appointed by the LINXS Consortium as the Lenders' Technical Advisor (LTA) on the Automated People Mover Project (the "Project") at Los Angeles International Airport being procured by Los Angeles World Airports (LAWA). The Project is an availability payment based design, build, finance, operations and maintenance (DBFOM) project, with a maximum term of 30 years following Financial Close.

This Report constitutes an assessment of the Project Agreement (PA) and the Consortium's response as summarized below:

**Project Organization:** All team members have established working relationships through their prior and successful experience working together. From the outset, LINXS has demonstrated itself to be an organized and integrated team, with the maintenance and operations team participating from the outset in the development of design and construction.

**Contracts:** The Executed PA is consistent in both form and contract strategy with similar P3 projects that have reached financial close in the US. Reasonable risk-sharing positions have been taken by LAWA with regards to inter alia: termination, delay and compensation reliefs, land acquisition, environmental and utilities risks.

The LTA has been provided with copies of a draft of the Amended and Restated DB Contract for Financial Close and the Executed OM Contract. This report provides the LTA's assessment of the delay and costs associated with the termination and replacement of the DB and O&M Contractors, during the Construction and Operating Periods, respectively. The LTA's analysis indicates a potential maximum liability of 21.0% of the DB Costs, based on the information reviewed to date, in comparison to the 35% cap on liability within the DB Contract. Similarly, the LTA has calculated the cap on liability during the Operating Period and finds a potential maximum liability of 70.7% of the O&M Service Fee Reference Amount for the preceding 12 months with a 100% cap on the liability contained within the OM Contract.

**Payment Mechanism:** The payment mechanism is similar to other APM/ Light Rail Transit (LRT) payment mechanism structures seen elsewhere with the emphasis placed on maintaining a good user experience in respect of APM vehicles keeping the timetable. An assessment of the Noncompliance Points for both D&C and O&M Period shows them to be inside any termination thresholds. During the Operating Period the limiting case for deductions is Noncompliance Occurrences rather than Unavailability and an assessment of potential worst case deductions by the LTA is in line with Consortium valuations. The escalation basket of indices would appear appropriate and broadly aligned to operating costs incurred.

**Environment:** LAWA have obtained environmental approval from Los Angeles City Council and the FAA have completed their review in compliance with NEPA and other federal requirements, issuing a Finding of No Significant Impact and Record of Decision for the LAMP program. The site itself is predominantly urban and as such ecological and archaeological impacts are low. Notwithstanding, there are various standard Relief Event provisions in the PA including discovery of fossils and antiquities, threatened or endangered species, and pre-existing hazardous materials.

The site lies in a seismic zone and, as is standard for California, the APM infrastructure is to be designed to recognized seismic standards. Nonetheless, no active faults exist within the Project area, and seismic activity in areas adjacent to the Project area are historically limited, both in occurrence and magnitude. The Consortium designers have good and local experience of designing to the seismic codes.

**Design and Construction:** The Project structures, some of which are significant in size, are of moderate complexity, consisting mainly of typical reinforced concrete box-section beamed viaducts, with freestanding reinforced concrete station structures, and steel-framed pedestrian bridges. The main Project challenges during construction are likely to emerge from co-ordination, traffic management and utilities work. LINXS is currently developing and optimizing its phasing plan and construction strategy, which aims to reduce traffic management and utility relocations through the implementation of approved ATCs.

**O&M:** There are no particularly challenging or unusual features in the PA requirements for the ongoing O&M requirements of the Project. The OMJV is taking full O&M responsibility including lifecycle risk and has assembled a very capable team with vast experience successfully running other APMs at a similar service level. Handback requirements are consistent with LINXS' holistic asset management system approach to provide a high likelihood of meeting the handback condition requirements without further unprogrammed intervention.

**Schedule:** Department scheduling requirements are seen by the LTA to be adequate to the Project and do not appear too onerous for a capable contractor such as the DBJV. The LTA is satisfied that the activities breakdown across the various Project Disciplines are consistent with the Technical proposals. Governmental agency approvals and required review periods have been taken into account and the DBJV has also reflected the metering of design submissions and review periods. The Critical Path flows through design, construction of Center CTA Station and finally through the Full System Testing and Commissioning. Delivery of both the MSF and the APM fleet are not on the Critical Path (there over 300 days of float in the delivery of the last APM vehicle for the current schedule) with an adequate buffer for static and dynamic testing before guideway testing commences. The schedule also includes for an additional 21 adverse weather days per year of construction activity.

**Project Costs:** The LTA is satisfied with the approach adopted by the Consortium members to develop its Project Costs and the level of internal process and governance to validate and sign off on the final price. The Consortium has produced a DB Cost model that is robust and, when compared with benchmark data, adequate to fulfil its requirements under its contract. The pricing approach and allowances by the OMJV has been built up from acceptable sources including direct quotations from local sub-contractors. Benchmarking of the APM system against other equivalent projects places the LAX APM Project within the expected bandwidth. Key rates used for labor have been benchmarked against existing contracts and local market rates and are considered acceptable. Allowances for risk and contingencies are within acceptable ranges.



## ACRONYMS and DEFINITIONS

Acronym	Definition
AASHTO	American Association of State Highway and Transportation Officials
AC	Alternating Current
ACS	ACS Infrastructure Development
AD	Applied Deductions
AP	Availability Payment
APM	Automated People Mover
ASCE	American Society of Civil Engineers
ATC	Alternative Technical Concept
ATCT	Air Traffic Control Tower
AVIS	Automated Vehicle Inspection System
BART	Bay Area Rapid Transit
BC	British Columbia
BTGHUK	Bombardier Transportation (Global Holding) UK Limited
Caltrans	California Department for Transport
CAN	Canada
CC	Central Control
CCSOP's	Central Control Standard Operating Procedures
CCTV	Closed Circuit Television
CD	Contract Document
CDPQ	Caisse de Dépôt et Placement du Québec
CEO	Chief Executive Officer
CEQA	California Environmental Quality Act
CFC	Certificate of Final Completion
CIP	Cast In Place
CJV	Construction Joint Venture
CLA	City of Los Angeles
ConRAC	Consolidated Rent-A-Car Center
CPI	Consumer Price Index
CPT	Cone Penetration Test
CPUC	California Public Utilities Commission
CTA	Central Terminal Area
D&C	Design and Construction

Acronym	Definition
DB	Design and Build
DBFOM	Design, Build, Finance, Operate and Maintain
DBJV	Design and Build Joint Venture
DEIR	Draft Environmental Impact Report
DfM	Design for Maintenance
DfS	Design for Safety
DVBE	Disabled Veteran Business Enterprise
EA	Environmental Assessment
ECTA	East Central Terminal Area
EIR	Environmental Impact Report
ESC	Escalation
FAA	Federal Aviation Authority
FAA	Federal Aviation Administration
FEIR	Final Environmental Impact Report
FHWA	Federal Highway Administration
FL	Florida
FLL	Fort Lauderdale (airport)
FRP	Fibre Reinforced Plastic
GW	Ground Water
HCF	Hundred Cubic Feet
HVAC	Heating Ventilation and Air Conditioning
IA	Interface Agreement
IE	Independent Engineer
ISO	International Organisation for Standardization
ITF	Internal Transportation Facilities
ITP	Instruction To Proposers
JFK	John Fitzgerald Kennedy (airport)
LA	Los Angeles
LABI	Labor Index
LADWP	Los Angeles Department of Water and Power
LAMP	Landside Access Modernization Program
LAWA	Los Angeles World Airports
LAX	Los Angeles International Airport (airport code)

Acronym	Definition
LBE	Local Business Enterprise
LC	Lenders' Counsel
LIA	Lender's Insurance Advisor
LINXS	LAX Integrated Express Solutions
LoC	Letter of Credit
LRFD	Load and Resistance Factor Design
LRT	Light Rail Transit
LSBE	Local Small Business Enterprise
LSE	London Stock Exchange
LTA	Lenders' Technical Advisor
M&E	Mechanical and Electrical
MSF	Maintenance and Storage Facility
MAPC	Maximum Availability Payment Capital
MAPO	Maximum Availability Payment Operations
MaxAP	Maximum Availability Payment
MDE	Maximum Design Earthquake
MMIS	Maintenance Management Information System
MMP	Maximum Monthly Payments
MMRP	Mitigation Monitoring and Reporting Programme
MO	Missouri
MOT	Management Of Traffic
MP	Milestone Payment
MPI	Metal Products Index
MSC	Midfield Satellite Concourse
MW	megawatts
NCP	Noncompliance Points
NEPA	National Environmental Policy Act
NTP1	Notice to Proceed 1
NTP2	Notice to Proceed 2
NY	New York
O&M	Operations and Maintenance
ODE	Operating Design Earthquake
ODE	Operating Design Earthquake
OM&F	Operations and Management Facilities
OMJV	Operations and Maintenance Joint Venture
ON	Ontario

Acronym	Definition
OS	Operating System
OSUAF	Operating System Unavailability Factor
P3	Public-Private Partnership
PA	Project Agreement
PARCS	Sixth St. Park, Arts, River and Connectivity Project
PDS	Protection Distribution System
PLC	Public Liability Company
PMP	Project Management Plan
pphpd	Passengers Per Hour Per Direction
PPP	Public-Private Partnership
P-S	Pressure-Shear wave tests for seismic design
PSA	Passenger Service Availability
RFCD	Release for Construction Documents
RFP	Request for Proposals
RFQ	Request for Qualification
ROW	Right Of Way
SBE	Small Business Enterprise
SCADA	Supervisor Control and Data Acquisition
SD	System Demonstration
SHPA	State Historic Preservation Act
SUA	Station Unavailability Adjustment
TCC	Testing Commissioning and Compliance
TEI	Transportation Equipment Index
TP	Technical Provisions
TPSS	Traction Power Substation
TTC	Testing, Commissioning and Compliance
TVA	Threat and Vulnerability Assessment
TX	Texas
UA	Unavailability Deductions
UOMND	Unavailability Operations and Maintenance Noncompliance Deduction
URRA	Utility Rate Risk Adjustment
WA	Washington
WCTA	West Central Terminal Area
WITF	West Internal Transportation Facilities

## PROJECT SUMMARY

Project Element	Project Parties	Designation in this report
Description	The LAX APM Project is for the design, build, finance, operate and maintain (DBFOM) of a new APM system at LAX for a 30 year Period from Financial Close. The Project is a P3 Availability based project. The Project will span 2.25miles from a Consolidated Rent-A-Car Center (ConRAC) to the Central Terminal Area of the Los Angeles International Airport (LAX) along an elevated dual-lane guideway and includes five elevated stations and a Maintenance and Storage Facility (MSF).	
Project Title	LAX APM Project	<b>The Project</b>
Concession Term	30 Years (from Financial Close)	<b>The Term</b>
Passenger Service Availability Deadline	Must be achieved no later than March 31, 2023	-
Authority	Los Angeles Department of Airports aka Los Angeles World Airports (LAWA)	<b>The City, Authority, LAWA</b>
Authority APM / Technical Advisor	Lea+Elliot	<b>Authority Technical Advisor</b>
Authority Financial Advisor	Ernst & Young (EY)	<b>Authority Financial Advisor</b>
Authority Legal Advisor	Nossaman	<b>Authority Legal Advisor</b>
Project Company	LAX Integrated Express Solutions (LINXS)	<b>Consortium, Developer, LINXS</b>
Equity Members	ACS Infrastructure Development Inc., Fluor, Balfour Beatty Investments, HOCHTIEF PPP Solutions GmbH, Bombardier Transportation (Holdings) USA Inc.	<b>Sponsors (ACS, Fluor, Balfour Beatty, HOCHTIEF, Bombardier)</b>
Equity Financial Advisor	Bank of Tokyo Mitsubishi (BTMU)	<b>Equity Financial Advisor</b>
Equity Tax and Accounting Advisor	Deloitte	<b>Equity Tax and Accounting Advisor</b>
Equity Legal Counsel	White & Case	<b>Equity Legal Advisor</b>
Equity Insurance Brokers	TSIB, Marsh	<b>Equity Insurance Broker</b>
Rating Agencies	Fitch	<b>Rating Agencies</b>
Lender(s)	-	<b>Lender(s)</b>
Lender Insurance Advisor	Intech	<b>LIA</b>
Lender Technical Advisor	Infrata Ltd	<b>Infrata, LTA</b>
Lenders' Counsel	Ashurst	<b>LC</b>
Model Audit	Operis	
APM Fixed Facilities Contractor	Fluor, Dragados USA, Balfour Beatty Infrastructure Inc., Flatiron West Inc. (Flatiron)	<b>DBJV / DB Contractor</b>
APM Operation System Supplier	Bombardier	
APM Fixed Facilities Designer	HDR, HNTB	
APM O&M Provider	Bombardier, ACS, Fluor, HOCHTIEF PPP Solutions North America, Inc.	<b>OMJV / O&amp;M Contractor</b>

# 1 INTRODUCTION

## 1.1 Purpose of the Report

- 1.1.1 Los Angeles World Airports (LAWA) is procuring the Automated People Mover Project (the “Project”) as part of its Landside Access Modernization Program (LAMP) and LINXS (the “Consortium”) has been appointed for the DBFOM of the Project through a Public-Private Partnership (P3) Agreement, for a period of 30 years following Financial Close.
- 1.1.2 Infrata Limited (Infrata) has been appointed as LTA, the role of the LTA at this stage of the process is to continue technical due diligence on the Consortium’s proposals. Any queries regarding this report should be directed to the LTA via Ray Powell at Ray.Powell@infrata.com and Eimear Connery at Eimear.Connery@infrata.com
- 1.1.3 The LTA assignment commenced in September 2017 and information has been provided by the Consortium. A series of meetings and presentations, as well as a visit to the Project site, took place on September 19-20, 2017 at the Fluor office in Los Angeles with a follow up meeting at the Fluor office in Los Angeles, post Commercial Close, on April 19, 2018.







## 1.2 Scope of the Report













- 1.2.1 This report contains analysis and LTA opinion on the following key areas: (i) Project Parties and Structure, (ii) Contracts: Project Agreement, the DB and OM Contracts, the Interface Agreement and the main DB subcontracts (APM Operating System and Electrical Works) (iii) Design and Construction including Environmental, Consents and Permits, (iv) Operations and Maintenance, (v) Construction Schedule, (vi) Project Costs, and (vii) Payment Mechanism and LINXS Energy Modelling.

## 1.3 LTA Approach

- 1.3.1 The LTA approach mainly focuses on the Project risks and, in particular, those risks that could be material to the Lenders’ interests, and assesses the adequacy of the mitigating measures proposed by the Consortium. The LTA takes an overall view of the processes and methodologies employed by the Consortium during the development of the proposal. Where the LTA considers it necessary, specific issues are scrutinized in detail in order to achieve a better understanding of the key issues and the Consortium’s responses to the risks they represent.
- 1.3.2 Infrata’s experience of the rail infrastructure sector covers light rail, metro and high speed schemes globally and is summarized in the table below.

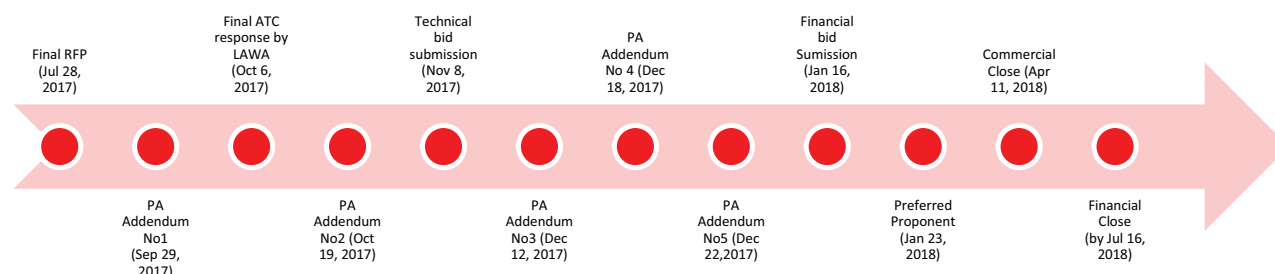
**Table 1-1 Summary of Infrata’s Global Rail sector experience**

Project Name		Project Value	Infrata Role
	Finch West LRT	\$700m	Ongoing (LTA due diligence)
	Edmonton Valley Line LRT	\$1.3bn	LTA role completed in 2015
	East Rail Maintenance Facility	\$365m	LTA role between 2013 - 2015
	The Confederation Line (Ottawa LRT)	\$2.2bn	LTA role completed in 2012
	Purple Line LRT	\$2.2bn	LTA role completed in 2015
	Lima Metro LRT	\$4.6bn	Ongoing (LTA due diligence, Construction Monitoring)

Project Name		Project Value	Infrata Role
	High Speed 2 (HS2)	£31bn	Ongoing (Technical and Programme Advisor)
	Diabolo Rail Project	€540m	Ongoing (LTA due diligence, Construction and Operations Monitoring)
	Livan 1 LRT	€103m	Ongoing (LTA due diligence, Construction and Operations Monitoring)
	LGV Bretagne Pays de la Loire (BPL)	€3.4bn	Ongoing (LTA due diligence, Construction Monitoring)
	Brabo 1 LRT	€180m	Ongoing (LTA due diligence, Construction and Operations Monitoring)
	Perpignan Figueras HSL	€1.2bn	Ongoing (LTA due diligence, Construction and Operations Monitoring)
	Sydney LRT	AU\$2.1bn	LTA role completed in 2014
	Brabo 2 LRT	€230m	LTA role completed in 2014
	Liege Tram LRT	€400m	Ongoing (LTA Due Diligence)
	Dutch High Speed Line Zuid	€1.2bn	LTA role completed in 2011 (due diligence up to FC then Construction and Operations Monitoring).
	Sud Europe Atlantique (SEA) HSL	€7.8bn	LTA role completed in 2010
	Contournement Nîmes-Montpellier (CNM) HSL	€1.3bn	LTA role completed in 2010

Source: Infrata

1.3.3 The current key dates of the tender process are shown below:



Source: ITP Addendum No.5

## 1.4 Limitations and Exclusions of the LTA's Review

1.4.1 This Final report is prepared on the basis of the information received prior to June 06, 2018. For this reason, discrepancies may exist between the documents reviewed at the time of submission of this report and their final version. Lenders are advised that variations between documents reviewed and their final version may have the potential to impact on the LTA opinions described in this report. It is noted that final (executed version) of the PA, DB and OM Contracts have been reviewed by the LTA as has the draft of the Amended and Restated DB Contract for Financial Close and commentary on these are presented herein.

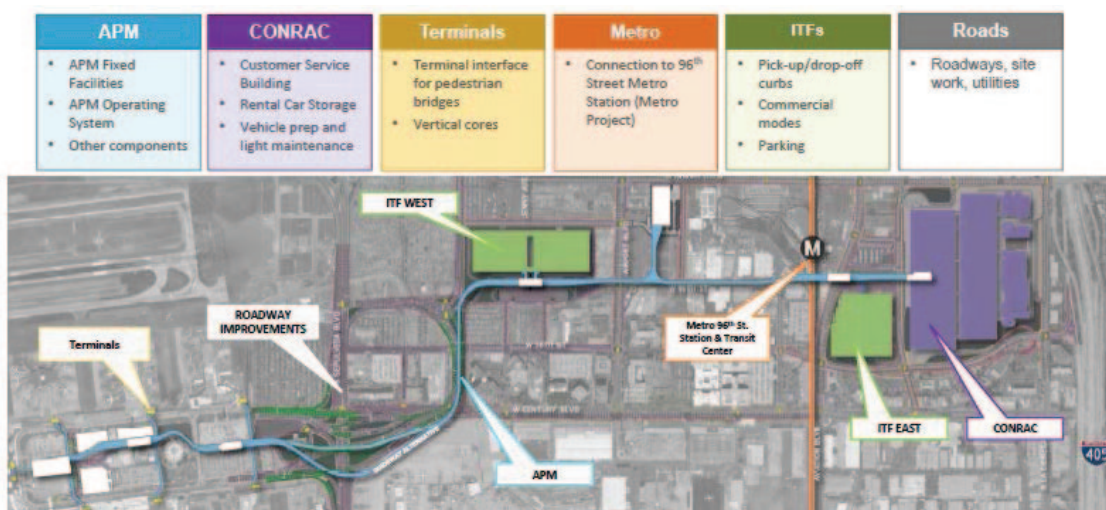
## 2 PROJECT OVERVIEW

### 2.1 Project Context and Description

#### LAMP Program

- 2.1.1 Los Angeles International Airport (LAX) is the busiest origin/destination airport in the United States and in 2016 reported traffic figures of approximately 80.9 million passengers, with approximately 50% of departing passengers arriving at the airport by car, resulting in over 6,000 cars per hour entering the airport during peak periods. Current air traffic projections forecast a passenger growth to over 96 million by 2030<sup>1</sup>.
- 2.1.2 In January 2016 Los Angeles World Airports (LAWA) announced a \$5.5 billion-landside modernization program at LAX, the Landside Access Modernization Program (LAMP). The aim of LAMP is to (i) Transform LAX into a world-class destination airport and enhance the passenger experience; (ii) Relieve traffic congestion in the Central Terminal Area (CTA) and on area surface streets and roads; (iii) Connect to transit, reducing private vehicles trips to LAX; (iv) Create new options for passenger pick-up and drop-off; (v) Give passengers a fast and reliable new way to get to their flights; (vi) Reduce vehicle emissions and improve air quality. The LAMP consists of the following main elements:
- an Automated People Mover (APM) system;
  - two Intermodal Transportation Facilities (ITFs);
  - a Consolidated Rent-a-Car Facility (ConRAC);
  - improvements within the CTA; and,
  - a connection to the Metro rail system.
- 2.1.3 The program is to be completed in phases with construction of the APM, ITFs, and ConRAC forming Phase 1 with a target operational date in 2023. The other LAMP elements would then commence.

Figure 2-1: Overview of LAMP



Source: LAWA

<sup>1</sup> Source LAWA

## APM Project

- 2.1.4 The APM is the primary element of the program and is intended to provide passengers, employees and other users a reliable, time certain means of accessing the CTA. It will connect the ConRAC with the ITFs and then to the CTA. It consists of the key components as outlined in the following table, these are described in further detail in Section 10 of this report.

**Table 2-1 Key Components of the APM**

Component	
APM Operating System	<ul style="list-style-type: none"> <li>• Normal operation mode: Pinched Loop</li> <li>• Capable of 24 hours per day operation</li> <li>• Peak period of 14 hours daily</li> <li>• Up to 9 trains (4 cars) operating simultaneously with 1 hot train stand-by and 1 spare at MSF</li> <li>• Peak demand Period Minimum line capacity of approximately 5,600 passengers per hour per direction (pphpd)</li> <li>• Round trip time of less than 1,200 seconds</li> <li>• Peak period Operational headway: 134 seconds</li> </ul>
APM Fixed Facilities	<ul style="list-style-type: none"> <li>• 2.25 miles of elevated dual-lane guideway</li> <li>• 3 stations in the CTA <ul style="list-style-type: none"> <li>○ West APM Station</li> <li>○ Centre APM Station</li> <li>○ East APM Station</li> </ul> </li> <li>• 2 stations outside the CTA include: <ul style="list-style-type: none"> <li>○ ITF West Station</li> <li>○ ITF East Station</li> </ul> </li> <li>• Elevated moving walkways connecting APM stations to Terminals, CTA parking garages, ITFs and ConRAC</li> <li>• 3 Traction Power Substations (TPSS)</li> <li>• New/ Reconstructed Roads</li> <li>• Maintenance and Storage Facility (MSF)</li> </ul>

Source: TP Part 1

- 2.1.5 The D&C Work includes facilities for which the Developer will not be responsible for Operations and Maintenance during the O&M Period, though will be responsible for any maintenance that may be required during the D&C Period prior to turnover to LAWA for its use. These are as listed in the following table.

**Table 2-2 Non-O&M Facilities**

Component	
Non-O&M Facilities	<ul style="list-style-type: none"> <li>• CCTV cameras installed on guideway columns at grade level and in parking garages</li> <li>• Garage Vertical Cores</li> <li>• New parking garages P2A, P2B and CTA West Station parking structure</li> <li>• Relocated/reconstructed roadway segments and new roadway segments (including associated drainage, irrigation and adjacent landscaping works).</li> <li>• Curbs, and pedestrian/bicycle facilities at Stations (excluding elevated Pedestrian Walkways)</li> <li>• Un-programmed shell space adjacent to the West CTA Station</li> <li>• Utility Relocation</li> <li>• Dedicated and LAWA infrastructure within the LAWA IT rooms</li> <li>• Cellular equipment</li> </ul>

Source: TP Part 1

- 2.1.6 During the pre-commercial close stage, a number of Additional TVA Mitigation Works and Scope Modifications were agreed between LAWA and LINXS with Additional D&C payments provided for within the PA. These changes are discussed further in section 10.4.
- 2.1.7 In addition to the above-mentioned pre-commercial close modifications the executed PA includes an allowance for a potential additional station that LAWA is considering as part of future terminal expansion projects.

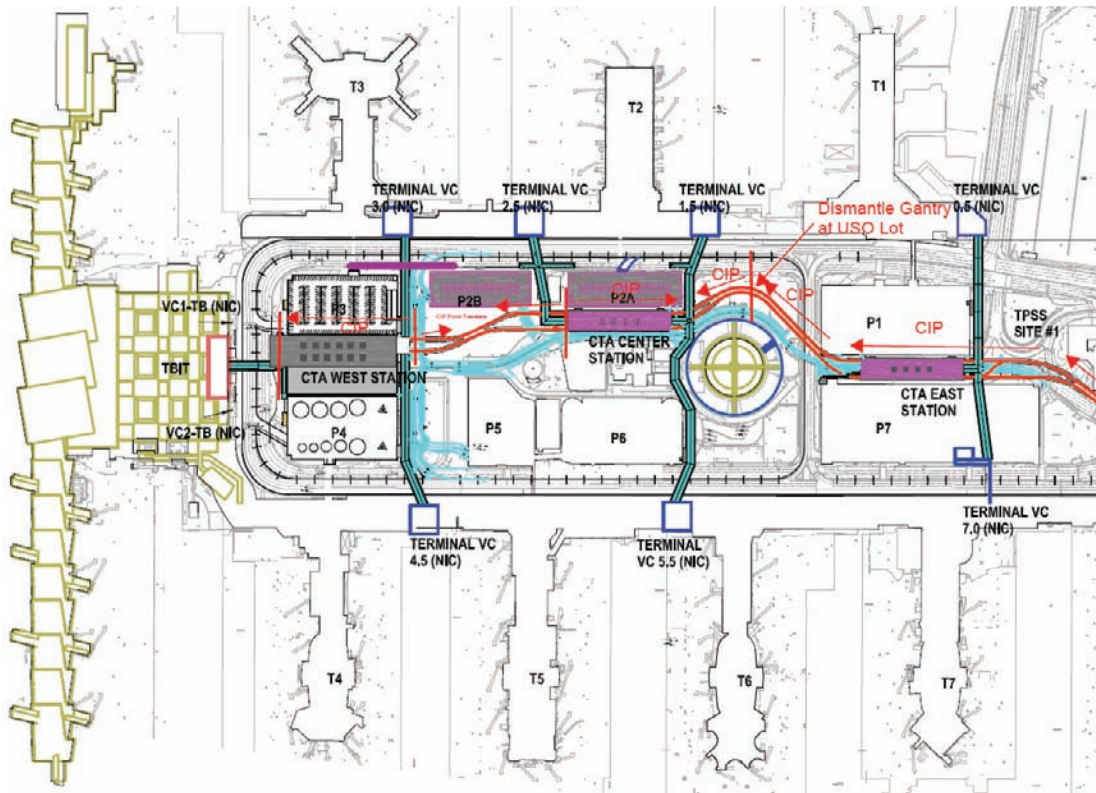
**Figure 2-2: APM Site Plan**



Source: LAWA

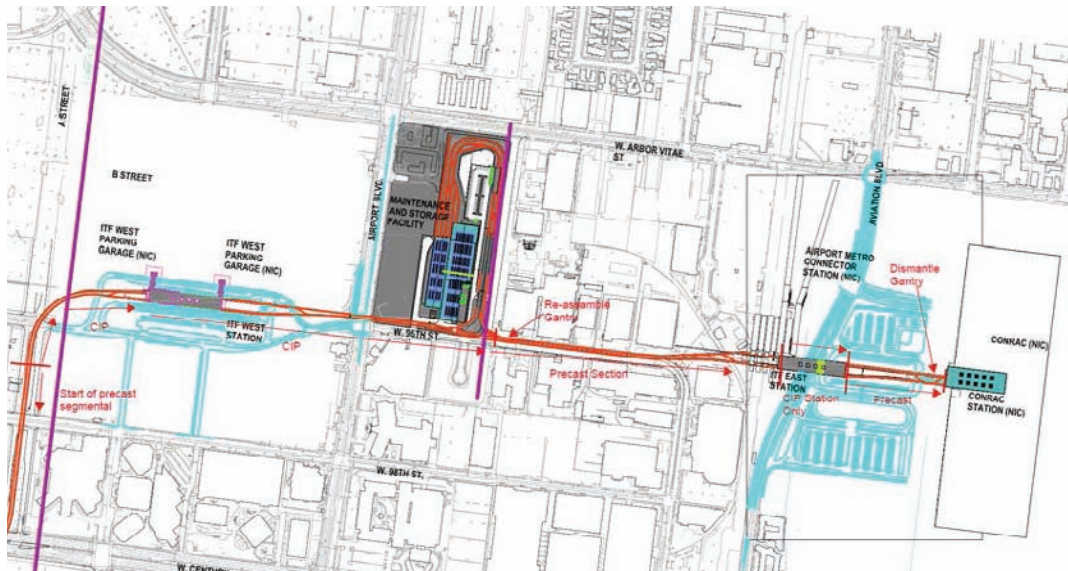


Figure 2-3: APM Site Plan in CTA



Source: Site Plan 8-16-17

Figure 2-4: APM Segment ITF West to ConRAC



Source: Site Plan 8-16-17

## 2.2 Key Stakeholders and Interfaces

- 2.2.1 The LAMP requires both federal and local approval as part of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) process. On June 7, 2017 CEQA approval was obtained from the Los Angeles City Council for the Environmental Impact Report (EIR). The Federal Aviation Administration

(FAA) have completed their environmental review in compliance with the National Environmental Policy Act (NEPA) and other federal requirements and have issued a Finding of No Significant Impact and Record of Decision for the LAMP program on January 12, 2018.

- 2.2.2 Due to the nature and location of the project there are a large group of stakeholders with whom the Developer will need to consult and keep informed throughout the Concession Term. The key stakeholders are listed in the following table.

**Table 2-3: Project Stakeholders**

Project Stakeholders	Who they are	Nature of interest in Project
LAWA	The City of Los Angeles department that owns and operates Los Angeles International (LAX) and Van Nuys (VNY) general aviation airports	Responsible for the management and administration of the PA on behalf of the City of Los Angeles.
Federal Aviation Authority (FAA)	Ensures the national airport system is safe, efficient, and environmentally responsible and meets the needs of the traveling public.	Helps airports implement the National Environmental Policy Act (NEPA) and other Federal environmental laws and regulations. This includes airport noise compatibility planning (Part 150), airport noise and access restrictions (Part 161), environmental review for airport development. Ensures development will not adversely impact the safe operation of the airport, from an aviation safety perspective, either during construction or during operation.
City of Los Angeles	The City Council is the governing body of the City. Owner of LAX, planning and highway authority for City of Los Angeles	Los Angeles Department of Transportation (LADOT), is a municipal agency that oversees transportation planning, design, construction, maintenance and operations within the City of Los Angeles.
Utility Companies	Owner or operator of any utility including private, public, municipalities and government agencies	Responsible for any design, safeguarding and relocation and protection measures of utilities under their control
Local Community	Wider residential and businesses not directly connected to the airport (although may be employed or supply the airport)	Impacted by construction operations (traffic diversions, noise, vibration, overnight working). contract includes local labor employment targets
Airport Users	Travelling public either directly using the airport to travel, dropping off or meet and greet	Impacted by traffic diversions, access to parking (especially where parking areas are being demolished or taken out of service temporarily)
Airport Community	Companies and staff involved in the operation of the airport including retail outlets, car park operators, hotels, taxi/bus operators etc.	Impacted by traffic diversions, access to parking (especially where parking areas are being demolished or taken out of service temporarily)
Caltrans	manages the state highway system and is involved with public transportation systems throughout the state	Highway department responsible for Sepulveda Boulevard

*Source: various websites*

- 2.2.3 There are a number of interfacing projects with which the APM Developer will need to coordinate their efforts, these are listed in the following table.

**Table 2-4 Interfacing Projects**

Project Name	Interface Elements	Responsible Party	Start Date	End Date
ConRAC	<ul style="list-style-type: none"> <li>• Station Structure and Vertical Core</li> <li>• APM Equipment Room</li> <li>• LAWA IT Room</li> <li>• Station Canopies</li> <li>• Station Floor Finishes</li> <li>• Fire Protection</li> <li>• Mechanical and Electrical components</li> <li>• APM Operating System</li> <li>• Signage and Graphics</li> <li>• ITF East Circulation Site</li> <li>• O&amp;M</li> </ul>	ConRAC DBFOM	Q3 2018	Q1 2023
ITF West – Phase 1	<ul style="list-style-type: none"> <li>• Pedestrian walkways - ITF W Garage.</li> <li>• ITF W Communication infrastructure - ITF W Station.</li> <li>• ITF W circulation site – ITF W fire lane access roads</li> <li>• ITF W circulation site – ITF W site utilities</li> <li>• ITF W garage facade</li> </ul>	ITF West Design-Builder	Q3 2017	Q4 2024
96 <sup>th</sup> Street/Crenshaw Airport Metro Connector Station	TBC	By Others	ongoing	TBC
Metro Southwest Yard	TBC	By Others	ongoing	TBC
Terminal Vertical Core 1.5, 2.5, 3.0, 4.0, 4.5, 5.5 and TBIT	Connection between pedestrian Walkways and the Terminal Vertical Core	TVC Parties	Q1 2018	Q4 2022
Parking Access and Revenue Control System (PARCS) CTA West Station Garage	<ul style="list-style-type: none"> <li>• PARCS IT Equipment Room</li> <li>• Minimum Point of Entry (MPOE) Room</li> <li>• Flatwork for Entry and Exit Plazas</li> <li>• Electrical Works</li> <li>• Payment Kiosks</li> <li>• Digital Signage</li> </ul>	PARCS Party	TBC	TBC

Project Name	Interface Elements	Responsible Party	Start Date	End Date
Cellular Communications System	<ul style="list-style-type: none"> <li>• APM Stations</li> <li>• Cellular Towers and Distribution Systems</li> <li>• Local Exchange Carrier Manholes</li> </ul>	NELA Party	TBC	TBC
New LADWP Electrical MH 190 and MH 196	TBC	MSC Party/LADWP	TBC	TBC
New LADWP Electrical MH A and MH E, Removal of Electrical MH 155-A	TBC	LADWP	TBC	TBC
<p>Note:</p> <p>It is anticipated that there will also be an interface with the works at ITF East though this project has not been identified as an interfacing project within the PA.</p>				

Source: PA Exhibit 10, TP Part 2A, LAWA Program Overview

- 2.2.4 In addition to the above listed projects there are a number of other concurrent projects being undertaken at LAX which will require coordination between LAWA, the APM Developer and the relevant contractor: Midfield Satellite Concourse (MSC) – North Project, Terminal 1-3 Improvements, Terminal 6 Electrical Updates, Terminal 7 and 8 Improvements, Century Corridor Street Scape Plan, CTA – Landside Accessibility Improvements – Phase 2, CTA Departure Level Security Bollards.
- 2.2.5 Exhibit 10 of the PA sets out the interface requirements and the Relief and Compensation events for breach of interface obligations with those projects directly connecting with the project infrastructure such as ITF West, ConRAC, Terminal Vertical Cores, PARCS and Cellular Comms etc. Interfacing with other projects will be more a case of coordination in terms of such activities as work planning, logistics and traffic management. See Table 2-5 Key technical challenges below for further commentary on coordination and interfacing challenges and mitigations.

## 2.3 Key Technical Challenges

- 2.3.1 Following a review of the project documents and a site visit the key technical challenges facing LINXS in this contract as identified by the LTA are presented below:

**Table 2-5 Key technical challenges**

Area	Technical challenge	Proposed mitigations	LTA comment
Design Submittals	There are a large quantity of design packages to be submitted to LAWA for its approval. Developer can have no more than 30 Submittals with LAWA at any one time and a maximum of 10 Submittals per design discipline at any one time. Therefore, careful planning will be required to appropriately meter design submittals and obtain approvals	The DBJV is currently refining its design submittal schedule to meet the construction schedule whilst avoiding overload on LAWA review.  LINXS have advised that by Financial Close design development will be at 20-30%. This includes design progression anticipated during Early Works.	The DBJV members have extensive experience of working with LAWA's technical consultants Lea+Elliot and Jacobs which should help to improve understanding and smoother passage of design submittals.  The Project Schedule reviewed takes into account the limits on number of submittals under review by LAWA at any time and their review and approval periods.

Area	Technical challenge	Proposed mitigations	LTA comment
Utilities	There are many utilities along the route of the APM, most of which have been identified and surveyed by the utility companies on behalf of LAWA. The scheduling of utility relocations or protection will be key. The design of the guideway foundations are reliant on completion of utility works to ensure timely completion of guideway and station foundations	<p>Additional Early Works site investigations to better identify utility locations</p> <p>Design of guideway columns to be adjusted ~10' without a major redesign. This flexibility will give the team the ability to eliminate some utility relocations.</p> <p>Prioritize and meter the utility relocation submittals (as well as designs that those utility relocations rely upon) to prevent any delay to the project. Incorporate appropriate review time in the schedule.</p> <p>Conduct over the shoulder reviews with City Agencies who will be co-located with the Design Team.</p>	<p>The DBJV's experience, capabilities and the considerable level of planning that is being employed at this early stage is likely to mitigate risks related to this challenge.</p> <p>LAWA has, proactively, entered into early relocation design and utility diversion agreements to advance certain relocations.</p> <p>All utility relocations for the project are straight pass-through to LAWA (there is a \$50m budget allowance administered through the Developer with upside or downside cost risk taken by LAWA)</p>
Ground risks	Being a longstanding industrial site, there will be areas of contaminated ground and unmarked obstacles. The most likely are abandoned utilities, which always prove to be time consuming to check and verify ownership and absolute abandonment. The incorporation of detailed and extensive ground surveys in advance of construction works will be key	<p>Undertake additional borings at each Guideway pier and other key groundwork locations.</p> <p>Design of guideway columns to be adjusted ~10ft. This flexibility will give the team the ability to react to unmarked obstacles without a major redesign.</p>	<p>The DBJV members are experienced with similar conditions, they have worked in the Project region and there is a reasonable degree of information available to enable it to identify geotechnical risks during this early stage and propose adequate solutions.</p> <p>There are contractual safeguards for geotechnical conditions of an unusual or different nature than expected.</p>
Working space/ access and management of traffic	The landside area of the airport is heavily congested with existing infrastructure consequently with tight working space for construction activities (especially in the CTA area) and few suitable locations for laydown areas adjacent to the guideway. Coordination with other concurrent projects and airport operations to keep the traffic flowing and maintain just-in-time delivery of construction material and plant will be critical to maintaining the schedule.	<p>The DBJV have confirmed that although space is limited, it is adequate.</p> <p>Management of Traffic proposals have been well developed under the leadership of Ross Fryman who brings relevant experience leading MOT efforts on the high-profile I-405 "Carmageddon" as well as on the recent Crenshaw/LAX Transit Project.</p> <p>Design and constructability have been improved to reduce construction traffic through recycling construction waste on-site wherever possible and by less demolition of car parks and other structures.</p>	<p>The specified traffic management requirements are considered typical for an urban project in and around an airport or CBD.</p> <p>The DBJV members have extensive experience in this regard, from its work in the region and other North American projects with similar requirements, provided that good practices are maintained.</p> <p>MOT imperatives are driving design and construction development as evidenced through key personnel such as the DB Project Manager and Construction Manager and Ross Fryman being at the heart of MOT decision-making.</p>

Area	Technical challenge	Proposed mitigations	LTA comment
Interfaces with neighbors and other projects	Given the proximity of the APM to its neighbors, within a highly developed urban area, and adjacent to the airport, there will be a significant amount of interaction to avoid disrupting their individual requirements including interfacing projects, utility access, freedom to pedestrian and vehicular access, noise, vibration, light, etc. and restrictions around construction methods	The APM project is the backbone of the overall LAMP program and will interface with all other construction work ongoing within the CTA. The LINXS team has begun and will continue to take a proactive leadership role integrating the APM Project with future and adjacent contracts through such forums as the MOT Technical Working Group.	The DBJV members have extensive experience in this regard, from their work in the region and other North American projects with similar requirements, provided that good practices are maintained.  Compensation Event protections in the PA for breach by other parties of their respective interface obligations.
APM vehicle delivery / systems testing and commissioning	<p>The delivery of the first vehicle needs to coincide with the completion of enough of the MSF to enable the vehicle's unloading and final assembly, with enough of the rail systems in place to be able to start static testing shortly thereafter. It is at this point that the two separate schedules are joined for the first time in the project.</p> <p>The integration, testing and commissioning of the vehicle with the rail systems along the route can be a significant challenge where vehicles and systems are being designed as separate packages.</p>	<p>LINXS has de-risked this activity to a considerable degree by locating the MSF at ground level thereby reducing its complexity and its construction schedule. LINXS has also de-risked integration, testing and commissioning of the vehicle with the rail systems activities by both utilizing tried and tested components as well as utilizing them in similar configurations.</p> <p>36 cars are required for full integrated testing at month 7 of the 12 month testing period. 40 cars are required at Month 11 of this same period. The schedule has 13 months of cushion for the 36 cars and 16+ months for the 40 cars.</p>	<p>Bombardier has extensive experience in APM manufacture, integration, commissioning and testing and is proposing a tried-and-tested version of its APM vehicle already in use at other airports.</p> <p>The redesign of the MSF is considered to be a positive initiative which should improve the probability of achieving PSA on time and increase operating resilience thereafter.</p>

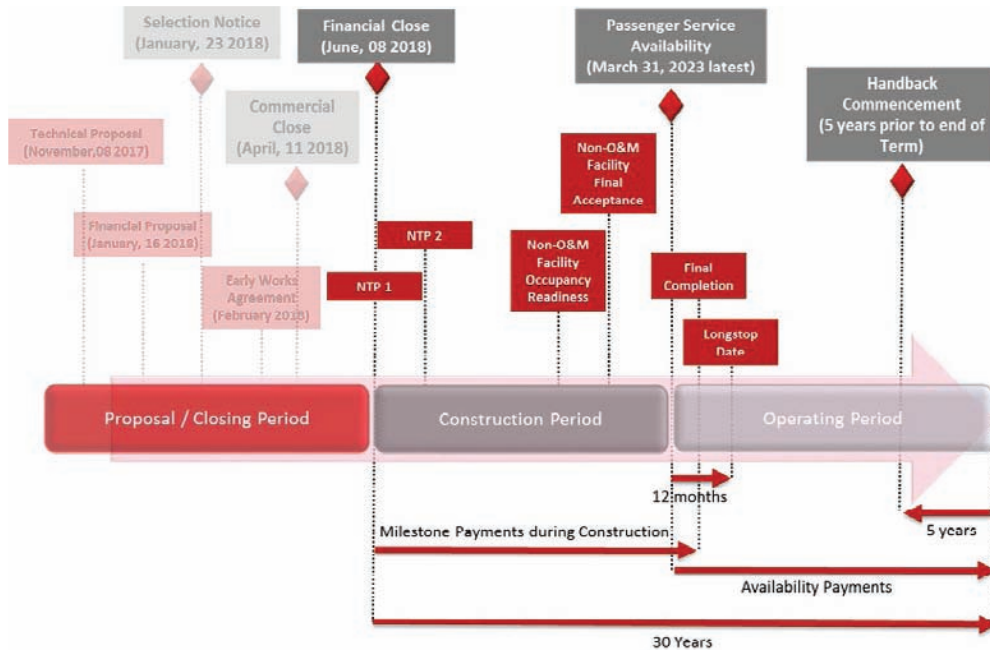
Source: LTA/ LINXS

## 2.4 Project Timeline

2.4.1 The key dates of the process going forward and project timeline are listed in the following figure.



**Figure 2-5: Tender and Project Timeline**



Source: PA

## 2.5 LTA Opinion

- 2.5.1 The LTA Opinion on the Project during the D&C Period and during the Operating Period, including that on the key technical challenges are provided in Sections 10 and 12 respectively where these items are discussed in detail.
- 2.5.2 The risk matrix table in Section 4.2 of this report provides an overview of the allocation of the technical risks associated with this Project.
- 2.5.3 The LTA notes the number of interfaces and stakeholders which will need to be managed through the Project Term though does not consider these to be outside the capabilities, and experience, of the LINXS team. It is further noted that LAWA has diligently listed the direct interface requirements (Exhibit 10) and has provided Compensation Event protections in the PA for breach by other parties of their respective interface obligations.

## 3 PROJECT ORGANIZATION

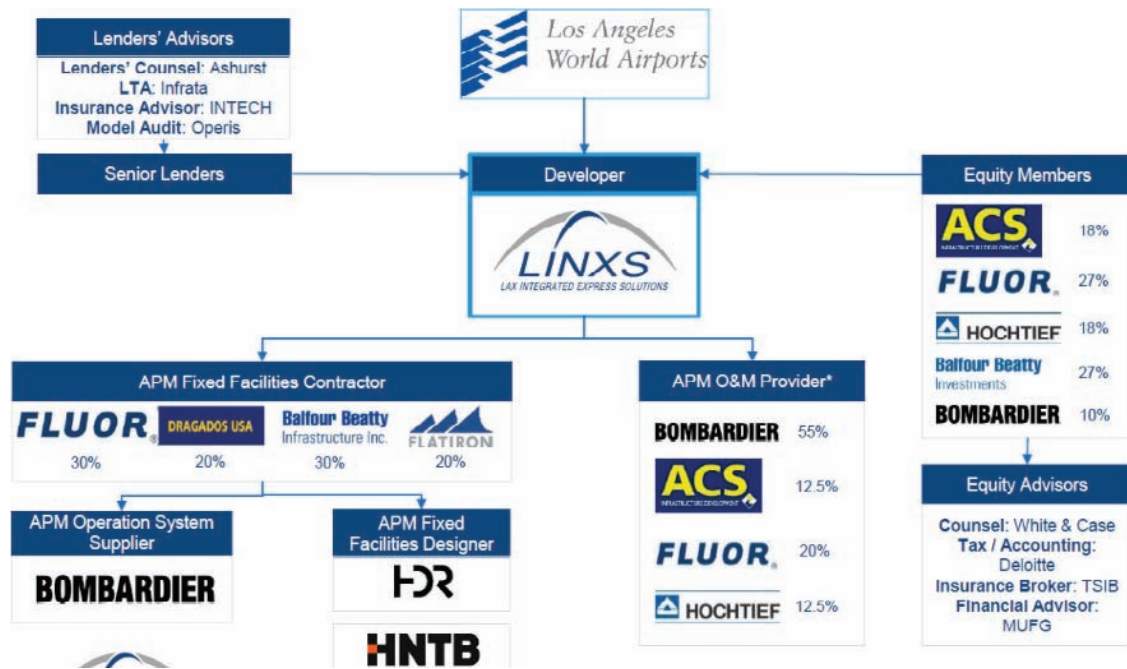
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### 3.1 Overall Project Structure

- 3.1.1 The Developer, LAX Integrated Express Solutions (LINXS), is a team of local and international experts led by Equity Members ACS Infrastructure Development Inc. (ACS), Fluor, Balfour Beatty Investments (Balfour Beatty), HOCHTIEF PPP Solutions GmbH (HOCHTIEF), and Bombardier Transportation Holdings USA Inc. (Bombardier). Collectively, the Equity Members have developed over 50 P3 projects in North America representing more than \$40 billion of total investment. This includes seven rail P3's that are under operations or construction valued at over \$15 billion, including the first P3 in the City of LA, Angels Flight, the Purple Line P3 in Maryland and the Eagle P3 project in Denver. Participation levels of each team member are: 18% ACS, 27% Fluor, 27% Balfour Beatty, 18% HOCHTIEF, and 10% Bombardier. A summary of projects LINXS team members have been involved in is provided in Table 3-9 at the end of this section.
- 3.1.2 Following Project Award, LINXS created a special purpose vehicle and have entered into a Project Agreement (PA) with City of Los Angeles Department of Airports, known as Los Angeles World Airports (LAWA). The main agreements are:
- The PA that the Consortium and the City entered into at Commercial Close on April 11, 2018 (the same as the Effective Date);
  - The Design and Build Contract (DB Contract) between the Developer and the APM Fixed Facilities Contractor (the DBJV).
  - The DB Contract main subcontracts, specifically the Operation System Supply Contract between the APM Fixed Facilities Contractor and APM Operation System Supplier, and the Fixed Facilities Contract between APM Fixed Facilities Contractor and APM Fixed Facilities Designer.
  - The Operation and Maintenance (O&M) Contract between the APM O&M Provider and the Developer.
  - The Interface Agreement between APM Fixed Facilities Contractor, the APM O&M Provider and the Developer.
- 3.1.3 The Consortium's complete organizational and contractual structure is provided in Figure 3-1 below.

















Figure 3-1 LINXS Organizational and Contractual Structure



Source: LINXS

- 3.1.4 The following diagram illustrates the strength of the LINXS team through vertical integration. Dragados is an affiliate company of ACS and Flatiron an affiliate company of HOCHTIEF.

Table 3-1 LINXS group member vertical integration

Entity	ACS Group	Balfour Beatty	Bombardier	Fluor Group	HOCHTIEF Group
Equity Sponsors	 18%	 27%	 10%	 27%	 18%
Design-Build Contractor	 20%	 30%	 0% (APM Supplier)	 30%	 20%
Operator	 12.5%		 55%	 20%	 12.5%

Source: LINXS

## 3.2 The Authority



- 3.2.1 The Procuring Authority is the City of Los Angeles Department of Airports, known as Los Angeles World Airports (LAWA), acting by and through its Board of Airport Commissioners.

- 3.2.2 LAWA raises revenue by collecting aircraft landing fees, in addition to property leases and concession fees from airport tenants. Expenditures include runway and building maintenance fees, capital improvements and administration. LAWA employs close to 2,500 employees who work for the two airports under its control.
- 3.2.3 LAWA is procuring the APM and ConRAC through separate design, build, finance, operate and maintain (DBFOM) procurements. Other projects in the LAMP program are utilizing a mixture of non P3 procurements as shown below:

**Table 3-2 LAMP procurement routes under consideration by LAWA**

Element	D-B-B	CM@R	DB	DBOM	DBFOM	Other
APM						
CONRAC						Tenant
Terminals						Tenant
Metro						Metro MOU
ITF Garage(s)						
Other Elements						

Selected delivery method  
 Delivery methods under consideration

Source: LAWA

### LTA Opinion

- 3.2.4 The LTA notes that the APM and ConRAC are the first P3 procurements for LAWA. However, LAWA does have extensive experience in procuring and managing large construction and renovation projects at LAX and has brought in a team of experienced and well-established P3 advisors to support it on the APM procurement, including: Nossaman (legal) 46 P3 deals in North America, EY (financial) 80 P3 deals in North America, and Lea+Elliot (APM/ Technical) experience in Automated Transit Systems includes BART to Oak, Phoenix Sky Harbor, Dallas Fort Worth Skylink, Minneapolis Airport APM etc.
- 3.2.5 Management and support of overlapping contracts in the LAMP program will require adequate resourcing from the client-side team for instance in turning around design submittals within the timeframes required under the PA and in coordination of the different LAMP projects. The LTA notes positively the requirements for appropriate metering of design submittals and the passing down of coordination responsibilities to the Developer.

## 3.3 Sponsors and Equity Members

- 3.3.1 LINXS equity members have collectively delivered, or have been awarded, more than 50 P3 projects in North America, including 8 rail P3s. These include the Purple Line P3 Project in Maryland, the Eagle P3 Project in Denver, Ottawa LRT Project (Confederation Line), Eglinton Crosstown LRT (Eglinton LRT) Project in Toronto and the Finch West Light Rail Transit Project (Finch LRT). Relevant project experience with LINXS partners working together is summarized in Table 3-9 Selected LINXS Members' partnering and other relevant experience. The following table provides a brief overview of the five equity partners.

**Table 3-3 Equity Partners overview**

Parameter	ACS <sup>(1)</sup>	Balfour Beatty	Bombardier <sup>(2)</sup>	Fluor	HOCHTIEF
Year Parent Founded	1968	1909	1942	1912	1873
Total Employees	182,000	28,000	37,000	56,000	51,000
Annual Revenue	\$34.9 billion	\$8.7bn	\$7.6bn	\$19.5bn	\$21 billion
Notes: (1) year of creation of Construcciones Padros, S.A, later to be ACS Group (2) year of creation of Bombardier inc. which owns 70% of Bombardier Transportation (30% is owned by CDPQ)					

Source: LINXS



- 3.3.2 ACS Infrastructure Development Inc. (ACSID) is an industry leader of projects in the North American infrastructure market with more than a decade of established experience. ACSID is the US subsidiary of ACS Servicios y Concesiones, S.L. (ACS SyC), and a member of the ACS Group, a global leader in the design, construction, operations and maintenance of transportation concessions. With over 50 years of experience in the development and construction of transportation concession projects, the ACS Group has developed more than 110 P3 projects globally, has more than 182,000 employees worldwide, and a presence in 60 countries. Its revenue was approximately \$35 billion in 2017.
- 3.3.3 Along with its sister company, ACS Infrastructure Canada Inc. (ACSIC), ACS currently manages 15 transportation P3 projects in North America including 12 availability-based, two revenue risk, and one hybrid availability-revenue risk. Apart from the APM Project, six of these projects are in operations phase, and eight are in construction phase. ACS' North American P3 portfolio has a total value of over \$21 billion. ACS and Dragados have partnered on each of these projects.
- 3.3.4 The table below sets out ACSID's, alongside its sister company ACSIC's, project experience in North America.

**Table 3-4 ACS P3 equity involvement**

Project	Project Size <sup>(1)</sup>	Year	Location
Autoroute 30	CAD1.9bn	2008	Montreal, Quebec
I-595 Corridor Roadway Improvements	USD1.7bn	2009	Broward County, Florida
South Fraser Perimeter Road	CAD715m	2010	British Columbia, Quebec
Right Honorable Herb Gray Parkway	CAD1.3bn	2010	Windsor, Ontario
Northeast Anthony Henday Drive	CAD1.5bn	2012	Edmonton, Alberta
Southern Ohio Veterans Memorial Highway (Portsmouth Bypass)	USD557m	2014	Portsmouth, Ohio
Eglinton Crosstown LRT	CAD5.5bn	2015	Toronto, Ontario
Ottawa LRT (Confederation Line)	CAD2.0bn	2013	Ottawa, Ontario
Angels Flight Railway	Less than USD5 million	2017	Los Angeles, California
New Champlain Bridge	CAD2.5bn	2015	Montreal, Quebec
SH 288 Toll Lanes	USD1.1bn	2016	Houston, Texas

Project	Project Size <sup>(1)</sup>	Year	Location
Highway 427 Expansion	CAD363m	2017	Toronto, Ontario
Finch West LRT	CAD1.4bn	2018	Toronto, Ontario
Note: (1) Total project costs during construction.			

Source: LINXS

## FLUOR

- 3.3.5 Fluor is one of the world's largest professional services firms providing engineering, procurement, fabrication, construction, and maintenance companies serving 4,000 clients in more than 100 countries. Fluor ranks 149 on the Fortune 500 list with revenues of \$19.5 billion in 2017 and has more than 56,000 employees.
- 3.3.6 Fluor's Infrastructure business line has delivered more than \$20 billion in transportation assets by way of design-build and P3 approaches over the last 23 years, investing approximately \$193 million of equity in P3s. Fluor's North America Investment Portfolio includes the following projects:

**Table 3-5 Fluor DB and P3 equity involvement**

Project	Project Size <sup>(1)</sup>	Year	Location
Maryland Purple Line Light Rail Transit	USD2.3bn	2016	Washington, Maryland
Exposition Light Rail Transit, Phase 1	USD691m	2012	Los Angeles, California
Tappan Zee Bridge	USD3.1bn	2013	Rockland and Westchester Counties, New York
Dallas Horseshoe	USD798m	2013	Dallas, Texas
95 Express Lanes	USD925m	2012	Stafford and Fairfax Counties, Virginia
Rt. Hon. Herb Gray Parkway	CAD1.3bn	2010	Windsor, Ontario
Denver Eagle P3 Commuter Rail Line	USD1.6bn	2010	Denver, Colorado
495 Express Lanes	USD2.0bn	2007	Fairfax County, Virginia
San Francisco-Oakland Bay Self-Anchored Suspension Bridge	USD1.9bn	2006	San Francisco, California
Note: (1) Total project costs during construction			

Source: LINXS

- 3.3.7 Fluor and Flatiron have advised that work on the Exposition line was on time and on budget and involved working with the City of LA and its various agencies respecting their review cycles of submittals. F&F's schedule includes the design review process required by the City agencies.

## Balfour Beatty Investments

- 3.3.8 Balfour Beatty is a global infrastructure investor operating predominantly in North America and the UK. Over the past 20 years Balfour Beatty Investments has established itself as one of the largest P3 developers in the industry developing over 70 P3 projects globally.
- 3.3.9 Balfour Beatty Investments is a division of Balfour Beatty plc; a leading international infrastructure services group headquartered in London listed on the LSE.

- 3.3.10 Balfour Beatty Investments equity portfolio was valued at USD1.7bn at the end of 2017. In North America, their P3 portfolio consists of:

**Table 3-6 Balfour Beatty P3 equity involvement**

Project	Project Size <sup>(1)</sup>	Year	Location
Borden Data Centre	CAD110m	2016	Ontario
Children's and Women's Hospital	CAD336m	2014	British Columbia
North Island Hospital	USD422m	2014	British Columbia
Various Student Accommodation Projects (14 projects)	USD900m	2010-2018	Iowa, Texas, Oklahoma and Nevada
21 Military Housing Privatization Initiative concessions	USD5.8bn	2003-2014	throughout US
Note: (1) Total project costs during construction			

Source: LINXS



- 3.3.11 HOCHTIEF PPP Solutions GmbH ("HOCHTIEF") is responsible for managing the PPP activities of its ultimate parent, HOCHTIEF Aktiengesellschaft ("HOCHTIEF AG"), one of the world's largest international providers of construction and construction-related services with a presence in more than 60 countries. HOCHTIEF's current committed equity exceeds \$336 million for its PPP project portfolio (22 social and 11 transport infrastructure projects) with a total investment value of over \$12.7 billion.
- 3.3.12 Since 2010, HOCHTIEF has closed seven PPP projects in North America, three of which were in conjunction with Flatiron West, Inc. or its affiliates: The total committed investment of these seven projects is \$4.3 billion, with total equity commitments of \$222 million, HOCHTIEF's share being \$76 million. The projects are listed below:

**Table 3-7 HOCHTIEF P3 equity involvement**

Project	Project Size <sup>(1)</sup>	Year	Location
Presidio Parkway Drive	USD365m	2012	San Francisco, California
New Champlain Bridge	CAD2.5bn	2015	Montreal, Quebec
Northeast Anthony Henday Drive	CAD1.5bn	2012	Edmonton, Alberta
DBFOM project Stanton Territorial Hospital	CAD287m	2015	Yellowknife, Northwest Territories
DBFOM project Alberta Schools Alternative Procurement III	CAD206m	2012	Alberta
DBFOM project Ontario Provincial Police Modernization	CAD282m	2010	Ontario
DBFOM project Alberta Schools Alternative Procurement II	CAD173m	2010	Alberta
Note: (1) Total project costs during construction			

Source: LINXS

- 3.3.13 HOCHTIEF's sister company, Turner Construction, has significant FAA experience having completed over 35 Airport Projects in USA. Turner also has ongoing work at the Central Terminal and their scope includes improvements to the Central Terminal - extensive upgrades to concourse areas such as ticketing and baggage

screening, as well as updates to all building systems. The project also includes construction of additional retail and dining structures. Projects at LAX are completed by a core team of Turner employees who work hand-in-hand with Los Angeles World Airport personnel, designers and stakeholders to choose delivery methods and deploy Turner teams to build each project. Projects range in size from ADA upgrades to large renovations across eight terminals.

## **BOMBARDIER**

- 3.3.14 Bombardier Transportation (Holdings) USA Inc. (“Bombardier”), a Delaware corporation, is a wholly-owned indirect subsidiary of Bombardier Transportation (Global Holding) UK Limited, the transportation group’s consolidated holding company (“Bombardier Transportation”) established in November 2015. which is part of the Bombardier Inc. group of companies. Since February 2016, Caisse de dépôt et placement du Québec, a large Canadian institutional investor and pension fund, indirectly owns a 30% equity stake (27.5% on an as converted basis) in Bombardier Transportation.
- 3.3.15 Bombardier historically has manufactured APM vehicles in Pittsburgh. However, Bombardier intends to manufacture the APM vehicles in China through its 50/50 JV with CRRC, (“Puzhen Bombardier Transport Ltd” or “PBTS”) the largest rail transit supplier in the world. PBTS was based in Nanjing within a larger CRRC manufacturing facility but has recently moved to a new, dedicated facility in Wuhu (about 60 miles from Nanjing) which is capable of producing 60 APM vehicles per year and increasing production if needed to.
- 3.3.16 LINXS have advised that 80% of the supplier base for PBTS is comprised of the same suppliers (typically global companies) as when manufacturing in Pittsburgh (especially for main components, such as doors, wheels, tires, electrical components etc.); some of the less complex components may now be produced in China. All suppliers will manufacture under the same certified quality management system under International Standards currently used by Bombardier.

### **LTA Opinion**

- 3.3.17 The LTA notes the proven capability and experience of all the equity partners on various successful P3 transactions including transportation-related projects in North America and has no concerns over their ability to manage and direct this Project through bidding, design and construction and thereafter operations and maintenance.
- 3.3.18 Bombardier’s proposed manufacture of APMs in joint venture with CRRC is considered a positive development and should mitigate potential delay risks. It is also noted positively that PBTS recently manufactured and assembled 44 APM 300’s for the Shanghai Line 8 out of its Nanjing facility. The LTA has been advised that APMs were delivered on time and revenue operations commenced in March 2018. For further discussion on APM manufacture and certification, please refer to Section 10.7.

## **3.4 The Design and Build Contractor**

- 3.4.1 The construction team members will form a Design and Build Joint Venture (DBJV) “APM Fixed Facilities Contractor” with a participation level of 30% by Fluor, 20% by Dragados USA, 30% by Balfour Beatty Infrastructure Inc., and 20% by Flatiron. The DBJV is a fully integrated team (i.e. no member has individual responsibility for a scope of work) that will implement proven expertise and capabilities to ensure the successful completion of the Project. Fluor, Balfour Beatty Infrastructure, Dragados, and Flatiron bring combined experience of P3 / Design Build projects in North America, including 5 P3 rail projects.
- 3.4.2 Through a fixed price and date-certain DB Contract the Developer has transferred the design and construction obligations of the PA to the DBJV. The pass down of the DB Contract from the PA is discussed in Sections 4.2 and 5.

- 3.4.3 The APM Fixed Facilities Design Team is led by HDR, with dedicated sub-consultant HNTB. The lead engineer team members have designed or provided management services on P3 projects including many rail projects such as Eagle P3, Crenshaw / LAX Transit Corridor and the Honolulu High-Capacity Transit Corridor Project.
- 3.4.4 The DBJV will subcontract approximately 75% of the construction work including its obligations for systems supply and integration to the APM Operation System Supplier, Bombardier (total of subcontracting to Bombardier is 22%). Electrical work will be subcontracted to Rosendin Electric (projects include Sacramento International Airport Terminal B, San Jose International Airport, and San Jose International Airport ConRAC). Other noted sub-contractors proposed include vertical conveyancing, HVAC/MEP, and automation/controls.

### **FLUOR**

- 3.4.5 Fluor's capabilities and experience delivering P3 projects is explained previously in Section 3.3 of this report.



- 3.4.6 Dragados USA is a wholly owned US subsidiary of Dragados S.A., the construction arm of the ACS Group. Founded in 1941, Dragados is one of the largest P3 contractors in the world having participated on more than 80 P3 projects. The firm has experience of delivering more than 8,400 miles of roads and highways, 1,500 bridges, 857 miles of tunnels, 230 dams and 528 miles of rail transit. It employs 11,800 people worldwide and 600 in North America.
- 3.4.7 Dragados has had an active presence in the US since 2005 and has experience on more than \$21 billion worth of major infrastructure projects throughout North America. In North America, Dragados has experience on 12 major P3 transportation projects with a combined construction value in excess of \$16 billion.
- 3.4.8 Dragados S.A.'s rail experience includes Eglinton, Ottawa, Madrid, Zaragoza, Tenerife and Seville LRTs as well as the Maintenance Storage Facilities on the Eglinton, Ottawa, Zaragoza, Seville and Barcelona projects. Other relevant projects include the Lima Metro, which is currently under construction in Peru. Dragados were recently appointed as part of the team to design and build a 65 mile segment of the California High Speed Rail.

### **Balfour Beatty** Infrastructure Inc.

- 3.4.9 Balfour Beatty Infrastructure Inc. is the wholly owned United States subsidiary of Balfour Beatty PLC, established in North America since 1990. Balfour Beatty Infrastructure is divided into three regional markets and one national rail division that focuses on public and private rail project in the US - Balfour Beatty Rail.
- 3.4.10 Balfour Beatty has a wide record of rail projects including Blackfriars Station and London Bridge Station in London (UK), and West Island Metro Line in Hong Kong. Selected US rail experience includes, among others, the Alameda Freight Corridor in California, Eagle P3 Commuter Rail in Denver, CO, Mid-City Exposition Line Light Rail in Los Angeles, CA, and the Metro Gold Line Eastside LRT Extension in Los Angeles, CA.



- 3.4.11 Flatiron is a wholly owned subsidiary of HOCHTIEF AG and provides infrastructure construction services in North America, and has more than 2,500 employees and 12 regional offices in the U.S. and Canada. Flatiron operates as a contractor in DB and P3 projects, constructing roads, bridges, tunnels, and rail transit for both public and private clients. With more than \$1 billion in annual revenues, Flatiron has delivered more than \$10 billion in DB and P3 projects, with another \$6 billion currently under construction.
- 3.4.12 Selected design-build experience includes part of the Metro Line LRT and Northeast Anthony Henday Drive project in Edmonton, the Champlain Bridge, Calgary Ring Road and Kicking Horse Pass in Canada, as well as the



Exposition Light Rail and Presidio Parkway, California High-Speed Rail Construction Package 2-3, Oakland Airport Connector, Sprinter Mainline in Oceanside (California) all in the US.



- 3.4.13 HDR is a US engineering and design firm based in Omaha, Nebraska, specialising in engineering, architecture, environmental and construction services, and healthcare design; and employing 10,000 professionals.
- 3.4.14 HDR has worked on projects in all 50 US states and in 60 countries. Selected experience includes projects in the US like OC Streetcar in Santa Ana, CA; Link Union Station in Los Angeles, CA; FLL Terminal 1 Modernization and Concourse A in Fort Lauderdale, FL; Centre City Connector in Seattle, WA; Kansas City Streetcar, MO; and Union Station Oak Cliff Dallas Streetcar, TX.



- 3.4.15 HNTB Corporation is an architecture, civil engineering consulting and construction management firm based in Kansas City, Missouri. HNTB has an extensive international experience designing airports, and rail and transit systems. Selected experience includes, among others, the Bay Area Rapid Transit Earthquake Safety Programme in San Francisco, CA; San Francisco BART Station, CA; Long Island Rail Road Atlantic Avenue Viaduct, NY; BART Warm Springs Extension in Oakland, CA; San Bruno Grade Separation, CA; Alameda Corridor in Los Angeles, CA; and Central Florida Commuter Rail in Orlando, FL.

### **BOMBARDIER**

- 3.4.16 Bombardier will be the APM Operating System Supplier the DBJV. Bombardier has one of the longest and most successful track records of designing, building, commissioning, and operating and maintaining APM systems in the world, with over 40 years of demonstrated experience and 26 APM systems in North American and globally (15 of which Bombardier is currently performing operations for).

#### **DBJV – LTA Opinion**

- 3.4.17 The DBJV members, including the design subcontractors, are well established contractors and designers who have undertaken a sizeable number of P3 projects in the US and worldwide, including major rail and airport projects also in California. Furthermore, all members have a significant presence in California with several operating offices. Each of the DBJV members are, in the opinion of the LTA, capable of executing this Project.
- 3.4.18 As demonstrated by a selection of experience summarized in Table 3-9, members of the DBJV have technical capability to complete the Project and have previously worked together on similar projects in North America.
- 3.4.19 The percentage of work to be sub-contracted is considered to be reasonable especially as Bombardier is a key provider.

### **3.5 Operation and Maintenance Contractor**

- 3.5.1 Bombardier, Fluor, ACS and HOCHTIEF will form a fully integrated O&M Joint Venture (OMJV); with the following percentages: Bombardier 55%, Fluor 20%, ACS 12.5%, HOCHTIEF 12.5%. The OMJV will perform the scope of both APM Fixed Facilities O&M Provider and APM Operating System O&M Provider.
- 3.5.2 The OMJV will be responsible for all O&M activities for the, anticipated, approximately 25-year Operating Period from service commencement. This includes operation of the system, facility management services, maintenance and rehabilitation of the system infrastructure, and maintenance and overhaul of vehicle fleet.
- 3.5.3 Capabilities of the OMJV members are described on Section 3.3 of this report.
- 3.5.4 Table 3-8 Selected Bombardier APM experience lists selected APM Operating Systems O&M experience of Bombardier.



**Table 3-8 Selected Bombardier APM experience**

APM Type	Location	Opened	Maintenance	Operations	Fleet Size	System Length (Km)
100 loop	Atlanta	1980	✓	✓	59	4
	Denver	1994	✓	✓	31	2
	Frankfurt	1994	✓	✓	18	2
	Houston	1999	✓	✓	16	2
	Madrid	2005	✓	✓	19	2.7
	San Francisco	2003	✓	✓	39	10
100 Shuttle	LV Airport	1985	✓	✓	16	2
	Orlando	1981	✓		24	2
	Pittsburgh	1999	✓		6	1
	Rome	1999	✓	✓	4	1.1
	Sacramento	2011	✓	✓	2	0.5
	Tampa	1971	✓		16	1
200	DFW	2005	✓		64	8
	Phoenix	2013	✓	✓	18	5
300	Dubai	2016	✓	✓	18	1.5
	Munich	2016	✓	✓	12	0.7
Monorail	Newark	1996	✓	✓	5	-
	Las Vegas	2004	✓	✓	5	-
	Tampa	1991	✓		1	-
ART 200	JFK	2005	✓	✓	8	-
	Yong In	2013	✓	✓	11	-

Source: LINXS

### OMJV – LTA Opinion

- 3.5.5 Having the same ultimate parent companies of the partners in the DBJV and the OMJV has some benefits: (i) reducing the potential interface risks between partners during the testing and commissioning phase and the risks associated with the Authority requirement to be fully compliant from Day 1 (ii) promoting a more collaborative approach during the development of solutions ensuring that the operational impacts are considered during the design stage and a solution is developed which is the best overall fit when considering the D&C requirements and the O&M requirements. The collaborative approach between the Consortium partners was very evident during the LTA site visit in September 2017 and subsequent interactions.
- 3.5.6 The members of the OMJV are well regarded and are currently operating a considerable number of APM and other Light Rail Transits (LRT) systems globally. Furthermore, Bombardier is a well-respected APM operator and maintainer that brings valuable practical information and methods to the Project from other similar systems

around the world, which is likely to have a positive impact on technical and cost risk assessment and mitigation on this Project.

### 3.6 Previous Partnering Experience

3.6.1 Members of LINXS team have a long and broad track record of working together on a variety of projects across North America. Most recent and relevant projects are summarized in Table 3-9 below.

**Table 3-9 Selected LINXS Members' partnering and other relevant experience**

Project	Location	Year	Approx. Capital Value	Type	ACS	FLUOR	BALFOUR B.	HOCHTIEF	BOMBARDIER	FLATIRON	DRAGADOS	HDR	HNTB
Eglinton Crosstown LRT	ON, CAN	2015	CAD5.5bn	DBFM	✓				✓		✓		
Confederation Line	ON, CAN	2013	CAD2.0bn	DBFM	✓						✓		
Purple Line	MD, US	2016	USD2.3bn	DBFOM		✓							
Eagle P3	CO, US	2010	USD1.6bn	DBFOM		✓	✓						✓
Lima Metro Line 2	Peru	2014	USD5bn	DBFOM	✓						✓		
Exposition Light Rail	CA, US	2006	USD691m	DB		✓				✓			
BART International Airport Connector APM	CA, US	2010	USD393m	DB						✓			
Crenshaw/LAX Transit Corridor	CA, US	2013	USD1.2bn	DB									✓
Honolulu High Capacity Transit Corridor Project	HI, US	2009	USD1.3bn	DB									✓
South 200 <sup>th</sup> Link Extension	WA, US	2012	USD168m	DB								✓	
North Metro Rail Line	CO, US	2013	USD365m	DB			✓						
New Champlain Bridge	QC, CAN	2015	CAD2.5bn	DBFOM	✓			✓		✓	✓		
Rt. Hon. Herb Grey Parkway	ON, CAN	2010	CAD1.3bn	DBFM	✓	✓					✓		
Northeast Anthony Henday Drive	AB, CAN	2013	CAD1.5bn	DBFOM	✓			✓		✓	✓		
I-595 Corridor Roadway Improvements	FL, US	2009	USD1.7bn	DBFOM	✓						✓		

Project	Location	Year	Approx. Capital Value	Type	ACS	FLUOR	BALFOUR B.	HOCHTIEF	BOMBARDIER	FLATIRON	DRAGADOS	HDR	HNTB
Tappan Zee Hudson River Crossing	NY, US	2013	USD3.1bn	DB		✓						✓	
Sacramento International Airport Terminal Modernization	CA, US	2008	USD288m	DB					✓	✓			
Edmonton LRT	ON, CAN	2016	CAD1.8bn	DBFOM					✓				
Las Vegas Monorail	NV, US	2000	USD650m	DBFOM					✓				
Presidio Parkway	CA, US	2012	USD365m	DBFOM				✓		✓			✓

Sources: Company Websites, LINXS

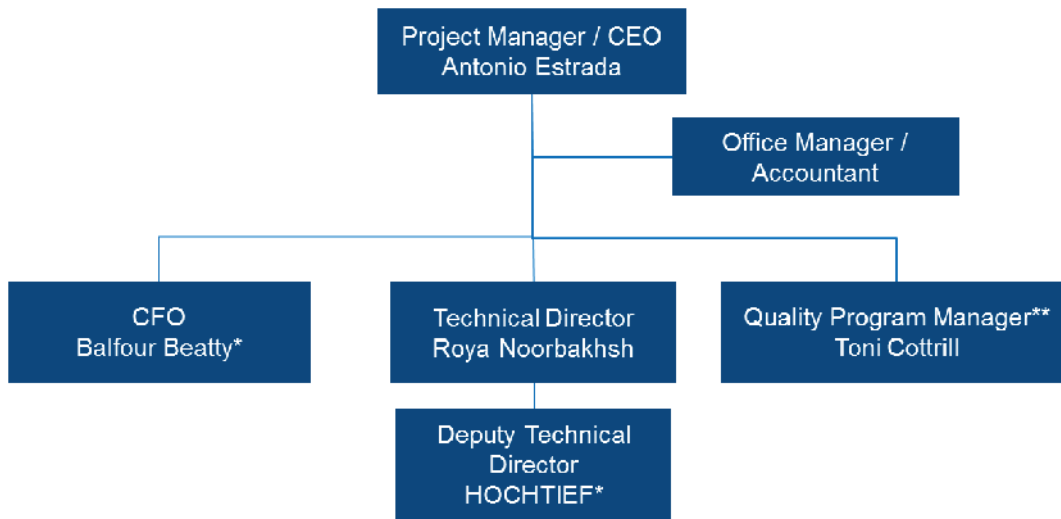
### Previous Partnering Experience - LTA Opinion

- 3.6.2 Overall, the LTA considers the LINXS consortium to be of high caliber and capable of executing a project of this size and complexity. The Equity Members, DBJV, and OMJV have demonstrated to the LTA that they have the resources, knowledge, experience and established relationships necessary to perform on the Project.
- 3.6.3 LINXS current and previous partnering experience between team member organizations, particularly in the US and Canada, demonstrates its existing working relationships and their ability to successfully deliver projects together. Furthermore, LINXS members currently operate and maintain APM and LRT systems in similar environments, and have experience of working in California, having previously partnered in projects like Exposition Light Rail, Crenshaw/LAX Transit Corridor, and BART International Airport Connector APM.
- 3.6.4 There are no material challenges for the Operating Period; indeed, similar scopes have already been successfully delivered by the OMJV members in other LRT's and APM projects via Bombardier. The range and percentage of proposed sub-contracting is considered standard and reasonable in the opinion of the LTA. Further discussion on the Operation and Maintenance is provided in Section 12 of this report

## 3.7 Developer Structure and Resources

- 3.7.1 LINXS structure for the project has been reproduced on Figure 3-2 below:

**Figure 3-2 LINXS Equity Organisational Structure (Simplified)**



\* Seconded individual to be provided by referenced partner. Role/responsibility being provided by partner organization in interim  
 \*\* Seconded to SPV by DBJV

Sources: LINXS

- 3.7.2 Regarding the D&C Period and based on the minimal length of the project, 2.25 miles, LINXS has elected to divide the project into discipline managers instead of segment managers: the day to day construction activities will be managed by LINXS Construction Manager (Jan Bohn) who will have discipline managers reporting directly to him. Each discipline managers will be responsible for the safety, quality, schedule and cost controlling for their specific disciplines.
- 3.7.3 Disciplines under the Construction Manager will be: Utility Manager, CIP Manager (including columns for precast guideway and stations), Pre-cast Manager, Stations Structure Manager, Guideway Finishing Manager (including running plinths, guide rail, switches and power rail), Roadway Manager, OM&F Building Manager, APM Systems Manager, Interface Manager, MOT Manager, and Environmental Manager.
- 3.7.4 During this Period, the DB Project Manager (Terry Gohde) will have the overall responsibility for the APM Project and will report directly to the CJV Executive committee and Developer Project Manager. People reporting to the DB Project Manager will be: DB Deputy Project Manager (Brent Berenson), Construction Manager, Engineering Manager, Community Outreach Manager, Inclusivity Manager, Professional Services Manager, and Safety & Security Manager.

**Table 3-10 Key DBJV personnel**

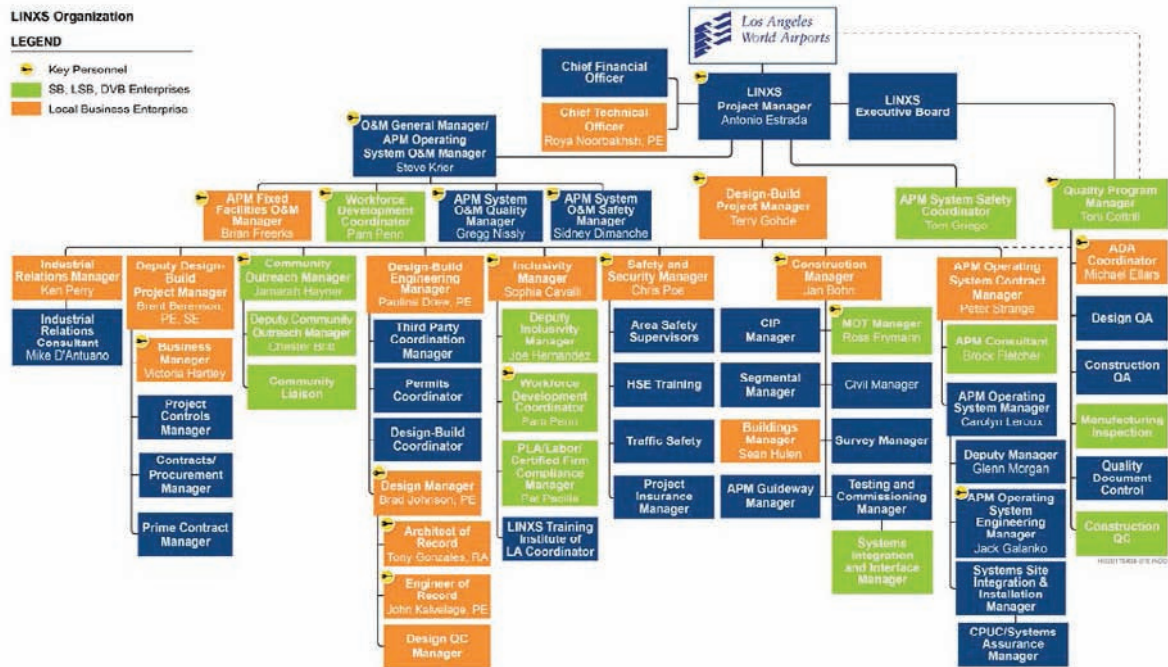
Personnel	Role	Relevant experience
Terry Gohde	DB Project Manager	35 years' experience including senior leadership roles in other US transit projects Dulles Corridor Metrorail Silver Line Extension Design-Build, Denver Union Station Transit Project, and the York Rapid Transit, Canada's first P3 transit project
Jan Bohn	Construction Manager	37 years' experience managed over \$4 billion in design build construction projects including Deputy PM on Metro Gold Line eastside Extension LRT

Personnel	Role	Relevant experience
Ross Fryman	MOT Manager	Planned and executed MOT operations for I-405 Sepulveda Pass and LAX/ Crenshaw LRT Project

Source: LINXS

3.7.5 The Organizational Structure during Construction has been simplified by the LTA and reproduced below.

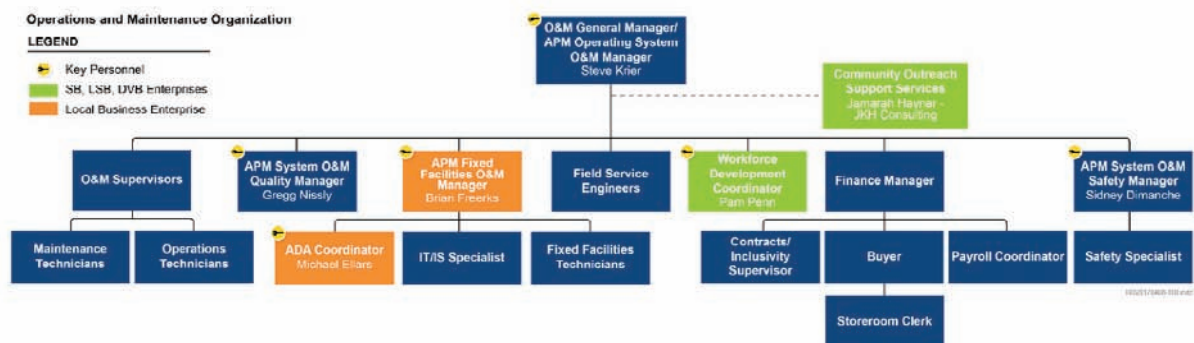
Figure 3-3 Organisational Structure during Construction



Sources: LINXS

3.7.6 The organizational structure for O&M has been reproduced in Figure 3-4 below:

Figure 3-4 APM O&M Organizational chart (Simplified)



Source: LINXS

3.7.7 The OMJV will be fully engaged in the D&C Period of the project as it was during the bid preparation activities. Representatives of the OMJV will be present during design meetings and consideration will be given to Design for Maintenance (DfM) and Design for Safety (DFS).

### **Consortium Structure and Resources – LTA Opinion**

- 3.7.8 The Consortium’s approach to organizing and structuring its resources across the D&C Period has been developed with the requirements of the full Term of the Project in mind, with particular reference given to the requirements of the Operating Period. It is based on previous experience as well as the needs of this Project. The LTA considers the Consortium’s approach and proposals to be adequate and appropriate.
- 3.7.9 The integrated approach involving the OMJV from the initial stages of the project will reduce post-construction risks. OMJV personnel will be located, on a regular basis, with the DBJV team which will create a natural interface and will facilitate problem solving in a more efficient manner.

## 4 CONTRACTUAL REVIEW AND SECURITY PROVISIONS

### 4.1 Introduction

- 4.1.1 This section is a review of the Project's contractual documents that have been executed namely (i) the Project Agreement (PA) that the Developer and the City entered into, dated April 11, 2017, (ii) the DB Contract between the DBJV and the Developer, (iii) the O&M Contract between the OMJV and the Developer, and (iv) the Interface Agreement between DBJV and OMJV.
- 4.1.2 The purpose of this review is to identify technical risks, which could be of material interest to Lenders, and focus on the appropriateness of the risk allocation. As a result, it does not provide an exhaustive review of each clause of the contracts and Lenders' Legal Advisors should be referred to for a full legal review of all contracts.

### 4.2 Matrix of Key Risks and Responsibilities

- 4.2.1 The table below summarizes the allocation of key Project technical risks. Further details of the PA are summarized in the remainder of this section and pass down of risks to the DB Contractor through the DB Contract.

**Table 4-1 Key Technical Risks and Responsibilities (✓ = Assumes Risk)**

PA Ref.	Risk	LAWA	Developer	DB Contractor (1)	OM Contractor (1)
<b>Design and Construction Period</b>					
6.12.2	ATC		→	✓	
7.5.1	ROW Acquisition <sup>(2)</sup>	✓			
7.5.3	Temporary Interests in Property		→	✓	
7.6.1	Utility Adjustments <sup>(3)</sup>		→	✓	
7.8.2	Public Art	✓			
TP Part 1	Maintenance of Non-O&M Facilities prior to Acceptance		→	✓	
	Environmental Requirements <sup>(4)</sup>	✓	→	✓	
	Threat and Vulnerability Assessment (TVA) <sup>(5)</sup>		✓		
7.4.5.2	Financial Close <sup>(6)</sup>		✓		
7.4.5.2	NTP1 Work		✓	✓	
10.8.5	Additional Station <sup>(7)</sup>		→	✓	
<b>O&amp;M Period</b>					
8.1.1	O&M Work on the APM Operating System and Fixed Facilities <sup>(8)</sup>		→		✓
8.1.1.7	Technology Enhancements		→		✓
8.3.4	Acts of Vandalism <sup>(9)</sup>	✓	→		✓
<b>General</b>					
1.4.2.	Reliance on Reference Documents		→	✓	✓

PA Ref.	Risk	LAWA	Developer	DB Contractor <sup>(1)</sup>	OM Contractor <sup>(1)</sup>
2.4.6	Care, Custody and Control of the Project		✓	✓	
5.3	Quality Assurance and Quality Control activities		✓	✓	✓
6.2.1	Site Conditions <sup>(10)</sup>		→	✓	✓
6.2.2	Hazardous Materials	✓			
6.3.	Governmental Approvals and Permits <sup>(10)</sup>	✓	→	✓	✓
6.4	Compliance with Laws		→	✓	✓
6.9	LAWA obligations and liabilities under the Cooperation Agreements		✓		
6.10	Safety Compliance		→	✓	✓
6.11.2.1	Security and Safety of the Project		→	✓	✓
<p>Notes:</p> <ol style="list-style-type: none"> <li>1. In so far as they relate to the Contracted Works / OM activities</li> <li>2. Should any ROW be required due to a Developer proposed ATC these will be the Developer's responsibility.</li> <li>3. The Developers Liability for Utility Works is capped at \$50m, works performed by Utility Owners in excess of this amount are considered LAWA Changes. The responsibility of coordinating the Utility Works has been passed down to the DB Contractor and the Utility Works account initial \$50m budget is to be provided by the Developer.</li> <li>4. Scope of the environmental works is passed down to the DBJV with Equivalent Project Relief for any Relief Events under the PA. See Table 4-4: Relief Events.</li> <li>5. The LTA notes that the Project Schedule, D&amp;C Contract Amount and the Base Capital MaxAP are subject to adjustment based on changes relating to TVA mitigation as contemplated in the Early Works Agreement.</li> <li>6. It is noted that in the event the Parties fail to agree to terms relating to TVA mitigation measures as contemplated in the Early Works Agreement, the Effective Date may occur after the Financial Close Deadline.</li> <li>7. The PA provides a LAWA Allowance of \$118.45m for the Addition Station Works. If this scope item is required by LAWA it will be treated as a LAWA Change.</li> <li>8. LAWA will be responsible for the O&amp;M for the LED wall (West CTA Station) and light curtain screens and the water feature (ITF East Plaza Improvements) following an initial 10 year period.</li> <li>9. The Developers Liability for Acts of Vandalism is capped at \$250,000 per calendar year. Any amounts above this cap will be reimbursed through the Change Process. This cap does not apply to the M&amp;SF or the TPSS for which the Developer is responsible, passed down to the OM Contractor. Furthermore, the Developer is not responsible for any vandalism to the ITF East Plaza Improvements.</li> <li>10. See Section 9 (Environment, Permits and Approvals).</li> </ol>					

Source: PA and Exhibits

## 4.3 Project Agreement (PA)<sup>2</sup>

### Project Agreement Overview

- 4.3.1 The Contract Documents are made up of the PA and its 21 Exhibits and a separate suite of Technical Provisions (TP) documents which outline the technical requirements for the Design and Construction (D&C) and the Operation and Maintenance (O&M) of the Works with a clear order of precedence between the different documents. The LTA has reviewed the key terms included in the PA and other associated contract documents.
- 4.3.2 The parties to the PA are:
- The City of Los Angeles (The City), acting through its Board of Airport Commissioners (The City's Department of Airports (LAWA) is responsible for the management and administration of the PA on behalf of the City),

<sup>2</sup> More correctly DBFOM Agreement. Project Agreement or PA used as shorthand throughout this report



- LAX Integrated Express Solutions, LLC (The Developer)

4.3.3 The Developer is required to design, build, finance, operate and maintain the Project in accordance with the PA. The Design and Construction Period commenced on the Effective Date (April 11, 2018) and ends on the day immediately preceding the Passenger Service Availability Date. The O&M Period commences on the Passenger Service Availability Date and continues to the Termination Date, which is the thirtieth anniversary of the Financial Close Date. The key dates and milestones associated with this Project are as summarized earlier in Figure 2-5.

#### LTA Opinion

4.3.4 The PA is in line with North American precedents that Consortium members are familiar with. The PA's features and risk allocation have been widely accepted by the financial community, having been present on previous transactions that have reached Financial Close. As a result, the Developer is not considered to be exposed to any significant undue risks, provided that adequate pass down will be in place in the DB Contract and in the O&M Contract.

#### Design and Construction (D&C)

4.3.5 The Developer is responsible for the design and construction of all aspects of the D&C Work required for the Project, and for the selection, pricing and performance of all Subcontractors. Except to the extent otherwise expressly provided in the PA, all risks, costs and expenses in relation to the performance of the Works are allocated to the Developer as its entire and exclusive responsibility. The Developer shall ensure that the D&C Work complies with and is undertaken in accordance with the terms, conditions, requirements, criteria, specifications and standards set out or referenced in Article 7 of the PA and the TPs. Standards and Specifications referred to within the TPs relate to the editions in effect as of October 9, 2017 (the Setting Date) any modification, by LAWA, of the relevant provisions after this date will be subject of a LAWA Change.

4.3.6 The Developer is not entitled to rely on any Reference Document except to the extent that the Contract Documents incorporate specific provisions of the Reference Documents by reference.

4.3.7 The D&C Work consists of items for which the Developer has O&M responsibilities and items which are outside the O&M limits of the works (non-O&M Facilities). Section 10 of this report provides an overview of the TPs and the Developers proposals for the D&C Works and Section 12 covers the O&M requirements and the Developers proposals for these.

4.3.8 In addition to those conditions indicated in Figure 4-3 for Final Completion to be achieved the Developer will have to meet Art 9.6.1.1 and 9.6.1.2 of the PA regarding participation levels of small businesses for Design Work and Construction Work. Table 4-2 below summarizes these levels:

**Table 4-2 Minimum Participation Levels to enable Milestone Payment 6**

Sub-Contractor Type	Design Work Participation Level	Construction Work Participation Level
SBE (Small Business Enterprise)	22%	18%
LBE (Local Business Enterprise)	8%	7%
LSBE – sub-set of LBE (Local Small Business Enterprise)	3%	3%
DVBE (Disabled Veteran Business Enterprise)	3%	3%

Source: PA Art. 9.6.1

4.3.9 An overview of the construction stages and the contractual requirements are provided in the figure below. For further information on Milestones, see Section 8.2 of this report.

**Figure 4-1: Overview of Construction Stages and Technical Contractual Requirements**

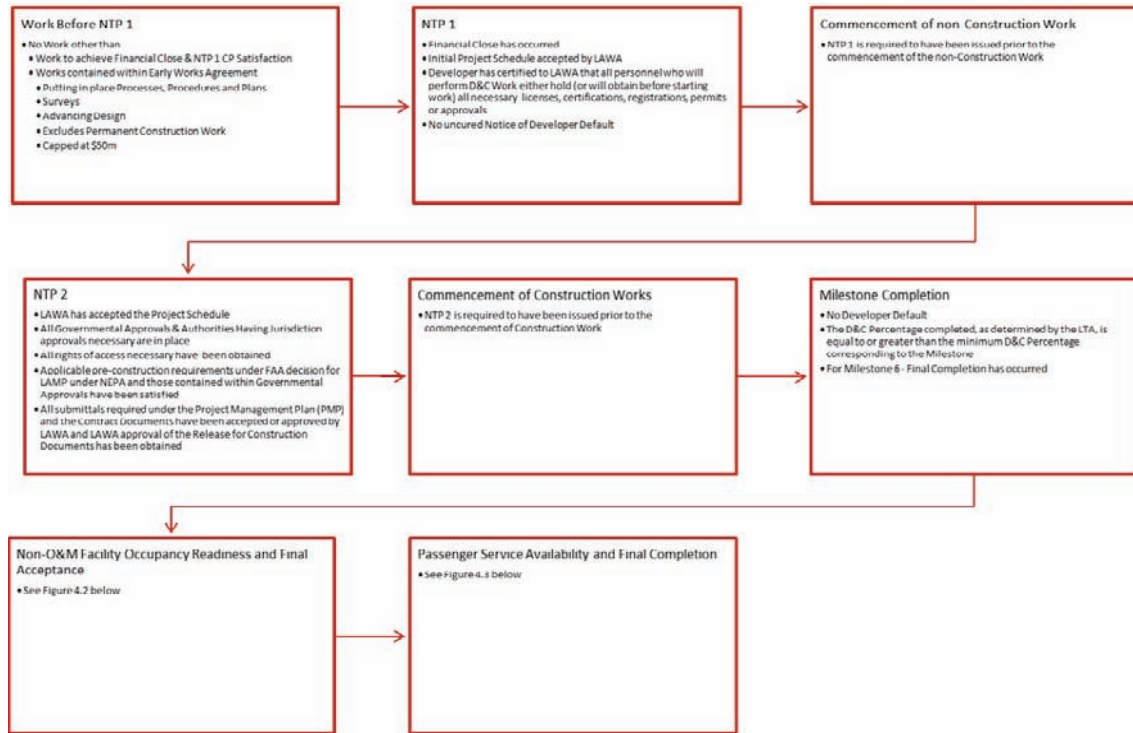


Figure 4-2: Non-O&M Facilities Occupancy Readiness and Final Acceptance

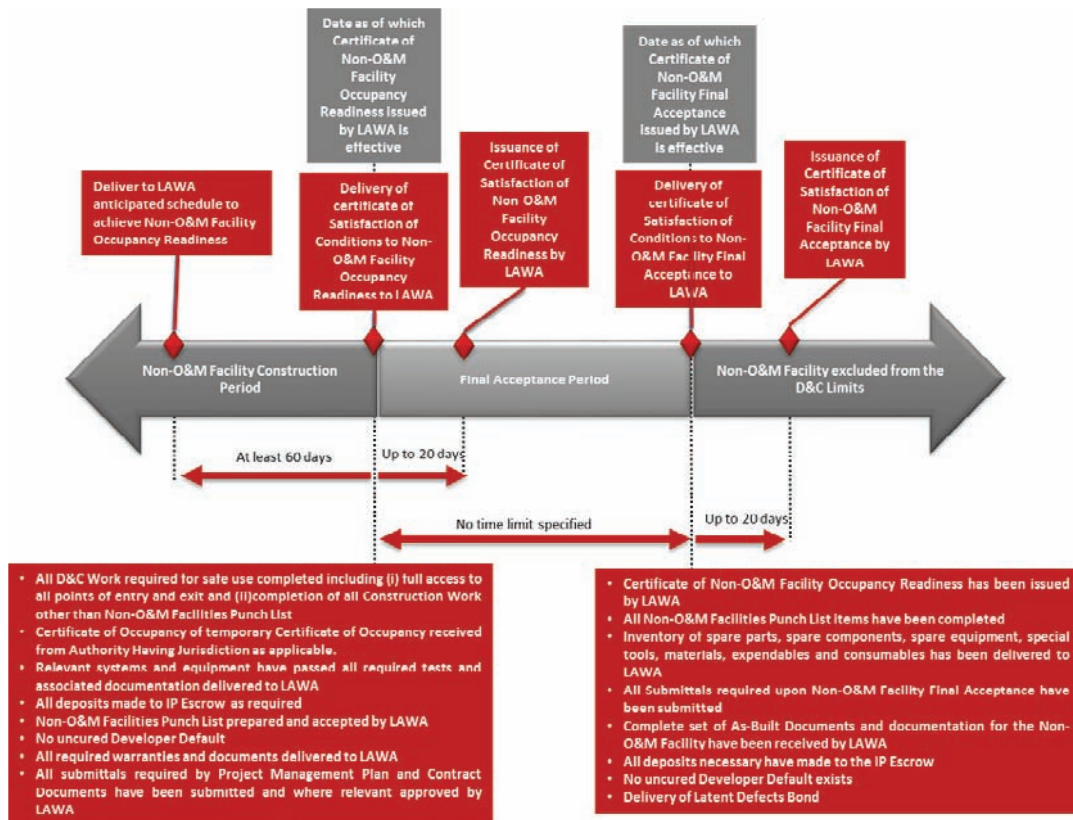
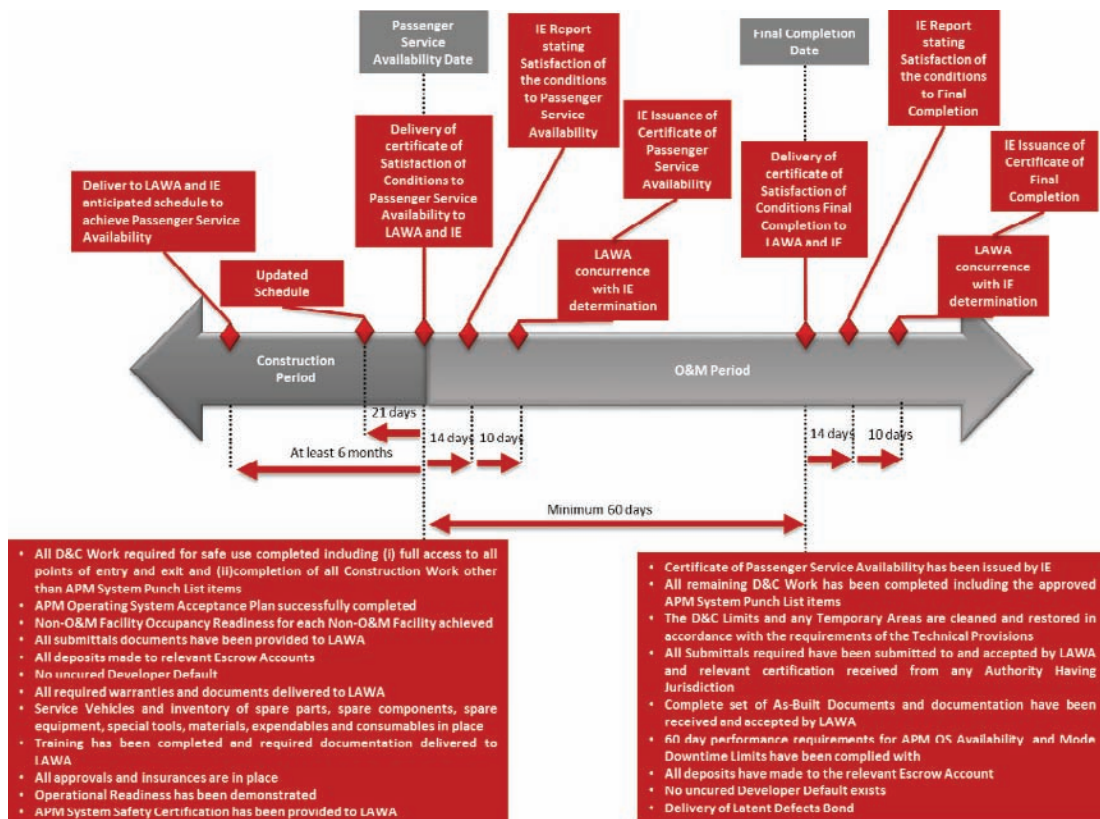


Figure 4-3: Passenger Service Availability and Final Completion Scope and Process



### Warranties

- 4.3.10 The Developer must provide warranties against defects with respect to the Non-O&M Facilities for a period of 2 years from the respective Non-O&M Facility Occupancy Readiness Date.
- 4.3.11 The Developer is to obtain from all Contractors warranties and guarantees for the benefit of (i) the Developer (ii) LAWA, (iii) Utility Owner or (iv) Authority Having Jurisdiction for whom Work is being performed for a minimum period of 1 year or such longer period as stipulated in the TPs from date of acceptance of the work by the Utility Owner or Authority Having Jurisdiction.
- 4.3.12 Prior to entering into any contract providing for the manufacture of Vehicles or providing quality assurance and control oversight of Vehicle manufacturing drafts of these contracts are to be provided to LAWA for their review and comment.

### LTA Opinion

- 4.3.13 The D&C obligations are reasonable and appropriate for a Project of this nature. The conditions precedent to Financial Close, NTP1, NTP2, Milestone Completion, Non-O&M Facility Occupancy Readiness, Passenger Service Availability and Final Completion are reasonable, prescriptive and process driven.
- 4.3.14 The Warranties terms are consistent with other agreements in this context. The period of warranty associated with the Non-O&M Facilities is considered standard and adequate.
- 4.3.15 The LTA considers the LA region as a mature contracting market able to respond to the additional construction activities for the infrastructure (Stations, Guideway, MSF, systems, MEP). This is confirmed by the Consortium who confirm that whilst there is competition in the labor market, the availability of skilled labor is good, and they don't anticipate great difficulties in meeting our requirements.
- 4.3.16 With regard to inclusivity, local subcontractor availability is considered to be good. The DBJV have advised they have over 2000 such organisations on their database which is more than they have achieved in other states. DBJV Project Management includes a dedicated SBE outreach group.

### Operations and Maintenance (O&M)

- 4.3.17 The Developer is responsible for performing the O&M Work in accordance with the requirements set out in Article 8 of the PA and in Part 3 of the TPs, for the duration of the O&M Period commencing on the Passenger Service Availability Date. The O&M Work sets the requirements for the Project to ensure that it is operated, maintained and managed in a safe, effective, and reliable level of operation. It includes Operations Work, Maintenance Work, Technology Enhancements and Renewal Work undertaken pursuant to the Contract Documents and Handback Requirements as set out within the Developers Asset Management Plan.

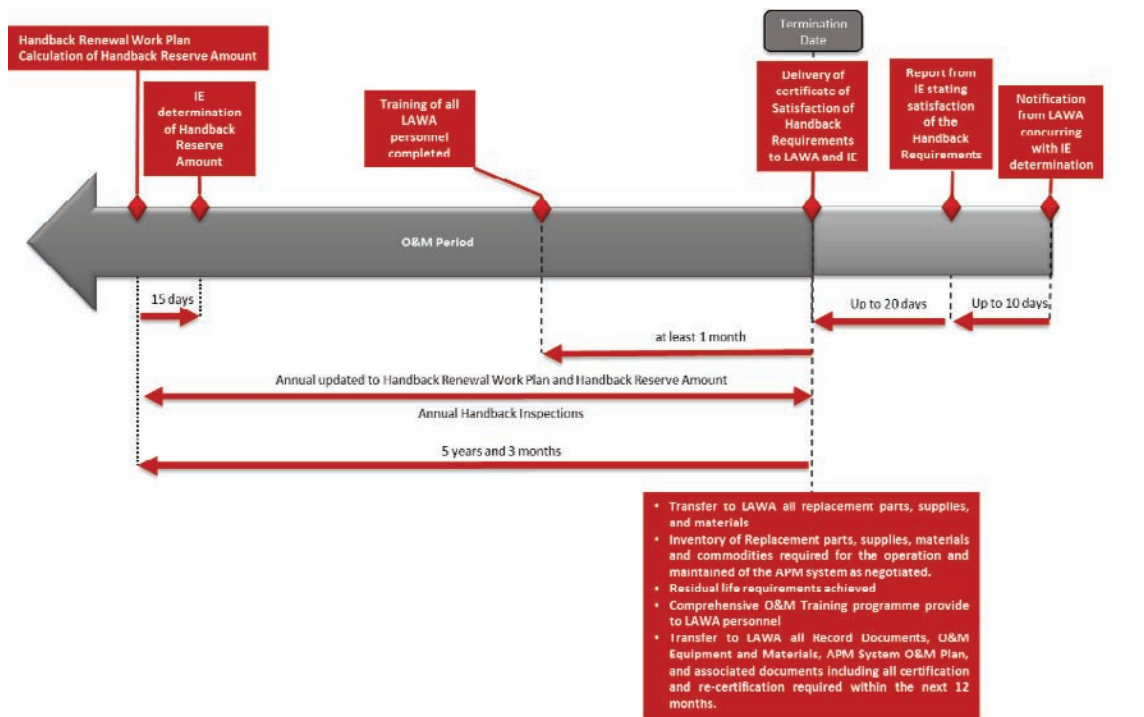
### LTA Opinion

- 4.3.18 The Developer's operations and maintenance obligations are reasonable and appropriate for this type of project. The Consortium's proposals for O&M, and LTA commentary, are provided in Section 12 of this report.

### Handback

- 4.3.19 Handback Requirements are detailed in TP Part 2C and Article 8.6 of the PA. The Developer will hand back the Project to LAWA on the Termination Date.
- 4.3.20 The Handback Process commences 5 years prior to the Termination Date and is as indicated within Figure 4-4.

Figure 4-4: Handback Process



#### LTA Opinion

- 4.3.21 The requirements are detailed, prescriptive and typical compared to similar projects. Further details on the handback requirements, together with the Consortium’s proposals and LTA commentary, is provided in Section 0 of this report.
- 4.3.22 It is noted by the LTA that whilst a report is prepared by the IE stating its determination in relation to the Developer meeting the Handback Requirements LAWA is not bound by the decision of the IE.

#### Performance Management

- 4.3.23 In accordance with Exhibit 4A (Milestone Payment Mechanism) Milestone Payments are subject to certain D&C Period performance related deductions as set out in Table 1 of Exhibit 4C. Likewise, in accordance with Exhibit 4B (Availability Payment Mechanism) and Table 2 of Exhibit 4C certain O&M Period performance related deductions, Availability and Noncompliance related, can be made from Availability Payments. It is by this mechanism that the Developer’s performance is assessed throughout the Term. Should an event result in both an Unavailability Deduction and an O&M Period Noncompliance Deduction the higher Deduction shall apply. A summary of each performance management instrument is provided in the table below.

Table 4-3: Performance Management Instruments

Type	Trigger	Instrument
D&C Period Noncompliance Deductions	<p>If Developer accumulates Noncompliance Points.</p> <p>If the event which results in the accrual of the Noncompliance Point occurs on a Critical Day then the resulting Deduction will be doubled.</p>	<p>Noncompliance Deductions from Milestone Payments in accordance with Section 2 of Exhibit 4A. Table 1 of Exhibit 4C outlines the events which result in Noncompliance Points.</p> <p>See Section 8.2.</p>

Type	Trigger	Instrument
O&M Period Noncompliance Deductions	If Developer accumulates Noncompliance Points.  If the event which results in the accrual of the Noncompliance Point occurs on a Critical Day then the resulting Deduction will be doubled.	Noncompliance Deductions from Availability Payments in accordance with Exhibit 4B. Table 2 of Exhibit 4C outlines the events which result in Noncompliance Points.  See Section 8.6.
Stations Unavailability Deductions (during O&M Period)	If a Station Downtime Event exceeds ten minutes.	Station Unavailability Deduction depending on the total duration of all Station Unavailability Events, exceeding ten minutes, in the month and the total number of hours in the month calculated in accordance with Section 2.1 of Appendix A to Exhibit 4B.
APM OS Unavailability Deductions (during O&M Period)	Should the APM OS Availability, as calculated in accordance with TP Part 2B, fall below the requirement of 99.5% in a month.	APM OS Unavailability Factor based on actual Availability achieved in the month in accordance with Section 1.1 of Appendix A to Exhibit 4B.  See Section 8.6.

Source: PA

### LTA Opinion

- 4.3.24 The concept of performance deductions for failure to achieve specific Availability requirements and for Closures and Noncompliance Points are typical features of P3 agreements seen elsewhere. The LTA notes that there are no performance deductions in the PA that accrue if NTP1, NTP2, Milestone Completions and/or Passenger Service Availability Date is/are delayed by the Developer, as compared to more onerous regimes in some P3 agreements in the North American market, however Milestone Payments to the Developer would subsequently be deferred. Further commentary, analysis and opinion on likely levels of Deductions due to Unavailability and Noncompliance Points are provided in Section 8.

### Relief Events

- 4.3.25 Relief Events are any Compensation or Non-Compensation Events as identified within Exhibit 1 to the PA. The process for dealing with these is detailed in Article 13 of the PA.
- 4.3.26 If a Relief Event occurs and the Developer has complied with its obligations under the Contract Documents in relation to the Relief Event, it may be entitled to (i) relief from the performance of its obligations under the PA, to the extent they are directly affected by the Relief Event; (ii) an extension of Contract Deadlines; (iii) compensation for a Compensation Event (Incremental Costs and Delayed Payment Compensation, if applicable, during the D&C Period) as determined under Article 14 of the PA.
- 4.3.27 A summary of the Relief Events is provided in the following table.

**Table 4-4: Relief Events**

Event	Description	Compensation	Schedule Relief
<b>Compensation Events</b>			
LAWA-Caused Event	As defined in Exhibit 1 of the PA, includes (but not limited to): LAWA Changes; Failure to provide ROW; Failure to provide access to Related and Enabling Project; suspension of work by LAWA for reasons other than attributed to Developer failure to comply with requirements; failure to provide LAWA-Provided Approvals	✓	✓
Unforeseen historical site conditions	Discovery of paleontological, cultural, archaeological or historical resources within or under the D&C Limits (excluding Additional Properties and Temporary Areas)	✓	✓



Event	Description	Compensation	Schedule Relief
Threatened or Endangered Species	Discovery of any Threatened or Endangered Species within or under the D&C Limits (excluding Additional Properties and Temporary Areas	✓	✓
Hazardous Materials release	Release of Hazardous Materials by a Person other than a Developer-Related Entity that renders the Project unsafe or are required to be recycled, treated or stored	✓ <sup>(3)</sup>	✓
Pre-Existing Hazardous Materials	Discovery of Pre-Existing Hazardous Materials that render use of the Project unsafe or are required to be recycled, treated or stored, excluding any Known Hazardous Materials <sup>(1)</sup>	✓	✓
Unknown Utilities	Discovery of any underground Utility (excluding Service Lines) within the D&C Limits not identified or misidentified in the Utility Information <sup>(1)</sup>	✓	✓
Geotechnical Conditions	Discovery of geotechnical conditions of an unusual nature and differing materially from those ordinarily encountered on, and generally recognized as inherent in, work of the character provided for in the Agreement; or differ materially from the conditions indicated at such boring holes in the Geotechnical Data Report.	✓	✓
Earthquake	Earthquake or tidal wave that causes physical damage to the Project	✓	✓
Terrorism	As defined in Exhibit 1 of the PA	✓	✓
Qualifying Change in Law	(a) a Change in Law that is directed at / effect of which is borne by Developer or airport owners or operators in the State, (b) a Change in Law for which compliance requires capital expenditures by Developer; or (c) a Change in Law for which compliance requires specific changes in Developer's normal operation or maintenance procedures	✓	✓
Restraining Order / Injunction	Issuance of a temporary restraining order, injunction or other legal order that impacts any portion of the Work;	✓	✓
Power Outage	During the O&M Period, permanent and planned power network change in voltage by the Utility Owner supplying electricity to the APM System that has a material adverse effect on operations	✓	✓
Emergency	California governor-declared emergency	✓	✓
Security Threat	Issuance of a rule, order or directive from the U.S. Department of Homeland Security or any Governmental Entity regarding specific security threats to the Project or LAX if it required changes in Developer's normal design, construction, operation or maintenance procedures.	✓	✓
Airport activities	Interruptions or suspensions required by Airport Police, emergency response personnel or other public officials;	✓	✓
Latent Defects	Discovery of latent defects in (i) the ConRAC building; (ii) the Terminal Vertical Cores; or (iii) the columns constructed by LA Metro between the Southwest Yard Track and the Crenshaw Mainline Track	✓	✓
Safety Compliance Order	Issuance by LAWA of a Safety Compliance Order	✓	✓
Utility Owner Delay	A Delay to a Utility Adjustment caused by a Utility Owner's failure to complete a task for which the Utility Owner is responsible within the required time period	✓	✓

Event	Description	Compensation	Schedule Relief
Governmental Approval Delay	A Delay in obtaining a Governmental Approval required from Caltrans, AQMD or the County of Los Angeles beyond 120 days following Developer's submission of a complete and sufficient application for the approval	✓	✓
Breach of Cooperation Agreement	Breach by City or LA Metro of its respective Cooperation Agreement	✓	✓
Breach of Interface Obligations	Breach by the ITF W Party, the ConRAC Party, the TVC Party, the PARCS Party, or the NELA Party of its respective interface obligations as set forth in Exhibit 10 (Interface Obligations) of the PA;	✓	✓
Logistics Delay Days	Any day during the D&C Period in which a decision of CALM or a decision of the City Taskforce prevents construction activities during more than fifty percent (50%) or more of Developer's scheduled work day and results in a Delay.	✓	✓
LADWP Delay	A delay caused by LADWP's failure to complete a service by the Service Date Requested <sup>(2)</sup>	✓	✓
NEPA Change	A change to the Project required in order to obtain the FAA's approval in accordance with NEPA	✓	✓
<b>Non-Compensation Event</b>			
Force Majeure Event	(a) war, civil war, invasion, blockade, embargo or violent act of foreign enemy or armed conflict, except Terrorism; (b) strike, lockout, work slowdown or other dispute generally affecting the construction, transit facility maintenance or transit facility operations industry in the State; (c) act of riot, insurrection, civil commotion or sabotage that causes physical damage to the Project or material disruption to the O&M Work; (d) nuclear, chemical or biological contamination unless caused by a Developer Related Entity		✓
Change in Law <sup>(4)</sup>			✓
Earthquake (no physical damage)	Earthquake or tidal wave that impacts performance of Work at the Site, but excluding earthquakes or tidal waves that cause physical damage to the Project		✓
Fire, explosion or flood	Fire, explosion or flood directly impacting the physical improvements of the Project or performance of Work		✓
Trespassers or other third-party criminal action occurring to the APM System	During the O&M Period, disruptions due to trespassers or other third-party criminal action occurring to the APM System except restricted access areas identified in the plan provided by Developer pursuant to Part 2A, Section 8.1 (APM Operating System Safety and Security Programs) of the Technical Provisions and accepted by LAWA		✓
Weather Delay Days	Adverse Weather Days in excess of 21 days in the aggregate per calendar year		✓



Event	Description	Compensation	Schedule Relief
Notes: <ol style="list-style-type: none"> <li>1. Provided the Developer has conducted an investigation of site conditions at the applicable portion of the Site</li> <li>2. Provided the Developer has satisfied the following conditions by the Service Date Requested: (i) the TPSS building and associated equipment have been fully installed and statically tested; (ii) the Traction Power segmentation has been installed and statically tested; (iii) the Traction Power grounding has been installed and statically tested; (iv) APM Fixed Facilities have been completed and are ready for application of permanent power</li> <li>3. Compensation for Hazardous Materials Management Work will be based on actual quantities and the unit prices provided in the Hazardous Material Management Pricing Sheet (PA Exhibit 2A-17).</li> <li>4. Change in Law excludes a Qualifying Change in Law</li> </ol>			

Source: PA

### LTA Opinion

4.3.28 The definition of any of the Relief Events follows typical P3 principles in that schedule and cost relief are available for Compensation Events and schedule relief is available for non-Compensation Events. The Events covered in the PA are comprehensive, reasonable and comparable to other P3 agreements viewed by the LTA in North America and follow typical allocations of risks between the Developer and the Department.

4.3.29 The LTA welcomes the fact that the Release of Hazardous Materials by anyone other than a Developer Related Entity gives rise to compensation.

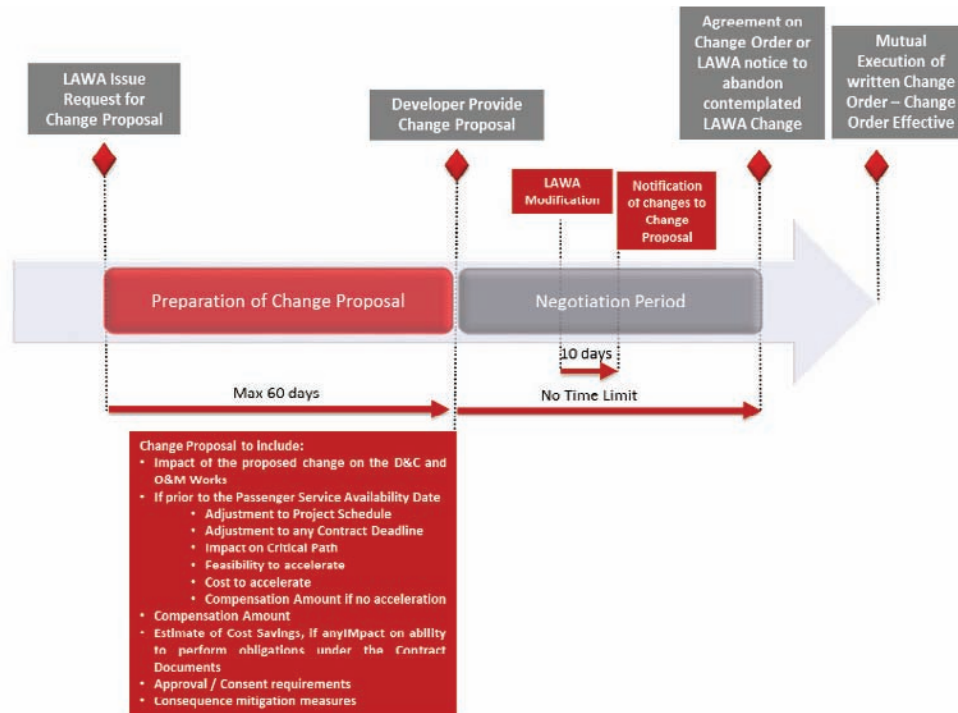
### Changes

4.3.30 The Change Procedure is detailed in Article 12 of the PA and Exhibit 9 of the same. Changes can either be initiated by LAWA or the Developer.

4.3.31 The process for a LAWA Change is as indicated in the Figure 4-5. The Developer will not be required to implement any LAWA Change which would (i) result in a breach of Law; (ii) require a new Government Approval which would not be reasonably obtainable; (iii) render any Insurance Policy void; (iv) materially adversely affect the health and safety of any person; or (v) materially and adversely affect the risk allocation and payment regime under the PA.

4.3.32 If the Developer requests a change and they are approved by LAWA, then the Developer and LAWA will enter into negotiations to reach agreement on the terms of the Change Order.

Figure 4-5: LAWA Change Process



Source: PA Exhibit 9

#### LTA Opinion

- 4.3.33 The provisions are typical for P3 projects in North America and should not present any particular risk to the Developer throughout the Project Term.

#### Default and Termination

- 4.3.34 Defaults and Remedies are defined in Article 16 of the PA. Developer Defaults, of a technical nature, are summarized in the table below.

Table 4-6: Developer Defaults (Technical)

Developer Events of Default	Cure Period	Passed Down to DBJV <sup>(3)</sup>	Passed Down to OM Contractor <sup>(3)</sup>
Failure to achieve Passenger Service Availability by the Long Stop Date	None	✓	
Failure to comply with LAWA-ordered suspension of work allowed under the DBFOM Agreement		✓	✓
Receipt of a total of 400 or more Noncompliance Points over the course of 12 consecutive Months (determined on a rolling basis); Receipt of a total of 1,110 or more Noncompliance Points over the course of 36 consecutive Months		✓	✓
Three or more Persistent Unavailability Events <sup>(1)</sup> have occurred in the prior 12 months			✓
An APM Operating System Shutdown lasting 96 hours or more has occurred			✓
Failure to commence non-construction work within 30 days after NTP1, to begin D&C work within 10 days following NTP2, or to diligently prosecute the work in accordance with the Contract Documents	30 days	✓	
Developer's abandonment of the Project		✓	✓

Developer Events of Default	Cure Period	Passed Down to DBJV <sup>(3)</sup>	Passed Down to OM Contractor <sup>(3)</sup>
Failure to obtain, provide and maintain insurance, bonds, guarantees, LCs or other performance security as required under the PA. <sup>(2)</sup>		✓	✓
Assignment of the Contract Documents, the Project, or Developer’s Interest, Equity Transfer or Change of Control not made in accordance with the PA.		✓	✓
Unpermitted draws by Developer on Project custodial/trust/reserve accounts		n/a	n/a
Failure to comply with applicable Governmental Approvals or Laws in any material respect		✓	✓
Unlawful use of the Project or use of the Project not permitted within under the Contract Documents <sup>(3)</sup>		✓	✓
Any false representation or warranty made by Developer, any Equity Member, Controlling Affiliate of Developer, Prime Contractor or APM Operating System Supplier to LAWA in connection with the Project	30 days, up to a maximum of 150 days	✓	✓
Developer failure to timely observe or perform any covenant, agreement, obligation, term or condition required of it under the Contract Documents (except for Noncompliance Events or Noncompliance Occurrences which are permitted up to the maximum allowable amounts)		✓	✓
Note:			
1. A Persistent Unavailability Event is a month in which the APM OS Availability is below 98% as calculated in accordance with TP Part 2B.			
2. LAWA may effect cure of this default, at the Developers cost, 5 days after delivery of Developer Notice of Developer Default.			
3. In so far as they relate to the Contracted Works. See Sections 5.2 and 6.2 for further discussion on these.			
4. LAWA may, without notice and without awaiting the lapse of the cure period, enter and take control of the relevant portion of the Project to restore it to the permitted use.			

Source: PA

- 4.3.35 If a Developer Default occurs and has not been cured by the applicable cure period, LAWA may, exercise any rights and remedies available to them, including (i) Termination; (ii) rights of Step-in; (iii) Make a demand upon and enforce any Contractor Bond.
- 4.3.36 Termination Events under Article 17 of the PA include (i) Termination for Convenience/Condemnation; (ii) Termination for Extended Delay Events or Insurance Unavailability; (iii) Termination for Developer (or LAWA) Default; (iv) Termination for Suspension of Work; (v) Termination Due to Court Ruling; or (vi) Termination if Financial Close Fails to Occur.
- 4.3.37 Termination for Extended Delay Events includes (i) any single Force Majeure Event, a Qualifying Change in Law or Earthquake or Terrorism Event as described in Table 4-4: Relief Events causes the Developer to be unable to comply with its obligations for a period of at least 180 Calendar Days. If an Extended Delay Event occurs, either Party may terminate the PA. LAWA may terminate the PA in the event of an Insurance Unavailability.

#### LTA Opinion

- 4.3.38 The provisions for Default and Termination Events are similar in content and structure to other P3 agreements that have reached successful Financial Close. The LTA notes that only the items of a technical nature have been considered and that a view should be sought from the Lenders' Legal Adviser on the drafting. Analysis of the termination trigger due to Noncompliance Points / Closure Deductions can be found in Section 8.

#### Performance Security

- 4.3.39 The performance of the Works is protected through performance security instruments required by the PA and summarized in the table below.

**Table 4-6: Performance Security Instruments**

Performance Security	Form	Amount
D&C Work	Contractor Bond from an Eligible Surety.	Aggregate value of Milestone Payments 1 through 5.
O&M Work	(i) Letter of Credit (LoC); (ii) Contractor Bond; or (iii) Guarantees, provided that the Developer delivers the form of security to LAWA within 10 days of issuance, if obtained by the Developer.	

Source: PA

## 5 DB Contract and Replacement Analysis

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### 5.1 Introduction

- 5.1.1 The LTA has been provided with a copy of the draft version of the Amended and Restated DB Contract for Financial Close (the DB Contract). This contract is between the Developer (LAX Integrated Express Solutions, LLC) and the DB Contractor (an unincorporated joint venture between Fluor Enterprises, Inc, Balfour Beatty Infrastructure Inc, Dragados USA, Inc and Flatiron West, Inc).
- 5.1.2 The DB Contract consists of the Articles of Agreement (Part 1) with a total of 13 Articles, Part 2 with a total of 23 Articles and 22 DB Attachments, and the DB Technical Provisions. Part 1 relates to the rights and obligations specifically between the Developer and the Construction Contractor, which are not included in the PA (e.g. limitation of liability and performance support). Part 2 is a back-to-back pass down of the PA relevant to the DB Contract, with headroom built in to timescales and triggers, as applicable.
- 5.1.3 This section of the report summarises and comments on the key technical aspects of the DB Contract and includes the DB Contractor liability cap analysis undertaken by the LTA.
- 5.1.4 Commentary on the Interface Agreement entered into by the DB Contractor, the OM Contractor and the Developer is provided in Section 7 of this report.

#### Introduction - LTA Opinion

- 5.1.5 The LTA has reviewed the provisions of a technical nature in the DB Contract Part 2 against the corresponding provisions in the PA, which are commented upon in Section 4 of this report. The LTA observes that no material technical provisions are retained at Developer level other than the cost provision in relation to the Utility Works. Part 2 reflects the flow down of rights and obligations from the Developer to the DB Contractor. It is noted that the provisions contained within Part 2 are either on a par with the provisions within the PA or have been drafted such that the obligations of the DB Contractor are more onerous than those imposed on the Developer under the DBFOM.
- 5.1.6 The LTA notes that whilst the responsibility of coordinating the Utility Works has been passed down to the DB Contractor, the Utility Works account initial \$50m budget is to be provided by the Developer.
- 5.1.7 Commentary and opinion on the provisions in Part 1 and Part 2 are presented below.

### 5.2 DB Contract

#### Scope of Works

- 5.2.1 The DB Contract defines the DB Contractor Scope of Works (Contracted Works) and has been drafted on a back-to-back basis with the PA reviewed in Section 4 of this report, such that all the Developer's obligations, liabilities and reliefs set forth relating to the Contracted Works are passed down to the DB Contractor. There are some exclusions to this (Excluded Obligations), which do not constitute part of the Contracted Works, these include (i) financing of the Project, other than providing the security requirements as outlined below and cooperating with the Developer to procure the financing of the Project; (ii) carrying out the O&M Work; (iii) meeting the Handback Requirements; (iv) responsibility for Hazardous Materials after the Passenger Service Availability Date unless resulting from a failure of the DB Contractor to comply with its obligations relating to Hazardous Materials prior to Final Completion

- 5.2.2 The DB Contractor is solely responsible for obtaining approval of any DB Alternative Technical Concept by the Effective Date.

### Contract Price/Payment

- 5.2.3 The DB Contract is fixed-price, date-certain and the Contract Price and the Additional D&C Payments which are payable to the DB Contractor cover all design and construction taxes. The Not-To-Exceed payment schedule is set out in D&C Attachment 4A (Payment of Contract Price). If the Developer does not get paid a Milestone Payment or Additional D&C Payment through the fault of the DB Contractor then no further payments are due until the DB Contractor has remedied the relevant breach.
- 5.2.4 Payments to DB Contractor are subject to Deductions upon occurrence of Noncompliance Events in accordance with Attachment 4 to the DB Contract. Deduction amounts more than 10% of a Monthly Payment will be carried forward and be deducted off the next Monthly Payment.
- 5.2.5 Compensation on Termination is provided for under Attachment 22 to cover the following scenarios:

**Table 5-1 Compensation on Termination**

Termination Scenario	Who pays who	Compensation areas
Termination of DBFOM Agreement for Convenience, Condemnation, Insurance Unavailability, Court Ruling, or LAWA Default, or for Extended Delay Events	Payable by Developer to DB Contractor	DB Subcontractor Breakage Costs DB Insurance Proceeds Any deductions not already deducted in full from Monthly Progress Payments Any Equivalent Project Relief payments received by the Developer under the PA after Developer has paid all Lenders Liabilities in full
Termination for DB Contractor Default – PA also terminated	Payable by DB Contractor to Developer	Direct losses incurred by the Developer Any deductions not already deducted in full from Monthly Progress Payments Other sums due including any outstanding Delay Liquidated Damages, or Final Completion Delay Costs
Termination for DB Contractor Default – PA not terminated	Payable by DB Contractor to Developer	Direct losses incurred by the Developer under the PA and including any additional replacement contractor costs Other sums due including any outstanding Delay Liquidated Damages, or Final Completion Delay Costs
Termination for Developer D&C Default or Following Termination of the PA for Developer Default	Payable by Developer to DB Contractor	DB Subcontractor Breakage Costs DB Insurance Proceeds Any deductions not already deducted in full from Monthly Progress Payments

Source: DB Contract Attachment 22

### Deductions and Noncompliance Points

- 5.2.6 The DB Contract provides for the following step down triggers:

**Table 5-2 DB Contract Performance triggers**

Performance Trigger	PA	DB Contract
<b>Increased Oversight Threshold</b>		
Noncompliance Points - Rolling 12 months	≥ 200	same
Noncompliance Points - Rolling 36 months	≥ 550	same
<b>Written Notice Threshold</b>		
Noncompliance Points - Rolling 12 months	≥300	upon receipt of same by Developer from LAWA
Noncompliance Points - Rolling 36 months	≥825	upon receipt of same by Developer from LAWA
<b>Termination</b>		
Rolling 12 months	≥ 400	≥ 320
Rolling 36 months	≥ 1100	≥ 880

Source: DB Contract

### Schedule Triggers

5.2.7 The Longstop Date provisions when compared with the PA are set out below:

**Table 5-3 Longstop Date stepdown triggers**

LSD Default Trigger	PA	DB Contract
Long Stop Date	12 months after the Planned Early PSA Date	10 months after the Planned Early PSA Date

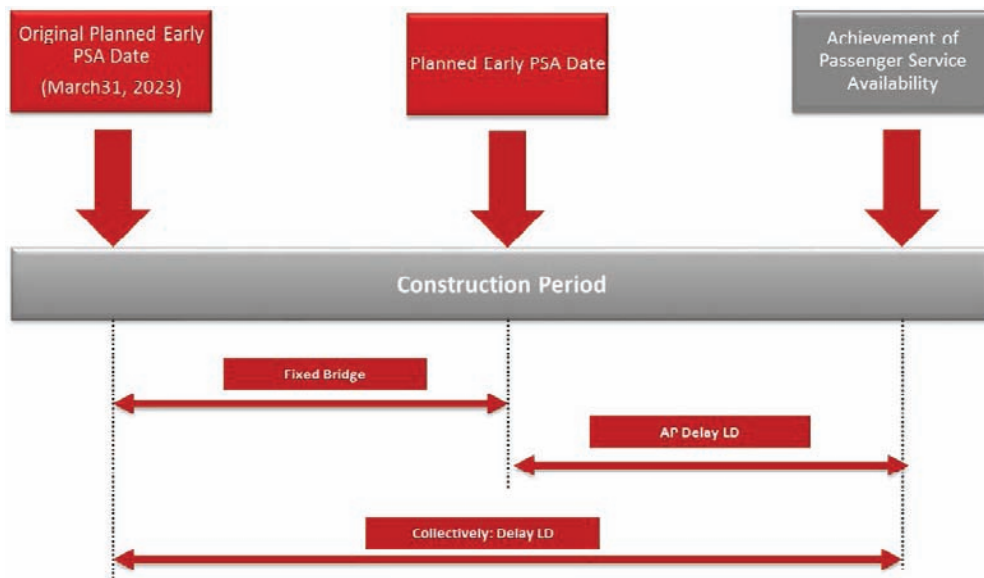
Source: DB Contract

5.2.8 It is noted that whilst the Float provisions within the DB Contract are the same as that those provided under the PA (shall be available to LAWA, Developer and the DB Contractor as needed to absorb delay caused by Relief events) it will not be available to absorb delays caused by Developer Acts.

### Delay Liquidated Damages

5.2.9 If the DB Contractor has not achieved Passenger Service Availability by the Original Planned Early PSA Date (March 31, 2023) or the Planned Early PSA Date (the date identified in the Initial Project Schedule as extended due to awarded extensions of time), then the DB Contractor shall pay to the Developer for the adverse impact of such delay:

- (i) \$190,238.59 per day of each day Passenger Service Availability is delayed beyond the Original Planned Early PSA Date (Fixed Bridge Payments) but excluding any day for which AP Delay Liquidated Damages apply; and
- (ii) \$227,758.78 per day for each day by which Passenger Service Availability is delayed beyond the Planned Early PSA Date (AP Delay Liquidated Damages and collectively with the Fixed Bridge Payments, the Delay Liquidated Damages)



5.2.10 If Final Completion is not achieved by the Scheduled Milestone Payment Date for Milestone Payment 6, the DB Contractor shall pay to the Developer the incremental amount of interest payable with respect to the Short-Term Facility due to this delay. The amount will be at a floating rate for each day that Final Completion is delayed.

#### Warranties

5.2.11 Any defective work arising during the DB Warranty Period will be corrected by the DB Contractor. If the DB Contractor does not correct any DB Defect within a reasonable time, the Developer has the right to step in and undertake remedial work and claim back reasonable costs after having given 10 Working Days' notice. Any remedial work undertaken during the Warranty Period will be warranted for a minimum of 12 months or until the end of the applicable Warranty Period.

5.2.12 The following table outlines the applicable Warranty Periods

Defect Type	Applicable Warranty Period
APM Operating System	PSA + 24 months
Epidemic DB Defect <sup>1</sup>	PSA + 24 months
All other DB Defects	PSA + 12 months
Note: 1. An Epidemic DB Defect is a DB Defect or a DB Defect in any component of the APM Operating System which has a failure rate of more than 15% over a rolling 12-month period.	

Source: DB Contract

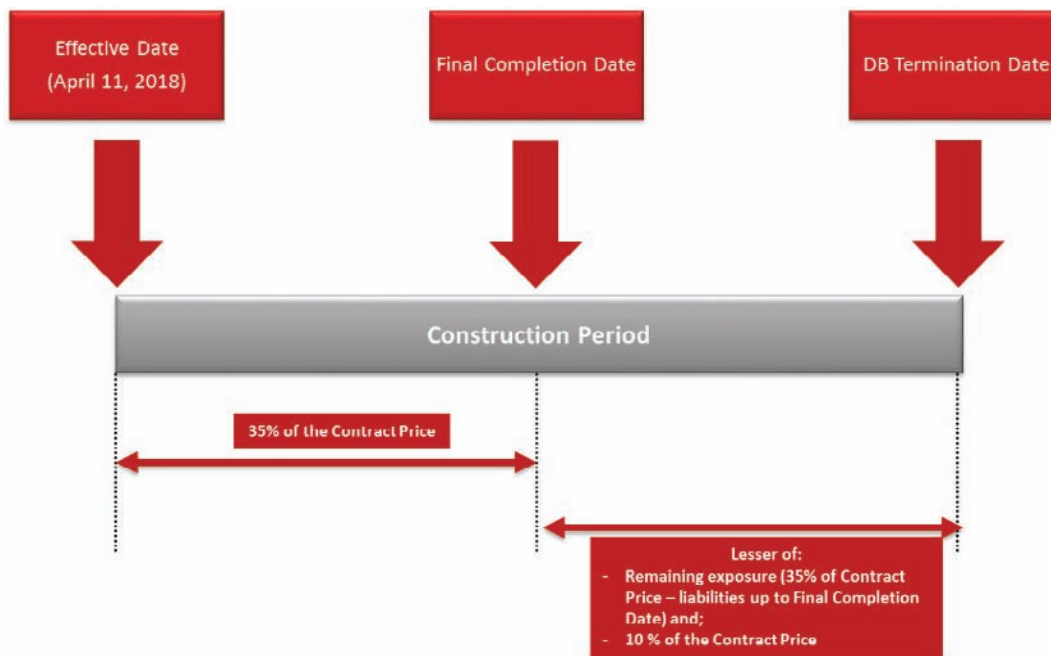
5.2.13 The DB Contractor will rectify and bear all risks associated with any Latent Defects discovered in the APM Fixed Facilities from the end of the DB Warranty Period up to the 10th anniversary of the Final Completion Date. The Latent Defects period for all other items will be determined pursuant to the laws of the State.

5.2.14 In addition to the above the DB Contract requires the obtaining of warranties from all Subcontractors.



## Limitation on Liability and Security Package

- 5.2.15 The aggregate liability of the DB Contractor to Developer in relation to Delay Liquidated Damages and Final Completion Delay Cost will be limited to allow for 12 months of LD's.
- 5.2.16 The maximum aggregate liability of DB Contractor under the DB Contract (DB Liability Cap), including for default, breach, negligence, any Delay Liquidated Damages and Final Completion Delay Cost, indemnity obligations or in connection with the Contracted Work shall be limited to an amount equal to: (i) in the period up to and including the Final Completion Date, 35% of the Contract Price, (ii) in the period from the Final Completion Date until the DB Termination Date the liability amount will equal to the lesser of 10% of the Contract Price or the remaining exposure under the limit of 35% of the Contract Price reduced by liabilities up to and including the Final Completion Date.



- 5.2.17 The performance and quality of the works are protected through a mix of securities and guarantees, letter of credits and additional securities upon triggering events as shown below.

**Table 5-4 Summary of Key Security Instruments of the DB Contract**

Instrument	Details	Enforcement/release
<ul style="list-style-type: none"> <li>Parent Company Guarantees</li> </ul>	<ul style="list-style-type: none"> <li>One for each DB Construction Guarantor</li> </ul>	<ul style="list-style-type: none"> <li>Entered into on the execution of the DB Contract</li> </ul>
<ul style="list-style-type: none"> <li>One or more Payment Bonds</li> </ul>	<ul style="list-style-type: none"> <li>Aggregate value equal to the sum of Milestone payments 1 through 5</li> </ul>	<ul style="list-style-type: none"> <li>To be delivered prior to Financial Close</li> </ul>
<ul style="list-style-type: none"> <li>One or more Performance Bonds</li> </ul>	<ul style="list-style-type: none"> <li>Aggregate value equal to the sum of Milestone Payments 1 through 5</li> </ul>	<ul style="list-style-type: none"> <li>To be deliver prior to Financial Close</li> </ul>
<ul style="list-style-type: none"> <li>One or more Letters of Credit (collectively the Liquid Performance Security)</li> </ul>	<ul style="list-style-type: none"> <li>Aggregate amount available to be drawn equal to 3% of the Contract Price and reducing to 1% of the Contract Price following the Final Completion Date (the Performance LC Amount).</li> </ul>	<ul style="list-style-type: none"> <li>To be delivered prior to the Financial Close Date</li> </ul>

Instrument	Details	Enforcement/release
<p>Note:</p> <ul style="list-style-type: none"> <li>• All guarantees, including those provided to the DB Contractor by its subcontractors and suppliers, are to expressly include the Developer and LAWA as guaranteed parties.</li> <li>• The Payment Bonds and Performance Bond and shall contain multiple oblige riders naming the City and Collateral Agent as additional obliges.</li> </ul>		

Source: DB Contract

- 5.2.18 If at any point in the period after the earlier of either 12 months before the Planned Early PSA Date or the Initial Bank Draw Date, the payment for works are in arrears by 6 or more months as defined in Attachment 4 to the DB Contract or if during the same period the LTA notifies the Developer that the PSA Date is not reasonably likely to occur within 6 months of the Planned Early PSA Date (Contingent Security Triggering Events) the DB Contractor shall provide additional performance security in the form of Contingent Letters of Credit with an aggregate value equal to (i) the LD Cap, less (ii) the amount of Liquid Performance Security that has been drawn as of the date of the occurrence of the Contingent Security Triggering Event, less (iii) the aggregate outstanding amount of the Liquid Performance Security.

#### Termination / Force Majeure

- 5.2.19 The DB Contractor's event of default and termination are set out in Part 2 of the DB Contract. The DB Contractor will be afforded a cure period with regards to any DB Contractor Event of Default if a cure period is granted to the Developer under the PA.

#### LTA Opinion

- 5.2.20 The LTA considers that the DB Contractor scope is adequately passed down from the Developer's obligations specified under or in connection with the DBFOM Agreement.
- 5.2.21 The LTA notes that the Excluded Obligations that are retained by the Developer are mainly related to financing the project, the O&M Works and payment of the Independent Engineer and are appropriate and in line with the LTA's expectations.
- 5.2.22 The provision of Equivalent Project Relief, Equivalent Claim and LAWA Claim reflects the pass down nature of the DB Contract and is common to contractual provisions seen by the LTA in projects in the USA. These measures limit adequately the Developer's liabilities vis-à-vis the DB Contractor's entitlements to those of the Developer under or in connection with the DBFOM Agreement. It is noted that in the case of Relief Events any compensation or relief received from LAWA, in so far as it relates to the Contracted Works, is to be passed down to the DB Contractor on a pro rata basis.
- 5.2.23 The LTA is of the opinion that the Developer has correctly passed down the relevant dates under the DBFOM Agreement. The definition of the relevant dates within the DB Contract and the use of Float is consistent between the PA and the DB Contract.
- 5.2.24 The LTA considers the warranty and Latent Defect Periods to reflect current market practice. The timeframes to identify, notify and correct the defects are considered reasonable and aligned with the industry. The LTA has seen 12 month defects warranty periods elsewhere in the North American P3 market. In the LTA opinion, defects in equipment and infrastructure usually manifest themselves within the first few months of installation. It should be born in mind that some of this equipment and infrastructure will have been in position and working for considerable periods during the 12 month testing and commissioning stages before PSA triggers the start of the 12 month warranty period.

- 5.2.25 The security instruments (Parent Company Guarantee, Performance Bond, Payment Bond and Letters of Credit) are generally typical of those seen by the LTA in similar agreements. The extent of the exclusions to the cap are comparable with similar agreements seen by the LTA which have reached financial close in the market. The LTA notes that the Performance and Payment Bond requirements are back to back with the requirements in the PA.
- 5.2.26 The LTA notes the reduction in the limit of liability from 35% to 10% at the Final Completion date, and recognises that this is normal procedure in other P3 infrastructure contracts as is the step-down in liquid performance security from 3% to 1% to cover such items as minor repairs to the finished systems during the early part of the operational phase.
- 5.2.27 The LTA notes that there are two alternative tests for a Contingent Security Triggering Event. The first test is an objective test based on cashflow. The alternative test is based on the LTA notification of the Developer that the Planned Early PSA Date is reasonably likely to be delayed by 6 months. Whilst the LTA will monitor and report on progress to Lenders monthly, in reality the first assessment of whether the actual PSA date will not reasonably likely be met within 6 months of the Planned Early PSA Date, will be through a combination of ongoing assessments undertaken by the DBJV, the Developer, the IE and the LTA. In this regard the LTA role will be more of validation and confirmation of these assessments.
- 5.2.28 The liquid security package to be provided is sufficient to cover liquidated damages for a delay of 12 months to the PSA Date (estimated at 5.17% of capex).
- 5.2.29 With regard to discussion on the proposed caps, please see Section 5.3 for the LTA's cap on liability analysis.

### **5.3 DB Contractor Security Analysis**

- 5.3.1 The objective of this section is to provide an assessment of the:
- i. Overall maximum liability of the DBJV towards the Consortium under the DB Contract under a termination scenario; and
  - ii. Liquidity needs under a termination scenario.
- 5.3.2 The documents reviewed by the LTA include:
- Sub-contractor percentages, email of 11-15-2017;
  - LAWA APM - LINXS - LD Rate for Commercial Close Model - May 7, 2018;
  - Project Schedule, received on the 11-02-2017;
  - Form O & Cashflow Jan 08;
- 5.3.3 The commentary and analysis in this section are from a technical perspective only and further legal advice should be sought by the Lenders in relation to any point noted below which could have legal implications either during termination procedures or the procurement of a new DBJV.
- 5.3.4 For the termination scenarios, analysis does not address, nor consider, the track record and capabilities of the DBJV members and/or the likelihood of occurrence. The analysis assumes that Default has occurred in each and every scenario and the Developer will be entitled to terminate the DBJV. It is worthy of note that replacing the Contractor is considered by the LTA to be a rather unlikely but material event with significant impact to the Project in terms of delays and additional costs to complete the Project. In this circumstance, a complete termination / replacement of the DBJV would mean the replacement of all four DBJV members.

- 5.3.5 The LTA considers that the falling away of one or more DBJV contractor members is a more likely scenario in reality. Given the relatively standard nature of the construction elements of the project and the significant portion of the works to be subcontracted, the LTA considers that any one “last man standing” contractor could complete the works in case of a termination of the DBJV. Further commentary on replacement contractors is provided later in this section.

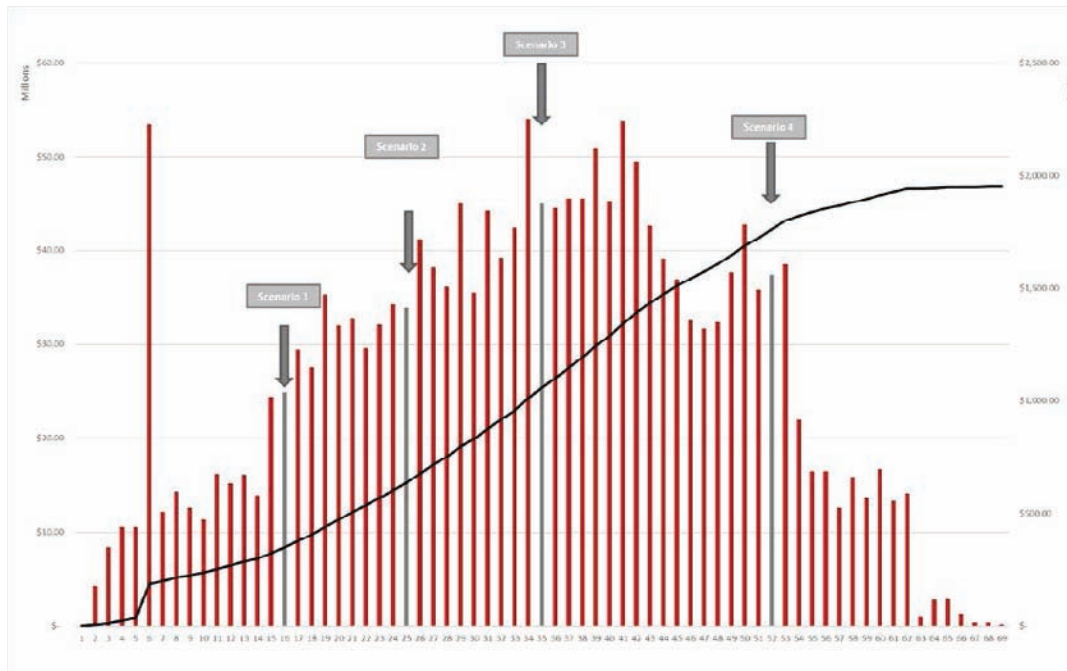
#### **Construction Phase - Replacement Scenarios and Additional Costs to Complete**

- 5.3.6 The LTA’s assessment of the additional costs to complete the Project in the event of the replacement of the DBJV is achieved by defining a set of theoretical replacement scenarios informed by data provided by the Consortium, e.g. latest DB Costs and Construction Schedule.
- 5.3.7 The LTA’s established methodology is a theoretical calculation of the additional costs associated with the replacement of the Contractor during the Construction Phase and to complete the project in the event of termination due to a Default event.
- 5.3.8 The LTA’s methodology is based on the quantitative analysis of:
- Peaks of expenditure in the planned monthly construction cash flow;
  - Key construction activities taking place on site when expenditure is high or material; and
  - Other key activities, for example design, permits, phasing plans, traffic rerouting, testing and commissioning which, in the LTA’s experience, have the ability to impact negatively on the Project in terms of costs and delays to the PSA date, and other Project Milestones.

#### **Replacement Scenarios**

- 5.3.9 The LTA has considered four scenarios-in-time resulting in a realistic worst case set of delays and cost impacts from a DBJV default. The proposed scenarios consider an overall total delay of up to 9 months due to the time to replace, mobilisation of new DBJV and potential construction delay. The potential delays are considered more severe at stages where critical path works are seen as more technically complex.
- 5.3.10 The LTA notes that for each of the termination scenarios, the expected residual delay to the completion of PSA date is within the PA Long Stop Date.
- 5.3.11 Based on the above criteria, scenarios have been run at the following four periods during construction, which are depicted in the figure below:

**Figure 5-1 Monthly breakdown of Construction Phase Costs (Scenarios are shown in grey)**



Source: LTA summary based on data provided by DBJV

Note: For clarity the early works payment in month 5 (at Financial close) have been omitted from the monthly bars, the value for this has been included within the cumulative amount.

5.3.12 Note that in months 45 to 50 the monthly spend is down due to the guideway structure work winding down to completion. Roadwork also decreases down to one work front. Guiderail also decreases from 5 fronts to 2 over this period.

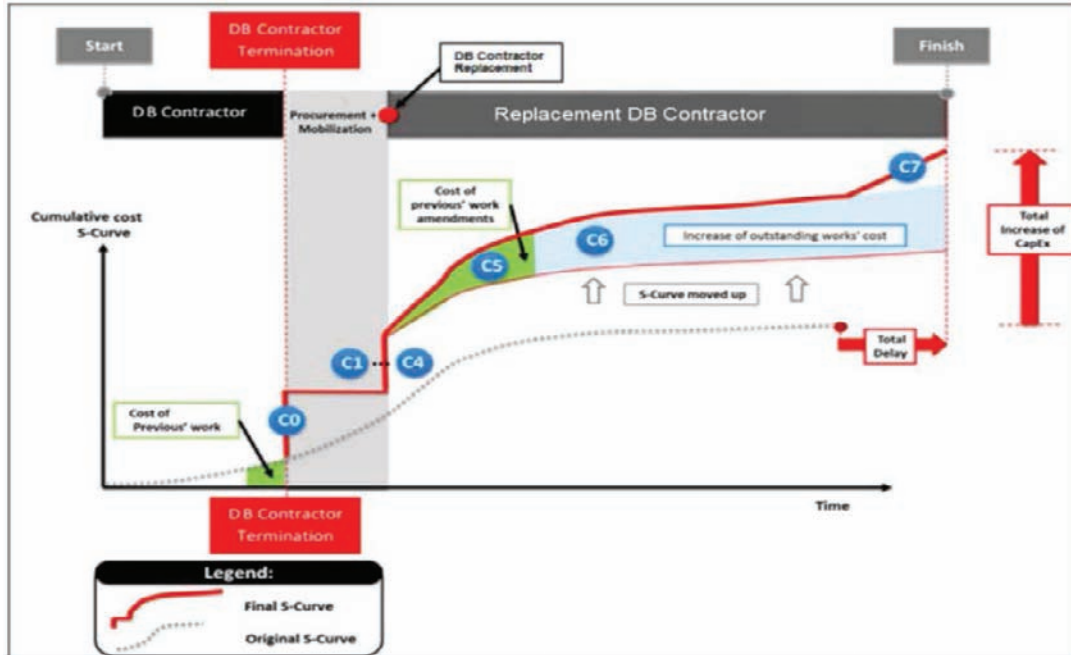
5.3.13 The main ongoing construction works at the time of default for each of the proposed scenarios are further described below:

- **Scenario 1 (Month 16, May 2019):** At this point in the Baseline Schedule, the DBJV main activities focus on the development of the Project Design works, start of the mobilization works, procurement and delivery of the APM Vehicles.
- **Scenario 2 (Month 25, February 2020):** At this point in the Baseline Schedule, the DBJV is scheduled to have started demolition, clear and grub works. Construction of the Project Bridges and Guideway structures and MSF facility is ongoing. Additional works include the start of construction of the stations, including the CTA Station, which is on the Project Critical Path, and installation of the Traction Power and APM Systems.
- **Scenario 3 (Month 35, December 2020):** At this point in the Baseline Schedule, the DBJV key areas of activity are related with the construction of the Project bridges and guideway system, as well as the Project stations, which continue to be on the Project Critical Path. Additionally, at this point in time the DBJV carrying out the construction of pedestrian walkways and nearing the completion of the Project utility relocation and protection activities.
- **Scenario 4 (Month 52, May 2022):** At this point in the Baseline Schedule, the DBJV is scheduled to have completed all guideway works and Traction Power and APM Systems. Similarly, at this point in the construction the DBJV shall be nearing completion to the Project stations and shifting its focus to the construction and testing of the Project signalling systems.

### Additional Costs to Replace and Complete

5.3.14 In determining the cost to replace and complete the Project due to each of the above scenarios, the LTA has considered the items summarized in the figure below:

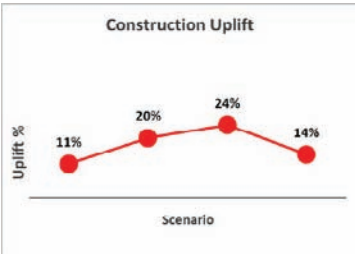
Figure 5-2 Cost items considered in LTA analysis



Source: LTA (not to scale)

5.3.15 The assumptions used to calculate the cost components are described in the table below:

**Table 5-5 Additional Costs Items**

Item	Cost	Description										
C0	Performance Deductions	Allowance for additional penalties that might occur due to the default event and replacement/ mobilization period. This is based on the LTA assessment of performance deductions during the D&C period and is subject to ongoing refinement and review.										
C1	Developer Tender Costs	The associated cost to put together the documentation to find a new DBJV.										
C2	Ransom Creditors	Suppliers/Sub-contractors might pursue claims relating to arrangements with the terminated DBJV against the Consortium, or the Consortium might have to incur additional costs to re-engage the incumbent’s supply chain to continue the works.  Based on an estimate of the works that will be sub-contracted and an estimation of the amount of non-payment works carried out.										
C3	Consultancy fee	Allowance for additional advisory fees for legal (excluding any potential settlement cost) and technical advisors (additional to the LTA’s normal scope of works for construction monitoring).										
C4	Additional Engineering	Allowance to cover for the need to assess any faulty/ non-compliant design or works and draw up plans suitable to the new DBJV. Calculated as a percentage of the design costs and works outstanding.										
C5	Remedial Costs	Remedial costs arising from repairing previously completed works deemed to be of insufficient standard or not meeting the contractual requirements. Additional costs considered under this assumption includes provisions for the need to rebuild certain areas of the Project, where remediation measures are not viable and site up keep during the procurement period.  Remedial Costs have been conservatively calculated by the LTA by analyzing the capital expenditure to date for each construction elements at each scenario. For each cost center, the LTA has assessed the level of progress made, and complexity, by the DBJV on each work element, and estimated to what degree (expressed as a percentage grading down to six months prior to replacement) the completed works, not completed to standard, will need to be remediated.										
C6	Construction Uplift %	<div>Construction uplift is the percentage applied by any replacement Contractor to complete the remaining works.  To calculate the construction uplift, the LTA has taken into account the amount of works being sub-contracted, contract value and duration, nature and complexity of the works, potential of causing delays and acceleration of works, and availability of replacement sub-contractors in the market.  The LTA notes that a number of Tier 1 Contractors currently engaged in various other projects in the area could be potential replacement contractors. The LTA’s uplift assumptions are based on a range of factors including activity type and complexity, current stage of construction for the various activities and the availability of potential replacement contractors. The graph opposite presents the average uplift applied to each of the scenarios considered.</div> <div><table><caption>Construction Uplift</caption><thead><tr><th>Scenario</th><th>Uplift %</th></tr></thead><tbody><tr><td>Scenario 1</td><td>11%</td></tr><tr><td>Scenario 2</td><td>20%</td></tr><tr><td>Scenario 3</td><td>24%</td></tr><tr><td>Scenario 4</td><td>14%</td></tr></tbody></table></div>	Scenario	Uplift %	Scenario 1	11%	Scenario 2	20%	Scenario 3	24%	Scenario 4	14%
Scenario	Uplift %											
Scenario 1	11%											
Scenario 2	20%											
Scenario 3	24%											
Scenario 4	14%											
C7	Liquidated Damages	Based on information provided by the Developer, the total daily LDs passed to the DBJV amount to US\$275,340 per day including AP Delay Liquidated Damages and Final Completion Liquidated Damages. The AP Delay Liquidated damages includes forgone availability payments due to a delay in reaching PSA, less any avoidable costs, plus any incremental SPV and financing costs. The Final Completion Liquidated Damages includes the incremental interest costs on the Design Build Loan Facility that would be incurred in the event that Milestone Payment 6 is delayed.										

Source: LTA

## Results

5.3.16 The results of the LTA analysis are provided below:

**Table 5-6 Additional Cost to Complete the Project – Realistic Worst Case**

Worst Case - Costs in US\$					
Month		Scenario 1	Scenario 2	Scenario 3	Scenario 4
		16	25	35	52
Total CAPEX:		1,949,193,819			
Total works completed:		348,265,624	635,373,338	1,056,431,165	1,760,492,712
Total works completed %		18%	33%	54%	90%
Balance to complete:		1,600,928,195	1,313,820,481	892,762,654	188,701,107
Balance to complete %		82%	67%	46%	10%
No.	Name				
C0	Performance Deductions	112,917	127,031	127,031	127,031
C1	Tender Costs	180,000	180,000	180,000	180,000
C2	Ransom Creditors	19,864,094	14,357,809	32,944,140	32,846,631
C3	Consultancy Fees	950,000	950,000	950,000	950,000
C4	Additional Engineering	36,681,391	30,103,013	20,455,493	4,323,629
C5	Remedial Costs	8,196,348	29,940,338	50,975,387	40,880,734
C6	Construction Uplift	178,165,184	257,946,165	213,279,707	26,849,738
C7	Liquidated Damages	66,999,400	75,374,325	75,374,325	75,374,325
Grand Total		311,149,333	408,978,681	394,286,084	181,532,088
	% of the Construction Contract	16.0%	21.0%	20.2%	9.3%

Source: LTA

5.3.17 As can be seen from the above table, the LTA's analysis has generated a maximum percentage of liability foreseeable under a realistic worst-case scenario of 21.0% of the total DB Costs, which is within the proposed limit on liability in the DB Contract of 35%.

## DBJV – Liquidity provisions at termination

5.3.18 In order to determine the need for immediate liquid funds in the event of a termination and replacement of the DBJV in the above scenarios, the LTA has taken into account the following costs items: CO –Performance Deductions; C1 – Tender Costs; C2 – Ransom Creditors; C3 – Consultancy Fees and additional LTA monitoring; and C8 – Construction site upkeep and interim maintenance costs during the procurement period, including site maintenance, MOT and security costs.

## Results

**Table 5-7 Liquidity security in case of DBJV replacement under the previously described scenarios**

Costs in US\$					
Month		Scenario 1	Scenario 2	Scenario 3	Scenario 4
		16	25	35	52
Total CAPEX:		1,949,193,819			
Total works completed:		348,265,624	635,373,338	1,056,431,165	1,760,492,712
Total works completed %		18%	33%	54%	90%
Balance to complete:		1,600,928,195	1,313,820,481	892,762,654	188,701,107
Balance to complete %		82%	67%	46%	10%
No.	Name				
C0	Performance Deductions	112,917	127,031	127,031	127,031
C1	Tender Costs	180,000	180,000	180,000	180,000
C2	Ransom Creditors	19,864,094	14,357,809	32,944,140	32,846,631
C3	Consultancy Fees	950,000	950,000	950,000	950,000
C8	Site upkeep and O&M costs	1,419,227	3,726,375	3,726,375	3,726,375
Grand Total		22,526,238	19,341,216	37,927,546	37,830,038
	% of the Construction Contract	1.16%	0.99%	1.95%	1.94%

Source: LTA



- 5.3.19 Excluding LD's, the total immediate liquidity liability due to the DBJV replacement ranges between 1.0% to 2.0% of the DB Costs, which is within the 3% D&C Liquid Performance Security provided under the DB Contract.

### Potential Replacement Contractors

- 5.3.20 An important element of the DBJV replacement scenarios is the ability to replace one or two of the four incumbent Construction Contractor members. Technical competence and capacity to perform as an Acceptable Remaining Party on this Project is considered in the table below.

**Table 5-8 Construction Contractor – Acceptable Remaining Party**

Technical Aspect	Comment
Civils Infrastructure	Any of the four contractors are more than capable of taking on the utilities, MOT, MSF, stations and guideway construction.
APM Systems	This aspect will be subcontracted, so the issue is more of experience in management of subcontractors. Competence in subcontractor management is held by all four members
APM Vehicles	This aspect will be subcontracted so the issue is more of experience in management of subcontractors. Whilst competence in subcontractor management is held by all four members.

Source: LTA

- 5.3.21 The LTA has considered the LA construction market alongside the Project scope of works in order to assess the feasibility of replacing one or two DBJV members. Should a replacement DB Contractor be needed, there are several with the experience to undertake the scope of activities required, including those who are currently bidding the APM Project alongside LINXS. It is also noteworthy that Bombardier is in joint venture with CRRC (one of the largest manufacturer of rail vehicles globally) who could step in as sole provider should Bombardier fall away due to some unforeseen circumstance.

## 5.4 Main Subcontracts

- 5.4.1 The DB Contractor has engaged two main subcontractors for the: i) design, supply, installation and integration of the APM Operating System with Bombardier, and ii) Electrical Works with Rosendin. The key commercial aspects are summarized in the tables below:

**Table 5-9 Bombardier Subcontract – Key commercial aspects**

Item	DB Contract (April 11, 2018)	Bombardier Subcontract (April 11, 2018)	Comment in relation to Bombardier Subcontract Provisions
Payments	The DB Contract is fixed-price, date-certain and the Contract Price and Additional D&C Payments which are payable to the DB Contractor covers all design and construction taxes. The Not-To-Exceed payment schedule is to be set out in D&C Attachment 4 (Payment of Contract Price).	Cl. 4.5 Payments based on the performance and progress milestones set out in Attachment 2 (Payment of the Subcontract price).  If the payments are different to the payments received by the DB Contractor from the Developer, the parties will agree to hold the progress milestone payments until the correspondent payments have been received by the DB Contractor.	Alignment of timing of payment obligations is noted – effectively a pay-when-paid acceptance by Bombardier

Item	DB Contract (April 11, 2018)	Bombardier Subcontract (April 11, 2018)	Comment in relation to Bombardier Subcontract Provisions
Limitation of liability	<ul style="list-style-type: none"> <li>Up to and including Final Completion, 35% of the Contract Price;</li> <li>In the period from Final Completion until the DB Termination Date the liability amount will equal to the lesser of 10% of the Contract Price or the remaining exposure under the limit of 35% of the Contract Price.</li> </ul>	<p>Cl. 13 Delay Cap – the maximum cap on liability in relation to Bombardier Delay Liquidated Damages is 20% of the Subcontract Price;</p> <p>Liability Cap - the maximum cap on liability is 150% of the Subcontract Price (including delay damages)</p>	The maximum cap on liability is comparable with the provisions seen in similar subcontracts for other projects.
Delay Damages	<ul style="list-style-type: none"> <li>Fixed Bridge Payments: \$190,238.59 per day for each day Passenger Service Availability is delayed beyond the Original Planned Early PSA Date;</li> <li>AP Delay Liquidated Damages: \$227,758.78 per day for each day Passenger Service Availability is delayed beyond the Original Planned Early PSA Date;</li> </ul>	<p>Cl.8 In case of delay in delivering the Subcontracted Work, Bombardier will pay to the DB Contractor the amounts of any DB Delay Liquidated Damages imposed to the DB Contractor (other than Milestone Interest Cost) up to a maximum of:</p> <ul style="list-style-type: none"> <li>\$200,000: between days 1 to 30 that DB Liquidated Damages are imposed</li> <li>\$125,000: between days 31 to 60 that DB Liquidated Damages are imposed;</li> <li>\$100,000: between days 61 to 365 that DB Liquidated Damages are imposed;</li> </ul> <p>Bombardier will also pay the DB Contractor's Direct Losses arising out of such delay, including acceleration cost.</p>	Bombardier Delay Liquidated Damages are back to back with the DB Delay Liquidated Damages in the DB Contract.
Long Stop Dates	10 months after the Planned Early PSA Date	Attachment 1, Definitions BT Long Stop Dates 90 days before the DB Long Stop Date.	Shortening of LSD by 90 days each time gives cascading protections
Performance Security	<ul style="list-style-type: none"> <li>Parent Company Guarantees: One from each DB Construction Guarantor;</li> <li>Performance Bonds: Aggregate value equal to the sum of Milestone payments 1 through 5 (this corresponds to approximately 43% of the DB Contract Price);</li> <li>Liquid Security: amount available to be drawn equal to 3% of the Contract Price and reducing to 1% of the Contract Price following the Final Completion Date</li> </ul>	<p>Cl. 14 Bombardier will provide the DB Contractor the following security provisions:</p> <ul style="list-style-type: none"> <li>Performance Bond: 55% of the Subcontract Price reducing to 27.5% of the Subcontract Price after the Passenger Service Availability Date;</li> <li>Warranty Bond: 5% of the Subcontract Price;</li> <li>Liquid Security: 20% of the Subcontract Price (in a form of Letter of Credit) reducing to 2.5% of the Subcontract Price after the Passenger Service Availability Date;</li> <li>Parent Company Guarantee.</li> </ul>	

Item	DB Contract (April 11, 2018)	Bombardier Subcontract (April 11, 2018)	Comment in relation to Bombardier Subcontract Provisions
Warranties	<p>The DB Contractor will repair any defective work arising during the applicable Warranty Period:</p> <ul style="list-style-type: none"> <li>• APM Operating System Warranty Period – 24 months from PSA</li> <li>• Epidemic Defects Warranty Period – 24 months</li> <li>• All other DB Defects Warranty Period – 12 months</li> </ul> <p>The Warranty Period will extend for a minimum of 12 months for any area that is rectified.</p>	<p>Cl. 12 The Defect/Warranty provisions [TBC], will correspond to the DB obligations under the DB Contract. The warranties will be for such periods as specified in the Technical Provisions or, if not specified, a period of not less than 1 year from the date of the Certificate of Non-O&amp;M Facility Occupancy Readiness or the Certificate of Passenger Service Availability, as applicable.</p> <p>The Warranties will be assigned by DB Contractor to O&amp;M Contractor in the Passenger Service Availability Date 'Warranty Assignment Date'.</p> <p>There is no latent defects provision. The latent defect risk will be passed down to the O&amp;M Contractor on the Warranty Assignment Date.</p> <p>The DB Warranty Period will be reset for any rectified BT Defect until the later of 24 months or the end of the BT Warranty Period.</p>	<p>Defects periods are back-to-back.</p> <p>Latent defects protection would be usual.</p> <p>Re-setting the warranty period after an element is repaired is in line with the LTA's expectations.</p>

Source: Infrata; Bombardier subcontract, DB Contract Executed Version April 11, 2018

**Table 5-10 Electrical Works Subcontract – Key commercial aspects**

	DB Contract (April 11, 2018)	Electrical Works Subcontract	Comment in relation to Electrical Subcontract Provisions
Payments	<p>The DB Contract is fixed-price, date-certain and the Contract Price and Additional D&amp;C Payments which are payable to the DB Contractor covers all design and construction taxes. The Not-To-Exceed payment schedule is to be set out in D&amp;C Attachment 4 (Payment of Contract Price).</p>	<p>Cl. 5 The Contract Price will be payable in monthly progress payments. Each progress payment will be for ninety percent (90%) of the earned value of Work completed by Contractor.</p> <p>The subcontractor will be paid 7 days after the DB Contractor has received the correspondent payment from the Developer.</p>	<p>The payment mechanism is seen as standard and reasonable for the Project.</p>
Limitation of liability	<ul style="list-style-type: none"> <li>• Up to and including Final Completion, 35% of the Contract Price;</li> <li>• In the period from Final Completion until the DB Termination Date the liability amount will equal to the lesser of 10% of the Contract Price or the remaining exposure under the limit of 35% of the Contract Price.</li> </ul>	<p>CL.55 Neither party will be liable to other for damages relating to the Electrical Works Contract.</p>	<p>The LTA would expect to see a liability provision within the subcontract as commonly seen in contracts of this nature.</p>
Delay Damages	<ul style="list-style-type: none"> <li>• Fixed Bridge Payments: \$190,238.59 per day for each day Passenger Service Availability is delayed beyond the Original Planned Early PSA Date;</li> <li>• AP Delay Liquidated Damages: \$227,758.78 per day for each day Passenger Service Availability is delayed beyond the Original Planned Early PSA Date;</li> </ul>	<p>Cl. 54 If the Electrical Works Contractor does not achieve the Milestone Deadline set out in this Contract, it will pay to the DB Contractor the amount of [\$15,000-\$30,000 per day] as Liquidated Damages, dependent on activity, capped at a total of 20% of the Subcontract price.</p>	<p>It would be expected that Delay Damages are appropriately sized in accordance with the provisions in the DB Contract.</p>

	DB Contract (April 11, 2018)	Electrical Works Subcontract	Comment in relation to Electrical Subcontract Provisions
Long Stop Dates	10 months after the Planned Early PSA Date	There is not a Long Stop Date provision within this Contract.	N/A
Performance Security	<ul style="list-style-type: none"> <li>• Parent Company Guarantees: One from each DB Construction Guarantor;</li> <li>• Performance Bonds: Aggregate value equal to the sum of Milestone payments 1 through 5 [this corresponds to approximately 43% of the DB Contract Price];</li> <li>• Liquid Security: amount available to be drawn equal to 3% of the Contract Price and reducing to 1 % of the Contract Price following the Final Completion Date</li> </ul>	CI 1.3 The Subcontractor will provide a Performance Bond of 100% of the Contract Price.	100% Performance Bond is standard industry practice for subcontracts of this nature.
Warranties	<p>The DB Contractor will repair any defective work arising during the applicable Warranty Period:</p> <ul style="list-style-type: none"> <li>• APM Operating System Warranty Period – 24 months from PSA</li> <li>• Epidemic Defects Warranty Period – 24 months</li> <li>• All other DB Defects Warranty Period – 12 months</li> </ul> <p>The Warranty Period will extend for a minimum of 12 months for any area that is rectified.</p>	<p>The Warranty provisions will extend for twenty-four (24) months after the Certificate of Passenger Service Availability.</p> <p>Design and engineering, labour, equipment and materials defect is corrected, the guarantee for the repaired element will be in (18) months from the date of completion of the correction, or for the remainder of the guarantee period, whichever is longer.</p>	<p>The Warranty period is considered reasonable and similar to the provisions seen in projects of similar scope.</p> <p>Re-setting the warranty period after an element is repaired is positive and in line with the TA's expectations.</p> <p>This provision assumes Contractor will not be Key Contractor and scope will only include Non-O&amp;M Facilities</p>

Source: *Infra; Elec Works subcontract, DB Contract Executed Version January 11, 2018*

## 6 OM Contract and Replacement Analysis

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### 6.1 Introduction

- 6.1.1 The LTA has been provided with a copy of the Executed Version of Part 1 and Part 2 of the O&M Contract (OM Contract) dated April 11, 2018. This contract is between the Developer (LAX Integrated Express Solutions LLC) and the OMJV (an unincorporated joint venture between Bombardier Transportations (Holdings) USA Inc., Fluor Enterprises, Inc., HOCHTIEF PPP Solutions North America, Inc. and ACS Infrastructure Development Inc., the O&M Contractor).
- 6.1.2 The OM Contract consists of the Articles of Agreement (Part 1) with a total of 13 Articles, Part 2 with a total of 23 Articles and 22 Attachments and all of the attachments, forms and appendices to the Agreement including named Technical Provisions from the DBFOM. Part 1 relates to the rights and obligations specifically between Developer and the OMJV, which are not included in the PA (e.g. limitation of liability and performance support). Part 2 is a back-to-back pass down of the PA relevant to the OM Contract, with headroom built in to timescales and triggers, as applicable.
- 6.1.3 This section of the report summarises and comments on the key provisions within the OM Contract and includes the O&M Contractors liability cap analysis undertaken by the LTA.
- 6.1.4 Commentary on the Interface Agreement entered into by the O&M Contractor, DB Contractor and the Developer is provided in Section 7 of this report.

#### Introduction - LTA Opinion

- 6.1.5 The LTA has reviewed the provisions of a technical nature in the OM Contract Part 2 against the corresponding provisions in the PA, which are commented upon in Section 4 of this report. The LTA observes that no material technical provisions are retained at Developer level. Part 2 reflects the flow down of rights and obligations from the Developer to the OM Contractor. It is noted that the provisions contained within Part 2 are either on a par with the provisions within the PA or have been drafted such that the obligations of the OM Contractor are more onerous than those imposed on the Developer under the DBFOM.
- 6.1.6 Commentary and opinion on the provisions in Part 1 are presented below.

### 6.2 OM Contract

#### Scope of works

- 6.2.1 The OM Contract confirms that all Developer's obligation and responsibilities specified under the PA in relation to the operation and maintenance of the Project are passed down to the O&M Contractor. LINXS has advised that the majority of the rehabilitation is to be passed down to the OMJV.
- 6.2.2 The O&M Contractor's obligations and responsibilities, as set out in Part 1 Article 4 of the OM Contract, comprises the following: (i) all O&M Activities to be performed in accordance with the OM Contract and the O&M Technical Requirements other than the Excluded Obligations; (ii) assume all cost of equipment, materials, labor, transportation and services (including intellectual property rights) associated with the execution of O&M activities; (iii) all taxes, duties, fees and royalties related to O&M Activities; and (iv) liable for the acts and omissions of all O&M Contractor-Related Entities in the performance of O&M activities.
- 6.2.3 It is noted that the Excluded Obligations, in addition to including project financing and the D&C Works, includes Excluded Rehabilitation which relates, primarily, to the rehabilitation of those items which, based on their design

life, replacement of is not anticipated within the Term of the Project (see Section 6.2.11 for further discussion on Excluded Rehabilitation).

### Contract Payment

- 6.2.4 Under Part 1 Article 4, the O&M Contractor shall be paid by the Developer the O&M Payments and other additional payments in accordance with OM Attachment 4B (O&M Payments). The O&M Contractor is undertaking the O&M Activities on a fixed price, lump sum basis.
- 6.2.5 Compensation on Termination is provided for under Attachment 21 to cover the following scenarios:

**Table 6-1 Compensation on Termination**

Termination Scenario	Who pays who	Compensation areas
Termination of DBFOM Agreement for Convenience, Insurance Unavailability, Court Ruling, or LAWA Default, or for Extended Delay Events	Payable by Developer to O&M Contractor	O&M Subcontractor Breakage Costs O&M Insurance Proceeds Any deductions not already deducted in full from Monthly Progress Payments Any Equivalent Project Relief payments received by the Developer under the PA after Developer has paid all Lenders Liabilities in full 15% of the O&M Payments due for the remainder of the DBFOM Term.
Termination for O&M Contractor Default – PA also terminated	Payable by O&M Contractor to Developer	Direct losses incurred by the Developer under the PA and including any additional replacement contractor costs Any deductions not already deducted in full from Monthly Progress Payments Any other sums due and payable under the O&M Contract
Termination for O&M Contractor Default – PA not terminated	Payable by O&M Contractor to Developer	Direct losses incurred by the Developer under the PA and including any additional replacement contractor costs Any deductions not already deducted in full from Monthly Progress Payments Any other sums due and payable under the O&M Contract
Termination for Developer O&M Default or Following Termination of the PA for Developer Default	Payable by Developer to O&M Contractor	O&M Subcontractor Breakage Costs O&M Insurance Proceeds Any deductions not already deducted in full from Monthly Progress Payments Any credit balance in the Handback Reserve Account

Source: OM Contract Attachment 21

### Performance, Deductions and Noncompliance Points

- 6.2.6 The OM Contract provides for the following step down triggers:

**Table 6-2 OM Contract Performance triggers**

Performance Trigger	PA	OM Contract
<b>Increased Oversight Threshold</b>		
Noncompliance Points – Rolling 12 months	≥ 200	same
Noncompliance Points – Rolling 36 months	≥ 550	same
Persistent Unavailability Event	1 in prior month	same
APM Operating System Shutdown	Lasting 24 hours or more	same
<b>Written Notice Threshold</b>		
Noncompliance Points – Rolling 12 months	≥300	same
Noncompliance Points – Rolling 36 months	≥825	same
Persistent Unavailability Event	2 in prior 12 months	same
APM Operating System Shutdown	Lasting 48 hours or more	same
<b>Termination</b>		
Rolling 12 months	≥ 400	≥ 320
Rolling 36 months	≥ 1100	≥ 880
Persistent Unavailability Event	3 in prior 12 months	same
APM Operating System Shutdown	Lasting 96 hours or more	same

Source: OM Contract

### Limitations on Liability and Security Package

- 6.2.7 The maximum aggregate liability of the O&M Contractor under the OM Contract is 100% of (a) the Service Fee Reference Amount for the first calendar year of the O&M Period, for any 12-month period ending on or before the end of the first calendar year of the Operating Period; and (b) the Service Fee Reference Amount for the preceding calendar year, for any calendar year ending after the end of the first 12 months of the Operating Period.
- 6.2.8 In case the O&M Contractor incurs liability under the OM Contract in an aggregated amount that exceeds 150% of the average Service Fee Reference Amount, the O&M Contractor may terminate the O&M Contract by providing 90 Calendar Days' written notice to the Developer.
- 6.2.9 Under Part 1 Article 9.3 of the O&M Contract, the maximum aggregate liability of O&M Contractor to Developer on the occurrence of the events referred to (i) termination of the agreement, or (ii) the agreement is subject to termination but has not been terminated by the Developer, by reason of an O&M Contractor Default, shall not exceed 150% of the Service Fee Reference Amount for the 12-month period ending on the Termination Event Date.
- 6.2.10 The performance and quality of the work are protected through a Letter of Credit (LoC), to be sized at 40% of the Service Fee Reference Amount payable in the following 12 months, and Parents Company Guarantees. The LoC shall be issue on the date that is 30 Calendar Days prior to the PSA date. Additionally, for the remainder of the O&M Period, upon each anniversary date of the delivery by the O&M Contractor of such LoC, the LoC shall be replaced or renewed no later than 30 Calendar Days prior to each anniversary date. In accordance with Part 2 Section 9.3.3 of the O&M Contract.

## Rehabilitation

- 6.2.11 The O&M Contractor is responsible for all lifecycle work except for “Excluded Rehabilitation” meaning renewal or reconstruction work related to the following (to the extent not resulting from an O&M Contractor Act):
- The guideway structure (including without limitation, foundations, substructure, superstructure, bearings and expansion joints);
  - The APM’s main steel guide beam (other than switches and related mechanism which, for the avoidance of doubt, shall remain within the O&M contractors responsibility);
  - Reinforcement concrete paving at the MSF;
  - Structures (including stations, walkways, and the MSF Building) and all buildings structural elements, culverts, sewers and drainage inlets and outlets and retaining walls; and,
  - Losses or damages to the Project that are covered by property insurance except as otherwise agreed to.
- 6.2.12 Under Part 1 Article 13, the Developer may appoint a Rehabilitation Contractor to perform the Excluded Rehabilitation work on terms to be determined by the Developer. The O&M Contractor is required to cooperate and allow access to any Rehabilitation Contractor, as well as, to provide assistance and information as may be required. In addition, the Developer shall make sure the Rehabilitation Contractor cooperates with the O&M Contractor and not interference or disturbance arise in the O&M Activities.
- 6.2.13 Under Part 2 Article 8.8 of the O&M Contract, the Developer shall establish a Major Maintenance Account (MMA) which shall be funded by the O&M Contractor. At 10<sup>th</sup>, 15<sup>th</sup>, and 20<sup>th</sup> anniversaries of the PSA Date (Testing Date(s)) the LTA is required to review the condition of the Project and determine whether the Renewal Work and Handback Renewal Work is being performed in accordance with the PA and that the remaining lifecycle budget in the MMA is sufficient to cover the projected expenditures for Renewal Work to meet the Handback Requirements.
- 6.2.14 If the projected expenditure is greater than the remaining lifecycle budget (Major Maintenance Deficit Amount) by 10% then the O&M Contractor shall make up the shortfall by either (i) cash payments, (ii) by set-off from any O&M Payments, or (iii) Acceptable Letter of Credit.
- 6.2.15 On the first Handback Year, the Developer will transfer any amounts in the MMA necessary to fund the handback requirements (Section 8.7.2.2 of the PA) to the Handback Requirements Reserve Account. Any funds remaining MMA thereafter will be paid out to the O&M Contractor.

## LTA Opinion

- 6.2.16 The LTA is satisfied that the Developer scope of works and allocation of responsibilities imposed under the PA have been passed down to the O&M Contractor through the O&M Contract in an appropriate manner. The warranty regime set out in the contract is consistent with others that have reached Financial Close in the North American market and elsewhere.
- 6.2.17 The security instruments are typical of those seen by the LTA in similar agreements. For analysis of the robustness of the termination cap and liquidity provisions, please refer to Section 6.3 below.
- 6.2.18 The Noncompliance Point buffer is set at 80% of the Noncompliance termination threshold in the PA. This is considered acceptable on the basis that analysis of potential deductions even in a worse case assessment is well below either of these thresholds. For further commentary please refer to Section 8.5.



- 6.2.19 The LTA acknowledges that Excluded Rehabilitation relates primarily to those items which, based on (i) their design life and (ii) an in-depth evaluation by the OM team, would not require renewal and reconstruction work during the O&M Period or to meet the Handback requirements. The LTA notes that there is no Developer budget for these items and accepts this would likely be the same situation should all lifecycle responsibilities have been kept at Project Co level. The LTA notes the inclusion of some items which may require refurbishment, rather than full renewal, for example bearings and expansion joints and as such would fall within the purview of the O&M Contractor.
- 6.2.20 The MMA protocol and the requirement for periodic reviews by the LTA is considered a typical approach where the rehabilitation work is to be passed down to an O&M Contractor. Typically, the Testing Dates would be aligned to points at or just prior to significant lifecycle spend.

### **6.3 O&M Contractor Security Analysis**

- 6.3.1 The objective of this section is to provide an assessment of the:
- i. O&M Contractor limitation of liability prior to termination;
  - ii. Overall maximum liability of the O&M Contractor towards the Consortium under the OM Contract upon termination; and
  - iii. Liquidity needs under a termination scenario.
- 6.3.2 The commentary and analysis in this section are from a technical perspective only and further legal advice should be sought by the Lenders in relation to any point noted below which could have legal implications either during termination procedures or the procurement of a new O&M Contractor.
- 6.3.3 For the termination scenarios, analysis does not address, nor consider, the track record and capabilities of the O&M Contractor members and/or the likelihood of occurrence. The analysis assumes that Default has occurred in each and every scenario and the Developer will be entitled to terminate the O&M Contractor. It is worthy of note that replacing the Contractor is considered by the LTA to be an unlikely but material event with significant impact to the Project in terms of additional costs and deductions.

#### **O&M Contractor Limitation of Liability upon termination**

- 6.3.4 The LTA has carried out an assessment of additional costs to the project in the event of the replacement of the Contractor during the Operating Period.
- 6.3.5 The LTA has approached the analysis on the basis of experience with similar projects, thereby ensuring that the technical assumptions made reflect the worst case scenario, which is technically realistic, although highly improbable. The scenario is not intended to be precise, but rather, serves as a guideline for a worst case scenario represented in monetary terms as a percentage of the O&M Price.

#### **Cost of Replacement and Uplift**

- 6.3.6 Should an early termination event occur, additional costs would arise during the replacement process until a new contractor becomes fully established. The LTA has tested the O&M Contractor Liability Cap by making an assessment of these additional costs of replacement, as described in the table below.

**Table 6-3 Costs of replacement of the O&M Contractor**

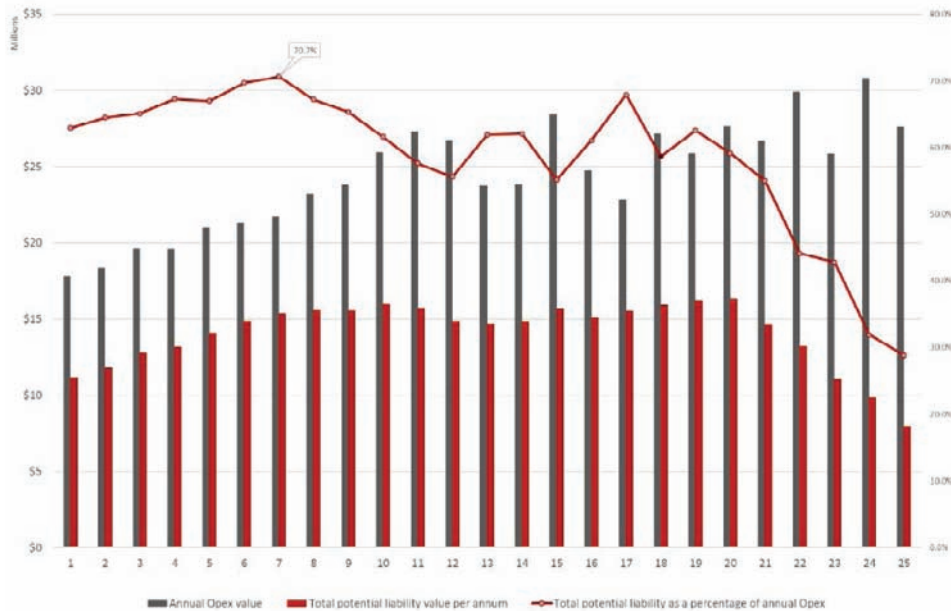
Item	Cost	Description
M0	Availability and Performance Deductions	Allowance for additional penalties that might occur due to the default event and replacement period. The LTA has conservatively considered a level of deductions equivalent to the Consortium's maximum assessment over a period of 6 months.
M1	Tender Costs	Considers increased Developer staff resources associated with terminating the Contractor and tendering for a replacement contractor.
M2	Ransom Creditors	Creditors might pursue claims relating to arrangements with the terminated Contractor against the Consortium, or the Consortium might have to incur additional costs to re-engage the incumbent's supply chain to continue operating.
M3	Consultancy Fees	Allowance for additional advisory fees for legal (excluding any potential settlement cost) and technical advisors (this is outside the LTA's scope of works for construction monitoring).
M4	Interim caretakers during replacement period	Considers that during the period of replacement of a new Contractor (3 months), the Consortium will have to employ interim O&M caretakers to ensure the operational responsibilities.  The cost has been calculated taking into account activities considered essential to the normal operation of the Project during the 3-month procurement period.
M5	Mobilization of incoming Contractor	Considers the cost of mobilization and lack of efficiency of the replacement Contractor during the initial 2 months period after award.
M6	Additional Maintenance works	Assumes that a non-performing Contractor would have neglected to carry out some routine maintenance. This item considers costs incurred by the incoming Contractor with additional inspections and asset conditioning.
M7	Incoming Contractor Price uplift	Considers a premium imposed on the new prices by the incoming Contractor. At this stage, based on similar projects the LTA has considered conservative uplifts of 5% to 15% against different O&M activities over a period of 5 years (following which costs will converge with market trends) based on the complexity of the activity being performed and the competition within the pool of potential replacement contractors.

Source: LTA

## Results

6.3.7 The LTA analysis has been run for each year of the Operating Period.

Figure 6-1 LTA Analysis of Potential Liability across the Operating Period



Source: LTA Analysis

6.3.8 As can be seen from the above, the worst case is in Year 7:

Table 6-4 Worst Case Scenario OM Contract % liability (Year 7)

Worst Case - Costs in US\$		
Total OPEX (excluding mobilization costs):		\$ 617,196,133
OPEX (yearly average):		\$ 24,463,359
OPEX (Year 17):		\$ 21,736,695
No.	Name	
M0	Performance Deductions	\$ 235,550
M1	Tender Costs	\$ 90,000
M2	Ransom Creditors	\$ 1,694,598
M3	Consultancy Fees	\$ 350,000
M4	Interim Caretakers	\$ 2,963,162
M5	Mobilization Costs	\$ 830,685
M6	Additional Maintenance	\$ 1,008,656
M7	OM Contractor Uplift	\$ 8,186,399
Grand Total		\$ 15,359,050
O&M Contract % liability		70.7%

Source: LTA

6.3.9 The maximum total potential liability arising from the LTA analysis corresponds to 70.7% of the OM Payment for the preceding 12 months which compares favourably with the 100% rolling 12 month cap in the OM Contract.

#### O&M Contractor – Liquidity provisions at termination

6.3.10 In order to determine the need for immediate liquid funds in the event of a termination and replacement of the O&M Contractor, the LTA has taken into account the following cost items: M0 – Availability and Performance Deductions; M1 – Tender Costs; M2 – Ransom Creditors; M3 – Consultancy Fees and additional monitoring.

**Table 6-5 Liquidity Security in the case of O&M Contractor replacement**

Worst Case - Costs in US\$		
Total OPEX (excluding mobilization costs):		\$ 617,196,133
OPEX (yearly average):		\$ 24,463,359
OPEX (Year 17):		\$ 21,736,695
No.	Name	
M0	Performance Deductions	\$ 235,550
M1	Tender Costs	\$ 90,000
M2	Ransom Creditors	\$ 1,694,598
M3	Consultancy Fees	\$ 350,000
Grand Total		\$ 2,370,148
O&M Contract % liability		10.9%

Source: LTA

- 6.3.11 As can be seen, at 10.9% the potential liquidity requirement during the O&M Contractor replacement is below the 40% LoC being proposed under the OM Contract.

### Potential Replacement Contractors

- 6.3.12 An important element of the O&M Contractor replacement scenarios is the ability to replace one or two of the four incumbent OMJV members. The O&M Contract will be structured as an integrated company with dedicated staff performing day-to-day maintenance supported by specialist subcontractors. Both Bombardier, ACS and Fluor have experience in managing rigorous inspection regimes on other APM and LRT projects. The key aspect is the ability to access specialist fitters and supervisors and, based on previous LTA experience, it is likely that in the event of one or more parties falling away, these specialist operatives and subcontractors will elect to stay with the project and work under the remaining party. If the party falling away was Bombardier, then replacement parts would need to be sourced from another supplier. Most of the replacement parts could be sourced from Bombardiers supply-chain or found from alternative sources (e.g. wheels, braking systems, engines, electrical equipment, batteries are in many cases industry standard).
- 6.3.13 The LTA has considered the US APM market alongside the Project scope of works in order to assess the feasibility of finding a replacement party. A selection of organisations in the industry operating in the region include Bechtel (Bay Area Rapid Transport, Dulles Metrorail) and Skanska (Los Angeles LRT Extension) other APM operators in the US include Johnson Controls and Mitsubishi Crystal Movers, both of whom were on the other bid teams but could be available in the event that a full replacement of the OMJV is considered.
- 6.3.14 It is also worth noting that the Consortium members form the OMJV and as such, in the event of an OMJV default and termination, the Consortium could elect to self-perform given the retained expertise and staff/etc. There are also other operators of APMs in the US, including Johnson Controls and Mitsubishi Crystal Movers, who were on other teams but could be available in the event a full replacement is considered (as opposed to self-performing).

## 7 Interface Agreement

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### 7.1 Introduction

- 7.1.1 The Consortium has provided the LTA with the executed version of the Interface Agreement (IA) main document. The IA is between the Developer, the DB Contractor and the O&M Contractor. It states the obligations and duties for each party to ensure that the DB and O&M Contractors will work cooperatively with each other to facilitate the performance of activities under their respective Contracts in a timely and proficient manner.
- 7.1.2 The DB and O&M Contractors will retain all rights, claims, defences and limitations of liability possessed by each party in the DB and OM Contracts, respectively. The Developer will not have liability under or pursuant to or regarding this Agreement.

### 7.2 Obligations of the Contractors

- 7.2.1 The O&M Contractor will take responsibility and control of the Site and Infrastructure from and after the PSA Date. Specific obligations for the DB and O&M Contractors are as follows:

#### Access to Information

- 7.2.2 The DB Contractor will give the O&M Contractor access to current construction and commissioning schedules and bring the opportunity to the O&M Contractor to attend construction progress meetings and design meetings. Attendance at these meetings by the O&M Contractor will be coordinated through the working groups.

#### Access to Site

- 7.2.3 During the Construction Period, the O&M Contractor and O&M Contractor-Related Entities will be entitled to all reasonable access to the Site and the Infrastructure for all purposes related to the preparation and performance of the O&M Activities to be carried out during the Construction Period, including manuals, facilities and equipment. The Interface Agreement sets out O&M Key Access Dates. These dates are to ensure that the O&M Contractors staff has access to (i) suppliers inputs; (ii) facilities; (iii) systems; (iv) infrastructure and (v) rolling stock at the correct time to ensure staff readiness for successful Day 1 and beyond.
- 7.2.4 The DB Contractor and DB Contractor-Related Entities will be entitled to all reasonable access to the Site and the Infrastructure for all purposes reasonably connected with performing the Contracted Work, including achieving Final Completion and any warranty work.

#### Defects

- 7.2.5 The DB Contractor will be responsible for the remediation of any Construction Defect during the Warranty Period. Following the Warranty Period and during the balance of the Latent Defect Period, the DB Contractor will remedy any Latent Defects and will be responsible for any O&M Period Deductions arising from any Construction Defect for which it is responsible under the DB Contract. The DB Contractor may also, in agreement with the O&M Contractor, elect the O&M Contractor to remedy a Latent Defect and pay the Direct Losses incurred by the O&M Contractor in repairing such Latent Defect.

### Delay

- 7.2.6 The DB Contractor will inform the O&M Contractor through a written notice of any planned or anticipated delay or acceleration in achieving PSA by the Planned Early PSA Date and no later than when Developer and LAWA are notified of the same.
- 7.2.7 The DB Contractor will pay to the O&M Contractor the O&M Monthly Avoidable Costs, an amount equal to O&M Contractor's costs incurred as consequence of a delay in achieving PSA by the Planned Early PSA Date.

Period in advance of Planned PSA notification of delay in achieving PSA Date received	O&M Monthly Avoidable Costs amount
18 months or more	US\$209,317/month
10 to 18 months in advance	US\$386,024/month
6 to 10 months in advance	US\$518,769/month
Less than 6 months in advance	US\$821,014/month

### Assignment of Warranties

- 7.2.8 At least six months prior to the PSA date the DB Contractor and the O&M Contractor will negotiate a warranty protocol for the management of warranty claims between them. The warranty protocol will be established at least 90 days prior to the PSA date.

### Interface Committee

- 7.2.9 The parties are to establish an Interface Committee consisting of one Representative from each Party. The purpose of this committee is to provide effective dialogue between the Parties as to all issues with respect to their rights and obligations under PA, the DB Contract, the OM Contract and the IA. The Representative members of each Party will make reasonable efforts to attend all meetings of the Interface Committee, which will be held monthly.

### Passenger Service Availability

- 7.2.10 The DB Contractor is to give the O&M Contractor a copy of the PSA Notice at the same time as it provides it to the Developer.
- 7.2.11 The O&M Contractor is to notify the DB Contractor as soon as reasonably practicable after it becomes aware of the date on which it intends to mobilize its personnel and O&M Contractor-Related Entities and deliver the updated plans, certifications and other deliverables it is required to submit prior to PSA within 50 Business Days prior to the expected PSA Date referred to in the PSA Date Notice.
- 7.2.12 The DB Contractor is to obtain the O&M Contractor's consent for achieving the PSA Date prior to the Planned Early PSA Date.
- 7.2.13 On the PSA Date, the DB-Build Contractor is to deliver to the O&M Contractor spare parts as set out in Attachment 2 Part E to the IA (Spare and Equipment List). The O&M Contractor may implement changes to the spare parts, at its cost, up to a maximum of: \$5,922,840 in aggregate, and providing a notice to the other Parties within 10 days before the PSA Date.

### Hand Over

- 7.2.14 The Contractors shall cooperate and work with each other in connection with the transition of care and control of, and responsibility for, the Site and the Infrastructure from the DB Contractor to the O&M Contractor.

- 7.2.15 Each Contractor is to coordinate its respective efforts in the commissioning, verification, start-up and testing of the Project and its component systems (including the APM System and Vehicles) in accordance with the agreed organization of testing and commissioning works as set out in PA, including rectifying any failures or deficiencies that arise therefrom.

### **7.3 LTA Opinion – Interface Agreement**

- 7.3.1 The IA clearly defines the specific obligations of the Contractors. The obligations of both Contractors in relation to each other are reasonable and appropriate given the nature of the Project. The IA is consistent in content and structure to similar agreements seen by the LTA elsewhere in North America.
- 7.3.2 The maximum liability caps of each Contractor are clear in that they apply as set out in their respective Contracts. In addition to the damages amounts passed down from the PA to the DB Contract, the additional liabilities that are included as part of the IA relate to Direct Losses incurred by the O&M Contractor in relation to (i) unreasonable withholds or delays by the DB Contractor for O&M Contractor Governmental Approvals, (ii) rectifying Latent Defects and (iii) DB Contractor Changes. The LTA considers there should be sufficient headroom in the DB and OM cap on liability to cover the above events.
- 7.3.3 In the case of delay to the PSA Date, any unavoidable costs incurred by the O&M Contractor will be paid by the DB Contractor, which in the LTA's views is reasonable and appropriate. The LTA notes that the DB Contractor will also reimburse O&M Contractor for O&M Contractor's losses resulting from the termination of the Vehicle Supply Subcontract for the DB Contractor's convenience or for a DB Contractor BT Default (as defined in the Vehicle Supply Subcontract).

## 8 PAYMENT MECHANISM

### 8.1 Overview of Payment Mechanism

8.1.1 This section describes the main principles behind the mechanism by which the Developer will be remunerated. Remuneration will take place: (i) during the D&C Period (ii) at Service Commencement and (iii) throughout the Operating Period. The Payment Mechanism is availability-based and it is detailed in Article 11 – Payments to Developer, Article 15 – Deductions and Noncompliance Points, Article 16 – Default Remedies, and in Exhibit 4 of the DBFOM Agreement.

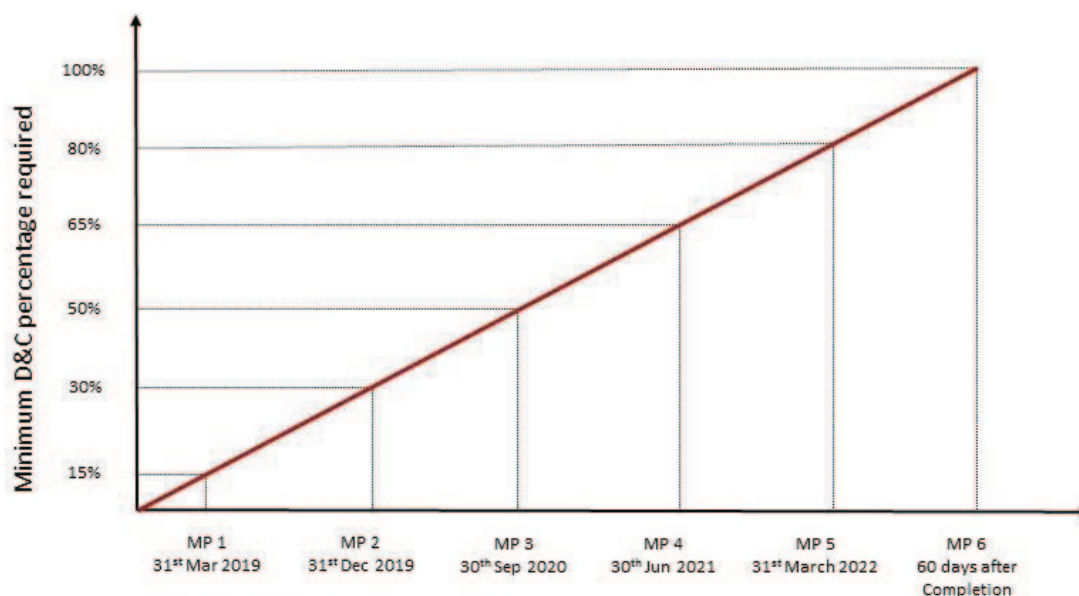
### 8.2 Payments during the D&C Period

8.2.1 Payments during the D&C Period can be considered under 2 main categories:

- Milestone Payments; and
- Additional D&C Payments

8.2.2 LAWA will make six milestone payments to compensate the Developer for completing the Work. Milestone Payments 1 to 5 are conditional on achieving a minimum percentage of D&C Work, while Milestone Payment 6 will be received when Final Completion is achieved. The payment process is set out under Exhibit 4A and must reach the minimum percentages shown no earlier than the dates set by LAWA as summarized below:

Figure 8-1 Scheduled Milestone Completion Dates



Source: PA Exhibit 4A Table 1.1

8.2.3 Under PA Article 5.7.2.2, the D&C Percentage completion is determined by reference to the LTA's report to lenders which "shall clearly state the D&C Percentage as of the date of the report, and the invoices approved by the LTA in connection with the foregoing".

8.2.4 Each Milestone payment is valued at \$168,291,515.12.



- 8.2.5 The Additional D&C Payments are to account for the impact of the Additional TVA Mitigation Work and Scope Modifications agreed and finalised pre-Commercial Close. These are lump sum payments to be paid as follows:

Payment #	Payment Date	Conditions of Payment	Payment Amount
1	September 30, 2018	Minimum D&C Percentage of 10%	\$2,152,082.50
2	Date that LAWA pays Milestone Payment 1	Payment by LAWA of Milestone Payment 1	\$6,456,247.60
3	Date that LAWA pays Milestone Payment 2	Payment by LAWA of Milestone Payment 2	\$6,456,247.60
4	Date that LAWA pays Milestone Payment 3	Payment by LAWA of Milestone Payment 3	\$6,456,247.60

PA Exhibit 4

- 8.2.6 In addition to the above the PA provides a number of allowances for works should they be performed by the Developer. These include allowances for (i) Streetscape, Landscape and Public Realm (\$6m); (ii) Hazardous Materials Management Work (\$3.7m); (iii) Art Accommodation and Installation Work (\$15m) and (iv) Work relating to a potential Additional Station (\$118.45m). It is noted that should the costs associated with the above work items be within the LAWA Allowance then a Change Order is not required, however, should the associated costs be more than the LAWA Allowance the additional amounts would be paid by LAWA pursuant to a Change Order notwithstanding this the Additional Station would be subject to a LAWA Change regardless of cost. The PA caps the aggregate amount payable to the Developer for Milestone Payments, Availability Payments, LAWA Allowances and the Additional D&C Payments at \$4,895,750,000. Noting that this Not to Exceed amount does not prejudice any other claims for compensation or other payments otherwise available to Developer under the PA, including Utility Rate Risk Adjustments.

### 8.3 Payments during the Operating Period

- 8.3.1 LAWA will make monthly availability payments to the Developer during the Operating Period, compensating for long term capital repayment, and the operations, maintenance and rehabilitation works performed in accordance with Exhibit 4B (Availability Payment Mechanism).
- 8.3.2 Availability Payments to the Developer will commence during Operating Year 1, which starts immediately following the Passenger Service Availability (PSA) Date. The trigger for PSA is that all D&C Work is complete (except for APM System Punch List items that do not affect normal and safe use, and operation of the APM System, and any D&C Work that, by its nature, is to be performed after the Passenger Service Availability Date), and all other prerequisites for start of Passenger Service have been met, as defined in Exhibit 15E.
- 8.3.3 The PSA Deadline is set as March 31, 2023. LAWA has no obligation to commence paying Availability Payments December 31, 2022, even if the Developer has achieved PSA before that date.
- 8.3.4 The annual Maximum Availability Payment (MaxAP) for Operating Year (y) ( $MaxAP_y$ ) is calculated for any period commencing after the PSA Date as follows:

$$MaxAP_y = MAPC \times 1.03^{y-1} + MAPO \times ESC_y$$

Where:

$MAPC$  means Base Capital MaxAP [\$65,064,858.60]

$MAPO$  means Base Operating MaxAP [\$28,422,366.74]

$ESC_y$  means the escalation factor calculated in accordance with Exhibit 4B, Part A Section 1.4 (Availability Payment Escalation).

$y$  means the numbered Operating Year commencing on the first of the Month in which the Passenger Service Availability Date occurs and on each twelve-month anniversary thereof.

- 8.3.5 Escalation is set for MAPC (compensation for debt and equity payments) at 3.0% per annum, and for MAPO (compensation for O&M, insurance and Developer costs during the Operating Period) on a mixed basket of indexes as shown below:

**Table 8-1 MAPO Escalation Indices**

Index	Percentage	Definition
CPI	30%	Consumer Price Index – Los Angeles-Riverside-Orange County for all Urban Consumers, All Items
LABI	40%	Employment Cost Index – Wages and salaries for Private industry workers in West
MMPI	15%	Metal and Metal Products Index, Not Seasonally Adjusted
TEI	15%	Transportation Equipment Index, Not Seasonally Adjusted

Source: PA

- 8.3.6 Maximum Monthly Payments ( $MMP_m$ ) are also subject to limitations and exceptions. These  $MMP_m$  will be calculated as the monthly amount of the annual MaxAP plus, for the month immediately following the end of each quarter, a Utility Rate Risk Adjustment (URRA) as per Exhibit 4B – Appendix B – Art 3. URRA has an Electricity Rate Risk Share (ERRS) component and a Water Rate Risk Share (WRRR) component as follows:

For the first month of a quarter:

$$MMP_m = \frac{1}{12} \times MaxAP_y + URRA_{q-1}$$

For second and third months of a quarter:

$$MMP_m = \frac{1}{12} \times MaxAP_y$$

- 8.3.7 The monthly disbursement will be subject to reductions from the  $MMP_m$  based on the Applied Deductions (AD). These deductions are described on Section 8.6 of this report below.
- 8.3.8 Exposure to utility rate movements is only applicable in the event that the O&M over consume on the as-bid consumption commitment. The adjustment mechanism exists to cover any energy rate changes that may occurred, each quarter. If the O&M over consumes, and the rate in the quarter is also in excess of the setting rate, then O&M are exposed to the rate increase for the portion of over consumption. The combined utilities bills represent approximately 17% of the total O&M budget.
- 8.3.9 The indexation mechanism provides a good degree of flexibility to the Consortium and the weighted basket of chosen indices is broadly in line with the expected cost base

## 8.4 Increased Oversight of the Project and the Work

- 8.4.1 Under Article 15.5.3, excessive Noncompliance Point accumulation can lead to (i) increased LAWA Oversight and (ii) termination as shown below:

**Table 8-2 Noncompliance Point triggers for increased oversight and termination**

Initial Trigger	Increased Oversight	End trigger	Written Notice <sup>1</sup>	Termination
NCP in rolling 12 months	200 NCP	Cured all breaches and reduced to less than 200 NCP in rolling 12	300 NCP	400 NCP
NCP in rolling 36 months	550 NCP	Cured all breaches and reduced to less than 550 NCP in rolling 36	825 NCP	1100 NCP
Persistent Unavailability Event	One in prior month	no Persistent Unavailability Event has occurred in the prior six Months	Two in prior 12 months	Three in prior 12 months
APM Operating System failure	shutdown of 24 hours or more	Developer achieves 99.5% APM Operating System Availability in a month, No APM Operating System Shutdown lasting 24 hours or more has occurred in the prior six Months	Shutdown of 48 hours or more	Shutdown of 96 hours or more
Developer fails to submit remedial plan in accordance with Section 7.12.2.1 or Section 9.6.1.3		Cured failure		
Notes: (1) Written Notice sent by LAWA but no additional sanctions				

Source: PA

- 8.4.2 For pass-down thresholds on sub-contracts please refer to Section 5.2 (DB Contract) and Section 6.1 (OM Contract).

#### **LTA Opinion**

- 8.4.3 The LAWA payment mechanism is similar to other APM/LRT payment mechanism structures seen elsewhere with the emphasis placed on maintaining a good user experience in respect of APM vehicles keeping the timetable. The escalation basket of indices would appear appropriate and broadly aligned to operating costs incurred.

### **8.5 Noncompliance Points and Payment Deductions during the D&C Period**

#### **Introduction**

- 8.5.1 Each Milestone Payment is subject to deductions due to D&C Noncompliances (NC), as per Table 1 of Exhibit 4C of the DBFOM Agreement. If NC Deductions are greater than 10% of any Milestone Payment then any balance over the 10% is held over to next Milestone Payment (Exhibit 4A 2.5).
- 8.5.2 Each of Milestone Payments 1 through 5 shall be in the amount of the sum of all Deductions calculated in accordance with the D&C Period Noncompliance Occurrences Table set forth in Exhibit 4C for the period (i) commencing 60 days before the previous Scheduled Milestone Payment Date, or if none, commencing on the Effective Date; and (ii) ending 60 days before the Scheduled Milestone Payment Date for the Milestone Payment to which the Deductions will apply.
- 8.5.3 Milestone Payment 6 shall be in the amount of the sum of all Deductions calculated in accordance with the D&C Period Noncompliance Occurrences, Table set forth in Exhibit 4C, for the period commencing 60 days before the Scheduled Milestone Payment Date for Milestone Payment 5 and ending on the Final Completion Date.

- 8.5.4 D&C Period Noncompliance Deductions will be double the amount calculated pursuant to Section 2.2 of Exhibit 4A with respect to any period for which the event resulting in the assessment of Deductions occurs on a Critical Day (Friday to Tuesday around Memorial Day, Friday and Monday either side of Thanksgiving, Sunday before Christmas day to Jan 3rd, plus five other days per year nominated by LAWA).
- 8.5.5 The deductions applicable to the Milestone Payments are described in Exhibit 4C – Table 1. There are 23 noncompliances categorized into seven types, related to: Submittals, Inclusivity, Labor, Public Outreach, Road Cleaning, Traffic Maintenance, Parking Closures
- 8.5.6 The D&C Period Noncompliances have rectification periods that range between 2 hours (e.g. public outreach notifications) and 30 days (e.g. missing inclusivity targets), and deductions which range from \$500 to \$100,000.
- 8.5.7 The Noncompliance Occurrences which could result in deductions to the Milestone Payments are described in Exhibit 4C - Table 1 in the form shown below:

**Figure 8-2 Examples of D&C Period Noncompliances**

ID	Element Category	Required Task	Minimum Performance Requirements	D&C Noncompliance Points	Rectification Period	Interval of Recurrence	D&C Noncompliance Deductions in \$ (for new or recurred Noncompliance Events)	Relevant Section(s) of Contract Docs
1	Submittals	APM System Maintenance Plan	Submit APM System Maintenance Plan by the time prescribed in the Contract Documents	0	14 days	14 days	2,500	TPs, Part 2C, Section 3.3, TPs, Part 2A, Section 5.7
19a	Maintenance of Traffic	Planned Lane Closure	No lane shall be closed outside the time period detailed in the approved Traffic Control Plan on: W. Century Blvd; Airport Blvd; Aviation Blvd; W Arbor Vitae St	2	N/A	15 minutes	10,000	TPs, Part 2A, Section 16.4.1, Table 16-2

Source: TP Exhibit 4C Table 1

- 8.5.8 There are 23 D&C Noncompliances categorized into nine category types as highlighted below:

**Table 8-3 D&C Period Noncompliance categories**

Category Type	No. in category	Description	Rectification period	NC Points	NC deductions
Inclusivity	11	Not meeting LSBE, LBE, DVBE targets	N/A to 30 days	4 – 50+	\$0 - \$20,000
Submittals, other certificates	10	Failure to submit Plans, Schedules or Reports in time	None to 14 days	0 - 20	\$0 - \$2,500
Traffic Maintenance	7	Keep lanes closed beyond planned lane closure	None to 24 hours	1 - 10	\$500 - \$10,000
Labor / Key Personnel	4	Not meeting local hires and apprentices targets	N/A to 28 days	10 – 45+	\$0 - \$120,000
Public Outreach	2	Not providing adequate written notice before work activities or road closures	None – 2 hours	0	\$500 - \$20,000
Road cleaning	1	Not cleaning roadways and walkways daily	None	0	\$2,500
Parking Garage closures	1	Maintaining a minimum number of car park spaces	None	0 - 10	\$40,000

Category Type	No. in category	Description	Rectification period	NC Points	NC deductions
Constructing without a design	1	Not obtaining approval for Release for Construction documents before starting construction	24 hours	20	\$40,000
ADA Compliance	1	Relates to ADA certification Permanent and temporary construction	None	20	\$40,000

Source: Exhibit 4C – Table 1

### Consortium Analysis

- 8.5.9 The DBJV has undertaken a review of the likely D&C Noncompliance Occurrences and assessed the Noncompliance Points and Noncompliance deductions as shown below

**Table 8-4 Consortium D&C Period Noncompliance Points and Noncompliance deduction assessment**

Item	LINXS assessment	DB Contract Termination value	PA Termination value
Assessed Rolling 12-month Noncompliance Points	40	320	400
Assessed Rolling 36-month Noncompliance Points	110	880	1100
Assessed D&C Noncompliance Deductions	\$4m (full period)	N/A	N/A

Source: LINXS

- 8.5.10 The DBJV considers that the greatest exposure to deduction penalties relates to potential failure to meet inclusivity targets particularly the LAWA SBE Ordinance<sup>3</sup>: *"A Contractor that fails to maintain the Local Business, Local Small Business or Local- State Disabled Veterans Business commitment established for a Contract shall be subject to a penalty up to ten percent (10%) of the amount of the applicable Subcontract. At the end of each project, before final calculation of any penalty, LAWA may withhold from the Contractor as disputed funds 150% of the estimated amount of any penalty."*
- 8.5.11 The DBJV considers it will meet these requirements and cites as evidence it has outperformed by on similar targets elsewhere achieving circa 30% on Northern Virginia Express Lane projects and currently also on the Purple Line P3 project. It has also looked at the extent of the local certified business community which it considers is more extensive than in other regions such as Virginia. Currently it has a database of over 2,000 such firms. Notwithstanding it has assumed a worse case of failing to meet the stated inclusivity requirements by up to 4% (28% required) and has included a risk provision of just under \$4m in its contingency costs.
- 8.5.12 Beyond inclusivity, the DBJV considers the main area of potential deductions is related to overruns on lane closures to World Way Upper and Lower Levels (ID No. 18 on Table 1, Exhibit 4C). The DBJV recognise the importance of this area to LAWA and have allowed buffers to their workplan and schedule in order to reduce this risk to a very low level assessed as only a handful during the whole of the construction period.

### D&C Period NC Points and deductions - LTA Analysis and Opinion

- 8.5.13 The LTA has undertaken its own analysis to provide an independent assessment of (i) the reasonableness of the contractual provisions related to deductions during the Construction Period and (ii) levels of deductions that

<sup>3</sup> LAWA SBE Ordinance 184938, Chapter. 1, Art. 23, Sec 10.49.8

could reasonably be incurred by LINXS during the Construction Period as a result of D&C period Noncompliance Occurrences.

- 8.5.14 This analysis is based on a base case and realistic worst case assessment against each Noncompliance category, the LTA's assessed likely deductions have been aggregated using a deterministic approach across the full construction period. Assessed potential Noncompliance Points range from a base case of 20 points to a worst case of 115 points per year. Based on the LTA's analysis, the assessed Noncompliance Points provide adequate headroom to a termination event. Based on the rigorous MOT planning and consultation regime required by LAWA and the DBJV's proposals in this regard, and on the assumption procedures will be followed, the LTA concurs with the DBJV assessment of likely lane closure Noncompliances as low.
- 8.5.15 Assessed deductions excluding SBE range from \$50,000 to \$170,000 per year. For discussion on contingency allowances provided for by the DBJV, please refer to Section 13.3.
- 8.5.16 For the avoidance of doubt, all D&C Period Noncompliance deductions detailed in the PA are passed down back-to-back to the DBJV through the DB Contract.

## 8.6 Noncompliance Points and Payment Deductions during the O&M Period

- 8.6.1 Monthly Payments during O&M Period are subject to deductions. These deductions are calculated quarterly and are applied on the first month, and cannot exceed 40% of MaxAP for a quarter. Any amount in excess of that 40% will be rolled over to the next month. Deductions can be due to:

- Unavailability Deductions
- Noncompliance Deductions
- Utility Rate Risk Adjustments

- 8.6.2 Should a deduction occur under more than one heading for instance on APM Operating System shutdown then the highest calculated monetary deduction shall prevail.

- 8.6.3 Unavailability Deductions ( $UA_m$ ) with respect to Month ( $m$ ) will include Station Unavailability and APM Operating System Unavailability and are calculated in accordance with Exhibit 4Bas follows:

$$UA_m = \left( OSUAF_m + \frac{SUA_m}{t_m} \right) \times MaxAP_y \times \frac{1}{12}$$

Where:

$SUA_m$  means the Station Unavailability Period during Month calculated and adjusted in accordance with Section 2.1 of Appendix A expressed in hours.

$OSUAF_m$  means the APM OS Unavailability Factor

$t_m$  means the number of hours in Month

- 8.6.4 Noncompliance is assessed under Article 15 (Deductions and Noncompliance Points) and Exhibit 4C (Noncompliance Occurrence Tables). A Noncompliance Event occurs after non-rectification within the Rectification Period and will result in either or both the assessment of Noncompliance Points in accordance with Article 15.4 of the PA and the assessment of Noncompliance Deductions in accordance with Exhibit 4. Double points are awarded for any event resulting in the assessment of Noncompliance Points on a Critical Day.

- 8.6.5 Table 2 of Exhibit 4C includes 80 possible Noncompliance events classified in 19 categories, with rectification times ranging from 10 minutes (e.g. notification of suspicious items) to one month (e.g. non-submission of a Failure Analysis and Correction Report) and penalties ranging up to \$5 million for major service degradation lasting longer than 36 hours.
- 8.6.6 No points shall be assessed for Noncompliance Events that occur during the first 90 days following the Passenger Service Availability Date unless related to lines 62 to 80 in Table 2 (mode downtime events, major service degradation, APM Operating System Shutdown) where a 50% tariff shall be applied. If two or more Noncompliance occurrences are covering the same failure then the worst tariff is applied. 100% of D&C inclusivity failures and 50% of the maximum number of Noncompliance Points applicable to the Noncompliance Event during D&C Period can be carried over beyond Passenger Service Availability Date.
- 8.6.7 The Noncompliance Occurrences which could result in deductions to the Availability Payments during the O&M Period are described in Exhibit 4C - Table 2.

**Figure 8-3 Examples of O&M Period Noncompliances**

ID	Element Category	Required Task	Minimum Performance Requirements	O&M Period Noncompliance Event Points	Rectification Period	Interval of Recurrence	O&M Period Noncompliance Deductions in \$ (for new or recurred Events)	Relevant Section(s) of Contract Docs
1	Insurance	Verification of Insurance Coverage	Developer shall deliver to LAWA the written binder of insurance by the time required by Section 10.1.2.4 (a) of the Agreement	2	7 days	7 days	2,500	DBFOMA 10.1.2.4(a)
8	Submittals	O&M Daily Report	Developer shall automatically email the O&M Daily Report in the form and timescale required by the Contract Documents	1	N/A	24 hours	500	Part 2A, 6.7, Part 3, 2.2.5.4.2

Source: Exhibit 4C – Table 2

- 8.6.8 There are 87 noncompliances categorized into 20 types as highlighted below:

**Table 8-5 O&M Period Noncompliance categories**

Category Type	No. in category	Description	Rectification period	NC Points	NC deductions
Performance	20	Mode Downtime Events, Service Degradation, APM OS system shutdowns	10 minutes +	1 – 200+	\$2,500 - \$5 million
Operations	11	Station lighting, elevators, walkways, trapped passengers, departure tests	10 mins – 28 days	1 - 2	\$500 - \$5,000
Maintenance	7	Preventative maintenance of APM OS, Vehicles, platform doors	24 hours – 2 days	2 - 10	\$5,000 - \$20,000
Project Management	5	Key personnel, access to data, training program and personnel	1 hour – 28 days	1 – 10	\$2,500 - \$40,000
Submittals	5	Failure to submit plans, reports on time	None – 7 days	1 - 2	\$500 - \$10,000
Cleaning	5	Vehicle, station and spillages	None – 7 days	1 - 2	\$500 - \$2,500
Vandalism	5	Vandalism damage and graffiti	1 hour – 14 days	1 - 2	\$250 - \$2,500
Inclusivity	4	Not meeting LSBE, LBE, DVBE targets	N/A	5 – 15+	As per Business Enterprise Program

Category Type	No. in category	Description	Rectification period	NC Points	NC deductions
Labor	3	Local hires, O&M workforce development	N/A	20+	\$50,000+
Lane Closures	3	Closures outside those approved	None – 24 hours	1 - 10	\$500 - \$50,000
Handback	3	Renewal work Plans, Training and transition Plans	7 – 28 days	2	\$2,500
Security systems	3	APM system security, CCTV maintenance	8 hours – 7 days	2 - 10	\$500 - \$20,000
Operations and Maintenance	2	Inaccurate records, structures inspections	10 – 28 days	2 - 10	\$2,000 - \$25,000
Roadway / walkway Maintenance	2	Repairing of potholes etc	7 days	1	\$500
Safety	2	Failure to submit plans	50 days	1 - 2	\$500 - \$2,500
Fire, Life, safety systems	2	Failure to inspect, test and maintain	8 hours	10	\$20,000
Insurance	1	Verification of Insurance Coverage	7 days points	2	\$2,500
ADA Compliance	1	Failure to provide certification	none	20	\$40,000
Environ. Compliance	1	Notification of hazardous mats	15 mins	2	\$2,500
Public Outreach	1	Public notification	48 – 72 hours	1	\$500

Source: Exhibit 4C – Table 2

#### Utility Rate Risk Adjustment (URRA)

- 8.6.9 As mentioned in Section 8.3.6 the Maximum Monthly Payments allows a URRA for both Electricity Rate Risk Share (ERRS) and Water Rate Risk Adjustment (WRRRA) as follows:

$$URRA_{q-1} = ERRS_{q-1} + WRRRA_{q-1}$$

**ERRS** the adjusted electricity consumption (use actual consumption if less than bid consumption or use bid consumption if greater than or equal to actual consumption) multiplied by the difference between the actual average electricity rate less the baseline electricity rate (\$0.17/KWh) indexed at 4% per annum.

**WRRRA** the actual water consumption multiplied by the difference between the actual average water rate less the baseline water rate (\$8.9/HCF) indexed at 5% per annum.

#### Consortium Analysis

- 8.6.10 The Consortium has undertaken a detailed assessment of Operating Period Noncompliance points and deductions through the following process:

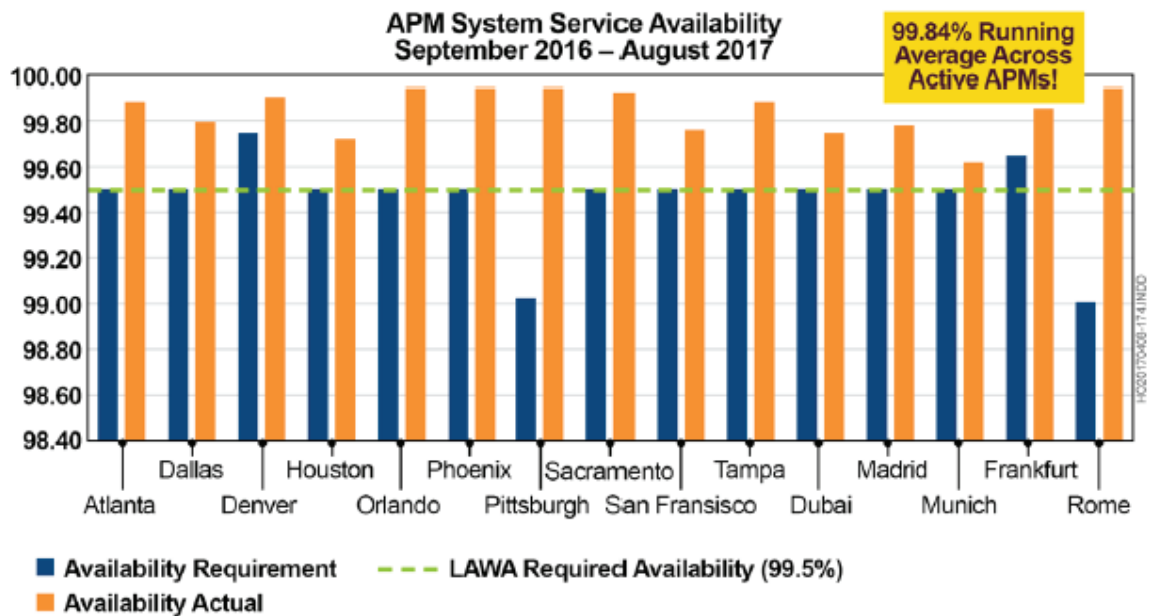
- A comprehensive Monte Carlo Model using the @Risk software was established for deduction analysis;
- NPE events inputs were assess by all OMJV partners and run in this model;
- Model outputs were then evaluated to identify potential mitigating strategies to incorporate in the O&M cost model;



- Residual event probabilities remaining in the model forming the basis of the Consortiums deduction provision costed into the O&M cost model.

8.6.11 APM system availability performance was assessed using Bombardier experience across all North American APM sites with the same availability formula. Bombardier operates more APM Systems globally than any of its competitors and has provided evidence on a history of consistently exceeding the 99.5% availability required by LAWA, as shown below.

Figure 8-4 Bombardier APM historic service availability



Source: LINXS Volume 1 Book C1

- 8.6.12 APM OS Unavailability has been determined through performance achievement for equivalent APM systems in North America under the identical availability performance regime. According to historic data and modelling, the Unavailability will drop below the 99.5% threshold on average once every 16 months where a deduction will be incurred. The O&M cost provision included assumes once every 16 months the Unavailability drops to 99.2% resulting in a 3% deduction of that monthly payment.
- 8.6.13 Fixed Facility availability performance (vertical conveyance and life safety systems) was assessed using vendor performance data and DB design and concluded that no cost provision is required due to the significantly redundant design regarding vertical conveyances. i.e. there are multiple pieces of equipment required to meet the TP passenger flow requirements, enabling the OMJV to adequately manage VC availability with no impact. LAWA clarified the intent of the station unavailability formula during client meetings and confirmed that the intent of the formula is to penalise for major/significant VC outages per station.
- 8.6.14 The Consortium confirmed that in all assessments, the Noncompliance monetary deductions were more onerous than the Unavailability deductions for the same reduced performance scenarios and that the Noncompliance monetary deductions have been used to assess the deductions contingency in the cost model.

**Table 8-6 Consortium O&M Period Noncompliance Points and Noncompliance Deduction assessment**

Item	LINXS assessment	OM Contract Termination value	PA Termination value
Assessed Rolling 12 months Noncompliance Points	81	320	400
Assessed Rolling 36 months Noncompliance Points	242	880	1100
Assessed O&M Noncompliance Deductions	\$6.7m (full term)	N/A	N/A

Source: LINXS

- 8.6.15 The monetary deductions for Noncompliance with inclusivity requirements have been calculated per LAWA Ordinances relating to the various inclusivity components of SBE/DBE/DVBE/LBE, as per Exhibit 4C Table 2. Based on historic performance on other projects and market soundings, the OMJV does not consider there is any risk of Noncompliance to the project specific inclusivity requirements, and their potential adjustment over the term, due to their robust inclusivity strategies (scope of subcontracted services / backup contractors etc.). The costed Noncompliance provision does not include a component related to inclusivity. OMJV will monitor actual inclusivity compliance over the term with specific inclusivity tracking software as part of the required monthly performance reporting, further ensuring compliance to the requirements to demonstrated at all times.

#### **O&M Period NC Points and deductions - LTA Analysis and Opinion**

- 8.6.16 The LTA has undertaken its own analysis based on a base case and worst case assessment against each Noncompliance category. Assessed likely deductions have been aggregated using a deterministic approach assessed across the full Operating Period. Assessed potential Noncompliance Points range from a base case of 74 points to a worst case of 238 points per year. Assessed deductions range from \$190,000 to \$570,000 per year, approximately 0.8% - 2.4% of the average annual O&M cost.
- 8.6.17 Based on the LTA's analysis, the assessed Noncompliance Points provide adequate headroom to a termination event and should not impact the final Milestone Payment (which occurs after the PSA date) and are in line with the OMJVs assessment. For the avoidance of doubt, all O&M Period Noncompliance deductions detailed in the PA are passed down back-to-back to the O&M Contractor through the O&M Contract.

## **8.7 Energy Modelling**

- 8.7.1 LINXS has retained two very experienced energy modellers to calculate the energy requirements for the APM throughout the O&M Period: Bombardier Transportation (BT) for the traction power and MCW for buildings and ancillary power supplies. BT will be one of the JV partners during the O&M Period and MCW has previously worked with ACS on the modelling for Finch West LRT, Eglinton LRT, and Edmonton LRT and is very familiar with North American P3 energy modelling requirements.

### **Traction Power**

- 8.7.2 The traction power requirements modelled by BT has been developed using a sophisticated rail operations simulation tool to calculate the power draw down requirements for the LAX APM. The model requires detailed input to accurately calculate the electrical power requirements during the daily operational cycle, including operational metrics (speed/location profile), the BT APM vehicles power needs, the alignment of the route, and the passenger loadings.
- 8.7.3 Bombardier has significant experience using its energy modelling tool which it has used on LAX APM. It has used this model to model the energy costs for other LRT and APM commissions, including Vancouver SkyTrain system, Detroit Downtown Automated People Mover, Kuala Lumpur LRT System, Las Vegas Monorail System, Gold Coast

Rapid Transit, Sao Paulo Expresso Tiradentes, King Abdullah Financial District Monorail, Al Maktoum APM, Frankfurt T3 APM and NYC Jamaica Station to JFK Airport Light Rail System. Additionally, this modelling tool has been used for LRT P3 contracts including Edmonton, Eglinton, and Ottawa.

- 8.7.4 BT has used EnerGplan v.2.3.1 to determine the consumed and regenerated vehicle energy per route. EnerGplan is a graphical-based simulation tool that provides the transit system designer with the ability to analyse and optimize the power system configuration and minimize the energy consumption of the complete transportation system. The flexibility of this software allows the user to model virtually any transit system of any complexity.
- 8.7.5 For LAX APM, EnerGplan has been used only to model the traction energy (i.e. the energy taken from the transformer/rectifiers to supply the vehicles). It includes both passenger service, and non-passenger service vehicle movements which includes transitions to and from service as well as the MSF storage and yard movements, and internal workshop traction power (stingers). It also includes all losses associated with the traction transformer and rectifier, as well as distribution losses in the power rails and traction power feeder cables.
- 8.7.6 The following elements were considered in the BT traction energy estimate: alignment information (grades, station/turnback details, switches, etc.); speed restrictions; vehicle model (i.e. mass, propulsion, auxiliary, drag, etc.); passenger loading; revenue service daily operating schedules; service transitions; vehicle maintenance activities; vehicle storage; traction power system configuration and losses; and, fleet receptivity, i.e. the ability of the fleet to reuse any power regenerated by vehicles slowing or stopping.

### Buildings and Ancillary Power

- 8.7.7 The energy requirements for the MSF, and all the stations' HVAC requirements have been simulated by MCW using a specialist software package IESVE developed by Independent Environment Solutions (IES). This is an industry renowned software package that models whole building energy requirements which has been used and accepted on numerous P3s in North America. It has also been accepted on applications for LEED, building permits, site plan applications, and incentive applications. MCW has modelled Station and Platform Lighting, Communications and APM equipment, and LED lighting. Conveyances have all been modelled in Excel with consumption levels provided by the manufacturers supplying the equipment where this is not BT.

**Table 8-7 Calculation and modelling method for Ancillary Power requirements**

Ancillary Power Usage	Calculation Methodology
MSF	IESVE building simulation
Station Mechanical/Electrical rooms only	IESVE block model
Station and Platform Lighting	MS Excel in conjunction with Daylighting model
Communications and APM equipment	MS Excel
WOW – RFP requested design enhancements (LED lighting / display screens)	MS Excel
Conveyance	MS Excel in conjunction with simulation data from manufacturers
Solar	Solar analysis provided by Rosendin

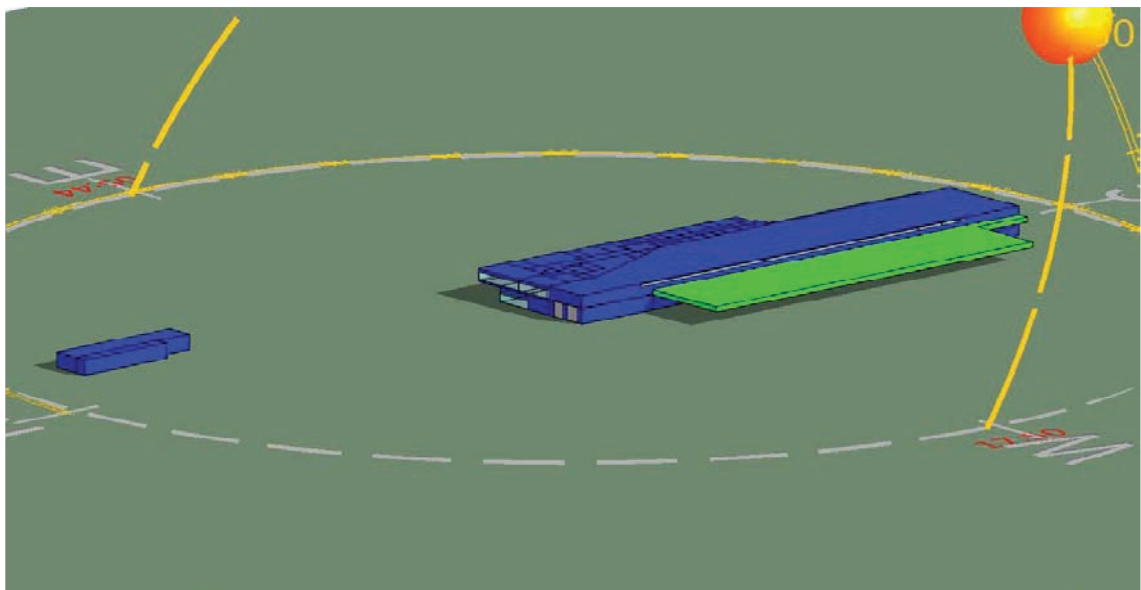
Source: LINXS

- 8.7.8 MCW has extensive experience for similar modelling of electrical usage on railway infrastructure including Eglinton Crosstown LRT where it plays an active role in the design process as well as estimating the energy requirements for the MSF and stations. It undertook a similar role on the East Rail Maintenance Facility in

Ontario Canada, a 600,000 sq. ft. facility, providing storage capacity for 22 heavy rail trains, including offices and an electrical substation which achieved its LEED Silver Certification Target.

- 8.7.9 Input to the model for the MSF assessment includes developing a 3-D model of the MSF building, with a representation of the current HVAC system modelled within it. Also required are the insulation values for the materials of all the building components such as the walls, roofs including skylights, and doors including reviewing the heat loss resulting from the operational requirements for opening and closing the large roller doors that access the maintenance lines. The building is modelled for the variations in daily temperature. Similarly, the heating and cooling requirements are modelled throughout an operational year using the seasonal weather data approved by the Contracting Authority.
- 8.7.10 Los Angeles Typical Meteorological Year (TMY) are data sets of hourly values of solar radiation and meteorological elements for a one-year period from the National Climatic Data Centre which were used to simulate weather, solar radiation, and humidity. An energy model was built for the MSF building in IESVE software, which can be seen in the figure below, with the sun path included. The IESVE simulation software accounts for the building envelope, equipment loads, lighting, HVAC systems, solar gain, humidity, and uses LAX averaged yearly weather data. Heat losses from the 'stingers'<sup>4</sup> in the shop are accounted for as an internal heat gain, but the traction consumption is excluded since it is captured in the separate BT traction power simulation.

Figure 8-5 3D view of model in IESVE software

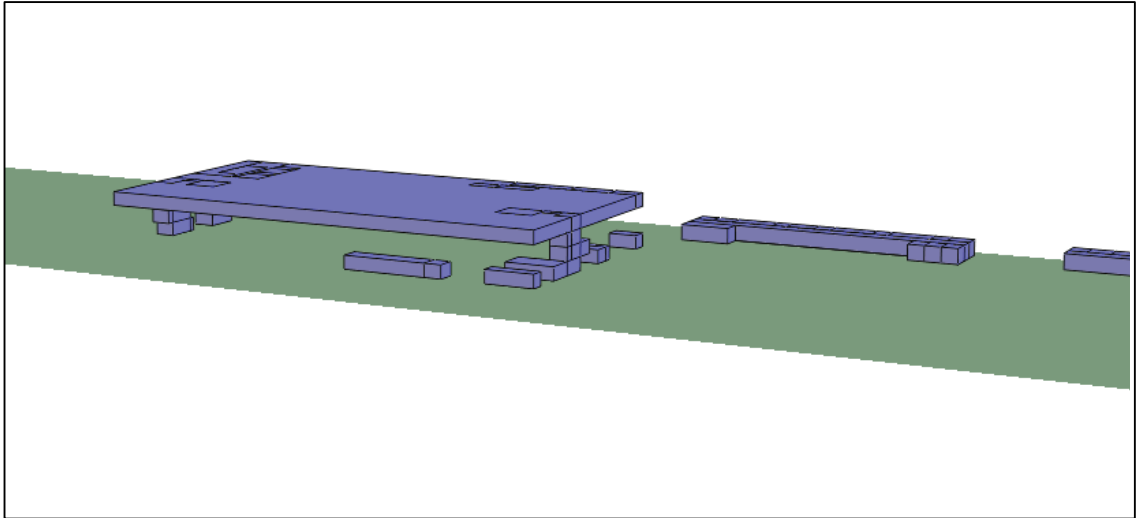


Source: LINXS

- 8.7.11 MCW set up a simple block model in IESVE to measure the cooling requirements of the mechanical and electrical rooms at each station. The platforms and walkways are not modelled because they are not ventilated or conditioned. Figure 8-6 shows a screen shot of the layout of the model which combines all stations together. The individual rooms in the model are not surrounded by the station buildings because they are largely glass and unconditioned spaces. The bigger impact is the equipment loads, which are based on the communications equipment data provided by the designers, as well as heat loss through the power supplies.

<sup>4</sup> A stinger is an electrical power lead that is used in workshops to move vehicles without their conventional power pick up source (OCS or 3rd rail type) creating a safety hazard when turned on.

**Figure 8-6 3-D view of Station cooling model in IESVE**



Source: LINXS

- 8.7.12 Station lighting was calculated via lighting fixture counts from the electrical drawings. The schedule of lighting for walkways and platform areas which are to be light by daylight were estimated to have a minimal daytime operation with power lighting to be used during night and dark periods. Typical loads from the various communications equipment and display screens were provided by the DBJV and were used to calculate the average heat gain across every hour of the whole year.
- 8.7.13 Elevators, escalators, and moving walkways were modelled using specialized and often proprietary software. Two specialist manufacturers engaged by the DBJV team provided details on the operational power requirements of the various conveyancing equipment. The independent calculations from the two manufacturers were cross-compared and correlated closely and so were used within MCW's analysis.
- 8.7.14 A summary of solar voltaic generation was provided to MSW by the DBJV, from which it calculated the average power output over the O&M Period, applying a factor whereby the output is reduced each year to 99.2% of the previous year's output, due to the system degeneration. The solar output was subtracted directly from the total energy consumption for each quarter.
- 8.7.15 The interior of the MSF building is heated with gas powered space heaters, and its water is also heated by gas.

**Figure 8-7 Annual Ancillary Power Usage**

End Use	Annual Power (kWh)
Transformer Cooling Load	139,302
ATC Equipment	938,952
UPS Losses	204,809
LV Communications	1,434,904
WOW – RFP requested design enhancements	493,607
Conveyances	3,168,266
Lighting	1,589,031
Station Cooling	438,761

End Use	Annual Power (kWh)
MSF	1,951,122
Total Electrical	10,358,761
Gas Heating	48,855

Source: LINXS

- 8.7.16 Over the 30-year operational period it is expected that the energy requirements of the MSF will change due to the programme of different interventions required on the APM fleet. MCW has modelled the input of the different interventions within the model.

### Total energy results

- 8.7.17 Table 8-8 below sets out the calculated energy requirements over the 30-year concession period.

**Table 8-8 Annual Energy Consumption**

Year	Ancillary Power kWh <sup>1</sup>	Traction Power kWh	Consolidated Power kWh	After regeneration improvement kWh <sup>2</sup>
1	8,133,761	17,332,546	25,466,307	24,192,991
2	8,151,761	17,346,083	25,497,844	24,222,952
3	8,168,761	17,359,621	25,528,382	24,251,963
4	8,186,761	17,373,158	25,559,919	24,281,923
5	8,203,761	17,386,696	25,590,457	24,310,934
6	8,221,761	17,400,233	25,621,994	24,340,895
7	8,238,761	17,413,771	25,652,532	24,369,905
8	8,255,761	17,427,309	25,683,070	24,398,916
9	8,271,761	17,440,846	25,712,607	24,426,977
10	8,288,761	17,454,384	25,743,145	24,455,988
11	8,305,761	17,467,921	25,773,682	24,484,998
12	8,321,761	17,481,459	25,803,220	24,513,059
13	8,337,761	17,494,997	25,832,758	24,541,120
14	8,354,761	17,508,534	25,863,295	24,570,130
15	8,370,761	17,522,072	25,892,833	24,598,191
16	8,386,761	17,535,609	25,922,370	24,626,252
17	8,401,761	17,549,147	25,950,908	24,653,363
18	8,417,761	17,562,685	25,980,446	24,681,423
19	8,433,761	17,576,222	26,009,983	24,709,484
20	8,448,761	17,589,760	26,038,521	24,736,595
21	8,463,761	17,603,297	26,067,058	24,763,705
22	8,478,761	17,616,835	26,095,596	24,790,816

Year	Ancillary Power kWh <sup>1</sup>	Traction Power kWh	Consolidated Power kWh	After regeneration improvement kWh <sup>2</sup>
23	8,493,761	17,630,372	26,124,133	24,817,927
24	8,508,761	17,643,910	26,152,671	24,845,037
25	8,523,761	17,657,448	26,181,209	24,872,148
2mnlhs	1,420,627	2,942,908	4,363,535	4,145,358
<b>Total</b>	<b>209,790,652</b>	<b>440,317,823</b>	<b>650,108,474</b>	<b>617,603,051</b>
Notes (1) Ancillary Power includes a gain from solar panels on the MSF. (2) Trains have two forms of braking; friction brakes as in a car, as well as electronic braking, whereby the momentum of a vehicle is used to reverse drive the electric traction motors, making them work as generators. This regenerated electricity, can be fed back into the distributive traction power circuits to power other vehicles that are simultaneously drawing power.				

Source: LINXS

- 8.7.18 Outturn costs in the Energy cost line used the unit rates provided by LAWA for electricity (\$0.17 per Kilowatt hour) drawn from the Los Angeles Department of Water and Power (LADWP) and for gas (\$0.30 per cubic meter) from the Southern California Gas Company.

#### Energy Matters – LTA Opinion

- 8.7.19 The LTA draws comfort from the experience and industrial reputation of the companies that the DBJV have employed to undertake the energy analysis, as well as from the fact that the companies, have worked together previously on the pursuits for other projects and are very familiar with North American P3 energy modelling requirements.
- 8.7.20 The LTA notes positively that the energy models being used to predict the power requirements have been tried and tested on many other APM and LRT networks and is not aware, within the industry, of systemic under-recording of energy outputs due to modelling issues. The LTA has undertaken a review of the calculations and finds that the traction power amounts are within the broad expectations for a transit system such as this with similar annual mileages and loadings. Similarly, the energy requirement for the fixed facilities also conforms to the higher end of the usual 50 to 60 percent ratio of the total traction energy that a system such as LAX APM would achieve given its high volume of powered vertical conveyances and mobile walkways.
- 8.7.21 The Interface Agreement includes an Energy Consumption Protocol (IA Attachment 4), where the liability to pay any impact of Energy Consumption in excess of the Electricity Rate Risk Share Consumption Cap (or conversely any benefit deriving from a lower consumption) is passed down to the OMJV. There are procedures set out for independent monitoring of the electricity consumption and redress back to the DBJV on discrepancies with the outturn versus the model simulation. The DBJV has rights to take corrective action and obligations to pay the OMJV for any losses not remedied.
- 8.7.22 The OMJV will also capture ridership data, through passenger counting systems installed by the DBJV, and include them in monthly performance reports, to demonstrate, if required, that consumption of consumables, such as power, has been impacted due to actual passenger counts greater than LAWA forecasts. The consumption cap will be adjusted, either up or down, based on ridership counts where the excess can be tied to passenger ridership in excess of the model inputs based on RFP requirements.

## 9 ENVIRONMENT, PERMITS and APPROVALS

### 9.1 Environmental Matters

#### Authority Requirements

- 9.1.1 Under PA Article 6.3 LAWA is responsible for obtaining and maintaining the following LAWA-Provided Approvals as specified in Exhibit 8:
- Final Environmental Impact Report (FEIR) for the LAX Landside Access Modernization Program (LAMP) under the California Environmental Quality Act (CEQA), as certified by the Board of Airport Commissioners and affirmed by the Los Angeles City Council; and,
  - FAA Finding/Record of Decision for the LAX Landside Access Modernization Program under the National Environmental Policy Act (NEPA).
- 9.1.2 It is noted that as of the Effective Date all LAWA Provided Approvals have been issued and a copy received by LINXS.
- 9.1.3 LAWA published the Draft Environmental Impact Report (DEIR) on September 15, 2016 with the Final Environmental Impact Report (FEIR) being released on February 15, 2017. On March 2, 2017, the Board of Airport Commissioners via Resolution No. 26185 certified that the FEIR has been completed in compliance with the requirements of CEQA and the City of Los Angeles CEQA Guidelines. On June 7, 2017, the Los Angeles City Council affirmed the certification of the FEIR. The Federal Aviation Administration (FAA) completed their environmental review in compliance with the National Environmental Policy Act (NEPA) and other federal requirements. The FAA issued a Finding of No Significant Impact and Record of Decision for the LAMP program on January 12, 2018.

**Table 9-1 Status of Environmental Approvals**

Approving Body	Approval date	Comment
Board of Airport Commissioners	Mar 2, 2017	FEIR certified as compliant under Resolution No. 26185
City of Los Angeles	June 7, 2017	
FAA	January 12, 2018	The FAA issued a Finding of No Significant Impact and Record of Decision for the LAMP program

Source: LAWA

- 9.1.4 The Developer must comply with the FEIR provisions as set out in the Mitigation Monitoring and Reporting Program (MMRP) which are specific to APM as set out below.

**Table 9-2 FEIR APM-specific MMRP commitments**

Aspect	Number	Comment	Report ref
Aesthetic	1	Application of Design Features to Protect Aesthetic Context of Theme Building	Section 10.5.2
Air Quality	2	Use of clean diesel and emission levels in construction vehicles, transportation related air-quality control measures	
Greenhouse Gases	1	provide a minimum of 0.5 MW solar AC power generation at the MSF facility	Section 10.6.7



Aspect	Number	Comment	Report ref
Historic Resources	2	Theme Building and ATCT	Section 9.1.14
Drainage	2	On-site stormwater management for MSF, Guideway and new roadways	Section 10.5.30
MOT	4	Maintenance of Traffic, Worksite traffic control, roadway closure restrictions	Section 10.9

Source: FEIR and Section 7.8.2 of TP Part 2A

- 9.1.5 The Developer is responsible for obtaining all other Government Approvals including those requiring environmental studies. It shall also undertake certain environmental control and monitoring activities as set out under TP Part 2A Section 7:

**Table 9-3 Environmental Control and Monitoring Requirements**

Environmental Control and Monitoring Requirement	Requirement	Process
Environmental and Hazardous Material Response Plan	A. Identification of potential environmental accidents and emergencies associated with site-specific construction activities B. Response procedures and mitigations to construction site environmental accidents and emergencies	Submittal to LAWA 60 Days prior to the planned start of construction
Environmental Protection Training Plan	Sets out the environmental awareness training program and training of all employees and subconsultants on the Project.	Submittal to LAWA 30 Days prior to the planned start of construction
Environmental Compliance Plan	How Works will comply with FEIR, environmental constraints maps, environmental permits, team roles, compliance monitoring	Submittal to LAWA within 30 days of Financial Close
Construction Site Environmental Management Supervisor (monitors environmental performance)	Certified Professional in Erosion and Sediment Control 5 years' experience in erosion and sediment control and managing environmental requirements	Named person - to be approved by LAWA

Source: TP Part 2A

- 9.1.6 There are certain Relief Events relating to environmental aspects that are available to the Developer as follows:

**Table 9-4 Environmentally related Relief Events**

Relief Event	Comments
Discovery of paleontological, cultural, archaeological or historical resources within or under the D&C Limits	Excluding Additional Properties and Temporary Areas
Discovery of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Setting Date) within or under the D&C Limits	Excluding Additional Properties and Temporary Areas

Relief Event	Comments
Discovery of Pre-Existing Hazardous Materials within the D&C Limits that: (i) render use of the Project unsafe or potentially unsafe absent assessment, containment and/or remediation or, (ii) are required by applicable Law to be recycled, treated or stored	Excluding any Known Hazardous Materials and any Hazardous Materials within Additional Properties and Temporary Areas  provided Developer has conducted an investigation of site conditions at the applicable portion of the Site within 180 days of the Effective date or the date of access to the property,
Changes in the scope of the Work required to accommodate material modifications of the FEIR requirements imposed by the FAA as part of its Finding/Record of Decision on the LAMP NEPA Environmental Assessment.	FAA determination expected in Q4, 2017.  Developer will get Compensation and Schedule Relief (identified event under Exhibit 1 to the PA). See Section 4.3.25 and Table 4-4 in our report

Source: PA

## Ecology

- 9.1.7 The FEIR advises the Project site does not include native species habitat areas that are used for movement of migratory fish or wildlife species, nor that are part of a wildlife corridor between large open space areas. There are 323 mature trees along the APM alignment some of which will be removed and replaced. Tree species include palm, jacaranda, oak, sycamore, honeylocust and wingleaf soapberry trees. None of these trees meet the criteria for being locally-protected trees. The Developer is required to conduct surveys and take into account seasonal nesting activities during removal of any trees or demolition of any structures.

## Consortium Proposals

- 9.1.8 LINXS approach is to minimize the number of trees to be removed and where removal is required two trees will be installed for every tree removed in accordance with to TP Part 2B, Section 13.2, Century Corridor Streetscape Plan states, "Trees removed along Century Boulevard in the public right-of-way and adjoining public properties will be replaced at a minimum of 2:1 ratio."
- 9.1.9 The species of newly planted replacement trees will be local native tree species to the extent feasible. Each mitigation tree will be at least a 15-gallon or larger specimen. The replacement trees will be planted within the boundaries of LAX or at a suitable off-site location. If mitigation occurs within LAX boundaries, the replacement site and tree species will be determined in consultation with LAWA's USDA Wildlife Hazard Biologist and will be consistent with FAA AC No. 150/5200-33B "Hazardous Wildlife Attractants on or Near Airports" and LAWA's "LAX Wildlife Hazard Management Plan" to avoid increasing wildlife hazards to aircraft.
- 9.1.10 Prior to any construction activities and after the nesting season, trees will be surveyed by a third party biological engineer to verify no nesting birds are present before they are removed. Where feasible, construction will be scheduled outside of nesting season for those areas of the project site that have a potential for nesting birds/raptors. If construction is scheduled to occur during the nesting season for birds/raptors (generally February 1 to June 30 for raptors and March 15 to August 15 for other birds), vegetation clearing will be conducted prior to the nesting season.

## LTA Opinion

- 9.1.11 The environmental requirements including air quality, noise and ecology are in-line with national and local regulations. The LTA notes the small number of trees that might be affected by the project and the LAWA requirements to replace on a 2 for 1 basis. LINXS have taken into account constraints of the nesting season within its schedule and has included a cost allowance for appropriate replacement trees. The LTA considers that these aspects does not pose a material risk to the project.

## Historic / Archaeological Constraints

9.1.12 LAWA commissioned a report by PCR Services Corporation in January 2015 to assess any archaeological and paleontological resources within the LAMP area the results of which are included in Appendix 1 to the FEIR. The study concluded that:

- A records search indicates no previously recorded archaeological resources within the study area, although a watching brief should be undertaken during excavations;
- A records search indicates no previously recorded vertebrate fossil localities within the study area although museum records show two fossil locations adjacent to the study area at depths between 13 to 40 feet below ground. One additional site just south of the Theme Building revealed a shell fossil at a depth of 10-12 feet below ground. The report concluded discovery of paleontological resources to be unlikely but a watching brief should be undertaken during excavations;
- A records search indicates no evidence of historic human remains or Native American cultural resources, although a watching brief should be undertaken during excavations.

9.1.13 Historic structures are identified in the FEIR as the Theme Building and the 1961 Airport Traffic Control Tower (ATCT).

**Figure 9-1 LAX Theme Building and ATCT and proximity to Parking Garage P2 A&B**



Source: internet, LTA, LTA

9.1.14 Whilst neither of these facilities are to be demolished, the APM Guideway runs close to both and the FEIR advises certain protection and control measures are to be allowed for. Section 7.8.2 of TP Part 2A qualifies which of the FEIR requirements shall apply to the Developer:

**Theme Building - MM-HR(LAMP)-1:** The Developer is not responsible to complete the preparation of the Historic Structures Report, rehabilitation of the Theme Building prior to use, and implementation of the interpretive program. For the avoidance of doubt, the Developer shall preserve and retain the open setting to recall the Theme Building's historic setting (application of mitigating design features to the APM Guideway and passenger walkways is also a requirement under MM-A(LAMP)-1.

**ATCT - MM-HR(LAMP)-2:** The Developer must protect the ATCT during demolition of the Administration Building and construction of APM Guideway by minimizing vibration and erection of physical barriers during construction.

## Contaminated Sites and Hazardous substances

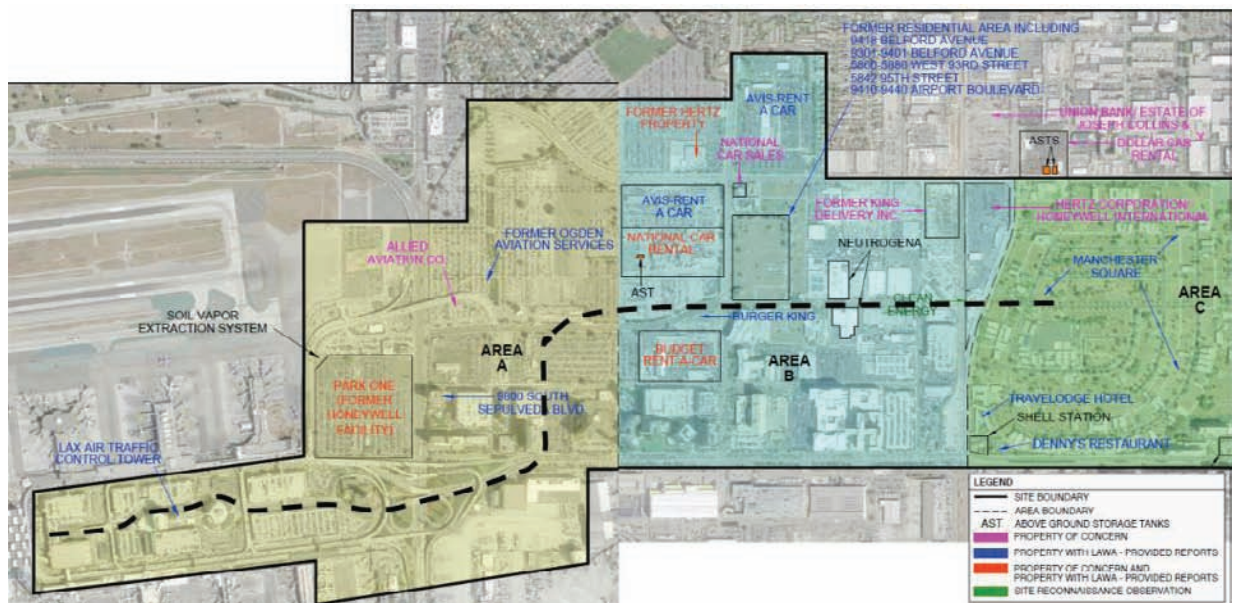
9.1.15 LAWA has commissioned various surveys as follows:

- Hazardous Materials Assessment Report by Ninyo & Moore dated October 14, 2015

- Addendum letter Hazardous Materials Assessment by Ninyo & Moore dated June 29, 2016
- Updated Hazardous Materials Assessment Report by Alta Environmental dated March 23, 2017
- Hazardous Materials Assessment memo by LAWA Environmental Program Group dated March 29, 2017
- Asbestos Survey Report by Panacea Environmental Services dated April 2017
- Lead-Based Paint Survey Report by Panacea Environmental Services dated April 2017

- 9.1.16 In the 1950's the western and central portions (between Aviation Boulevard and Sepulveda Boulevard) of the APM route were developed primarily with manufacturing facilities and residential neighborhoods. The eastern portion of the APM route at that time was predominantly developed with residential homes.
- 9.1.17 Numerous historical manufacturing, aviation maintenance, and vehicle maintenance facilities are present along the APM route. Records of hazardous material usage, storage, and disposal as well as the presence of underground storage tanks or above ground storage tanks have been identified at these facilities.
- 9.1.18 Another former aerospace manufacturing facility (Honeywell) was previously located at the intersection of Aviation Boulevard and Arbor Vitae Street. A release of chlorinated solvents and petroleum hydrocarbons at this facility has been identified. The extent of impacted groundwater that has migrated off-site and is known to extend beneath the eastern portion of the APM route.

**Figure 9-2 Compilation map of identified sites with potential hazard materials**



Source: FEIR Appendix K – Ninyo & Moore Report October 14, 2015

- 9.1.19 Properties with hazards close to the Project and are generally related to fuel storage facilities and the presence of hazardous materials (asbestos, lead-based paint) in buildings due to be demolished. The N&M report recommends the following surveys and treatments to these properties and sites:

**Table 9-5 Hazardous Material Impact Mitigation Measures**

HMI	Impacts	Mitigation Measures
1	Demolition of structures built prior to 1980 may result in the exposure of ACMs and/or LBP	Prior to construction activities undertake an evaluation of all buildings (built prior to 1980) to be demolished to identify presence of ACMs and LBP. Implement appropriate remediation.
2	Construction activities may encounter previously unidentified USTs, hazardous materials, petroleum hydrocarbons, or hazardous or solid wastes	Prepare a hazardous materials contingency plan addressing potential for discovery of unidentified hazards including decommissioning of USTs, field screening and testing, contaminant management
3	Construction activities, including demolition, may encounter or generate hazardous or solid wastes and debris	Disposal of all hazardous wastes and debris in accordance with federal, state and local laws and regulations
4	Construction activities may result in exposure of contaminated soil	Prepare and implement a soil management plan. Monitoring for VOCs. Contaminated soil to be profiled and disposed accordingly
HMI – Hazardous Material Impact, VOC – Volatile Organic Compound, ACM – Asbestos Containing Materials, LBP – Lead-based paint, UST – Underground Storage Tank		

Source: FEIR Appendix K – Ninyo & Moore Report October 14, 2015

### Consortium Proposals

- 9.1.20 LINXS has confirmed it will comply with all requirements in the PA related to the control and treatment of construction operations that may impact or be impacted by contaminated ground, hazardous materials and groundwater.
- 9.1.21 Early testing of soils for contamination will be performed during potholing and initial site investigation. Construction activities that could potential uncover additional contaminated soils will be performed under the supervision of personnel trained in identification of potentially contaminated soils (HAZWHOPPER). Quantity of hazardous materials encountered during construction will be paid at unit rates established in the contract. Quantities exceeding those in the contract will be a Change condition.

### LTA Opinion

- 9.1.22 The LTA notes positively that the FEIR has attained the necessary approvals from the Board of Airport Commissioners and Los Angeles City Council, and the FAA's issuance of a Finding of No Significant Impact and Record of Decision for the LAMP program. The APM-specific commitments in the FEIR are set out in TP Part 2A and are considered reasonable and attainable and should not pose a problem for the DBJV to comply with.
- 9.1.23 LAWA have undertaken numerous and detailed surveys which indicate that the route of the APM does not pass through ecologically sensitive areas, or properties high contamination. There are areas of lower grade contaminations which relate primarily to fuel storage facilities and the presence of hazardous materials (asbestos, lead-based paint) in buildings due to be demolished. Further surveys are proposed to be undertaken by LINXS prior to any demolition or groundwork taking place.
- 9.1.24 As commented in Section 4.3.25, there is compensation available for the discovery of pre-existing and unknown: threatened or endangered species, archaeological resources, or hazardous materials which require treatment.



## 9.2 Land Matters

### Authority Requirements

- 9.2.1 Under Article 7.5 of the PA, LAWA will provide Developer with rights of access to the Project ROW properties identified within the D&C Limits in TP Part 5 (Contract Drawings/Engineering Data) by the dates specified in TP Part 2A, Section 20.1 (ROW Conveyance) as summarized below.

Figure 9-3 LAWA ROW Zoning map and conveyancing dates



ROW Zone	Dates available
Zone 1 (CTA)	Entire area conveyed on April 1, 2018 except: <ul style="list-style-type: none"> <li>1) The Theme Building north lot will be conveyed in as-is condition by July 1, 2018. Developer shall clear the site.</li> <li>2) The surface parking lot to the east of P4 will be conveyed in as-is condition by August 1, 2018</li> <li>3) The bridge between P3 and P4 will be conveyed in as-is condition by August 1, 2018</li> </ul>
Zone 2	Entire area conveyed on July 1, 2019, except. <ul style="list-style-type: none"> <li>1) The former Delta Reservation Center will be conveyed in as-is condition by April 1, 2018</li> <li>2) The former Delta Flight Training Center will be conveyed in as-is condition by April 1, 2018</li> </ul> D&C Limits adjacent to the 6150 Century Complex shall be revised on May 1, 2021 - all demolition activity and the AOA fence relocation must be completed by that time
Zone 3	Entire area conveyed on April 1, 2018 except: <ul style="list-style-type: none"> <li>1) Access to Parcel APN 412400992 (Burger King at the southwest corner of 96th Street and Airport Boulevard) will require the Developer to provide LAWA with six (6) months written notice prior to the date it would require access to the parcel</li> <li>2) Access to Parcel APN 4125023007 (Hood Property at the northwest corner of 96th Street and D Street) will be provided on November 1, 2018</li> </ul>
Zone 4	Entire area conveyed on July 1, 2019.

Source: TP Part 2A Addendum No.2 and TP Part 5

- 9.2.2 Certain parcels have restrictions or obligations placed on them under Section 20.5 of TP Part 2A.

**Table 9-6 APM Parcel Obligations**

Zone	Parcel Owner	Obligations
3	LAWA (Burger King)	1) Maintain property access from 96th Place at all times until conveyance date. 2) Maintain utility services to property at all times until conveyance date.
3	Hood	1) Maintain property access from Belford Avenue and alley adjacent to new D Street at all times until conveyance date. 2) Maintain utility services to property at all times until conveyance date.
3	Neutrogena	1) Maintain pedestrian access and bi-directional WB-50 vehicular access to all driveways and loading docks along 96th Street, Arbor Vitae Street and alley adjacent to new D Street at all times. 2) Maintain utility services to property at all times. 3) Maintain safe pedestrian crossings at all times.
3	China Airlines Cargo	1) Maintain pedestrian access and bi-directional WB-50 vehicular access at all times. 2) No guideway columns shall be placed in a clear zone defined as extending five feet on either side of the main building entrance. 3) Maintain utility services to property at all times. 4) Protect existing trees to the extent possible.

Source: TP Part 2A Addendum No.2

### Consortium Proposals

- 9.2.3 LINXS have confirmed that their design and construction proposals can be accommodated within the ROW landtake provided by LAWA. Access restrictions will be accommodated within the construction schedule.

### LTA Opinion

- 9.2.4 The LTA notes that the risk of land acquisition has been kept by LAWA with certain access date restrictions which the Developer will need to incorporate into its construction schedule. Any land required by the Consortium outside the ROW limits needed for temporary working space is at the risk of the Developer, although LINXS has confirmed that their construction proposals and working areas can be accommodated within the ROW provided by LAWA.

## 9.3 Permits and Approvals

### Authority Requirements

- 9.3.1 Under Article 6.3, the Developer is responsible for obtaining all Permits and Approvals except LAWA-Provided Approvals related to CEQA and NEPA approval (see Section 9.1.1 for further details).

### Consortium Proposals

- 9.3.2 Table 9-7 lists the major construction permits and approvals that LINXs will submit applications for during the LAX APM Project.

**Table 9-7 LAX APM Permits**

Scope of Work	Permit Required	Permitting Agency
Stations/Guideway/M&SF	Building Permit "B-Permit"	LADBS
Stations/Guideway/M&SF	Grading Permit	LABOE
Stations/Guideway/M&SF	Haul Route Permit	LADOT

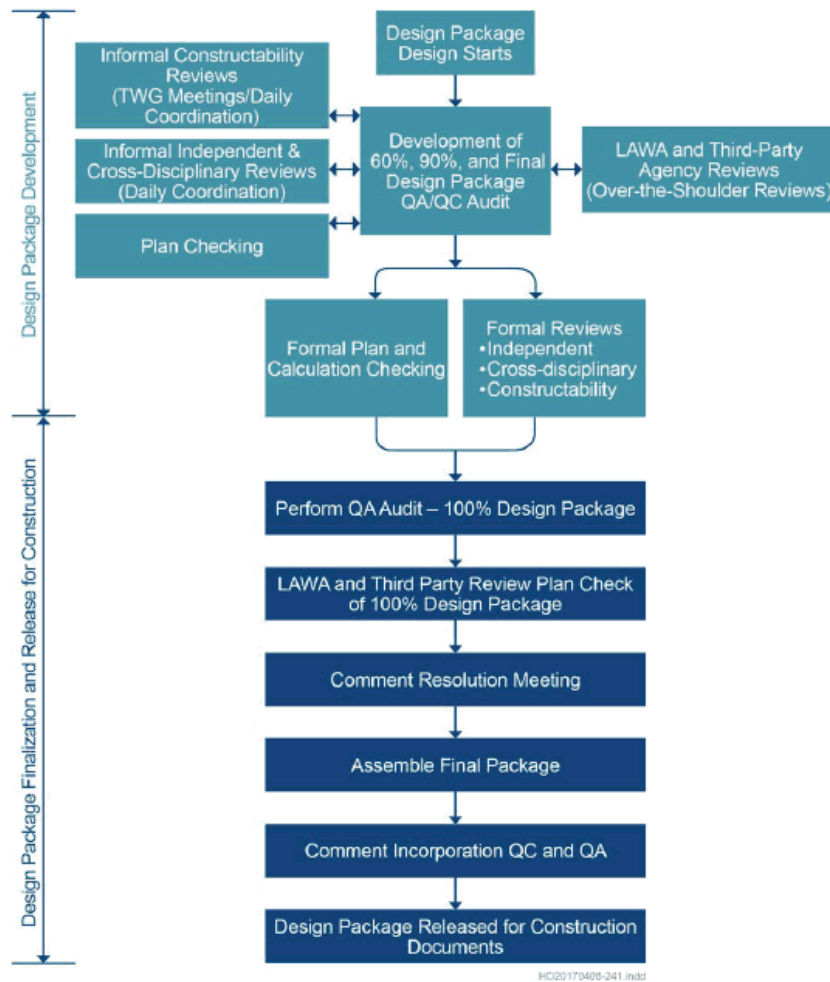
Scope of Work	Permit Required	Permitting Agency
Stations/Guideway/M&SF	Plumbing Permit	LADBS
Stations/Guideway/M&SF	Mechanical Permit	LADBS
Stations/Guideway/M&SF	Electrical Permit	LADBS
Stations/Guideway/M&SF	Fire Department/Fire Marshal Permit	LADBS and LAFD
Stations/Guideway/M&SF	Industrial Waste Permit	LADPW
Stations/Guideway/M&SF	Cultural Affairs Approval	Los Angeles Cultural Affairs Department
Traffic	Street Use Permit	LABSS
Roadways-new	B-Permit	LABOE
Roadways-minor	A-Permit	LABOE
Utilities	Sewer and Storm Drain Permit "S-Permit"	LABOE
Utilities	Revocable Permit "R-Permit"	LABOE
Utilities	Excavation Permit "E-Permit"	LABOE
Utilities	Maintenance Hole Permit	LABOE
Utilities	New Power Service Permit	LABOE and LADWP
Utilities	New Water Service Permit	LABOE and LADWP
Utilities	New Sewer Service Permit	LABOE and LADWP
Air Quality	SCAQMD Permit to Construct	South Coast Air Quality Management District
Water Quality	National Pollutant Discharge Elimination System Stormwater Permit (MS4 Permit)	Regional Water Quality Control Board, LABOS and LACFCD
Trees	Removal/Relocation Permit	LABSS
Construction within public use airport	7460 Permit	FAA
LABOE= Los Angeles Bureau of Engineering, LABOS = Los Angeles Bureau of Sanitation, LABSS = Los Angeles Bureau of Street Services, LACFCD = Los Angeles County Flood Control District, LADBS = Los Angeles Department of Building and Safety, LADOT = Los Angeles Department of Transportation, LADPW = Los Angeles Department of Public Works, LADWP = Los Angeles Department of Water and Power, LAFD = Los Angeles Fire Department		

Source: LINXS

- 9.3.3 LINXS will adopt the following design review process with third party agencies and LAWA to support the permit application process.



**Figure 9-4 Design review process to support permit applications**



Source: LINXS

### LTA Opinion

- 9.3.4 The LTA notes the permits required to be acquired and permitting process proposed by LINXS which is considered appropriate for a project of this type.

## 9.4 Utilities

### Authority Requirements

- 9.4.1 Under TP Section 25 of Part 2A, the Developer is responsible for the utility investigations, conflict resolution, design, construction, inspection, commissioning and coordination of all new and existing utility movements and protection. LAWA has identified and listed known Utility Owners' requirements, and design and construction responsibilities necessary for completion of the work in Table 9-8 as reproduced below.

Table 9-8 Utility Owners requirements

Utility Company	Type of Utility	Clearance Requirement	Utility's Design Responsibility <sup>5</sup>		Utility's Responsibility		Construction
			Responsibility	Duration <sup>6</sup>	Responsibility	Duration <sup>6</sup>	
DPW LABOS <sup>4</sup>	- Central Outfall Sewer <sup>1, 2</sup>	Horizontal - 10' min No additional loading allowed	Review any design within the sewer easement and vibration monitoring results	20 working days per submittal	Not Applicable		Not Applicable
DPW LABOS <sup>4</sup>	- Sewer, Storm Drain (LID) <sup>1</sup>	As required by Utility	Design review	20 working days per submittal	Not Applicable		Not Applicable
DPW LABOE <sup>4</sup>	- Sewer and Storm Drain	As required by Utility	Design review	20 working days per submittal	Not Applicable		Not Applicable
LADWP-Water <sup>8</sup>	Domestic and Fire Water Reclaimed/ Recycled Water	Comply with Dept of Health and Safety Regulations	Design review	20 working days per submittal	Construction of Meters		Allow 6 months
LADWP-Power <sup>4</sup>	Conversion/ Underground	3' min from encasement	Preliminary duct bank design after 85% Street design <sup>7</sup>	Allow 12 months	Connection to energized facilities, cable pull, cutover, and energize		Allow 10 months
	Overhead	Comply with CPUC	Design	Allow 4 months	Construction		Allow 10 months
	New Service	3' min from encasement	Preliminary design <sup>7</sup>	Allow 12 months	Connection to energized facilities, cable pull, cutover, and energize		Allow 10 months
Sempra Utilities	Gas - Transmission	10' min	Design	Allow 8 months	Construction		Allow 6 months
	Gas - Distribution	As required by Utility	Design	Allow 4 months	Construction		Allow 4 months
Los Angeles County Flood Control District	Storm Drain	As required by Utility	Design review	7 weeks per submittal	Not Applicable		Not Applicable
AT&T <sup>3</sup>	Telecom	As required by Utility	Design review	4 weeks per submittal	Pull cable and cutover customers		Allow 6 months
Century Link <sup>3</sup>	Telecom	As required by Utility	Design review	4 weeks per submittal	Pull cable and cutover customers		Allow 6 months
Level 3 <sup>3</sup>	Telecom	As required by Utility	Design review	4 weeks per submittal	Pull cable and cutover customers		Allow 6 months
Spectrum/Charter <sup>3</sup>	Telecom	As required by Utility	Design review	4 weeks per submittal	Pull cable and cutover customers		Allow 6 months
Verizon Business <sup>3</sup>	Telecom	As required by Utility	Design review	4 weeks per submittal	Pull cable and cutover customers		Allow 6 months
XO <sup>3</sup>	Telecom	As required by Utility	Design review	4 weeks per submittal	Pull cable and cutover customers		Allow 6 months
LAWA IMTG and FAA	Telecom and Fiber	As required by Utility	Design Review	4 weeks per submittal	Not Applicable		Not Applicable
LAWA Utilities	Domestic and Fire Water, Power, Storm Drain, and Sewer	As required by Utility	Design Review	4 weeks per submittal	Not Applicable		Not Applicable

Utility Company	Type of Utility	Clearance Requirement	Utility's Design Responsibility <sup>5</sup>		Utility's Construction Responsibility	
			Responsibility	Duration <sup>6</sup>	Responsibility	Duration <sup>6</sup>
LAWA CUP	Terminal Water (Chilled, Hot, and Return)	As required by Utility	Design Review	4 weeks per submittal	Not Applicable	Not Applicable
Chevron	Crude Oil and Gas <sup>2</sup>	As required by Utility	Design Review of Protective Measures	8 weeks per submittal	Not Applicable	Not Applicable

**Legend**

DPW – LABOS: Los Angeles Department of Public Works Bureau of Sanitation, DPW – LABOE: Los Angeles Department of Public Works Bureau of Engineering, LADWP-Water: Los Angeles Department of Water and Power Water Division, LADWP-Power: Los Angeles Department of Water and Power Division

**NOTES:** Developer responsible for all work not performed by utility owner and for obtaining all (including design performed by utility companies) required design approvals and construction permits

- 1 Developer is responsible for payment of Sewer Service Charge.
- 2 Developer shall Protect In Place.
- 3 Joint trench for low voltage utilities are acceptable; however separate pullboxes for each utility shall be provided.
- 4 See City Agreement for additional requirements
- 5 Only five simultaneous submittals at any given time.
- 6 Utility owner durations start only after Developer submittal is deemed complete by the Utility Owner.
- 7 Preliminary Design provided by LADWP-Power within 12 months will be an 85% level design of the horizontal ductbank alignment and vaults. The Developer is responsible for:
  - a) Finalizing the design – providing the vertical alignment and finalizing the horizontal alignment to Final Design;
  - b) Obtaining Final Design approval by LADWP and the AHJs that issue construction permits; and
  - c) Obtaining permits to facilitate ductbank/vault construction, such as shoring, traffic control, temporary traffic signals, and temporary street lights.

LADWP will complete their review of the Developer's design submittals in accordance with the City Agreement.

- 8 For LADWP-Water, the Utility Design and Construction Responsibility shown in this Table 25.4-1 supersedes the requirements of the City Agreement.

Source: TP Part 2A Table 25.4.-1 Utility matrix (Addendum No.2)

- 9.4.2 LAWA have awarded an enabling contract whereby Utility Owners/ Contractors have been engaged to undertake relocations in advance of contract award. A list of works being undertaken is included in Section 21 of TP Part 2A. It is noted that this list is not an exhaustive list the full list is not currently available.

**Table 9-9 LAWA advanced utility works**

Ref	Project Name	Description of Work	Start	End
U1	Replace Domestic Water in the CTA	Replace existing waterline loop and laterals within the CTA for segment phase 1 only	Oct-17	Apr-18
U5	Relocate 24" Reclaimed Waterline	Relocate existing 24" reclaimed waterline on 96th Street and on Jenny Avenue	Dec-17	Sep-18
U24	Provide Underground ductbank from "D" Street to ITF West Power Feed.	Design and Construction of underground ductbank on Westchester Parkway from "D" Street to "A" Street. Design of Underground Ductbank on "A" Street from Westchester Pkwy to ITF West Power Feed Station, with construction to be done by others.	Jun-18	Jun-19

Ref	Project Name	Description of Work	Start	End
UXX	New LADWP Electrical MH B and MH C, and Removal of LADWP Electrical MH 430 and MH 432	Design and construct two electrical manholes, removal of two existing electrical manholes, and associated electrical line installation	Jan-18	Jan-19

Source: TP Part 2A Addendum No.2

9.4.3 There are certain Relief Events relating to Utilities that are available to the Developer as follows:

**Table 9-10 Relief events related to Utilities**

Relief Event	Comments
discovery of any underground Utility (excluding Service Lines) within the D&C Limits	provided Developer conducted an investigation of site conditions at the applicable portion of the Site in accordance with Section 14.1.6.2 (Reduced Relief for Delay in Investigating Site Conditions)
(i) not identified in the Utility Information and which could not have been reasonably inferred as of the Setting Date from the presence of other facilities, such as buildings, meters, junction boxes, manholes or identifying markers, visible during a surface inspection of the Site; or	any Utility identified as Quality Level D in the Utility Information shall not be deemed to be misidentified
(ii) misidentified in the Utility Information outside of the baseline tolerance of the applicable Quality Level <sup>1</sup> ;	excluding from the foregoing any Utilities within Additional Properties or Temporary Areas
a Delay to a Utility Adjustment caused by a Utility Owner's failure to complete a task for which the Utility Owner is responsible within the required time period, in each case as specified in Table 25.1 (Utility Matrix) of Part 2A of the Technical Provisions	provided that such time period shall commence upon Developer's submission to the Utility Owner of a complete and adequate request for completion of that task, including applicable submittals if any, that meet applicable quality requirements, and provided Developer has complied with the requirements of Section 7.6.7.1.
NOTES: (1) Quality levels: A – 0 to 5ft, B – 0 to 10ft, C – 0 to 20ft, D – greater than 20ft	

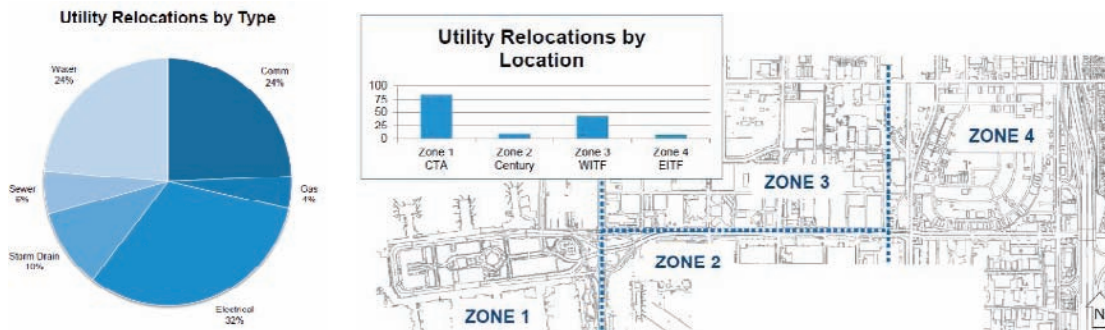
Source: PA

9.4.4 Notwithstanding the Quality Level compensation above, costs for utility work undertaken by Utility Owners are capped at \$50 million with any excess over that amount deemed as a LAWA Change. Under Article 3.3.5 the Developer shall establish a \$50m fund for utility works at Financial Close. Note any underspend on the fund is handed back to LAWA.

9.4.5 LAWA may approve a Utility Owners requests for the Developer to perform additional "betterment" work only if the work will not delay the critical path and that all additional costs are paid by the Utility Owner.

#### **Consortium Proposals**

9.4.6 LINXS has undertaken a detailed review of the utility information provided by LAWA and has identified 550 utilities of which 150 will need to be relocated, 50 removed and 350 protected.



Source: LINXS

- 9.4.7 Key Utilities (utilities with the least float) that need to be relocated are the overhead to underground powerline conversions: Aviation, 96th, and MSF site. The remaining utility relocations are important but as they are all smaller lines, the cost/schedule risks to relocating them are relatively low compared to the overhead to underground conversions. The overhead to underground conversions will primarily be reviewed and performed by LADWP. The schedule durations, although extremely long (2+ years), are defined and LINXS has put the full allowable duration (i.e. worst-case scenario) in the CPM schedule, thereby mitigating schedule risk. However, this is the reason they have the least float as it is difficult to accommodate such a long duration within the CPM. Any exceedance of the duration as set out in the PA is a Compensation Event. The cost risk is also mitigated as the cost for this item falls under the utility allowance.
- 9.4.8 The LADWP water line relocation under the CTA West station and the LADWP electrical line relocation at the East ITF station are the largest and have the longest lead times. Neither is on the critical path.
- 9.4.9 LINXS have advised that the nearest hazardous liquid pipeline is more than 20' from a foundation and therefore outside LINXS criteria for relocation or protection due to foundation installation. Roadway improvements on West Century Blvd. will not impact this pipeline.
- 9.4.10 LINXS have identified various mitigations to reduce the risk of utility relocations impacting on the design and construction.

**Table 9-11 LINXS identified utility issues and mitigations**

Issue	Mitigation
Quality Level of Utility Data - Most of the utility data is accurate within 10'. This is a wide range and leaves much uncertainty as to the actual location of many utilities.	Early works site investigation Design of guideway columns to be adjusted ~10ft without a major redesign. This flexibility will give the team the ability to eliminate some utility relocations.
Quantity of Relocations, Metering of Submittals, Duration for Review Period - The contract documents limit the number of submittals that the Developer may submit to LAWA/Agencies at one time.	Prioritize and meter the utility relocation submittals (as well as designs that those utility relocations rely upon) to prevent any delay to the project. Incorporate appropriate review time in the schedule.
There will be many utility relocations and some of the utility owners have very long lead times from the identification of the utility conflict to the completion of the utility relocation (notably LADWP-Power).	Conduct over the shoulder reviews with City Agencies who will be co-located with the Design Team.

Source: Consortium

9.4.11 In accordance with the requirements of the PA, LINXS will manage the utility coordination and execution by preparing the following plans:

- Utility Coordination Work Plan: Utility Coordination Manager, Scope and Responsibility, Submittal, Review and Approval Processes for LAWA and Utility Owners, Utility Coordination Meetings, Project Utility Composite Map, Design and Construction Procedures for Utility Adjustments, Emergency Work Procedure, Utility Relocation Schedule, Utility impact to Adjacent Property owners.
- Project Execution Plan: Project Execution Plan for each Utility Owner and Third Party (providing greater detail to the work to be performed within the scope of the utility agreement)

#### LTA Opinion

9.4.12 The LTA notes that LAWA has undertaken extensive utility surveys and conducted dialogue with Utility Owners/ Contractors to compile a detailed list of utilities. In addition, it has let an enabling works contract for Utility Owners to undertake advance utility surveys and relocations. LAWA has also recognized that certain utilities may be mis-located and has accepted additional payments will be due for where this is the case. The risk of additional utility costs is further capped to \$50 million, above which LAWA bears the risk. LINXS has done significant investigations of its own and drawn up a register of locations to inform the bid stage design.

## 9.5 Geotechnical Conditions

9.5.1 PA Article 6.2 confirms that any site condition risk is passed down to the Developer and that the Developer has taken into account the results of exploratory work and other information provided to Developer by LAWA (as provided in TP Part 5).

9.5.2 Notwithstanding, there are certain Relief Events relating to geotechnical conditions that are available to the Developer as follows:

**Table 9-12 Geotechnical Relief Events**

Relief Event	Comments
discovery of geotechnical conditions: <ul style="list-style-type: none"><li>• within the D&amp;C Limits of an unusual nature and differing materially from those ordinarily encountered on, and generally recognized as inherent in, work of the character provided for in the Agreement; or</li><li>• located at the boring holes identified in the Geotechnical Data Report and differ materially from the conditions indicated at such boring holes in the Geotechnical Data Report</li></ul>	excludes Additional Properties and Temporary Areas

Source: PA

9.5.3 LAWA have commissioned a number of geotechnical studies which are provided under TP Part 5:

- Preliminary Geotechnical Evaluation, Pile Foundations by Ninyo & Moore dated January 29, 2016
- Geotechnical Data Report by WSP I Parsons Brinckerhoff dated April 3, 2017
- Geotechnical Data Report Supplemental Geotechnical Investigation by MB Professional Service Inc dated June 26, 2017

9.5.4 The Geotechnical Data Report contains information on drilling and sampling of 12 exploratory borings to depths ranging from about 100 to 151½ feet below ground surface. In-situ testing and monitoring was undertaken as summarized below:

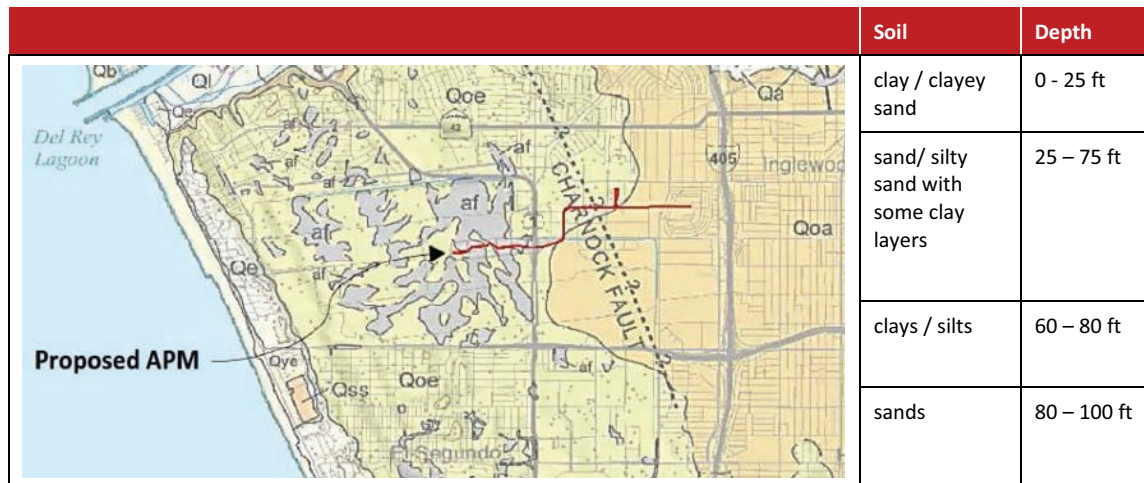
**Table 9-13 Exploration Summary**

Exploration Summary	Tests <sup>1</sup>	P-S Logging	GW Wells (in borings)	Depth (ft)
Guideway	152	4	4	120
Stations	15	0	0	100-120
Pedestrian Walkways, Vertical Cores	22	0	0	100-120
MSF and MSE walls	5	0	0	100-120
TPSS	3	0	0	30
Signs and Special Structures	7	0	0	50
Roadways	78	0	0	5
Parking Lots	20	0	0	5
Total	302	4	4	
Notes: (1) Laboratory analysis was carried out on soil samples taken from exploratory borings at intervals of 5 feet				

Source: LAWA GDR

- 9.5.5 The Project area lies approximately 100 to 110 feet above mean sea level. The site and the surrounding topography are relatively flat and slopes gently to the southeast. The site is generally underlain by alluvial soils consisting of gravel, sand, silt, and clay. The general trend is fine-grained silt and clay alluvial layers increasing in thickness towards the east and coarse-grained sandy marine and dune deposits predominate in the western part of the site.

**Figure 9-5 Local Geological Map and general soil profile**



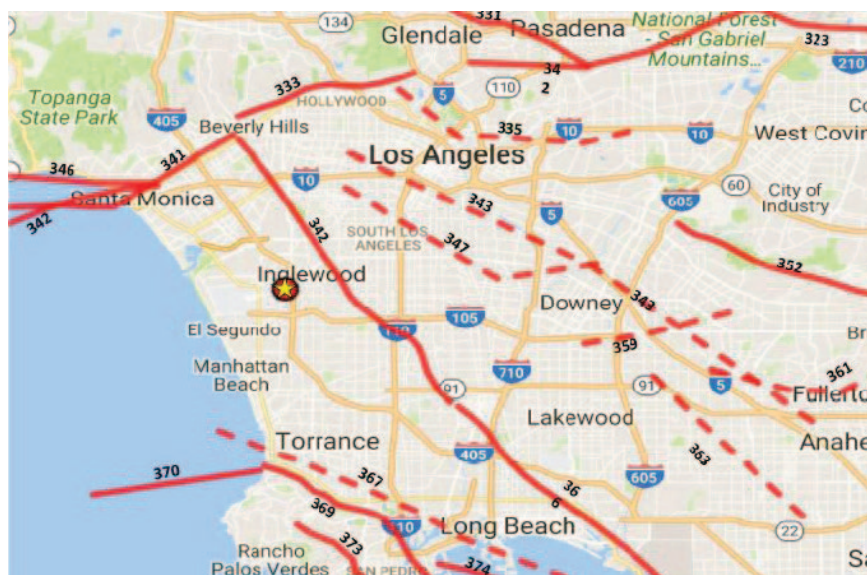
"af"	gray	Artificial fill – deposits of fill resulting from human construction, mining or quarrying activities; includes engineering fill for buildings, roads, dams, airport runways, harbor facilities and waste landfills
"Qoe"	light sand	Old Eolian and Dune Deposits – slightly to moderately consolidated, moderately dissected wind-blown sands
"Qoa"	dark sand	Old Alluvial Valley Deposits – slightly to moderately consolidated, moderately dissected fine-grained sand, silt, mud, and clay from lake and estuarine deposits of various types

Source: LAWA Geotechnical Data Reports (CGS, 2010)



- 9.5.6 Groundwater generally ranges from approximately 88 to 100 feet deep. In the eastern portion of the site in the vicinity of the proposed ConRAC facility, the data show that the groundwater is shallower, ranging from approximately 56 feet to 88 feet below the ground surface. There are also local pockets of perched water at approximately 40 feet below ground surface.

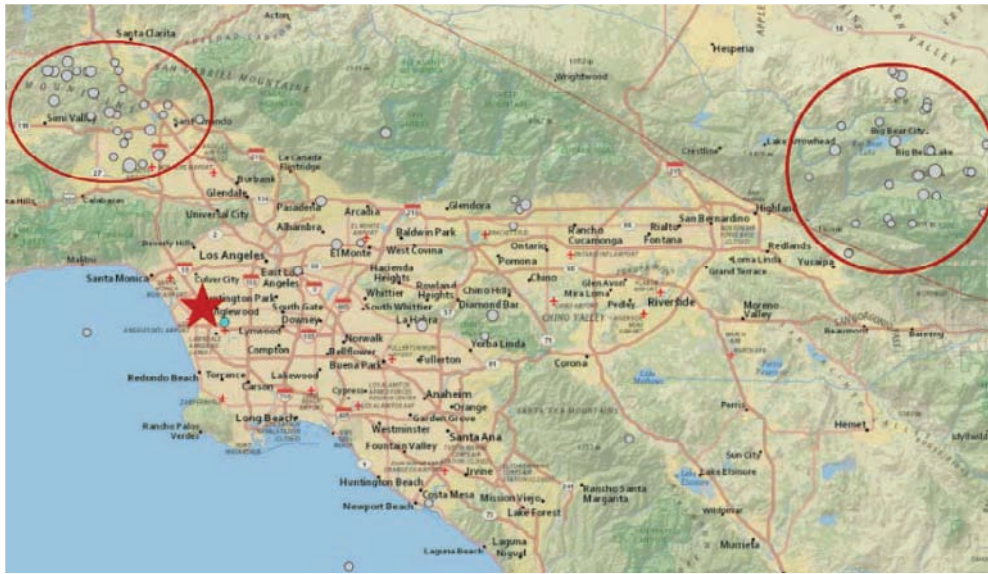
- 9.5.7 The Project is located in seismically active southern California, spanning between the boundary of two tectonic plates (North American Plate on the East and the Pacific Plate the west). These two tectonic plates move relative to each other at the San Andreas Fault, and cause crustal shortening at a rate between 4 and 9 mm per year across the Greater Los Angeles area.
- 9.5.8 Seismic events are scattered in the Los Angeles region occurring in the proximity of known fault systems. Additionally, a number of events are linked to blind thrust faults underneath the region basin. These faults are buried relatively deep below ground surface and are often poorly understood in terms of locations, extents and orientations. Any large earthquakes associated with these buried faults are most likely to originate at great depths and not impacting significantly the project area more than similar-sized earthquakes on the other surface faults in proximity.
- 9.5.9 Faults are classified by the California Department of Conservation, Division of Mines and Geology (CDMG), as “active” if there is evidence of movement along the fault within the last 11,000 years. A list of known active faults in the vicinity of the Project area is shown in the figure below.



- 9.5.10 In accordance with historical data from the USGS over the last 30 years, seismic activity in the LA region has been limited to two main focus areas, north-west and north-east from LA, and over 50 miles from the Project area. An overview of the seismic events with a magnitude of 4.5, or more, is shown in the figure below.



Figure 9-7 Seismic activity (magnitude > 4.5) over last 30 years



Source: usgs.gov

- 9.5.11 Over the last 30 years, only one seismic event took place in the proximity of the project area. The 4.7 magnitude earthquake struck 3 miles east of Los Angeles International Airport associated with movement on the Newport-Inglewood fault. No damage to the city infrastructure was recorded from the event.
- 9.5.12 Whilst not shown as an active fault in Figure 9-6, the Project alignment crosses the potentially active Charnock fault. The Charnock fault trends northwest-southeast and is depicted as an inferred fault and not observed at the surface. Technical literature of the areas reports that there is no evidence of movement during the Holocene epoch and therefore it is categorized as potentially active but not active fault. The Charnock fault alignment is shown in the figure below.

Figure 9-8 Charnock Fault location and APM alignment



Source: Caltrans ([www.dap3.dot.ca.gov](http://www.dap3.dot.ca.gov))

- 9.5.13 In accordance with the Liquefaction Hazards zone on the State of California Seismic Hazards Zones Map, the site is not located in a liquefaction susceptibility zone. GDR reports state that due to the absence of shallow groundwater and the presence of dense soils, the potential for liquefaction is remote.
- 9.5.14 LAWA has carried out a number of seismic ground investigations with the aim to better understand the behavior of the ground conditions under dynamic events, including: seismic CPT and suspension P-S logging.

### Authority Requirements

- 9.5.15 In the event of an Earthquake with a magnitude up to and including the Operating Design Earthquake (ODE) level, the Developer shall be entitled to Relief from accrual of Noncompliance Points and from the assessment of Deductions with respect to the APM Operating System. Earthquake events that cause physical damage to the Project will be treated as a Compensation Event, excluding events which effect is limited to the performance of the works.
- 9.5.16 In accordance with the Geotechnical Investigation results and ASCE/SEI-7, the Project site is to be classified as a Site Class D – stiff soils with Occupancy Category III – buildings and other structures that represent substantial hazard to human life in the event of failure. These classifications set the load factors to which the Project structures have to be designed.
- 9.5.17 The Project design solution is to be fully compliant with the following:

**Table 9-14 Earthquake design requirements**

Earthquake Rating	Design Requirements
Operating Design Earthquake (ODE)	Average return period 150-year Structure to remain fully operational immediately after an Earthquake No cosmetic damage to the structure (elastic response)
Maximum Design Earthquake (MDE)	Average return period 2,500-year Potential operational failure immediately after Earthquake, with limited disruption to service Damage controlled and limited to members that are easily accessible

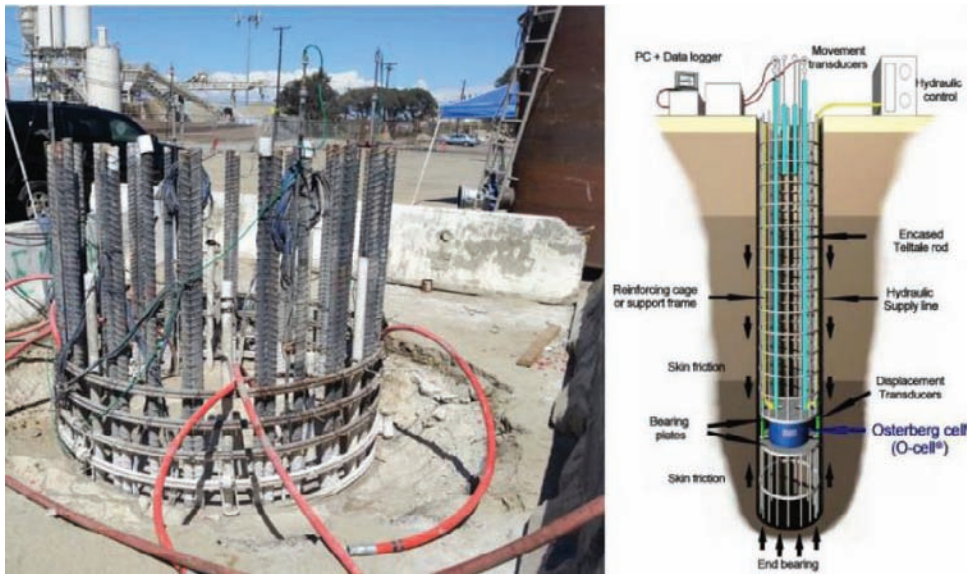
Source: PA

- 9.5.18 Additionally, specific design requirements have been defined for the Guideway segment over Sepulveda Boulevard due to potential risk to users. In accordance with Caltrans, the Developer is to carry out the design for spectra with 975-years return period.

### Consortium Proposals

- 9.5.19 The Project structures seismic design has been carried out in accordance with (i) Minimum Design Loads for Buildings and Other Structures, Standard ASCE 7; (ii) AASHTO LRFD Seismic Analysis and Design of Bridges Reference Manual, FHWA; and Caltrans Seismic Design Criteria. The structures seismic design currently being developed by LINXS is compliant with these technical standards and the PA requirements.
- 9.5.20 The Consortium has not had the opportunity to self-perform additional boreholes during the bid phase, and considers the LAWA information to be reliable but limited. The Consortium has access to additional data from other sources (LA Metro and Stadium contracts). During the Preferred bidder stage, the Consortium plans to undertake additional borings at each Guideway pier and other key groundwork locations in order that LINXS can optimize the design of all its foundations. In addition, the geotechnical survey is likely to locate any relevant obstructions to the construction of the guideway.
- 9.5.21 The Consortium's proposed design solution drilled shaft piles will range in length from 60 -110ft and in diameter from 3ft (60ft long), 8ft (70-100ft long) and 11ft (100ft long). Additionally, in accordance with the RFP requirements for load testing, the Consortium proposes to install Osterberg Cells (O-Cells) in a few selective Test piles to allow verification of vertical capacity load. A representation of an O-cell equipped pile is shown in the figure below.

**Figure 9-9 Drilled shaft pile equipped with O-cell**



Source: Consortium

### **LTA Opinion**

- 9.5.22 As shown from the surveys, the underlying soil conditions are generally consistent throughout the site. Being a longstanding industrial site, there are bound to be some unmarked obstacles, such as old foundations and abandoned utilities, and the LTA welcomes the Consortium approach to undertake further surveys including borings at each guideway pier location which will also confirm the presence or otherwise of perched water. The LTA also notes positively the contractual safeguards for geotechnical conditions of an unusual or different nature than expected.
- 9.5.23 The LTA notes that the Project is located in an area of significant seismic activity. Nonetheless, no active faults exist within the Project area, and seismic activity in areas adjacent to the Project area are historically limited, both in occurrence and magnitude.
- 9.5.24 In the LTA's opinion the specification and standards for seismic design and construction to account for these seismic conditions is standard practice for California. Comfort is taken from the limited soil liquefaction risk, further simplifying the design considerations. The Consortium's experience in dealing with seismic issues is considerable and their approach to seismic design, and interpretation of the geotechnical data, is considered adequate and consistent with good engineering practice.

## **9.6 Equator Principles**

- 9.6.1 The LTA has conducted an appraisal of the Project against the Equator Principles, which is presented in ANNEX 1 to this report. Based upon the information provided to date by the Consortium, the Project is considered by the LTA to fall in Category B and this categorisation is consistent with that allocated to other APM/LRT projects. Category B means that the Project has "potential limited adverse environmental and social risks and/or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures".

## 10 DESIGN and CONSTRUCTION REVIEW

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### 10.1 Introduction

10.1.1 LAWA requirements for design and construction are primarily defined in PA for the Automated People Mover (APM) Landside Access Modernization Program at Los Angeles International Airport; Part 1 Scope of Work: a short report listing the major elements of the project. More detail of the technical scope is presented in the following documentation:

- APM-04 - TP Part 1 - 20171019\_Addendum No. 2
- APM-05.01 - TP Part 2A - 20171019\_Addendum No. 2
- APM-05.02 - TP Part 2B- 20171019\_Addendum No. 2 (Design and Construction Technical Requirements)
- APM-05.03 – TP Part 2C – 20171019\_Addendum No. 2 (APM System Testing, Certification and Operational Readiness)
- APM-06 – TP Part 3 – 20171019\_Addendum No. 2 (APM System Operations and Maintenance Requirements)
- APM-07 – TP Part 4 – 20171019\_Addendum No. 2 (Standards and Specifications)
- APM-08 – TP Part 5 – 20171019\_Addendum No. 2 (Drawings).
- All the DB Drawings as at 2017 10 02

10.1.2 Background Information has also been prepared and made available by LAWA through a Data Room, which was subsequently forwarded by LINXS to the LTA, which includes various technical reports and investigations, existing asset condition surveys and other technical documents.

### 10.2 Design and Construction Process

10.2.1 The organisation of the design and contraction teams is discussed in Section 3.4 above.

#### Contracting Authority Requirements

10.2.2 As described in Section 5 of the TP Part 2A of the Design and Construction General Requirements, LINXS is required to develop and complete the design of the Operational System Infrastructure, as well as selective new third-party infrastructure in consultation with the LAWA Representative and other stakeholders including, Utility companies, the relevant County and City departments, and any other authorities having jurisdiction in an interactive process.

10.2.3 LINXS shall perform detailed pre-construction surveys of all buildings, roadways, utilities and structures within or adjacent to the D&C Limits. The survey shall include clearly record the existing condition such that the detailed pre-construction survey will also serve as documentation of pre-construction condition of each facility in order to provide a baseline for establishing damage resulting from Construction Work. A post construction survey will highlight all the existing damage noted during the pre-construction survey as well as any new damage.

10.2.4 LINXS shall identify all requirements, including design, construction, operations and maintenance that apply to design of each element of the Project, and shall integrate the design processes clearly tracking and cataloguing the status of all interfaces between different Project elements and between Project elements and Related Projects. LINXS shall classify design Submittals for the APM Fixed Facilities as well as the Non-O&M Facilities at the following general design stages:

1. Preliminary Design (representing an approximate sixty (60) percent level of completion);
2. Intermediate Design (representative an approximate ninety (90) percent level of completion); and
3. Final Design (representing 100% level of completion).

10.2.5 LINXS is not precluded from requesting additional submittals or reviews by LAWA.

10.2.6 LINXS shall use Release for Construction Documents (RFCD) to construct the work which shall be individually signed and sealed by the licensed professional engineer under the laws of the State of California responsible for the specific content included in the documents. The Engineer(s) of Record shall sign and seal the title sheet, prior to the RFCD being submitted to LAWA's for approval.

10.2.7 The Developer shall carry out independent design checks of structural components of all buildings and structures by experienced professional engineers not involved in the production of the design.

10.2.8 LINXS shall at all times maintain a mark-up set of all RFCD plan sheets, specifications, and shop drawings for Work that varies from the Work as originally shown.

10.2.9 All assets shall have a documented design life or service life established prior to the asset being incorporated into the Work. LINXS shall provide durability documentation suitable to the asset. Certain assets shall have a minimum design life/service life as indicated in the table below. Other assets shall have the service life indicated in acceptable design durability documentation provided by the manufacturers.

**Table 10-1 Asset design life**

ASSET	DESIGN LIFE / SERVICE LIFE (years)
Guideway Structure	75
Roadway Bridges	75
MSF Buildings	50
Stations Structure	75
Stations Finishes	50
TPSS Buildings	50
Running Surface	30
Guideway Equipment	30
PDS Equipment	30
Vehicle Structure	30

Source: PA

#### **LINXS Response**

10.2.10 Based on the minimal length of the project, LINXS has elected to divide the project into discipline managers instead of segment managers, whereby a specific discipline manager will be responsible for constructing all his discipline elements across the whole project, in all four zones. For instance, a single discipline manager will be responsible for constructing the cast in situ concrete for all the guideway columns from West CTA to ConRAC. Each discipline managers will report directly to the Construction Manager, as indicated in the organization chart



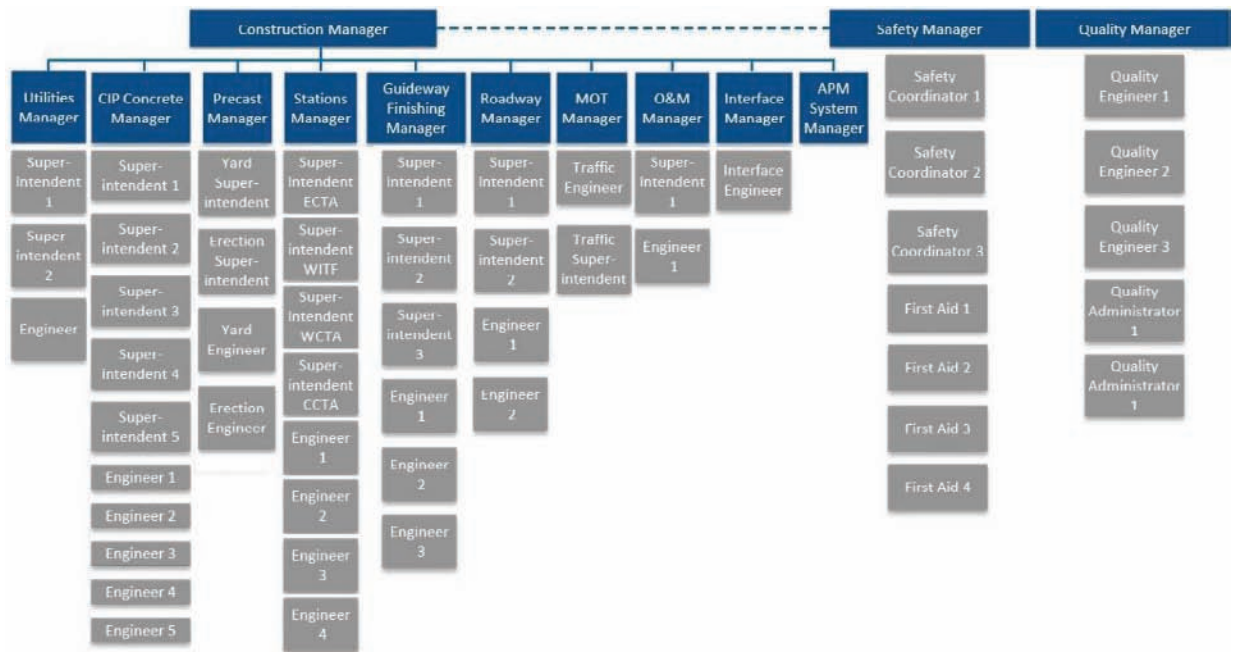
in Figure 11-1 below. Each discipline managers will be responsible for the safety, quality, schedule and cost control within their specific disciplines.

10.2.11 All discipline managers will report directly to the LINXS Construction Manager who will manage the day to day construction activities.

10.2.12 As can be seen from the organization chart, the following disciplines will report to the Construction Manager:

- Utility Manager
- CIP Manager including columns for precast guideway and columns for stations
- Precast Manager
- Stations Structure Manager
- Guideway Finishing Manager, running plinths, guide rail, switches and power rail
- Roadway Manager
- OM&F Building Manager
- APM Systems Manager
- Interface Manager
- MOT Manager
- Environmental Manager

**Figure 10-1 Organisational Structure during Construction (Simplified)**



Sources: LINXS

10.2.13 LINXS is also planning to set up independent Safety Management and Quality Management organizations to supervise and control the design and construction on site. Both these managers will have independent access to the Construction Manager.

### Submittals

10.2.14 Article 5 of the Agreement, and Exhibit 11 to the Agreement describe the Submittal process and review procedures for all Developer Submittals to LAWA and Third Parties, for the D&C Period as well as the O&M Period. Refer to Part 2B and 2C of Technical Provisions for specific requirements and procedures related to the submittal of design documents for APM Operating System.

10.2.15 By mutual agreement, LAWA and the LINXS may modify and refine the Submittals, Submittal content, and review process required by the Contract Documents to make the process more efficient for all parties.

10.2.16 There are a large quantity of design packages to be submitted to LAWA and the City of Los Angeles (CLA) for their approval. LAWA has stated that each approval will take 21 days, with the CLA's 16 separate authorizing offices each requiring 28 days for approval. In addition, LINXS should not submit more than ten submissions to either LAWA or CLA at any one time. To mitigate the risk of designs being lost in the bureaucracy the Mayor of Los Angeles has backed LAMP and CLA in the setting up of a single CLA response group that will co-ordinate the response from CLA's numerous authorizing divisions in order that the 28-day approval may be given concurrently rather consecutively.

### LINXS Response

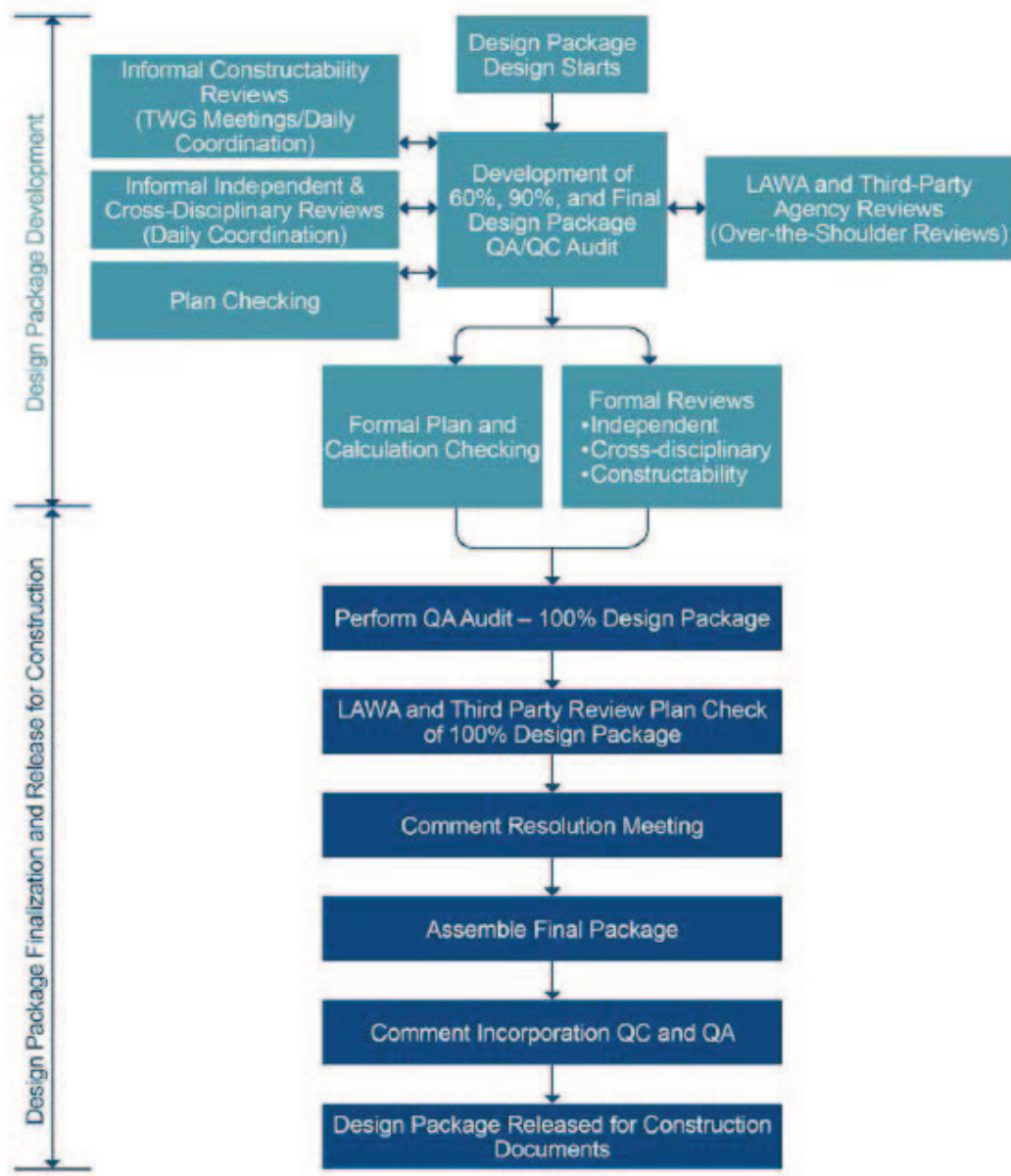
10.2.17 LINXS approach is through careful planning to obtain timely approval for the scheme designs, by scheduling a comprehensive submittal plan and liaising with the CLA as to the delivery dates of its designs. The LINXS design team has worked closely with the construction team during the proposal phase to establish design packages that are logical and in direct support of the sequence of construction, long lead items, and the APM OS. Example design packages include:

- Stations. Six separate APM station design packages, one for each APM station. At this time, LINXS plans to submit a fully contained station design package that includes all major elements of the station, including site/civil, architecture, vertical structures, MEP, communications, signage/wayfinding and other key station components. As further schedule development occurs, it may be necessary to develop and release for construction certain early works packages, such as site/civil and/or foundations packages.
- Guideway. The design package/deliverable approach currently includes 10 separate guideway design packages, one for each guideway structural frame. At this time, LINXS plans to submit a fully contained structures package for each guideway frame, however as schedule development is further refined, it may be necessary to submit and release for construction certain early works, such as foundations.

10.2.18 The design development and submittal review process will be controlled through Design Development process Logs which provide a detailed plan for each deliverable including: QA/QC activities, construction and O&M reviews, key submittal dates, owner and third party reviews, comment resolution meetings. Third parties such as the City of Los Angeles agencies and utility companies will remain engaged throughout design development during the technical work group process. This early involvement allows LINXS to incorporate their input prior to formal submittal.

10.2.19 LINXS have advised that by Financial Close design development will be at 20-30%. This includes design progression anticipated during Early Works.

Figure 10-2 LINXS Design Review Process



Source: LINXS

#### LTA Opinion

- 10.2.20 The LTA confirms that the LINXS response complies with the LAWA Requirements in the proposed development of its management structure and processes.
- 10.2.21 The list of design standards issued by LAWA, covers a variety of different standards without a specific statement as to which it would want to take precedence. This is not in itself a major issue but should be settled during the early stages of the contract negotiations, and agreed with CLA and LAWA as necessary.



## 10.3 Quality Management

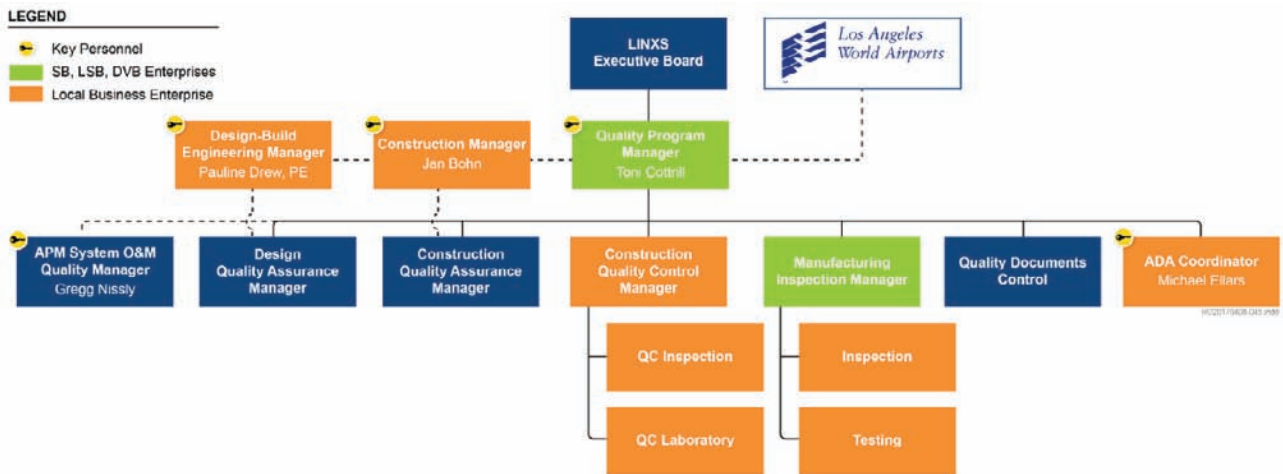
### LAWA's Requirements

- 10.3.1 LAWA outlines LINXS' responsibilities in the management of quality in all phases of the Work during the D&C Period, including the activities of Contractors and Suppliers. The Developer's Quality Management process shall be independent of the management of scope, schedule, and budget activities of the DBJV, reporting into the Developer's top tier management group. The quality management team shall be independent of teams executing the Work and shall provide status reports on noncompliance actions and results of QA reviews

### LINXS Response

- 10.3.2 All of the partners within the LINXS Consortium are registered within the ISO 9001 compliance. LINXS has stated that it will be developing its Q.A. in compliance with ISO 9001 Quality Management.
- 10.3.3 Raba Kistner, Inc. (RK) will provide quality assurance services. RK is the market leader in providing independent quality services on large DB and P3 projects in the United States. RK and LINXS team members have worked together for the past 15 years to successfully deliver many high quality mega projects, including the \$3.8 billion Tappan Zee Bridge Replacement, \$1.1 billion SH 130 in Texas, and the \$1.1 billion I-15 CORE project in Utah. RK is completely independent and unaffiliated with the Design-Builder. This relationship allows the quality team to act autonomously and provide a wholly independent assessment of the D&C work being performed.

Figure 10-3 LINX Quality management organisation



- **Quality Program Manager (QPM)** - The Quality Program will be under the direct authority of LINXS Project Quality Manager, who will report dually to the LINXS Executive Board and LAWA. The QPM is completely independent of the Design-Builder with no responsibility in the execution of the D&C work. The QPM will certify that the design and construction has been completed in accordance with the Contract.
- **Design Quality Assurance Manager (DQAM)** - The DQAM will be employed by RK and report directly to the QPM. The DQAM will review all submittals before they are released to LAWA. The DQAM will ensure that the Design Quality Control (DQC) process was followed. The DQAM will also ensure the QC process has been followed in the plan revision and as-built processes. They will also identify and track all design related non-conformances. The DQAM will provide a monthly report that summarizes all their activities and findings.
- **Construction Quality Control Manager (CQCM)** - This position will be staffed by Sequoia Consultants, our Construction Quality Control (CQC) Testing and Inspection subcontractor, and will report to the QPM. The

CQCM will oversee all CQC which includes frontline testing and inspection. The testing and inspection requirements and frequencies will be detailed in LINXS's Developer's Construction Quality Plan (DCQP).

- Construction Quality Assurance Manager (CQAM) - This position will be staffed by RK and will report directly to the QPM. The CQAM will manage the construction quality assurance program including QA audits, inspection, and testing. The CQAM works with the CQCM to ensure adherence to the DCQP and to verify and document conformance of work to the requirements of the RFC and Contract documents.

10.3.4 LINXS will use the Electronic Laboratory Verification Information System (ELVIS) as the quality Electronic Management Data Management System (EDMS) for the Project. LINXS members have successfully used ELVIS to effectively maintain and retrieve quality documents on over \$8bn worth of DB and P3 projects of similar scope and size. The QPM will use the ELVIS system to document the QA/QC design review process. Any LAWA comments regarding design are uploaded into the ELVIS system and tracked for resolution. A design search engine tool will be made available to LAWA to facilitate design oversight audits.

#### **LTA Opinion**

10.3.5 The Quality management requirements from LAWA are considered standard and mirror the internationally accepted approach set out in ISO 9001.

10.3.6 LINXS has based its quality management proposals on an approach and methodology that has been tried and tested on similar large scale and complex projects. Its proposal to provide quality assurance services through independent Raba Kistner is a positive approach as is the use of the ELVIS document management system.

10.3.7 Currently LINXS is considering how best to develop its quality plan: whether by (i) adopting the plan from one company, or (ii) developing its own systems tailored to the project requirements. The LTA is comfortable with either of these options and sees no issue in the unlikely event the lead company fall away for any reason as all the individual consortium members are accredited in their own right under ISO 9001 and it will be straightforward to continue using the already established quality management process thereafter.

## **10.4 The Scope of Work**

### **Client requirements**

10.4.1 The scope of the project is laid out in APM-04 TP Part 1 which clearly outlines all the works to be constructed, operated and maintained by the consortium, as well as listing clearly the those works that are to be constructed by LINXS, but not operated or maintained. LAWA also lists clearly those new structures that are outside this programme of works: -

10.4.2 *'The Developer's Work shall include the provision of all scope necessary to Design, Build, Finance, Operate and Maintain a fully-functional APM System under the terms set forth in these Contract Documents. The Design and Construction (D&C) Work to be completed by the Developer includes the design and construction of the APM System and certain associated Non-O&M Facilities that are part of the Project as summarized in Section 3, of Part 1. The Operations and Maintenance (O&M) Work for the APM System, including the Handback requirements, is summarized in Section 4. Non-O&M Facilities Work is summarized in Section 5. The ITFs, ConRAC, Terminal Vertical Cores specific Enabling Projects as described in Part 2A, Section 21 and LA Metro facilities will be constructed by others.'*

10.4.3 The APM Guideway Structure is to be a grade-separated and dedicated structure that supports the APM running surfaces. The APM alignment extends east from the Central Terminal Area (CTA), crossing over several LAWA, City of Los Angeles and Caltrans roadways and terminates at the ConRAC APM Station located east of Aviation Boulevard. The APM connects three (3) CTA Stations (West, Center, East), two (2) Intermodal Transfer Facilities

(West and East), a Maintenance and Storage Facility (MSF), and the ConRAC APM Station. The overall plans and alignment envelope for the APM Operating System is shown in Part 5, Contract Drawings/Engineering Data.

### Pre-Commercial Close Modifications

- 10.4.4 Pre-Commercial Close a number of additional TVA mitigation works and scope amendments were agreed between LAWA and LINXS, these changes are tabulated below. As these are being implemented at this early stage of the process the impact of the changes has been minimised and there is no impact on the PSA date or the Critical Path timeline.

**Table 10-2:Pre-Commercial Close Modifications**

Location	Description of Change
Site Wide	Options to maintain operations after a TVA event, repairable within 120 days. Measures Adopted <ul style="list-style-type: none"> <li>Added Laminated Glass in all blast vulnerable areas</li> <li>Added Hardened Walls and Doors at Train Control and Power Distribution Rooms</li> <li>Provide stored back-up train control equipment, to enable replacement/repair within 120-day period</li> <li>Provide various operational measure including parking gates and vehicle restriction equipment.</li> </ul>
Upper and Lower West Way	Minor Highway, footpath, and at grade parking arrangements.
Traction Power Substation #1	Relocation of Substation to maximise parking.
Guideway Realignment at Admin Building (ECTA to Sepulveda)	Minor realignment to Guideway away from Clifton A. Moore Admin. Building
Guideway Realignment and Drainage Modifications on A Street	Minor realignment along A Street between Century and ITF West
Update BIM Project Execution Plan	Addition of four LAWA provided collaboration tools to the requirements
Vault Manhole 155A	Removal of electrical vault MH-155A, the addition of two new electrical vaults, and associated duct bank work within the Central Terminal Area.
LULEP Task Order UXX	LAWA has added LULEP Task Order UXX to LINXS' scope in exchange for ability to relocate an electrical duct bank that is on the centerline of the CTA Center Station columns. The LINXS proposal at bid stage included an allowance to undertake this work.

Source: LINXS

### LINXS Proposals

- 10.4.5 LINXS has accepted the overall scope of work as outlined and detailed by LAWA. However, following a considerable amount of design and internal negotiation between the different technical departments within LINXS, it has developed a number of Alternative Technical Concepts that it has negotiated with LAWA. See Section 10.5 below for further details.

## LTA Opinion

- 10.4.6 The LTA is comfortable that LINXS is conforming to the LAWA Scope of Works within the bid so far. The changes it has made to the reference designs are very minor realignment of the guideway geometry keeping it within the Limits of Deviation; changing the viaduct columns' locations and viaduct articulation to minimize interference with the existing highways and utilities and relocating the MSF from being on a viaduct to being at grade, but remaining within the same Limits of Deviation.
- 10.4.7 The scope changes discussed and agreed pre-commercial close are relatively minor in nature and do not result in a material change in the technical solutions being developed by LINXS and it is the LTA's opinion that these do not result in a change in the overall technical risk profile of the project.

## 10.5 Guideway Structures, Stations, Maintenance and Servicing Facility and Pedestrian Walkways

### Structures - LINXS Guideway Proposals

- 10.5.1 The deck supporting the guideway surfaces is designed by LINXS to be a simple, reinforced concrete, trapezoidal box. This basic form can either be cast in situ with fixed shuttering supported on falsework, or precast and lifted into position; the choice will be made by LINXS depending upon the access to the exact location and the use of the ground under the guideway as shown in Figure 10-4. The section of the guideway is shown in Figure 10-5 below alongside the single-track option.

Figure 10-4 LINXS proposals for Guideway construction type



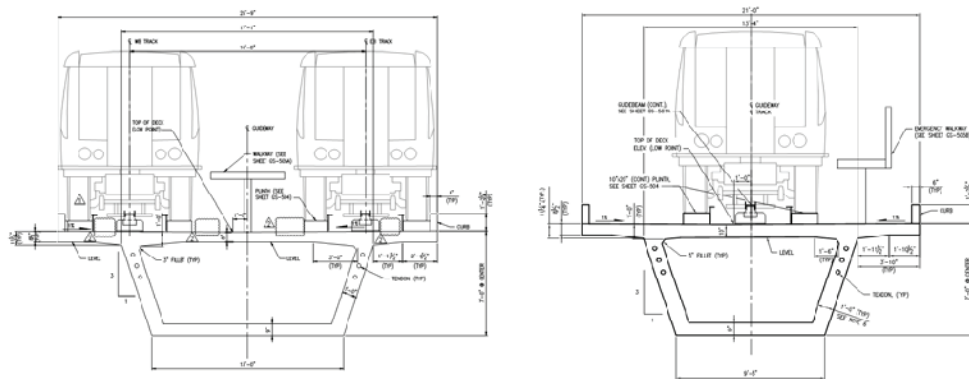
Source: LINXS

- 10.5.2 The gantry will be delivered in 40' Conex Containers. DBJV will then partially assemble the gantry trusses into large erectable sections in the adjacent parking lot and will then mobilize a large crane to lift the larger assembled truss components onto the guideway bents and on some interim temporary supports. At this point intermediate

bracing, hydraulic and electrical systems are installed. All the assembly will be supervised by the gantry manufacturer and upon completion will be load tested and certified.

- 10.5.3 The aesthetics of the guideway deck is improved by the ergonomics of the load paths, whereby each track (in the double Track version) is centered over the webs of the box girder, thus avoiding the requirement for a more complicated structure.
- 10.5.4 The Aesthetic standards are particular and specific and will not cause the DBJV to buy materials from certain suppliers, nor does it require highly skilled craftsmen to install. The specification is looking for ‘form’ and ‘style’ rather than any ornate, add-on finishes. There are no additional risks added by LAWA’s standards. In fact, the materials of construction are quite standard and similar to transit construction elsewhere.
- 10.5.5 In addition, LINXS has not included an outer guard rail, and relies instead on an unobtrusive safety wire running the length of the deck to which any personal working on the surface would attach themselves via a safety line and harness. LINXS has informed the LTA that it has received verbal approval of the system from the emergency services.

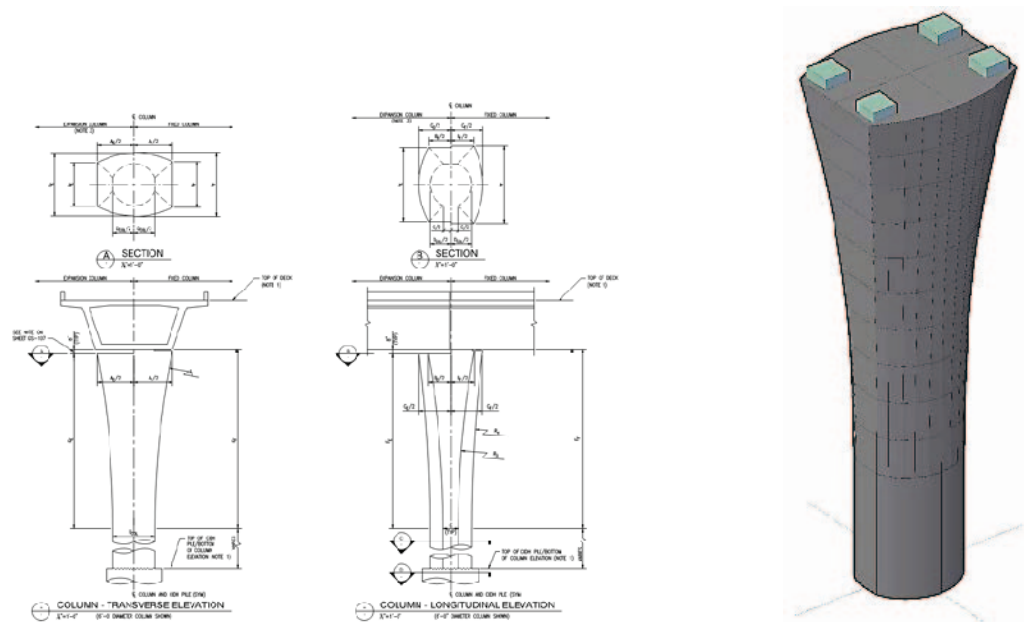
**Figure 10-5 Cross Sections of Typical Double Track Guideway (left) and Typical Single Guideway (right)**



Source: LINXS

- 10.5.6 There are two variants on the guideway structures described above. The first one involves the use of a concrete straddle bent with two columns that will be used to avoid significant highway or utility diversions. The second one involves the use of an offset head to the standard column enabling the guideway to be located adjacent to an existing building, with its foundation also avoiding direct contact with the existing building.
- 10.5.7 Generally, the guideway is supported on a single reinforced concrete pier, that rises from the either a single pile or a pile cap connecting four piles, depending upon the location of the existing highways and utilities. In order to respond to LAWA’s wish for high aesthetic values in the design of the system, LINXS is proposing a simple circular column at ground level that with gentle, sweeping lines metamorphoses into a rectangular section with curved sides, that also aligns with the trapezoidal deck cross section.
- 10.5.8 The general uniformity for the guideway’s substructure will enable LINXS to use steel shuttering to repeat the exact shape frequently, which will in turn enable it to have clean and smooth surfaces.

**Figure 10-6 Guideway Column Elevations, Transverse (left) and Longitudinal (right)**



Source: LINXS

10.5.9 LINXS has undertaken an intensive study to optimize the guideway structure which has involved the review of the alignment, in consultation with Bombardier to confirm the optimal operational route and guideway layout. This has resulted in the reduction of crossover locations whilst maintaining the journey time requirements under both normal operation as well as during maintenance periods when sections of the route are closed to traffic. In addition, LINXS has minimized the single-track sections and minimized the distance between tracks in the dual track sections, in order to reduce initial infrastructure costs.

10.5.10 A separate part of the LINXS review of the project has resulted in the optimization of the guideway structure to reduce the construction and maintenance costs. This part of the study has gone beyond the usual rationalization of the deck beam depth verses the number of supporting columns, to also include the costs of traffic and utilities diversions. The average Span Length is 135 feet, with a minimum span length of 54 feet and a maximum Span Length of 274 feet, reflecting the economics of constructing longer Spans over West Century Boulevard and Sepulveda Boulevard to eliminate median piers and highway traffic disruption. In order to achieve some of these avoidance works LINXS has used straddle bents, a beam with two columns, which are commonly used to replace a single column that would force expensive relocation of highways or utilities.

10.5.11 The table below indicates the quantum of savings that LINXS has achieved from its structural study.

**Table 10-3: LINXS Structural Savings**

Structural Element	LAWA Configuration (No.)	LINXS Configuration (No.)	Percentage Reduction
Bents	134	101	25%
Columns	242	147	39%
Straddle Bents	73	5	93%

Source: LINXS



### LTA Opinion

10.5.12 The LTA team have been taken through the LINXS guideway structure proposals and are comfortable with the competence and experience of the LINXS team to provide suitable designs that will improve construction productivity and reduce cost. The LTA team has no concerns that LINXS will be able to gain suitable approvals for their designs.

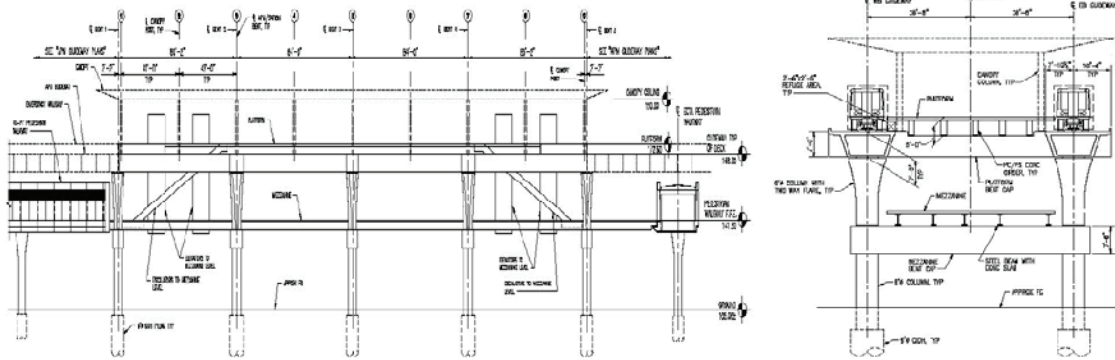
### Vertical Structures – LINXS Response

10.5.13 The vertical structures are the passenger-bearing accesses between the APM and the Car Parks and Terminal Buildings. There are four In-Line, stand-alone, APM Stations, (CTA Center, CTA East, ITF West and ITF East); and one station that is constructed within a new car park at the West CTA terminal. In addition, there are eight passenger walkways connecting the stations with car parks or airport terminal buildings.

10.5.14 The station structures are separate structural units within the overall guideway, with expansion joint connections between the structures to form integral guideway and walkway surfaces. The station structures are between 300ft and 375ft long with structural components (superstructure, substructure and foundations) that mirror the guideway structure. Figure 10-7 Typical Station Structure; Long Section and cross-section below indicate the structural form of the stations.

**Figure 10-7 Typical Station Structure; Long Section and cross-section**





Source: LINXS

10.5.15 The stations will have a reinforced concrete platform deck to provide passengers with level access onto the APM, and an intermediate mezzanine floor constructed from a composite steel beam with concrete deck. The canopy over the platforms and guideway are formed from steel truss moment frames supported on steel columns.

10.5.16 Passenger circulation within the stations is catered by 29 Elevators and 36 Escalators.

10.5.17 CTA West Station is built in a similar form but also includes the adjacent multi-storey parking garage and enclosed space to the west of the station for a future program space to be fitted out by LAWA in due course.

#### LTA Opinion

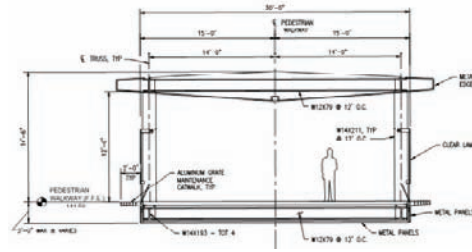
10.5.18 The LTA team have been taken through the LINXS station structure proposals and are comfortable with the competence and experience of the LINXS team to provide suitable designs that will improve construction productivity and reduce cost. The LTA team has no concerns that LINXS will be able to gain suitable approvals for their designs.

#### Pedestrian Walkways – LINXS Response

10.5.19 There are eight pedestrian walkway bridges connecting the new stations to the adjacent airport terminal buildings and multi-story car parks, with a total length of approximately 3,500 feet, incorporating sixteen moving walkways located on the bridges. There are two additional pedestrian walkway bridges at WITF that have a lighter deck section.



## Pedestrian Walkway Bridge



10.5.20 The walkways are self-supporting structures and so are structurally isolated with expansion joints from both the station structure and the car park or airport terminal structures.

10.5.21 The LTA team have been taken through the LINXS pedestrian walkway proposals and are comfortable with the competence and experience of the LINXS team to provide suitable designs that will improve construction productivity and reduce cost. The LTA team has no concerns that LINXS will be able to gain suitable approvals for their designs.

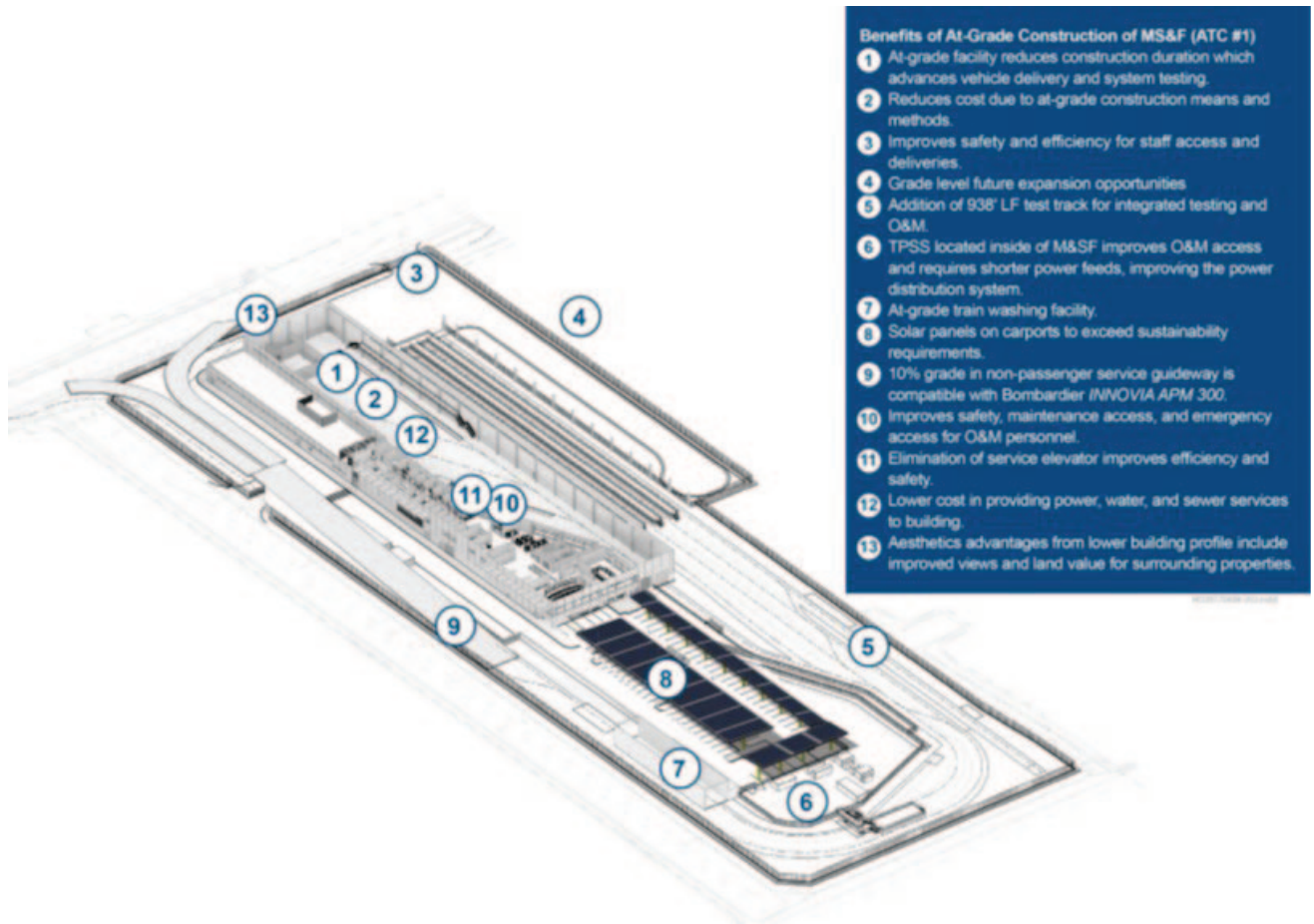
## Maintenance and Storage Facility – LINXS Response

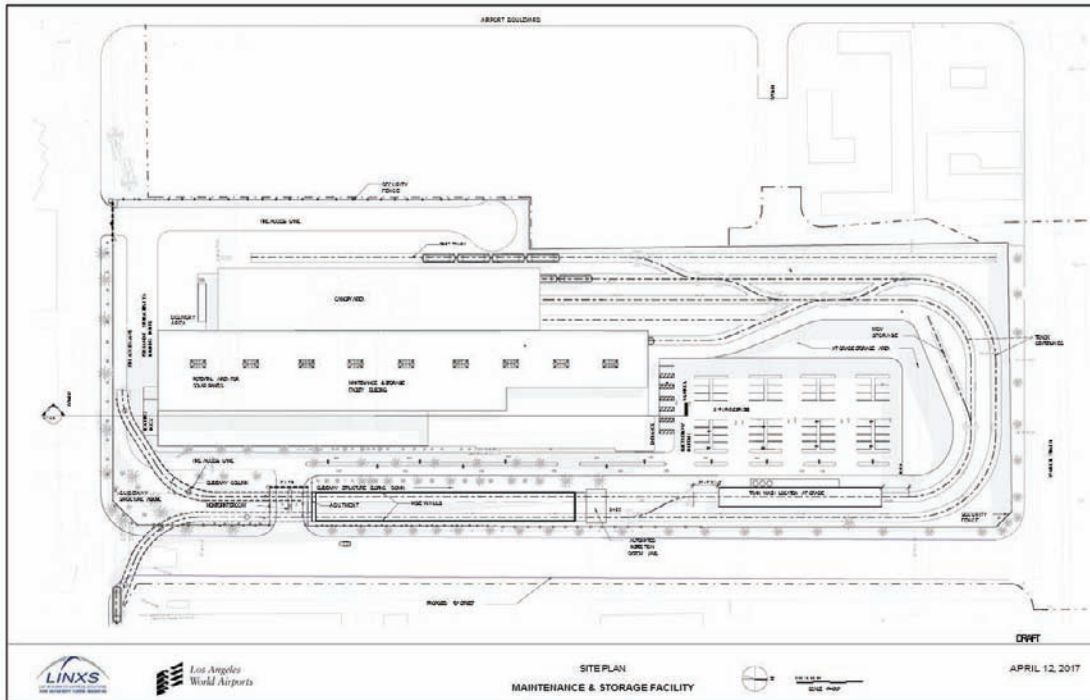
10.5.24 This ATC proposes to place the MSF at grade rather than on an elevated structure to position it at the guideway level as shown in the RFP requirements. This is accomplished by ramping the MSF access guideway from its junction off the revenue guideway down to grade along the East side of the plot reserved for the MSF. This alternative layout is possible due to the ability of the Bombardier APM to traverse steeper gradients than normal steel-tyred railway systems.

1. Enables the new APM vehicles to be delivered by lorry without the requirement for craneage to access the MSF

2. Eliminates the requirement for elevator access for maintenance spare parts and consumables as well as for personnel access
3. All the manual activities required within the MSF will be at grade improving access and safety
4. Future expansion of the MSF would be available without the need to construct elevated structures
5. Power distribution system at grade simplifying operations, maintenance and renewal
6. At grade test track, maintenance bays, car wash, visitor access, etc.

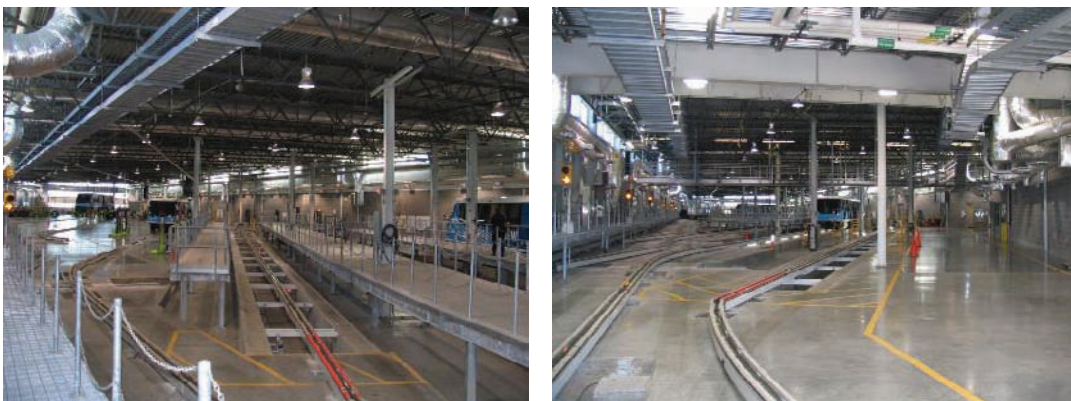
**Figure 10-8: MSF LINXS Revised Layout**





Source: LINXS

Figure 10-9 Proposed internal configuration of MSF workshop for easier maintenance



Source: LINXS (Bombardier MSF at Dallas)

#### LTA Opinion

- 10.5.26 The LTA team have been taken through the LINXS MSF construction and operability proposals and are comfortable with the competence and experience of the LINXS team to provide suitable designs that will improve construction productivity and reduce cost. The LTA team has no concerns that LINXS will be able to gain suitable approvals for their designs.
- 10.5.27 The LTA also has no concerns with the modified APM access to the MSF, as it is sure that the rubber tyred APMs will be able to negotiate the 10% incline to the revenue guideway with ease in all weathers. The LTA is also of the opinion that the other operational factors in the change of design such as safety, staff and visitor access and accommodation, delivery of APMs and maintenance consumables will bring no additional risk to the project, and is confident that they will in fact be of lower risk than the LAWA reference designs.

10.5.28 The LTA is comfortable with the 10% gradient of the access guideway for the APMs into the MSF. Rubber tyred APMs can easily negotiate a 13% gradient and also bearing in mind that at this point the APMs will have no passenger load

### Alternative Technical Concepts (ATCs)

10.5.29 LAWA included a comprehensive and interactive ATC process during the procurement, under which LINXS has developed a number of ATCs that significantly improve its technical solution from a design, construction and O&M perspective which are tabulated in Table 10-4 below. It is noted that no additional ROW is required due to these ATCs.

**Table 10-4 LINXS ATC Summary**

ATC Number	ATC Description	Status	LTA Comments
1	MSF	Approved	See above.
2	CTA Center Station Relocation The CTA Center Station is relocated southwards over the CTA Road. The car park P2A can be left in operation during construction and does not need demolition/reconstruction.	Approved	It is understood that LINXS has provided the necessary information and submittals to LAWA, who are currently pursuing it with the FAA for approval following which it will be determined whether SHPO approval is required. It is understood that preliminary feedback from LAWA is that they do not anticipate there being an issue in gaining FAA approval.
10	APM Dwell Time Modification / West CTA Station Platform Expansion	Approved	None
12	PVC vs PVC Coated RGS	Approved	None
14	Med. Voltage Power in Guideway	Approved	None
15	Reconfiguration of West Way	Approved	None

Source: Consortium

### Drainage

#### LAWA Requirements

10.5.30 The current airport drainage in the area flows into six distinct drainage basins, into which LAWA would expect the APM structure to be drained, with LINXS either expanding the current drainage capacity where needed, or regulating its storm water flows into the existing system via a system of catch pits to hold back any water that would otherwise have drained naturally into the bare earth. It has been confirmed by LAWA that the US Army Corps of Engineers 404 permit will not be required as the required methodology does not increase the volume of water entering the storm water drains, nor changes their routing significantly.

10.5.31 Drainage from the elevated guideway is to be hidden within the structure that will support the guideway or the MSF area.

10.5.32 LINXS is not responsible for the storage volume requirements for on-site stormwater management for the following LAMP components: ConRAC, ITF East, ITF West.

10.5.33 However, for the avoidance of doubt, LINXS shall provide the storage volume requirements for on-site stormwater management for the following LAMP components:

**Table 10-5 Drainage storage volumes**

LAMP Component	Water Requirement (ft <sup>3</sup> )	Quality Additional Drainage Requirement (ft <sup>3</sup> )	Total (ft <sup>3</sup> )
APM MSF Facility	7,000	16,000	23,000
APM Guideway	54,000	New Storm Drains	54,000
New Roadways	59,530	New Storm Drains	59,350

Source: LINXS

10.5.34 LINXS shall include the following measures, or functional equivalents, in the design of each component of the Project to reduce Project-specific impacts on stormwater drainage and flooding:

1. APM MSF Facility: A 0.2-acre site, or functional equivalent, for combined retention and detention to retain 7,000 ft<sup>3</sup> of runoff (0.13 acre) and detain 16,000 ft<sup>3</sup> (0.07 acre) shall be provided by Developer.
2. Roadways and APM Guideway: For roadways associated with APM Project, approximately 1.2 acres, or functional equivalent, of swales shall be provided to retain 59,530 ft<sup>3</sup> of runoff. For the guideway, approximately 1 acre of surface-level bio retention features, or functional equivalent, shall be provided by Developer to treat 54,000 ft<sup>3</sup> of runoff.

#### LINXS Drainage Proposals

10.5.35 LINXS has undertaken significant surveys of the existing road and general storm water drainage systems and concluded that the existing facilities have limited capacity, and the poor soils limit the ability of the storm water readily infiltrate the ground.

10.5.36 LINXS' solution is to mitigate any increase in runoff, which is mainly in the MSF area, as it is currently not built over, by creating suitably sized swales and settlement ponds.

10.5.37 LINXS has also designed suitable details for the surface water landing on the guideway to use rain water downpipes incorporated within the guideway structure, as well as enabling some limited storage capacity on the deck surface.

#### LTA Opinion

10.5.38 The LTA is comfortable the LINXS is complying with the LAWA requirements as well as producing feasible and constructible designs. The LTA also recognizes the difficulty of converting 'grey water' from surface run off from industrial surfaces into usable water for washing trains without pre-treatment and therefore confirms the decision to discharge excess water into Swales and retention ponds where feasible and to use filtration plants where necessary.

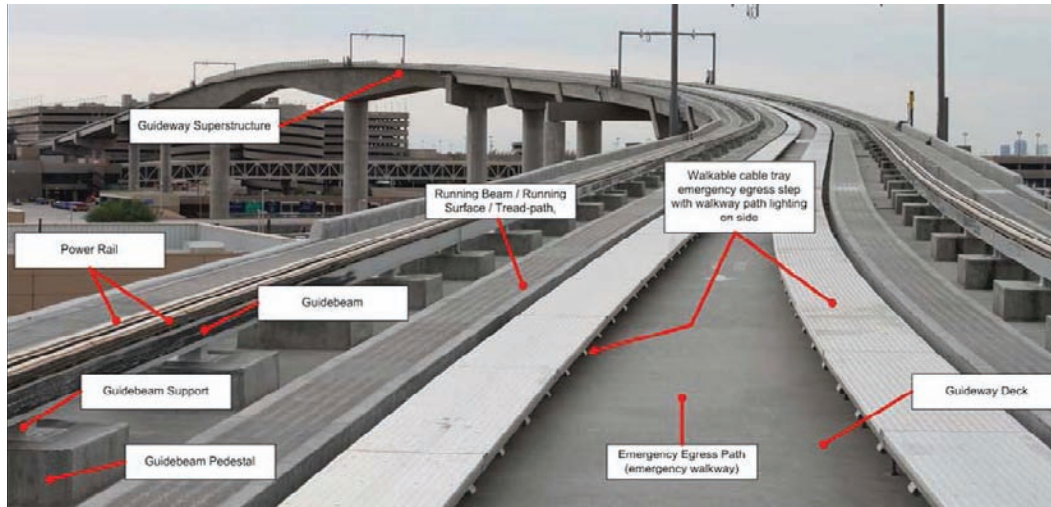
## 10.6 Rail, Signalling and Vehicle Control Systems

10.6.1 LINXS is proposing to use the Bombardier APM which has pneumatic rubber tyres which run on two specially prepared concrete surfaces under each wheel track. To optimize the durability and traction capability of the track, it is made from 5,000 psi compressive strength concrete with a transverse broom finish to the surface that is laid to very tight tolerances to maintain Ride Quality.



- 10.6.2 The APM is located on the track with a Steel Center Guidance Beam that is also fixed to exacting vertical and horizontal tolerances and is therefore mounted on a specialized support system which can be seen in Figure 10-10 below.

**Figure 10-10: Typical Guideway Layout for the Bombardier APM**



*NOTE: This figure shows a marginally different arrangement to that proposed at LAX APM, in that the walkway is to be elevated to be level with the floor of the APM to facilitate the emergency egress of passengers from a possible failed vehicle.*

#### **LINXS Response; Traction power**

- 10.6.3 LINXS is proposing a 750VDC traction power delivered to the APM as +/-375 VDC on two separate power take off rails mounted on a dedicated Power Rail, which in turn is mounted on the central guide beam, see Figure 10-10 above.
- 10.6.4 The power is supplied to the system from two main intake points from different high voltage networks. The traction and auxiliary power is distributed from three double ended substations, located at LAWA's recommended sites, in the vicinity of the CTA East Station, the ITF West Station, and the ITF East and ConRAC Stations. This enables the configuration of a fully redundant distributed power circuit over the whole site.
- 10.6.5 Stray electrical currents are usually the bane of electrically powered rail systems as the traction power is usually supplied to the train via a catenary system and the return current is passed back to the substation via the steel running rails. LINXS ATM uses a rubber-tired System, with the Power Rail holding dedicated power and ground rails, suitably insulated and shielded from the weather: this system therefore has no stray currents and there is therefore no requirement for any stray current prevention or collection infrastructure. As a precaution however LINXS is to install passive monitoring stray current systems.
- 10.6.6 Both the traction power system to the vehicles and the power system to the M&E subsystems have dedicated and independent grounding systems, ensuring no stray or re-circulating currents which also provides system safety grounding and limits touch potentials as a safety measure to staff and public.
- 10.6.7 LINXS has stated that it is planning to incorporate energy panels on the roof of the MSF, in order to comply with LAWA's requirement for the generation of a minimum of 0.5 MW solar AC power generation at the MSF facility.

## **LINXS Response; Signalling and Train Control**

- 10.6.8 LINXS is proposing to use the Bombardier CITYFLO 650 Moving Block Communications Based Train Control, which utilizes a system that has been in general service since 2003 on eight rubber tire APM solutions as well as on numerous steel wheel, light metro, and metro applications worldwide.
- 10.6.9 The system is based on each APM having a digital plan of the route loaded in its inboard computer, which is updated by the central control center to update the location of other APMs on the system as well as to change any the operational requirements. Each APM uses a tachometer to locate itself along the route and confirms its exact location as it passes over each of a network of ballasts that are laid at approximately twenty meter centers adjacent to each track.
- 10.6.10 The APM is in constant data communication with the central control room via a robust spread spectrum wireless radio system to a wayside fully redundant high-speed fiber optic system. Continuity of data supply is checked by the dual usage of redundant communication architecture.

## **LTA Opinion**

- 10.6.11 The LTA has no concerns about the technology that LINXS is proposing for the railway systems for the APM. Rubber tired train systems have been in successful operation for many decades on a variety of different railway types. Bombardier in particular has had a very successful record over 40 years with this technology since it launched its first APM vehicle in 1971.
- 10.6.12 This one of many advantages in making the decision to select a rubber tired APM solution as it has the capability to access a ground level MSF down a steep ramp from the revenue guideway that would not be possible for steel wheeled vehicles. The rubber tired solution also eliminates stray currents, as well as simplifying maintenance as most of the ongoing maintenance is in replacing tyres in the depot rather than rail on the revenue guideway.
- 10.6.13 The signaling and train Control system is recognised for its simplicity of architecture and ease of maintenance as again the main components can be maintained in the MSF: the computers and tachometers within each vehicle and in the MSF; the radio connection vehicles / Control Centre; and, the passive 'ballasts' along the guideway. There is therefore no complicated, sensitive or unreliable equipment on the revenue guideway such as the extensive wiring required for track circuitry and the need for insulated rail points; one of the main causes of unpredictable failures on steel rail systems

## **10.7 Rolling stock/vehicle design, manufacturing and delivery**

- 10.7.1 The 44 APM Vehicles proposed by LINXS are to be produced by Bombardier, one of the foremost rolling stock manufacturers in the world with 50 years' experience of developing the APM concept. Bombardier states that it operates a strict quality control base in all of its rolling stock manufacturing, utilizing its approved supplier list.
- 10.7.2 Bombardier is currently in a 50/50 JV with CRRC, and intends to manufacture the APM vehicles under this JV arrangement ("Puzhen Bombardier Transport Ltd" or "PBTS"). PBTS was based in Nanjing within a larger CRRC manufacturing facility, but has recently moved to a new, dedicated facility in Wuhu (about 60 miles from Nanjing). PBTS currently employees about 300 people.
- 10.7.3 BT's Pittsburgh group will continue to provide engineering and quality oversight for PBTS' activities. PBTS will maintain certain suppliers as previously utilized for Pittsburgh manufacturing, but will also add new local suppliers. The Nanjing facility has already delivered an APM project for the Shanghai Line 8 Project, completed in August 2017, which begin revenue service in March 2018. Approximately 80% of Nanjing employees and management have transferred to the new Wuhu facility to ensure continuity. The new facility can produce up to

200 monorail vehicles and 60 APM vehicles per year under standard shifts/production, allowing BT to add additional shifts and resources if necessary to mitigate any delays.

10.7.4 The completed APMs will undergo full testing in accordance with PBTS' ISO9001:2008 certified quality control processes:

- Full wiring check out,
- The cars go through a full static test to validate that all subsystems,
- Dynamic (movement) tests on the test tracks.

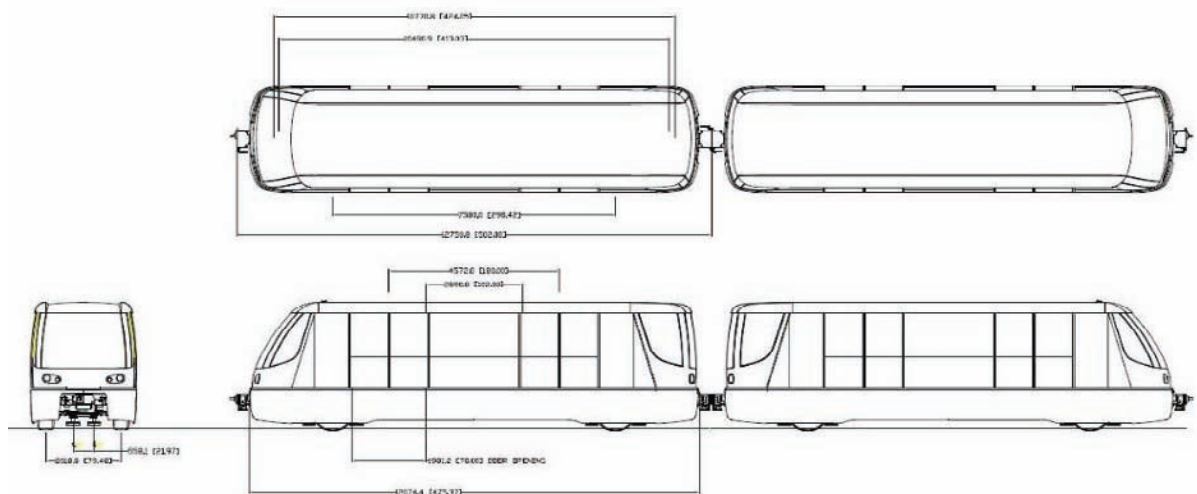
10.7.5 These factory tests will be conducted initially on single cars, then on the two-car married pairs (the off-peak vehicle configuration), and finally on 2 x two-car trains, which will be the operating train configuration during peak period operations).

10.7.6 There will be a BT Project Engineer/Quality Assurance representative co-located in PBTS' manufacturing facility in Wuhu during the manufacturing cycle. This representative will have direct oversight responsibility over PBTS' manufacturing, is the direct point of contact to BT's Quality Assurance (QA) team and will have complete authority to approve and/or reject work that does not conform to the Technical Provisions.

10.7.7 The DBJV will employ Raul V. Bravo + Associates who will provide independent Quality Assurance and Quality Control oversight for the manufacturing of the APM vehicles on location in Wuhu. Fluor and Balfour utilized the same firm for this scope on the Denver Eagle P3.

10.7.8 Pre-Commercial Close, the consortium responded to detailed questioning from LAWA as to BT's approach to the APM assembly with CRRC. BT also supplied an APM Vehicle Delivery Plan (Innovia APM 300 Manufacturing and Testing Requirements) which included its details as to how BT would assure the quality of the APMs.

**Figure 10-11 INNOVIA APM 300 Consist as Proposed for the Los Angeles International Airport LAMP System**



Source Bombardier

10.7.9 The APM body's frame and shell will be formed with extruded aluminum panels stir welded together with the body ends capped with fiber reinforced plastic (FRP) panels, which could be delivered as a flat pack kit to a local assembly plant and assembled in LA: this option is still being evaluated by LINXS. The assembly of the vehicles could be undertaken in any of Bombardier's manufacturing and assembly plants in US, Canada, China, Mexico or India.



- 10.7.10 The APM is formed as a consist of two 41 feet, 10 inches long cars (over the couplers). Two cars are linked with impact loading draw bar at the intermediate location between cars to form the two car consist. The operational service is provided by either a single or double consist. Two consists are linked with mechanical couplers, with electric heads, on both ends of the consist.
- 10.7.11 Each car has a series of two steerable bogies with rubber tired wheels, which provide vehicle support, levelling and guidance. Each bogie has a single rigid axle with single pneumatic tires.
- 10.7.12 The equipment within the train is designed as being modular and incorporates AC Traction Inverters and Motors, dual HVAC Units, FRP Interior Liners, multiple passenger information options, PA, CCTV, and emergency phone.
- 10.7.13 Bombardier states that it's vehicle has technical maturity having evolved the concept from the manufacture of its first rubber tire APM technology in the Mid 1960's; Bombardier has designed, installed, operated and maintained APM Systems since 1971.
- 10.7.14 INNOVIA APM 300 is the third generation of the INNOVIA APM evolution: the vehicle is the evolution of APM 200, and a convergence of proven design concepts from the INNOVIA APM 100 and 200 configurations. The APM200 has been operating in Dallas Fort Worth Airport since 2005. APM 300 has been in revenue service since 2016, and delivered to three clients: -
1. Munich International Airport - 12 vehicles
  2. Dubai International Airport - 18 vehicle
  3. Jeddah International Airport, - 10 vehicles
- 10.7.15 The difference in the proposed solution for the LAMP project from the three applications listed above are the result of the deviations in the client specifications, local codes and standards, and client aesthetic and passenger comfort requirements. However, the base vehicle configuration and core elements remain unchanged from the prior three applications, with the following major subsystems remaining unchanged: -
- Steel frame and structure
  - Aluminum shell (side walls, floor, roof)
  - Fiber reinforced plastic (frp) end caps allowing for slight aesthetic adjustments
  - Bogie structure and guidance configuration
  - Propulsion motors and inverter configuration
  - Coupler configuration
  - Heating, ventilation and air conditioning systems
  - Vehicle interior panel designs and fit
  - Interior lighting configuration
  - Passenger automatic door systems

Figure 10-12 INNOVIA APM 300 proposed by LINXS



Source: Bombardier

10.7.16 Bombardier states that all subsystems comply with Lea+Elliot Service proven requirement.

#### LTA Opinion

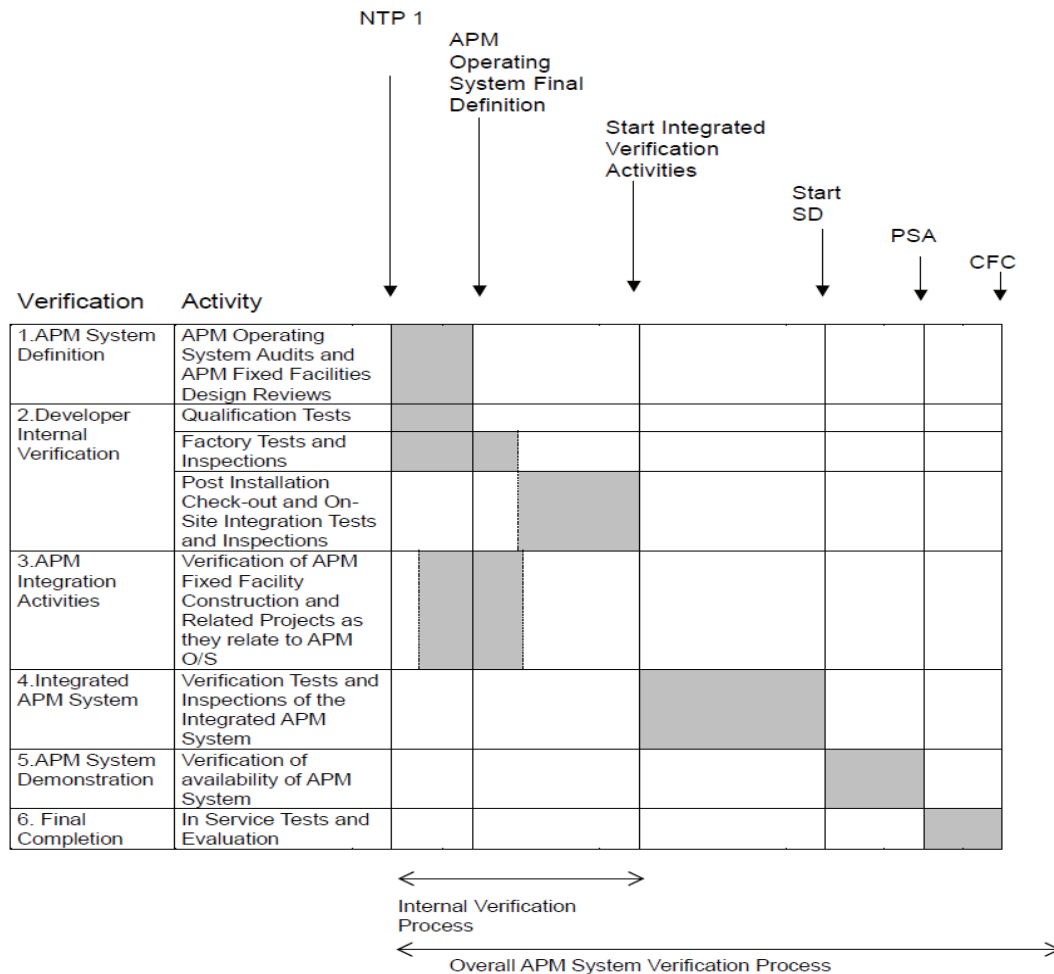
- 10.7.17 The LTA takes considerable comfort from the fact that the APM System proposed is the descendent of continual development from Bombardier's APM vehicle type since 1971, and the particular model has already been installed in three major cities already with two already in operation with no reports of any significant faults. The only potential modification to these previous schemes might be the GRP nose cones.
- 10.7.18 Given Bombardier Railway's considerable experience in the manufacture and operation of these railway vehicles, as well as having responsibility for installing the railway systems, the LTA is also comfortable that there will not be any issues with electromagnetic interference between the APM and its supporting systems.
- 10.7.19 The LTA also notes the reduction in risk from conventional APM or LRT systems by the use of rubber-tired technology linked to the traction power delivery system that eliminates the risk of stray currents.
- 10.7.20 The LTA has observed that the recent history of Bombardier's capabilities in terms of delivering the required APM vehicles on time and to the relevant execution plan are very good. Similarly, the APMs are being assembled in China, under strict BT management and supervision with additional independent supervision from a well renowned consultancy that has been used in this field previously by members of the Consortium.
- 10.7.21 Similar vehicles, the APM 300, have been in revenue service since 2016 and delivered to three clients: Munich International Airport, Dubai International Airport and Jeddah International Airport. These vehicles were manufactured in Pittsburgh.
- 10.7.22 Shanghai Line 8 is also APM 300. Manufactured by PBTS, the BT Chinese JV with CRRC, and delivered this year. It has the same manufacturing footprint as LAX APM. Shanghai's first car was delivered on time on January 2017 last one August 2017.
- 10.7.23 The LTA has enquired as to contingency plans available to BT should the Wuhu plant not be fully or partially available for whatever reason. BT have confirmed they have contingency plans in place to move manufacturing to one of its other Bombardier plants in US, Canada, Mexico or India. The LTA is satisfied that should the Wuhu plant not be available, for whatever reason, there are suitable alternatives available to BT for the manufacture of the vehicles without a material change in the project risk provided the decision on manufacturing location is made during the initial stages of the project. Furthermore, regardless of the location BT have confirmed that the appropriate quality control processes (Certified to ISO9001:2008) and management principles will be implemented.
- 10.7.24 It should be noted that any reported problems that BT may have with manufacture of Light Rail Vehicles at Thunder Bay in Canada, have no connection with the manufacture of the APMs in either Pittsburgh or China.

## 10.8 Testing, Commissioning and Compliance (TCC)

### LAWA Requirements for Testing, Commissioning and Compliance

10.8.1 Under TP Part 2C, the Developer shall be required to verify that the design, fabrication, installation and performance of the APM System (comprised of the APM Fixed Facilities and the APM Operating System) and shall comply with the requirements of the Contract Documents. This verification will be determined by: (1) analysis, (2) inspection, and/or (3) test. The process of verification and acceptance of the APM System is shown in Figure 10-13 below.

Figure 10-13: Verification and Acceptance Process



Source: TP Part 2C

10.8.2 Verification of the APM Facilities shall be verified prior to on site installation, such that each system is sufficiently complete to accept the on-site integration testing of the APM. Verification of the fully integrated APM System will begin after completion of the on-site integration test and inspection activities.

10.8.3 The Developer's internal verification of the APM System shall be accomplished through the Developer's qualification tests, factory tests, post installation checkout, and on-site integration activities.

10.8.4 The APM System Demonstration follows the integrated APM System verification activities and will verify that APM OS Availability complies with the Contract Documents.

- 10.8.5 The final aspect of verification and acceptance includes in-service testing and evaluation to verify final APM OS Availability.

#### **LINXS Response to the TCC Requirements**

- 10.8.6 LINXS has confirmed that it will be fully compliant with the testing TCC requirements. For the APM vehicles and its supporting railway systems, Bombardier advises that it will utilize its standard testing, commissioning and compliance procedures which involves rigorous initial acceptance testing at the factory, with all vehicles undertaking both static and dynamic system tests as well as operating for 300 miles fault free on the factory test track.
- 10.8.7 The DBJV members have extensive experience of working with LAWA's technical consultants, Lea+Elliot, which will help to improve understanding and smoother passage of design submittals, as well as during the testing and commissioning process when a great deal of co-operation and trust is required between the parties involved.
- 10.8.8 Bombardier has scheduled the individual vehicles to be delivered 'just in time' to coincide with the completion of the MSF. Due to the MSF being at ground level the units will be delivered at a specially designed delivery bay that enables the vehicles to be rolled off the back of the flatbed trailer, without the requirement of a crane, directly onto the MSF Test Track, where each vehicle will undergo further rigorous static and dynamic testing.
- 10.8.9 Further testing of all the individual vehicles will be undertaken over the route once it is complete and has completed its own static testing regime. The final part of the complete integration test period will consist of the testing multiple trains over the route: once the total operational fleet has been reliably tested over the route, the system will be ready for obtaining its final certification for public operation.

#### **LTA View of TCC**

- 10.8.10 The LTA has not seen anything in the LAWA requirements that would be considered to be unexpected or excessively onerous. The processes for verification and acceptance appear reasonable and in line with similar requirements seen elsewhere. Similarly, the approach outlined by LINXS is considered to be tried-and-tested and based on experience gained from working with LAWA technical consultant Lea+Elliot on other APM projects.
- 10.8.11 The LTA has reviewed the APM Vehicle Delivery Plan (Innovia APM 300 Manufacturing and Testing Requirements) and finds it a satisfactory development of the outline documentation reviewed before BAFO.

### **10.9 Traffic Management**

#### **Authority Requirements**

- 10.9.1 As LAWA has emphasised, the APM Project is being implemented to address current traffic congestion within the CTA due to a number of issues, including, but not limited to: (i) the CTA roadway system currently creates queuing, weaving, and conflict points; (ii) during peak travel times, inbound airport traffic currently extends out of the CTA roadways onto public streets; (iii) curbside demand is unevenly distributed, especially during peak periods; (iv) cumulative regional traffic increases which result in less time certainty for airport users; and (v) the roadway system is not designed to efficiently accommodate security screening of vehicles entering the CTA.
- 10.9.2 The importance of managing traffic during construction is highlighted in the FEIR with five project specific mitigation measures:

**Table 10-6 Project specific traffic related mitigation measures contained in FEIR**

FEIR Ref	Impact being addressed	Requirement
MM-ST (LAMP)-1	Traffic congestion and delay related to construction activities	<p>LAWA to establish a Construction Traffic Project Task Force - comprised of key stakeholders from LAWA, the Coordination and Logistic Management Team (CALM), other City departments, and others as deemed appropriate to:</p> <ul style="list-style-type: none"> <li>• Coordinate and provide input into worksite traffic control plans and other traffic management plans that are developed for the Project.</li> <li>• Collaborate with the appropriate groups to develop a comprehensive and long-term communication and construction impact outreach strategy for implementation during construction.</li> </ul> <p>Prior to initiation of construction, contractors will be required to complete a Traffic Management Plan (TMP) with associated Haul Routes and Worksite Traffic Control Plans (WTCP), as well as Temporary Traffic Signal Plans (TTS), and Temporary Street Lighting (TSL) including:</p> <ul style="list-style-type: none"> <li>• Designated Truck Delivery Hours. To the extent possible, truck deliveries of bulk materials such aggregate, bulk cement, dirt, etc. to the project site, and hauling of material from the project site, shall be scheduled during off-peak hours to avoid the peak commuter and Airport traffic periods on designated haul routes. Peak commuter traffic periods are between 7:00 a.m. to 9:00 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday. Peak Airport traffic periods occur throughout most of the day, therefore, to the extent possible, truck delivery hours shall be limited to overnight hours from 1:10 a.m. to 7:00 a.m.</li> <li>• Designated Truck Routes. For dirt, aggregate, bulk cement and all other materials and equipment, truck deliveries would be on designated routes only (freeways and non-residential streets). Stockpile Locations. All stockpile locations must be pre-approved by LAWA.</li> <li>• Stockpile locations/laydown/staging areas shall be accessed by construction vehicles with minimal disruption near residential neighborhoods.</li> </ul>
MM-ST (LAMP)-2	Maintenance of Traffic	To ensure that continued vehicular access to community facilities is maintained, the contractor shall provide at least one lane of traffic in each direction on access cross streets that are not going to be dead-ended during construction. If one lane of traffic cannot be maintained, the contractor shall provide a detour route for motorists.
MM-ST (LAMP)-3	Worksite Traffic Control Plans	Before the start of construction, Worksite Traffic Control Plans (WTCP) and Traffic Circulation Plans, including identification of detour requirements, will be formulated in cooperation with the affected municipalities and other jurisdictions (County, State) in accordance with the Work Area Traffic Control Handbook (WATCH) manual and the California Manual on Uniform Traffic Control Devices (MUTCD) as required by the relevant municipality. The WTCPs will be based on lane requirements and other special requirements defined by the Los Angeles City Department of Transportation (LADOT), the affected municipalities for construction within the City and from other appropriate agencies for construction in those jurisdictions. The WTCP's shall be designed to maintain designated Safe Routes to School wherever possible during times of the year when nearby schools are in session. The WTCP's shall be reviewed and coordinated with the LAWA Project Task Force 30 days in advance of any restriction or closure, or with as much notice as technically feasible.
MM-ST (LAMP)-4	Roadway Closure Restrictions	No designated major or secondary highway will be closed to vehicular or pedestrian traffic except at night or on weekends, unless approval is granted by the jurisdiction in which it is located.

FEIR Ref	Impact being addressed	Requirement
MM-ST (LAMP)-5	Traffic Maintenance During Construction	<p>The following to be implemented during construction when appropriate City departments or local jurisdictions deem necessary:</p> <ul style="list-style-type: none"> <li>• Deliveries and pick-ups or construction materials shall be scheduled during non-peak travel periods to the degree possible and coordinated to reduce the potential of trucks waiting to load or unload for protracted periods of time.</li> <li>• Access shall remain unobstructed, or equivalent alternate access provided for land use in proximity to the Project site during construction.</li> <li>• Unless otherwise specified in the WTCP, the contractor shall maintain access to the businesses that rely on on-street parking and pedestrian access during construction. If it is necessary to temporarily restrict access to a business. The contractor shall provide the facility advance notice of restrictions. Unless otherwise specified in the WTCP, the contractor shall schedule access restrictions to off-peak hours or during times when the business is closed and shall not fully restrict access for the total hours of operation of business on any given day of operation.</li> <li>• Relative to maintaining access to businesses, construction activities shall be sequenced to minimize the temporary removal of multiple blocks of on street parking at one time unless otherwise specified by the WTCP.</li> <li>• Contractors shall use temporary special signage to inform the public of closure information in advance of temporary closures. Signage shall also provide special access directions, if warranted.</li> <li>• Notice of closure will be prepared by the contractor with legible maps and reviewed prior to dissemination by the Project Task Force.</li> <li>• A construction management plan shall be developed by the contractor and will be implemented during construction, to include the following;</li> <li>• Establish requirements for the loading, unloading, and storage of materials on the Project site</li> <li>• Coordinate with the City and emergency and safety service providers to ensure adequate access is maintained to the project site and neighboring businesses. In addition to the mitigation measures identified above, the contractor would be required to comply with City and local jurisdiction guidelines and regulations.</li> </ul>

Source: FEIR

10.9.3 The above is enshrined in Section 16 of TP Part 2A which outlines various provisions for Management of Traffic to “ensure that airport operations continue to function with minimal disruption” during construction.

**Table 10-7 MOT planning document requirements**

Section	Description		Submittal Timing
16.2	Transportation Management Plan	To be developed in coordination with LAWA, City of Los Angeles (LA-DOT) and Caltrans: (i) process to develop MOT plans; (ii) identify key personnel; (iii) procedure to design, plan, schedule works to reduce disruptions to vehicles and pedestrians (iv) coordination with other projects and users: lane closures, utility shutdowns, impacts on parking, terminal access, ATCT access, police, fire service access (v) Incident Management Plan (vi) Traffic analysis including level of service and delay calculations and sight distance analysis	60 days before implementation of first planned Traffic Control Plan
16.3.1	Traffic Control Plan	Development detailed Traffic Control Plans (TCPs), for all construction phases using City and State standard drawings, Manual of Uniform Traffic Control Devices (MUTCD).	30 days prior to implementation

Section	Description		Submittal Timing
16.8	Schedule of Traffic Control Activities	Written Schedule of Traffic Control Activities for the following week (defined as Friday noon through the following Friday noon). Traffic control activities include all closures, redirections, work or traffic control near any FAA controlled facility	Noon Monday, weekly

Source: TP Part 2A

10.9.4 MOT restrictions / requirements to be taken into account in the development of traffic management proposals are highlighted below:

- Minimum Speed - Changes to posted speed limits will not be allowed unless specific prior approval is granted by LAWA, the City, or Caltrans, as appropriate (within CTA design speed is 20mph, local roads design speed is 5mph above posted, state highways – as dictated by Caltrans)
- Minimum lane width – 11ft on CTA and local roads. As agreed with Caltrans on state highways
- Minimum shoulder – 1ft
- Minimum access driveways – one per premises
- On-street parking – metered parking spots must be maintained, unmetered parking may be closed at any time

10.9.5 With regard to the minimum number of lanes, these must match those currently available unless approved by the appropriate authority or as allowed under Part 2A Tables 16-1 to 16-3 as summarized below. Further restrictions apply at holiday periods.

**Table 10-8 Permitted Lane Closure - CTA**

Roadway	Lanes Open	Lanes Closed	Closure Time Permitted	Approval Body
Center Way from World Way (west end) to West Way	24 Hours (Permanent Closure)			LAWA
Center Way N from West Way to East Way	2	1	24 Hours	LAWA
	1	2	1:00 a.m. – 9:00 a.m.	LAWA
	0	3	1:00 a.m. – 5:00 a.m.	LAWA
Center Way S from West Way to East Way	No closures permitted			
Center Way from East Way to World Way (east end)	3	1	24 Hours	LAWA
	2	2	1:00 a.m. – 9:00 a.m.	LAWA
	1	3	1:00 a.m. – 5:00 a.m.	LAWA
	0	4	1:00 a.m. – 5:00 a.m.	LAWA
West Way – Upper Level <sup>2</sup>	1	1	11:00 p.m. – 4:00 a.m.	LAWA
West Way – Lower Level Northbound	24 hours (Permanent Closure)			
West Way – Lower Level Southbound	1	1	1:00 a.m. – 9:00 a.m.	LAWA
Theme Way – World Way to Center Way N	24 Hours			
Theme Way – Center Way N to Center Way S	No closures permitted			
East Way – Upper Level	No closures permitted			
East Way – Lower Level	2	2	24 Hours (NB lanes only)	LAWA

Roadway	Lanes Open	Lanes Closed	Closure Time Permitted	Approval Body
Sky Way – Inbound (north of World Way)	No closures permitted			
Sky Way – Outbound (north of World Way)	1	1	24 Hours	LAWA
Sky Way – World Way to Center Way	1	2	1:00 a.m. - 5:00 a.m.	LAWA
World Way – Upper Level		1	12:00 a.m. – 4:00 a.m.	LAWA
World Way – Lower Level		1	1:00 a.m. – 8:00 a.m.	LAWA

Source: Table 16-1, TP Part 2A

**Table 10-9 Permitted Lane Closures - outside CTA (non-state highways)**

Streets	Lanes Closed Per Direction Of Travel	Closure Time Permitted	Approval/ Consultation Body
Century Blvd (4 Lanes Each Direction) <i>Century Blvd From Airport Blvd To La Cienega Blvd Is Classified As TCTMC Street Of Significance</i>	1	11:30PM TO 5AM	1,3
	2	1AM TO 5 AM	1,3
	3	1AM TO 4 AM	1,3
	Full Street		1,2,3
98th St (One Lane In Each Direction)	1	11PM TO 4AM	
	Full Street		2
96th St - West Of Airport Blvd (2 Lanes In Each Direction)	1	11PM TO 5AM	
	Full Street		2
96th St - East Of Airport Blvd (1 Lane In Each Direction)	1	9PM TO 5AM	
	Full Street		2
Jenny Ave - New APM Station Northern Limits To 96th St (2 Sb Lanes and 1 NB Lane)	1	1 SB - LONG TERM	
	Full Street		
Airport Blvd - Manchester Ave To Century Blvd (3 Sb Lanes and 2 NB Lanes) <i>Airport Blvd Is Classified As TCTMC Street Of Significance</i>	1		1
	2		1
	Full Street		1
Belford Ave (One Lane In Each Direction)	Full Street		
Bellanca Ave (One Lane In Each Direction)	Full Street		2
Aviation Blvd (2 Lanes In Each Direction) <i>Aviation Blvd Is Classified As TCTMC Street Of Significance</i>	1		1
	Full Street		1
Westchester Pkwy (2 Lanes In Each Direction)	1	9PM TO 5AM	3
	Full Street		2,3
Arbor Vitae St (2 Lanes In Each Direction) <i>Arbor Vitae St From Airport To La Cienega Blvd Is Classified As TCTMC Street Of Significance</i>	1	9PM TO 5AM	1
	Full Street		1,3
New "A" St – (Pvt LAWA Street)	1	11PM TO 5AM	
	Full Street		2
New "D" St – (Pvt LAWA Street)	1	9PM TO 5AM	
	Full Street		2
Approval/ Consultation Bodies: 1 = TCTMC, 2 = Board of Public Works, 3 = LAWA			

Source: Table 16-2 TP Part 2A



**Table 10-10 Permitted Lane Closures - Sepulveda Boulevard (approval by Caltrans)**

Drt'n	Hour	24	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
NB	Mon -Thu		1	1	1	1	2	2	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2
NB	Fri		1	1	1	1	2	2	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2
NB	Sat		2	1	1	1	1	2	2	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2	2
NB	Sun		1	1	1	1	1	1	2	2	2	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2
SB	Mon -Thu		1	1	1	1	1	1	2	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2	2	2
SB	Fri		1	1	1	1	1	1	2	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2	2	2
SB	Sat		1	1	1	1	1	1	1	2	2	2	N	N	N	N	N	N	N	N	2	2	2	2	2	1
SB	Sun		1	1	1	1	1	1	1	1	2	2	2	N	N	N	N	N	N	2	2	2	2	2	2	1

Legend: 1 = minimum one through lane in direction of travel, 2 = minimum two adjacent through lanes in direction of travel, N = no work allowed

Source: Table 16-3 TP Part 2A

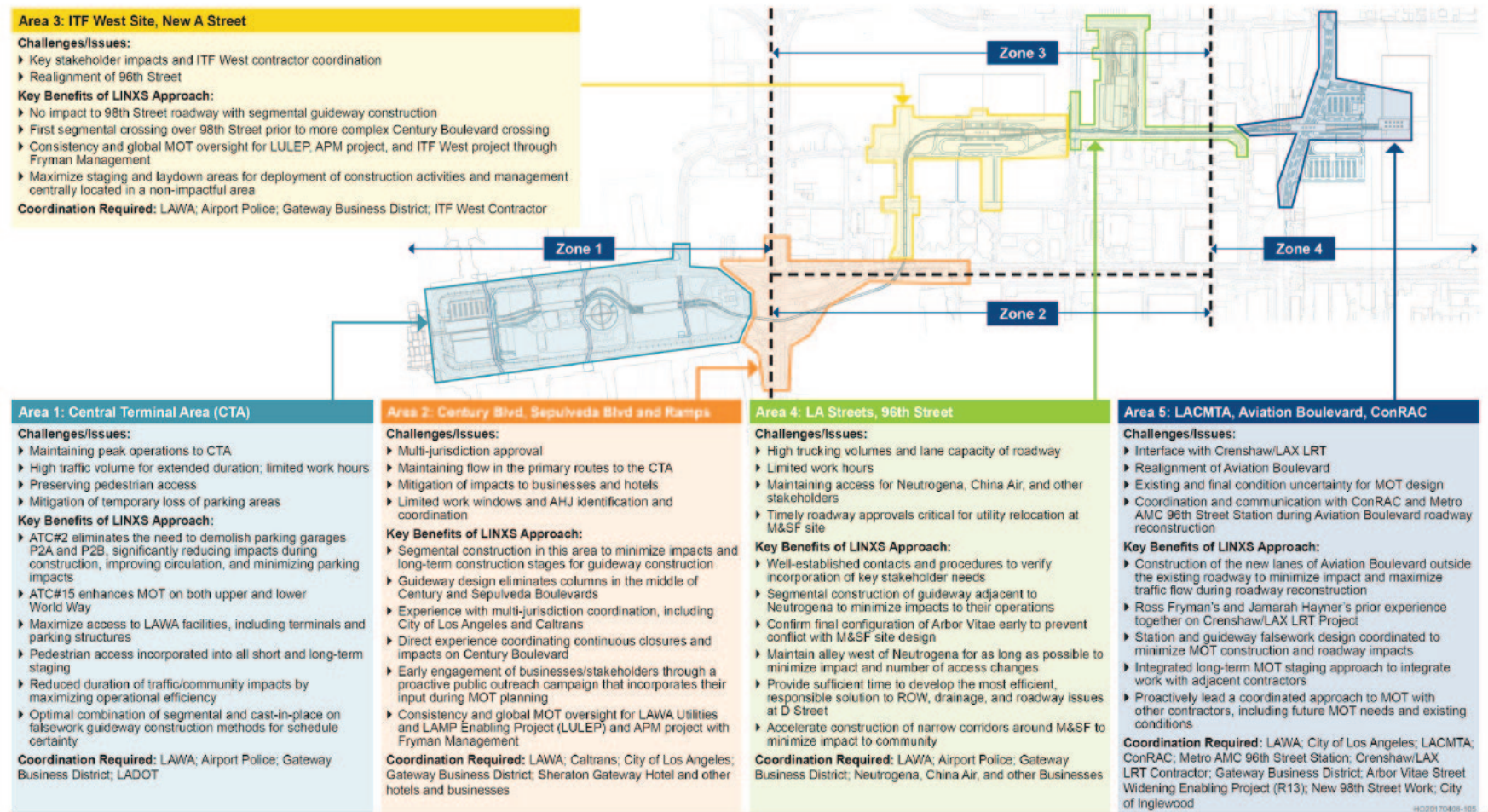
### LINXS proposals

10.9.6 The key aspects of LINXS approach to MOT includes the following:

- Consistent leadership for MOT throughout design and construction.
- A proactive approach to navigating third party approvals that emphasizes early and frequent communication.
- Partnering with LAWA to minimize impacts within the CTA and coordinate MOT efforts with adjacent contracts.
- A fully integrated public outreach and stakeholder communication efforts into their MOT approach: Meeting with impacted stakeholders early, incorporating their needs, and addressing their concerns early in the design phase is critical to our approach to MOT.
- Enhanced wayfinding using both conventional traffic control devices and other innovative signage to clearly navigate vehicles and pedestrians through and around work zones using the latest technology.

10.9.7 The above considerations have resulted in a targeted approach to MOT as highlighted in Figure 10-14 below.

Figure 10-14 LINXS Overall Approach to MOT

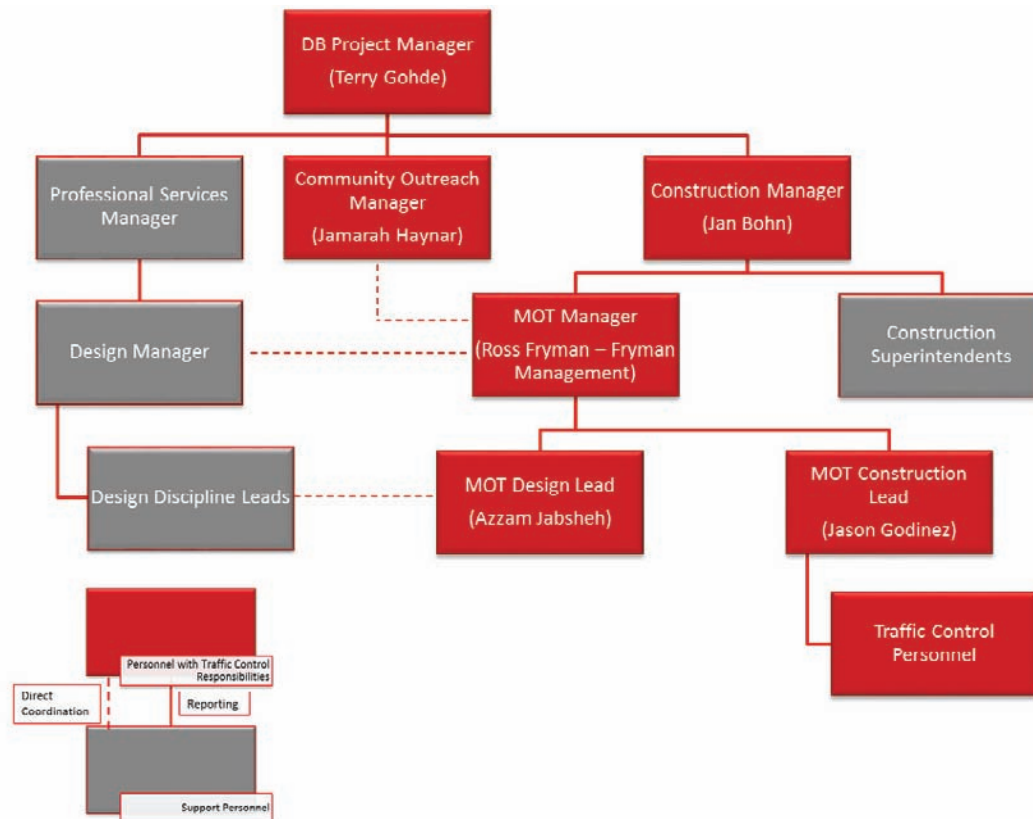


Source: LINXS

10.9.8 LINXS has engaged Fryman Management to support MOT development. Ross Fryman has worked closely with LINXS' DB Project Manager (Terry Gohde), Construction Manager (Jan Bohn), and the LINXS construction operations team to develop a comprehensive approach to MOT that will move traffic (including construction traffic) and pedestrians safely and efficiently through and around the construction work zones. Ross brings relevant experience leading MOT efforts on the high-profile I-405 "Carmageddon"<sup>5</sup> as well as on the recent Crenshaw/LAX Transit Project, which is adjacent to this alignment and presents similar challenges.

10.9.9 Key personnel with MOT responsibilities are shown below.

**Figure 10-15 Key personnel with MOT responsibilities**



Source: LINXS

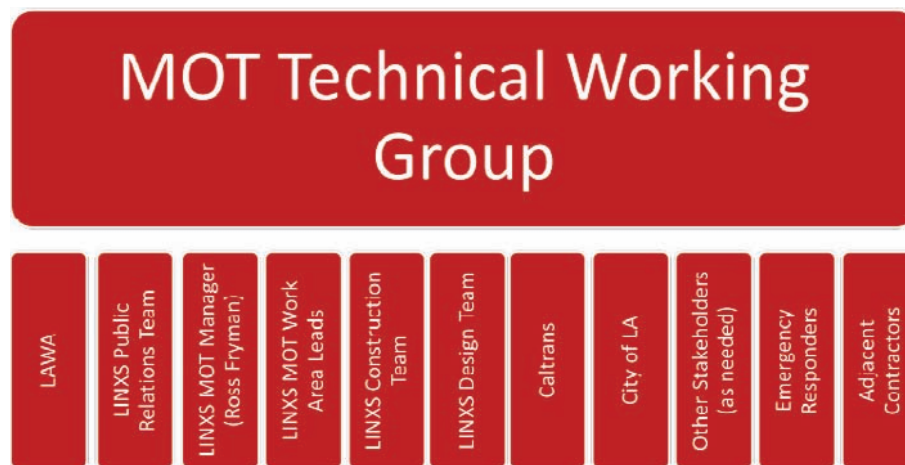
10.9.10 MOT Manager Ross Fryman will continue to manage the development of the MOT plans through final design and will lead the coordination efforts with LAWA, Caltrans, City of Los Angeles, and other agencies to streamline approvals. He will also oversee implementation of the MOT on a daily basis.

<sup>5</sup> A section of I-405 was closed over the weekend of Friday, July 15, 2011 as part of the Sepulveda Pass Improvements Project. Before the closing, local radio DJs and television newscasts referred to it as "Carmageddon" since it was anticipated that the closure would severely impact traffic. In reality, traffic was lighter than normal across a wide area. California Department of Transportation reported that fewer vehicles used the roads than usual, and those who did travel by road arrived more quickly than on a normal weekend

### Third Party approvals

- 10.9.11 Since the APM project is the backbone of the overall LAMP program and will interface with all other construction work ongoing within the CTA, the LINXS team commits to taking a proactive leadership role integrating the MOT efforts of future and adjacent contracts into their approach.
- 10.9.12 Chaired by MOT Manager Ross Fryman, the LINXS team have utilized a multi-disciplinary MOT Technical Working Group (TWG) throughout the proposal phase to develop their MOT plans and approach presented in this proposal. The MOT TWG included representatives from design, construction, public relations, and other disciplines that met weekly or more frequently as needed.
- 10.9.13 Since award of the contract, LINXS have continued to hold regular MOT TWG meetings and have also extended the participation to include representatives from LAWA, Caltrans, City of Los Angeles, and other stakeholders, as needed. The MOT TWG is the primary forum for developing, disseminating, implementing, monitoring, refining, and maintaining the MOT plans.

Figure 10-16 Proposed MOT Technical Working Group

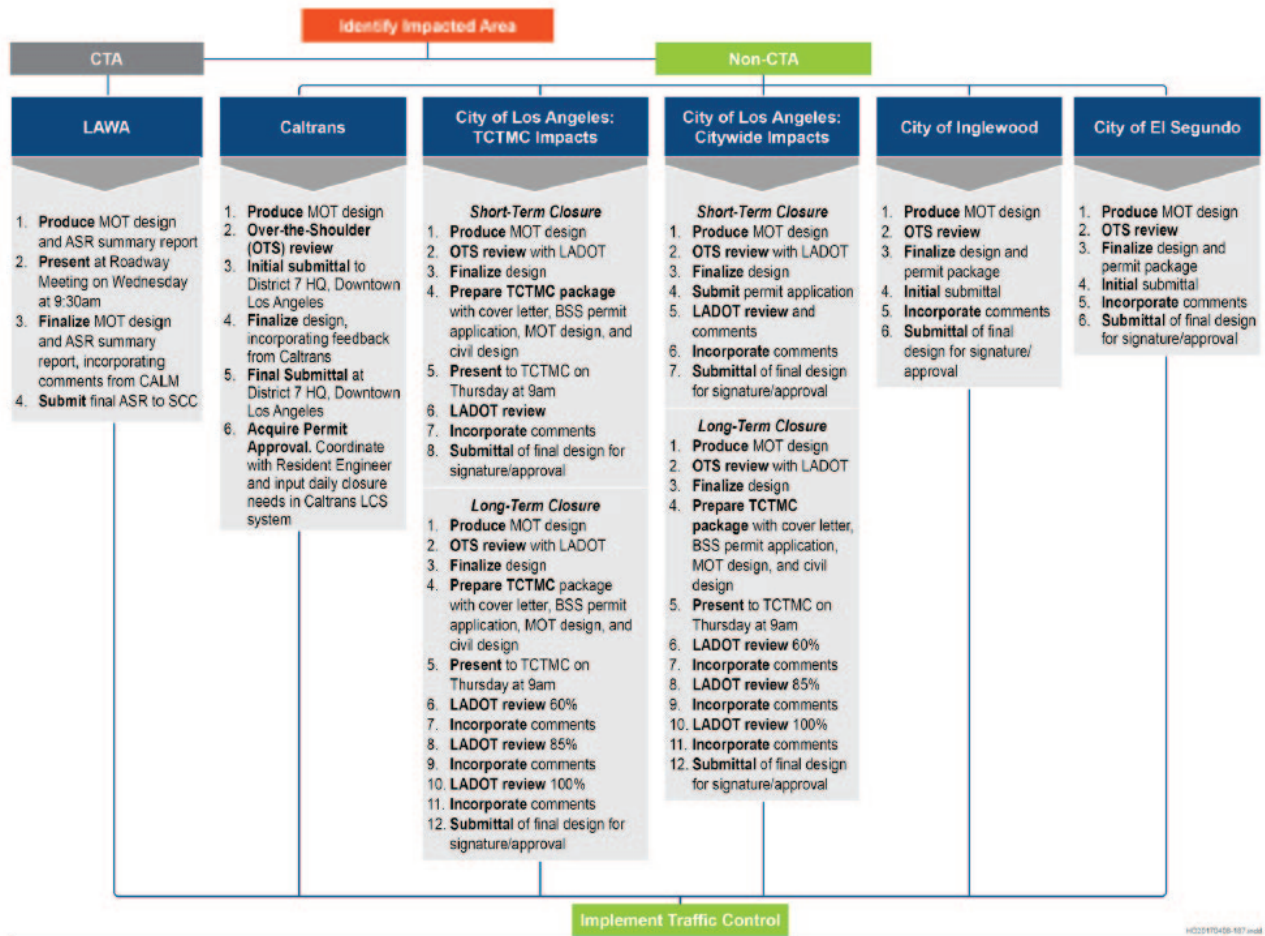


Source: LINXS

- 10.9.14 LINXS will split the MOT work into the five MOT Work Areas. Under the direction of MOT Manager, Ross Fryman, LINXS will have dedicated staff for each area to help lead and facilitate the required coordination with the appropriate agencies throughout all phases of design and construction as shown in Figure 10-17 below.



Figure 10-17 LINXS Approach to Coordination



Source: LINXS

### Design and construction development to reduce lane and access closures

10.9.15 Throughout its design and construction development, LINXS has considered ways to reduce the lane and access closures of the Project. Key aspects which have reduced traffic impacts are highlighted below:

Table 10-11 MOT enhancements through D&C development

Aspect	D&C proposal	MOT benefit
Car Park retention, and limiting parking closures to no more than 900 parking spaces at any one time	Through ATC #2, the LINXS team will not demolish parking structures P2A and P2B.  Making 1,100 more parking spaces available throughout construction as compared to the RFP requirement that allows up to 2,000 spaces to be closed in the structured parking spaces and surface parking lots adjacent to P3 and P4 in the CTA	Reduces the amount of truck trips in the CTA and City streets by 9,250  Eliminates approximately one year of impacts to traffic on Upper and Lower World Way  Avoids interference between existing West Way and the new construction  Maintains circulation by keeping elevated West Way access and avoiding interference between access to P2B and P4

Aspect	D&C proposal	MOT benefit
Guideway design	Eliminate the Guideway Columns in the Middle of both Sepulveda Blvd. and Century Blvd. – by designing the guideway to maximize the span length and remove the need for the middle column in both Sepulveda Blvd. and Century Blvd.	By completely removing these high-impact construction activities associated with guideway substructure construction, MOT impacts are significantly reduced for these key arteries into and out of the CTA.
Pre-cast segmental construction at key locations along the alignment	Construct of the guideway superstructure at key locations using the precast segmental method using an overhead launching gantry as shown in Figure 10-18 and Figure 10-19.	Allows no full closures of Century Blvd. and Sepulveda Blvd. for guideway superstructure erection and significantly minimizes traffic impacts on the two main arterials into and out of the CTA  Eliminates the need for ground access for superstructure construction and keeps the entrance to Neutrogena and China Airlines clear at all times.
User experience	Use of Mobile Apps, enhanced wayfinding signage, Passenger Assistance personnel located at critical points during major MoT changes	Mobile Apps provides real-time information on closures, detours, passenger walk paths, upcoming construction activities  Enhanced wayfinding in a coordinated and intuitive way to improve user comfort, safety and reduce disruption to traffic flow
Construction laydown and site compounds	Strategic use of laydown areas and stockpiles to facilitate an effective material recycling program.	Significantly reduces construction traffic on busy streets during peak travel times.

Source: LINXS

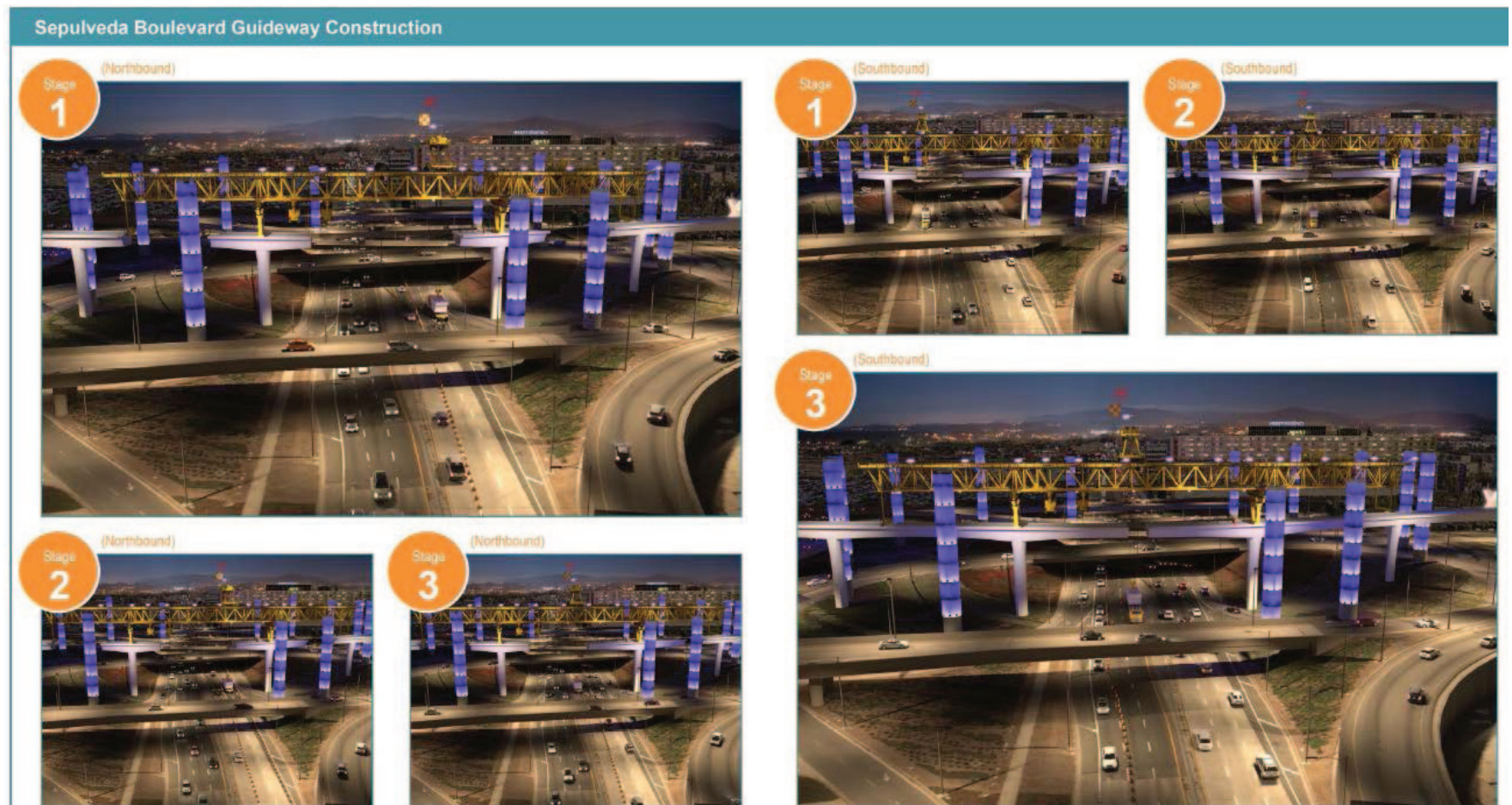
Figure 10-18 LINXS proposal for Guideway construction over Century Boulevard



Source: LINXS



Figure 10-19 LINXS proposal for Guideway construction over Sepulveda Boulevard



Source: LINXS



## LTA Opinion

- 10.9.16 A noticeable theme highlighted throughout the FEIR and the PA is that current highways especially in the CTA area are close to capacity and that the APM and sister projects are answering the need to improve the situation on a long-term basis. LAWA acknowledge that during construction this situation needs to be carefully managed and has included in the PA and the TPs a number of process, coordination, lane, and access restriction requirements to safeguard the operation of LAX APM and the interests of users and stakeholders along the route of the APM. In the opinion of the LTA, the stated requirements maintain a reasonable balance between constructability and user convenience.
- 10.9.17 The LTA recognises that LINXS member organisations have demonstrated extensive MOT experience on similar urban projects and has supplemented its MOT team by the addition of Ross Fryman of Fryman Management who has extensive MOT experience in the LAX area. The LTA has observed that MOT imperatives are driving design and construction development as evidenced through key personnel such as the DB Project Manager and Construction Manager being at the heart of MOT decision-making.
- 10.9.18 Of particular note to the LTA is how the design and constructability have been developed to reduce construction traffic through recycling construction waste on-site wherever possible, the clever design of the guideway, and by less demolition of car parks and other structures.

## 11 CONSTRUCTION SCHEDULE

### 11.1 Introduction

11.1.1 LAWA requirements for the project schedule are primarily defined in the project RFP:

- Part 2A Design and Construction: General Requirements Section 3.1 Project Schedules
- Part 2A Design and Construction: General Requirements Section 3.1 Schedule Requirements
- Part 2A Design and Construction: General Requirements Section 20 Right of Way

11.1.2 LAWA states that the Project Schedule shall be used for identifying Work to be performed, coordinating and monitoring progress, and evaluating changes. It shall also be used to determine work-arounds and “what if” ad hoc requests for areas of concern, cross-contract interfaces, and schedule risk mitigation measures. The schedule shall also include Third Party activities that may affect LINXS’ progress, including ROW availability and LAWA reviews of submissions.

11.1.3 LINXS will be required to archive the monthly progress report schedules and accepted Project Schedules, as well as to maintain an as-built schedule.

11.1.4 LINXS is required to provide the first update to the Initial Project Schedule no later than fourteen days after Financial Close, and shall further develop it to become the Baseline Schedule. Which shall be submitted no later than sixty after Financial Close. The Baseline Schedule will represent LAWA’s acceptance of LINXS’ plan to execute the work from Financial Close through to Final Completion.

11.1.5 Once LAWA has accepted the Baseline Schedule, it shall become the Project Schedule. The major LAWA milestone requirements are summarised in the table below, which dictate the overall timings of the delivery schedule. The Rights of Way (ROW) granted within four zones along the route will provide access for the contractors to start on site; relocating the existing utilities along the route will also need to be started on site after these dates.

**Table 11-1 LAWA milestone requirements**

Construction Milestones	Date	Month	ROW Location	ROW Piers	ROW Stations
ROW Availability - Zone 1	Apr 1, 2018	-2	Chg. 500+00 – 542+00	Piers 1 - 41	East CTA, West CTA, Center CTA
ROW Availability - Zone 3	Apr 1, 2018	-2	Chg. 552+00 to 596+00	Piers 47 - 80	West ITF
Financial Close	Jun 11, 2018	0			
ROW Availability - Zone 2	Oct 10, 2018	+4	Chg. 542+00 to 552+00	Piers 42 - 46	None
ROW Availability - Zone 4	Jul 1, 2019	+13	Chg. 596+00 to 615+10	Piers 81 - 98	East ITF
Start Construction	Oct 17, 2019	+16			
Complete Design	Aug, 18, 2020	+26			

Construction Milestones	Date	Month	ROW Location	ROW Piers	ROW Stations
Passenger Service Availability	Mar 31, 2023	+57			
Final Completion	Sep 29, 2023	+63			

Source: LAWA

- 11.1.6 LAWA specifies that all float contained in the Project Schedule shall be available to both LAWA and Developer, and shall not be considered as time for exclusive use or benefit of either party. Developer shall ensure all sub-Contractors acknowledge that float shall be available to LAWA and Developer to absorb delay caused by Relief Events or other events, to achieve interim completion dates, and achieve Contract Deadlines. All Float shall be identified in the Project Schedule on each affected schedule path. LAWA shall have the right to examine the Float within the Project Schedule when it approves the Project Schedule.

### LTA Opinion

- 11.1.7 The LTA notes LAWA's prescriptive specification of the Project Schedule requirements which, although numerous, are not out of the ordinary for a project of this size and complexity and should pose no particular issue to a competent contractor, such as this DBJV. The requirement to share float is a common one, albeit that this can lead to further discussions during the construction period on who has best claims over its use. The LTA has seen examples in other contracts where the Authority predefines its own float to be in-built into the contractor's schedule for sole call-off against Authority variations or Relief Events. The DBJV then builds in their own float for its sole use. The LTA notes that under the DB Contract the use of the Float is not permitted for Developer Acts.

## 11.2 Scheduling Approach

- 11.2.1 The LTA has reviewed the following material from LINXS: *LAX Basis of Schedule 10/26/17*; *LAX Initial Baseline Schedule 09/12/17*; *LAX APM Critical Path Schedule 20171028*; *LAX APM Initial Project Schedule 20171031*; *LAX APM Linear Schedule 20171028*. It is understood by the LTA that this schedule is subject to finalisation and further development of the design and testing elements of the programme, however the LTA understands that no significant changes are anticipated to the construction items as indicated within this initial schedule.
- 11.2.2 As specified in the requirements of the Project documents, the Consortium has developed its Construction Schedule using the Primavera P6 project management software. The time/ chainage diagram was developed using the Tilos version 8 software. This software package will be used for scheduling, coordination, monitoring progress, identifying Work to be performed and evaluating changes.
- 11.2.3 The Construction Schedule has been broken down into four zones to correspond to the ROW Zones identified by LAWA. The Schedule activities have been organized following a detailed work breakdown structure (WBS), allowing them to be managed by the various disciplines that represent the scope of the Works. The WBS groups the significant items of work under a hierarchical arrangement that, in its entirety, describe the scope of the Works.
- 11.2.4 The Schedule identifies administrative activities associated with the scope of Works, specifically: (a) Project Milestones; (b) Preliminary Requirements Early Works; (c) Rights of Way; (d) Long Lead Procurement; (d) Submittals; and (d) Design. LINXS has incorporated within the WBS the maximum turnaround times to obtain the various permits from the respective agencies.
- 11.2.5 LINXS reports that an initial detailed schedule was developed based upon logic as well as using activity durations that were derived from the experience in similar projects undertaken by LINXS' members. This initial schedule was developed without constraining resources in order that the overall schedule activity blocks could be assessed. Once this logic driven schedule was independently assessed and agreed upon, LINXS proceeded with

a resource leveling effort, taking into consideration labor and equipment density throughout the work corridor. The schedule was then manually manipulated with relationships in order to provide for leveling of resources, as opposed to developing a fully resource loaded driven schedule at this stage.

11.2.6 The following calendars have been used in the schedule.

**Table 11-2 Schedule Calendars**

Calendar	Activity	Work Week	Holidays
1	Non-Site Work Activities (Design, Procurement etc)	5-day work week 8-hour day	6 holidays per year plus <ul style="list-style-type: none"> <li>Day either side of Thanksgiving</li> <li>The week between Christmas Day and New Year's Day</li> </ul>
2	Site Activities (no lane closures required)	5-day work week 10-hour day	6 holidays per year plus <ul style="list-style-type: none"> <li>Day either side of Thanksgiving</li> <li>The week between Christmas Day and New Year's Day</li> </ul>
3	Site Activities (lane closures required)	5-day work week 10-hour day	6 holidays per year plus <ul style="list-style-type: none"> <li>New Year's Eve and New Years Day (December 30 through January 3)</li> <li>Chinese New Year</li> <li>Easter Holiday Weekend (Friday through Sunday)</li> <li>Memorial Day Weekend (Friday through Monday)</li> <li>Independence Day (July 3 through noon on July 5)</li> <li>Labor Day Weekend (Friday through Monday)</li> <li>Thanksgiving Holiday (Monday through Monday)</li> <li>Christmas Holiday (December 23 through December 26)</li> <li>Day either side of Thanksgiving</li> <li>The week between Christmas Day and New Year's Day</li> </ul>
4	LAWA and Thirdparty review activities	7 Day work week	0
5	Logistic Delay Days		The logistic delay days were built into the overall schedule contingency and then rolled into the construction durations.

Source: LINXS

### LTA Opinion

11.2.7 The LTA is of the opinion that the coordinated Work Breakdown Structure (WBS) and segmentation approach allows for construction activities to be optimized by creating self-contained construction projects and focusing teams on key elements within each segment. This is likely to improve efficiency on the delivery when actively

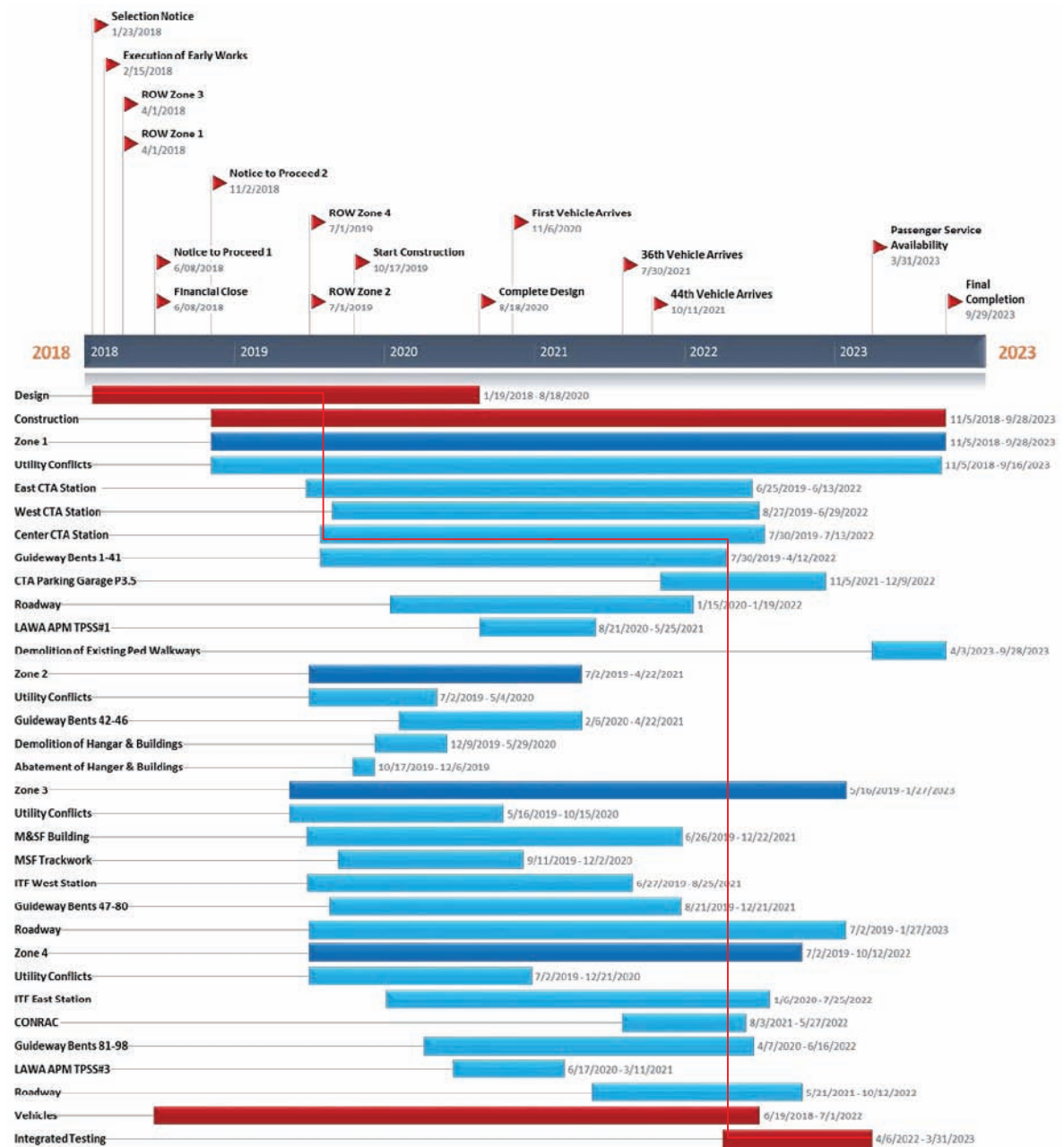
managed by the supervisory design and construction team. The LTA is comfortable that the durations of the activities are suitable for the location and type of work required.

- 11.2.8 The Project Schedule is logically sequenced to achieve suitable service availability. Its activities are representative of the scope of works and are well organized and presented in the form of a Gantt chart, developed in Primavera 6, which is a widely recognized project management tool to develop and maintain schedules of complex projects. This software provides the facility to assign manpower and costs to activities, enabling the development of planning and control tools, such as manpower histograms and S-curves, allocation of activity estimated cost/ planned value and distribution of cost to address the entirety of the project scope at all levels of the WBS, all of which are requirements from the Project Agreement.
- 11.2.9 A WBS section is dedicated to the utilities relocation in each construction segment as they constitute a key activity at the beginning of the works. During the tender stage, LINXS has made contact with the utility companies to discuss early utility relocation proposals. The LTA notes that, as a result of this, the Consortium has made reasonable assumptions regarding the utilities work commencements and diversion dates, which will be confirmed during the detailed design phase.
- 11.2.10 The main constraints to the Project Schedule, which can potentially constitute risks to the Project, are generally linked to matters such as environment, utilities, permits, interface with third parties, transit and traffic management. However, the LTA deems these to be generic construction risks that have been adequately addressed in the Consortium's schedule and should not pose particular difficulties, given the DBJV member's experience in the region.
- 11.2.11 The LTA was informed that the schedule iterations and optimizations have been achieved through joint cooperation of planners, designers and construction management teams. The LTA considers that the approach to the Project planning has been done with adequate structure and level of detail, and that the Project Schedule activities reflect conditions of the site including for restrictions around the CTA and over Century Boulevard, permitting, ROW and utility works. Additionally, the LTA has observed that the Project Schedule includes calendars to allow for winter working and contingencies to face special events and various statutory holidays.

### **11.3 Construction Schedule and Critical Path**

- 11.3.1 The schedule reviewed shows the LINXS proposals for design, civil engineering construction, railway systems installation, rolling stock development and delivery, integration testing, and performance testing. In addition, it shows a contingency for adverse weather days of 65 days over the approximately 4-year construction works period (including testing and commissioning). It is noted that this is below the PA requirements of 21 days of Adverse Weather for every year of the construction work, though the LTA notes that in the schedule RFC received from LAWA this matter was not raised.

Figure 11-1 Outline LINXS Base Schedule, showing Critical Path (Red)



Source: LINXS

- 11.3.2 The LINXS team has programmed the alignment design to start in February 2018 (4 months before Financial Close) in order that the main engineering and architectural designs can start promptly in July 2018. Design completion is scheduled for July 2019, approximately twelve months before the LAWA specified milestone for completion of Design of August 2020. There is therefore, theoretically, some float on the design stages, however the civil engineering is scheduled to start in July 2019 at all of the station sites and the MSF site, as well as at four separate sites of the guideway structure. The early completion of the design is therefore necessary to enable as early a start as possible on the construction.
- 11.3.3 The designs are shown to be scheduled to run concurrently by a number of separate design teams, with enough separation in the timescales of the individual activities to enable submissions to LAWA to achieve the required

metering requirements. The design period includes allowance for the progressive approval by both LAWA (21 days) and LA City Department/Bureaus (28 days) at each of the design 'gateways': 60%, 85/90%, 100%.

- 11.3.4 The Critical Path flows through the first half of the design stages, which includes the civil and structural designs for the stations and guideways. The design schedule for this element of the design is approximately eighteen months, and includes the final alignment designs.
- 11.3.5 The Critical Path then flows through the construction of the Center CTA Station (July 30 2019 to July 13 2022), due to the requirement to obtain SHPO and FAA approval for associated ATC 2. This is constructed in the CTA area between car park P2A and the LAX Control Tower and utility center, making this site marginally more constrained than the other station structures. The construction of the station is sequential, as for most structures, starting below ground and gradually working to the roof cover; with the fit out and installation of the elevators and escalators at the end of the construction pattern. The connecting walkways are erected once the station building has reached a suitable level for the connecting cross passages.
- 11.3.6 Final element of the Critical Path involves the Full System Testing and Commissioning process (April 6 2022 to March 31 2023) which involves the testing of all the fixed infrastructure along the guideway as well as the interface with the APM. It should be noted that delivery of both the MSF and the APM fleet are not on the critical path. Within the MSF the trackwork is very unlikely to be delayed sufficiently to adversely effect the delivery and testing of the first APM vehicle, due June 11 2020. Similarly, the static and semi dynamic testing of the first APM vehicle within the MSF is scheduled to be started in June 2021, approximately nine months before the guideway testing commences.
- 11.3.7 The first sub-critical path flows through the East ITF Station, with three days' float; the second sub-critical path flows through the West CTA Station with 15 days' float.
- 11.3.8 No particular elements in the D&B are particularly complex or novel and the DBJV can readily accelerate the schedule when required by increasing the normal site work from 10hr/day, five days per week to a double shift of a further 10 hours per day, as well as working weekends. The workforce could be double-shifted with no material adverse effect on the LAX traffic as sufficient material can be stockpiled on site for use in the forthcoming shift.

#### **LTA Opinion**

- 11.3.9 Based on the LTA's review of the schedule the sequencing of the activities appears logical and reflects the LAWA imposed constraints, such as their review and approval time periods and release of ROWs. It is noted that the Adverse Weather Days allowance is below the PA requirement of 21 days per year of construction works, though as noted earlier on the schedule RFC received from LAWA this matter was not raised. In any case there is sufficient contingency in the schedule to accommodate an additional 21 days adverse weather should LAWA insist on it. Activities shown are representative of the scope of Works.
- 11.3.10 The LTA's review has revealed a well-structured and resourced schedule that sets out to deliver the necessary designs to the construction teams in a timely manner. The individual activities are considered to be of a suitable length for the scope of each task, with reasonable float at the end of the design schedule to avoid a late start on the civil engineering.
- 11.3.11 The design schedule activities are comprehensive and coherent, with a reasonably aggressive timescale for the designs which start approximately eighteen months before the civil engineering construction commences: the total design period being approximately two years seven months. The LTA is of the opinion that the design schedule proposed by LINXS is an achievable ambition for a large and experienced team of professionals which does not bring any additional risk to the Lenders. There are many engineering design methods that can be used to ensure that the designs are not delayed sufficiently that they might delay the construction. For instance, it is

possible to design the structures bottom-up, rather than top-down: the foundations are relatively straightforward as LINXS proposes to use a small selection of different pile sizes, limiting the number of differing foundation designs that will be required.

- 11.3.12 The logistics of the design stages are also greatly simplified by having all the railway systems, and the vehicles, being constructed by Bombardier which has significant experience in constructing the vehicle/systems combination within the LINXS proposal. The re-establishment of existing interface protocols require considerably less time to set up than developing new ones.
- 11.3.13 The LTA understands that the Early Works activities commenced in mid-February 2018, including design. To date work has been focused on establishing (i) the Project Execution Office; (ii) developing design documents including the Design Quality Plan, Basis of Design, Design Criteria documents and the Project Schedule; (iii) participating in co-ordination and interface meetings with LAWA and other relevant parties and holding design Technical Working Group (TWG) meetings; (iv) developing and clearing through LAWA investigative potholing and geotechnical boring plans; and (v) obtaining ATC No. 2 approval. It is understood that to date the LWA review process for those documents that have been submitted have been completed ahead of the scheduled timeframe. Based on the information provided the LTA is satisfied with the progress of the Early Works in advance of Financial Close.
- 11.3.14 LINXS' construction schedule is scheduled to start in November 2018, and in the opinion of the LTA there is minimal risk that the start date should be delayed. LINXS construction is scheduled to be undertaken at all of the station sites, the MSF, and five to seven guideway structure sites simultaneously, in order that the guideway can be made accessible to the vehicles at the earliest possible date. In the LTA's experience this is the normal approach for the construction of an extended viaduct structure carrying an APM or LRT through a busy or congested area. It has the natural, and usual, consequence of having multiple sub-critical paths through the schedule. This should be seen as a consequence of the positive construction approach, and not as the evidence of a fragile schedule.
- 11.3.15 The manufacture of the vehicles is also scheduled to be completed, and the whole fleet delivered to the MSF (October 2021), within a relatively comfortable schedule six months before the integration testing with the guideway infrastructure is due to start (April 2022). The integration testing is due to be completed by January 2023; allowing two months at 'Trial Run Readiness' before the 'System Demonstration' to LAWA for the PSA, on March 31 2023. The contractual Final Completion Day is September 29, 2023. The LTA is reassured that the Integration Testing is scheduled to take approximately one year, which is normal for an APM or LRT.



## 12 OPERATIONS, MAINTENANCE and REHABILITATION

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### 12.1 Introduction

12.1.1 LAWA requirements for the APM system operations and maintenance requirements are primarily defined in RFP Part 1 Scope of Work which is a short report listing the major elements of the project. More detail of the technical scope is presented in the following documentation:

- APM-06 – TP Part 3 – 20171019\_Addendum No. 2 (APM System Operations and Maintenance Requirements)

12.1.2 Background Information has also been prepared and made available by LAWA through a Data Room, which includes various technical reports and investigations, existing asset condition surveys and other technical document

### 12.2 LAWA Requirements

#### General Operations

12.2.1 LAWA specifies its general requirements for the operation of the APM to be driven by the health and safety of the travelling, and non-travelling public, as well as all LINXS and LAWA staff.

12.2.2 LINXS' APM System Safety Program and APM System Security Program must fully comply with the requirements of CPUC General Order No. 164-D as well as the accepted SSPP.

12.2.3 LINXS shall be responsible for the health and safety of its employees, agents, subcontractors, consultants, other persons who perform Work during the O&M Period, Users and the general public, and for the protection and preservation of the APM System. LINXS shall take all necessary and reasonable precautions and actions to protect all such persons and property.

12.2.4 LAWA sets the standard requirements for the operation, and failure modes, of the fixed and mechanical infrastructure: this is supported by the contractual measurement of the operational standard required within the Payment Mechanism (see Section 5 for further details).

12.2.5 LINXS is responsible for the operation and maintenance of the System for the residual years, post construction activities, of the 30-year project term – currently estimated at approximately 25 years.

12.2.6 The obligations of the Developer are:

- Operation of the APM System during the Operating Hours, at the service frequency, and the specified service levels.
- Complete System Maintenance and Asset Management for both the APM Operating System and the Fixed Facilities, ensuring that the APM System shall at all times be in a condition commensurate with:
  - Its remaining design life or, where applicable, other specified remaining useful life;
  - its use as an operational, airport critical, automated people mover system.
- Develop, implement, update and enforce all rules, policies, procedures and hazard mitigation strategies.

- Provide an environment that promotes personal security, public safety and passenger satisfaction at all times;
- To satisfy the Handback Requirements;
- There are no fare setting, collection, fare enforcement and policing requirements.

12.2.7 The Pre-Commercial Close modifications discussed in section 10.4 do not have a significant impact on the approach to O&M proposed by LINXS.

### **Maintenance Management Information System (MMIS)**

12.2.8 The Developer shall implement a network based MMIS and record-keeping system in accordance with TP Part 2B, Section 11. The MMIS shall be used during the O&M Period to record all maintenance activities, document track, and report on scheduled and non-scheduled maintenance on all elements, components, and systems. It shall be used to record all maintenance equipment and parts with associated listings and inventories; as well as providing information on system failures and their causes. LAWA shall have access to the MMIS at any time.

12.2.9 The Developer shall update the MMIS daily to keep the system in a current status. It shall report all preventative maintenance activities scheduled and completed as well as equipment failures and future works. It shall be used to document asset maintenance, asset condition, and parts ordered, as well as to assure that there is no backlog of maintenance work.

12.2.10 For each of the APM Operating System subsystems, the following types of maintenance shall be performed:

- Routine Maintenance - Activities required to provide a clean and aesthetically pleasing APM Operating System for public use. Routine inspections and tests designed to identify any unusual or abnormal equipment conditions. Routine maintenance activities shall be as included in the APM System Maintenance Plan.
- Scheduled Maintenance - Activities required to keep the APM Operating System operating at prescribed levels of safety and reliability which are performed on a recurring basis at specified intervals. Scheduled maintenance activities shall be as included in the APM System Maintenance Plan.
- Non-Scheduled Maintenance - Any corrective measure or repair necessitated by an inspection, a failure, or unusual circumstances adversely affecting the normal APM Operating System operations. Non-scheduled maintenance may be required as a result of unsatisfactory conditions discovered during an inspection or because of an operational failure. Non-scheduled maintenance activities shall be performed on a priority basis as necessary to meet required APM OS Availability.
- Ordinary Wear/Tear - Any corrective measure or repair that may be required because of ordinary wear and tear, including but not limited to, painting, re-upholstering, and re-flooring.
- Other Maintenance - Maintaining updated maintenance manuals, maintenance testing as required and maintenance of tools, equipment and furniture.

### **Operations Scope Requirements**

12.2.11 The APM is required to operate as a 24/7 system, with an extended Peak Period of 14 hours. Operating Headways are not to exceed specified values for the time of day, reflecting passenger flow forecasts. The APM round trip travel time shall be less than 1,200 seconds excluding dwell times at stations.

12.2.12 The service operations are to be covered with a mix of four car and two car trains. Table 12-1 below shows the daily operating requirements for capacity of passenger per hour per day, APM consist, and the operational headway.

**Table 12-1 Operation Requirements**

Ops Mode	Time	Ops Headway (seconds)	Capacity (pphpd)	Operating Fleet (and configuration)
Night Mode	0:00 – 02:59	272	1,622	1x4 car + 4x2 car
Off Peak	03:00 – 08:59	155	4,487	7x4 car
Peak	09:00 – 22:59	134	5,515	9x4 car
Off Peak	23:00 – 23:59	218	3,210	5x4 car + 1x2 car

Source: PA

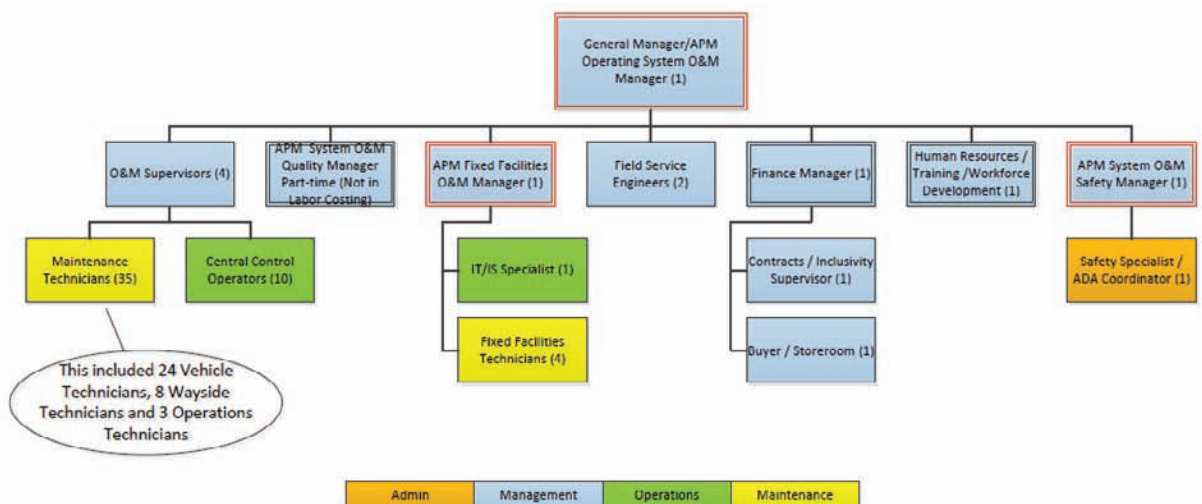
### 12.3 Consortium's Approach to Maintenance

12.3.1 LINXS have approached the maintenance by ensuring the prime contractors involved in the design and construction phases of the project are also significant shareholders in the OMJV.

12.3.2 The LINXS consortium has already set up its O&M team which attends all the joint team meetings and is encouraged to act proactively within the overall team. The O&M team has already contributed significantly to the early design stages of the APM during the bid preparation stage such as proposing the redesign of the MSF, and recommending route alignment changes to enable the rationalization of the guideway supporting structure. The O&M team participates in all relevant design meetings which ensures that O&M considerations are taken into account, including Design for Maintenance and Design for Safety.

12.3.3 Figure 12-1 below shows LINXS' organisation during the operation and maintenance period.

**Figure 12-1 O&M Organisation Chart**



Source: LINXS

12.3.4 LINXS' Central Control Room will be staffed 24/7 with at least two qualified operators whose prime responsibility will be monitoring the system status during service ensuring optimal system performance. However, they will also interface with the station operations teams and support and coordinate the maintenance activities along

the guideway and in the APM systems operation rooms. LINXS has stated that it is planning to automate the Central Control Standard Operating Procedures (CCSOP) to ensure optimized and consistent response to non-routine incidents. These CCSOP's are usually large printed documents that are followed following an incident; by automating them LINXS will aim to speed up response time as well as have an automated log of the recovery procedures as they unfold.

- 12.3.5 OMJV are anticipating, and therefore planning accordingly, for a unionized workforce. It remains for the employees to organize, but BT's experience indicates that this is likely, as such OMJV are pricing for this from start of OM.
- 12.3.6 LINXS is planning its failure management processes in a series of standard management tools incorporated from the best O&M practices including:
- Operating Plan
  - Failure Management Plan
  - Standard Operating Procedures
  - Rulebooks
  - System Safety Program Plan
- 12.3.7 LINXS will have a Hot Standby Train strategically located at the top of the MSF ramp to ensure levels of system performance are maintained, and as required by the RFP.
- 12.3.8 LINXS has also stated that it will automate its Shift to Shift passdowns in Visualization Centers in order to brief the oncoming shift about the priorities for the next shift, provide real time system status, ensure consistent information is provided across shifts, continue KPI monitoring, and to provide information critical to the system operations. LINXS has advised it is likely to use MAXIMO V7.6 Asset Management System to record all the asset data as well as to manage the ongoing maintenance effort and that it is likely to install interactive monitors linked to the Asset Management System. LINXS has indicated that it will use most of the functionalities of MAXIMO, with the exception of the automatic ordering of, and payment for, the spare parts to be used. However, LINXS will use the software to warn of any acceleration of early component wear or failure, as well as for all the preventative maintenance requirements for listing work schedules and checking with the storage data to ensure when new parts are required.
- 12.3.9 MAXIMO is an industry database system that provides real time awareness of component wear and condition and is used to extrapolate asset replacement dates and processes. It also tracks the spare parts stock and parts consumption, warranty, parts tracking, making it an industry standard maintenance tool for the asset management processes of major systems, such as railways.
- 12.3.10 LINXS is also proposing to use the bar-coding option within MAXIMO 7.6 in order to enable staff with a suitable bar code on their security badges to sign-off a spare part, and for the spare to be bar coded for automatic stock taking.
- 12.3.11 LINXS is planning to base its maintenance effort in a process called 'Dynamic Maintenance Management' or Condition Management Maintenance that will focus attention on preventative & predictive maintenance, whereby the assets are monitored on a regular and frequent basis in order that: -
- they can be modelled for wear, and future projections of the rate of wear can be calculated to predict maintenance interventions.

- Early warning signs of mechanical failure can be tracked, and replacement or intervention organized before complete failure this is the prime role of SCADA equipment
- Damage or vandalism can be identified earlier, enabling a swifter repair

12.3.12 LINXS is also preparing for the training of its maintenance staff to act as multifunctional maintenance teams in order to minimize the size of the workforce as well as to maximize its productivity.

12.3.13 Vehicle Maintenance will follow the preventive and predictive maintenance concept and be routinely performed during off peak periods. The predictive maintenance will be workload balanced to ensure consistent execution within the available resource based on the vehicles' time and mileage records which are automatically monitored and scheduled within MAXIMO.

12.3.14 The entry line into the MSF will be fitted with Automated Vehicle Inspection Systems (AVIS) which will undertake high frequency, high standard, inspections, providing datasets to Maximo to enable predictive wear and failure trends.

12.3.15 Table 12-2 below indicates the indicative intervention points for the APM vehicles: -

**Table 12-2: Intervention Milestone for APM Vehicles**

Mileage Intervention	Interval	Maintenance Type
250	Daily	Automated
500	Bi-Daily	Automated
7,000	Monthly	Physical in Shop
14,000	Bi-Monthly	Physical in Shop
21,000	3 Monthly	Physical in Shop
42,000	Semi Annual	Physical in Shop
84,000	Annual	Physical in Shop
168,000	Bi-Annual	Physical in Shop

Source: LINXS

12.3.16 LINXS' approach to the APM vehicles (and the fleets of elevators and escalators) lifecycle maintenance will be based on a Technical Maintenance Plan backed up with condition assessments and prognostic data set outputs. Where practical, LINXS will use a modularized component replacement approach in order to reduce vehicle downtime. The initial periodicities indicated in the table above, incorporate LINXS' assessment of the impact of the LAX operating environment, but this will be modified following ongoing analysis of the asset behavior.

12.3.17 LINXS' approach to spare parts supply is based on Bombardier's experience worldwide experience of more than 30 years. Initial levels of on-site spares will be based on a combination of the location of O&M services, subsystem performance, reliability and failure rates, initial strategy for its on-site testing and for its attitude to repair of components, or component replacement. LINXS is proposing to adapt its approach following on-site experience during the period of the stock levels established in MAXIMO.

12.3.18 LINXS' reports that on all its O&M assignments it routinely relies on its own regional and worldwide support network, with an established spares network. These operations include:

- vehicle and system engineering
- procurement

- Warehousing
- Transport
- Logistics.

12.3.19 Of more importance to this project Bombardier's regional warehouse, based in Pittsburgh, stocks all of the generic APM parts for worldwide business.

**Table 12-3: Vehicle Routine Maintenance / Inspections**

Subsystem / Interval	Daily (In-Service or AVIS Checks)	Monthly	Semi Annual	Annual
Automatic Train control		X	X	X
Batteries		X	X	X
Brakes		X	X	X
Car Body	X		X	X
Comms	X	X	X	X
Coupler		X	X	X
Current Collectors	X	X	X	X
Doors		X	X	X
HVAC		X	X	X
Power Conversion Unit			X	X
Lighting	X			X

Source: LINXS

12.3.20 LINXS is planning for its wayside maintenance to be typically performed during overnight hours, when passenger numbers are lowest and during partial system shutdowns; by using operational switches along the guideway LINXS can divert traffic of a particular section of line and run bi-directional on the parallel route. This work will be performed by a blend of permanent staff and subcontracted staff, depending on the efficiencies of the work to be undertaken. Diagnostic data is to be monitored on the operational infrastructure through Supervisor Control and Data Acquisition system (SCADA) with the data fed into MAXIMO, and similarly maintenance service vehicles will be used to perform wayside inspections, as well as maintenance.

**Table 12-4: Wayside Routine Maintenance / Inspections**

System	Daily	Weekly	Bi-Weekly	Monthly	Quarterly	Semi-Annual	Annual
Signaling –switch control panels	CC	X				X	X
Switches	CC			X		X	X
Power Rails / Cabling	CC			X		X	X
PS&D	CC			X		X	X

System	Daily	Weekly	Bi-Weekly	Monthly	Quarterly	Semi-Annual	Annual
UPS	CC					X	
Communication	CC					X	
Substations	CC			X		X	
ATC –Control / Elec Rooms	X	X	X	X	X	X	X
ATC -Wayside	CC			X			X
Platform Screen Doors	CC			X	X	X	X
Workshop Equipment	SA			X			X
MSV & Workshop Equipment	SA						X
<i>Notes: CC - Central Control will support daily inspection for Wayside. SA - Workshop Equipment and MSV will be inspected each time it used for safety and proper functionality</i>							

Source: LINXS

- 12.3.21 In a similar fashion to the wayside equipment, LINXS will perform its Fixed Facilities maintenance during off peak or overnight hours as required by either its own staff or by subcontractors, depending on the type of work required. Routine visual inspections will be performed by LINXS staff, but more specialist work such as detailed structural surveys, or other skilled, or equipment specific, inspections are to be performed by subcontractors. The asset condition will be tracked through MAXIMO throughout the O&M Period, enabling the handback requirements to be achieved

**Table 12-5: Fixed Facilities Routine Maintenance / Inspections**

System	Monthly	Annual	Bi-Annual (every 2 Years)	Every 4 Years
Guideway Structures			X	
Pedestrian Walkways			X	
Station Structures			X	X
TPSS				X
MSF				X
Retaining Walls				X
Culverts (AASHTO classification)			x	
Large Diameter Drainage Pipes			x	Camera Inspection (5 years)
Small Diameter Drainage Pipes		Scuppers twice pa Outlets		Camera Inspection (5 years)
Small Buildings (Elec / Mech Rooms)			X	
Drainage Structures		X		

System	Monthly	Annual	Bi-Annual (every 2 Years)	Every 4 Years
Elevators/ Escalators / Moving Walkways*	X	X		
HVAC*	X	X		
Fire/Life Safety Systems	X	X		
Solar Panels Equipment*		X		
* Based on Supplier Recommendations				

Source: LINXS

12.3.22 LINXS anticipates that it will have maintenance responsibility only for the pipes at the MSF water retention facility as well as those associated with the elevated guideway and station drainage: all other areas will form part of the 'Non-O&M Facilities' and handed back to others prior to the start of the maintenance period.

12.3.23 The approach to Mechanical and Electrical (M&E) equipment maintenance, by its nature, tends to be reliant on unscheduled maintenance, however, LINXS is planning to undertake a continual programme of testing and verification at component level, with Corrective maintenance undertaken from the results in order to increase component availability. LINXS staff will perform rebuilds and repairs to line replaceable units and complete assemblies undertaken via safety sensitive procedures. As with the other assets, all activities will be tracked in Maximo.

12.3.24 All non-vehicle APM System maintenance, i.e. switches, power rail, signalling, platform screen doors, etc., will be self-performed. The maintenance of facilities and infrastructure will be a blend of self-perform and subcontracted, based on requirements, certifications, equipment etc.

#### LTA Opinion

12.3.25 The LTA is satisfied that the LINXS responses to its O&M obligations suitably covers the LAWA requirements.

12.3.26 Having had direct experience of using the MAXIMO software on the operation of several other railway systems, and reviewed several alternatives, the LTA is confident that LINXS is using one of the leading tools of asset management. The LTA has not had direct experience of the AVIS system to be used by LINXS, but has experienced alternative systems. Therefore, it is confident that the system will significantly improve the ability of the operator to observe the early symptoms of component failure and enable it to address them before failure occurs, possibly during operations.

12.3.27 The O&M concept has been clearly carefully thought through by the LINXS team for all aspects of the asset management requirements. This is exemplified by the proposal to train its in-house staff to be capable of undertaking a variety of tasks, thus creating a degree of technical redundancy enabling easier and more flexible staff rostering within the maintenance teams.

12.3.28 In the view of the LTA, the integrated approach between the operations and design and construction disciplines during the current bidding stage (and the proposal to continue this throughout the design development stages of the Project) significantly reduces post construction risk and enhances the efficiency of design and bid competitiveness while minimizing the potential issues during the period of transition to the O&M organization when the system is completed.



## 12.4 Handback

### LAWA Handback Requirements

12.4.1 LINXS is responsible for turning the APM System over to LAWA at the end of the Term in accordance with the requirements of the Agreement. In order to identify areas of the APM System that may need major or minor renewal work to meet these requirements, the Developer shall develop a Handback Renewal Work Plan to identify these items of work and to properly plan for this work to be accomplished in accordance with the Handback Requirements. The Handback Renewal Work Plan shall be provided by LINXS, which shall include:

- The main civil and structural works and the APM System elements shall not exhibit any undue signs that they cannot reasonably be expected to satisfy their full design life specification and to support reliable service operations for a period of three years beyond the end of the Term;
- Limited life and "wear and tear" components of the APM System elements have been replaced by Developer during the O&M Period in accordance with Good Industry Practice as and when they failed, wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities;
- Major electrical and mechanical components or other APM System elements (excluding the Vehicles) have been repaired, refurbished, or replaced by LINXS as appropriate if their condition indicates that they are unlikely to support reliable service operations (without recourse to major repair) for a period of five years beyond the end of the Term;
- Each Vehicle and its components, whether original or replacement equipment, have been, and continues to be, maintained in accordance with the original equipment manufacturers' recommendations, subject to reasonable modification of maintenance practices, up until the end of the Term;
- Additional asset actions required to meet the condition of no asset rehabilitation, overhaul, or replacement being performed in the three-year period immediately following Handback;
- Plan for the transition of O&M responsibilities to LAWA;
- Procedure for acceptance of the Assets and elements by LAWA; and
- Procedure for training LAWA on O&M of Assets and elements.

12.4.2 The Residual Life of the assets at the end of the Term is to be as follows:

- APM Operating System Assets – 5 years
- Remaining Useful Life of each asset had it been maintained in a State of Good Repair,
  - no less than 5 years
  - no asset rehabilitation, overhaul or replacement required in the five-year period after handback

### LINXS Proposal

12.4.3 LINXS has stated that it understands the handback requirements set by LAWA and consider them to be aligned with the normal requirements for a proactive maintenance system that it intends to implement and has therefore planned for 25% of the rehabilitation work to be undertaken in the last five years of the O&M period.

- 12.4.4 LINXS will develop a Handback Renewal Work Plan that matches the LAWA Requirements. It will establish the process for the selection of an Independent Engineer at least six years before the end of the project and deliver the Handback Renewal Work Plan, including delivery of the estimate of residual work (Handback Reserve Amount) to LAWA, and the Independent Engineer, no later than five years and three months before the end of the project.
- 12.4.5 Any asset rehabilitation, overhaul, or replacement scheduled to occur in the five-year period following handback shall be accelerated to occur before the handback such that no asset rehabilitation, overhaul, or replacement will be required during that period as determined by Developer's Asset Management Plan.
- 12.4.6 LINXS' strategy to deliver its handback obligations is by adhering to its established and evolving asset management plans. It will therefore be implementing its concept of Intelligent Maintenance Systems for applicable assets as detailed above, including establishing regular, planned, inspections of the fixed facilities and infrastructure.

#### **LTA Opinion**

- 12.4.7 The LTA has reviewed the LAWA handback requirements and view them to be normal for an APM or LRT project: these requirements are consistent with a reasonable holistic asset management system that involves a high degree of asset monitoring and the majority of the maintenance budget, and effort, is spent on timely preventative maintenance, rather than on reactive maintenance.
- 12.4.8 The LTA is also satisfied that the LINXS proposals for the handback process is satisfactory and that due to its approach to the good quality maintenance process it is planning for the O&M Period that there are unlikely to be a likelihood of any serious default towards the end of the contract.

## 13 PROJECT COSTS

### 13.1 Introduction

- 13.1.1 The Consortium has provided the LTA with the SPV Costs, DB Costs, O&M Costs and lifecycle costs for review. This section of the report provides the LTA commentary on the reasonableness of the allowances made by the Consortium.
- 13.1.2 The Consortium has developed its cost model using a structured process involving the estimating teams, the design teams, the construction teams and other Consortium members involved in the design, construction, and maintenance of the assets. The costs have been reviewed by the LTA through a process of benchmarking and more detailed review where appropriate. The LTA notes that the allocation of costs/ risk within each item is still subject to change.
- 13.1.3 The cost impact due to the Pre-Commercial Close modifications is just over 1% of the overall capex and nominal increases to the MAPO payment. This additional cost will be paid for by LAWA via a number of lump sum payments as discussed in section 8.2 and are not being financed by the Developer. For these reasons the impact of the changes has not been included in the following analysis.

### 13.2 SPV Costs

- 13.2.1 The Consortium has made an allowance for SPV costs during both the Construction and the O&M Period as summarised in the table below. Commentary on those costs which are related with technical aspects (Staffing and Office and IT), are presented in the following paragraphs.

**Table 13-1 Summary of SPV costs during Construction and O&M periods**

Item	Construction period		O&M Period		Total Combined	
	Total (USD)	Dist.	Total (USD)	Dist.	Total (USD)	Dist.
Staffing	\$5,777,878	61.7%	\$13,416,341	57.1%	\$19,194,219	58.4%
Office and IT	\$224,417	2.4%	\$677,329	2.9%	\$901,745	2.7%
Advisory Costs	\$774,667	8.3%	\$673,076	2.9%	\$1,447,743	4.4%
Financing Costs	\$2,089,388	22.3%	\$4,546,311	19.3%	\$6,635,698	20.2%
General Costs	\$386,967	4.1%	\$3,619,503	15.4%	\$4,006,470	12.2%
Contingency	\$117,972	1.3%	\$573,022	2.4%	\$690,994	2.1%
Total	\$9,371,287	100%	\$23,505,581	100%	\$32,876,868	100%

Source: LINXS

#### LTA Opinion – SPV Costs

- 13.2.2 The Consortium relies on a robust internal experience to establish, with a reasonable level of certainty, a realistic estimation for the SPV costs. The LTA is satisfied with the level of detailed presented.

- 13.2.3** The LTA welcomes the inclusion of a contingency allowance in the SPV costs. Whilst this item can be seen to be relatively low in the overall budget, the LTA considers this allowance to be reasonable given the high level of certainty in the SPV costs estimation, and the robust allowance made for the biggest cost item – staffing – as further detailed below.
- 13.2.4** It is noted that O&M Period insurance costs will be carried by SPV but are “separate” from the SPV budget. Also to be noted is that lenders advisory costs are contained in Financing Costs.
- 13.2.5 Staffing:** at 58.4% of the total costs, this is the largest allowance of the SPV costs. The Consortium proposes a team formed of 5 FTE during the Construction Period and 2.3 FTE during the O&M Period. Base annual cost used for each period per role are shown in Table 13-2 below.

**Table 13-2 Base annual costs for SPV staffing**

Role	Construction Period		O&M Period	
	FTE	Base annual cost / role	FTE	Base annual cost / role
Project Manager/CEO	1	\$355,485	1	\$303,788
Chief Technical Officer	1	\$321,239	-	-
Chief Financial Officer	1	\$277,897	0.33	\$107,947
Technical Assistant	1	\$142,452	-	-
Office Manager / Finance Asst. / Document Control	1	\$119,323	1	\$120,510
Total FTE / Average cost	5	\$243,279.08	2.33	\$177,415

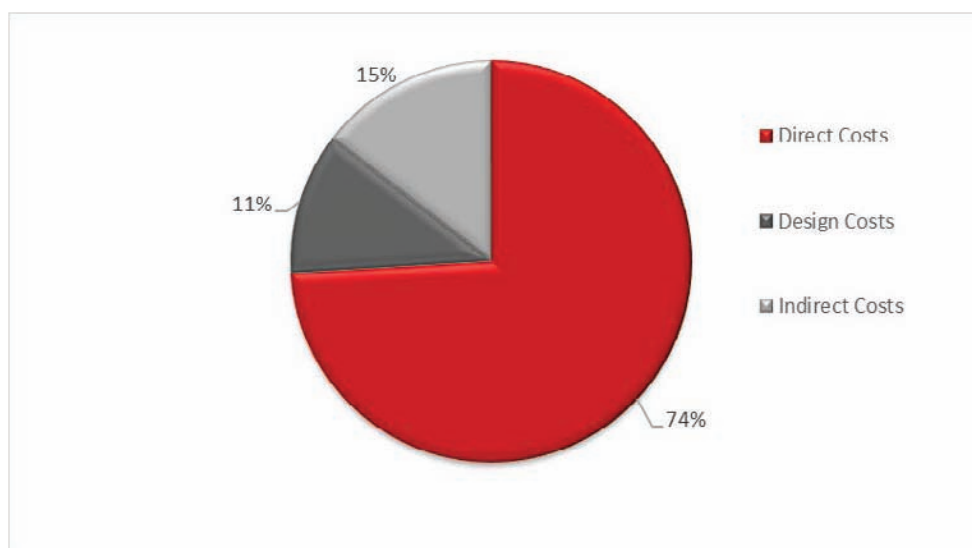
Source: LINXS

- 13.2.6** As a result of the responsibilities pass-down, the SPV is light in structure and staffing, as the vast majority of the tasks are carried out by the DBJV or the OMJV. In the LTA’s opinion, the sizing of the team is adequate for each period. Furthermore, the base annual cost for each role is in line with the LTA’s expectations for the Project.
- 13.2.7 Office and IT:** these costs are considered to be on the low side but still within the expectation as the Consortium confirms that the space and facilities will be part of the DBJV’s and the O&M’s facilities for the D&C and O&M Periods respectively.

### **13.3 DBJV’s Construction Costs (CAPEX)**

- 13.3.1** The LTA has been provided with a breakdown of the final Design and Build related costs, *Form O & Cashflow Jan 08*. The overall DB Costs, excluding the Additional Amounts, amount to \$1,949,193,818.85. A breakdown of these costs is shown in the figure below.

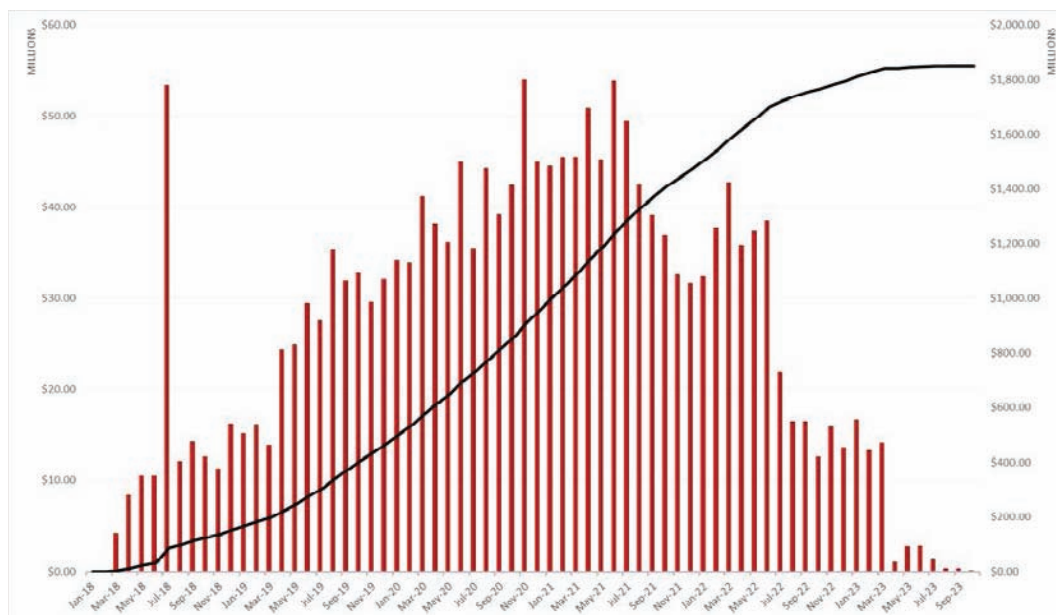
**Figure 13-1 Overall Design and Build Costs**



Source: LINXS

- 13.3.2 Overheads, mobilisation, contingency, risk and profit account for 17% of the overall DB cost allocation this is considered reasonable by the LTA. The proposed Project cashflow post financial close is shown in the figure below. It is noted that at Financial Close the SPV will have to pay the costs associated with Mobilisation (to the DBJV) and the Early Works (to LAWA). This amount is capped at approximately US\$136m. Whilst the cumulative line includes these in the below figure for clarity they have been omitted from the monthly bars.

**Figure 13-2 DB Costs cashflow post Financial Close**



Source: LINXS

- 13.3.3 The LTA has carried out a review of the costs presented by benchmarking the Project allowances against equivalent allowances made on other projects that are considered similar in scope and location. The results of the benchmarking review, of the most significant cost elements, are presented in the remainder of this section.

## Direct Costs

13.3.4 The various elements which comprise the Project Direct Costs are shown in the table below.

**Table 13-3 Breakdown of Direct Costs**

Element	Allowance, USD	% DB Direct Costs
Demolitions, clear & grub	\$10,193,459	0.8%
Environmental and Hazardous Materials	\$3,311,778	0.3%
Earthworks	\$4,307,581	0.3%
Erosion Control	\$2,326,836	0.2%
Vertical Cores	\$17,204,616	1.4%
Base & Paving	\$9,016,576	0.7%
Misc Roadway & Landscape	\$15,414,885	1.2%
Drainage	\$14,098,422	1.1%
MSE Wall	\$1,038,771	0.1%
Bridges & Guideway	\$162,297,926	13.2%
Pedestrian Walkways	\$73,096,885	5.9%
Guiderail	\$7,013,256	0.6%
Vehicles	\$113,020,301	9.2%
Traction Power & APM system, including power structures	\$80,252,453	6.5%
Signalling	\$167,876,170	13.6%
Traffic signalling and lighting	\$30,809,823	2.5%
Aerial Stations	\$355,821,785	28.8%
Parking Garage	\$40,141,625	3.3%
MSF Structure	\$78,273,987	6.3%
Utilities	\$37,082,105	3.0%
MOT	\$10,968,422	0.9%
O&M during Construction	\$-	0.0%
Total	\$1,233,567,662	100.0%

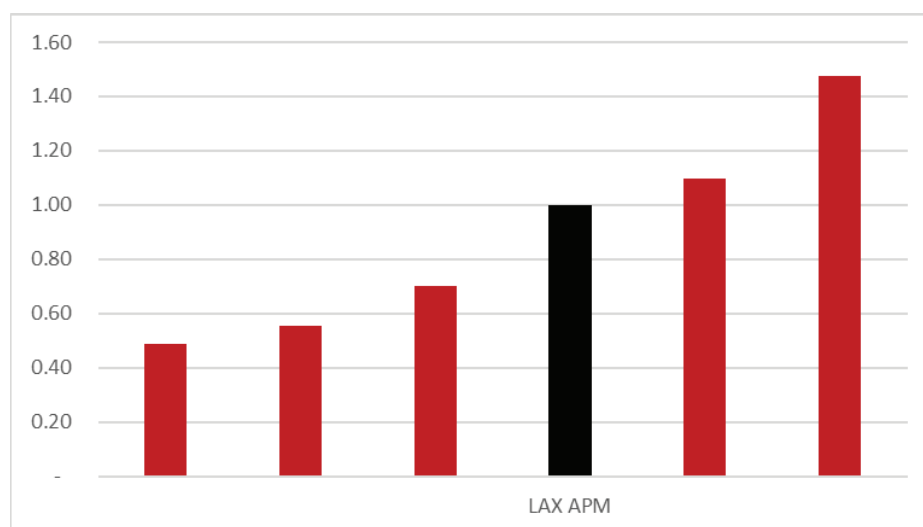
Source: LINXS

13.3.5 **Demolition Costs** - a total allowance of \$10.2m, equivalent to 0.8% of the total direct costs, has been considered for demolition works and material removal from site. The scope of works is limited to the demolition of existing buildings, parking garages and vertical cores. The proposed allowance is considered consistent with the proposed scope of works and lies within the LTA's benchmarking expectations.

13.3.6 **Environmental and Hazardous Materials** - The Consortium has allocated a total of \$3.3m for environmental mitigation and removal of hazardous materials. The LTA's considers this provisional contingency associated with the demolition, clear and grub works to be adequate for the limited demolition scope.

- 13.3.7 **Bridges and Guideway** - The Consortium has made a total allowance of \$162.3m, equivalent to approximately 13.2% of the total direct costs, for the construction of the Project Bridges and Guideway structure. The LTA has benchmarked the proposed allowance against similar civil works carried out on other North American projects. The proposed allowance is within the LTA's benchmark expectations for works of this nature.
- 13.3.8 Additionally, the LTA has compared the guideway allowance on a route-mile basis against guideway costs on other airport APM projects in the US. The proposed allowance per route-mile lies within the range of costs seen on other Projects, as shown in the figure below.

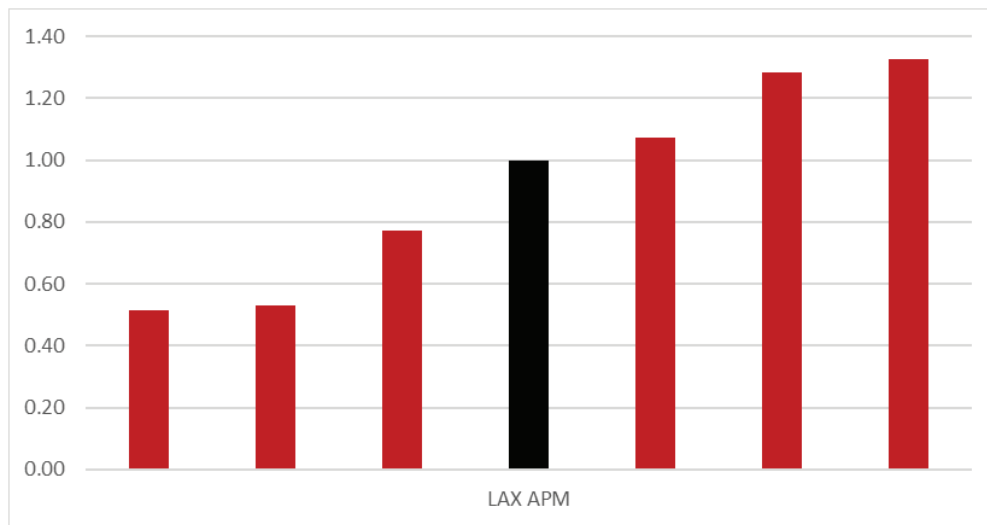
**Figure 13-3 Guideway costs per route-mile – compared against other US airport APM projects**



Source: LTA

- 13.3.9 **Vehicles** - The Project vehicles will have a total cost of \$113m, equivalent to 9.2% of the total direct costs. The Project vehicles will be provided by Bombardier in accordance with typical vehicle specifications. The sub-contract is currently being negotiated with the provider. The current costs seen by the LTA are within the expected cost range for the provision of vehicles in similar projects.
- 13.3.10 **Traction Power and APM systems and Signalling Costs** - the traction power and APM system costs amount to a total of \$80.3, equivalent to 6.5% of the total direct costs. Additionally, a total allowance of \$167.9m, equivalent to approximately 13.6% of the total direct costs, has been made for the provision of the APM signalling systems. The scope of services, equipment and systems are entirely related with the type of vehicle and the provider's own technical solutions. The Consortium has informed that the sub-contract is currently being negotiated with the provider.
- 13.3.11 **Traffic Signalling and Lighting** - the Consortium has made a total allowance of \$30.8m, equivalent to 2.5% of the total direct costs, for the installation of traffic signalling and lighting systems of the Project. The corresponding value per track-mile is within the LTA's benchmarking expectations, as shown in the figure below.

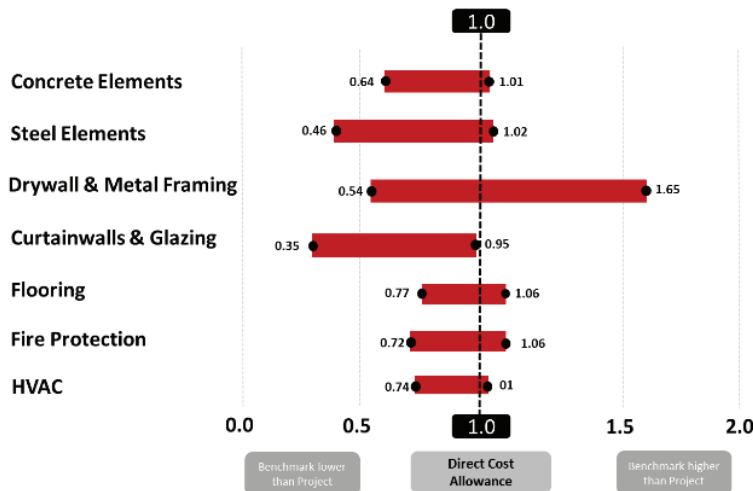
Figure 13-4 Traffic Signalling per track-mile benchmarked against similar North American projects



Source: LTA

- 13.3.12 **Aerial Stations and Pedestrian walkways**– the Project’s five stations will have a total cost of \$355.8m, equivalent to 28.8% of the total direct costs. Pedestrian walkways have a total cost of \$73.1m, equivalent to 5.9% of the total direct costs, has been made for the construction of the Project Pedestrian Walkway structures.
- 13.3.13 Due to the singularities of the Project stations, pedestrian walkways and parking garages, a direct benchmark/ comparison of the overall costs is not deemed adequate. Alternatively, the LTA as carried out a bottom-up approach to review quantities and benchmark the various pockets of expenditure for the main works to be carried in the stations. The costs are generally consistent with the LTA’s cost range expectations, as shown in the figure below.

Figure 13-5 Aerial Stations LTA’s high-low benchmarking



Source: LTA

- 13.3.14 The Consortium has confirmed that the various price quotations were sent to the market. Over 91% of the total civil and electrical costs for the stations, parking garages and pedestrian walkways are as a result of market quotes, including all the major pockets of expenditure (conveying, steel elements, roofing, curtainwall, glass elements or HVAC and systems. The remaining costs were determined based on the Consortium members own



experience performing similar activities. The LTA considers there is high pricing certainty in the bid price for those items.

#### Design Costs

- 13.3.15 A total allowance of \$190.6m, equivalent to 11% of the overall DB Costs, has been made for the provision of design services for all activities taking place during the Construction Period. Allowances made by Consortia vary depending upon the extent of design completed by Authorities prior to procurement and level of design completed by the bid team to submission.
- 13.3.16 The proposed allowance made by the Consortium for the Project has been developed based on advanced level of engineering understanding of the Project requirements, design optimizations (as per the ATC's proposed) and is consistent with the LTA's expectations when design costs are expressed as a percentage of the overall DB Costs.

#### Indirect Costs

- 13.3.17 The Project indirect Costs amount to a total of \$241.8m, approximately 15% of the overall DB Costs. The Consortium's allowance includes provisions for (i) field staff; (ii) surveying & layout; (iii) taxes, permits, licenses and legal costs; (iv) Project Offices & facilities; (v) construction support; (vi) warranties, insurance, contract bonds; and (vii) insurance. The item coverage and allowances are generally in-line with similar provisions seen by the in North American Projects.

### 13.4 OM Costs

#### Introduction

- 13.4.1 The Operations and Maintenance Costs (O&M Costs) are based upon the Consortium's estimate of the necessary costs related to Service Payments, Vehicle mileage costs and time-based rehabilitation. This section of the report provides the LTA commentary and opinion on the approach taken by the Consortium in developing its O&M Costs estimate and provides an initial opinion on the reasonableness of the overall allowances made. The analysis is based on the breakdown of O&M Costs by category (LAX APM OMJV LTA Breakdown 2018-05-09) provided to the LTA on May 09, 2018.
- 13.4.2 During the Operating Period (Post PSA) the total allowance for O&M and Capital Asset Replacement Programme (CARP) costs is \$617.2m, of which CARP (lifecycle costs) accounts for 13.7%, energy requirements for 24.4%, and the maintenance including Operations, Management and Administration accounts for 62.0%.

#### Operations & Maintenance (O&M) Costs

- 13.4.3 The approach to costing for O&M has been for each OMJV to lead and develop the cost book to ensure there are no duplicate or missing inputs. Additionally, the OMJV went out to market to get sub-contractor and supplier quotes. Costs were cross-referenced with DBJV prices and where appropriate turnkey packages for construction and onward maintenance have been used in the price build up (eg. conveyancing). In some instances, a hybrid approach of part in-house and part subcontract has been chosen, for instance on Fixed Facility MEP and automation and control systems where on-site staff will perform first response, minor preventative and reactive maintenance, backed up by a service contract with a local company to support when required for major equipment preventative maintenance and major equipment repairs. External support prices used are based on actual quotes.

13.4.4 The breakdown of O&M costs is presented below.

**Table 13-4 Total O&M Costs Breakdown**

Operations and Maintenance Element	Allowance, USD 000's	O&M %
Management & Administration	\$91,532	23.94%
Operations	\$30,401	7.95%
Systems	\$2,328	0.61%
Vehicles	\$109,610	28.67%
Guideway	\$28,173	7.37%
Traction Power, substations, distribution systems	\$1,214	0.32%
Facilities	\$118,321	30.94%
Non-Revenue Equipment	\$798	0.21%
<b>Total</b>	<b>\$382,377</b>	<b>100%</b>

Source: LAX APM OMJV LTA Breakdown 2018-05-09

13.4.5 The larger items within the maintenance budget include: -

- **Vehicles:** An allowance of \$110m, equivalent to 28.7% of the maintenance costs, accounts for activities including cleaning and preventative maintenance of the Vehicles within the MSF (but not including the MSF facilities).
- **Management and Administration:** The costs of administration account for 23.9% of the maintenance costs and include overheads, contingency for deductions, supplies, and IT.
- **MSF and Station Facilities:** The costs arising from the MSF and the station facilities, form 30.9% of the maintenance costs and cover the maintenance of the finishing's and structures, MEP (including elevators and escalators), cleaning, pest control of the MSF and station areas, and landscaping. The facilities capital costs have been split as follows:

**Table 13-5 Facilities costs breakdown**

Facility Element	Proportion of Facility Budget - (%)	Proportion of O&M Budget - (%)
Conveying Equipment, including elevators, escalators, and walkway conveyors.	67.8%	21.0%
Fire Suppression	2.1%	0.6%
Plumbing	1.1%	0.3%
HVAC	6.9%	2.1%
Integrated Automation	14.4%	4.5%
Others	7.7%	2.4%

Source: LINXS

13.4.6 It is to be expected that the maintenance of the conveying equipment requires the second largest maintenance budget for the O&M as a whole (21.0%), both by their relative complexity with other systems as well as the large number of them within the overall system. Integrated Automation, at 4.5% of the overall O&M budget,

represents the costs associated with maintaining the Facilities maintenance controls i.e. Building management systems etc.

- 13.4.7 Costs relating to the track and guideway elements form 7.4% of the maintenance cost budget and are primarily composed of the costs of regular track and infrastructure inspections and minor repairs.

#### Capital Asset Replacement Costs (CARP)

- 13.4.8 The CARP costs derive from the lifecycle replacement costs associated with the APM. The breakdown of CARP costs is presented below.

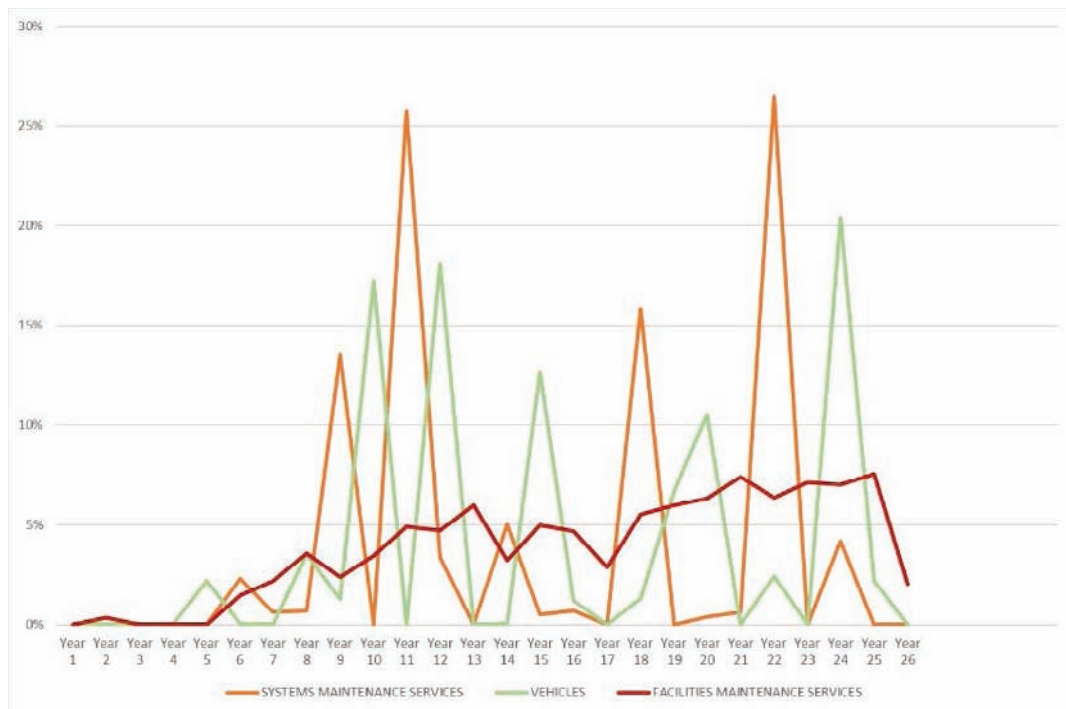
**Table 13-6 Total Lifecycle Costs Breakdown**

Operations and Maintenance Element	CARP %
Management & Administration	0%
Operations	0%
Systems	16.87%
Vehicles	19.38%
Guideway	2.76%
Traction Power, substations, distribution systems	0.21%
Facilities	57.82%
Non-Revenue Equipment	2.96%
<b>Total</b>	<b>100.0%</b>

Source: LAX APM OMJV LTA Breakdown 2018-05-09

- 13.4.9 The cost profile of the main items associated with lifecycle costs across the concession period is presented in the following graph:

Figure 13-6 CARP Profile of main items



Source: LAX APM OMJV LTA Breakdown 2018-05-09

13.4.10 The cost profile reflects the lifecycle interventions proposed as discussed below.

13.4.11 For the vehicles, the Consortium has planned for two major overhauls in years 10-12, and 24. The scope of these interventions includes replacement of the main mechanical components of the vehicles such as bogies, motors and gearboxes, as well as components of the HVAC system such as fans. Additionally, the further interventions are associated with components that are less exposed to the wear resulting from transit (such as doors, and switches and pick-ups) are undertaken in Year 5, 10, 15, 20, 24. This pattern is planned to meet the Hand Back requirements.

13.4.12 Similarly, the guideway maintenance plans, involve a succession of major overhauls occur at five year intervals, years 5, 10, 15, 20, and 23. For the M&E systems, including signalling, train control and communication the major services are on an approximate 7 year cycle occurring in years 7, 14, and 21/22. Major overhauls to the OCS infrastructure are scheduled in years 10 and 20.

13.4.13 The maintenance spend profile for the MSF and Station facilities is less periodic and shows an even spend throughout the O&M Period, but with less pronounced peaks in years 9 – 11 and 18 – 22, reflecting the more gradual approach that is required for major Elevator and Lift interventions. The Facilities CARP budget is broken down as follows:

**Table 13-7 Facilities CARP budget breakdown and proposed interventions**

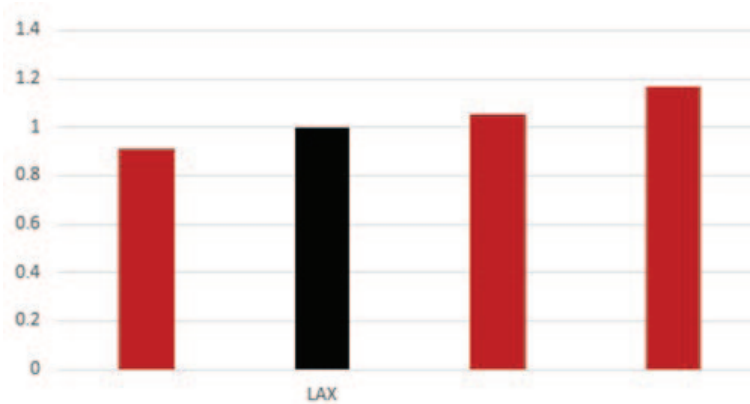
CARP Elements	Proportion of Facility Budget (%)	Proportion of CARP (%)	Interventions
Interior Improvements	2.7%	1.56%	General Interior improvements refurbished as necessary, on average once over the Term. Carpet finish assumes three replacements over the term, bathroom partitions assumes once over the term with an additional 50% allowance for high volume areas.
Specialities	2.9%	1.68%	Repair refurbishment as necessary for concrete, metals, timber. Windows resealed and caulked every 5 years, 25% replacement over term, sliding doors one replacement over term. Workstations replacement to meet handback. Replace damaged tiles (assumed 15% of capital).
Conveying Equipment	9.5%	5.49%	Comprehensive service price in the O&M, which includes major maintenance (covers all mechanical and electrical rehab), Assuming 13% of capital for handback to refurbish or replace aesthetic finishes (as recommended by conveyance company)
Fire Suppression	4.9%	2.83%	Fire extinguishers are schedule to be replaced every 6 years, sprinkler heads assumes 50% of capital over the term, and the valves are replace once over the Term.
HVAC	7.0%	4.05%	Major HVAC assets assumed 100% to 150% replacement over the term (renewal plan based on ASHRAE recommended life expectancy). Boilers will be replace prior to handback, and some minor rehab mi-term (assumed 120% of capital). AHUs 60% of capital (assuming only coils and blower replacement), Fan coils will be replaced once over the Term.
Exterior Improvements	2.6%	1.50%	Roofing assumed 13% of capital for spot replacement near the end of the Term (20 year warranty, life expected greater than 30 years). Louvers and flashing will be reviewed to be refurbished as necessary, assumed 20% of capital for handback.
Integrated Automation	21.5%	12.43%	Sensors assume 100% every 8 to 10 years, end devices assume 100% every 12 to 15 years, and controllers assume 100% every 16 to 18 years, minor panel refurb before handback.
Electrical	23.9%	13.82%	LED lighting 100% replacement over the Term. Seismic sensors to be reviewed and replaced if necessary every 8 to 10 years. UPS batteries replacement every 4 years, and the battery backup units 100% battery refresh before handback (rated life expectancy is 25 years). Generators will undergo a minor overhaul mid-term (assumed 12% of capital) and a major overhaul prior to handback (assumed 25% of capital)
Audio/Video/Way finding	7.9%	4.57%	Audio/video and digital wayfinding systems will be reviewed to be refurbished or replaced as necessary (assumed 200% of capital)
Others	17.1%	9.89%	Plumbing 100% replacement over Term, Solar system will be reviewed to be refurbished prior to handback, the inverters will be replaced twice over the Term. Wi-Fi access points will be reviewed and replaced if necessary once every 5 to 7 years.

Source: LINXS

## Benchmarking

13.4.14 The key metric for benchmarking purposes on APM systems is the cost per APM per km travelled per year which includes wayside maintenance, vehicle maintenance and operations. The benchmark comparison is shown below against other comparable APM systems:

**Figure 13-7 benchmark cost per APM per km travelled per year**



Source: LTA

13.4.15 The other projects referenced are all in the USA, with rubber typed APMs of an equivalent sized project and are already in operation. As can be seen the benchmark above shows LAX APM at mid-range compared with other APM systems.

13.4.16 In order to assess other aspects of the OM pricing the LTA has considered different elements of the pricing make up as follows:

13.4.17 Labor rates – 40% of the O&M costs are accounted for by labor. The OMJV have provided a detailed cost breakdown showing how they have built up their labor rates. Blue collar staffing rates have been based on actual pay rates on other Californian APM contracts adjusted for the cost of living in the Los Angeles area. Cost rates have assumed a Union workforce with associated benefit packages. Shift premiums for appropriate staff have been included to account for 24/7 operation. For management positions costs have based on comparable positions on other local commissions. The LTA has reviewed the cost build ups and compared them with equivalent commissions and considers the rates and hours used are within expectations.

13.4.18 Sub-contracts – 19% of the O&M costs are based on direct sub-contractor quotes. The major sub-contract packages are shown below:

**Table 13-8 O&M sub-contracting packages**

Asset area	Comment
Conveyance	OMJV worked closely with the conveyance contractors (Schindler, Kone, and Otis), selected by the DBJV as part of their pre bid tendering process, to provide a quote for maintenance (including major maintenance). All three quotes were within 8% of each other, and considering Schindler had the lowest supply and install price (for Design Build) and the lowest maintenance price Schindler's price is used in model.

Asset area	Comment
Janitorial/ Housekeeping	OMJV worked closely with two janitorial contractors located in the LA area, Executive Suites and DVBE Janitorial Services; which were selected for their experience in the Los Angeles area and their inclusivity qualifications. In parallel, the OMJV used internal resources to develop a bottom up comparison pricing model, considering staffing, materials, and equipment necessary to comply with the contract requirements. The OMJV internal model was roughly 10% lower (mostly due to the labor cost difference) than the quotes received from the two Janitorial service providers, however due to our inclusivity benefits the price from Executive Suites' was carried forward into the pricing model.
HVAC / Mechanical	OMJV worked with the HVAC contractor (ACCO) to provide a quote to perform the maintenance work for all HVAC/Mechanical equipment. ACCO was selected because they are the DBJV's preferred contractor to perform HVAC/Mechanical supply and install services, therefore creating synergy between design, construction, and maintenance. A bottom up comparator pricing exercise came within 10% of ACCO's quote.
Integrated Automation	OMJV worked with the non APM automation integration provider (Birdi) to provide a quote to perform the maintenance work for all non-APM automation and controls. Birdi was selected because they are the DBJV's preferred contractor to perform the automation/controls supply and install services as well as automation integration, therefore creating synergy between design, construction, and maintenance.

Source: LINXS

The LTA has been provided with access to relevant OMJV documentation and is satisfied that prices have been appropriately market tested.

13.4.19 Lifecycle (CARP) - The costing strategy mirrored the costing approach to O&M with renewal pricing based on construction cost breakdowns provided by the DBJV. The pricing details received from the DBJV were detailed down to asset level, including quantities and unit pricing, allowing the OMJV to assemble a bottom up (asset based) renewal pricing. In addition, the OMJV were able to get additional information on life cycle strategies and cost directly from the suppliers for the top cost items, such as conveyance, fixed facilities systems and controls, roofing, major electrical assets, and major mechanical assets.

13.4.20 Energy costs – the OMJV pricing model includes an allowance for energy consumption of \$4.4m per year (average during full APM running). For commentary on the Consortium's energy modelling please refer to Section 8.7.

13.4.21 Overhead, profit and contingency – The OMJV has advised their pricing allows for 20% to cover overheads, profit and contingency. Contingencies cover deductions, identified risk and an allowance for general non-identified contingencies. The LTA has been provided with a breakdown of contingencies and considers the allowance is appropriate and lies within the expected range. For the LTA's review of deductions please refer to Section 8.6.

### LTA Opinion

13.4.22 The LTA considers the capital cost spend profiles of the various technologies reflect the type of intervention required to keep the fixed and mobile infrastructure operating in an appropriate condition to meet the contract requirements.

13.4.23 The LTA considers the pricing approach and allowances by the OMJV has been built up from acceptable sources including direct quotations from local sub-contractors. Benchmarking of the APM system against other equivalent projects places the LAX APM Project within the expected bandwidth. Key rates used for labor have been benchmarked against existing contracts and local market rates and are considered acceptable. Allowances for risk and contingencies are within acceptable ranges.

## ANNEX 1: EQUATOR PRINCIPLES

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The LTA has conducted an appraisal of the scheme against compliance with the 10 Equator Principles (“EPs”) dated June 2013, which are a set of standards for determining, assessing and managing social and environmental risk in project financing for new projects and their refinancing across the globe with a total project capital cost of US\$ 10m or more across all industry sectors.

### **Principle 1: Review and Categorization**

“When a project is proposed for financing, the Equator Principle Financial Institutions (EPFIs) will, as part of its internal social and environmental review and due diligence, categorise such project based on the magnitude of its potential impacts and risks in accordance with the environmental and social screening criteria of the International Finance Corporation (IFC).”

In accordance with the EPs and the IFC, and based upon the information provided to date by the Consortium, the Project is considered by the LTA to fall in Category B and this categorisation is consistent with that allocated to other transportation infrastructure projects. Category B means that the Project has “potential limited adverse environmental and social risks and/or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures”.

### **Principle 2: Social and Environmental Assessment**

“For all Category A and B Projects, the EPFI will require the client to conduct an Assessment process to address, to the EPFI’s satisfaction, the relevant environmental and social risks and impacts of the proposed Project. The Assessment Documentation should propose measures to minimise, mitigate, and offset adverse impacts in a manner relevant and appropriate to the nature and scale of the proposed Project. The Assessment Documentation will be an adequate, accurate and objective evaluation and presentation of the environmental and social risks and impacts, whether prepared by the client, consultants or external experts. For Category A, and as appropriate, Category B Projects, the Assessment Documentation includes an Environmental and Social Impact Assessment (ESIA)”.

The authority, Los Angeles World Airports (LAWA), published a Final Environmental Impact Report (FEIR) under the California Environmental Quality Act (CEQA), which has been certified by the Board of Airport Commissioners and affirmed by the Los Angeles City Council. A determination on the FEIR by the FAA (Record of Decision) under the National Environmental Policy Act (NEPA) is pending. The FEIR provides a thorough examination of all possible adverse impacts resulting from the Project’s implementation. The preferred design was used to assess the potential impacts on all existing significant features of the Project. Key mitigations set forth include, but are not limited to: (i) incorporate solar energy into LAX LAMP facilities, (ii) Project-specific stormwater management facilities, (iii) noise curtains, and (iv) modification of specific intersections. This provides comfort that the environmental and social impacts of the Project have been thoroughly assessed.

### **Principle 3: Applicable Environmental and Social Standards**

“The Assessment process should, in the first instance, address compliance with relevant host country laws, regulations and permits that pertain to environmental and social issues. The EPFI will require that the Assessment process evaluates compliance with the applicable standards. For Projects located in Designated Countries, the Assessment process evaluates compliance with relevant host country laws, regulations and permits that pertain to environmental and social issues. Host country laws meet the requirements of environmental and/or social assessments (Principle 2), management systems and plans (Principle 4), Stakeholder Engagement (Principle 5) and, grievance mechanisms (Principle 6).”



LAWA has complied with the requirements of the CEQA and is progressing with the FAA Finding/Record of Decision under NEPA. The LTA is satisfied that the terms of reference of the FEIR are in alignment with the Principles 2, 4, 5 and 6.

#### **Principle 4: Environmental and Social Management System and Equator Principles Action Plan**

“For all Category A and Category B Projects, the EPFI will require the client to develop or maintain an Environmental and Social Management System (ESMS). Further, an Environmental and Social Management Plan (ESMP) will be prepared by the client to address issues raised in the Assessment process and incorporate actions required to comply with the applicable standards. Where the applicable standards are not met to the EPFI’s satisfaction, the client and the EPFI will agree an Equator Principles Action Plan (AP). The Equator Principles AP is intended to outline gaps and commitments to meet EPFI requirements in line with the applicable standards”

As required under the PA, the Developer is required to develop an Environmental Compliance Plan (ECP) based on the FEIR commitments and obligations to comply with the extensive permitting and environmental regulations during the Construction and O&M Periods. The ECP will include, amongst other items, the plan for implementation of all actions required under environmental permits, orders and authorizations obtained by LAWA and details of mitigation requirements for the Project.

#### **Principle 5: Stakeholder Engagement**

“For all Category A and Category B Projects, the EPFI require the Borrower to demonstrate effective Stakeholder Engagement as an ongoing process in a structured and culturally appropriate manner with Affected Communities and, where relevant, Other Stakeholders. For Projects with potentially significant adverse impacts on Affected Communities, the client will conduct an Informed Consultation and Participation process. The client will tailor its consultation process to: the risks and impacts of the Project; the Project’s phase of development; the language preferences of the Affected Communities; their decision-making processes; and the needs of disadvantaged and vulnerable groups. This process should be free from external manipulation, interference, coercion and intimidation”.

The primary responsibility of proactive stakeholder engagement is with LAWA, who have already undertaken extensive consultation with affected stakeholder groups as part of the development of the Project feasibility. The requirements bestowed upon the Developer with regards to stakeholder engagement include efforts to engage the community and local stakeholders during the D&C Work, affording them the opportunity to provide input. LAWA may also invite Project stakeholders and affected Third Parties to participate in all design reviews conducted by the Design QA Manager. The scope of the Project does not significantly encroach on any Affected Community, disadvantaged or vulnerable group per se, the Consortium will develop noise, vibration and air quality mitigation plans and associated complaint monitoring proposals.

#### **Principle 6: Grievance Mechanism**

“For all Category A and, as appropriate, Category B Projects, the EPFI will require the client, as part of the ESMS, to establish a grievance mechanism designed to receive and facilitate resolution of concerns and grievances about the Project’s environmental and social performance.”

The Consortium will prepare and implement a Complaint Protocol or grievance resolution process compliant with Principle 6.

#### **Principle 7: Independent Review**

“For all Category A and, as appropriate, Category B Projects, an Independent Environmental and Social Consultant, not directly associated with the client, will carry out an Independent Review of the Assessment

Documentation including the ESMPs, the ESMS, and the Stakeholder Engagement process documentation in order to assist the EPFI's due diligence, and assess Equator Principles compliance”.

The LTA has independently reviewed the FEIR and associated documents and rated the Project accordingly. On this basis, the LTA is of the opinion that this principle is likely to be met.

#### **Principle 8: Covenants**

“For all Projects, the client will covenant in the financing documentation to comply with all relevant host country environmental and social laws, regulations and permits in all material respects”.

This principle is considered to be fulfilled given that the PA states that the Project and Works has to be executed in accordance with applicable Laws, which specifically includes Environmental Law.

#### **Principle 9: Independent Monitoring and Reporting**

“To assess Project compliance with the Equator Principles and ensure ongoing monitoring and reporting after Financial Close and over the life of the loan, the EPFI will, for all Category A and, as appropriate, Category B Projects, require the appointment of an Independent Environmental and Social Consultant, or require that the client retain qualified and experienced external experts to verify its monitoring information which would be shared with the EPFI”.

The PA requires independent monitoring and certification by the Independent Engineer who will review and assess the extent of compliance to all PA obligations during the Construction and Maintenance Periods on behalf of Lenders. On this basis, the LTA considers that Principle 9 is likely to be adequately met.

#### **Principle 10: Reporting and Transparency**

“For all Category A and, as appropriate, Category B Projects: the client will ensure that, at a minimum, a summary of the ESIA is accessible and available online; The client will publicly report GHG emission levels (combined Scope 1 and Scope 2 Emissions) during the operational phase for Projects emitting over 100,000 tonnes of CO2 equivalent annually. The EPFI will report publicly, at least annually, on transactions that have reached Financial Close and on its Equator Principles implementation processes and experience, taking into account appropriate confidentiality considerations. The EPFI will report according to the minimum reporting requirements detailed in Annex B”.

It is the LTA's opinion that reporting of GHG-emissions is not required, since the sum of Scope 1 and 2 emissions is expected, as confirmed by the Consortium, to be under 100,000 tonnes of CO2-equivalents annually.

#### **Equator Principles Compliance and LTA Opinion**

As the Project is located in an Organisation for Economic Cooperation and Development (OECD) country with robust environmental and social governance, legislation systems and institutional capacity designed to protect their people and the natural environment, the Project's compliance with the local permitting regime is considered to satisfy the Equator Principles.

## APPENDIX D-1

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The following is a summary of certain provisions of the Indenture. This summary is not to be considered a full statement of the terms of the Indenture, and accordingly is qualified by reference thereto and is subject to the full text thereof.*

*Capitalized terms used in this APPENDIX D-1 and not otherwise defined herein will have the meaning assigned to them in APPENDIX A—“DEFINITIONS.”*

#### Security for the Senior Bonds

##### *Grant of Trust Estate*

The Issuer, in consideration for the purchase of the Senior Bonds by the Owners and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, in order to secure the payment of the Senior Bonds and in order to secure the performance and observance of all the covenants and conditions set forth in the Senior Bonds and the Indenture, has executed and delivered the Indenture and has granted, assigned, pledged, bargained, sold, alienated, remised, released, conveyed, set over and confirmed or has required to be granted, assigned, pledged, bargained, sold, alienated, remised, released, conveyed, set over and confirmed, and by these presents does grant, assign, pledge, bargain, sell, alienate, remise, release, convey, set over and confirm unto the Trustee and to its successors and assigns forever for the benefit of the Owners, all of the following described property, franchises, rights and income, including any title or interest therein acquired after the date of the Indenture (collectively, the “**Trust Estate**”):

(a) all right, title and interest of the Issuer (except for Reserved Rights) in and to the Series 2018 Loan Agreement, the present and continuing right of the Issuer to make claim for, collect, receive and receipt for any of the Series 2018 Loan Payments and any and all sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Series 2018 Loan Agreement, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is entitled to do under the Series 2018 Loan Agreement;

(b) all moneys from time to time held by the Trustee under the Indenture including the Series 2018 Debt Service Fund, or any other debt service fund established with respect to Additional Senior Bonds, and any other Fund or Account other than (i) any Defeasance Escrow Fund, (ii) the Series 2018 Rebate Fund, or (iii) any other Rebate Fund established with respect to any Additional Senior Bonds issued as Tax-Exempt Senior Bonds;

(c) any Security Interest granted to the Collateral Agent for the benefit of the Trustee (as a Senior Secured Party) on behalf of the Owners of the Senior Bonds under the Security Documents or otherwise, including without limitation the Security Interest in the Collateral pledged thereunder, and the present and continuing right of the Collateral Agent on behalf of the Trustee (as a Senior Secured Party) to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Security Documents, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Collateral Agent on behalf of the Trustee (as a Senior Secured Party) is entitled to do under such Security Documents;

(d) subject to the Collateral Agency and Accounts Agreement, the Intercreditor Agreement and the Security Agreement, all funds deposited from time to time and earnings thereon in the Project Accounts, any and all sub-accounts created under and any and all other accounts established from time to time pursuant to the Collateral Agency and Accounts Agreement, each held by the Collateral Agent under the Collateral Agency and Accounts Agreement (excluding the Handback Requirements Reserve Account, the Distribution Account and the Utility Owners’ Cost Account and the subaccounts of the same); and

(e) any and all other property, revenues, rights or funds from time to time hereafter by delivery or by writing of any kind specifically granted, assigned, pledged, bargained, sold, alienated, remised, released, conveyed, set over or confirmed as and for additional security for any of the Senior Bonds and the Series 2018 Loan Agreement in favor of the Trustee (as a Senior Secured Party) or the Collateral Agent on behalf of the Trustee (as a Senior Secured Party), including any of the foregoing granted, assigned or pledged by the Borrower or any other Person on behalf of the Borrower, and the Trustee (as a Senior Secured Party) and/or the Collateral Agent on behalf of the Trustee (as a Senior Secured Party) is authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture.

#### *Time of Pledge; Delivery of the Trust Estate*

In accordance with Section 5451 of the California Government Code; (a) the Trust Estate will immediately be subject to the Lien and Security Interest of the pledge pursuant to the Indenture without any physical delivery or other act; (b) the Lien and Security Interest of such pledge will be valid, binding and enforceable against all parties having claims of any kind in tort, contract or otherwise against the Issuer regardless of whether the claiming party has notice of such Lien and Security Interest and even though it is not recorded or filed; and (c) the Lien and Security Interest of such pledge and the obligations of the Issuer to perform the contractual provisions set forth in the Indenture and any Supplemental Indenture will have priority over any or all other obligations and liabilities of the Issuer, except as may be otherwise provided in the Indenture or any Supplemental Indenture.

#### *Amounts Received Pursuant to the Collateral Agency and Accounts Agreement*

All funds provided pursuant to the Collateral Agency and Accounts Agreement for deposit into any Fund or Account of the Indenture will be available together with other moneys then on deposit in such Funds and Accounts to be used for the applicable purposes as set forth in the Indenture and any Supplemental Indenture.

#### *Senior Bonds Secured on Equal and Proportionate Basis*

The Trust Estate will be held by the Trustee for the equal and proportionate benefit of the Owners of the Senior Bonds and any of them, without preference, priority or distinction as to Security Interest or otherwise.

#### *Discharge of Indenture*

If the Indenture is discharged in accordance with the provisions of the Indenture (see “—Defeasance” below), the right, title and interest of each Owner and the Trustee in and to the Trust Estate will terminate and be discharged (except those rights, titles and interest that by their terms will survive the discharge of the Indenture); otherwise the Indenture is to be and remain in full force and effect.

#### *Special, Limited Obligations*

None of the Issuer, any Issuer member or any person executing the Series 2018 Bonds is liable personally on the Series 2018 Bonds or subject to any personal liability or accountability by reason of their issuance. The Series 2018 Bonds are limited obligations of the Issuer, payable solely from and secured by the pledge of the Trust Estate. Neither the Issuer, its members, the State of California, nor any of its political subdivisions will be directly, indirectly, contingently or morally obligated to use any other moneys or assets to pay all or any portion of the debt service due on the Series 2018 Bonds, to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The Series 2018 Bonds are not a pledge of the faith and credit of the Issuer, its members, the State of California or any of its political subdivisions nor do they constitute indebtedness within the meaning of any constitutional or statutory debt limitation. The Issuer has no taxing power.

The Issuer will not be liable for payment of the principal of, Redemption Price or interest on the Series 2018 Bonds or any other costs, expenses, losses, damages, claims or actions of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Indenture, the 2018 Bonds or any other documents, except only to the extent amounts are received for the payment thereof from the Borrower under the Series 2018 Loan Agreement.

The parties hereto acknowledge that neither the City nor the Department will be directly, indirectly, contingently or morally obligated to pay all or any portion of the debt service due on the Series 2018 Bonds, to levy or to pledge any form of taxation whatever therefor or to compel any appropriation by the Board of Airport Commissioners or the City Council for their payment. The Series 2018 Bonds are not a pledge of the faith and credit of the City or the Department nor do they constitute indebtedness of the City or the Department.

Nothing in the foregoing affects any rights or obligations of the Borrower, the City or the Department under the DBFOM Agreement.

#### *Senior Bonds Constitute a Contract*

The Senior Bonds will constitute a contract between the Issuer and the Owners of the Senior Bonds.

#### *Limits on Superior or Parity Security Interest; Subordinate Security Interests Permitted*

The Issuer will not pledge, grant or create in any manner any Security Interest or encumbrance on, or rights with respect to, the Trust Estate, except (a) Security Interest securing the Series 2018 Bonds and any Additional Senior Bonds issued or incurred in accordance with the Indenture, and (b) Security Interest or encumbrances that are junior and subordinate to the Security Interest created under the Indenture for the payment of the Senior Bonds.

### **Funds and Accounts**

#### *Establishment of Certain Funds and Accounts*

At the time of issuance of the Series 2018 Bonds, the following Funds and Accounts will be created and established with the Trustee: (a) the “California Municipal Finance Authority Senior Lien Revenue Bonds (LINXS APM Project), Series 2018 Debt Service Fund” (the “Series 2018 Debt Service Fund”) will be created in the Series 2018 Debt Service Fund, three Accounts designated: (i) the “Series 2018 Interest Account” (the “Series 2018 Interest Account”), (ii) the “Series 2018 Principal Account” (the “Series 2018 Principal Account”), and (iii) the “Series 2018 Redemption Account” (the “Series 2018 Redemption Account”); and (b) the “California Municipal Finance Authority Senior Lien Revenue Bonds (LINXS APM Project), Series 2018 Rebate Fund” (the “Series 2018 Rebate Fund”). The Series 2018 Debt Service Fund (including the Series 2018 Interest Account, the Series 2018 Principal Account and the Series 2018 Redemption Account) and the Series 2018 Rebate Fund will be held and administered by the Trustee.

#### *Series 2018 Debt Service Fund*

There will be deposited (i) into the Series 2018 Interest Account amounts remitted or transferred to such Account from the Senior Interest Payment Sub-Account pursuant to Section 5.06 of the Collateral Agency and Accounts Agreement and into the Series 2018 Principal Account amounts remitted or transferred to such Account from the Senior Principal Payment Sub-Account pursuant to the Collateral Agency and Accounts Agreement, which amounts will represent the repayment of the Senior Loan made from the proceeds of the Series 2018 Bonds in accordance with the Series 2018 Loan Agreement; and (ii) all other moneys received by the Trustee that are accompanied by directions that such moneys are to be deposited into such Accounts.

There may be deposited into the Series 2018 Redemption Account: (i) any moneys paid to the Trustee pursuant to the Collateral Agency and Accounts Agreement and any all moneys accompanied by directions that such moneys are to be applied pursuant to the Indenture; (ii) amounts transferred from a Defeasance Escrow Fund, and (iii) all other moneys received by the Trustee that are accompanied by directions that such moneys are to be deposited into such Account.

The Trustee, on each Interest Payment Date, will withdraw and apply from moneys on deposit in the Series 2018 Interest Account an amount which will be sufficient to pay interest payable on the outstanding Series 2018 Bonds on such Interest Payment Date. The Trustee, on each Principal Payment Date, will withdraw and apply from moneys on deposit in the Series 2018 Principal Account, an amount equal to the principal (including mandatory

sinking fund redemption payments) becoming due on the Series 2018 Bonds on such Principal Payment Date. The Trustee, on each redemption date (other than a mandatory sinking fund redemption date), will withdraw and apply from moneys on deposit in the Series 2018 Redemption Account amounts required to pay the Redemption Price on the Series 2018 Bonds to be redeemed prior to their stated maturity.

#### *Moneys to be Held in Trust*

The Series 2018 Debt Service Fund and any other Fund or Account created under the Indenture (excluding any Defeasance Escrow Fund or the Series 2018 Rebate Fund), will be held by the Trustee, for the benefit of the Owners of the Series 2018 Bonds as specified in the Indenture. Any Defeasance Escrow Fund will be held solely for the benefit of the Owners of the Series 2018 Bonds to be paid therefrom as provided in the agreement governing such Defeasance Escrow Fund.

#### *Series 2018 Rebate Fund*

The Series 2018 Rebate Fund will be for the sole benefit of the United States of America and will not be subject to the claim of any other Person, including without limitation, the Owners. The Series 2018 Rebate Fund is established for the purpose of complying with Section 148 of the Code and the Treasury Regulations promulgated pursuant thereto. There will be deposited into the Series 2018 Rebate Fund all amounts to be transferred to such Fund pursuant to the Collateral Agency and Accounts Agreement. The money deposited in the Series 2018 Rebate Fund, together with all investments thereof and investment income therefrom, will be held in trust and applied solely as provided in the Tax Regulatory Agreement. The Series 2018 Rebate Fund is not a portion of the Trust Estate and is not subject to any lien under the Indenture. Notwithstanding the foregoing, the Trustee with respect to the Series 2018 Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it under the Indenture. Notwithstanding anything contained in the Indenture to the contrary, neither the Issuer nor the Trustee will be responsible or liable for any loss, liability or expense incurred as a result of the failure of the Borrower to fulfill its obligation with respect to the calculation and payment of the Rebate Amount. The Issuer and the Trustee will be entitled to rely conclusively upon the calculations provided by the Borrower.

The Trustee, at the direction of the Borrower given in accordance with the Series 2018 Loan Agreement, will apply or cause to be applied the amounts in the Series 2018 Rebate Fund at the times and in the amounts required by Section 148 of the Code solely for the purpose of paying the United States of America in accordance with Section 148 of the Code.

Moneys held in the Series 2018 Rebate Fund will be invested and reinvested upon the written direction of the Borrower by the Trustee in Permitted Investments that mature at such times specified in such written direction, which times will not be later than such times as will be necessary to provide money when needed for payments to be made from such Series 2018 Rebate Fund and in accordance with the provisions of the Indenture. The interest earned on moneys or investments in the Series 2018 Rebate Fund will be retained in the Series 2018 Rebate Fund. Moneys held in the Series 2018 Rebate Fund, after payment of any Rebate Amount then due pursuant to the provisions of the Tax Regulatory Agreement, will be held by the Trustee for a period of not less than seventy-five (75) days following the redemption or final maturity of the Series 2018 Bonds.

### **Representations and Covenants of Issuer**

#### *Maintenance of Existence*

The Issuer will maintain its legal existence under the laws of the State and preserve all of its rights and powers under the JPA Act.

#### *Cooperation*

The Issuer agrees that it will cooperate with the Borrower in connection with its obligation to cause all documents, statements, memoranda or other instruments to be registered, filed or recorded in such manner and at such places as may be required by Law to fully protect the security of the Owners and the right, title and interest of

the Trustee and Collateral Agent in and to the Security Interests (whether now existing or hereafter arising) and any moneys or securities held hereunder or any part thereof and to perfect and maintain the perfection of the same (including any re-filings, continuation statements or such other documents as may be required). The Issuer shall have no responsibilities for such filings whatsoever, other than executing the documents reasonably requested by the Borrower. The Issuer's approval will not be required prior to the release of liens that have been properly discharged in accordance with applicable Law.

#### *No Superior or Parity Liens on Trust Estate*

The Issuer will not, except as specifically permitted pursuant to the Indenture or pursuant to any Security Document, pledge, grant, create or permit to exist in any manner any Security Interest on, or rights with respect to, the Trust Estate or any part thereof, except for a contract or agreement under which the financial obligations of the Issuer and the rights of any Person to require the Issuer to make any payment are (a) limited to (i) moneys in the Funds and Accounts (other than the Series 2018 Rebate Fund and the Defeasance Escrow Account) that are to be used pursuant to such contract or agreement for the purposes for which moneys in such Funds and Accounts may be used pursuant to the terms of the Indenture or (ii) moneys of the Issuer that are not part of the Trust Estate; and (b) subordinate to the rights of the Owners of the Series 2018 Bonds under the Indenture.

#### *Tax Covenant*

The Issuer will not take any action or omit to take any action with respect to the Series 2018 Bonds or any Additional Senior Bonds issued as Tax-Exempt Senior Bonds, the proceeds of the Series 2018 Bonds or any Additional Senior Bonds issued as Tax-Exempt Senior Bonds, the Trust Estate, the Project or any other funds or property of the Issuer, and it will not permit, to the extent of its control, any other Person to take any action or omit to take any action with respect to the Series 2018 Bonds or any Additional Senior Bonds issued as Tax-Exempt Senior Bonds, the Trust Estate, the Project or any other funds or property of the Issuer if such action or omission would cause interest on any of the Series 2018 Bonds or any Additional Senior Bonds issued as Tax-Exempt Senior Bonds, to be included in gross income for federal income tax purposes. In furtherance of this covenant, the Issuer agrees to comply with the procedures set forth in the Tax Regulatory Agreement for the Series 2018 Bonds or any Additional Senior Bonds issued as Tax-Exempt Senior Bonds. The covenants set forth in the Indenture will remain in full force and effect notwithstanding the payment in full or defeasance of the Series 2018 Bonds or any Additional Senior Bonds issued as Tax-Exempt Bonds until the date on which all of the Issuer obligations in fulfilling such covenants have been met.

#### *Payment of Lawful Claims*

The Issuer will, solely from moneys available therefor in the Trust Estate, pay or cause to be discharged, or make adequate provision to satisfy and discharge, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the Trust Estate; provided, however, that nothing in this Section will require the Issuer to pay or cause to be discharged, or make provision for, any such lien or charge the validity of which is being contested in good faith by appropriate legal proceedings.

#### *Compliance with Law*

The Issuer will comply with all Laws and regulations, the State Constitution, the JPA Agreement, the JPA Act and all other State Laws relating to the Series 2018 Bonds, the Project, the organization and operation of the Issuer and the subject matter of the Indenture.

#### *Rights Under Series 2018 Loan Agreement*

The Series 2018 Loan Agreement set forth the covenants and obligations of the Issuer and the Borrower with respect to the Senior Loan, and reference is made to the Series 2018 Loan Agreement for a detailed statement of such covenants and obligations of the Borrower thereunder, and the Issuer agrees that the Trustee (subject to the terms of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement) in its name or in the name of the Issuer may enforce all rights of the Issuer (other than Reserved Rights) and all obligations of the

Borrower under and pursuant to the Series 2018 Loan Agreement and on behalf of the Owners, whether or not the Issuer is in default under the Indenture.

*Notices, Etc.*

The Issuer shall promptly deliver to the Trustee, the Borrower (other than with respect to any notices set forth in subparagraphs (i) or (iv) below), the Intercreditor Agent and the Collateral Agent:

(a) any written notice provided to it by the Borrower under the terms of the Series 2018 Loan Agreement;

(b) provided the Issuer has actual knowledge of an Indenture Event of Default and any actions to be taken thereto, written notice of the occurrence of any Indenture Event of Default (with a description of any action being taken or proposed to be taken with respect thereto);

(c) provided the Issuer has actual knowledge of a Series 2018 Loan Agreement Event of Default, written notice of the occurrence of any Series 2018 Loan Agreement Event of Default;

(d) written notice provided to it by the Borrower of the filing of any action, suit, or other proceeding by or before any arbiter or any government authority, to which the Issuer is a party, which could reasonably be expected to have a material adverse effect on the Project or the interests of the Owners;

(e) written notice of any Security Interest placed on or claim against the Trust Estate (other than the Security Interests created under the Indenture or any other Permitted Security Interest), provided the Issuer has actual knowledge of such; and

(f) any written notice received by the Issuer from any government authority, which could reasonably be expected to have a material adverse effect on the Project or the interests of the Owners.

The Trustee shall promptly deliver to the Issuer, the Borrower (other than with respect to any notices set forth in subclause (i) below), the Collateral Agent and the Intercreditor Agent:

(a) any notice provided to it by the Borrower under the terms of the Series 2018 Loan Agreement;

(b) written notice of the occurrence of any Event of Default under the Indenture (with a description of any action being taken or proposed to be taken with respect thereto) and any Series 2018 Loan Agreement Default, in either case, of which a Trustee Representative has actual knowledge; and

(c) written notice of any Security Interest placed on, or any claim against, the Trust Estate (other than the Security Interests created under the Indenture or the other Financing Documents or any other Permitted Security Interest), in either case, of which a Trustee Representative has actual knowledge.

The Trustee shall promptly deliver to the Issuer a copy of any written notice received by the Trustee pursuant to the terms of the Intercreditor Agreement.

*No Indebtedness of the Issuer*

The Issuer will not create, incur, assume or permit to exist any Indebtedness secured by the Trust Estate or any part thereof, other than the Series 2018 Bonds or any Additional Senior Bonds; provided, however, that the Indenture does not limit the ability of the Borrower to create, incur, assume or permit to exist Permitted Indebtedness in accordance with the Financing Documents.



### *Additional Senior Bonds*

Additional Senior Bonds secured by and payable from the Trust Estate may be issued in the Issuer's sole discretion, provided the following terms and conditions have been met:

(a) All Additional Senior Bonds must be issued on the same terms and conditions then applicable to the then Outstanding Senior Bonds, unless otherwise approved by the Issuer and the Borrower, except that (i) Additional Senior Bonds may be issued as Capital Appreciation Bonds or Original Issue Discount Bonds, (ii) the interest rate on, and amortization schedule for, such Additional Senior Bonds must be fixed, (iii) the amortization applicable to any such Additional Senior Bonds would be subject to then-current market conditions and (iv) the terms of such Additional Senior Bonds must be acceptable to the Borrower;

(b) To the extent that any or all of the Series 2018 Bonds (or any Additional Senior Bonds) are Outstanding at the time the Additional Senior Bonds are proposed to be incurred, the additional financing documents entered into in connection therewith (i) will not prohibit the Borrower from incurring new indebtedness to refinance such Senior Bonds (at least to the extent permitted under the Indenture and, to the extent still in effect as of the date of any such issuance of Additional Senior Bonds, under the Series 2018 Loan Documents) and (ii) will provide that all principal and interest payment dates with respect to such Additional Senior Bonds will be the same principal and interest payment dates as the Senior Bonds that remain Outstanding through maturity of such Senior Bonds;

(c) The Trustee and the Collateral Agent have received a copy, certified by the secretary of the board of directors of the Issuer, of the resolution adopted by the Issuer authorizing, among other things, the issuance of the Additional Senior Bonds and the execution and delivery of a Supplemental Indenture and an Additional Senior Bonds Loan Agreement;

(d) The Trustee and the Collateral Agent have received a certified copy of the resolutions adopted by the Borrower authorizing, among other things, the execution and delivery of the Additional Senior Bonds Loan Agreement and the incurrence of the Additional Senior Loan;

(e) The Trustee and the Collateral Agent have received original executed counterparts of the Supplemental Indenture, the Tax Regulatory Agreement if the Additional Senior Bonds are issued as Tax-Exempt Senior Bonds and any amendments or supplements to the Series 2018 Loan Documents or the Security Documents entered into in connection with the issuance of such Additional Senior Bonds;

(f) The Trustee has received direction from the Issuer to authenticate such Additional Senior Bonds and deliver such Additional Senior Bonds to the purchaser(s) thereof upon payment to the Trustee, for the account of the Issuer, of the purchase price thereof;

(g) The Issuer and the Trustee have received an opinion of Bond Counsel to the effect that (i) the issuance of such Additional Senior Bonds has been duly authorized, (ii) such Additional Senior Bonds are valid and binding special limited obligations of the Issuer in accordance with their terms, and (iii) if such Additional Senior Bonds are being issued as Tax-Exempt Senior Bonds, the interest on such Additional Senior Bonds is excludable from gross income of the recipient thereof for federal income tax purposes;

(h) No Indenture Event of Default has occurred and is continuing, or if an Indenture Event of Default has occurred and is continuing, such Indenture Event of Default will be cured upon the issuance of the Additional Senior Bonds and the application of the proceeds of the Additional Senior Bonds in accordance with the Supplemental Indenture executed and delivered in connection with the issuance of such Additional Senior Bonds;

(i) Such Additional Senior Bonds will be Additional Senior Secured Obligations and will meet the requirements of Additional Senior Secured Obligations as set forth in the definition thereof; and

(j) The terms and conditions set forth in the Series 2018 Loan Agreement (to the extent still in effect as of the date of any such issuance of Additional Senior Bonds) and the Collateral Agency and Accounts Agreement have been met with respect to the issuance of Additional Senior Secured Obligations.

### *Defense of Trust Estate*

The Issuer shall at all times defend, preserve and protect its title to all portions of the Trust Estate granted or purported to be granted by the Issuer, the grant of the Trust Estate to the Trustee made or recognized under the Indenture and all the rights of the Owners under the Indenture against all claims and demands of all Persons whomsoever.

### **Defaults and Remedies**

#### *Indenture Events of Default*

Any of the following will constitute an “Indenture Event of Default” under the Indenture with respect to all of the Outstanding Senior Bonds:

(a) Failure to make any payment of the principal of any Outstanding Senior Bond when due and payable at maturity or upon redemption or otherwise and such failure is not remedied within three (3) Business Days after the applicable Principal Payment Date;

(b) Failure to make any payment of the interest on any Outstanding Senior Bonds when due and payable and such failure is not remedied within three (3) Business Days after the applicable Interest Payment Date;

(c) The Issuer will fail to observe or perform in any material way any covenant, condition, agreement or provision contained in the Senior Bonds or in the Indenture on the part of the Issuer to be performed, other than those set forth in (a) and (b) above, and such failure will continue for sixty (60) days after written notice specifying such failure and requiring the same to be remedied will have been given to the Issuer by the Trustee, which notice may be given by the Trustee in its discretion and will be given by the Trustee at the written request of the Majority Owners, provided that if any Indenture Event of Default described in this paragraph (c) cannot be cured within sixty (60) days after written notice specifying such failure has been given to the Issuer by the Trustee, such sixty (60) day period will be extended to one hundred eighty (180) days provided the Issuer has commenced curing such Indenture Event of Default and the Issuer diligently proceeds to cure such Indenture Event of Default;

(d) The filing of a petition for relief against the Issuer, as debtor, under any insolvency law, or the entry of a decree or order by a court having jurisdiction in the premises appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for the Issuer, or ordering the winding up or liquidation of the affairs of the Issuer, and the continuance of the case commenced by such petition or any such decree or order unstayed and in effect for a period of ninety (90) consecutive days, unless such decree or order has been limited so as to remove the Trust Estate from the control, supervision, and jurisdiction of the court entering such decree or order and of such custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official by the end of such period;

(e) The commencement by the Issuer of a voluntary case under any insolvency law, or the consent or acquiescence by the Issuer to the commencement of such a case under any insolvency law or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of the Issuer, or the making by the Issuer of an assignment for the benefit of creditors, or the taking of corporate action by the Issuer or the Borrower in furtherance of any such action and, in any such case, a court will not have limited such case, appointment, possession, or assignment so as to remove the Trust Estate from the control, supervision, and jurisdiction of such court or custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official within ninety (90) days after such commencement, consent, acquiescence, or assignment; or

(f) A Series 2018 Loan Agreement Event of Default will have occurred and be continuing;

provided that, where any such failure to pay described in clauses (a) or (b) above is a result of a technical or an administrative error caused by a party other than the Borrower in connection with the administration of the accounts from which such payment is made or is due to be made, no Event of Default will occur until failure to pay

within seven (7) Business Days after notice is received by the Borrower from the Trustee requiring such payment to be made.

*Remedies Following and During the Continuance of an Indenture Event of Default*

Upon the occurrence and during the continuance of an Indenture Event of Default, the Issuer will, and any Owner may, deliver to the Trustee a written notice, with a copy to the Issuer, the Collateral Agent, the Intercreditor Agent, the Department and the Borrower, that an Indenture Event of Default has occurred and is continuing. The Trustee will not be deemed to have any knowledge of the occurrence of an Indenture Event of Default unless and until it has received a written notice thereof, except (i) with respect to an Indenture Event of Default described in clauses (a) or (b) under “—*Indenture Events of Default*” above or (ii) for an Indenture Event of Default that results from its giving of a notice specified in the Indenture.

At any time during which an Indenture Event of Default has occurred and is continuing commencing on the date of delivery to the Trustee of the notice described in the paragraph above (except with respect to an Indenture Event of Default described in clauses (a) or (b) under “—*Indenture Events of Default*” above, in which cases no notice will be required), the Majority Owners will have the right to give the Trustee one or more enforcement directions directing the Trustee to exercise on behalf of the Owners, subject to the terms of the Collateral Agency and Accounts Agreement, the Intercreditor Agreement, applicable law and the paragraph immediately below, whatever action at law or in equity may appear necessary or desirable to enforce the rights of the Owners on behalf of the Owners.

(i) Upon the occurrence of an Indenture Event of Default described in clauses (d) or (e) under “—*Indenture Events of Default*” above, all Outstanding Senior Bonds, all interest accrued and unpaid thereon, and all other amounts payable in respect thereof to be due and payable and (ii) if so instructed by the Majority Owners, upon the occurrence and during the continuance of any other Indenture Event of Default, subject to the immediately succeeding provisos, the Trustee will declare all Outstanding Senior Bonds, all interest accrued and unpaid thereon, and all other amounts payable in respect thereof to be due and payable, whereupon, in either case, the same will become immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are waived by the Issuer; provided that the Outstanding Senior Bonds may be accelerated pursuant to this paragraph only to the extent that (i) the Senior Loan is concurrently being accelerated pursuant to the Series 2018 Loan Agreement or (ii) any Permitted Senior Secured Indebtedness is concurrently being accelerated in accordance with the Financing Documents pursuant to which such Permitted Senior Secured Indebtedness was issued or incurred.

The Trustee may, or at the written direction of the Majority Owners will, rescind any acceleration and its consequences if such rescission would not conflict with any judgment or decree and if all existing Indenture Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived and the Issuer has paid or deposited, or caused to be paid or deposited, with the Trustee a sum sufficient to pay sums paid or advanced by the Trustee under the Indenture and the reasonable fees and expenses of the Trustee’s agents and counsel. In case of any such rescission, then and in every such case the Issuer, the Trustee and the Owners will be restored to their former positions and rights, and such rescission will not extend to any subsequent or other Indenture Event of Default or impair any right consequent thereon.

All rights and actions and claims under the Indenture may be prosecuted and enforced by the Trustee on behalf of the Owners of the Senior Bonds. In the case of pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization or other similar judicial proceeding relative to the Issuer or the Trust Estate, the Trustee, subject to the Collateral Agency and Accounts Agreement and the Intercreditor Agreement, will be entitled to file and prove a claim for the amount of the Issuer’s and the Borrower’s obligations to the Owners of the Senior Bonds owing and unpaid and to file such other papers or documents as may be necessary in order to have the claims of the Owners allowed in such judicial proceeding and, to the extent permitted by Law, to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same in accordance with the terms of the Indenture and of the Collateral Agency and Accounts Agreement.

The exercise of the foregoing remedies upon an Indenture Event of Default is subject to the provisions of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement. Notwithstanding anything in the

Indenture to the contrary, in the event of any conflict between the remedial provisions of the Indenture and the remedial provisions of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement, the remedial provisions of the Intercreditor Agreement will prevail.

The parties to the Indenture acknowledge certain rights of the Department with respect to the appointment of a receiver as provided in the Lenders' Direct Agreement.

*Use of Moneys Received from Exercise of Remedies*

After an acceleration pursuant to provisions of the Indenture, moneys received by the Trustee from the Collateral Agent pursuant to the Collateral Agency and Accounts Agreement, the Indenture, the Intercreditor Agreement, the Series 2018 Loan Agreement, and the other Security Documents in respect of the Issuer's obligations under the Indenture or from any other source, together with money in the Series 2018 Debt Service Fund will be applied first to pay the reasonable and proper fees and expenses (including the reasonable fees and expenses of counsel, advisors and agents) of the Trustee determined in accordance with the provisions of the Indenture and any indemnification payments owing to the Trustee pursuant to provisions of the Series 2018 Loan Agreement (including those incurred in connection with the exercise of remedies following such Indenture Event of Default), and thereafter remaining amounts will be applied promptly by the Trustee as follows:

*First*, to the payments then due and payable by the Borrower to the Series 2018 Rebate Fund;

*Second*, ratably, to all accrued and unpaid interest on the Senior Bonds;

*Third*, ratably, to the outstanding principal amount on the Senior Bonds; and

*Fourth*, to the Borrower, upon termination, expiration or payment in full of all commitments, any surplus to be applied at the Borrower's discretion.

*Limitations on Rights of Owners Acting Individually*

Subject to the Collateral Agency and Accounts Agreement and the Intercreditor Agreement, no Owner will have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any remedy under the Indenture or for the enforcement of the terms of the Indenture, unless an Indenture Event of Default under the Indenture has occurred and is continuing and (i) the Owner of such Senior Bonds has made a written request to the Trustee, and has given the Trustee sixty (60) days, to take such action in its capacity as Trustee, (ii) the Trustee will have been provided reasonable security or indemnity against the costs, expenses and liabilities to be incurred in connection with such action to be taken, (iii) during such sixty (60) day period, no direction inconsistent with such written request will have been delivered to the Trustee by the Majority Owners and (iv) the Trustee has failed to take such action. Nothing in this section will affect or impair the right of the Owner to enforce the payment of the principal of and interest on or Redemption Price of any Senior Bond at and after the date such payment is due, *provided, however*, that no Owner will be entitled to take any action or institute any such suit to enforce the payment of any Senior Bond, whether for principal, interest, or premium, if and to the extent that the taking of such action or the institution or prosecution of any such suit or the entry of judgment therein would under applicable law result in a surrender, impairment, waiver, or loss of the Security Interest created or acknowledged by the Indenture in the Trust Estate, or any part thereof, as security for the Senior Bonds held by any other Owner. In addition, any action by any Owner taken with respect to the Trust Estate will only be taken in accordance with the provisions of the Indenture and the provisions of the Intercreditor Agreement.

*Trustee May Enforce Rights Without Senior Bonds*

All rights of action and claims under the Indenture or any of the Outstanding Senior Bonds may be enforced by the Trustee without the possession of any of the Senior Bonds or the production thereof in any trial or proceedings relative thereto; any suit or proceeding instituted by the Trustee will be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Owners of the Senior Bonds; and any recovery of

judgment will be for the ratable benefit of the Owners of the Senior Bonds, subject to the provisions of the Indenture and the Intercreditor Agreement.

*Trustee to File Proofs of Claim in Receivership, Etc.*

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting the Trust Estate, the Trustee will, subject to the Intercreditor Agreement and to the extent permitted by law, be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have claims of the Trustee and of the Owners of the Senior Bonds allowed in such proceedings for the entire amount due on the Senior Bonds under the Indenture, at the date of the institution of such proceedings and for any additional amounts which may become due by it after such date, without prejudice, however, to the right of any Owner to file a claim on its own behalf, to the extent permitted under the Indenture. Nothing contained in the Indenture will be deemed to authorize the Trustee to authorize or consent to or accept or adopt, on behalf of any Owner, any plan of reorganization, arrangement, adjustment or composition affecting such Owner or the rights of any Owner thereof, or vote in respect of a claim of any Owner in any such proceeding.

*Delay or Omission No Waiver*

No delay or omission of the Trustee or of any Owner to exercise any remedy, right or power accruing upon any Indenture Event of Default or otherwise will exhaust or impair any such remedy, right or power or be construed to be a waiver of any such Indenture Event of Default, or acquiescence therein; and every remedy, right and power given by the Indenture may be exercised from time to time and as often as may be deemed expedient.

*Discontinuance of Proceedings on Indenture Event of Default; Position of Parties Restored*

In case the Trustee or any Owner will have proceeded to enforce any right under the Indenture and such proceedings will have been discontinued or abandoned for any reason, or will have been determined adversely to the Trustee or such Owner, then and in every such case the Issuer, the Trustee and the Owners of the Senior Bonds will be restored to their former positions and rights, and all rights, remedies and powers of the Trustee and the Owner will continue as if no such proceedings had been taken.

*Waivers of Indenture Events of Default*

The Trustee, notwithstanding anything else to the contrary contained in the Indenture or contrary instructions delivered by other Owners, will waive any Indenture Event of Default upon the written direction of the Owners of not less than thirty-five percent (35%) of the aggregate principal amount of the Outstanding Senior Bonds; provided, however, that any Indenture Event of Default in the payment of the principal of or interest on, or the Redemption Price of, any Senior Bond when due will not be waived (except as contemplated in the Indenture) without the consent of the Owners of 100% in aggregate principal amount of the then Outstanding Senior Bonds, unless, prior to such waiver, all such amounts (with interest on amounts past due on any Senior Bond at the interest rate on such Senior Bond) and all expenses of the Trustee (with interest on amounts past due with respect to any expenses of the Trustee at a rate per year equal to the highest yield on any Outstanding Senior Bond) in connection with such Indenture Event of Default have been paid or provided for. In case of any such waiver, then and in every such case the Issuer, the Trustee and the Owners of the Senior Bonds will be restored to their former positions and rights under the Indenture, but no such waiver will extend to any subsequent or other Indenture Event of Default, or impair any right consequent thereon.

*Notices to Issuer and Owners*

As promptly as practicable after, and in any event within two (2) Business Days after the receipt by the Trustee of any notice from the Intercreditor Agent, the Trustee will promptly notify the Issuer and the Owners of the events described in the notice. Promptly after a Trustee Representative obtains actual knowledge of the occurrence of any Default under the Indenture or any Indenture Event of Default, or that any Default under the Indenture or any Indenture Event of Default has ceased to exist or has been rescinded, the Trustee will notify the Issuer, the Owners and the Intercreditor Agent in writing thereof.

### *Direction of Proceedings by Majority Owners*

At any time after the occurrence and during the continuance of an Indenture Event of Default, the Majority Owners may direct the Trustee to send a remedies initiation notice to the Intercreditor Agent describing the relevant Indenture Event of Default and the proposed remedies that the Majority Owners wish to direct the Intercreditor Agent to pursue.

Except in accordance with the Intercreditor Agreement, none of the Trustee or the Owners may (i) enforce any Security Interest created or evidenced by any Security Document or require the Intercreditor Agent to enforce any such Security Interest; (ii) exercise any right of set-off against the Issuer in respect of any obligations under the Senior Bonds; or (iii) petition, apply or vote for or take any step (including the appointment of any trustee, liquidator, receiver, administrator or similar officer) for the winding-up, administration of or dissolution of, or any insolvency proceeding in relation to, the Borrower, or any suspension of payments or moratorium of any Indebtedness of the Borrower or any analogous procedure or step in any jurisdiction.

Whenever the Trustee is required or requested to provide any consents, directions, determinations, acceptances, objections, rejections or other similar actions pursuant to the Indenture or such other Series 2018 Loan Document, or exercise any discretionary right or remedy under the Indenture or other Series 2018 Loan Document, or to otherwise decide between two or more courses of action permitted or required by the Indenture or under any other Series 2018 Loan Document in respect of a matter determined by the Trustee to be of material importance, the Trustee will promptly give notice (in such form as will be appropriate under the circumstances) to the Owners(s) of the Senior Bonds requesting instruction as to the course of action to be adopted, and to the extent the Trustee acts in good faith in accordance with any written instruction of the Majority Owners of the applicable Senior Bonds (or such greater percentage of Owners of the applicable Senior Bonds as may be required in the Indenture or such other Series 2018 Loan Document), and in any such case the Trustee will not be liable on account of such action to any Person and will not be liable for any failure or delay in taking such actions resulting from any failure or delay by the Owners, as applicable, in providing such directions and in such case will be fully justified in failing or refusing to take any such action if it will not have received written instruction, advice or concurrence from such number or percentage of the Owners of the Senior Bonds as will be expressly provided for in the Indenture or in the other Series 2018 Loan Documents.

## **Trustee**

### *Duties of the Trustee*

The Trustee accepts the trusts imposed upon it by the Indenture and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Indenture Event of Default and after the curing of all Indenture Events of Default which may have occurred, (i) undertakes to perform such duties and only such duties as are specifically set forth in the Indenture and the other Series 2018 Loan Documents to which it is a party, and no implied covenants or obligations will be read into the Indenture or the other Series 2018 Loan Documents to which it is a party against the Trustee, and (ii) will not be liable, answerable or accountable under any circumstances, except for its own willful misconduct or gross negligence, as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review. In the event the Trustee knows that an Indenture Event of Default has occurred (which has not been cured or waived), the Trustee will exercise such of the rights and powers vested in it by the Indenture, and use the same degree of care and skill in their exercise as a reasonable and prudent man would exercise or use under the circumstances in the conduct of such person's own affairs. The Trustee will not be liable for any action or inaction of any other party or Person (or agent thereof) to the Indenture or any related document.

(b) The Trustee may execute any of the trusts or powers set forth in the Indenture and perform any of its duties by or through attorneys, agents, receivers or employees but will not be responsible for the misconduct or negligence of any agent appointed with due care, and will be entitled to rely and act upon a written opinion of counsel concerning all matters of trust set forth in the Indenture and the duties under the Indenture, and may in all

cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts set forth in the Indenture.

(c) The Trustee will not be responsible for any recital in the Indenture, in the Senior Bonds or in any of the Series 2018 Loan Documents to which it is a party, for the validity of the execution by the Issuer of the Indenture, any Supplemental Indenture or any instruments of further assurance, for the sufficiency of the security for the Senior Bonds or for the value of the Trust Estate. The Trustee will have no obligation to perform any of the duties of the Issuer under the Indenture; and the Trustee will not be responsible or liable for any loss suffered in connection with any investment of funds made by it pursuant to instructions from the Borrower in accordance with the provisions of the Indenture. While the Trustee will receive certain financial statements and other information from the Borrower and certain other parties pursuant to the Series 2018 Loan Agreement, the Trustee will not have any duty to review such documents or be charged with knowledge of the contents thereof.

(d) The Trustee will not be accountable for the use of any Series 2018 Bonds delivered to the Underwriter or any other Senior Bonds delivered to the underwriter of such Senior Bonds pursuant to the Indenture or any Supplemental Indenture. The Trustee may become the Owner of the Series 2018 Bonds or any other Senior Bonds with the same rights which it would have if not Trustee.

(e) The Trustee will be protected in acting upon any notice, request, direction, instruction, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to the Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Owner of any Senior Bond will be conclusive and binding upon any Senior Bonds issued in place thereof.

(f) The Trustee may employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties under the Indenture and, in the absence of the Trustee's gross negligence, bad faith or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisors, may act and rely and will be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower, the Issuer or by the Trustee, in relation to any matter arising in the administration of the Indenture, and will not be responsible for any act or omission on the part of any of them. In addition, the Trustee will not be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its gross negligence, bad faith or willful misconduct in nominating or appointing such persons and so long as such persons are permitted to act under the Indenture.

(g) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee will be entitled to rely upon a certificate signed by the Borrower or an Issuer Representative or such other Person as may be designated for such purpose by the Issuer, as sufficient evidence of the facts therein contained.

(h) The permissive right of the Trustee to do things enumerated in the Indenture will not be construed as a duty.

(i) The Trustee will not be required to take notice or be deemed to have notice of any Indenture Event of Default under the Indenture, except with respect to an Indenture Event of Default described in in clause (a) or (b) under “—Default and Remedies—*Indenture Events of Default*” above, unless the Trustee will be specifically notified in writing at the Corporate Trust Office of such Indenture Event of Default by the Issuer, an Owner or the Borrower.

(j) All moneys received by the Trustee will, until used or applied or invested as provided in the Indenture, be held in trust in the manner and for the purposes for which they were received and will be segregated from all other Funds and Accounts held by the Trustee.

(k) The Trustee will not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(l) Notwithstanding anything in the Indenture to the contrary, the Trustee will have the right, but will not be required, to demand in respect of the delivery of any Senior Bonds, the withdrawal of any cash, or any action whatsoever within the purview of the Indenture, any showings, certificates, opinions, calculations, appraisals, directions, instructions or other information, or corporate action or evidence thereof, in addition to that by the terms of the Indenture required, as a condition of such action by the Trustee.

(m) Whenever in the administration of the trusts or duties imposed upon it by the Indenture the Trustee will deem it necessary that a matter be proved or established prior to taking or not taking any action under the Indenture, such matter may be deemed to be conclusively proved and established by a certificate of an Issuer Representative or by the Borrower, as applicable, and such certificate will be full warrant to the Trustee for any action taken or not taken by it in good faith under the provisions of the Indenture in reliance on such certificate.

(n) The Trustee will not be permitted to unilaterally resolve ambiguities in the Indenture or the Senior Bonds in any manner that will be deemed to be conclusively binding on the Owners, but the Trustee will be protected in acting in good faith when resolving any ambiguities.

(o) The Trustee will at all times keep, or cause to be kept, proper books of record and account in which complete and accurate entries will be made of all transactions relating to the Senior Bonds and all Funds and Accounts established pursuant to the Indenture. Such books of record and accounts will be available for inspection by the Issuer, any Owner, the Borrower or the Borrower or their agents or representatives duly authorized in writing, at reasonable hours and under reasonable circumstances and upon reasonable prior written request.

(p) Records of the deposits to, withdrawals from and investment earnings on moneys in the Fund and Accounts held by the Trustee under the Indenture will be retained by the Trustee until six years after the later of the final payment of the last Senior Bond.

(q) The Trustee will deliver written reports to the Issuer and the Borrower within fifteen (15) days after the end of each calendar month that include at least the following information: (i) the balance in each Fund and Account held by the Trustee as of the first day and the last day of such calendar month; (ii) all moneys received by the Trustee during such calendar month, broken down by source, and earnings from the investment moneys held by the Trustee as part of any Fund or Account into which such moneys are deposited; (iii) all disbursements from each Fund and Account held by the Trustee during such calendar month; and (iv) all transfers to and from each Fund and Account held by the Trustee.

(r) The Trustee will notify the Issuer, the Borrower and the Collateral Agent within ten (10) days after any claim by any Owner or any other Person that any certification, representation or agreement of the Trustee set forth in the Indenture is not accurate or complete or that the Trustee has failed to perform any of its duties or obligations under or has failed to comply with any provision of the Indenture or any Supplemental Indenture.

#### *Trustee Fees and Expenses*

The Trustee will be entitled to compensation in accordance with its agreement with the Borrower, which, notwithstanding any other provision of the Indenture, may be amended at any time by agreement of the Borrower and the Trustee without the consent of or notice to the Owners. In no event will the Trustee be obligated to advance its own funds in order to take any action under the Indenture. The Trustee will be under no obligation to exercise its rights and powers under the Indenture at the request of the Owners, unless the Owners have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

#### *Resignation or Replacement of Trustee*

The present or any future Trustee may resign by giving written notice to the Issuer and the Collateral Agent (with a copy to the Borrower and the Intercreditor Agent) not less than ninety (90) days before such resignation is to



take effect. Such resignation will take effect only upon the appointment of a successor qualified as provided in this Section. If no successor is appointed within ninety (90) days following the date designated in the notice for the Trustee's resignation to take effect, the resigning Trustee may petition a court of competent jurisdiction for the appointment of a successor. The present or any future Trustee may be removed at any time (i) by the Issuer in the event the Issuer reasonably determines that the Trustee is not duly performing its obligations under the Indenture or that such removal is in the best interests of the Issuer and the Owners, provided that the Trustee may not be removed during the pendency of an Indenture Event of Default without the written consent of the Majority Owners; or (ii) by an instrument in writing executed by the Majority Owners.

In case the present or any future Trustee will at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed by the Issuer, with the written consent of the Borrower (such consent not to be unreasonably withheld, delayed or conditioned). Upon making any such appointment, the Issuer will forthwith give notice thereof to each Owner, the Borrower, the Intercreditor Agent and the Collateral Agent, which notice may be given concurrently with the notice of resignation given by any resigning Trustee and will include a description of the right of each Owner to object to the appointment. Any successor Trustee appointed by the Issuer pursuant to this subsection will be removed by the Issuer if the Majority Owners and the Borrower object to the appointment by an instrument or concurrent instruments signed by such Owners, or their duly appointed attorneys-in-fact, and the Borrower delivered to the Issuer within ninety (90) days following the date of the Issuer's notice of the appointment of such successor. If the Majority Owners and the Borrower object to the appointment of a successor Trustee pursuant to this subsection, the Issuer will appoint another successor Trustee and the Owners and the Borrower will have the same right to object to the new successor Trustee.

Every successor Trustee will be a bank or trust company in good standing, duly authorized to exercise trust powers and subject to examination by federal or state authority, qualified to act under the Indenture, having a capital and surplus of not less than five-hundred million dollars (\$500,000,000). Any successor Trustee appointed under the Indenture will execute, acknowledge and deliver to the Issuer (with a copy to the Borrower) an instrument accepting such appointment under the Indenture, and thereupon such successor will, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trust under the Indenture with like effect as if originally named as Trustee in the Indenture; but the Trustee retiring will, nevertheless, on the written demand of its successor, execute and deliver an instrument conveying and transferring to such successor, upon the trusts expressed in the Indenture, all the estates, properties, rights, powers and trusts of the predecessor, which will duly assign, transfer and deliver to the successor all properties and moneys held by it under the Indenture. Should any instrument in writing from the Issuer be required by any successor for more fully and certainly vesting in and confirming to it, such instrument in writing will, at the reasonable discretion of the Issuer, be made, executed, acknowledged and delivered by the Issuer on request of such successor.

The instruments evidencing the resignation or removal of the Trustee and the appointment of a successor under the Indenture, together with all other instruments provided for and described in this section "*—Resignation or Replacement of Trustee*" will be filed and/or recorded by the successor Trustee in each recording office, if any, where the Indenture will have been filed and/or recorded.

#### *Conversion, Consolidation or Merger of Trustee*

Any bank or trust company into which the Trustee or its successor may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business as a whole or substantially as a whole will be the successor of the Trustee under the Indenture with the same rights, powers, duties and obligations and subject to the same restrictions, limitations and liabilities as its predecessor, all without the execution or filing of any papers or any further act on the part of any of the parties hereto or thereto, anything in the Indenture or therein to the contrary notwithstanding. In case any of the Senior Bonds will have been executed, but not delivered, any successor Trustee may adopt the signature of any predecessor Trustee, and deliver the same as executed; and, in case any of such Senior Bonds will not have been executed, any successor Trustee may execute such Senior Bonds in the name of such successor Trustee.

### *Intervention by Trustee*

In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of the Owners, the Trustee may intervene on behalf of Owners, and will do so if requested in writing by the Majority Owners, provided, the Trustee may, as a condition to taking any action at the request or direction of the Owners, require that a satisfactory indemnity bond be furnished to it for the reimbursement of its reasonable fees and expenses and the liability that it may incur as a result of such action.

### *Documents Furnished by Trustee to Owners*

The Trustee will furnish or otherwise make available to each applicable Owner (and each applicable Beneficial Owner who so requests in writing in accordance with the Indenture) a copy of any material certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal or other paper or document it receives in each such case from the Issuer pursuant to the Indenture or from the Intercreditor Agent with respect to any other Financing Document. The Issuer directs the Trustee, promptly upon the written request of any Owner, Beneficial Owner, bona fide prospective Owner or, as required by law, any other person, to provide copies of any Financing Document, materials received pursuant to the reporting requirements of the Series 2018 Loan Agreement, copies of the DBFOM Agreement (including the schedules thereto) and the other Material Project Contracts. The Issuer further directs the Trustee promptly upon receipt of the written request of any such person provide copies of any Financing Document.

### *Required Actions Under DBFOM Agreement*

The Trustee will not name or join the Issuer, the Department, the City, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of the foregoing in any legal proceeding seeking collection of the related debt or other obligations secured thereby or the foreclosure or other enforcement of the Financing Documents, unless and except to the extent that (i) joinder of the Department as a necessary party is required by applicable law in order to confer jurisdiction on the court over the dispute with the Borrower or to enforce lender remedies against the Borrower and (ii) the complaint against the Department states no claim or cause of action for a lien or Security Interest on, or to foreclose against the Department's right, title and interest in and to the Project, or for any liability of the Department on the indebtedness.

The Trustee will not seek any damages or other amounts from the Department, the City, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of the foregoing due to the Department's breach of the DBFOM Agreement; provided, that the foregoing will not affect any rights or claims of the Trustee (i) for damages from the Department for a violation of its express obligations to Lenders under the DBFOM Agreement or in any Lenders' direct agreement delivered on the Financial Close Date or at any time thereafter in accordance with the terms for the DBFOM Agreement and (ii) amounts due to the Trustee as a successor in interest to the Borrower by foreclosure or transfer in lieu of foreclosure in accordance with the DBFOM Agreement.

## **Supplemental Indentures**

### *Supplemental Indentures Not Requiring Consent of Owners*

Subject to the provisions set forth in the Intercreditor Agreement, the Issuer and the Trustee may, without the consent of, or notice to, the Owners, but with the written consent of the Borrower, enter into a Supplemental Indenture for any one or more or all of the following purposes; provided, however, that no Supplemental Indenture that adversely affects the rights and interests of the Insurer in its capacity as Insurer may be entered into without the prior written consent of the Insurer:

(a) to provide for the issuance by the Issuer of Additional Senior Bonds in accordance with the provisions of the Indenture;

- (b) to add additional covenants to the covenants and agreements of the Issuer set forth in the Indenture;
- (c) to add additional revenues, properties or collateral to the Trust Estate;
- (d) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in the Indenture;
- (e) to amend any existing provision of the Indenture or to add additional provisions which, in the opinion of Bond Counsel, are necessary or advisable (i) to qualify, or to preserve the qualification of, the interest on any Tax-Exempt Senior Bonds for exclusion from gross income for federal income tax purposes; (ii) to qualify, or to preserve the qualification of, the Indenture or any Supplemental Indenture under the federal Trust Indenture Act of 1939, as amended; or (iii) to qualify, or preserve the qualification of, any Senior Bonds for an exemption from registration or other limitations under the laws of any state or territory of the United States;
- (f) to provide for or eliminate book-entry registration of any of the Senior Bonds;
- (g) to obtain or maintain a rating of the Senior Bonds by one or more of the Rating Agencies;
- (h) to facilitate the receipt of moneys;
- (i) to establish additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this section; or
- (j) in connection with any other change which does not materially adversely affect the rights of the Owners as set forth in a certificate of an Issuer Representative and an opinion of Bond Counsel delivered pursuant to the Indenture.

#### *Supplemental Indentures Requiring Consent of Owners*

Subject to the provisions set forth in the Intercreditor Agreement, the Issuer and the Trustee may enter into a Supplemental Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or modifying the rights of the Owners in any way under the Indenture (other than as contemplated in under “—*Supplemental Indentures Not Requiring Consent of Owners*” above) with the consent of the Majority Owners affected by the proposed amendment and with the consent of the Borrower; provided, however, that no Supplemental Indenture that adversely affects the rights and interests of the Insurer in its capacity as Insurer may be entered into without the prior written consent of the Insurer; provided, further, that no Supplemental Indenture modifying the Indenture in the way described below may be entered into without the consent of the Owner of each Senior Bond affected thereby:

- (a) a reduction of the interest rate, principal of or interest on or Redemption Price payable on any Senior Bond, a change in the maturity date of any Senior Bond, a change in any Interest Payment Date for any Senior Bond or a change in the redemption provisions applicable to any Senior Bond;
- (b) the deprivation of an Owner of the Security Interest in the Trust Estate granted by the Indenture;
- (c) the creation of a priority right in the Trust Estate of another Senior Bond over the right of the affected Senior Bond, except as permitted in the Indenture; or
- (d) a reduction in the percentage of Owners that are required to consent to any Supplemental Indenture or the parties whose consent is required.

#### *Conditions to Effectiveness of Supplemental Indentures*

No Supplemental Indenture will be effective until (i) it has been executed by the Issuer and the Trustee and, when applicable, consented to by the Borrower, and (ii) Bond Counsel has delivered a written opinion to the effect

the Supplemental Indenture complies with the provisions of this section “—Supplemental Indentures,” is authorized by the Indenture and the Intercreditor Agreement, will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any series of Outstanding Senior Bonds where the interest on such Senior Bonds was excludable from gross income for federal income tax purposes on the original date of issuance of such Senior Bonds, and with respect to any amendment made pursuant to clause (j) of the section entitled “Supplemental Indentures Not Requiring Consent of Owners” above, such amendment does not materially adversely affect the rights of the Owners.

No Supplemental Indenture entered into pursuant to the provisions described under “—*Supplemental Indentures Requiring Consent of Owners*” above will be effective until, in addition to the conditions set forth in the Indenture, (i) a notice has been mailed to each Owner by the Trustee at least ten (10) Business Days and not more than twenty (20) Business Days prior to the expected date of the execution and delivery of such proposed Supplemental Indenture (provided, that the Trustee may designate such lesser period (being at least seven (7) Business Days) it may consider necessary or advisable in circumstances where the interests of the Owners would otherwise be likely to be prejudiced), which notice describes the nature of the proposed Supplemental Indenture (or such Supplemental Indenture may be included with such notice) and states that copies of it are on file at the office of the Trustee for inspection by the Owners and (ii) subject to the provisions of the Indenture and any Supplemental Indenture, the required percentage of Owners of the then Outstanding Senior Bonds have consented to, or in accordance with paragraph (c) below, have been deemed to have consented to, the Supplemental Indenture no later than one (1) Business Day prior to the expected date of the execution and delivery of such proposed amendment.

Anything in the Indenture to the contrary notwithstanding, if an Owner does not respond (in any way) to a request with respect to any Supplemental Indenture requiring Majority Owners’ consent, but not requiring consent from greater than a majority of the Owners, pursuant to “—*Supplemental Indentures Requiring Consent of Owners*” above, within ten (10) Business Days of delivery of such request, then any Bonds registered to such Owner in the bond register will not be counted for the purpose of calculating the Majority Owners’ consent. For the avoidance of doubt, this provision (i) will not apply to clauses (a)-(d) of “—*Supplemental Indentures Requiring Consent of Owners*” above and (ii) will not be utilized to effectuate a Supplemental Indenture that materially adversely affects the interests of Owners.

For the purposes of “—*Supplemental Indentures Requiring Consent of Owners*” above, the purchasers of the Senior Bonds of a Series, whether purchasing as underwriters, for resale or otherwise, upon such purchase from the Issuer, may consent to a modification or amendment permitted by “—*Supplemental Indentures Requiring Consent of Owners*” above in the manner provided in the Indenture and with the same effect as a consent given by the Owners of such Senior Bonds, except that no proof of ownership will be required; provided, that this provision will be disclosed prominently in the offering document, if any, for each Series of Senior Bonds issued pursuant to the Indenture or any Supplemental Indenture, provided that, if such consent is given by a purchaser who is purchasing as an underwriter or for resale, the nature of the modification or amendment and the provisions for the purchaser consenting thereto will be described in the offering document prepared in connection with the primary offering of the Senior Bonds of such Series by the Issuer.

#### *Consent of the Borrower; Consent of the Department*

Anything in the Indenture to the contrary notwithstanding, a Supplemental Indenture under this section “—*Supplemental Indentures*” will not become effective unless and until the Borrower will have consented to the execution and delivery of such Supplemental Indenture. In this regard, the Trustee will cause notice of the proposed execution of any such Supplemental Indenture together with a copy of the proposed Supplemental Indenture to be mailed to the Borrower at least fifteen (15) Business Days (or such shorter notice period as the Borrower may agree to) prior to the proposed date of execution and delivery of any such Supplemental Indenture.

Anything in the Indenture to the contrary notwithstanding, a Supplemental Indenture under this section “—*Supplemental Indentures*” relating to the captions entitled “Required Actions Under DBFOM Agreement” and “Compliance with DBFOM Agreement” or any other provision of the Indenture relating to the Department will not become effective unless and until the Department shall have consented to the execution and delivery of such Supplemental Indenture. In this regard, the Trustee shall cause notice of the proposed execution of any such Supplemental Indenture together with a copy of the proposed Supplemental Indenture to be mailed to the

Department at least fifteen (15) Business Days (or such shorter notice period as the Department may agree to) prior to the proposed date of execution and delivery of any such Supplemental Indenture.

#### **Amendment of Certain Actions Under Series 2018 Loan Agreement and Other Series 2018 Loan Documents**

##### *Amendments to Series 2018 Loan Agreement Not Requiring Consent of Owners*

Subject to the provisions set forth in the Intercreditor Agreement, the Issuer and the Borrower may, upon receipt of an opinion of Bond Counsel to the effect that the proposed amendment will not adversely affect the excludability of interest on the Series 2018 Bonds from gross income for federal income tax purposes and is authorized by the Indenture and the Intercreditor Agreement, amend, change or modify the Series 2018 Loan Agreement, without the consent of, or notice to, the Owners, for any one or more or all of the following purposes:

- (a) to add additional covenants to the covenants and agreements of the Borrower set forth therein;
- (b) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained therein;
- (c) to amend any existing provision thereof or to add additional provisions which, in the opinion of Bond Counsel, are necessary or advisable (i) to qualify, or to preserve the qualification of, the interest on any Series 2018 Bonds for exclusion from gross income for federal income tax purposes or (ii) to qualify, or preserve the qualification of, any Series 2018 Bonds for an exemption from registration or other limitations under the laws of any state or territory of the United States;
- (d) to facilitate the receipt of moneys;
- (e) to establish additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this section; or
- (f) in connection with any other change which does not materially adversely affect the rights of the Owners as set forth in a certificate of an Issuer Representative and an opinion of Bond Counsel delivered pursuant to the Indenture.

##### *Amendments to Series 2018 Loan Agreement Requiring Consent of Owners*

Subject to the provisions set forth in the Intercreditor Agreement, except for the amendments, changes or modifications as provided in under “—*Amendments to Series 2018 Loan Agreement Not Requiring Consent of Owners*” above, the Issuer and the Borrower may amend, change or modify the Series 2018 Loan Agreement with the consent of the Majority Owners of the then outstanding Senior Bonds; provided, however, that no amendment, change or modification of the Series 2018 Loan Agreement may be entered into without the prior written consent of the Insurer; provided, further, that no amendment, change or modification of the Series 2018 Loan Agreement may be entered into in respect of the matters contemplated below unless the consent of the Owner of each Senior Bond affected thereby has been obtained:

- (a) a reduction of the interest rate, principal of or interest on the Senior Loan, a change in the maturity date of the Senior Loan, a change in the Interest Payment Date for the Senior Loan or a change in the prepayment provisions applicable to the Senior Loan; or
- (b) the deprivation of the Trustee of the Security Interest granted by the Security Documents.

##### *Conditions to Effectiveness of Amendments to Series 2018 Loan Agreement*

No amendment to the Series 2018 Loan Agreement will be effective until (i) it has been executed by the Issuer and the Borrower, and (ii) Bond Counsel has delivered a written opinion to the effect the amendment to the Series 2018 Loan Agreement complies with the provisions of this section “—Amendments of and Certain Actions

Under Series 2018 Loan Agreement and Other Series 2018 Loan Documents” and the provisions of the Series 2018 Loan Agreement, is authorized by the Indenture, the Series 2018 Loan Agreement and the Intercreditor Agreement, will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Outstanding Senior Bonds, and with respect to any amendment made pursuant to clause (f) under “—*Amendments to Series 2018 Loan Agreement Not Requiring Consent of Owners*” above, such amendment does not materially adversely affect the rights of the Owners of the Senior Bonds.

No amendment to the Series 2018 Loan Agreement entered into pursuant to the provisions described under “—*Amendments to Series 2018 Loan Agreement Requiring Consent of Owners*” above will be effective until, in addition to the conditions set forth in the previous paragraph, (i) a notice has been mailed to each Owner of the Senior Bonds by the Trustee at least ten (10) Business Days and not more than twenty (20) Business Days prior to the expected date of the execution and delivery of such proposed amendment (provided, that the Trustee may designate such lesser period (being at least seven (7) Business Days) it may consider necessary or advisable in circumstances where the interests of the Owners would otherwise be likely to be prejudiced), which notice describes the nature of the proposed amendments (or such amendment may be included with such notice) and states that copies of it are on file at the office of the Trustee for inspection by the Owners of the Senior Bonds and (ii) subject to the provisions of the Indenture, the required percentage of Owners of the then Outstanding Senior Bonds have consented to the amendment to the Series 2018 Loan Agreement no later than one (1) Business Day prior to the expected date of the execution and delivery of such proposed amendment.

For the purposes of the amendments described under “—*Amendments to Series 2018 Loan Agreement Requiring Consent of Owners*” above, the purchasers of the Additional Senior Bonds of a Series, whether purchasing as underwriters, for resale or otherwise, upon such purchase from the Issuer, may consent to a modification or amendment permitted by provisions described under “—*Amendments to Series 2018 Loan Agreement Requiring Consent of Owners*” in the manner provided in the Indenture and with the same effect as a consent given by the Owners of such Additional Senior Bonds, except that no proof of ownership will be required; provided, that this provision will be disclosed prominently in the offering document, if any, for each Series of Additional Senior Bonds issued pursuant to the Indenture or any Supplemental Indenture, provided that, if such consent is given by a purchaser who is purchasing as an underwriter or for resale, the nature of the modification or amendment and the provisions for the purchaser consenting thereto will be described in the offering document prepared in connection with the primary offering of the Additional Senior Bonds of such Series by the Issuer.

#### *Actions of Trustee Requiring Owner Consent*

In the event that the Intercreditor Agreement or the Series 2018 Loan Agreement requires certain actions by the Trustee at the direction of a designated portion of the Owners of the applicable Senior Bonds, or any other Series 2018 Loan Document, or the DBFOM Agreement requires the consent, direction or other action of the Secured Creditors (in each case, the consent, direction or other action of the Trustee, on behalf of the Owners, to be given upon the consent of the Majority Owners, unless a different designated portion of the Owners of the Senior Bonds is required pursuant to such document), the Trustee agrees as follows:

(i) subject to the provisions of the Intercreditor Agreement, if applicable, if the Intercreditor Agent or such other party requests the consent, direction or other action of the Trustee be provided at the direction of a designated portion of the Owners of the applicable Senior Bonds, the Trustee will, upon notice of the same from the Intercreditor Agent or such other party and upon being satisfactorily indemnified with respect to expenses, cause notice of such requested consent, direction or other action to be given to the Owners in the same manner as provided by the Indenture with respect to Supplemental Indentures or with respect to any amendments to the Series 2018 Loan Agreement; provided, that prior to the delivery of such notice or request, the Trustee may require that an opinion of Bond Counsel be furnished to the effect that such consent, direction or other action complies with the provisions of the Indenture and the Intercreditor Agreement and will not adversely affect the excludability of interest on the Tax-Exempt Senior Bonds from gross income for federal income tax purposes. Such notice will briefly set forth the nature of such requested consent or action and will state that any copies of such request from such requesting party are on file at the Corporate Trust Office of the Trustee for inspection by all Owners; and

(ii) upon receipt of the consent of or direction from the Owners of not less than the required percentage in aggregate principal amount of the then Outstanding Senior Bonds (which consent or direction will be received no later than one (1) Business Day prior to the requested action date), the Trustee will, upon being satisfactorily indemnified with respect to expenses, take any such directed action in accordance with the Indenture, the Series 2018 Loan Agreement, any other Series 2018 Loan Document or the DBFOM Agreement; provided, that prior to the taking of such action, the Trustee may require that an opinion of Bond Counsel be furnished to the effect that such consent, direction or other action complies with the provisions of the Indenture and the Intercreditor Agreement and will not adversely affect the excludability of interest on the Tax-Exempt Senior Bonds from gross income for federal income tax purposes.

## **Defeasance**

### *Discharge of Indenture*

If (a) 100% of all the Senior Bonds due, or to become due, have been paid, or provision will have been made for the payment thereof in accordance with the provisions described under “—*Defeasance of Senior Bonds*” below, (b) all rebate payments payable to the United States with respect to the Tax-Exempt Senior Bonds have been paid, or provision will have been made for the payment thereof, (c) all other amounts payable under the Indenture (including, but not limited to, the fees and expenses of the Trustee) have been paid, or provision will have been made for the payment thereof, and (d) the opinion of Bond Counsel required by the Indenture has been delivered, then, (i) the right, title and interest of the Trustee in and to the Trust Estate will terminate and be discharged (referred to in the Indenture as the “discharge” of the Indenture); (ii) the Trustee will transfer and convey to or to the written order of the Issuer all property that was part of the Trust Estate, including but not limited to any moneys held in any Fund or Account under the Indenture, except any Defeasance Escrow Fund created pursuant to provisions described under “—*Defeasance of Senior Bonds*” below (which Defeasance Escrow Fund will continue to be held in accordance with the agreement governing the administration thereof); and (iii) the Trustee will execute any instrument requested by the Issuer to evidence such discharge, transfer and conveyance.

### *Defeasance of Senior Bonds*

All or any portion of the Outstanding Senior Bonds will be deemed to have been paid (referred to in the Indenture as “defeased”) prior to their maturity or redemption if:

(a) the defeased Senior Bonds are to be redeemed prior to their maturity, the Borrower has irrevocably instructed the Trustee in writing to give notice of redemption of such Senior Bonds in accordance with the Indenture and any applicable Supplemental Indenture;

(b) there has been deposited in trust in a Defeasance Escrow Fund either moneys in an amount which will be sufficient, or Defeasance Securities, to pay the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited into or held in the Defeasance Escrow Fund, will be sufficient to pay the principal and Redemption Price, if any, and interest due and to become due on the defeased Senior Bonds on and prior to the redemption date or maturity date thereof, as the case may be;

(c) an independent certified public accountant has delivered a verification report verifying the deposit described in paragraph (b) of this subsection; and

(d) the opinion of Bond Counsel required by the Indenture has been delivered.

The Defeasance Securities and moneys deposited in a Defeasance Escrow Fund pursuant to the Indenture and the principal and interest payments on such Defeasance Securities will not be withdrawn or used for any purpose other than, and will be held in trust solely for, the payment of the principal and Redemption Price, if any, of and interest on the defeased Senior Bonds; provided, however, that (i) any moneys received from principal and interest payments on such Defeasance Securities that are not required to pay the principal and Redemption Price, if

any, of and interest on the defeased Senior Bonds on the date of receipt will, to the extent practicable, be reinvested in Defeasance Securities maturing at the times and in amounts sufficient to pay when due the principal and Redemption Price, if any, of and interest on the defeased Senior Bonds on or prior to the redemption date or maturity date thereof, as the case may be; and (ii) any moneys or Defeasance Securities may be withdrawn from a Defeasance Escrow Fund if (A) the moneys and Defeasance Securities that are on deposit in the Defeasance Escrow Fund, including any moneys or Defeasance Securities that are substituted for the moneys or Defeasance Securities that are withdrawn from the Defeasance Escrow Fund, satisfy the conditions stated in clause (b) above, and (B) a verification report and Bond Counsel opinion are delivered that comply with clauses (c) and (d) above.

Any Senior Bonds that are defeased as provided in the Indenture will no longer be secured by or entitled to any right, title or interest in or to the Trust Estate, and the principal and Redemption Price, if any, of and interest on such Senior Bonds will be paid solely from the Defeasance Securities and money held in the Defeasance Escrow Fund.

#### *Opinion of Bond Counsel*

Prior to any discharge of the Indenture pursuant to the Indenture or the defeasance of any Senior Bonds pursuant to the Indenture, Bond Counsel will have delivered a written opinion to the effect that all requirements of the Indenture for such discharge or defeasance have been complied with and that such discharge or defeasance will not constitute a violation by the Issuer of its tax covenant in the Indenture.

#### **Insurance Provisions**

As used below, the following terms shall have following respective meanings:

(a) “*Insurance Policy*” means the insurance policy issued at the request of the Issuer or the Borrower by the Insurer guaranteeing the scheduled payment of the principal of and interest on the Insured Bonds when due.

(b) “*Insured Bonds*” means the Series 2018A Bonds maturing December 31, 2030 (CUSIP 13048VBP2), December 31, 2032 (CUSIP 13048VBS6), December 31, 2035 (CUSIP 13048VBZ0), December 31, 2047 (CUSIP 13048VCB2).

(c) “*Insurer*” means Assured Guaranty Municipal Corp., a New York stock insurance company, or any successor thereto or assignee thereof.

#### *Nonpayment by the Issuer*

The Insurer will be entitled to pay principal or interest on the Insured Bonds that becomes Due for Payment (as such term is defined in the Insurance Policy) but shall be unpaid by reason of Nonpayment by the Issuer (as such term is defined in the Insurance Policy) and any amounts due on the Insured Bonds as a result of acceleration of the maturity thereof in accordance with the Indenture, whether or not the Insurer has received a Notice of Nonpayment (as such term is defined in the Insurance Policy) or a claim upon the Insurance Policy.

#### *Insurance Payment Procedures*

As long as the Insurance Policy is in full force and effect, the Issuer, the Borrower and the Trustee agree to comply with the following provisions:

(a) If, on the third Business Day prior to an Interest Payment Date or Principal Payment Date on which the principal of or interest on the Insured Bonds is payable (a “Payment Date”) the Borrower has determined pursuant to the Collateral Agency and Accounts Agreement that on the immediately succeeding Transfer Date, after making all transfers and deposits required under the Collateral Agency and Accounts Agreement in respect of amounts due and payable under the Indenture, there will not be sufficient money to pay the principal of and interest on the Insured Bonds due on such Payment Date, the Borrower must give notice thereof to the Trustee and the Insurer and to its designated agent, if any (the “Insurer’s Fiscal Agent”), by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, by 12:00 noon New York City time on the second Business Day prior to the related Payment Date, the Borrower delivers notice to the Trustee that there



continues to be a deficiency in the amount available to pay the principal of and interest on the Insured Bonds due on such Payment Date, the Trustee must make a claim under the Insurance Policy by 5:00p.m. New York City time, and the allocation of such deficiency between the amount required to pay interest on the Insured Bonds and the amount required to pay the principal of Insured Bonds, by filing the form of Notice of Claim and Certificate delivered with the Insurance Policy; provided, however, that the Insurer will not be required to make any payment to the extent that on the Payment Date such deficiency of funds no longer exists.

(b) The Trustee must designate any portion of payment of principal on Insured Bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Insured Bonds registered to the then current Owner, whether DTC, its nominee or otherwise, and must issue a replacement Bond to the Insurer, registered in the name of Assured Guaranty Municipal Corp., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided, however, that failure by the Trustee to so designate any payment or issue any replacement Bond will have no effect on the amount of principal or interest payable by the Issuer on any Insured Bond or the subrogation rights of the Insurer.

(c) The Trustee must keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payment Account (as defined below) and the allocation of such funds to payment of interest on and principal of any Insured Bond. The Insurer will have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

(d) Upon payment of a claim under the Insurance Policy, the Trustee shall establish a separate special purpose trust account for the benefit of Owners of Insured Bonds, which account shall be referred to in the Indenture as the "Policy Payments Account," over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under the Insurance Policy in trust on behalf of the Owners of Insured Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Trustee to the Owners in the same manner as principal and interest payments are to be made with respect to the Series 2018 Bonds pursuant to the third paragraph under the section entitled "Series 2018 Debt Service Fund" above. It shall not be necessary for such payments to be made by check or wire transfers separate from the check or wire transfer used to pay the principal and interest with other funds available to make such payments. The Insurer shall be entitled to receive the defaulted interest that is payable on the Insured Bonds, following the payment of any claims under the Insurance Policy, and the amount of such defaulted interest will not be less than a penalty rate of two percent over the then current interest rate on the Insured Bonds.

(e) Funds held in the Policy Payment Account may not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee. Any funds remaining in the Policy Payments Account following a Payment Date must promptly be remitted to the Insurer.

#### *Acceleration*

If any maturity of the Insured Bonds is accelerated pursuant to the Indenture, the Insurer may elect, in its sole discretion, but has no obligation, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the Issuer) and the Trustee must accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Insurer's obligations under the Insurance Policy with respect to such Insured Bonds will be fully discharged. If the Insurer does not so elect to pay the Insured Bonds on an accelerated basis, the Insurer must pay under the Insurance Policy the principal of and interest on the Insured Bonds at the time principal and interest would have been due had the maturity of the Insured Bonds not been accelerated.

#### *Subrogation*

Amounts paid by the Insurer under the Insurance Policy will not be deemed paid and the Insured Bonds relating to such payments will remain outstanding and continue to be due and owing until paid by the Issuer in accordance with the Indenture. The Indenture will not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for. In the event that the principal of and/or interest on the Insured Bonds is paid by the Insurer pursuant to the Insurance Policy, the Insurer will be subrogated to the rights of the

recipients of such payments in accordance with the terms of the Insurance Policy. Each obligation of the Issuer to the Insurer under the Transaction Documents will survive discharge or termination of such Transaction Documents.

#### *Insurer's Entitlement to any Penalty Interest*

Any additional amounts owing by the Issuer in respect of payments on Insured Bonds as a result of the failure by the Issuer to make such payments when due and payable (including, without limitation, any such additional amounts as may be attributable to penalties or default interest rates) which payments have been timely paid with proceeds of the Insurance Policy shall be additional amounts owing to the Insurer and not to the Owners of such Insured Bonds.

#### *Insurer as Owner*

The Insurer is deemed to be the sole holder of the Insured Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the registered holders of the Insured Bonds are entitled to take. Any amendment, supplement, modification to, or waiver of, any Financing Document that requires the consent of the Owner of an Insured Bond or adversely affects the rights and interests of the Insurer, shall require the prior written consent of the Insurer.

#### *Contractual Rights of the Insurer.*

The Issuer and the Trustee have acknowledged and agreed that:

- (a) the rights granted to the Insurer under the Indenture to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy;
- (b) any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the registered holders of the Insured Bonds; and
- (c) such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of any of the registered holders of the Insured Bonds or any other person is required in addition to the consent of the Insurer.

#### *Insurer as Third Party Beneficiary*

To the extent that the Indenture or the Series 2018 Loan Agreement confers upon or gives or grants to the Insurer any right, remedy or claim thereunder, the Insurer is intended to be and is explicitly recognized as being a third-party beneficiary of such right, remedy or claim and may enforce any such right, remedy or claim conferred, given or granted thereunder.

#### *Notices, Etc.*

While the Insurance Policy is in effect, the Insurer will be provided with copies of any notices to be provided by the Trustee pursuant to the Indenture.

### **Miscellaneous**

#### *Parties Interested*

The Indenture and any Supplemental Indenture will be for the sole and exclusive benefit of the Issuer, the Trustee and the Owners and their respective successors and assigns. Nothing in the Indenture or any Supplemental Indenture expressed or implied is intended or will be construed to confer upon, or to give to, any person other than the Issuer, the Trustee and the Owners, any right, remedy or claim under or by reason of the Indenture or any terms of the Indenture. To the extent that the Indenture or any Supplemental Indenture confers upon or gives or grants to the Borrower any right, remedy or claim under or by reason of the Indenture or any Supplemental Indenture, the Borrower are explicitly recognized as being third-party beneficiaries under the Indenture and thereunder and may enforce any such right, remedy or claim conferred, given or granted under the Indenture or thereunder.

### *Compliance with DBFOM Agreement*

Nothing in the Indenture alters in any way the Borrower's rights, duties and obligations under the DBFOM Agreement. The Issuer and the Trustee acknowledge and agree to applicable provisions of the DBFOM Agreement.

### *Intercreditor Matters*

In accordance with the Intercreditor Agreement, certain determinations and directions from the Secured Creditors will be decided through an Intercreditor Vote. The Trustee and the Owners agree that any calculation or determination made by the Intercreditor Agent and each determination made or instruction given in accordance with the terms of the Intercreditor Agreement will, in the absence of manifest error, be binding upon the Trustee and the Owners. Each Owner will be entitled to vote in each Intercreditor Vote (indirectly via the Trustee) conducted under the Intercreditor Agreement.

Notwithstanding anything to the contrary in the Indenture, the Trustee will not be required to provide any such direction, take any such action or exercise any discretionary rights or remedies in the Indenture, give any consent under any of the Series 2018 Loan Documents, enter into any agreement amending, modifying, supplementing or waiving any provision of any Series 2018 Loan Documents or provide any direction to the Intercreditor Agent unless it will have been expressly directed in writing to do so by the Majority Owners and will have received indemnity and security satisfactory to it from the directing Owners against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action, and any action taken or failure to act pursuant thereto will be binding upon all the Owners. The Trustee will not be required to provide any indemnity to the Intercreditor Agent or the Collateral Agent in connection with providing a direction under the Intercreditor Agreement, any such indemnity to be provided by the directing Owners. The Trustee will have no liability or responsibility for any failure or delay on the part of any of the Issuer, the Intercreditor Agent or the Collateral Agent in connection with performing their respective duties under the Series 2018 Loan Documents or the taking of any action or exercise of a remedy under any Series 2018 Loan Documents.

In connection with any determination, remedy or vote under the Intercreditor Agreement, the Trustee is authorized and directed to (i) provide to the Intercreditor Agent any information in the possession of the Trustee in respect of the amount of principal of and interest owing on the Senior Bonds and (ii) provide votes to the Intercreditor Agent in response to any notice of an Intercreditor Vote to the Intercreditor Agent at the direction of, and on behalf of, each Owner.

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## **APPENDIX D-2**

### **SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2018 LOAN AGREEMENT**

*The following is a summary of certain provisions of the Series 2018 Loan Agreement. This summary is not to be considered a full statement of the terms of the Series 2018 Loan Agreement, and accordingly is qualified by reference thereto and is subject to the full text thereof.*

*Capitalized terms used in this APPENDIX D-2 and not otherwise defined herein will have the meaning assigned to them in APPENDIX A—“DEFINITIONS.”*

#### **Generally**

The Borrower and the Issuer will enter into the Series 2018 Loan Agreement, pursuant to which the proceeds of the Series 2018 Bonds will be loaned to the Borrower on the Financial Close Date, subject to the terms and conditions of the Series 2018 Loan Agreement and the Indenture. The net proceeds received from the sale of the Series 2018 Bonds will be deposited into the Bond Proceeds Account in accordance with the Collateral Agency and Accounts Agreement. The Borrower is required to use the proceeds of the loan under the Series 2018 Loan Agreement to pay a portion of the Project Costs as provided in the Indenture and the Collateral Agency and Accounts Agreement, and is required to cause the Collateral Agent to maintain such proceeds prior to such uses in accordance with the Collateral Agency and Accounts Agreement and the Indenture.

#### **Compliance with the Indenture**

In accordance with any applicable provisions of the Indenture, at the request of the Borrower, the Issuer is obligated to take any action directed by the Borrower to the extent required under, or permitted by, the provisions of the Indenture or the Series 2018 Loan Agreement. The Borrower, in turn, is obligated to take all action required to be taken by the Borrower in the Indenture as if the Borrower were a party to the Indenture.

#### **Amounts Payable**

The Borrower will covenant and agree under the Series 2018 Loan Agreement to repay the Loan, as follows: on or before any Interest Payment Date for the Series 2018 Bonds and on or before any other date on which any payment of interest, principal or Redemption Price on the Series 2018 Bonds is required to be made pursuant to the Indenture, until the payment of interest, principal, and Redemption Price on the Series 2018 Bonds shall have been fully paid or provision for the full and timely payment thereof shall have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in the applicable account of the Series 2018 Debt Service Fund, will enable the Trustee to pay to the Owners of the Series 2018 Bonds the full amount of interest, principal or Redemption Price on the Series 2018 Bonds due and payable on such date as provided in the Indenture.

Pursuant to the Series 2018 Loan Agreement, the Issuer will direct the Borrower, and the Borrower will agree, to pay to the Collateral Agent all amounts payable by the Borrower in respect of the Loan pursuant for deposit in accordance with the Collateral Agency and Accounts Agreement.

In the event that the Borrower should fail to make any of the payments required under the Series 2018 Loan Agreement, the amount so in default will continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower will agree to pay the same with interest thereon, to the extent provided under the Indenture or as permitted by law, from the date when such payment was due, at the rate of interest borne by the Series 2018 Bonds.

## **Additional Payments**

In addition to the amounts payable in the manner set forth under “—Amount Payable” above, the Borrower is also required to pay, or cause to be paid, to the Issuer or to the Trustee, as the case may be, “Additional Payments,” as follows:

(a) All taxes and assessments of any type or character charged to the Issuer or to the Trustee affecting the amount available to the Issuer or the Trustee from payments to be received under the Series 2018 Loan Agreement or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Trustee and taxes based upon or measured by the net income of the Trustee; provided, however, that the Borrower will have the right to protest any such taxes or assessments and to require the Issuer or the Trustee, at the Borrower’s expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower will have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Trustee;

(b) All reasonable fees, charges and expenses of the Trustee for services rendered under the Indenture and all amounts referred to in the Indenture, as and when the same become due and payable;

(c) The reasonable and documented fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Issuer or the Trustee (subject to the terms of any written arrangement between the Trustee and the Borrower in connection with fees, costs or expenses) to prepare audits, financial statements, reports, opinions or provide such other services required under the Series 2018 Loan Agreement, the Indenture or the Series 2018 Bonds;

(d) The Issuer Issuance Fee, the Issuer Annual Fee and the reasonable fees and expenses of the Issuer or any agent or attorney selected by the Issuer to act on its behalf in connection with the Series 2018 Loan Agreement, the Indenture or the Series 2018 Bonds, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of any such Bonds or in connection with any litigation, investigation or other proceeding which may at any time be instituted involving the Series 2018 Loan Agreement, the Series 2018 Bonds or the Indenture or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the Series 2018 Loan Agreement, the Indenture and the Series 2018 Bonds; and

(e) Any amounts due and payable by the Borrower as arbitrage rebate under Section 148 of the Code, pursuant to Borrower’s covenants and agreements with respect thereto in the Tax Regulatory Agreement.

Such Additional Payments are required to be billed to the Borrower by the Issuer or the Trustee from time to time, together with a statement certifying that the amount billed has been incurred or paid by the Issuer or the Trustee for one or more of the above items. After such a demand, amounts so billed are required to be paid on the next succeeding Monthly Transfer Date in accordance with clause Second of the Pre-Enforcement Waterfall (or other applicable provision of the Collateral Agency and Accounts Agreement). Notwithstanding the foregoing, the Issuer will not be required to submit a bill to the Borrower for payment of the Authority Annual Fee or any amounts due with respect to arbitrage rebate under Section 148 of the Code, the calculation and payment for which is the responsibility of the Borrower.

The Borrower is required to pay, or cause to be paid, to the Issuer the Issuer Issuance Fee and the initial Issuer Annual Fee on the Financial Close Date. Thereafter, the Issuer Annual Fee will be due and payable by the Borrower in advance on June 1 of each year commencing with the first such date following the Financial Close Date. The Trustee will invoice the Borrower for the Authority Annual Fee, and the Borrower will pay that amount, or cause that amount to be paid, directly to the Trustee as an additional payment in accordance with the Collateral Agency and Accounts Agreement such that the Trustee will remit from those additional payments the Authority Annual Fee to the Issuer when due. Borrower’s obligation to pay the Issuer Issuance Fee and the Authority Annual

Fee will in no way limit amounts payable by the Borrower to the Issuer under the Series 2018 Loan Agreement or under the Indenture, including for the enforcement thereof.

### **Borrower to Provide Funds**

In the event that proceeds derived from the Series 2018 Loan Agreement, or any other available (or to be available) funds and other amounts, including available pursuant to the DBFOM Agreement are not sufficient to finance the Project Costs, the Borrower will not be entitled to any reimbursement from the Issuer, the Trustee or the Department for the payment of such costs, nor will the Borrower be entitled to any abatement, diminution or postponement of its payment obligations under the Series 2018 Loan Agreement.

### **Covenants of the Borrower**

Covenants made by the Borrower under the Series 2018 Loan Agreement include, but are not limited to, the following (each as may be qualified by materiality and other exceptions as described in the Series 2018 Loan Agreement):

(a) *Maintenance of Legal Structure:* The Borrower will maintain (i) its legal existence as a limited liability company and (ii) its good standing and qualification to do business in the State of California and its good standing in the State of Delaware.

(b) *Technical Reports:* From the commencement of Work to the Final Completion Date, the Borrower will file on EMMA (with a copy to the Insurer) (i) a copy of the “Monthly Report” submitted to the Department pursuant to the DBFOM Agreement and (ii) a copy of the Lenders’ Technical Advisor monthly report, in each case within 10 Business Days of each report becoming available.

(c) *Operating Reports:* Not later than 45 days after the end of each fiscal quarter of the Borrower following the Passenger Service Availability Date, the Borrower will file on EMMA an operating report setting forth (i) the operating data for the APM Project for the previous quarter, including total Project Revenues, total O&M Expenditures and total Renewal Expenditures incurred, and (ii) the variances for such period between the actual Project Revenues, actual O&M Expenditures and actual Renewal Expenditures incurred, and the projected Project Revenues, budgeted O&M Expenditures and budgeted Renewal Expenditures, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more.

(d) *Maintenance of Insurance:* The Borrower will maintain, or cause to be maintained, all APM Project insurance required pursuant to the terms of the DBFOM Agreement and the Financing Documents.

(e) *Payment of Taxes:* The Borrower will pay all Taxes imposed upon it or any of its properties or assets or in respect of its business, income or profits before the same become delinquent, unless they are being contested in good faith by appropriate proceedings and Borrower has maintained adequate reserves therefor in accordance with GAAP and/or IFRS.

(f) *Report Requirements:* The Borrower will, with respect to clause (i), file on EMMA, and with respect to clause (ii), deliver to the Trustee and the Insurer, the following information:

(i) (A) audited financial statements for the Borrower, within 120 days after the end of each fiscal year of the Borrower, (B) unaudited financial statements for Borrower within 45 days after the end of each fiscal quarter of the Borrower and (C) an annual operating budget not later than 30 days prior to the commencement of each calendar year, in case of clause (A) and (B), prepared in accordance with GAAP and/or IFRS (except as approved by the auditor or the responsible officer, as the case may be, and disclosed therein) and delivered together with certificates from the Borrower certifying to its knowledge that there is no Event of Default; and

(ii) (A) audited financial statements for each of the O&M Guarantors within 120 days after the end of each fiscal year of such O&M Guarantor (or in the case of HOCHTIEF PPP Solutions GmbH, within 180 days of each fiscal year end), and (B) prior to the sunset date, as defined in the Design-Build Guarantees ACS Servicios y

Concesiones, S.L., audited financial statements for each of the Design-Build Guarantors within 120 days after the end of each fiscal year of such Design-Build Guarantor (or in the case of Dragados, S.A., within 150 days after the end of each fiscal year), and in each case prepared in accordance with GAAP and/or IFRS (except as approved by the auditor or the responsible officer, as the case may be, and disclosed therein), provided that the financial statements to be delivered pursuant to this paragraph may be delivered as a link to a website containing the same.

(g) *Project Revenues*: The Borrower will apply all Project Revenues solely for the purposes, and in the order and manner, provided for in the Collateral Agency and Accounts Agreement.

(h) *Intellectual Property*: The Borrower will maintain its rights to all patents, copyrights and Intellectual Property required for the development, construction, maintenance and operation of the APM Project, except where such failure to maintain would not reasonably be expected to have a Material Adverse Effect.

(i) *Governmental Approvals*: The Borrower will obtain, maintain and comply in all material respects with all required Governmental Approvals and will comply with all applicable laws, in each case, for which failure to so obtain, maintain or comply, as applicable, would reasonably be expected to have a Material Adverse Effect.

(j) *Inspection of Property*: The Borrower will keep proper records and books of accounts, and permit inspection of such records and books, and of the APM Project, by the Trustee and its representatives upon reasonable notice at reasonable times, subject at all times to compliance with applicable safety standards and requirements.

(k) *Notice of Material Events*: The Borrower will promptly, but in any event within 5 Business Days of the Borrower obtaining knowledge thereof, provide the Trustee and the Insurer with:

(i) details of any litigation in respect of the Borrower, pending or threatened in writing, by or before any arbitrator or Governmental Entity (A) in which the amount involved exceeds \$5 million and is not covered by insurance or (B) a remedy requested in the litigation is the stoppage or delay of the APM Project;

(ii) details of any event of default or “Default” as defined in, or any material breach (in each case by the Borrower) under, any Material Project Contract and copies of all notices of any such default or termination of any Material Project Contract delivered to the Borrower;

(iii) notice and details of any Default or Event of Default;

(iv) notice of any material insurance claims in excess of five million dollars (\$5,000,000);

(v) notice of any claim by the Borrower under the DBFOM Agreement in respect of the occurrence of a Compensation Event or Relief Event;

(vi) notice of any suspension of the Work (except to the extent the suspension is permitted under the DBFOM Agreement, in which case no notice is required, and except to the extent the suspension is as a result of an emergency, in which case the Borrower shall provide notice as reasonably promptly as possible following the Borrower’s knowledge thereof);

(vii) notice of any new, or newly discovered historical, material release of hazardous materials;

(viii) notice of any material defect in the APM Project with a cost to correct in excess of \$5 million (with a copy to the Lenders’ Technical Advisor); and

(ix) notice of the occurrence of any other event or condition that would reasonably be expected to have a Material Adverse Effect.

(l) *Ratings*: The Borrower will (i) use commercially reasonable efforts to cooperate with each Nationally Recognized Rating Agency rating the Series 2018 Bonds, in connection with any review of a rating



which may be undertaken by such Nationally Recognized Rating Agency with respect to the Series 2018 Bonds and (ii) deliver to the Trustee copies of any reports or ratings on the Series 2018 Bonds from any Nationally Recognized Rating Agency rating the Series 2018 Bonds.

(m) *Hedging*: The Borrower will comply with the terms of the terms of the Hedging Strategy.

(n) *Enforcement Obligations*: The Borrower will use commercially reasonable efforts to enforce against any counterparty to a Transaction Document each material covenant or obligation of such party in accordance with its terms, except, in each case, to the extent that the failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

(o) *Securing Liens*: The Borrower will execute, deliver and file further instruments and cause all necessary Uniform Commercial Code financing statements (including continuation statements), if any, to be recorded and filed in such manner and in such places as may be required by Law to maintain and perfect, and to maintain the perfection of, the Security Interests created by the Security Documents.

(p) *Rebate Fund*: The Borrower agrees to make such payments to the Trustee as are required by the Borrower under the Indenture and the Federal Tax Certificate. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture. In determining the amount required to be paid, Borrower shall consult with Bond Counsel or a nationally recognized arbitrage rebate consultant.

(q) *Use of Proceeds; Tax Covenants*:

(i) The net proceeds of the Series 2018 Bonds will be loaned by the Issuer to the Borrower pursuant to the Series 2018 Loan Agreement and used solely to pay eligible Project Costs as specified in the Federal Tax Certificate (or, to the extent not used therefor, to repay the relevant portion of such Bonds).

(ii) The procedures set forth in the Federal Tax Certificate implementing the covenant under the Series 2018 Loan Agreement will be complied with to the extent necessary to comply with the covenant under the Series 2018 Loan Agreement.

(iii) The Borrower shall aid and assist the Issuer in connection with preparing and submitting to the U.S. Internal Revenue Service a Form 8038 (or other applicable information reporting statement) at the time and in the form required by the Code.

(iv) On the earlier of the date on which the APM Project is placed in service or the five-year anniversary of the issuance of the Series 2018 Bonds, the Borrower shall deliver to the Issuer and the Trustee a tax completion certificate substantially in the form required under the Federal Tax Certificate.

(v) On the earlier of the fifth anniversary of Financial Close or the date 60 days after the APM Project is placed in service for tax purposes, if unexpended net proceeds (as defined Section 150 of the Code) of the Series 2018 Bonds remain on deposit in the Bond Proceeds Account (or that are otherwise treated as unexpended net proceeds of the Series 2018 Bonds), the Borrower shall (except as set forth below) certify to the Issuer in the form required under the Federal Tax Certificate and the Trustee that at least 95% of the net proceeds of the Series 2018 Bonds have been spent on qualified costs of the APM Project. If the Borrower is unable to make such certification, the Borrower shall direct the Collateral Agent to transfer all such unexpended net proceeds of the Series 2018 Bonds on deposit in the Bond Proceeds Account and any other necessary amounts to the Series 2018 Debt Service Fund to be held under the Indenture to be applied to the redemption of a portion of the Series 2018 Bonds, on the fifth anniversary of Financial Close or the date 60 days after the APM Project is placed in service for tax purposes, whichever is the earlier, pursuant to the terms of the Indenture. Notwithstanding the foregoing, no such transfer of such unexpended net proceeds (or any portion thereof) of the Series 2018 Bonds shall be required to the extent that the Borrower delivers to the Issuer and the Trustee an opinion of Bond Counsel to the effect that the transfer of such amount is not required to maintain the tax-exemption of interest on the Series 2018 Bonds. The covenants in this clause (q) shall survive any defeasance of the Series 2018 Bonds.

(r) *Intercreditor*: The Borrower will ensure that potential providers of Permitted Senior Secured Indebtedness accede to the Intercreditor Agreement before Borrower incurs such Permitted Senior Secured Indebtedness.

(s) *Ratings Surveillance*: The Borrower will enter into a reasonable and customary “ratings surveillance” agreement with one Nationally Recognized Rating Agency with respect to the Series 2018 Bonds.

(t) *Continuing Disclosure*. The Borrower will comply with terms of continuing disclosure agreement and post such continuing disclosure information to EMMA, including sending any notices or reports under the Series 2018 Loan Agreement.

(u) *Insurer Access to the Issuer and the Borrower*. The Borrower will give the Insurer and its consultants and representatives access to the APM Project site, at the sole cost of such Persons, at any reasonable time and as often as may reasonably be requested, and, upon reasonable prior notice to the Borrower, in each case during official business hours and in a manner that cannot reasonably be expected to materially interfere with or disrupt the performance by the Borrower or any other party of its obligations with respect to the construction and operation of the APM Project, and permit the Insurer and its consultants and representatives to discuss the APM Project and the business, accounts, operations, properties and financial and other conditions of the Borrower with officers of the Borrower to witness (but not cause) the performance and other tests conducted pursuant to any Material Project Contract, subject to all applicable confidentiality undertakings and operational or contractual requirements or limitations.

(v) *Insurer Reporting Requirements*. The Borrower shall provide the Insurer with the following:

(i) the final audited version of the Base Financial Model when the model auditor has completed its review, and any revisions to the Base Financial Model or any replacement model, as well as updated versions of the Financial Model when delivered under Section 4.7 of the DBFOM Agreement, in each case without further request from the Insurer;

(ii) copies of evidence of all Project insurance required pursuant to the terms of the DBFOM Agreement and the Financing Documents;

(iii) copies of the certificate provided by the Borrower to the Intercreditor Agent under clause (b) of definition of Restricted Payment Conditions in Exhibit A to the Collateral Agency and Accounts Agreement;

(iv) copies of annual statements for the Project Accounts;

(v) copies of each 5-year review of the Major Maintenance Account deposits and the Projected Lifecycle Costs, including any Major Maintenance Deficit Amounts and Major Maintenance Deficit Funding Schedule (as each such term is defined in the O&M Contract);

(vi) with copies of notices of any non-compliance or non-performance warning notices, in accordance with Section 15.5.1 of the DBFOM and Section 15.5.1 of Part 2 of the O&M Contract;

(vii) with copies of the annual Handback Renewal Work Plan during the O&M Period (in accordance with, and as defined in, the DB Technical Provisions Part 2C, Section 4.5.2.4);

(viii) a full set of executed documents relating to the execution of any amendment, supplement, or waiver to the Transaction Documents; and

(ix) the information that the Trustee, the Collateral Agent and the Intercreditor Agent are required to furnish or forward to the Borrower and the Developer, or to each other, under the Financing Documents (or shall cause such parties to provide such information to the Insurer), concurrently or promptly after such information is furnished or forwarded under the Financing Documents.

(w) *Insurer Equity Lock-up Account Notice.* If the Borrower delivers to the Depositary Agent a Funds Transfer Certificate or Distribution Certificate setting forth amounts to be deposited into or withdrawn from the Equity Lock-up Account, in each case, in accordance with the terms of the Collateral Agency and Accounts Agreement, the Borrower is required to deliver to the Collateral Agent a copy of such Funds Transfer Certificate or Distribution Certificate and instructions to the Collateral Agent to provide notice to the Insurer of the amounts so withdrawn from or deposited into the Equity Lock-up Account.

(x) *Permitted Indebtedness.* The Borrower shall not create, incur or be liable for any Indebtedness other than Permitted Indebtedness;

(y) *Prohibited Liens:* The Borrower will not create or permit to exist any Security Interest upon any of its assets or properties except for Permitted Security Interests.

(z) *Prohibited Business Arrangements:* The Borrower will not directly or indirectly engage in any business other than the development, design, construction, financing, operation and maintenance of the APM Project and business and activities ancillary and related thereto.

(aa) *Prohibited Sale or Assignment:* The Borrower will not sell, lease, assign or otherwise dispose of any assets of the APM Project except for Permitted Dispositions.

(bb) *Consolidation, Mergers, Etc.:* The Borrower will not merge, liquidate or dissolve or enter into any consolidation, amalgamation, demerger, reconstruction, partnership or any analogous arrangement or wind up, liquidate or dissolve or take any action that would result in the liquidation or dissolution of the Borrower.

(cc) *Material Project Contracts:* The Borrower will not:

(i) amend, assign, waive or modify in any material respect or terminate prior to the expiration of its term any Material Project Contract without the prior written consent of the Majority Owners; provided that, without the consent of any Owners, (A) the Borrower and the Department may enter into change orders under the DBFOM Agreement, the Borrower and the Design-Build Contractor may enter into change orders under the Design-Build Contract, the Borrower and O&M Contractor may enter into change orders under the O&M Contract, and the Borrower may enter into any amendments of any Material Project Contract or new agreements, in each case, required for compliance with the DBFOM Agreement or any change order or directive letter issued under the DBFOM Agreement, (B) the Borrower and the Design-Build Contractor may enter into change orders or amendments under the Design-Build Contract if such change (1) will not result in a Design-Build Contractor Default (as defined in the Design-Build Contract) for failure to achieve Passenger Service Availability prior to the Lenders' Long Stop Date (unless the Bank Lenders have consented to such extension), and (2) will not require the payment by the Borrower, net of any payments received from the Department or any other party for payment of the change order or amendment, in any year to exceed in the aggregate an amount equal to \$25,000,000 (the "Modification Threshold"), provided that any change order or amendment that results in exceeding the Modification Threshold on an individual or aggregate basis will be permitted (a) without the consent of the Majority Owners if (i) it is required by applicable law or (ii) the Borrower has certified, and the Lenders' Technical Advisor has confirmed, after due enquiry, that it does not dispute such certification, that, in their reasonable opinion, (A) no Funding Shortfall would occur due to such change order or amendment, (B) notwithstanding such change order or amendment, the Passenger Service Availability Date is reasonably expected to occur on or prior to the Lenders' Long Stop Date, and (C) that such change order or amendment would not reasonably be expected to have a Material Adverse Effect or (b) with the consent of the Majority Owners, (C) the Borrower and the O&M Contractor may enter into change orders or amendments under the O&M Contract if such change will not require the payment by the Borrower, net of any payments received from the Department or any other party for payment of the change order or amendment, in any year to exceed in the aggregate an amount equal to \$5,000,000 (provided that any change order or amendment that results in exceeding the \$5,000,000 threshold on an individual basis will be permitted without the consent of any Owners if (i) it is required by applicable law, or (ii) the scope of work under the O&M Contract will not have been changed materially as a result thereof and (iii) the Borrower may amend, waive or terminate prior to the expiration of its term any Material Project Contract if such amendment, waiver or termination would not reasonably be expected to have a Material Adverse Effect, and if such Material Project Contract being terminated is the Design-Build Contract or the O&M Contract, it (A) is replaced by a replacement agreement between the Borrower and

another counterparty (taking into consideration any applicable guarantor) of similar or greater creditworthiness and experience as the counterparty (and its guarantors, if applicable) being so replaced or with the prior written consent of the Trustee and (B) provides projected economic benefits for the APM Project that are, in light of the material risks and liabilities of such replacement contract taken as a whole, at least as favorable as the economic benefits for the APM Project of continuing under the existing contract, in light of the material risks and liabilities of such existing contract; provided that if any Material Project Contract or counterparty to a Material Project Contract is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, the Borrower will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced or otherwise that is reasonably acceptable to the Trustee; or

(ii) except as provided for in the Base Financial Model, the Borrower shall not enter into any material agreement that provides for a commitment by the Borrower or any obligation, contingent or otherwise, on the part of the Borrower, in either case in excess of \$5,000,000, except with or conditional upon the consent of the Trustee (at the instruction of the by the Majority Owners, if requested by the Trustee), each acting reasonably, or as otherwise permitted under any Financing Document (including any agreement relating to Permitted Subordinated Indebtedness or any other agreements relating to Permitted Indebtedness).

(dd) *Distributions*: The Borrower will not make any Restricted Payment other than a Permitted Distribution.

(ee) *Permitted Investments*: The Borrower will not make any investments other than Permitted Investments.

(ff) *Material Transactions With Affiliates*: Other than the Transaction Documents in effect at Financial Close, the Borrower will not enter into any material transactions with any Affiliates unless such transaction is fair and commercially reasonable to the Borrower and contains terms no less favorable to the Borrower than those which would be included in an arm's-length transaction with a non-Affiliate; provided that the Design-Build Contract, the Design-Build Guarantees, O&M Contract, the O&M Guarantees, any technical assistance and management services agreement reflected in the Base Financial Model or any subsequent operating budget certified by the Lenders' Technical Advisor, and any development fees or letter of credit fees payable to the Equity Members or to any future equity owners of the Borrower will not be deemed to violate this covenant.

(gg) *Fiscal Year, Jurisdiction, Name*: The Borrower will not change its fiscal year, name or jurisdiction of formation without giving the Collateral Agent and the Trustee prior written notice.

(hh) *Accounts*: The Borrower will not open or fund any bank accounts except for the Project Accounts, the Operating Account and such separate operating accounts as may be permitted by the Financing Documents, the Distribution Account, any accounts required to be established pursuant to the DBFOM Agreement, including, without limitation, the Handback Requirements Reserve Account, any accounts as may be contemplated to be established pursuant to the Design-Build Contract or the O&M Contract, any accounts permitted to be established pursuant to the Financing Documents and any other bank accounts established in the name of the Borrower if, in the reasonable judgment of the Borrower, the creation of such accounts will enable the Borrower to facilitate construction or operations or better administer the APM Project; provided that, to the extent such account is held outside of the Collateral Agency and Accounts Agreement, the Borrower will, prior to depositing any moneys into any such account, enter into a control agreement covering such account so as to perfect the security interest created in favor of the Collateral Agent over such account and the monies therein.

(ii) *Abandonment*: The Borrower will not, unless required or permitted under the DBFOM Agreement, abandon the APM Project, which abandonment will be deemed to have occurred if (i) the Borrower demonstrates through statements, acts or omissions an intent not to continue the Work, for any reason other than as permitted under the DBFOM Agreement or (ii) no significant Work on the APM Project or a material part thereof is performed for a continuous period of more than 45 days (taking into account the Project Schedule, if applicable, and any Relief Event).

(jj) *Limited Liability Company Agreement*: The Borrower will not amend or modify its limited liability company agreement in a manner that is materially adverse to the Secured Parties, other than any amendment or modification to permit a transfer of equity interests of the Borrower that would not result in a prohibited Equity Transfer under the DBFOM Agreement or is otherwise waived by the Department or is otherwise acceptable to the Majority Owners.

(kk) *Partnership, etc.*: The Borrower will not enter into any partnership, joint venture, profit-sharing or similar arrangement whereby the Borrower's income or profits are shared with any person (except as may be contemplated by the limited liability company agreement of the Borrower) or form or have any subsidiaries, except in each case as permitted under the DBFOM Agreement, the Financing Documents or with the Trustee's consent (at the instructions of the Majority Owners, if so requested by the Trustee).

(ll) *Restricted Party*: The Borrower will not extend or pay any funds received from the Lenders to any Restricted Party.

(mm) *Classification of Bonds*: The Borrower will not permit any use of the proceeds of the Series 2018 Bonds which would cause the Series 2018 Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code and the U.S. Treasury regulations thereunder.

(nn) *Bond Counsel Opinion*: The Borrower will not sell, assign or otherwise transfer all or substantially all of the APM Project unless the Borrower, in addition to satisfying the other requirements of the Financing Documents, has delivered to the Trustee and the Issuer an opinion of Bond Counsel to the effect that such transaction will not adversely affect the legality and the tax exempt status of the Series 2018 Bonds.

(oo) *LTA*: The Borrower will not terminate the Lenders' Technical Advisor other than in accordance with the Lenders' Technical Advisor's engagement letter, nor to replace the Lenders' Technical Advisor prior to Final Completion, without prior written consent of Majority Bank Lenders.

(pp) *No Action Threatening Excludability*: The Borrower covenants for the benefit of the Issuer and the Owners of the Series 2018 Bonds that it will not take any action or omit to take any action with respect to the Series 2018 Bonds, the proceeds thereof, any other funds of the Borrower or any of the facilities financed with the proceeds of the Series 2018 Bonds if such action or omission (i) would cause the interest on the Series 2018 Bonds to lose its excludability from gross income for federal income tax purposes under Section 103 of the Code or (ii) would cause interest on the Series 2018 Bonds to lose its exemption from income taxation in the State.

#### **Events of Default under the Series 2018 Loan Agreement**

The following events will be Events of Default under the Series 2018 Loan Agreement (subject to certain cure periods, materiality and other qualifications, as applicable):

(a) The Borrower fails to pay (i) principal on the Series 2018 Bonds within 3 Business Days after the same has become due and payable, and (ii) interest on the Series 2018 Bonds or any other sum (other than principal on the Series 2018 Bonds) owed under the Series 2018 Loan Agreement within 3 Business Days after the same has become due and payable; provided that where such failure to pay is a result of a technical or an administrative error caused by a party other than the Borrower in connection with the administration of the accounts from which such payment is made or is due to be made (and, for clarity, without limiting the Borrower's other cure rights set forth herein), the Borrower will have 7 additional Business Days after notice is received by the Borrower from the Trustee requiring such payment to be made in which to cure such failure to pay.

(b) Any representation or warranty made by the Borrower in any Financing Document proves to have been incorrect in any material respect when made, and a Material Adverse Effect would reasonably be expected to result therefrom, unless the effect of such misrepresentation is capable of remedy and is remedied, as reasonably determined by the Trustee, within 30 days after the Borrower's receipt of written notice from the Trustee of such misrepresentation.

(c) The Borrower fails to comply with any affirmative or negative covenant in the Series 2018 Loan Agreement (other than as expressly provided under the Series 2018 Loan Agreement), unless such failure is capable of being remedied and is remedied within 45 days after the earlier of (i) written notice specifying such failure will have been given to the Trustee by the Borrower and (ii) written notice specifying such failure and requesting that it be remedied will have been given to the Borrower by the Trustee, or such longer period as is reasonably necessary under the circumstances to remedy such failure so long as corrective action is instituted by the Borrower within the applicable period and is diligently pursued until such failure is corrected (a) within 180 days after the date of such failure, or (b) otherwise, in such longer time frame agreed to with the prior written approval of the Majority Owners.

(d) The Borrower fails to maintain all required insurance, unless such failure is remedied within 10 Business Days after the earlier of (i) written notice specifying such failure will have been given to the Trustee by the Borrower or (ii) written notice specifying such failure and requesting that it be remedied will have been given to the Borrower by the Trustee.

(e) The Borrower fails to comply with the negative covenant in relating to abandonment of the APM Project (as set forth in clause (ff) of “—Covenants of the Borrower” above), unless such failure is remedied within 30 days after the earlier of (i) written notice specifying such failure is given to the Trustee by the Borrower or (ii) written notice specifying such failure and requesting that it be remedied is given to the Borrower by the Trustee.

(g) A Bankruptcy Event occurs with respect to the Borrower.

(h) Any Financing Document (except to the extent otherwise permitted) ceases to be in effect against the Borrower unless such document is replaced by a contract on substantially similar terms with a counterparty reasonably acceptable to the Trustee (at the instructions of the Majority Owners, if so requested by the Trustee) within five Business Days following the earlier of (i) the Borrower’s actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Collateral Agent and the Trustee, or such longer period, reasonably necessary to effect such replacement except in the case of any rescission or repudiation of a Financing Document by the Borrower in writing, in which case no cure period will apply.

(i) Either (i) a Developer Default occurs and is continuing beyond any applicable cure period or has not been waived by the Department, and the Department is entitled to and serves a notice of termination to the Borrower pursuant to the terms of the DBFOM Agreement as a result thereof, or (ii) the Borrower fails to perform or observe any material term or obligation in any Material Project Contract (other than the DBFOM Agreement) and such failure constitutes an event of default under such Material Project Contract that has not been cured or waived within the grace period provided in such Material Project Contract and would reasonably be expected to result in a Material Adverse Effect; provided that in each case, the Borrower will be entitled to an extension of such time (such extension not to exceed 90 days) if corrective action is instituted by the Borrower within the applicable period and diligently pursued until such failure is corrected and the Borrower has been granted a concurrent extension by the applicable counterparty under the respective Material Project Contract.

(j) A non-appealable final judgment for the payment of money in excess of ten million dollars (\$10,000,000), such amount to be adjusted annually in accordance with the Escalation Factor (and not covered by insurance) individually or such lesser aggregate amount which would reasonably be likely to have a Material Adverse Effect is entered against the Borrower and such judgment remains unsatisfied without any procurement of a stay of execution within 30 days.

(k) Any Security Document ceases (other than as expressly permitted under the Financing Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described therein other than as a result of actions or failure to act by the applicable Agent or any other Senior Secured Party, and with the priority purported to be created thereby.

(l) The DBFOM Agreement ceases to be valid and binding and in full force and effect (other than as a result of its expiration or any termination of the DBFOM Agreement in accordance with its terms) and such invalidity has not been remedied within 10 Business Days following the earlier of (i) the Borrower’s actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Collateral Agent, the Department or the Trustee.

(m) A termination of the DBFOM Agreement pursuant to Section 17.3 thereof will have occurred.

(n) An “Equity Transfer” or “Change of Control” that is prohibited under Section 20.1 of the DBFOM Agreement has occurred and, prior to the repayment of the Design-Build Loan Facility, solely in respect of an Equity Transfer or Change of Control requiring the Department consent under the DBFOM Agreement, has not been approved by the Majority Bank Lenders.

(o) (i) The provider of any Equity Letter of Credit fails to honor its obligations to fund any draw request appropriately submitted thereunder and either (x) a replacement Acceptable Letter of Credit is not issued within 20 Business Days following such failure on substantially the same terms or (y) the applicable Equity Member has not cash collateralized its respective obligations in substitution of such Equity Letter of Credit within 20 Business Days following such failure or (ii) the Equity Members fail to make in full any Equity Contributions when required in accordance with the terms of the Equity Contribution Agreement (provided that if such Equity Member’s obligations are secured by an Equity Letter of Credit with an undrawn amount equal to or greater than the amount of such Equity Contribution (or such Equity Letter of Credit will have been previously drawn and the proceeds thereof will have been deposited in an account as security), before any such failure will constitute an Event of Default, the Collateral Agent will be required to have made a drawing under the applicable Equity Letter of Credit supplied by such Equity Member pursuant to the Equity Contribution Agreement (or will have withdrawn the applicable amount from the collateral account), and the proceeds of such drawing (if any) will have been insufficient to make the amount of such Equity Contribution in full), and such failure will continue unremedied or unwaived for a period of 20 Business Days; provided that with respect to each of clauses (i) and (ii) above, no Event of Default will occur if before the last day in which such Default could have been remedied prior to an Event of Default occurring, any one or more Equity Members have made a cash contribution or replaced the Equity Letter of Credit with an Acceptable Letter of Credit sufficient to fund any deficiencies resulting after the applicable Equity Letters of Credit have been drawn (or after the withdrawal of any applicable cash collateral (it being understood that, in each case, any draw on a letter of credit provided by an Equity Member pursuant to the Equity Contribution Agreement within the cure periods described above will satisfy the obligations of such Equity Member with respect to Equity Contributions to be made by such Equity Member and cure any default in respect thereof); provided, however, that if any of the events set forth above is caused by, or results from the action or inaction of, one (and not all) of the Equity Members, such event will not constitute an Event of Default so long as such event is capable of being remedied by the other Equity Members and is remedied within 20 Business Days after the Trustee gives written notice thereof to such Equity Member, or, with the prior written approval of the Majority Owners, such longer period as is reasonably necessary under the circumstances to remedy such event.

(p) The Design-Build Contract becomes void, voidable, unenforceable or illegal or is terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless the Design-Build Contract is replaced as provided under the Series 2018 Loan Agreement within 30 days following delivery of written notice thereof to the Borrower by the Trustee or such longer period reasonably necessary to effect such replacement so long as the Borrower is diligently pursuing such replacement.

(q) The O&M Contract becomes void, voidable, unenforceable or illegal or is terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless the O&M Contract is replaced as provided under the Series 2018 Loan Agreement within 30 days following delivery of written notice thereof to the Borrower by the Trustee or such longer period reasonably necessary to effect such replacement so long as Borrower is diligently pursuing such replacement.

(r) A Bankruptcy Event occurs in respect of any member of the Design-Build Contractor, Design-Build Guarantor, member of the O&M Contractor or O&M Guarantor unless such party or guarantee is replaced by a replacement party or guarantee on substantially similar terms or other form of security from another counterparty of similar or greater creditworthiness as the counterparty being so replaced or with the prior written consent of the Trustee, within 30 days following delivery of written notice thereof to the Borrower by the Trustee or such longer period reasonably necessary to effect such replacement so long as Borrower is diligently pursuing such replacement, provided that the occurrence of any Event of Default pursuant to this clause will be subject to the Acceptable Remaining Party Principle.

- (s) The Borrower fails to achieve Passenger Service Availability by the Lenders' Long Stop Date.
- (t) Any Funding Shortfall occurs and continues unwaived and unremedied for a period in excess of 60 days of written notice having been received by the Borrower from the Trustee or the Collateral Agent.
- (u) An ERISA Event (as such term is defined in the Series 2018 Loan Agreement) occurs, and such ERISA Event, together with all other ERISA Events, if any, results in or would reasonably be expected to result in a Material Adverse Effect.
- (v) All or a material part of the APM Project is condemned or appropriated without appropriate compensation therefor, unless such condemnation or appropriation constitutes a Relief Event under the DBFOM Agreement or the Borrower has demonstrated to the reasonable satisfaction of the Trustee (at the instructions of the Majority Owners, if so requested by the Trustee), within 10 Business Days of such condemnation or appropriation, that such condemnation or appropriation will not have a Material Adverse Effect.
- (w) Any failure to procure a Contingent Letter of Credit or retain the required amounts from the Design-Build Contractor, all in accordance with the Design-Build Contract, and such failure has not been remedied or waived within 20 Business Days.
- (x) Any Financing Document is terminated by any Senior Secured Party, in accordance with its terms, by reason of any default or breach on the part of the Borrower or any Material Project Party, except as expressly permitted under any Financing Document.
- (y) The occurrence of an "event of default" (howsoever described) with respect to the non-payment of any Indebtedness under any instrument or agreement governing Additional Senior Secured Obligations involving in the aggregate in excess of \$10,000,000, and the maturity of such Indebtedness is accelerated as a result thereof.

#### **Remedies upon Event of Default under the Series 2018 Loan Agreement**

Subject to the terms of the Intercreditor Agreement, whenever any Event of Default under the Series 2018 Loan Agreement has occurred and is continuing, the Trustee, or the Issuer with the written consent of the Trustee, may, in conjunction with its available remedies under the Indenture, take one or any combination of the following remedial steps, by notice to the Borrower and the Collateral Agent:

- (a) Upon direction by the Majority Owners or if the date for payment of the Series 2018 Bonds is accelerated pursuant to the Indenture, declare that all or any part of any amount outstanding under the Series 2018 Loan Agreement is (i) immediately due and payable, and/or (ii) payable on demand by the Trustee, and any such notice will take effect in accordance with its terms but only if all amounts payable with respect to the outstanding Bonds are being concurrently accelerated pursuant to the Indenture;
- (b) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower during regular business hours of the Borrower and following prior reasonable notice; or
- (c) The Trustee may, and upon direction of the Majority Owners will, take on behalf of the Owners of the Series 2018 Bonds, subject to the Intercreditor Agreement and applicable Law, whatever other action at law or in equity as is necessary to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under the Series 2018 Loan Agreement or the rights of the Owners of the Series 2018 Bonds, in each case subject to the terms of the Intercreditor Agreement.

In addition, whenever any Event of Default occurs and is continuing, if so instructed by the Intercreditor Agent pursuant to the terms of the Intercreditor Agreement and the Collateral Agency and Accounts Agreement, the Trustee or Collateral Agent may take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Security Documents.



**Amendments, Changes and Modifications**

Following the issuance of the Series 2018 Bonds and prior to their repayment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Series 2018 Loan Agreement, the Series 2018 Loan Agreement may not be effectively amended, changed, modified, altered or terminated, except in accordance with the provisions of the Indenture.

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## **APPENDIX D-3**

### **SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT**

*The following is a summary of certain provisions of the Collateral Agency and Accounts Agreement. This summary is not to be considered a full statement of the terms of the Collateral Agency and Accounts Agreement, and accordingly is qualified by reference thereto and is subject to the full text thereof.*

*Capitalized terms used in this APPENDIX D-3 and not otherwise defined herein will have the meaning assigned to them in APPENDIX A—“DEFINITIONS.”*

#### **General**

As further described below, all of the Project Accounts are required to be established with the Depositary Agent and be under the control of the Collateral Agent and, except as expressly provided in the Collateral Agency and Accounts Agreement, the Borrower will not have any right to withdraw funds from any Project Account. The Borrower is also required to establish other accounts with the Depositary Agent or a Deposit Account Bank (which accounts will not constitute Project Accounts) in the manner and for the purposes described below.

#### **Project Accounts**

The Collateral Agency and Accounts Agreement requires the following Project Accounts to be established and created on the Financial Close Date at such times as required under the Collateral Agency and Accounts Agreement, and to be maintained by the Depositary Agent in the name of the Borrower (collectively, the “Securities Accounts”):

- (a) the Construction Account, including:
  - (i) the Milestone Payment Sub-Account;
  - (ii) the Equity Contribution Sub-Account;
  - (iii) the DB Non-Compliant LC Cash Security Sub-Account;
  - (iv) the DB Contingent Letter of Credit Sub-Account; and
  - (v) the DB Contingent Retainage Sub-Account.
- (b) the Bond Proceeds Account;
- (c) the Proceeds Account;
- (d) the Revenue Account;
- (e) the Senior Debt Service Account, comprising:
  - (i) the Senior Interest Payment Sub-Account; and
  - (ii) the Senior Principal Payment Sub-Account;
- (f) the Subordinated Debt Service Account, comprising:
  - (i) the Subordinated Interest Payment Sub-Account;

- (ii) the Subordinated Principal Payment Sub-Account;
- (g) the Senior Debt Service Reserve Account;
- (h) the Utility Owners' Costs Account;
- (i) the Major Maintenance Account;
- (j) the Equity Lock-Up Account;
- (k) the Loss Proceeds Account;
- (l) the Mandatory Prepayment Account, comprising:
  - (i) the Bond Mandatory Prepayment Sub-Account; and
  - (ii) the Design-Build Loan Mandatory Prepayment Sub-Account;
- (m) the Equity Member Cash Collateral Account, comprising:
  - (i) the ACS Cash Collateral Sub-Account;
  - (ii) the BBI Cash Collateral Sub-Account;
  - (iii) the BT Cash Collateral Sub-Account;
  - (iv) the Fluor Cash Collateral Sub-Account; and
  - (v) the HT Cash Collateral Sub-Account.

#### *Other Accounts*

In addition to these Securities Accounts, the Borrower is also obligated to establish (i) the Operating Account with U.S. Bank National Association (not in its capacity as the Depositary Agent), and (ii) the Voluntary Equity Contributions Account with U.S. Bank National Association (not in its capacity as the Depositary Agent), in each case subject to the Control Agreement, and each such account is required to be maintained in the name of the Borrower, provided that each of the Operating Account and the Voluntary Equity Contributions Account may instead be maintained with a successor Deposit Account Bank, in each case subject to a Control Agreement described in clause (b) of the definition thereof. The Operating Account and the Voluntary Equity Contributions Account each also constitute a Project Account and will be subject to the Security Interest of the Collateral Agent.

Pursuant to the Collateral Agency and Accounts Agreement, the Borrower is required to cause to be established with U.S. Bank National Association (not in its capacity as the Depositary Agent) in the Borrower's name a Handback Requirements Reserve Account to the extent required under and in accordance with the DBFOM Agreement, as further described in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Handback"). The Handback Requirements Reserve Account will be for the sole and exclusive benefit of the City. The Borrower will have the exclusive right (subject to the rights of the City under the DBFOM Agreement) to withdraw or otherwise dispose of funds in the Handback Requirements Reserve Account, without any restriction or condition, for purposes contemplated in the DBFOM Agreement. The Handback Requirements Reserve Account does not constitute a Project Account and will not be subject to the Security Interest of the Collateral Agent. Pursuant to the DBFOM Agreement, the City is required to have a first priority perfected security interest over such account.

The Distribution Account is also to be established in the name of the Borrower with U.S. Bank National Association (not in its capacity as the Depositary Agent) pursuant to the Collateral Agency and Accounts

Agreement, but will not be subject to the Security Interest of the Collateral Agent, and the Borrower will have the exclusive right to withdraw or otherwise dispose of funds from the Distribution Account, subject to the terms and conditions of the Collateral Agency and Accounts Agreement, as further described under “—Restricted Payment Conditions” below, provided that the Distribution Account may, at the Borrower’s discretion, instead be maintained with a Deposit Account Bank.

## **Description of Project Accounts**

### *Construction Account*

Prior to the Final Project Costs Payment Date, except for amounts expressly required to be deposited in other Project Accounts (including, without limitation, amounts to be deposited into the Bond Proceeds Account pursuant to “—*Bond Proceeds Account*” below, the Proceeds Account pursuant to “—*Proceeds Account*” below, the Loss Proceeds Account pursuant to “—*Loss Proceeds Account*” below and the Mandatory Prepayment Account pursuant to “—*Mandatory Prepayment Account*” below), all (i) proceeds of all Equity Contributions, (ii) Project Revenues received prior to the Passenger Service Availability Date, (iii) all Additional D&C Payments and Milestone Payments initially received into the Proceeds Account (whether received prior to or following the Passenger Service Availability Date), and (iv) other amounts received by the Borrower from any source whatsoever, will be deposited into the Construction Account (including the sub-accounts thereof, as set forth below). If requested by the Depositary Agent, the Borrower is required provide a written certification with respect to any amounts received by the Depositary Agent as to whether such amounts constitute funds under this paragraph. Subject to certain exceptions, an Approved Construction Requisition is required for withdrawal of funds in the Construction Account or sub-account thereof, unless otherwise expressly specified. Subject to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts” below, from time to time, upon receipt by the Depositary Agent (copied to the Collateral Agent) of an Approved Construction Requisition at least five (5) Business Days prior to the applicable proposed Construction Funds Transfer Date, the Depositary Agent is required to make such transfers in accordance with such Approved Construction Requisition on such Construction Funds Transfer Date.

No Approved Construction Requisition will be required for (i) the withdrawal of Project Costs constituting the payment of interest on the Secured Obligations, fees payable to the Finance Parties and the costs of issuance of the Series 2018 Bonds, (ii) any withdrawal of proceeds that the Borrower receives in the Proceeds Account from the Department pursuant to the provisions of the DBFOM Agreement relating to allowances made by the Department to pay the costs of certain additional work (as further described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—*LAWA Allowances*”), and which are subsequently transferred to the Construction Account pursuant to “—*Proceeds Account*” below, (iii) the withdrawal of any amount that the Borrower is required to pay to the Design-Build Contractor pursuant to the Design-Build Contract in connection with such *LAWA Allowances*, (iv) the withdrawal of any amount of Additional D&C Payments that the Borrower is required to pay to the Design-Build Contractor pursuant to Section 2.1(c) of Attachment 4A to the Design-Build Contract, therein referred to as “Additional D&C Costs” (as further described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Payments to the Borrower—*Additional D&C Payments*” and APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Contract Price and Payments—*Additional D&C Costs*”) or (v) the withdrawal of any amounts that were funded by Equity Contributions, and the only condition in respect of any such withdrawal by the Borrower pursuant to the foregoing clauses (i) through (iv) will be, in the case of (i) only, delivery to the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate from the Borrower setting forth the amount requested and the applicable accounts or payees to which such funds are to be transferred, and, in the case of (iv) only, delivery to the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate from the Borrower setting forth the amount requested and the applicable accounts to which such funds will be transferred and an Additional D&C Payment Certificate executed by the Lenders' Technical Advisor; provided that in respect of any withdrawal pursuant to clauses (ii), (iii), or (v) above, the Borrower is required provide written notice to the Depositary Agent as to under which clause of this section such withdrawal is being made.

Upon the later of (i) the date on which the Borrower has made the payments described in “—*Milestone Payment Sub-Account*” below and (ii) receipt of the Final Project Costs Payment Amount Certificate in accordance with the following paragraph, the Depositary Agent is required to transfer all funds then on deposit in the

Construction Account or any sub-accounts thereof to the Revenue Account; provided that, the Final Project Costs Payment Amount (as set forth in the Final Project Costs Payment Amount Certificate), as well as any amount on deposit in the DB Non-Compliant LC Cash Security Sub-Account will remain in the Construction Account or such sub-account, respectively, and will not be transferred to the Revenue Account.

At least five Business Days prior to the Final Project Costs Payment Date, the Borrower is required to provide the Depositary Agent (copied to the Collateral Agent and the Intercreditor Agent) with a Final Project Costs Payment Amount Certificate confirming the Final Project Costs Payment Date, which certificate must have been executed by an Authorized Representative of the Borrower. Any funds remaining in all sub-accounts of the Construction Account (other than any amount on deposit in the DB Non-Compliant LC Cash Security Sub-Account) after the transfers as indicated in the Final Project Costs Payment Amount Certificate are then to be transferred to the Revenue Account.

Upon receipt by the Depositary Agent on or after the last day of the warranty period under the Design-Build Contract of a Withdrawal Certificate (copied to the Collateral Agent and the Intercreditor Agent) confirming that the warranty period has expired and that there are no warranty claims outstanding against the Design-Build Contractor pursuant to the Design-Build Contract, which Withdrawal Certificate must have been executed by an Authorized Representative of the Borrower, the Depositary Agent will (A) close the Construction Account and the DB Non-Compliant LC Cash Security Sub-Account, (B) transfer any funds in the DB Non-Compliant LC Cash Security Sub-Account to the Design-Build Contractor to the extent required pursuant to the Design-Build Contract and as set forth in such certificate and (C) if there are any remaining funds in the DB Non-Compliant LC Cash Security Sub-Account, transfer such amounts to the Revenue Account.

Any amounts deposited into the Construction Account pursuant to the first paragraph of this section “—*Construction Account*” are required to be (x) deposited into sub-accounts thereof, if applicable, as set forth below and (y) withdrawn from the Construction Account or any sub-account, in each case subject to the conditions and limitations set forth below:

#### *Milestone Payment Sub-Account*

Milestone Payment 6 (which is required to be identified as such upon delivery to the Depositary Agent) is required to be transferred from the Proceeds Account to the Milestone Payment Sub-Account promptly upon receipt thereof by the Depositary Agent, first applied to repay the Design-Build Loans and associated Hedging Termination Obligations, as described in this section..

Upon receipt of Milestone Payment 6 in the Milestone Payment Sub-Account (including any amounts that are transferred from the Utility Owners’ Costs Account to the Milestone Payment Sub-Account to offset amounts withheld by the Department from Milestone Payment 6 as described in “—*Utility Owners’ Costs Account*” below), on or prior to the End of Funding Date, such funds are required to be applied in the following order of priority:

First, to the pro rata payment of all accrued and unpaid interest due on the Design-Build Loan Facility Obligations, all accrued and unpaid Hedging Obligations, then, to the pro rata payment of all unpaid principal of Design-Build Loan Facility Obligations and all accrued and unpaid Hedging Termination Obligations, and then, to all other amounts payable in respect of the Design-Build Loan Facility Obligations, which amounts are required to be certified to the Depositary Agent by the Administrative Agent;

Second, to the extent funds are available after application in the preceding level, to the payment of the remaining Project Costs in connection with Final Completion;

Third, to the extent funds are available after application in the preceding levels to fund the Senior Debt Service Reserve Account so that the funds deposited therein equal the Required Senior Debt Service Reserve; and

Fourth, to the extent funds are available after application in the preceding levels, to the Revenue Account.

The Security Interest in the funds on deposit in the Milestone Payment Sub-Account (and all earnings thereon) will be for the sole benefit of the Administrative Agent on behalf of the Bank Lenders and in respect of the obligations of the Borrower under the Design-Build Loan Facility Credit Agreement, and such amounts are required to be applied solely to such obligations. No amounts other than Milestone Payment 6 (including any other Milestone Payments) may be deposited into the Milestone Payment Sub-Account.

#### *Equity Contribution Sub-Account*

The proceeds of Equity Contributions, the proceeds of any drawing upon any Equity Letter of Credit where an Equity Member has failed to fund, and any additional Equity Contribution made pursuant to the Equity Contribution Agreement on or prior to the End of Funding Date are required, in each case, be identified to the Depositary Agent for deposit in, and deposited in, the Equity Contribution Sub-Account.

Monies in the Equity Contribution Sub-Account are required to be applied by the Depositary Agent at the direction of the Borrower to pay, or reimburse for a prior payment of, Project Costs due and payable on or prior to the End of Funding Date, including the initial funding of the Senior Debt Service Reserve Account. On the End of Funding Date, any amounts remaining on deposit in the Equity Contribution Sub-Account are required to be applied in the following order of priority:

First, to the pro rata payment of all accrued and unpaid interest due on the Design-Build Loan Facility Obligations, all accrued and unpaid Hedging Obligations, then, to the pro rata payment of all unpaid principal of Design-Build Loan Facility Obligations and all accrued and unpaid Hedging Termination Obligations, and then, to all other amounts payable in respect of the Design-Build Loan Facility Obligations, which amounts are required to be certified to the Depositary Agent by the Administrative Agent;

Second, to the extent funds are available after application in the preceding level, to pay any remaining Project Costs relating to the achievement of Final Completion (including the initial funding of the Senior Debt Service Reserve Account); and

Third, to the extent funds are available after application in the preceding levels, for transfer to the Revenue Account and application in accordance with the Pre-Enforcement Waterfall.

#### *DB Non-Compliant LC Cash Security Sub-Account*

The proceeds of any draws on any Liquid Performance Security or any Contingent Letters of Credit made in connection with the failure of such letter of credit (or its issuer) to satisfy the requirements set forth in the Design-Build Contract are required to be deposited in the DB Non-Compliant LC Cash Security Sub-Account. Monies in the DB Non-Compliant LC Cash Security Sub-Account are required to be, at the direction of the Borrower in accordance with the Transaction Documents, (1) applied to pay any amounts due and payable for any incurred and unpaid Project Costs, subject to the satisfaction of the certification procedures described in the first two paragraphs of “—*Construction Account*” above, as applicable or (2) released to the Design-Build Contractor in accordance with the provisions of the Design-Build Contract relating to release of proceeds of Liquid Performance Security and Contingent Letters of Credit, as further described in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Performance Security,” subject only to receipt by the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate confirming that such transfer or release is in compliance with the Design-Build Contract, which Withdrawal Certificate must have been executed by an Authorized Representative of the Borrower.

#### *DB Contingent Retainage Sub-Account and DB Contingent Letter of Credit Sub-Account*

Any (1) payments due to the Design-Build Contractor under the Design-Build Contract that are retained as the Contingent Retainage Amount in accordance with the Design-Build Contract are required to be deposited in the DB Contingent Retainage Sub-Account pursuant to the direction of the Borrower and (2) any proceeds of draws on any Contingent Letters of Credit (other than draws on such Contingent Letters of Credit resulting from the same

ceasing to meet certain requirements), are required to be deposited in the DB Contingent Letter of Credit Sub-Account.

Monies in the DB Contingent Retainage Sub-Account and the DB Contingent Letter of Credit Sub-Account are required to be, at the direction of the Borrower, (1) applied in accordance with the two immediately subsequent paragraphs, subject to the satisfaction of the certification procedures described in the first two paragraphs of “—*Construction Account*” above, in each case, as applicable or (2) released to Design-Build Contractor in accordance with certain provisions of the Design-Build Contract relating to reduction of the Contingent Retainage Amount or the Contingent Security Amount (including if the Design-Build Contractor adequately cures the deficiencies that led initially to the Borrower retaining amounts otherwise payable to the Design-Build Contractor or the Design-Build Contractor being required to post a Contingent Letter of Credit, as applicable); provided that any release to the Design-Build Contractor under the foregoing clause (2) will be subject to receipt by the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate confirming that such release is required by the Design-Build Contract, which Withdrawal Certificate must have been executed by an Authorized Representative of the Borrower.

Amounts in the DB Contingent Retainage Sub-Account or the DB Contingent Letter of Credit Sub-Account that are drawn by the Borrower (or the Collateral Agent) and applied toward Delay Liquidated Damages owed by the Design-Build Contractor or any other amounts owed by Design-Build Contractor in accordance with the Design-Build Contract are required, at the direction of the Borrower, to be transferred or withdrawn to pay directly any amounts due and payable for any incurred and unpaid Project Costs, subject to the satisfaction of the certification procedures described in the first two paragraphs of “—*Construction Account*” above.

Upon the Passenger Service Availability Date, the Depositary Agent is obligated, at the direction of the Borrower, to withdraw and transfer to the Design-Build Contractor any funds remaining in the DB Contingent Retainage Sub-Account and the DB Contingent Letter of Credit Sub-Account, subject to receipt by the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate confirming (i) the occurrence of the Passenger Service Availability Date and (ii) that any Delay Liquidated Damages payable by the Design-Build Contractor in accordance with the Design-Build Contract have been paid in full, which Withdrawal Certificate must have been executed by an Authorized Representative of the Borrower.

Subject to the terms and conditions of the Design-Build Contract, amounts on deposit in the DB Contingent Retainage Sub-Account, at the option of the Design-Build Contractor, may be replaced or reduced from time to time by replacing such amount with a letter of credit meeting the requirements set forth in APPENDIX D-6—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Letters of Credit and the amount to be replaced is required to be released to the Design-Build Contractor in accordance with clause (2) of the second paragraph of this section “—*DB Contingent Retainage Sub-Account*.”

#### *Bond Proceeds Account*

All proceeds from the issuance of the Series 2018 Bonds (net of any costs of issuance, original issue discount, underwriting discount or similar fee, if any) received by the Borrower pursuant to the terms of the Series 2018 Loan Agreement and, thereafter, subject to the Borrower’s right to cause such deposits made to be invested and reinvested in Permitted Investments in accordance with the Collateral Agency and Accounts Agreement, any interest earned on such proceeds, are required to be deposited in the Bond Proceeds Account.

Monies in the Bond Proceeds Account are required to be applied to Permitted Uses of Proceeds, including release to the Operating Account for Project Costs incurred or projected to be incurred within the following one-month period, substantially in accordance with the budget, upon receipt by the Depositary Agent (copied to the Collateral Agent) of an Approved Construction Requisition at least five (5) Business Days prior to the applicable proposed transfer date; provided, however, that if on any withdrawal date, any portion of such proceeds is to be used solely to pay interest on the Series 2018 Bonds or fees payable to the Finance Parties (to the extent it is a Permitted Use of Proceeds), no Approved Construction Requisition will be required and the only condition in respect of such withdrawal will be delivery to the Depositary Agent (copied to the Collateral Agent) of a Withdrawal Certificate from the Borrower setting forth the amount requested and the applicable accounts or payees to which such funds are to be transferred; provided further that the Borrower is required, at the time of delivering such Withdrawal Certificate for the payment of interest or fees, to notify the Collateral Agent if any Funding Shortfall exists.



Upon the earlier of the Final Project Costs Payment Date or the fifth (5th) anniversary of the Financial Close Date, except as otherwise required by any applicable Law, to the extent that there are funds remaining on deposit in the Bond Proceeds Account, such amounts are required to be applied by the Depositary Agent as follows:

First, if the fifth (5th) anniversary of the Financial Close Date has not occurred, amounts are required to be transferred to the Construction Account for the payment of any remaining incurred but unpaid Project Costs;

Second, any applicable amount is required to be transferred to the Trustee for deposit in the Series 2018 Rebate Fund in accordance with the Indenture; and

Third, any remaining amounts are required be transferred to the Mandatory Prepayment Account for redemption of the Series 2018 Bonds; provided that no such redemption of the Series 2018 Bonds will be required (and, instead, amounts in the Bond Proceeds Account will be transferred to the Revenue Account) if the Borrower has obtained and delivered to the Trustee and the Depositary Agent an opinion of Bond Counsel stating that the failure to redeem any such Series 2018 Bonds will not adversely affect the exclusion of interest on such Series 2018 Bonds from gross income for federal or State income tax purposes and that such redemption is not required by State law.

The Security Interest in the funds on deposit in the Bond Proceeds Account (and all earnings thereon) is for the sole benefit of the Trustee on behalf of the Owners of the Series 2018 Bonds and in respect of the obligations of the Borrower under the Series 2018 Loan Agreement and the related rights of the Trustee, on behalf of the holders of the Series 2018 Bonds, and such amounts will be solely applied to such obligations.

#### *Proceeds Account*

All Project Revenues received from the Department pursuant to the DBFOM Agreement are required to be deposited initially in the Proceeds Account. Funds on deposit in the Proceeds Account are required, at the direction of the Borrower, (i) at any time prior to the Passenger Service Availability Date, to be transferred to the Construction Account (or applicable sub-account thereof) and (ii) at all times after the Passenger Service Availability Date, to be transferred to the Revenue Account, except any Milestone Payments, which are required to continue to be transferred to the Construction Account (or applicable sub-account thereof); provided that:

(A) any Compensation Amounts received in the Proceeds Account at any time that are the subject of an Equivalent Claim (as such terms are defined in the Design-Build Contract) and payable to the Design-Build Contractor under the Design-Build Contract will be transferred to the Design-Build Contractor in accordance with the Design-Build Contract, subject to receipt by the Depositary Agent (copied to the Collateral Agent) at least three (3) Business Days prior to the requested withdrawal date of a Withdrawal Certificate executed by an Authorized Representative of the Borrower and an EPR Certificate executed by the Lenders' Technical Advisor;

(B) any Compensation Amounts received in the Proceeds Account at any time that are the subject of an Equivalent Claim (as such terms are defined in the O&M Contract) and payable to the O&M Contractor under the O&M Contract are required to be transferred to the O&M Contractor in accordance with the O&M Contract, subject to receipt by the Depositary Agent (copied to the Collateral Agent) at least three (3) Business Days prior to the requested withdrawal date of a Withdrawal Certificate executed by an Authorized Representative of the Borrower and an EPR Certificate executed by the Lenders' Technical Advisor; and

(C) any Project Revenues received into the Proceeds Account which are to be reimbursed to any Applicable Equity Member Cash Collateral Account in accordance with the Equity Contribution Agreement are to be transferred from the Proceeds Account and paid into the Applicable Equity Member Cash Collateral Account (for the avoidance of doubt, without the delivery of a Withdrawal Certificate or a Funds Transfer Certificate) pursuant to a written direction to the Depositary Agent (copied to the Collateral Agent) from an Authorized Representative of the Borrower on the date specified in such written direction.

### *Revenue Account*

On and after the Passenger Service Availability Date, except for amounts required to be deposited in other Project Accounts pursuant to the Collateral Agency and Accounts Agreement (including, without limitation, all Milestone Payments, which are required to continue to be transferred to the Construction Account or any sub-account thereof, as applicable, promptly upon receipt) all (i) Project Revenues and (ii) any other amounts received by the Borrower from any source whatsoever, are required to be deposited into the Revenue Account.

Subject to the delivery of a Funds Transfer Certificate by the Borrower to the Depositary Agent and copied to the Collateral Agent, and subject to the Post-Enforcement Waterfall, beginning with the first Monthly Transfer Date after the Passenger Service Availability Date, the Depositary Agent will be required, to the extent of available funds, to make the withdrawals, transfers and payments from the Revenue Account and any sub-accounts therein in the amounts, on each Monthly Transfer Date or Distribution Date, as applicable, and in the order of priority set forth in the Pre-Enforcement Waterfall (as described in “—Flow of Funds Post-Passenger Service Availability” below).

If the Borrower receives a payment of any Compensation Amount with respect to which Indebtedness has been incurred in accordance with clause (b)(i)(B) of the definition of Permitted Indebtedness, such amount will promptly be deposited into a sub-account of the Revenue Account to be established by the Depositary Agent in accordance with the Collateral Agency and Accounts Agreement, as described in “—Project Accounts” above, for the purpose specified in this paragraph, and will not be applied pursuant to the Pre-Enforcement Waterfall except as specified in the immediately succeeding paragraph. Funds in such sub-account will be applied to the payment or prepayment of such Indebtedness and, upon repayment in full of such Indebtedness, the remaining amount, if any, will be transferred to the Revenue Account for application in accordance with the Pre-Enforcement Waterfall.

The proceeds of the Indebtedness incurred in accordance with clause (b)(i)(B) of the definition of Permitted Indebtedness pursuant to the preceding paragraph will promptly be deposited into a sub-account of the Revenue Account to be established by the Depositary Agent in accordance with the Collateral Agency and Accounts Agreement, as described in “—Project Accounts” above, for the purpose specified in this paragraph and the preceding paragraph and will not be applied pursuant to the Pre-Enforcement Waterfall except as specified below. Funds in such sub-account will be applied to the payment of costs or losses which are attributable to the applicable Compensation Event and, upon payment in full of such costs or losses, the remaining amount, if any, will be transferred to the Revenue Account for application in accordance with the Pre-Enforcement Waterfall.

### *Senior Debt Service Account*

The Senior Interest Payment Sub-Account is required to be funded in accordance with clause Fourth of the Pre-Enforcement Waterfall and the Senior Principal Payment Sub-Account is required to be funded in accordance with clause Fifth of the Pre-Enforcement Waterfall.

Funds (i) on deposit in the Senior Interest Payment Sub-Account are required to be applied pro rata on the applicable Interest Payment Date to pay accrued and unpaid interest due and payable on all Senior Secured Obligations and, if applicable, any related Hedging Obligations due to the Hedge Providers and (ii) on deposit in the Senior Principal Payment Sub-Account are required to be applied pro rata on the applicable Principal Payment Date to pay principal that is due and payable on all Senior Secured Obligations and, if applicable, any related Hedging Termination Obligations, in each case in accordance with a Funds Transfer Certificate delivered by the Borrower.

### *Subordinated Debt Service Account*

The Subordinated Interest Payment Sub-Account is required to be funded in accordance with clause Eighth of the Pre-Enforcement Waterfall and the Subordinated Principal Payment Sub-Account is required to be funded in accordance with clause Ninth of the Pre-Enforcement Waterfall.

Funds (i) on deposit in the Subordinated Interest Payment Sub-Account are required to be applied to pay accrued and unpaid interest due and payable on all Permitted Subordinated Indebtedness and related Hedging Obligations and (ii) on deposit in the Subordinated Principal Payment Sub-Account are required to be applied to pay

principal that is due and payable on all Permitted Subordinated Indebtedness and related Hedging Termination Obligations, in each case, provided that, in the event that the holder of such Permitted Subordinated Indebtedness is an Affiliate of the Borrower, such payments may only be made: (A) on a Distribution Date and (B) so long as the Restricted Payment Conditions have been satisfied as of such Distribution Date, in each case in accordance with a Funds Transfer Certificate delivered by the Borrower.

#### *Senior Debt Service Reserve Account*

The Senior Debt Service Reserve Account is required to be established solely for the benefit of the Owners of the Series 2018 Bonds, the Bank Lenders and providers of other Permitted Senior Secured Indebtedness (solely to the extent set forth in the applicable Additional Financing Documents, to the extent that such other Permitted Senior Secured Indebtedness includes a required debt service reserve) for the exclusive benefit of only such Senior Secured Parties. Prior to an Enforcement Action, amounts on deposit in the Senior Debt Service Reserve Account are to be available only to pay principal and interest on the Series 2018 Bonds and other Senior Secured Obligations (excluding the Design-Build Loan Facility Obligations, the Hedging Obligations, the Hedging Termination Obligations and other Permitted Senior Secured Indebtedness that does not include a Required Senior Debt Service Reserve of the type set forth in the definition of Required Senior Debt Service Reserve) provided, however, that in the event of an Enforcement Action against the Collateral (in accordance with the terms of the Intercreditor Agreement), the Design-Build Loan Facility Obligations will share ratably with all Senior Secured Obligations then outstanding in the amounts in the Senior Debt Service Reserve Account.

The Senior Debt Service Reserve Account is required to be funded (i) not later than the Passenger Service Availability Date in an amount equal to the Required Senior Debt Service Reserve (as calculated on such date) and (ii) thereafter to the extent of available funds in accordance with clause Sixth of the Pre-Enforcement Waterfall. Any amounts on deposit in the Senior Debt Service Reserve Account in excess of the Required Senior Debt Service Reserve are, at the direction of the Borrower, required to be deposited into the Revenue Account for application pursuant to the Pre-Enforcement Waterfall.

If on any Interest Payment Date or Principal Payment Date with respect to the Senior Secured Obligations (excluding the Design-Build Loan Facility Obligations, Hedging Obligations, Hedging Termination Obligations and other Permitted Senior Secured Indebtedness that does not require a Required Senior Debt Service Reserve of the type set forth in clause (ii) of the definition of Required Senior Debt Service Reserve), the funds on deposit in the Senior Interest Payment Sub-Account or the Senior Principal Payment Sub-Account (after giving effect to the transfers contemplated in (x) clauses *First*, *Second*, *Third*, *Fourth* and *Fifth* of “—Invasion of Accounts” below and (y) clauses Fourth and Fifth, in each case as applicable, of the Pre-Enforcement Waterfall), solely with respect to such Senior Secured Obligations are insufficient to pay the interest or principal due on such Senior Secured Obligations, as applicable, on such Interest Payment Date or Principal Payment Date, the Collateral Agent, without a Funds Transfer Certificate or further direction from the Borrower, is obligated to direct the Depositary Agent to withdraw the amount of such insufficiency, to the extent available, from the funds on deposit in the Senior Debt Service Reserve Account (including funds available to be drawn against an Applicable Reserve Letter of Credit ) and apply such amount pro rata on such Interest Payment Date to pay accrued and unpaid interest due and payable on such Secured Obligations, and then apply such remaining amount pro rata on such Principal Payment Date to pay principal that is due and payable on such Senior Secured Obligations. Following the taking of an Enforcement Action, monies on deposit in such Senior Debt Service Reserve Account are required to be applied in the manner set forth in the Post-Enforcement Waterfall.

If, at any time after the Passenger Service Availability Date, the balance in the Senior Debt Service Reserve Account is less than the Required Senior Debt Service Reserve, such event will not constitute a Default or an Event of Default but will constitute a failure to comply with the Restricted Payment Conditions.

#### *Utility Owners’ Costs Account*

No later than the Financial Close Date, the Borrower is required to deposit, or cause to be deposited, into the Utility Owners’ Costs Account funds in the amount of \$50,000,000. Funds on deposit in the Utility Owners’ Costs Account are required to be applied by the Borrower in accordance with the provisions of the DBFOM Agreement relating to work to be performed by Utility Owners at prices approved by the Department.

If, on or following the Final Completion Date, any amounts remain on deposit in the Utility Owners' Costs Account, the Department may recover such amounts from the Borrower as set forth in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Utilities—*Utility Adjustments Performed by Utility Owners; Utility Owners' Costs Account*" and the Borrower is obligated to make corresponding transfers of amounts remaining on deposit in the Utility Owners' Cost Account, as follows:

- (a) if the Department reduces Milestone Payment 6, such remaining amounts, upon direction of the Borrower to the Depositary Agent, are required to be transferred to the Milestone Payment Sub-Account of the Construction Account and applied in accordance with the Final Milestone Payment Waterfall;
- (b) if the Department reduces any Availability Payment due and owing from the Department to the Borrower, such remaining amounts, upon direction of the Borrower to the Depositary Agent, are required to be transferred to the Revenue Account and applied in accordance with the Pre-Enforcement Waterfall;
- (c) if the Department invoices Borrower for any such remaining amounts, upon direction of the Borrower to the Depositary Agent, in the Utility Owners' Costs Account, the Borrower is entitled to withdraw from the Utility Owners' Costs Account and pay to the Department such remaining amounts; and
- (d) if the Department sets off such remaining amounts in the Utility Owners' Costs Account against any other amount due and owing from the Department to Borrower, the Borrower, upon direction of the Borrower to the Depositary Agent, is entitled to transfer such amounts to the Revenue Account by issuing a Withdrawal Certificate to the Depositary Agent (with a copy to the Collateral Agent).

#### *Major Maintenance Account*

In the event that a Major Maintenance Deficit Amount is determined to exist and is required to be funded in accordance with the O&M Contract, the Borrower is required to either (a) cause the O&M Contractor to deposit an amount equal to the Major Maintenance Deficit Amount into the Major Maintenance Account, (b) set-off against any O&M Payments due and payable to the O&M Contractor up to the full amount of the Major Maintenance Deficit Amount and transfer an amount equal to any amount so set-off into the Major Maintenance Account or (c) cause the O&M Contractor to deliver an Acceptable Letter of Credit in an amount equal to the Major Maintenance Deficit Amount.

Following any review at a Testing Date or as requested by the O&M Contractor, if the funds on deposit in the Major Maintenance Account exceed the Required MMA Balance, the Borrower will be entitled to withdraw from the Major Maintenance Account (without the requirement for a Funds Transfer Certificate but upon direction to the Depositary Agent) and pay to the O&M Contractor at the first level of the Pre-Enforcement Waterfall any amount in excess of the Required MMA Balance. If, at any time after the first Testing Date, the balance in the Major Maintenance Account is less than required, such event will not constitute a Default or an Event of Default but will constitute a failure to comply with the Restricted Payment Conditions.

No later than five (5) Business Days following the first day of the first Handback Year, upon direction of from the Borrower to such effect, the Depositary Agent is required to transfer to the Handback Requirements Reserve Account for such Handback Year the funds on deposit in the Major Maintenance Account that are necessary to satisfy the requirements of the DBFOM Agreement with respect to the Borrower's obligations to fund the Handback Requirements Reserve Account (as further described in APPENDIX D-5—"SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Handback") as of such date, after taking into account funds on deposit therein. Promptly following such transfer for the first Handback Year, the Borrower is to be entitled to transfer (without the requirement for a Funds Transfer Certificate) any funds remaining on deposit therein to the O&M Contractor at the first level of the Pre-Enforcement Waterfall and, upon such transfer, the Major Maintenance Account will be closed.

If, at any time after the first Testing Date (as defined in the O&M Contract), the balance in the Major Maintenance Account is less than required, such event will not constitute a Default or an Event of Default but will constitute a failure to comply with the Restricted Payment Conditions.

#### *Voluntary Equity Contributions Account*

Any Equity Member will have the right, but not the obligation, to make equity contributions to the Voluntary Equity Contributions Account. Unless an Event of Default under the Series 2018 Loan Agreement or the Design-Build Loan Facility Credit Agreement has occurred and is continuing, and the Collateral Agent has exercised remedies in accordance with the Security Documents, withdrawals from the Voluntary Equity Contributions Account is required to be directed by the Borrower and will not require compliance with any conditions, except that amounts withdrawn are required to be applied (i) toward Project Costs through the Final Project Costs Payment Date and (ii) during the O&M Period, to fund any level of the Pre-Enforcement Waterfall (excluding clause Eleventh thereof).

#### *Equity Lock-Up Account*

The Equity Lock-Up Account is required to be funded in accordance with clause Eleventh of the Pre-Enforcement Waterfall. Funds on deposit in the Equity Lock-Up Account may be applied, upon direction by the Borrower to the Depositary Agent to such effect, subject to the provisions of the Collateral Agency and Accounts Agreement relating to invasion of accounts, on any Monthly Transfer Date, for any purpose that has priority over the funding of the Equity Lock-Up Account in accordance with the Pre-Enforcement Waterfall.

Funds on deposit in the Equity Lock-Up Account may be transferred to the Distribution Account (i) on any Distribution Date, if the Restricted Payment Conditions are satisfied as of the applicable Calculation Date or (ii) on any other date occurring prior to the next succeeding Calculation Date, if the Restricted Payment Conditions are satisfied as of such date; provided that the Borrower is required to deliver to the Depositary Agent (copied to the Collateral Agent and the Intercreditor Agent) a requisition certificate in the required form that specifically certifies that such conditions have been met as of the applicable date.

#### *Distribution Account*

The Distribution Account is required to be funded in accordance with clause Eleventh of the Pre-Enforcement Waterfall. Funds on deposit in the Distribution Account may be distributed to an account (or to such Person) as directed by the Borrower in its sole discretion. The Distribution Account will at all times be subject to the control of the Borrower and will not be pledged for the benefit of the Secured Parties.

#### *Operating Account*

The Operating Account is required to be funded in accordance with clause First of the Pre-Enforcement Waterfall. Prior to the Final Project Costs Payment Date, the Operating Account may also be funded from the Construction Account in accordance with Approved Construction Requisitions delivered by the Borrower, and all disbursements of the Design-Build Loan Facility are also required to be deposited into the Operating Account. Unless an Event of Default under the Series 2018 Loan Agreement or the Design-Build Loan Facility Credit Agreement has occurred and is continuing, and the Collateral Agent has exercised remedies in accordance with the Security Documents, withdrawals from the Operating Account may be made upon direction of the Borrower and will not require compliance with any certification conditions, except that amounts withdrawn are required to be applied (i) toward Project Costs through the Final Project Costs Payment Date or (ii) toward O&M Expenditures and Renewal Expenditures at any time during the O&M Period.

Under the Collateral Agency and Accounts Agreement, the parties thereto agree that, unless and until the Collateral Agent provides written notice to the Deposit Account Bank that the Borrower's access to the Operating Account is terminated, upon the Department providing written notice to the Collateral Agent in accordance with the terms of Section 16.2.4.2 of the DBFOM Agreement, which notice is required to be delivered to the Collateral Agent at least five (5) Business Days prior to the proposed withdrawal date and is required to set forth the amount requested to be withdrawn from the Operating Account and the applicable accounts or payees to which such funds will be transferred, the Collateral Agent is obligated to instruct the Deposit Account Bank to make the transfer described in such notice provided by the Department.

### *Loss Proceeds Account*

Subject to the requirements of the DBFOM Agreement relating to application of Insurance Proceeds and Condemnation Proceeds (as further described in APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Insurance”), all Insurance Proceeds and Condemnation Proceeds with respect to physical property damage are required to be deposited directly into the Loss Proceeds Account.

Amounts on deposit in the Loss Proceeds Account are required to be withdrawn and paid to the Borrower and required then to be applied to restoration of the APM Project or any portion thereof in accordance with the requirements of the DBFOM Agreement, as certified by the Borrower. If any amounts remaining on deposit in the Loss Proceeds Account after such use (i) are below \$25 million, such amounts are required to be transferred to the Revenue Account or (ii) are equal to or greater than \$25 million, such amounts are required to be transferred to the Mandatory Prepayment Account to cause the extraordinary mandatory redemption of the Senior Secured Obligations (on a pro rata basis), and, in the case of any remaining monies thereafter, to the Revenue Account.

### *Mandatory Prepayment Account*

Funds are required to be deposited into the Mandatory Prepayment Account, the Bond Mandatory Prepayment Sub-Account and/or the Design-Build Loan Mandatory Prepayment Sub-Account and/or any other sub-account established for any other Secured Obligations in accordance with the provisions of the Collateral Agency and Accounts Agreement and applied as follows:

(a) amounts transferred to the Mandatory Prepayment Account from the Loss Proceeds Account are required to be applied to the payment of the Senior Secured Obligations on a pro rata basis (the outstanding amounts of such Senior Secured Obligations to be certified to the Depository Agent by the Trustee or the Administrative Agent, as applicable);

(b) the proceeds of any Termination Compensation received from the Department under the DBFOM Agreement are required to be deposited into the Mandatory Prepayment Account and applied to the prepayment of the Senior Secured Obligations on a pro rata basis (and any such Proceeds which are to be used to pay any amounts to the Owners are required to be paid to the Trustee for deposit into the Series 2018 Debt Service Fund);

(c) the proceeds of dispositions of the Borrower’s assets (other than Permitted Dispositions), whether then owned, or thereafter acquired, are required to be deposited into the Mandatory Prepayment Account and applied to the prepayment of the Senior Secured Obligations on a pro rata basis;

(d) an amount equal to the net cash proceeds of any payment received by the Borrower from the Hedge Providers following early termination of any Hedging Agreement, except to the extent such proceeds are used to offset the costs to the Borrower of entering into a replacement Hedging Agreement in accordance with the terms of the Design-Build Loan Facility Credit Agreement, are required to be deposited into the Design-Build Loan Mandatory Prepayment Sub-Account and applied to the prepayment of the Design-Build Loan Facility in accordance with the Design-Build Loan Facility Credit Agreement; and

(e) the amounts transferred to the Mandatory Prepayment Account from the Bond Proceeds Account (relating to the distribution of funds that remain on deposit in the Bond Proceeds Account upon the earlier of the fifth (5th) anniversary of the Financial Close Date and the Final Project Costs Payment Date as described in “—*Bond Proceeds Account*” above) are required to be applied to the Series 2018 Redemption Account established pursuant to the terms of the Indenture to cause the mandatory redemption of the Series 2018 Bonds in accordance with the Indenture.

The Bond Mandatory Prepayment Sub-Account will be pledged solely to secure the Series 2018 Loan Agreement and will be established solely for the benefit of the Trustee, on behalf of the Owners of the Series 2018 Bonds, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such Owners, and the Design-Build Loan Mandatory Prepayment Sub-Account will be pledged solely to secure the

Design-Build Loans and will be established solely for the benefit of the Bank Lenders, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only the Bank Lenders.

#### *Equity Member Cash Collateral Account*

The Applicable Equity Member Cash Collateral Account relating to each Equity Member is required to be funded with (i) amounts received from, or on behalf of, such Equity Member in accordance with the Equity Contribution Agreement and (ii) the proceeds of any drawing upon such Equity Member's Equity Letter of Credit in accordance with the Equity Contribution Agreement. The Borrower may also transfer funds to the Applicable Equity Member Cash Collateral Account from the Proceeds Account or the Loss Proceeds, as applicable, in accordance with the Collateral Agency and Accounts Agreement upon the receipt of Project Revenues that are to be reimbursed to any Equity Member in accordance with the Equity Contribution Agreement. All amounts to be deposited into the Applicable Equity Member Cash Collateral Account are required to be identified as such upon delivery to the Depositary Agent.

Funds in an Applicable Equity Member Cash Collateral Account are required to be transferred (without the delivery of a Withdrawal Certificate or Funds Transfer Certificate or satisfaction of the Restricted Payment Conditions) to (i) the Equity Contribution Sub-Account as directed by the Borrower, or by the Depositary Agent upon the direction of the Collateral Agent, in each case in accordance with the Equity Contribution Agreement, (ii) to the applicable Equity Member, at the direction of the Borrower in accordance with the Equity Contribution Agreement, or (iii) to the applicable Equity Member, at the direction of the Borrower, in accordance with the Equity Contribution Agreement, solely to the extent that such Equity Member has delivered an Equity Letter of Credit meeting the requirements of the Equity Contribution Agreement with respect to Equity Letters of Credit in substitution for such funds.

#### **Restricted Payment Conditions**

Restricted Payments consist of (i) any payment of a dividend or other equity distribution of property in respect of any capital stock of the Borrower; and (ii) any payment of any amounts in respect of Permitted Subordinated Indebtedness owed to Affiliates of the Borrower, provided that, the following will not constitute Restricted Payments: (A) any amount distributed from the Distribution Account or otherwise distributed after satisfaction of the Restricted Payment Conditions, (B) any funds transferred from any Project Account or the Handback Requirements Reserve Account following substitution of an Acceptable Letter of Credit or Handback Requirements Letter of Credit, as applicable, for cash on deposit in such account, (C) amounts required to be paid by the Borrower to the Design-Build Contractor under the Design-Build Contract, (D) amounts required to be paid by the Borrower to the O&M Contractor under the O&M Contract, (E) any Technical Assistance and Management Services Fees, and (F) any development fees or letter of credit fees payable to the Equity Members or to any future equity owners of Borrower.

Pursuant to the payment provisions of the Pre-Enforcement Waterfall, funds on deposit (i) in the Revenue Account, after application as contemplated in clauses First through Tenth of the Pre-Enforcement Waterfall, or (ii) in the Equity Lock-up Account (after giving effect to all provisions of the Collateral Agency and Accounts Agreement providing for the transfer of funds out of the Equity Lock-Up Account to accounts other than the Distribution Account), are permitted to be transferred to the Distribution Account on each Distribution Date, so long as the Restricted Payment Conditions are satisfied, as follows:

(a) all transfers required to have been made pursuant to clause "First" through clause "Tenth" of the Pre-Enforcement Waterfall as of the applicable Calculation Date have been satisfied in full, and any Reserve Account required to be established and funded as of such date has been fully funded to the level of the Applicable Reserve Requirement as of such date, or replaced with an Acceptable Letter of Credit;

(b) the Total DSCR as of the applicable Calculation Date (i) is not less than 1.10:1.00 for the immediately preceding period of twelve (12) consecutive months (or, with respect to any Calculation Date occurring prior to the first anniversary of the Passenger Service Availability Date, for any shorter period from the Passenger Service Availability Date) and (ii) is not projected to be less than 1.10:1.00 for the immediately succeeding twelve

(12) consecutive months, as set forth in a certificate provided by the Borrower to the Intercreditor Agent setting forth such Total DSCRs;

(c) no Default or Event of Default has occurred and is continuing under the Financing Documents, or would exist as a result of making the requested Restricted Payment;

(d) the Passenger Service Availability Date has been achieved; and

(e) all amounts outstanding under the Design-Build Loan Facility (and any associated Hedging Obligations and Hedging Termination Obligations) have been repaid.

### **Withdrawal and Application of Funds; Priority of Transfers from Project Accounts**

Each withdrawal or transfer of funds from the Securities Accounts by the Depositary Agent on behalf of the Borrower which, pursuant to the terms of the Collateral Agency and Accounts Agreement, is expressly required to be made pursuant to an Approved Construction Requisition is required to be transferred by the Depositary Agent as directed in the applicable Construction Requisition Certificate to pay Project Costs upon receipt by the Depositary Agent (copied to the Collateral Agent) of the following documents and satisfaction of the following conditions, as applicable:

(a) a duly executed Construction Requisition Certificate from the Borrower setting forth the amount requested and certifying that (A) no Default or Event of Default has occurred or is continuing, or would result from the proposed transfer of funds, (B) no Funding Shortfall exists and (C) if funds are being requested from the Bond Proceeds Account, that such funds will be used solely for Permitted Uses of Proceeds); and

(b) except in the case of any withdrawal to pay for administrative expenses of the Borrower, including, without limitation, personnel, insurance and lease expenses, and fees related to Equity Letters of Credit, a duly executed Technical Advisor Certificate stating that (A) the Lenders' Technical Advisor does not dispute the certification given by the Borrower that no Funding Shortfall exists, (B) Passenger Service Availability is reasonably expected to occur prior to the Lenders' Long Stop Date, and (C) if applicable, the amounts being requested in the applicable drawing request are for the payment of Project Costs (and with respect to any proposed withdrawal from the Bond Proceeds Account, for the payment of Project Costs in accordance with the Tax Regulatory Agreement).

In the event that a Construction Requisition Certificate does not comply with the requirements of the Collateral Agency and Accounts Agreement, the Depositary Agent has the right to reject such certificate and the Borrower will not be entitled to cause the proposed withdrawal or transfer until it has submitted a revised and compliant certificate.

Except as otherwise provided in the Collateral Agency and Accounts Agreement, each withdrawal or transfer of funds from the Project Accounts (other than from the Construction Account and any sub-account thereof, whether existing as of the Financial Close Date or thereafter created, the Bond Proceeds Account, the Voluntary Equity Contributions Account, the Major Maintenance Account, the Utility Owner's Cost Account, each Equity Member Cash Collateral Account and the Operating Account) by the Depositary Agent on behalf of the Borrower is required to be made pursuant to an executed Funds Transfer Certificate, which certificate must be provided and prepared by the Borrower and is required to contain a certification by the Borrower, as applicable, that such withdrawal or transfer complies with the requirements of the Collateral Agency and Accounts Agreement. Such Funds Transfer Certificate relating to the applicable account is required to be delivered to the Depositary Agent (and copied to the Collateral Agent) no later than five (5) Business Days prior to each date on which the Borrower proposes that funds should be withdrawn or transferred.

The Borrower is obligated to deliver to the Depositary Agent (copied to the Collateral Agent) at least five (5) Business Days prior to each Distribution Date (or such other date on which a transfer to the Distribution Account is proposed) a Distribution Requisition Certificate.



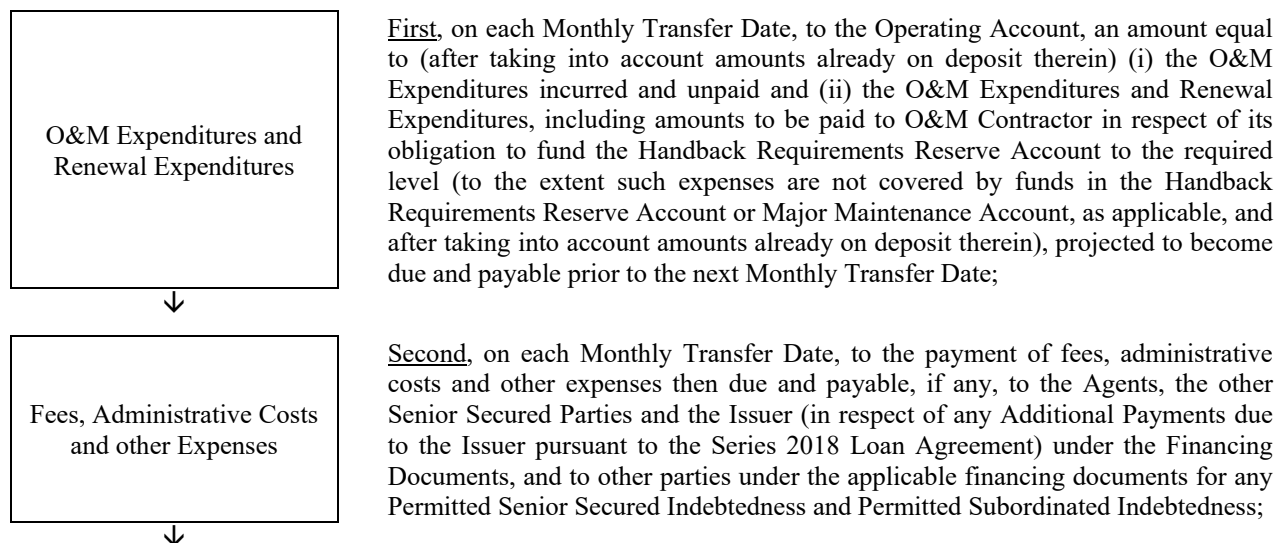
## Event of Default

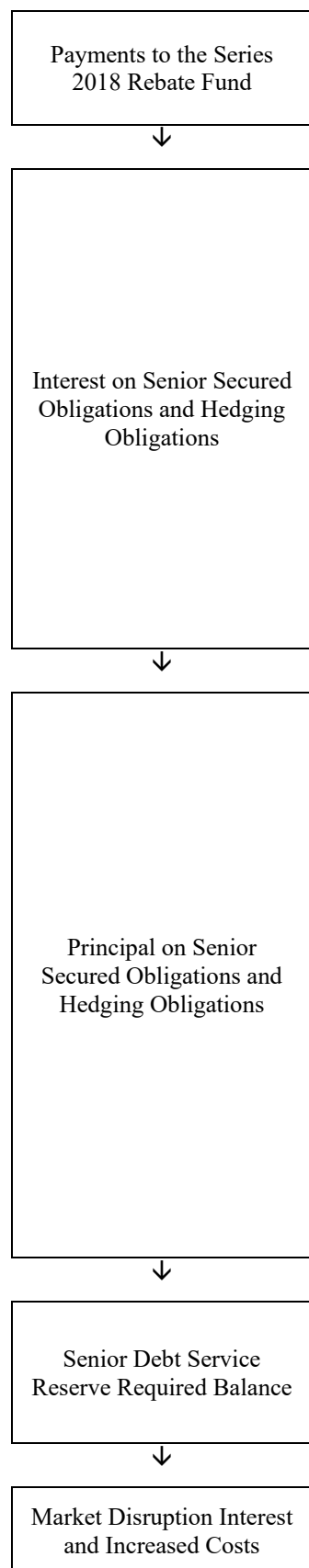
Upon receipt of a notice of an Event of Default and during the continuance of the related Event of Default, the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) may, in connection with the taking of an Enforcement Action, without consent of the Borrower, instruct the Collateral Agent in writing to apply, or direct the Depositary Agent to apply, proceeds of the Project Accounts to the payment of Secured Obligations, in accordance with the terms of the Intercreditor Agreement and in the order set forth in the Post-Enforcement Waterfall, so long as such payments are on account of amounts due under the Financing Documents in respect of such Secured Obligations; provided that at any time prior to the taking of an Enforcement Action, proceeds of the Project Accounts are required to be applied in the order set forth in the Pre-Enforcement Waterfall; and provided, further, that proceeds of the Bonds Segregated Collateral, the Bank Segregated Collateral and the Senior Secured Segregated Collateral may only be applied in accordance with the provisions of the Collateral Agency and Accounts Agreement relating to the Milestone Payment Sub-Account, the Bond Proceeds Account, the Senior Debt Service Reserve Account and the Mandatory Prepayment Account, as applicable.

On and after any date on which the Depositary Agent receives a written notice from the Collateral Agent stating that an Event of Default has occurred and is continuing, the Depositary Agent is obligated thereafter to accept all notices and instructions required or permitted to be given to the Depositary Agent pursuant to the terms of the Collateral Agency and Accounts Agreement only from the Collateral Agent and not from the Borrower or any other Person, and the Depositary Agent will not be permitted to withdraw, dispose of, transfer, pay or otherwise distribute any monies in any of the Project Accounts except pursuant to such notices and instructions from the Collateral Agent until such time as the Depositary Agent receives written notice from the Borrower, countersigned by the Collateral Agent, stating that such Event of Default no longer exists due to the same having been waived (or deemed waived) or cured or no longer existing in accordance with the terms of the Financing Documents.

## Flow of Funds Post-Passenger Service Availability

Pursuant to the terms of the Collateral Agency and Accounts Agreement, beginning with the first Monthly Transfer Date after the Passenger Service Availability Date, Project Revenues are required to be transferred into the Revenue Account and the Depositary Agent is obligated, subject to the receipt of a Funds Transfer Certificate from the Borrower (if required) and to the extent of available funds, to make the following withdrawals, transfers and payments from the Revenue Account and any sub-accounts therein in the amounts, on each Monthly Transfer Date or Distribution Date, as applicable, and in the following order of priority, provided that no amount is permitted to be withdrawn on any date pursuant to any clause below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior clauses must have been withdrawn or set aside.





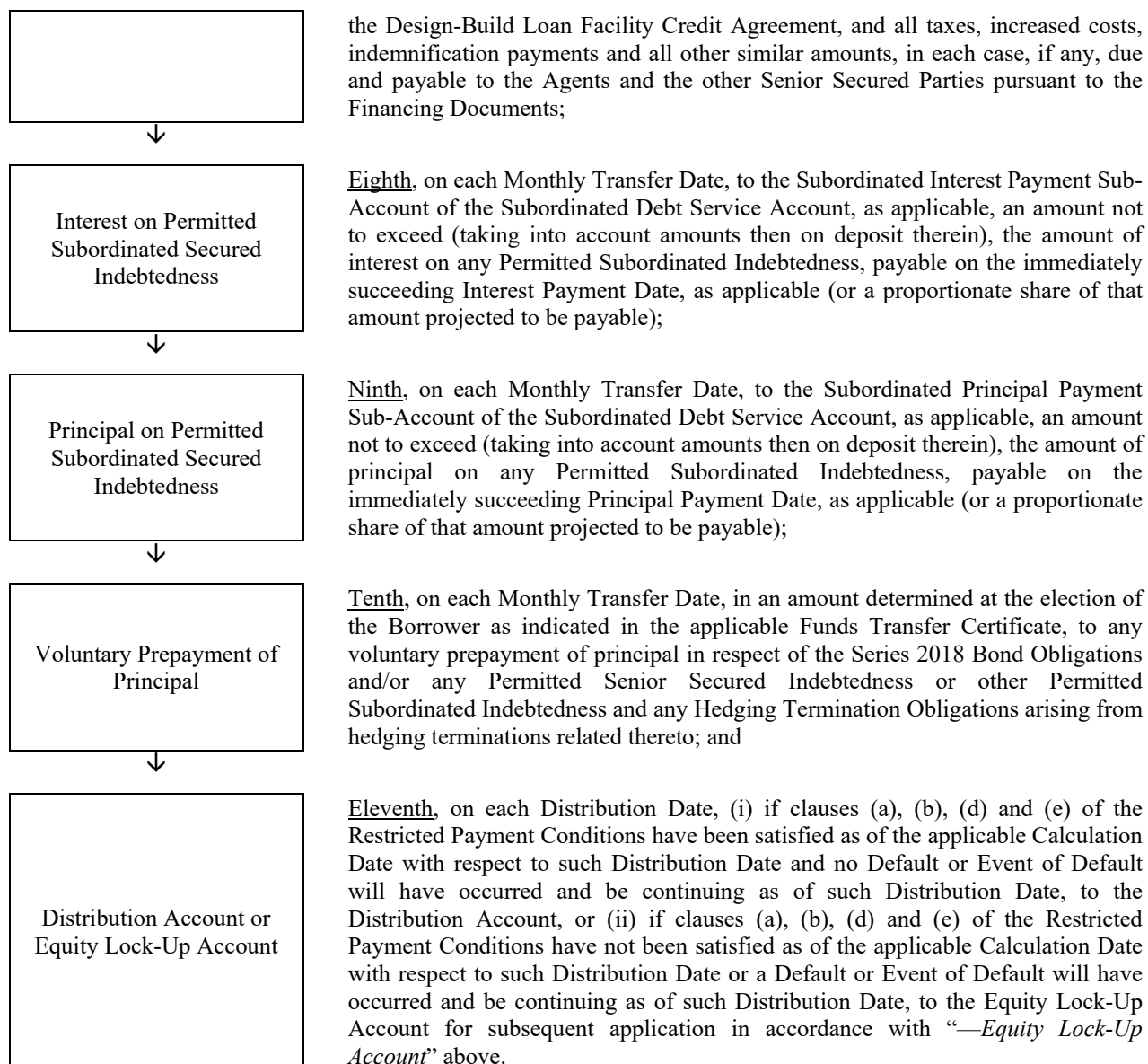
Third, on each Monthly Transfer Date, to any payments then due and payable by the Borrower to the Trustee for deposit in the Series 2018 Rebate Fund (or any similar fund established with respect to any tax-exempt financing) in accordance with the Indenture and Section 148 of the Code;

Fourth, on each Monthly Transfer Date, to the Senior Interest Payment Sub-Account of the Senior Debt Service Account, an amount not to exceed the sum of (i) (A) one-sixth (1/6) of the amount of the interest payable on the immediately succeeding Interest Payment Date in the case of the Senior Secured Obligations having semi-annual interest payment dates; (B) in the case of Senior Secured Obligations having monthly interest payment dates, the amount of interest payable on the immediately succeeding Interest Payment Date; (C) the proportionate amount of interest payable on any other Permitted Senior Secured Indebtedness in accordance with the applicable Additional Financing Documents; and (D) in each case, if applicable, the related Hedging Obligations; plus (ii) the sum of any shortfall in transfers required to have been made on any preceding Monthly Transfer Date; plus (iii) if such Monthly Transfer Date is also an Interest Payment Date or the last Monthly Transfer Date before an Interest Payment Date, any other amount required to make the amount credited to the Senior Interest Payment Sub-Account equal to the amount of interest (and, if applicable, related Hedging Obligations) due and payable on the Senior Secured Obligations (and, if applicable, related Hedging Obligations) on such Interest Payment Date;

Fifth, on each Monthly Transfer Date, to the Senior Principal Payment Sub-Account of the Senior Debt Service Account, an amount not to exceed the sum of (i) (A) one-sixth (1/6) of the amount of principal payable on any immediately succeeding semi-annual principal payment date, including mandatory sinking fund redemption dates in the case of the Series 2018 Bond Obligations; (B) the proportionate amount of principal payable on any other Permitted Senior Secured Indebtedness in accordance with the applicable Additional Financing Documents; (C) with respect to each Monthly Transfer Date after the End of Funding Date, to the extent the Design-Build Loan Facility has not been repaid in accordance with Final Milestone Payment Waterfall, the proportionate amount of principal payable on such date and (D) in each case, if applicable, the related Hedging Termination Obligations; plus (ii) the sum of any shortfall in transfers required to have been made on any preceding Monthly Transfer Date; plus (iii) if the Monthly Transfer Date is also a principal payment date (or a mandatory sinking fund payment date) or the last Monthly Transfer Date before a principal payment date (or a mandatory sinking fund payment date), any other amount required to make the amount credited to the Senior Principal Payment Sub-Account equal to the total aggregate amount of principal due and payable on the Senior Secured Obligations (and, if applicable, related Hedging Termination Obligations) on such Principal Payment Date;

Sixth, on each Monthly Transfer Date, to the Senior Debt Service Reserve Account the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such reserve account, equals the Required Senior Debt Service Reserve at such time;

Seventh, on each Monthly Transfer Date after the End of Funding Date, to pay Market Disruption Interest (if any) in accordance with the Design-Build Loan Facility Credit Agreement and increased costs (if any) payable in accordance with



### **Invasion of Accounts**

If on any Monthly Transfer Date on which disbursements are required to be made from the Revenue Account pursuant to clauses “First” through “Fifth” (and clause “Sixth,” solely in the case of transfer from the Equity Lock-Up Account as described below) of the Pre-Enforcement Waterfall, if the amounts on deposit in the Revenue Account or credited thereto are not sufficient to make such disbursements, the Depository Agent is required to transfer funds, *first*, from the Equity Lock-Up Account, *second*, from the Subordinated Principal Payment Sub-Account, *third*, from the Subordinated Interest Payment Sub-Account, *fourth*, from the Senior Principal Payment Sub-Account and, *fifth*, from the Senior Interest Payment Sub-Account, in each case in order to fund shortfalls in the clauses set forth in the Pre-Enforcement Waterfall in the order such clauses appear in the Pre-Enforcement Waterfall, and no amounts will be withdrawn as set forth in this sentence until amounts sufficient as of the date of such deficiency for all the purposes specified under higher-ranking clauses must have been withdrawn or set aside, in the amount of such deficiency.

## **Permitted Investments**

Funds in the Project Accounts may be invested and reinvested only in Permitted Investments in accordance with written instructions given to the Depositary Agent by the Borrower, which may be in the form of a standing instruction (prior to the occurrence of an Event of Default and, thereafter (so long as such Event of Default is continuing), as directed by the Intercreditor Agent and in accordance with the written instructions of the Intercreditor Agent) and, unless an Event of Default has occurred and is continuing, the Borrower will be entitled to instruct the Depositary Agent to liquidate Permitted Investments for purposes of effecting any such Permitted Investment or reinvestment or for any other purpose permitted under the Collateral Agency and Accounts Agreement. In the absence of written instructions by the Borrower or the Intercreditor Agent (to the extent provided in accordance with the terms of the Collateral Agency and Accounts Agreement), the Depositary Agent is required to invest funds in the Depositary Agent's Money Market Deposit Account. The Depositary Agent will not be liable for any loss resulting from any Permitted Investment or the sale or redemption thereof made in accordance with the terms of the Collateral Agency and Accounts Agreement. If and when cash is required for disbursement in accordance with the terms of the Project Accounts or the Post-Enforcement Waterfall, the Depositary Agent will be authorized, in the event the Borrower fails to direct the Depositary Agent to do so in a timely manner and to the extent necessary to make payments required pursuant to the terms of the Project Accounts or the Post-Enforcement Waterfall, to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Depositary Agent deems reasonable and prudent under the circumstances. The Depositary Agent will have no liability for the amount received from any redemption of any Permitted Investments or the residual value of investments after any sale or liquidation.

The Depositary Agent will have no obligation to invest or reinvest the funds if all or a portion of the funds are deposited with (or instructions with respect to the same are given to) the Depositary Agent after 11 a.m. (E.S.T. or E.D.T., as applicable) on the day of deposit. Instructions to invest or reinvest that are received after 11 a.m. (E.S.T. or E.D.T., as applicable) will be treated as if received on the following Business Day.

Interest earned on the balance standing to the credit of any Project Account and income resulting from investments in any Permitted Investment are required to be credited to the Operating Account prior to the Final Project Costs Payment Date and the Revenue Account thereafter, with the exception of income resulting from investment of funds standing to the credit of the following Project Accounts: (A) the Equity Lock-Up Account; (B) the Major Maintenance Account; (C) the DB Non-Compliant LC Cash Security Sub-Account; (D) the DB Contingent Retainage Sub-Account; (E) the DB Contingent Letter of Credit Sub-Account; and (F) the Bond Proceeds Account, which in each case are required to be credited to the applicable Project Account from which such funds were invested.

## **Collateral and Remedies**

### *Administration of Collateral*

The Account Collateral is required to be held by the Collateral Agent for the benefit of the Secured Parties pursuant to the terms of the Collateral Agency and Accounts Agreement and is required to be administered by the Collateral Agent in the manner contemplated below and by the other Security Documents.

### *Knowledge of Event of Default*

Notwithstanding anything to the contrary contained in the Collateral Agency and Accounts Agreement or any document executed in connection with any of the Secured Obligations, the Collateral Agent, unless a responsible officer of the Collateral Agent has actual knowledge thereof, will not be deemed to have any knowledge of any Event of Default unless and until it has received written notice from the Borrower, the Intercreditor Agent or any other Secured Party describing such Event of Default in reasonable detail. If the Collateral Agent receives any such notice from a Person other than the Intercreditor Agent, the Collateral Agent will be required to deliver a copy thereof to the other Secured Parties (or representative thereof) and to the Department, and if the Collateral Agent receives any such notice from a Person other than the Borrower, the Collateral Agent will also be required to deliver a copy thereof to the Borrower and the Secured Party's representatives and to the Department.

### *Enforcement of Remedies*

Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent is required to take such Enforcement Action with respect to such Event of Default as directed by the Intercreditor Agent acting in accordance with the terms of the Intercreditor Agreement (a “**Direction Notice**”); provided that, in the absence of a Direction Notice, the Collateral Agent may (but will not be obligated to) take such action (with notice thereof to the Department, the Borrower and the Secured Parties), or refrain from taking such action, with respect to such Event of Default as it deems advisable in the best interests of the Secured Parties and solely to the extent permitted under the Collateral Agency and Accounts Agreement or pursuant to the other Security Documents. Upon receiving a Direction Notice, the Collateral Agent is required to seek to enforce the Security Documents (with notice thereof to the Department and the Borrower) and to realize upon the Collateral in accordance with such Direction Notice; provided, however, that the Collateral Agent will not be obligated to follow any Direction Notice if the Collateral Agent reasonably determines that such Direction Notice is in conflict with any provisions of any applicable Law or any Security Document, and the Collateral Agent will not, under any circumstances, be liable to any Secured Party, the Borrower or any other Person for following a Direction Notice. Additionally, under the Lenders’ Direct Agreement, the Department has prior approval rights in respect of appointment of any receiver at the behest of the Borrower, and with respect to any appointment of a receiver at the behest of any Secured Party, the Collateral Agent is obligated to provide notice to the Department and the Department may appear in any related proceedings.

### *Secured Party Information*

In the event that the Collateral Agent proceeds to foreclose upon, collect, sell or otherwise dispose of or take any other action with respect to any or all of the Collateral or to enforce any provisions of the Security Documents or takes any other action pursuant to the Collateral Agency and Accounts Agreement or any provision of the Security Documents or requests directions from the Intercreditor Agent, upon the request of the Collateral Agent, each of the other Secured Parties (or any agent of, or representative for, such Secured Party) will be required to promptly deliver a written notice to the Collateral Agent and each of the other Secured Parties setting forth (a) the aggregate amount of Secured Obligations owing to such Secured Party (including Hedging Obligations and Hedging Termination Obligations owing to such Secured Party) under the applicable Financing Document as of the date specified by the Collateral Agent in such request and (b) such other information as the Collateral Agent may reasonably request.

### *Allocation of Cure Period under the BT Lenders' Direct Agreement*

Promptly, but no later than 5 Business Days after the Borrower obtains knowledge or notice of the occurrence of a Contract Default (as defined in the Bombardier Direct Agreement), the Borrower is required to notify the Collateral Agent of the Contract Default and whether or not the Borrower is curing or intends to take meaningful steps to cure such Contract Default. If the Borrower delivers a notice advising that the Borrower is curing or intends to take meaningful steps to cure the Contract Default (a “Borrower BT Cure Notice”) the Borrower is to have the remaining portion of the available Cure Period (as defined in the Bombardier Direct Agreement), up to 75% of the total Cure Period (“Borrower BT Cure Period”) to remedy such Contract Default. If the Borrower delivers a Borrower BT Cure Notice and, upon expiration of the Borrower BT Cure Period, the Contract Default is continuing, the Collateral Agent may, but will not be obligated to, in accordance with the instructions given by the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement), notify the Borrower that the Collateral Agent intends to take meaningful steps to cure such Contract Default (“Collateral Agent BT Cure Notice”). If the Collateral Agent issues a Collateral Agent BT Cure Notice, the Borrower is required to cease all remedial activity (unless otherwise permitted in writing by the Collateral Agent to continue) and is required to promptly transition all remedial and cure efforts to the Collateral Agent, affording the Collateral Agent the balance of the total available Cure Period to remedy such Contract Default. If the Borrower fails to issue a Borrower BT Cure Notice when required, then the Collateral Agent may, but will not be obligated to, in accordance with the instructions given by the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement), issue a Collateral Agent BT Cure Notice and will be afforded the entire remaining Cure Period to remedy any such Contract Default. Upon the occurrence and throughout the duration of a Contract Default, the Collateral Agent (or its representative) and the Borrower are required to reasonably coordinate and cooperate with each other in order to

ensure that during either party's afforded cure period, such party will be in a commercially reasonable position to cure such Contract Default.

*Application of Proceeds*

(a) Following the taking of an Enforcement Action, all Proceeds received by the Collateral Agent derived from the funds set forth below pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents, are required to be applied by the Collateral Agent as follows, after payment of all of the fees and expenses of the Collateral Agent in connection with such Enforcement Action, as follows:

(i) all Proceeds attributable to the Senior Secured Segregated Collateral, to the Administrative Agent and the Trustee, first, for the pro rata payment of all accrued and unpaid interest on all Senior Secured Obligations, and second, if any unpaid principal portion in respect of all Senior Secured Obligations has become due (by acceleration, prepayment or otherwise), to the pro rata payment of such unpaid principal amounts;

(ii) all Proceeds attributable to the Bank Segregated Collateral, to the Administrative Agent, first, for the pro rata payment of all accrued and unpaid interest on all Design-Build Loans, and second, if any unpaid principal portion in respect of all Design-Build Loans has become due (by acceleration, prepayment or otherwise), to the pro rata payment of such unpaid principal amounts;

(iii) all Proceeds attributable to the Bonds Segregated Collateral, to the Trustee for deposit in the Series 2018 Debt Service Fund, first, for the pro rata payment of all accrued and unpaid interest on all Series 2018 Bonds, and second, if any unpaid principal of any Series 2018 Bonds has become due (by acceleration, prepayment or otherwise), to the pro rata payment of such unpaid principal amounts;

(b) Subject to the prior application of funds as provided for in clause (a) above, following the taking of an Enforcement Action, all Proceeds received by the Collateral Agent pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents, including Insurance Proceeds, Termination Compensation, or proceeds from the sale or disposition of Collateral or other Enforcement Action and the Collateral Agent, as directed by the Intercreditor Agent, is required to promptly instruct the Depositary Agent to apply amounts available in or otherwise transferred from the Project Accounts as follows; provided that any such Proceeds which are to be used to pay any amounts to the Owners are required to be paid to the Trustee for deposit into the Series 2018 Debt Service Fund:

First, to the pro rata payment of the fees, administrative costs, other expenses and indemnification payments then due and payable, if any, to the Agents, the other Senior Secured Parties and the Issuer (in respect of any Additional Payments due to the Issuer pursuant the Series 2018 Loan Agreement) under the Financing Documents, if any;

Second, to the pro rata payment of all accrued and unpaid interest (but not default interest, if any) due on all Senior Secured Obligations and all accrued and unpaid Hedging Obligations (excluding any Hedging Termination Obligations);

Third, to the pro rata payment of all accrued and unpaid default interest due on all Senior Secured Obligations (excluding any Hedging Termination Obligations);

Fourth, to the pro rata payment of any unpaid principal of any Senior Secured Obligation that has become due (by acceleration, prepayment or otherwise) and all accrued and unpaid Hedging Termination Obligations;

Fifth, to the pro rata payment of all other accrued and unpaid amounts, if any, due and payable with respect to Senior Secured Obligations;

Sixth, to the pro rata payment of all accrued and unpaid interest on any other Permitted Subordinated Secured Indebtedness;

Seventh, to the pro rata payment of all outstanding principal amount on any other Permitted Subordinated Secured Indebtedness; and

Eighth, upon the payment in full of all Secured Obligations in accordance with clauses “First” through “Seventh” above, to pay to the Borrower, or as may be directed by the Borrower, or as a court of competent jurisdiction may direct, any Proceeds then remaining.

(c) If at any time any Secured Party obtains for any reason any payment or distribution upon or with respect to the Secured Obligations contrary to the terms of the Collateral Agency and Accounts Agreement or the Intercreditor Agreement, whether as a result of the Collateral Agent’s exercise of any Enforcement Action in respect of the Collateral or otherwise, such Secured Party will be deemed to have received such amounts in trust, and will be obligated to promptly remit such amount so received in error to the Collateral Agent to be applied in accordance with the terms of the Collateral Agency and Accounts Agreement.

As among the Senior Secured Parties, all liens on the Collateral will rank pari passu, no Senior Secured Party will be entitled to any preferences or priority over any other Senior Secured Party with respect to the Collateral (except in respect of the Segregated Collateral, including as set forth in the Post-Enforcement Waterfall, above) and the Senior Secured Parties will share in the Collateral and all Proceeds thereof in accordance with the terms of the Collateral Agency and Accounts Agreement.

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## **APPENDIX D-4**

### **SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD LOAN FACILITY CREDIT AGREEMENT**

*The following is a summary of certain provisions of the Design-Build Loan Facility Credit Agreement. This summary is not to be considered a full statement of the terms of the Design-Build Loan Facility Credit Agreement, and accordingly is qualified by reference thereto and is subject to the full text thereof.*

*Capitalized terms used in this APPENDIX D-4 and not otherwise defined herein will have the meaning assigned to them in APPENDIX A—“DEFINITIONS.”*

#### **Generally**

The Borrower and the Bank Lenders will enter into the Design-Build Loan Facility Credit Agreement, pursuant to which the Bank Lenders are expected to loan the Borrower up to \$269,322,603.50, such loans under the Design-Build Loan Facility Credit Agreement being the “Design-Build Loans.” The obligations of the Bank Lenders to make Design-Build Loans to the Borrower are several but not joint. The proceeds of the Design-Build Loan Facility Credit Agreement are expected to be used to finance a portion of the costs of construction of the APM Project, including the costs and fees of the Bank Lenders and Hedge Providers.

#### **Conditions to Draw**

The conditions to draws for the Design-Build Loan Facility require the Borrower to certify that (i) certain repeating representations and warranties are either: (A) where such representations and warranties are qualified as to “materiality,” “Material Adverse Effect,” or similar language, true and correct in all respects or (B) as to all other representations and warranties, true and correct in all material respects; (ii) no Event of Default or Specified Default has occurred and is then continuing; (iii) no Funding Shortfall exists (iv) the Borrower has obtained all governmental approvals required to be obtained in respect of the construction work performed as at the date of such certificate; (v) with respect to the initial Disbursement only, Financial Close has occurred; (vi) the Borrower has delivered to the Administrative Agent a certificate from the Lenders’ Technical Advisor stating that (A) the Passenger Service Availability Date is reasonably expected to occur prior to the Lenders’ Long Stop Date, (B) the amounts being requested in the applicable drawing request are for the payment of Project Costs and, in the case of Project Costs for construction work, are for payment of actual work completed and are payable in accordance with the terms of the Design-Build Contract, and (C) the Lenders’ Technical Advisor does not dispute the Borrower’s certification regarding no Funding Shortfall as described in clause (iii) above; and (vii) the Borrower has delivered to the Administrative Agent certain invoices and lien waivers from by the Design-Build Contractor.

#### **Amounts Payable and Maturity Date**

The Borrower is required to repay the Administrative Agent for the account of the Bank Lenders in the aggregate principal amount of the Design-Build Loans outstanding, and such Design-Build Loans will mature, on the Design-Build Loan Maturity Date. The Design-Build Loan Maturity Date is the earlier of: (i) the End of Funding Date and (ii) the date that is 18 months after the original Planned Early PSA Date. In accordance with the Collateral Agency and Accounts Agreement, Milestone Payment 6 is required to be applied first to the repayment of the Design-Build Loan Facility.

Accrued interest on each Design-Build Loan will be payable on each Interest Payment Date and upon any repayment or prepayment of principal under the Design-Build Loan Facility Credit Agreement, on the amount of such repayment or prepayment on the date thereof, or as otherwise provided in the Design-Build Loan Facility Credit Agreement.

Under the Design-Build Loan Facility Credit Agreement, the parties thereto acknowledge that neither the City or the Department will be directly, indirectly, contingently or morally obligated to pay all or any portion of the

debt service due on the Design-Build Loans, to levy or to pledge any form of taxation whatever therefor or to compel any appropriation by the Board of Airport Commissioners or the City Council for their payment, and that Design-Build Loans are not a pledge of the faith and credit of the City or the Department nor do they constitute indebtedness of the City or the Department.

### **Prepayment of the Design-Build Loan**

The Borrower is required to make mandatory prepayments of the Design-Build Loans, without premium or penalty (other than any associated hedging termination obligations, if any, pursuant to the Hedging Agreements and Break-Funding Costs, if such prepayment occurs on a date other than a Design-Build Loan Payment Date) under certain conditions, including upon receipt by the Borrower of any Termination Compensation, from net amounts of insurance proceeds, loss proceeds or condemnation proceeds, and in an amount equal to the net cash proceeds of any payment received by the Borrower from the Hedge Providers following early termination of any Hedging Agreement (except to the extent such proceeds are used to offset the costs of the Borrower entering into a replacement Hedging Agreement).

The Borrower may optionally prepay the Design-Build Loan Facility, together with accrued interest up to and including the prepayment date, without premium or penalty (other than associated hedging termination obligations, if any, pursuant to the Hedging Agreements and Break-Funding Costs if such prepayment occurs on a date that is not a Design-Build Loan Payment Date), from time to time in whole or in part upon certain conditions, including that no Funding Shortfall would result from such prepayment and that no Default or Event of Default has occurred and is continuing or could be reasonably expected to result as a consequence of any such prepayment.

### **Interest Rates**

Subject to certain exceptions relating to default interest, the occurrence of a Market Disruption Event and the unavailability of LIBOR, as described below, interest will accrue on the outstanding amount of the Design-Build Loans during each Design-Build Loan Interest Period, from and including the first day of such Design-Build Loan Interest Period to but excluding the last day thereof, at a rate per annum equal to the sum of the relevant Adjusted LIBOR plus the Applicable Margin (which is 0.80%) for such Design-Build Loan Interest Period (the "Euro-Dollar Rate").

If any amount payable by the Borrower is not paid when due, whether on its due date, or stated maturity, by mandatory prepayment, upon acceleration or otherwise, all principal of or interest on any Design-Build Loan or any fee or other amount payable by the Borrower under the Design-Build Loan Facility Credit Agreement and overdue will bear interest at the otherwise applicable interest rate (including the Applicable Margin) plus 2.00%.

If a Market Disruption Event occurs, the Design-Build Loans will bear interest at the "Market Disruption Rate," being the sum of (a) the Applicable Margin plus (b) the weighted average of the rates per annum (calculated on the basis of a year of 360 days) certified to the Administrative Agent by each affected Lender as soon as practicable but, in any event, before interest is due to be paid in respect of such Design-Build Loan Interest Period as constituting the cost to such affected Lender of funding its participation in such borrowing from whatever source it may reasonably select; provided, that in no event will such rate be lower than the LIBOR rate. The payment of Market Disruption Interest (together with capitalized interest thereon at the Alternative Rate, capitalized on each Interest Payment Date) will be deferred and paid on the first Design-Build Loan Payment Date to occur on or after the End of Funding Date (or if incurred after the End of Funding Date, on the next Design-Build Loan Payment Date following the date incurred) in accordance with the Pre-Enforcement Waterfall, and the failure to pay such interest during such deferral period will not constitute a Default or Event of Default.

If, on or prior to the first day of any Design-Build Loan Interest Period, the Administrative Agent is advised by the Majority Bank Lenders that deposits in dollars (in the applicable amounts) are not being offered to banks in the London interbank market for the applicable amount and interest period of such Design-Build Loan (in circumstances where quotes are requested for determining LIBOR under the definition thereof), the Administrative Agent will be required to give notice thereof to the Borrower and to the Bank Lenders, whereupon (a) the obligation of each Bank Lender to continue to make or maintain Design-Build Loans at the Euro-Dollar Rate will be suspended and (b) all outstanding Design-Build Loans bearing interest at the Euro-Dollar Rate will be converted into

Alternative Rate Loans on the last day of the then current Design-Build Loan Interest Period applicable thereto (such Alternative Rate Loans bearing interest at the Alternative Rate in effect on the second Business Day immediately preceding the commencement of each Design-Build Loan Interest Period plus the Applicable Margin); provided that, upon the recommencement of deposits in dollars being offered to banks in the London interbank market for the applicable amount and Design-Build Loan Interest Period (as confirmed in writing to the Administrative Agent by the Majority Bank Lenders), the Administrative Agent will be required to notify the Borrower thereof and the Borrower will be required to notify the Administrative Agent of the date on which the Borrower wishes the outstanding Alternative Rate Loans converted into Design-Build Loans bearing interest at the Euro-Dollar Rate.

If at any time the Administrative Agent determines (which determination will be conclusive absent manifest error) that (i) the circumstances set forth in the immediately preceding paragraph have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in the immediately preceding paragraph have not arisen but the supervisor for the administrator of the Screen Rate or a Governmental Entity having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Screen Rate will no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower will be required to endeavor to establish an alternate rate of interest to the Screen Rate that gives due consideration, in coordination with Part 4, Section 15 of each ISDA Schedule to each Hedging Agreement, to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and will enter into an amendment to the Design-Build Loan Facility Credit Agreement to reflect such alternate rate of interest and such other related changes to the Design-Build Loan Facility Credit as may be applicable. Such amendment will become effective without any further action or consent of any other party to the Design-Build Loan Facility Credit so long as the Administrative Agent has not received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Bank Lenders, a written notice from the Majority Bank Lenders stating that such Majority Bank Lenders object to such amendment. Until an alternate rate of interest is determined in accordance with this paragraph (but, in the case of the circumstances described in clause (ii) of the first sentence of this paragraph, only to the extent the Screen Rate for such Design-Build Loan Interest Period is not available or published at such time on a current basis), the provisions of the immediately preceding paragraph will apply.

The “Alternative Rate” means, for any day, a rate per annum equal to the greater of (a) the Prime Rate, (b) the sum of the Federal Funds Rate for such day plus 50 basis points (0.50%) and (c) the Adjusted LIBOR for a one-month term in effect on such day. Any change in the Alternative Rate due to a change in any of the rates described in the immediately preceding sentence will be effective on the effective date of such change in such rate described in the immediately preceding sentence.

The payment of Market Disruption Interest and the Alternative Rate of Interest (together with capitalized interest thereon at the Alternative Rate, capitalized on each Interest Payment Date) is deferred and payable by the Borrower on the first Design-Build Loan Payment Date to occur on or after the End of Funding Date (or if incurred after the End of Funding Date, on the next Design-Build Loan Payment Date following the date incurred) in accordance with the Pre-Enforcement Waterfall and the failure to pay such interest during such deferral period will not constitute a Default or Event of Default under the Design-Build Loan Facility Credit Agreement.

### **Special Covenants of the Borrower**

In the Design-Build Loan Facility Credit Agreement, the Borrower is required to make and comply with certain covenants, including but not limited to the following:

Permitted Indebtedness. The Borrower shall not create, incur or be liable for any Indebtedness other than Permitted Indebtedness.

Distributions. The Borrower shall not make any Restricted Payments other than Permitted Distributions.

Enforcement Obligations. The Borrower is required to use commercially reasonable efforts to enforce against any counterparty to a Transaction Document each material covenant or obligation of such party in accordance with its terms, except, in each case, to the extent that the failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

## **Additional Covenants of the Borrower**

In the Design-Build Loan Facility Credit Agreement, the Borrower is also required to make and comply with additional covenants, including but not limited to the following (each as may be qualified by materiality and other exceptions, as described in the Design-Build Loan Credit Agreement):

(a) Maintenance of Legal Structure: The Borrower will (i) its legal existence as a limited liability company and (ii) its good standing and qualification to do business in the State of California and its good standing in the State of Delaware.

(b) Technical Reports: From the commencement of Work to the Final Completion Date, the Borrower will deliver to the Administrative Agent (i) a copy of the monthly report submitted to LAWA pursuant to the DBFOM Agreement and (ii) a copy of the Lenders' Technical Advisor monthly report, in each case within 10 Business Days of each report becoming available.

(c) Operating Reports: Not later than forty-five (45) days after the end of each fiscal quarter of the Borrower following the Passenger Service Availability Date, the Borrower will deliver to the Administrative Agent an operating report setting forth (i) the operating data for the APM Project for the previous quarter, including total Project Revenues, total O&M Expenditures and total Renewal Expenditures incurred, (ii) the variances for such period between the actual Project Revenues, actual O&M Expenditures and actual Renewal Expenditures incurred, and the projected Project Revenues, budgeted O&M Expenditures and budgeted Renewal Expenditures, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more.

(d) Maintenance of Insurance: The Borrower will maintain, or cause to be maintained, all insurance required pursuant to the terms of the DBFOM Agreement and the Financing Documents.

(e) Payment of Taxes: The Borrower will pay all taxes imposed upon it or any of its properties or assets or in respect of its business, income or profits before the same become delinquent, unless they are being contested in good faith by appropriate proceedings and the Borrower has maintained adequate reserves therefor in accordance with GAAP and/or IFRS.

(f) Report Requirements: Report Requirements. The Borrower shall deliver the following financial information to the Administrative Agent:

- (i) (A) audited financial statements for the Borrower, within one hundred and twenty (120) days after the end of each fiscal year of the Borrower, (B) unaudited financial statements for Borrower within forty-five (45) days after the end of each fiscal quarter of the Borrower and (C) an annual operating budget not later than thirty (30) days prior to the commencement of each calendar year, in case of clause (A) and (B), prepared in accordance with GAAP and/or IFRS (except as approved by the auditor or the responsible officer, as the case may be, and disclosed therein) and delivered together with certificates from the Borrower certifying to its knowledge that there is no Event of Default; and
- (ii) (A) audited financial statements for each of the O&M Contractor Guarantors within one hundred and twenty (120) days after the end of each fiscal year of such O&M Contractor Guarantor (or in the case of HOCHTIEF PPP Solutions GmbH and ACS Servicios y Concesiones, S.L., within one hundred and eighty (180) days of each fiscal year end), and (B) prior to the Sunset Date, audited financial statements for each of the Design-Build Guarantors within one hundred and twenty (120) days after the end of each fiscal year of such Design-Build Guarantor (or in the case of Dragados, S.A. and HOCHTIEF USA, Inc., within one hundred and fifty (150) days after the end of each fiscal year), and in each case prepared in accordance with GAAP and/or IFRS (except as approved by the auditor or the responsible officer, as the case may be, and disclosed therein), provided that the financial statements to be delivered pursuant to this paragraph (f) may be delivered as a link to a website containing the same;

(g) Project Revenue: The Borrower will apply all Project Revenues solely for the purposes, and in the order and manner, provided for in the Collateral Agency and Accounts Agreement.

(h) Intellectual Property: The Borrower will maintain its rights to all patents, copyrights and Intellectual Property required for the development, construction, maintenance and operation of the APM Project, except where such failure to maintain would not reasonably be expected to have a Material Adverse Effect.

(i) Governmental Approvals: The Borrower will obtain, maintain and comply in all material respects with all required governmental approvals, and will comply with all applicable laws, in each case, for which failure to so obtain, maintain or comply, as applicable, would reasonably be expected to have a Material Adverse Effect.

(j) Inspection of Property: The Borrower will keep proper records and books of accounts, and permit inspection of such records and books, and of the APM Project, by the Administrative Agent and its representatives upon reasonable notice at reasonable times, subject at all times to compliance with applicable safety standards and requirements.

(k) Notice of Material Events: The Borrower will promptly, but in any event within 5 Business Days of the Borrower obtaining knowledge thereof, provide the to the Administrative Agent (i) details of any litigation in respect of the Borrower, pending or threatened in writing, by or before any arbitrator or Governmental Authority (A) in which the amount involved exceeds five million dollars (\$5,000,000) and is not covered by insurance or (B) a remedy requested in the litigation is the stoppage or delay of the APM Project, (ii) details of any event of default or "Default" as defined in, or any material breach under, any Material Project Contract and copies of all notices of any such default or termination of any Material Project Contract delivered to the Borrower, (iii) notice and details of any Default or Event of Default, (iv) notice of any material insurance claims in excess of \$5,000,000, (v) notice of any claim by the Borrower under the DBFOM Agreement in respect of the occurrence of a Compensation Event or Relief Event, (vi) notice of any suspension of the Work (except to the extent the suspension is permitted under the DBFOM Agreement in which case no notice is required, and except to the extent the suspension is as a result of an emergency, in which case the Borrower is required to provide notice as reasonably promptly as possible following the Borrower's knowledge thereof), (vii) notice of any new, or newly discovered historical, material release of hazardous materials, (viii) notice of any material defect in the APM Project with a cost to correct in excess of \$5,000,000 (with a copy to the Lenders' Technical Advisor); and (ix) notice of the occurrence of any other event or condition that would reasonably be expected to have a Material Adverse Effect.

(l) Ratings. The Borrower will enter into a customary rating surveillance agreement with one Rating Agency and deliver to the Administrative Agent copies of any reports or ratings on the Series 2018 Bonds from any Rating Agency rating the Series 2018 Bonds.

(m) Hedging: The Borrower will comply with the Hedging Strategy.

(n) Securing Liens: The Borrower will execute, deliver and file further instruments and cause all necessary Uniform Commercial Code financing statements (including continuation statements), if any, to be recorded and filed in such manner and in such places as may be required by Law to maintain and perfect, and to maintain the perfection of, the Security Interests created by the Security Documents.

(o) DB Power of Attorney: (i) Within ninety (90) days of the Financial Close Date, for any DB Letter of Credit (as such term is defined in the Design-Build Contract) issued on or prior to the Financial Close Date, and (ii) upon issuance of any DB Letter of Credit issued after the Financial Close Date, each issuer of any such DB Letter of Credit must provide, to the reasonable satisfaction of the Administrative Agent: (A) written acknowledgment from such Acceptable LC Bank that it will honor a drawing certificate delivered by the Collateral Agent with respect to such DB Letter of Credit on the basis of a DB Power of Attorney, (B) any replacement DB Letter of Credit naming the Collateral Agent a beneficiary under such DB Letter of Credit or (C) any other acknowledgment or documentation (which may be in the form of e-mail correspondence) or otherwise confirming that the Acceptable LC Bank will honor a drawing certificate delivered by the Collateral Agent with respect to such DB Letter of Credit.

(p) Prohibited Liens: The Borrower will not create or permit to exist any Security Interest upon any of its assets or properties except for Permitted Security Interests.

(q) Prohibited Business Arrangements: The Borrower will not directly or indirectly engage in any business other than the development, design, construction, financing, operation and maintenance of the APM Project and business and activities ancillary and related thereto.

(r) Prohibited Sale or Assignment: The Borrower will not sell, lease, assign or otherwise dispose of any assets of the APM Project except for Permitted Dispositions.

(s) Consolidation, Mergers, Etc.: The Borrower will not merge, liquidate or dissolve or enter into any consolidation, amalgamation, demerger, reconstruction, partnership or any analogous arrangement or wind up, liquidate or dissolve or take any action that would result in the liquidation or dissolution of the Borrower.

(t) Material Project Contracts. The Borrower will not:

- (i) amend, assign, waive or modify in any material respect or terminate prior to the expiration of its term any Material Project Contract without the prior written consent of the Majority Bank Lenders; provided that, without the consent of any Bank Lenders, (A) the Borrower and the Department may enter into change orders under the DBFOM Agreement, the Borrower and the Design-Build Contractor may enter into change orders under the Design-Build Contract, the Borrower and O&M Contractor may enter into change orders under the O&M Contract, and the Borrower may enter into any amendments of any Material Project Contract or new agreements, in each case, required for compliance with the DBFOM Agreement or any change order or directive letter issued under the DBFOM Agreement, (B) the Borrower and the Design-Build Contractor may enter into change orders or amendments under the Design-Build Contract if such change (1) will not result in a Design-Build Contractor Default (as defined in the Design-Build Contract) for failure to achieve Passenger Service Availability prior to the Lenders' Long Stop Date (unless the Bank Lenders have consented to such extension), and (2) will not require the payment by the Borrower, net of any payments received from the Department or any other party for payment of the change order or amendment, in any year to exceed in the aggregate an amount equal to \$25,000,000 (the "Modification Threshold"), provided that any change order or amendment that results in exceeding the Modification Threshold on an individual or aggregate basis will be permitted (a) without the consent of the Majority Bank Lenders if (i) it is required by applicable law or (ii) the Borrower has certified, and the Lenders' Technical Advisor has confirmed, after due enquiry, that it does not dispute such certification, that, in their reasonable opinion, (A) no Funding Shortfall would occur due to such change order or amendment, (B) notwithstanding such change order or amendment, the Passenger Service Availability Date is reasonably expected to occur on or prior to the Lenders' Long Stop Date, and (C) that such change order or amendment would not reasonably be expected to have a Material Adverse Effect or (b) with the consent of the Majority Bank Lenders, and (C) the Borrower and the O&M Contractor may enter into change orders or amendments under the O&M Contract if such change will not require the payment by the Borrower, net of any payments received from the Department or any other party for payment of the change order or amendment, in any year to exceed in the aggregate an amount equal to \$5,000,000 (provided that any change order or amendment that results in exceeding the \$5,000,000 threshold on an individual basis will be permitted without the consent of any Bank Lenders if (i) it is required by applicable law, or (ii) the scope of work under the O&M Contract will not have been changed materially as a result thereof and (iii) the Borrower may amend, waive or terminate prior to the expiration of its term any Material Project Contract if such amendment, waiver or termination would not reasonably be expected to have a Material Adverse Effect, and if such Material Project Contract being terminated is the Design-Build Contract or the O&M Contract, it (A) is replaced by a replacement agreement between the Borrower and another counterparty (taking into consideration any applicable guarantor) of similar or greater creditworthiness and experience as the counterparty (and its guarantors, if applicable) being so replaced or with the

prior written consent of the Administrative Agent and (B) provides projected economic benefits for the APM Project that are, in light of the material risks and liabilities of such replacement contract taken as a whole, at least as favorable as the economic benefits for the APM Project of continuing under the existing contract, in light of the material risks and liabilities of such existing contract; provided that if any Material Project Contract or counterparty to a Material Project Contract is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, the Borrower will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any counterparty to such Material Project Contract, in form and substance substantially similar to the one being replaced or otherwise that is reasonably acceptable to the Administrative Agent; or

- (ii) except as provided for in the Base Financial Model, the Borrower will not enter into any material agreement that provides for a commitment by the Borrower or any obligation, contingent or otherwise, on the part of the Borrower, in either case in excess of \$5,000,000, except with or conditional upon the consent of the Administrative Agent, each acting reasonably, or as otherwise permitted under any Financing Document (including any agreement relating to Permitted Subordinated Indebtedness or any other agreements relating to Permitted Indebtedness).

(u) Permitted Investments: The Borrower will not make any investments other than Permitted Investments.

(v) Material Transactions With Affiliates: Other than the Transaction Documents in effect at Financial Close and certain other agreements described in the Design-Build Loan Facility Credit Agreement, the Borrower will not enter into any material transactions with any Affiliates unless such transaction is fair and commercially reasonable to the Borrower and contains terms no less favorable to the Borrower than those which would be included in an arm's-length transaction with a non-Affiliate; provided that the Design-Build Contract, the Design-Build Guarantees, O&M Contract, the O&M Guarantees, any technical assistance and management services agreement reflected in the Base Financial Model or any subsequent operating budget certified by the Lenders' Technical Advisor, and any development fees or letter of credit fees payable to the Equity Members or to any future equity owners of the Borrower are not to be deemed to violate this covenant.

(w) Fiscal Year, Jurisdiction, Name: The Borrower will not change its fiscal year, name or jurisdiction of formation without giving the Collateral Agent and the Administrative Agent prior written notice.

(x) Accounts: The Borrower will not open or fund any bank accounts except for the Project Accounts and such separate operating accounts as may be permitted by the Financing Documents, the Distribution Account, any accounts required to be established pursuant to the DBFOM Agreement, including, without limitation, the Handback Requirements Reserve Account, any accounts as may be contemplated to be established pursuant to the Design-Build Contract or the O&M Contract, any accounts permitted to be established pursuant to the Financing Documents and any other bank accounts established in the name of the Borrower if, in the reasonable judgment of the Borrower, the creation of such accounts will enable the Borrower to facilitate construction or operations or better administer the APM Project; provided that, to the extent such account is held outside of the Collateral Agency and Accounts Agreement, the Borrower will, prior to depositing any monies into any such account, enter into a control agreement covering such account so as to perfect the security interest created in favor of the Collateral Agent over such account and the monies therein.

(y) Abandonment: The Borrower will not, unless required or permitted under the DBFOM Agreement, abandon the Project, which abandonment will be deemed to have occurred if (i) the Borrower demonstrates through statements, acts or omissions an intent not to continue the Work, for any reason other than as permitted under the DBFOM Agreement or (ii) no significant Work on the APM Project or a material part thereof is performed for a continuous period of more than forty five (45) days (taking into account the Project Schedule, if applicable, and any Relief Event).

(z) Limited Liability Company Agreement: The Borrower will not amend or modify its limited liability company agreement in a manner that is materially adverse to the Secured Parties, other than any amendment or modification to permit a transfer of equity interests of the Borrower that would not result in a prohibited Equity Transfer under the DBFOM Agreement or is otherwise waived by the Department or is otherwise acceptable to the Majority Bank Lenders.

(aa) Partnership, etc.: The Borrower will enter into any partnership, joint venture, profit-sharing or similar arrangement whereby the Borrower's income or profits are shared with any person (except as may be contemplated by the limited liability company agreement of the Borrower) or form or have any subsidiaries, except in each case as permitted under the DBFOM Agreement, the Financing Documents or with the Administrative Agent's consent.

(bb) Lenders' Technical Advisor: The Borrower will neither terminate the mandate of the Lenders' Technical Advisor other than in accordance with the Lenders' Technical Advisor's engagement letter nor replace the Lenders' Technical Advisor prior to Final Completion without the prior written consent of the Bank Lenders (such consent not to be unreasonably withheld, conditioned or delayed).

(cc) Restricted Party: The Borrower will not extend or pay any funds received from the Bank Lenders to any Restricted Party.

#### **Events of Default under the Design-Build Loan Facility Credit Agreement**

The following events will be Events of Default under the Design-Build Loan Facility Credit Agreement (subject to certain cure periods, materiality and other qualifications, as applicable):

(a) The Borrower fails to pay any principal, interest or other sum owed under the Design-Build Loan Facility Credit Agreement within three Business Days after the same has become due and payable; provided that where such failure to pay is a result of a technical or an administrative error caused by a party other than the Borrower in connection with the administration of the accounts from which such payment is made or is due to be made (and, for clarity, without limiting Borrower's other cure rights set forth in the Design-Build Loan Facility Credit Agreement), the Borrower will have seven (7) additional Business Days after notice is received by the Borrower from the Administrative Agent requiring such payment to be made in which to cure such failure to pay.

(b) Any representation or warranty made by the Borrower in any Financing Document proves to have been incorrect in any material respect when made, and a Material Adverse Effect would reasonably be expected to result therefrom, unless the effect of such misrepresentation is capable of remedy and is remedied, as reasonably determined by the Administrative Agent, within 30 days after the Borrower's receipt of written notice from the Administrative Agent of such misrepresentation.

(c) The Borrower fails to comply with any affirmative or negative covenant in the Design-Build Loan Facility Credit Agreement (other than as expressly provided under the Design-Build Loan Facility Credit Agreement), unless such failure is capable of being remedied and is remedied within 45 days after the earlier of (i) written notice specifying such failure have been given to the Administrative Agent by the Borrower and (ii) written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by the Administrative Agent, or such longer period as is reasonably necessary under the circumstances to remedy such failure so long as corrective action is instituted by the Borrower within the applicable period and is diligently pursued until such failure is corrected (a) within 180 days after the date of such failure, or (b) otherwise, in such longer time frame agreed to with the prior written approval of the Majority Bank Lenders.

(d) The Borrower fails to maintain all required insurance, unless such failure is remedied within 10 Business Days after the earlier of (i) written notice specifying such failure shall have been given to the Administrative Agent by the Borrower or (ii) written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by the Administrative Agent.

(e) A Bankruptcy Event occurs with respect to the Borrower.



(f) Any Financing Document (except to the extent otherwise permitted) ceases to be in effect against the Borrower unless such document is replaced by a contract on substantially similar terms with a counterparty reasonably acceptable to the Administrative Agent within five Business Days following the earlier of (i) the Borrower's actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Collateral Agent and the Administrative Agent, or such longer period, reasonably necessary to effect such replacement except in the case of any rescission or repudiation of a Financing Document by the Borrower in writing, in which case no cure period will apply.

(g) Either (i) a Developer Default occurs and is continuing beyond any applicable cure period or has not been waived by the Department, and the Department is entitled to and serves a notice of termination to the Borrower pursuant to the terms of the DBFOM Agreement as a result thereof, or (ii) the Borrower fails to perform or observe any material term or obligation in any Material Project Contract (other than the DBFOM Agreement) and such failure constitutes an event of default under such Material Project Contract that has not been cured or waived within the grace period provided in such Material Project Contract and would reasonably be expected to result in a Material Adverse Effect; provided, however, that in each case, the Borrower shall be entitled to an extension of such time (such extension not to exceed ninety (90) days) if corrective action is instituted by the Borrower within the applicable period and diligently pursued until such failure is corrected and the Borrower has been granted a concurrent extension by the applicable counterparty under the respective Material Project Contract.

(h) A non-appealable final judgment for the payment of money in excess of ten million dollars (\$10,000,000), such amount to be adjusted annually in accordance with the Escalation Factor (and not covered by insurance) individually or such lesser aggregate amount which would reasonably be likely to have a Material Adverse Effect is entered against the Borrower and such judgment remains unsatisfied without any procurement of a stay of execution within 30 days.

(i) Any Security Document ceases (other than as expressly permitted under the Financing Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described therein other than as a result of actions or failure to act by the applicable Agent or any other Senior Secured Party, and with the priority purported to be created thereby.

(j) The DBFOM Agreement ceases to be valid and binding and in full force and effect (other than as a result of its expiration or any termination of the DBFOM Agreement in accordance with its terms) and such invalidity has not been remedied within 10 Business Days following the earlier of (i) the Borrower's actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Collateral Agent, the Department or the Administrative Agent.

(k) A termination of the DBFOM Agreement for Developer Default has occurred.

(l) An "Equity Transfer" or "Change of Control" that is prohibited under Section 20.1 of the DBFOM Agreement has occurred and, prior to the repayment of the Design-Build Loan Facility and solely in respect of an Equity Transfer or Change of Control requiring Department consent under the DBFOM Agreement, has not been approved by the Majority Bank Lenders.

(m) (i) The provider of any Equity Letter of Credit fails to honor its obligations to fund any draw request appropriately submitted thereunder and either (A) a replacement Acceptable Letter of Credit is not issued within 20 Business Days following such failure on substantially the same terms or (B) the applicable Equity Member has not cash collateralized its respective obligations in substitution of such Equity Letter of Credit within 20 Business Days following such failure or (ii) the Equity Members fails to make in full any Equity Contributions when required in accordance with the terms of the Equity Contribution Agreement (provided that if such Equity Member's obligations are secured by an Equity Letter of Credit with an undrawn amount equal to or greater than the amount of such Equity Contribution (or such Equity Letter of Credit will have been previously drawn and the proceeds thereof will have been deposited in an account as security), before any such failure will constitute an Event of Default, the Collateral Agent will be required to have made a drawing under the applicable Equity Letter of Credit supplied by such Equity Member pursuant to the Equity Contribution Agreement (or shall have withdrawn the applicable amount from the collateral account), and the proceeds of such drawing (if any) will have been insufficient to make the amount of such Equity Contribution in full), and such failure shall continue unremedied or unwaived for a period

of 20 Business Days; provided that with respect to each of clauses (i) and (ii) above, no Event of Default shall occur if before the last day in which such Default could have been remedied prior to an Event of Default occurring, any one or more Equity Members have made a cash contribution or replaced the Equity Letter of Credit with an Acceptable Letter of Credit sufficient to fund any deficiencies resulting after the applicable Equity Letters of Credit have been drawn (or after the withdrawal of any applicable cash collateral (it being understood that, in each case, any draw on a letter of credit provided by an Equity Member pursuant to the Equity Contribution Agreement within the cure periods described above shall satisfy the obligations of such Equity Member with respect to Equity Contributions to be made by such Equity Member and cure any default in respect thereof); provided, however, that if any of the events set forth above is caused by, or results from the action or inaction of, one (and not all) of the Equity Members, such event shall not constitute an Event of Default so long as such event is capable of being remedied by the other Equity Members and is remedied within twenty (20) Business Days after the Administrative Agent gives written notice thereof to such Equity Member, or, with the prior written approval of the Majority Bank Lenders, such longer period as is reasonably necessary under the circumstances to remedy such event.

(n) The Design-Build Contract becomes void, voidable, unenforceable or illegal or is terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless the Design-Build Contract is replaced as provided under the Design-Build Loan Facility Credit Agreement within 30 days following delivery of written notice thereof to the Borrower by the Administrative Agent or such longer period reasonably necessary to effect such replacement so long as the Borrower is diligently pursuing such replacement.

(o) The O&M Contract becomes void, voidable, unenforceable or illegal or is terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless the O&M Contract is replaced as provided under the Design-Build Loan Facility Credit Agreement within 30 days following delivery of written notice thereof to the Borrower by the Administrative Agent or such longer period reasonably necessary to effect such replacement so long as Borrower is diligently pursuing such replacement.

(p) A Bankruptcy Event occurs in respect of any member of the Design-Build Contractor, Design-Build Guarantor, member of the O&M Contractor or O&M Guarantor unless such party or guarantee is replaced by a replacement party or guarantee on substantially similar terms or other form of security from another counterparty of similar or greater creditworthiness as the counterparty being so replaced or with the prior written consent of the Administrative Agent, within 30 days following delivery of written notice thereof to the Borrower by the Administrative Agent or such longer period reasonably necessary to effect such replacement so long as Borrower is diligently pursuing such replacement, provided that the occurrence of any Event of Default pursuant to this clause will be subject to the Acceptable Remaining Party Principle.

(q) The Borrower fails to achieve Passenger Service Availability by the Lenders' Long Stop Date.

(r) Any Funding Shortfall occurs and continues unwaived and unremedied for a period in excess of 60 days of written notice having been received by the Borrower from the Administrative Agent or the Collateral Agent.

(s) An ERISA Event (as such term is defined in the Design-Build Loan Facility Credit Agreement) occurs, and such ERISA Event, together with all other ERISA Events, if any, results in or would reasonably be expected to result in a Material Adverse Effect.

(t) All or a material part of the APM Project is condemned or appropriated without appropriate compensation therefor, unless such condemnation or appropriation constitutes a Relief Event under the DBFOM Agreement or the Borrower has demonstrated to the reasonable satisfaction of the Administrative Agent, within 10 Business Days of such condemnation or appropriation, that such condemnation or appropriation will not have a Material Adverse Effect.

(u) Any failure to procure a Contingent Letter of Credit or retain the required amounts from the Design-Build Contractor, all in accordance with the Design-Build Contract, and such failure has not been remedied or waived within 20 Business Days.

(v) Any Financing Document is terminated by any Senior Secured Party, in accordance with its terms, by reason of any default or breach on the part of the Borrower or any Material Project Party, except as expressly permitted under any Financing Document.

(w) The occurrence of an “event of default” (howsoever described) with respect to the non-payment of any Indebtedness under any instrument or agreement governing Additional Senior Secured Obligations involving in the aggregate in excess of \$10,000,000, and the maturity of such Indebtedness is accelerated as a result thereof.

### **Remedies upon Event of Default under the Design-Build Loan Facility Credit Agreement**

Subject to the terms of the Intercreditor Agreement:

(a) upon the occurrence and during the continuance of an Event of Default, any Bank Lender may deliver to the Administrative Agent a written notice, with a copy to the Borrower and to the Department, that an Event of Default has occurred and is continuing;

(b) at any time during which an Event of Default has occurred and is continuing commencing on the date of delivery to the Administrative Agent of the notice described in clause (a) above (except with respect to a Bankruptcy Event of the Borrower, in which case no notice will be required), the Majority Bank Lenders will have the right to give the Administrative Agent one or more enforcement directions directing the Administrative Agent to take on behalf of the Bank Lenders, subject to applicable Law, whatever action at law or in equity may appear necessary or desirable to enforce the rights of the Bank Lenders; and

(c) upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, if so instructed by the Majority Bank Lenders, will by written notice to the Borrower and to the Department, take one or more of the following actions: (i) cancel any undrawn Design-Build Loan commitments; (ii) declare all outstanding Design-Build Loan Facility Obligations, all interest accrued and unpaid thereon, and all other amounts payable in respect of the Design-Build Loan Facility Obligations to be due and payable, whereupon the same will become immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are waived by the Borrower; or (iii) vote to instruct the Collateral Agent to foreclose on any or all of the Collateral or proceed to enforce all remedies available to the Administrative Agent or the Collateral Agent pursuant to the Financing Documents and the Intercreditor Agreement, provided that in case of any Bankruptcy Event with respect to the Borrower, the Design-Build Loan commitments will automatically terminate and the principal of the Design-Build Loans then outstanding, together with accrued interest thereon and all fees and other obligations accrued under the Design-Build Loan Facility Credit Agreement, will automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Borrower under the Design-Build Loan Facility Credit Agreement.

Additionally, under the Lenders’ Direct Agreement, the Department has prior approval rights in respect of appointment of any receiver at the behest of the Borrower, and with respect to any appointment of a receiver at the behest of any Secured Party, the Collateral Agent is obligated to provide notice to the Department and the Department may appear in any related proceedings.

### **Amendments, Changes and Modifications**

The Design-Build Loan Facility Credit Agreement may be amended, and any provisions under it waived, only by an instrument in writing executed by the Borrower, the Administrative Agent and the Majority Bank Lenders; provided, however, that no such instrument will (i) increase or decrease the Design-Build Loan commitment of any Bank Lender (and a waiver of any Default or Event of Default will not constitute an increase or decrease of any Design-Build Loan commitment) or extend the expiry date thereof or otherwise subject any Bank Lender to any additional obligation under the Design-Build Loan Facility Credit Agreement without the written consent of such Bank Lender, (ii) reduce the principal amount of any Design-Build Loan or reduce the rate of interest thereon, or reduce any commitment fees payable under the Design-Build Loan Facility Credit Agreement, without the written consent of each Bank Lender directly affected thereby, (iii) alter the provisions of the Design-Build Loan Facility Credit Agreement relating to the manner in which payments or prepayments of principal,

interest or any commitment fee payable under the Design-Build Loan Facility Credit Agreement will be applied as among the Bank Lenders without the written consent of each Bank Lender directly affected thereby, (iv) postpone any date fixed for, or change the currency of, payment of the principal amount of any Design-Build Loan, or any interest thereon, or any commitment fees payable under the Design-Build Loan Facility Credit Agreement, or reduce the amount of, waive or excuse any such payment, without the written consent of each Bank Lender directly affected thereby, (v) change the percentage of Bank Lenders, or the manner of determining the percentage of Bank Lenders, required for the Bank Lenders or any of them to take any action under the Design-Build Loan Facility Credit Agreement or otherwise alter this provisions relating to amendments without the written consent of each Bank Lender, (vi) waive or amend any provisions providing for the pro rata nature of disbursements by Bank Lenders without the written consent of each Lender, (vii) waive any condition precedent to the initial disbursement of the Design-Build Loan Facility without the written consent of each Bank Lender, or (viii) waive any condition precedent to subsequent disbursements of the Design-Build Loan Facility without the written consent of the Supermajority Bank Lenders.

## APPENDIX D-5

### SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT

*The following is a summary of selected provisions of the DBFOM Agreement and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement, including any technical requirements therein. A copy of such agreement is available, free of charge, upon request from the Borrower or the Trustee upon request by a bona fide prospective investor. Unless otherwise stated, any reference in this Official Statement to any agreement shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.*

**The information in this APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT” is not provided by the Department, but derived from information provided by the Borrower. The Department has not reviewed or approved and is not responsible for, and makes no representation, warranty or certification as to the adequacy or accuracy of the information set forth in this APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT” and is not responsible for any statements made herein. The Department disclaims any responsibility for the information set forth in this APPENDIX D-5—“SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT.”**

#### **Nature of Agreement; Term**

##### *Overview*

Pursuant to the DBFOM Agreement, the Department has granted to the Borrower the right, and the Borrower has agreed, to design, build, finance, operate and maintain the APM Project, including supply of the APM Operating System, performance of Renewal Work and handback of the APM Project at the end of the Term (as described below), and to perform such other activities relating to the foregoing for the APM Project that are not retained by the Department.

##### *Term*

The Term will end 30 years after the Financial Close Date, subject to the right of the parties to terminate the DBFOM Agreement early in accordance with the DBFOM Agreement.

#### **Provisions Relating to Financing of the Borrower’s Obligations**

##### *Responsibility for Financing*

The Borrower is solely responsible for obtaining and repaying, at its own cost and risk and without recourse to the City or the Department, all financing necessary for the Work that is the Borrower’s responsibility under the Contract Documents.

Except for the adjustments to the Base Capital MaxAP and Original Equity IRR related to Base Interest Rates fluctuations and credit spread risk mitigation, to be implemented at Financial Close in accordance with Exhibit 5F and Section 3.2.3 of the DBFOM Agreement, the Borrower bears all risk of any changes in the interest rate, payment provisions, collateral requirements, financing charges, breakage charges or the other terms of Project Debt and Committed Investment.

##### *Security*

The Borrower may grant security interests in or assign all (but not a portion of) the right, title and interest of the Borrower in, to, under or derived from the DBFOM Agreement and the other Contract Documents (the

“**Borrower’s Interest**”) to Lenders for purposes of securing the Project Debt, subject to the terms of the Contract Documents.

#### *Lenders’ Rights*

The Department has no obligation to any Lender under the Contract Documents, except to the extent of any express obligations of the Department to Lenders under any Direct Agreement or in any other instrument or agreement signed by the Department in favor of such Lender or Collateral Agent, provided that this does not preclude Lender enforcement of the DBFOM Agreement against the Department where the Lender has succeeded to the Borrower’s Interest, whether by way of assignment or subrogation.

Certain rights of the Department under the provisions of the DBFOM Agreement relating to Developer Default and termination are subject to the terms of any Lenders’ Direct Agreement.

Each financing agreement and security document subject to the Lenders’ Direct Agreement must require that the Collateral Agent deliver to the Department, concurrently with delivery to the Borrower or any other Person, any notice of default or notice of election or enforcement of remedies, including an election to sell or foreclose, notice of sale or foreclosure or other notice required by Law or by the security document in connection with the exercise of remedies under the financing agreement or security document.

Except as otherwise expressly provided in the DBFOM Agreement, neither the City nor the Department has any obligation to pay debt service on any Project Debt or any other debt issued or incurred by a Borrower-Related Entity and the Project Debt does not constitute indebtedness, or a pledge of the faith and credit, of the Department, the City or any department of the City. Except for a violation by the Department of its express obligations to Lenders in any Lenders’ Direct Agreement, no Lender is entitled to seek any damages or other amounts from the City or the Department or any other agency, instrumentality or department of the City, whether for Project Debt or any other amount. The foregoing is without prejudice to the Department’s liability to the Borrower for Termination Compensation that is measured in whole or in part by reference to outstanding Project Debt as discussed below (see “—Termination”).

#### *Refinancing*

##### Department Approval of Refinancings

For all Refinancings other than Exempt Refinancings and Rescue Refinancings, the Department’s prior written approval is required. The Department will have no obligations or liabilities in connection with any Refinancing other than its obligations relating to Lender’s rights in any Lenders’ Direct Agreement. If the Refinancing is with a new Lender, the new Lender may accede to an existing Lenders’ Direct Agreement or the Department is obliged to enter into a new Lenders’ Direct Agreement with the new Lender, if such Lender so elects.

“**Exempt Refinancing**” means: (a) any Refinancing that was fully and specifically identified and taken into account in the Base Case Financial Model; (b) (i) amendments, modifications, supplements or consents to financing agreements and security documents, and (ii) the exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision that, in either case, do not, individually or in the aggregate, provide a financial benefit to the Borrower; (c) movement of monies between the APM Project accounts in accordance with the terms of financing agreements and security documents; (d) any of the following acts by a Lender of senior lien priority Project Debt: (i) the syndication of any of such Lender’s rights and interests in the senior Financing Agreements; (ii) the grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, with respect to the senior financing agreements in favor of any other Lender of senior lien Project Debt or any other investor; or (iii) the grant by such Lender of any other form of benefit or interest in either the senior financing agreements or the revenues or assets of the Borrower, whether by way of security or otherwise, in favor of any other Lender of senior lien Project Debt or any investor; and (e) periodic resetting and remarketing of tax-exempt or taxable bonds that bear interest at a variable or floating rate and are money market eligible under SEC Rule 2a-7.

***“Rescue Refinancing”*** means any Refinancing that: (a) occurs due to the failure or imminent failure of the Borrower to comply with any material financial obligation under any financing agreement or security document; (b) results in the cure of such failure or imminent failure; (c) Does not result in an increase in the Equity IRR beyond the Original Equity IRR; and (d) does not result, singly or in the aggregate, in an actual or potential increase of the Lenders’ Liabilities (determined without including any Exempt Refinancings) by more than ten percent.

In connection with any proposed Refinancing (except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing), the Borrower is required to submit to the Department promptly, at least 90 days before the proposed date for the Refinancing, a summary of the proposed Refinancing, together with a schedule setting forth the various activities, each with schedule durations, to be accomplished from commencement through the close of the proposed Refinancing.

The Borrower is required to provide draft proposed financing agreements and security documents (or term sheets therefor), available Refinancing Data, and any other submittals required by Exhibit 5C of the DBFOM Agreement at least 45 days before the proposed date for closing any Refinancing (except an Exempt Refinancing under clauses (b), (c) or (d) of the definition of Exempt Refinancing) and, if applicable, provide notice to the Department of the facts supporting the basis for characterization of the transaction as an Exempt Refinancing or Rescue Refinancing.

Within 15 days after receipt of the materials required under the immediately preceding paragraph, the Department will provide notice to the Borrower the Department’s determination (a) whether the proposed Refinancing is an Exempt Refinancing or Rescue Refinancing, and if neither, (b) whether to approve or disapprove the proposed Refinancing and, if approved, (c) whether the proposed Refinancing will result in a Refinancing Gain. The Department’s failure to deliver to the Borrower notice of such determination and selection within such time period will not prejudice the Department’s right to disapprove the proposed Refinancing, to receive any portion of Refinancing Gain, or its selection of the means for payment of such portion.

The Borrower is required to deliver to the Department copies of all signed financing agreements and security documents in connection with any Refinancing, and the final Refinancing Data.

#### Sharing of Refinancing Gain

Within ten Business Days after close of any Refinancing, the Department and the Borrower are required to meet and confer to agree upon the final calculation of the Refinancing Gain. Once the final calculation is made, the Borrower is obliged to pay the Department its portion of the Refinancing in accordance with the Department’s selected method of payment. If there is any dispute regarding the amount owing, the Borrower is required to pay the undisputed amount to the Department and the amount in dispute will be subject to resolution under the Dispute Resolution Procedures.

The Department is entitled to receive 50 percent of any Refinancing Gain attributable to a Refinancing other than an Exempt Refinancing. The parties are required to negotiate in good faith to determine the method by which the Department will receive its portion of the Refinancing Gain, if applicable, which includes one or a combination of (a) a single lump sum payment or (b) a credit or payment by the Borrower to the Department that effectively reduces the Availability Payments over the remaining Term.

If the Department renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering a consent and estoppel certificate under the Lenders’ Direct Agreement, then concurrently with close of the Refinancing, the Borrower is required to reimburse the Department all of the Department’s Recoverable Costs incurred in connection with the Refinancing.

The Borrower bears all risks for any Refinancing that negatively affects its Equity IRR, debt service coverage ratios or financial performance.

### *Equity and Debt Requirements through the Passenger Service Availability*

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

### *Updates to the Financial Model*

#### Permitted Updates

In connection with any Relevant Event (including Compensation Events for which the Department owes compensation and has elected to pay as an adjustment to the Availability Payments and Refinancings for which a portion of the Refinancing Gain is payable to the Department) that entitles either party to the payment of any amount, the Borrower may, in consultation with the Department, prepare an updated Financial Model (each, a “**Financial Model Update**”) to reflect the financial impacts of such Relevant Event and calculate the amount due to either party as a result of the Relevant Event. A Financial Model Update: (a) may incorporate only the following revisions: (i) changes to the Borrower’s cash revenues and expenses that arise directly from the Relevant Event; and (ii) consequential changes to the Project Debt draw down schedule, funding and release of reserves, financing costs, debt service schedule and amounts, Equity Investment draw down schedule and the Borrower’s Distributions schedule and amounts; and

(b) may not: (i) incorporate other information or assumptions based on the Borrower’s actual APM Project financial performance (except as permitted pursuant to the provisions relating to the calculation of a Refinancing Gain in the case of a Financial Model Update related to a Refinancing); or (ii) generally update projections through the end of the Term based on current market conditions.

No Financial Model Update will have any effect on the rights and obligations of the parties under the DBFOM Agreement until both parties have agreed in writing to accept it as an amendment to the DBFOM Agreement.

#### No Better; No Worse

Where the Borrower is entitled to adjustments to the payments between the parties in connection with certain events, including a Compensation Event, the proposed adjustments are required to be calculated by solving the Financial Model Update so that the Borrower is left in a “no better and no worse” financial position under the Financial Model Update relative to its financial position under the Financial Model then in effect under the DBFOM Agreement. The Borrower will be deemed to be in a “no better no worse” financial position based on the following:

(a) the key ratios set forth in the Financial Model Update are equal to the key ratios set forth in the Financial Model then in effect;

(b) the Equity IRR set forth in the Financial Model Update is substantially equal to the Equity IRR set forth in the Financial Model then in effect (i.e., the difference, if any, is not greater than one basis point (being 0.01 percent); and

(c) the Relevant Event does not result in a material adverse or beneficial effect on the Borrower’s ability to comply with and perform its obligations and exercise its rights under the Contract Documents and the Financing Documents.



## Management Systems, Oversight & Independent Engineer

### *Project Management Plan; O&M Management Plan*

The Borrower is required to develop the Project Management Plan and the O&M Management Plan, in accordance with the applicable requirements of the Technical Provisions and Good Industry Practice, including those requirements applicable to quality assurance and quality control.

The Borrower is required to submit to the Department, in accordance with the procedures and timeline described in the Technical Provisions, each component part, plan and other documentation of the Project Management Plan and O&M Management Plan, and any proposed changes or additions to or revisions of any such component part, plan or other documentation. The Project Management Plan PMP Approval must be approved prior to NTP 2 and the Borrower is not permitted to commence any aspect of the D&C Work before approval of the relevant component parts, plans and other documentation of the Project Management Plan applicable to such D&C Work. The Borrower is not permitted to commence any aspect of the O&M Work before approval of the relevant component parts, plans and other documentation of the O&M Management Plan applicable to such O&M Work.

### *Oversight & Testing*

The Department has the right at all times to conduct monitoring, inspecting, sampling, measuring, spot-checking, reviewing, attending, observing, testing, investigating, auditing and conducting any other ongoing oversight respecting any part or aspect of the APM Project or the Work (“**Oversight**”). Such Oversight may include assessments regarding compliance with the Contract Documents, Project Management Plan, the O&M Management Plan and requirements of applicable Governmental Entities and applicable Law. The Department may designate any Person or Persons to carry out any Oversight on the Department’s behalf.

The Department also has the right, but not the obligation, to conduct “over-the-shoulder” reviews of Design Documents and other Submittals.

The Department may attend and witness any tests and verifications to be conducted with respect to the APM Project and the Borrower is required to give the Department timely advance notice (not less than ten Business Days) of the date and specific location of such tests. The Borrower is required to provide to the Department all test results and reports (in electronic format in accordance with the Technical Provisions) within ten Business Days after the Borrower or its Contractor receives them. Where the Work impacts a Utility or an element subject to the jurisdiction of an Authority Having Jurisdiction, then the affected Utility Owner or Authority Having Jurisdiction, as applicable, has the same rights as the Department to attend such testing and receive such reports, subject to the same obligations that apply to the Department as described immediately below.

Whenever the Department or its representatives are present on the Site (including the APM Operating System assembly facility) and production facilities, including while conducting Oversight, they are required to abide by the applicable Contractor’s reasonable, non-discriminatory safety policies and practices and take appropriate measures to avoid unreasonable interference with normal construction activity or normal operation and maintenance activity.

### *Independent Engineer*

Following Financial Close, the parties are required to select an Independent Engineer to verify whether the conditions to Passenger Service Availability and Final Completion have been met (see “—Design and Construction—*Completion*”), to make a recommendation regarding the Handback Reserve Amount and to verify whether the Handback Requirements have been met (see “—Handback”).

The Independent Engineer is to be appointed jointly by the parties and is required to act independently from and not as an agent of either party. The Borrower is responsible for: (a) all costs of conducting the Independent Engineer solicitation (but has no obligation to reimburse the Department for the Department’s costs relating to the solicitation) and (b) all amounts payable under the terms of the agreement with the Independent Engineer for the

Independent Engineer role verifying satisfaction of the conditions to Passenger Service Availability and Final Completion. The Department is responsible for: (a) all costs of conducting the Independent Engineer solicitation (but has no obligation to reimburse the Borrower for the Borrower's costs relating to the solicitation) and (b) all amounts payable under the terms of the agreement with the Independent Engineer for the Independent Engineer role in connection with Handback.

## **General Borrower Obligations**

### *Governmental Approvals*

The Department is responsible for obtaining the Final Environmental Impact Report under CEQA and the FAA Finding/Record of Decision under NEPA for the LAX Landside Access Modernization Program, each as listed in Exhibit 8 of the DBFOM Agreement (the "**LAWA-Provided Approvals**"). The parties agreed that, as of the Effective Date, all such the LAWA-Provided Approvals have been issued. The Department is responsible, subject to certain limitations, for costs of litigation relating to the LAWA-Provided Approvals. The Borrower is required to provide support to the Department with respect to any modifications, renewals and extensions of the LAWA-Provided Approvals, including those required as the result of Borrower's design and Relief Events.

The Borrower is required to obtain all other Governmental Approvals required for the APM Project and the Work and, except to the extent required as a result of a LAWA Change or a Compensation Event as described under clause (s) (relating to delays in certain Governmental Approvals) or (t) (relating to breach by the City or LA Metro of their respective obligations under the Cooperation Agreements) of the definition of Compensation Event, bears the risk of any delay in obtaining such approvals as well as the risk of conditions imposed on performance of the Work by such approvals. The Borrower is also required to bear the cost of obtaining such approvals, subject to limited exceptions. The Borrower is required to deliver to the Department true and complete copies of all new or amended Governmental Approvals other than the Department-Provided Approvals.

As between the Department and the Borrower, the Borrower bears all risk arising out of, relating to or resulting from:

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

If the Borrower wishes to obtain, modify, renew or extend any Governmental Approvals, the Borrower is required to first comply with, and obtain any consent or waiver required in accordance with, then-existing agreements between the Department and other Governmental Entities. The Borrower may, by notice to the Department, request the Department's reasonable assistance and cooperation in obtaining modifying, renewing or extending any Governmental Approvals. Subject to an agreed upon scope of work and budget and to any rights of the Borrower in the case of a Relief Event, the Borrower is required to fully reimburse the Department for the Department's Recoverable Costs incurred in providing such assistance and cooperation, including those incurred to conduct further or supplemental environmental studies.

Throughout the Term and the conduct of the Work, the Borrower is required to:

- (a) comply with all applicable Laws, including, without limitation, all Environmental Laws and all accessibility Laws;

(b) comply with all conditions, and requirements imposed by all Governmental Approvals, except with respect to Environmental Approvals only, to those obligations, commitments and responsibilities of the Department that (i) specifically do not relate to the APM Project or (ii) are expressly excluded from the Borrower's scope of Work; and

(c) undertake all actions required by, or necessary to maintain in full force and effect all Governmental Approvals to be obtained by the Borrower.

#### *Access by the Department*

The Borrower is required to provide the Department, the Department's representatives and the Independent Engineer with (a) safe and unrestricted access to the Site and the APM Project at all times, (b) safe access during normal business hours to the Borrower's APM Project offices, operations buildings and Temporary Areas (including the APM Operating System assembly facility and production facilities). The Department must provide at least one Business Day's written notice in advance of visits to APM Operating System assembly facility and production facilities.

#### *Coordination*

The Borrower is prohibited from interfering with the work of or causing any delay to any other contractors that may be carrying out work within the Site or in the land adjoining or near the Site and is required to allow them reasonable access to the Site, provided that temporary interruption to the work of any such contractors are permitted where agreed to in advance in accordance with applicable procedures or is reasonably necessary in accordance with Law and Good Industry Practice to respond to emergencies.

#### *Interfacing Projects*

The Borrower is required to coordinate APM Project design and construction activities with certain facilities that are not the Borrower's responsibility but which interfere with the Work (the "**Related Projects**"), such as, among others, the design and construction of a new consolidated rental car facility and adjacent roadways, the first phase of construction of a new intermodal transportation parking facility, and the design and construction of cellular equipment for the APM system as required and the Borrower is required to sequence the Work so as to mitigate interference with the operations of other contractors engaged on Related Projects.

Exhibit 10 to the DBFOM Agreement sets forth certain interface obligations under the DBFOM Agreement which the Borrower must comply with in respect of certain of the key Related Projects in addition to the foregoing general obligations. The Department agrees to include such substantially similar interface provisions in its corresponding contract with the party developing each such Related Project.

#### *Cooperation Agreements*

The Department is party to (a) a Master Cooperative Agreement for the Landside Access Modernization Project and the Airport Metro Connector Station by and between the Department and the Los Angeles County Metropolitan Transportation Authority (the "**LACMTA Agreement**") and (b) a Master Memorandum of Understanding for Project Delivery of the Los Angeles World Airports Landside Access Modernization Project by and between the Department and the City of Los Angeles Departments (the "**City Agreement**") and together with the LACMTA Agreement, the "**Cooperation Agreements**").

The Borrower is required to comply with the Cooperation Agreements throughout performance of the Work, and except as otherwise specified, to assume and perform or cause to be performed:

(a) all obligations described in the Cooperation Agreements as obligations of the Department's contractors; and

(b) on behalf of the Department, the Department's obligations and liabilities under the Cooperation Agreements, excluding any liabilities of the Department that accrued before the Effective Date pursuant to any indemnities to Third Parties under the Cooperation Agreements, provided that the foregoing does not relieve the Borrower from its responsibilities and liabilities relating to the Early Works under the Early Works Agreement.

At the Borrower's request, the Department is obliged to provide reasonable assistance to the Borrower in obtaining cooperation and coordination from the parties to the Cooperation Agreements and in enforcing rights, remedies and warranties that the Department may have against any such parties.

#### *Safety Compliance*

The Department may from time to time issue Safety Compliance Orders to the Borrower with respect to the APM Project to implement Safety Compliance (including improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement, changes in configuration, or procedures implemented to correct a specific safety condition or risk that the Department has reasonably determined but excluding a safety condition or risk that exists by reason of a failure by the Borrower). Except in the case of an Emergency, the Department is required to consult with the Borrower before issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts and the availability of the Borrower resources to fund the Safety Compliance work. The Borrower is required to implement each Safety Compliance Order as expeditiously as reasonably possible following its issuance and diligently prosecute the work necessary to achieve such Safety Compliance. Subject to the provisions of the DBFOM Agreement, issuance by the Department of a Safety Compliance Order constitutes a Compensation Event.

#### *Law Enforcement Services and Incident Response*

The Borrower agrees that the Airport Police and other law enforcement agencies are empowered to enforce all applicable Laws and to enter the APM Project, and that any person engaged by the Department to provide law enforcement services has the authority to enter the APM Project (including Vehicles, Stations and APM Project facilities), at any and all times to carry out their duties. The Borrower is required to ensure that the Airport Police and other law enforcement agencies have necessary access to the APM Project to carry out their duties, power and jurisdiction. The Department does have any liability or obligation to the Borrower arising out of, relating to or resulting from the failure of the Airport Police or any other law enforcement agency to provide services, or any of their, or their respective agents' or employees', acts, omissions, negligence or misconduct in providing services.

The Borrower is required to comply with all rules, directives and guidance of the U.S. Department of Homeland Security and other comparable agencies, and to coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services.

#### *Alternative Technical Concepts*

As part of its Proposal, and pursuant to the terms of the RFP, the Borrower proposed certain alternative technical concepts, constituting approved deviations from the Technical Provisions. The Borrower acknowledges and agrees pursuant to the DBFOM Agreement that:

(a) it has sole responsibility for obtaining, and is required to use good faith efforts to obtain, any Third Party approvals required to implement Alternative Technical Concepts; and

(b) if any condition in the Department's pre-approval of an Alternative Technical Concept has not been met as of the Effective Date, the Borrower is required to (i) ensure that such condition is satisfied before implementing the Alternative Technical Concept and (ii) use its good-faith efforts to satisfy such condition.

If the Borrower cannot obtain any approval required to implement Alternative Technical Concepts, fails to satisfy any such condition or fails in any other way to implement the approved Alternative Technical Concept, it is required to provide notice to the Department's Authorized Representative and comply with the corresponding baseline requirements (unmodified by the Alternative Technical Concept) at its cost, without any additional

compensation, time extension or other basis for any Claim. To the extent an Alternative Technical Concept represented additional Work or higher-quality materials from what is otherwise required by the Contract Documents and resulted in a total net increase in amounts payable by the Department under the Contract Documents (accounting both for costs incurred during the D&C Period and the O&M Period), the Department is entitled to a credit for the net present value of the reduced cost (using the Borrower's weighted average cost of debt projected in the Financial Model at Financial Close as the discount rate and calculated as of the scheduled Financial Close Date) of reverting to the baseline requirements of the Contract Documents, including reduced costs relating to financing and equity investment.

### *Warranties*

#### Warranties for Non-O&M Facilities

The D&C Work includes certain Non-O&M Facilities for which the Borrower is not required to perform operations and maintenance during the O&M Period. (See “—Design and Construction—Non-O&M Facilities”).

The Borrower warrants each Non-O&M Facility against Non-O&M Facilities Defects during the period commencing on Non-O&M Facility Occupancy Readiness of the Non-O&M Facility and ending two years thereafter (each, a “**Non-O&M Facilities Warranty Period**”). The Borrower is required to perform, at the Borrower's sole cost and expense, Non-O&M Facilities Warranty Work for any Non-O&M Facilities Defect the Borrower receives notice of, or otherwise has actual knowledge of, within the applicable Non-O&M Facilities Warranty Period.

The Borrower is required to commence the applicable Non-O&M Facilities Warranty Work within 14 days of written notice of the relevant Non-O&M Facilities Defect from the Department or the Borrower's actual knowledge thereof, whichever is earlier; or such shorter period as may be designated by the Department for emergency repairs and thereafter diligently complete the Non-O&M Facilities Warranty Work as soon as reasonably practicable. If the Borrower fails to commence or pursue with diligence and complete the Non-O&M Facilities Warranty Work as required, the Department may, in its sole discretion, perform the Non-O&M Facilities Warranty Work upon written notice to the Borrower and the Borrower is required to reimburse the Department within seven days after any written demand from the Department for all costs and expenses incurred by the Department in connection with the performance of the Non-O&M Facilities Warranty Work.

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

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

#### Contractor Warranties and Guaranties

The Borrower is required to obtain from all Contractors representations, warranties, guarantees and obligations in accordance with Good Industry Practice for work of similar scope and scale, which extend not only to the Borrower but also to the Department and any Utility Owner or Authority Having Jurisdiction for whom Work is being performed. The warranties from Key Contractors are required to be for such periods as specified in the Technical Provisions or, if not specified, a period of not less than one year from the date of the applicable Certificate of Non-O&M Facility Occupancy Readiness or the Certificate of Passenger Service Availability, as applicable.

To the extent that any Contractor warranty or guaranty is voided after termination of the DBFOM Agreement by reason of the Borrower's negligence or failure to comply with the requirements of the Contract

Documents in incorporating material or equipment into the APM Project, the Borrower is required to correct any defects which would otherwise have been covered by such warranty.

The Borrower is required to include provisions in Contracts for Renewal Work during the last two years of the Term ensuring that warranties and guaranties under such Contracts inure to the benefit of both the Department and the Borrower.

#### Warranties for Utility Owners and Authorities Having Jurisdiction

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

#### *Title*

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

### **Design and Construction**

#### *General Design and Construction Obligations*

The Borrower is required to: (a) expeditiously and diligently progress performance of all Work to be performed to achieve Final Completion, including Design Work and Construction Work, (the “**D&C Work**”), with the goal of achieving Passenger Service Availability by the Planned Early PSA Date; (b) carry out or do all things necessary to perform the D&C Work and design and construct the APM Project in accordance with the Contract Documents and Good Industry Practice; (c) ensure that the APM System is fit for its intended function and uses and meets the requirements of the Contract Documents; (d) provide maintenance and other services in connection with its obligation to have full charge and care of the Site; (e) ensure adequate materials, equipment and resources are available to ensure compliance with the requirements of the Contract Documents; (f) ensure all materials and equipment are of good quality and new, unless otherwise expressly stated; (g) ensure the APM Project will be free of defects, including design defects, errors and omissions; (h) ensure the Site is kept in a neat and clean condition at all times; (i) cooperate with the Department and Authorities Having Jurisdiction in all matters relating to the D&C Work, including their review, inspection and oversight of D&C Work; (j) remove and replace Nonconforming Work and/or materials or otherwise remedy such Nonconforming Work and/or materials in an acceptable manner in accordance with the Contract Documents and (k) pay all direct and indirect costs for all Utility services required to perform and complete the D&C Work in accordance with the requirements of the Contract Documents.

#### *Schedule & Float*

The parties are required to use the Project Schedule, as approved by the Department, for planning and monitoring the progress of the D&C Work. The Project Schedule is required to include the Planned Early PSA Date.

The Borrower may, at any time but not later than 18 months prior to March 31, 2023, exercise a one-time election to commit to earlier completion of the APM Project. To exercise this election, the Borrower must submit to the Department a revised Project Schedule specifying an earlier Planned Early PSA Date, provided such date is not earlier than December 31, 2022. Upon acceptance by the Department of the Borrower's revised Project Schedule, the revised Project Schedule will become the Project Schedule and the Planned Early PSA Date will be reset as specified in such schedule.

All float contained in the Project Schedule, as shown in the Baseline Schedule or as generated during the course of the Work, is available to both the Department and the Borrower and is not to be considered as time for exclusive use or benefit of either the Department or the Borrower.

Except in respect of work required to achieve Financial Close, the Borrower is not permitted to commence any Work until the Department has issued NTP 1 authorizing commencement of non-Construction Work. The Department is required to promptly issue NTP 1 when all of the conditions set forth in Exhibit 15A to the DBFOM Agreement have been satisfied. The Borrower is also not permitted to commence any portion of the Construction Work until the Department has issued NTP 2 authorizing commencement of the applicable portion of Construction Work. The Department is required to promptly issue NTP 2 when all of the conditions set forth in Exhibit 15B to the DBFOM Agreement have been satisfied.

#### *Acquisition of Real Property*

##### Project ROW Property Acquisition

The Department is required to provide the Borrower with rights of access to the Project ROW properties identified within the D&C Limits as identified in the relevant Technical Provisions by the dates specified in the Property Acquisition Schedule.

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

##### Additional Acquisitions

If the Borrower identifies any property that is not subject to the above obligations of the Department but that the Borrower seeks to add to the Project ROW to accommodate the Borrower's particular design or for the Borrower's convenience in performing the Work, then the Borrower may submit to the Department a request for acquisition of additional property interests and related documentation in accordance with the Technical Provisions, including appropriate documentation of basis of acquisition and justification of acquisition together with an analysis identifying alternative approaches that could be adopted to avoid the need for the acquisition.

If the Department chooses to acquire such property proposed for acquisition by the Borrower pursuant to the procedure above ("**Additional Properties**"), the Department is required to proceed with the acquisition and add such real-property interests to the Property Acquisition Schedule.

The Borrower is responsible for the cost to acquire Additional Properties, together with all costs and expenses incurred by the Department, in connection with acquiring Additional Properties, and bears all risk of delays related to acquisition of Additional Properties.

##### Temporary Interests in Property

The Borrower is solely responsible for acquisition of any temporary interests in property that the Borrower determines is necessary, desirable or advisable to obtain in connection with the APM Project or the Work. The Borrower is required to pay directly the cost to acquire, maintain, operate, and/or dispose of all such property

interests. If the property is within the limits of any real property scheduled for acquisition by the Department or is intended to be used for permanent improvements, or if the Borrower intends to request the Department to acquire such real property, the Borrower is required to coordinate with the Department and is not permitted to negotiate with the owner(s) of such interests except with express permission of the Department and in compliance with applicable Law.

The Department has no obligation to acquire temporary interests in property and the Borrower bears the risk of any delays and cost impacts related to acquisition of temporary interests, regardless of whether the Department agrees to undertake any such acquisition.

#### *Site Conditions*

The Borrower acknowledges and agrees that:

(a) it has investigated and satisfied itself as to the conditions affecting the D&C Work, including those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather or similar physical conditions at the Site, the conformation and conditions of the ground and the character of equipment and facilities needed in connection with the D&C Work;

(b) it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including the results of exploratory work and other information publicly available or provided by the Department;

(c) any failure by the Borrower to acquaint itself with the available information relating to the conditions affecting the D&C Work will not relieve the Borrower from responsibility for estimating properly the difficulty or cost of successfully performing the D&C Work.

If, during the progress of the Work, the Borrower encounters any Hazardous Materials or other Site conditions that may entitle the Borrower to claim that a Relief Event has occurred, then the Borrower is required to notify the Department of the specific condition promptly before it is disturbed, or as soon as practicable afterwards, and before the affected Work continues. The Department is required to promptly investigate such conditions.

#### *Utilities*

##### General Obligations in connection with Utility Adjustments

The Borrower is required to coordinate with Utility owners and coordinate and cause each relocation (temporary or permanent), abandonment, protection in place, removal (of previously abandoned utility facilities as well as newly-abandoned facilities), replacement, reinstallation and/or modification of existing Utilities necessary to accommodate the APM Project or the Work (each a “**Utility Adjustment**”) in accordance with the Project Schedule and the requirements of the Contract Documents; make reasonable efforts to design around existing Utilities; conduct reasonable site investigation and exploration before commencement of Construction Work or Renewal Work in any particular area to correctly identify all Utilities in the area; submit to the Department utility relocation plans identifying each Utility Adjustment and timelines for obtaining approval of the applicable owner or operator of such Utility (the “**Utility Owner**”) and completing the Utility Adjustment; develop project execution plans showing existing and proposed Utility locations and determine work responsibility for Utility Adjustments with the applicable Utility Owner; for Utility Adjustments involving the City, Los Angeles County or LA Metro, comply with the Borrower’s obligations relating to the applicable Cooperation Agreement; obtain necessary permits for each Utility Adjustment; and obtain Utility Owner pre-approval of Contractors and/or Suppliers performing certain Utility Work if required by Utility Owner; before commencing Construction Work or Renewal Work on a particular Utility Adjustment, obtain the relevant Utility Owner’s approval in accordance with the Technical Provisions and Good Industry Practice.



If a Utility Owner performs all or any part of the Utility Adjustments the Borrower is required work, coordinate, monitor and otherwise undertake the necessary efforts to cause such Utility Owner to perform such work timely, in coordination with the Work, and in compliance with the Contract Documents.

The Borrower is required to keep the Department informed of any concerns regarding work by Utility Owners, and the Department agrees to cooperate as reasonably requested by the Borrower to ensure proper performance by the Utility Owners.

The Borrower is responsible for proper completion of the Utility Work required for the APM Project, in accordance with the Contract Documents, regardless of whether the Borrower or its Contractors, or the Utility Owner or its contractors, is performing the Utility Work.

The Borrower is also responsible for:

- (a) all costs of Utility Work performed by Borrower-Related Entities;
- (b) all payments owing to Utility Owners for Utility Work performed by such owners that is within the scope of the Utility Owners' Costs Account (as specified below) not to exceed \$50 million, with any payments owing to Utility Owners for Utility Work performed by Utility Owners in excess that amount to be addressed as a LAWA Change; and
- (c) all costs of incidental utility work necessary for the construction of the APM Project, being:
  - (i) Temporary Relocations;
  - (ii) relocations of Service Lines;
  - (iii) Protections in Place;
  - (iv) the adjustment of utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work;
  - (v) all work necessary to remove any utilities (whether or not in use as of the Financial Proposal due date) in situations for which leaving the utilities in place is not feasible or not permitted, or for facilities which the Borrower proposes be removed to accommodate or permit construction of the APM Project, regardless of whether replacements for such utilities are being installed in other locations; and
  - (vi) all work necessary to abandon in place any utility in accordance with proper procedures (e.g., flushing, capping, slurry backfill, etc.) (the "**Incidental Utility Work**").

The Department is not responsible for Utility Work costs except as specifically provided in the Contract Documents (see "—Relief Events—Compensation Events and Non-Compensation Events").

#### Utility Betterments

If a Utility Owner requests that the Department permit the Borrower to perform work relating to Utility Betterments as a part of the Work, at the Utility Owner's expense, and if the Department's Authorized Representative approves any such request, the Borrower is required to perform such work, with the right to receive additional payment by direct payment from the Utility Owner.

Pursuant to the DBFOM Agreement, the Department is only permitted to approve the addition of a Utility Betterment to the scope of the Work if: (a) the Utility Owner has agreed in writing to the addition of such Utility Betterment to the Work; (b) the Department determines that such Utility Betterment is compatible with the APM Project and will not delay the Critical Path; (c) the Department determines that it is feasible to separate the

cost/pricing for the Utility Betterment work from that for any related Utility Work being furnished or performed by the Borrower; (d) the Utility Owner has agreed to reimburse the Department or pay the Borrower directly for all the costs of the Utility Betterment; and (e) the Utility Owner has agreed to the method of pricing such Work. The Borrower is required to provide the Department with such information, analyses and certificates as may be requested by the Department in connection with its review of the Utility Betterment.

#### Utility Adjustment Delays

To be eligible for any relief pursuant to clause (r) (relating to delay relating to Utilities not subject to a Cooperation Agreement) and clause (t) (relating to Utilities subject to a Cooperation Agreement) of the definition of Compensation Event, the Borrower must, in addition to complying with the general requirements relating to Relief Events, establish that:

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

#### *Utility Adjustments Performed by Utility Owners; Utility Owners' Costs Account*

The Borrower is required to establish and fund at Financial Close a Utility Owners' Costs Account in the amount of \$50 million. The Borrower may use the funds in the Utility Owners' Costs Account upon certification to the Department (acceptable to the Department) that the following conditions have been satisfied: (a) a Utility Owner wishes to perform Utility Work indicated as Utility Owner's responsibility in the Technical Provisions; (b) the Borrower has in good faith negotiated with the Utility Owner the scope and costs for such Utility Work; (c) the Borrower has submitted to the Department a detailed description of the Utility Work and the Utility Owner's price for the work and obtained the Department's approval of such scope of work and price; and (d) the Borrower has demonstrated that the funds drawn from the Utility Owners' Costs Account will be paid to the Utility Owner for performance of such work.

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

#### *Hazardous Materials Management*

##### Management Obligations

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

The Borrower has duties under the DBFOM Agreement to identify, avoid, minimize and mitigate adverse monetary and non-monetary impacts to the APM Project and to the Department relating to Hazardous Materials.

The Borrower is required to promptly provide notice to the Department of any Hazardous Materials encountered in connection with the APM Project, the Site or the Work that require (a) reporting or notice to any

Governmental Entity and/or (b) taking any response action (e.g., evaluating and addressing the circumstances and location of the Hazardous Materials) under applicable Law, Governmental Approvals, the approved Environmental Protection Program and the Contract Documents, as applicable.

#### Risk Allocation

The Borrower is also required to manage all Pre-Existing Hazardous Materials encountered in connection with the APM Project, in compliance with applicable Law, subject to the following:

(a) to the extent circumstances warrant off-site disposal of any Pre-Existing Hazardous Materials, the Borrower is required to manage and dispose of such materials in accordance with the Environmental and Hazardous Material Response Plan. The Borrower (i) is required to ensure that each destination facility to which any Hazardous Materials will be transported is properly licensed under applicable Law to receive the specific Hazardous Materials to be transported to that facility; (ii) may not dispose of Hazardous Materials at any Superfund Sites; (iii) is required to take all reasonable efforts to not dispose of Hazardous Materials at any other site that is the subject of any response, remediation, enforcement, cease and desist, cleanup or abatement order issued by any state or federal agency pursuant to any Environmental Law; and (iv) is required to prepare manifests for review and signature by the Department's Authorized Representative (at the time that the Hazardous Materials are loaded on the transport truck on Site), provide all related forms required for transportation and disposal of the Hazardous Materials, and provide copies of such documentation to the Department on the date of transport. The Borrower will not be designated as the generator on the transport manifest for Pre-Existing Hazardous Materials. The Borrower may not transport Hazardous Materials off Site unless the Department's Authorized Representative has reviewed and signed the manifest;

(b) to the extent circumstances warrant managing and/or remediating any Pre-Existing Hazardous Materials in place or otherwise on-site, the Borrower is required to take all appropriate actions in accordance with the Environmental Protection Program (including specifically the Environmental and Hazardous Material Response Plan component) and applicable Law;

(c) as between the Department and the Borrower, to the extent permitted by applicable Law, the Department accepts legal responsibility for any Losses incurred by either party arising out of, relating to or resulting from the proper management (including off-site disposal) of Hazardous Materials under paragraph (a) or (b) above, including Losses incurred due to any impacts to nearby property provided that the Department has no liability for Third Party claims under this paragraph (c) to the extent that such Losses were the result of any Developer Release or the negligence, willful misconduct or breach of applicable Law or contract by any Borrower-Related Entity;

(d) as between the Department and the Borrower, the Borrower accepts legal responsibility for Third Party claims arising out of, relating to, or resulting from any Developer Release and any Losses relating to Developer Releases or any improper performance of off-site disposal or remediation or management in place of Pre-Existing Hazardous Materials by any Borrower-Related Entity;

(e) as between the Borrower and the Department, and to the extent permitted by and consistent with applicable Law, the Borrower accepts legal responsibility for any Losses, including those of Third Parties, with respect to (i) Developer Releases of Hazardous Materials and (ii) Hazardous Materials discovered or released into, onto or under Additional Properties or Temporary Areas, provided that this does not preclude or limit any rights or remedies that the Borrower may have against Third Parties;

(f) to the maximum extent permitted by and consistent with applicable Law, the Borrower is required to indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, legal or administrative proceedings or Losses arising out of, relating to or resulting from the off-site disposal of Hazardous Materials for which the Borrower accepts or is imputed legal responsibility under paragraphs (c) through (e) above.

If the Borrower fails to undertake the required Hazardous Materials Management within a reasonable time after discovery of Hazardous Materials, the Department may notify the Borrower that the Department will undertake

the Hazardous Materials Management. If the Department so undertakes Hazardous Materials Management actions or procure a contractor to perform such work, it is required to do so in accordance with all applicable Environmental Laws and the Borrower must reimburse the Department on a current basis, within ten days of request, for fines, penalties or other assessments against the Department or the APM Project by Governmental Entities due to the Borrower's delay or failure to undertake the Hazardous Materials Management.

#### Additional Hazardous Materials Obligations of the Borrower

The Borrower is required to avoid exacerbating Hazardous Materials (including Pre-Existing Hazardous Materials as well as new Releases) in, on, under or migrating from the Site.

#### *Completion*

#### Passenger Service Availability

The Borrower is required to exercise its best efforts to achieve Passenger Service Availability on or before the Planned Early PSA Date. Passenger Service Availability means that all D&C Work is complete (except for APM System Punch List items that do not affect normal and safe use and operation of the APM System and any D&C Work that, by its nature, is to be performed after the Passenger Service Availability Date), and all other prerequisites for start of passenger service have been met. Failure to achieve Passenger Service Availability by the Long Stop Date is a Developer Default.

The Independent Engineer's Certificate of Passenger Service Availability may be issued only after satisfaction of the following conditions to Passenger Service Availability:

- (a) the Borrower has completed all D&C Work required for running normal and safe passenger service on the APM System, including (a) full access to all points of entry and exit and (b) completion of all Construction Work other than punch-list items approved by the Department;
- (b) the Borrower has repaired or replaced any finishes impacted by the installation of the pedestrian walkway, as required pursuant to the interface obligations under the DBFOM Agreement;
- (c) the Borrower has substantially completed the APM Operating System Acceptance Plan;
- (d) all systems and equipment installed by or on behalf of the Borrower comply, in all respects, with applicable Laws and are operational and functional;
- (e) D&C Work remaining to be performed is limited to (i) punch-list items approved by the Department and (ii) any other D&C Work that the Contract Documents contemplate will be performed after the Passenger Service Availability Date;
- (f) Non-O&M Facility Occupancy Readiness has been achieved for each Non-O&M Facility;
- (g) all Submittals required by the Project Management Plan or Contract Documents have been submitted to and accepted or approved by the Department (as applicable);
- (h) there exists no uncured Developer Default that is the subject of a notice, unless (i) Passenger Service Availability will affect its full and complete cure, or (ii) with respect to a non-monetary Developer Default relating to an obligation that does not constitute a condition to Passenger Service Availability, (A) the Borrower has a right to cure and is diligently pursuing cure within the applicable cure period or (B) the Collateral Agent has a right to cure and is diligently pursuing cure within the applicable cure period specified in the Lenders' Direct Agreement; provided, however, that the Collateral Agent's and the Borrower's respective cure periods will be deemed to run concurrently, and not serially, for purposes of this condition to Passenger Service Availability;

(i) the Borrower has delivered to the Department all documents and other evidence of warranties required under the Contract Documents;

(j) the Borrower demonstrates to the Department's reasonable satisfaction that the Borrower has acquired and properly stored, or arranged for immediate availability, or incorporated into its Asset Management Plan, service vehicles, a reasonable inventory of all spare parts, spare components, spare equipment, tools, materials, expendables and consumables necessary for operation and maintenance of the APM Project during the O&M Period as identified in the Operating Plan, Asset Management Plan, maintenance plan and maintenance manuals;

(k) the Borrower has (i) completed training of operations and maintenance personnel in accordance with the Technical Provisions, (ii) delivered to the Department a certificate, in form acceptable to the Department, executed by the Borrower that it and its Contractors are fully staffed with such trained personnel and are ready, willing and able to operate and maintain the APM Project in accordance with the terms of the Contract Documents, (iii) delivered to the Department training records evidencing compliance with training requirements, (iv) completed and documented all training required to allow full access to the Site to those individuals designated by the Department in accordance with the Technical Provisions; and (v) satisfactorily demonstrated integrated operational readiness through "live" coordinated responses to failure management and other emergency events during the operations of the APM Operating System in accordance with the Technical Provisions;

(l) the Borrower has received, and paid all associated fees for, all applicable Governmental Approvals (excluding the LAWA-Provided Approvals) and other third-party approvals required for use and operation of the APM Project; such Governmental Approvals and other third-party approvals are in full force and effect; there exists no uncured material violation of the terms of any such Governmental Approval or other third-party approvals; and all such Governmental Approvals are in final form and are not subject to appeal;

(m) all Insurance Policies required to be in effect during the O&M Period (excluding insurance for capital asset replacement work) have been obtained and are in full force and effect and the Borrower has delivered to the Department verification thereof;

(n) any performance security required for the O&M Period has been obtained, delivered to the Department and is in full force and effect;

(o) the Borrower has provided evidence that (i) all deposits to the Intellectual Property Escrow(s) required to be provided at or before Passenger Service Availability have been made and (ii) all Cost and Pricing Data required to be provided at or before Passenger Service Availability has been delivered to the Department;

(p) the percentage availability of the APM Operating System as determined accordance with the Technical Provisions ("**APM OS Availability**") has been at least 98.5 percent for 30 consecutive days;

(q) the APM Operating System has not exceeded the applicable service mode downtime limits set forth in the Technical Provisions for 30 consecutive days;

(r) the Borrower has demonstrated Operational Readiness for APM Fixed Facilities in accordance with the Technical Provisions;

(s) the Borrower has demonstrated compliance with all verification requirements in accordance with the Technical Provisions;

(t) the Borrower has demonstrated that the prerequisites for passenger operation have been met during the demonstration of the APM Operating System pursuant to the Technical Provisions;

(u) the Borrower has provided to the Department the safety certifications in respect of the APM System required by the Technical Provisions;

(v) the Borrower has submitted the final Certificates of Occupancy and/or other approvals, as applicable, to the Department, from each applicable Authority Having Jurisdiction;

(w) the Borrower has accepted all applicable plans required to be provided by the Borrower under the Technical Provisions; and

(x) the Borrower has satisfied any other requirements for commencement of O&M Work in the Contract Documents.

#### *Final Completion*

Promptly after achieving Passenger Service Availability, the Borrower is required to perform all remaining D&C Work. In order for the Independent Engineer to issue a Certificate of Final Completion, it must determine that the following conditions have been satisfied:

(a) the Independent Engineer has issued a Certificate of Passenger Service Availability;

(b) all remaining D&C Work has been completed, including completion of all punch-list items;

(c) the D&C Limits and any Temporary Areas have been cleaned of all surplus and discarded materials, spilled materials, excess materials left deposited on the permanent Work as a result of the D&C Work, falsework and rubbish and temporary structures and buildings, placed thereon by Borrower-Related Entities and have been restored as required by the Technical Provisions;

(d) the Borrower has delivered, and the Department has accepted, all Submittals required as conditions precedent to Final Completion;

(e) if any Authority Having Jurisdiction requires any form of certification of design, engineering or construction with respect to the APM Project or any portion thereof, including any certifications from the engineer of record and architect of record for the APM Project, the Borrower has caused such certificates to be executed and delivered and has concurrently issued identical certificates to the Department;

(f) all D&C Work that the Borrower is obligated to perform for, or on behalf of, Third Parties and Utility Owners has been accepted by such Third Parties and Utility Owners (or by the Department for, or on behalf of, such Third Parties and Utility Owners, as provided under the Contract Documents, and the Borrower has paid for all work performed by third parties that the Borrower is obligated to pay for, other than disputed amounts;

(g) the Borrower has provided evidence that (i) all deposits to the Intellectual Property Escrow(s) required at or before Final Completion have been delivered to LAWA or deposited into Intellectual Property Escrow(s) and (ii) all Cost and Pricing Data required to be provided at or before Final Completion has been delivered to the Department;;

(h) there exist no uncured Developer Defaults that are the subject of a notice, or with the giving of notice or passage of time, or both, could give the Department the immediate right to terminate under the DBFOM Agreement except for (i) any Developer Default for which Final Completion will effect full and complete cure or for which corrective work is proceeding under the warranty provisions of DBFOM Agreement or (ii) any Developer Default relating to the O&M Work if the Borrower has a right to cure and is diligently prosecuting such cure;

(i) APM Operating System expendable parts, spare equipment and special tools have been stocked to the required levels;

(j) APM OS Availability has been at least 99.5 percent averaged over a 60-consecutive-day period;

(k) for two consecutive 30-day periods after the Passenger Service Availability Date, the APM Operating System has not exceeded the applicable mode downtime limits set forth in the Technical Provisions;

(l) the Borrower has submitted and the Department has accepted a complete set of the as-built documents for the APM Project;

(m) the Borrower has submitted satisfactory evidence to the Department that all Contractors, payrolls, bills for materials and equipment and other indebtedness connected with the Construction Work have been paid or otherwise satisfied; and

(n) the Borrower has submitted to the Department the final subcontracting report.

#### *Non-Conforming Work*

The Borrower is required to perform all Work in conformity with the Contract Documents. If the Borrower has not performed the Work in conformity with the Contract Documents, then, in addition to any other remedies available to the Department, the Department may direct the Borrower to, and the Borrower is required to, remove and replace or otherwise remedy the Nonconforming Work, without entitlement to make a Claim in connection with such Work. Promptly, and in any event ten Business Days after Nonconforming Work is identified, the Borrower is required to submit a remedial plan to the Department, for review and approval, describing the error or defect giving rise to the Nonconforming Work and describing the Borrower's planned remedial action.

The Department has the right to cause Nonconforming Work to be removed, replaced or otherwise remedied and to withhold or deduct the costs from any monies due or that become due to the Borrower under the Contract Documents upon (a) any failure of the Borrower to provide a proposed remedial plan as described above and obtain the Department's approval thereof, or (b) any failure of the Borrower to comply with the Department's direction under the DBFOM Agreement relating to any safety issue, including Safety Compliance Orders.

#### *Non-O&M Facilities*

##### Scope of Work

The D&C Work includes facilities for which the Borrower is not required to perform operations and maintenance during the O&M Period. The Borrower is responsible for any maintenance of such facilities that may be required during the D&C Period prior to turnover to the Department for its use. These facilities are required to be turned over to the Department (or the Authorities Having Jurisdiction, as applicable) upon receipt of the Certificate of Non-O&M Facility Occupancy Readiness, as described below. The Non-O&M Facilities include, among other items, certain CCTV cameras installed on guideway columns; certain parking garages; certain roadways and pedestrian facilities; and certain information technology infrastructure for the Department's use.

##### Non-O&M Facility Occupancy Readiness

The Borrower may, at its election, achieve Non-O&M Facility Occupancy Readiness and Non-O&M Facility Final Acceptance with respect to any Non-O&M Facility before Passenger Service Availability in accordance with the provisions of the DBFOM Agreement.

Approximately 60 days before the date on which the Borrower expects to achieve Non-O&M Facility Occupancy Readiness with respect to any Non-O&M Facility, the Borrower is required to provide to the Department its anticipated schedule to achieve Non-O&M Facility Occupancy Readiness.

The conditions to Non-O&M Facility Occupancy Readiness are:

(a) the Borrower has completed all D&C Work required for the safe use of the Non-O&M Facility including (i) full access to all points of entry and exit and (ii) completion of all Construction Work other than Non-O&M Facilities Punch List items approved by the Department;

(b) each Authority Having Jurisdiction has issued a Certificate of Occupancy or a temporary Certificate of Occupancy, to the extent such certificate is required by applicable Law, or has accepted the Non-O&M Facility, as applicable;

(c) the relevant systems and equipment have passed all required tests and the Borrower has delivered to the Department all reports, data and documentation relating to such tests;

(d) the Borrower has made all deposits to the IP Escrow required with respect to the D&C Work;

(e) the Borrower has prepared and submitted a Non-O&M Facilities Punch List in accordance with the Contract Documents and the Department has accepted such list;

(f) there exists no uncured Developer Default (except any Developer Default for which Non-O&M Facility Final Acceptance will affect its cure) that would directly or indirectly impact the operation of the Non-O&M Facility;

(g) the Borrower has delivered to the Department all warranties required under, and in the form and content specified by the Technical Provisions and (ii) all documents and other evidence of warranties required under the DBFOM Agreement; and

(h) all Submittals required by the Project Management Plan or Contract Documents to be submitted, accepted and/or approved by the Department have been submitted to and accepted or approved by the Department, as applicable.

#### Non-O&M Facility Final Acceptance

Promptly after achieving Non-O&M Facility Occupancy Readiness with respect to a Non-O&M Facility, the Borrower is required to perform all remaining Work to achieve Non-O&M Facility Final Acceptance.

The conditions to Non-O&M Facility Final Acceptance are:

(a) the Department has issued a Certificate of Non-O&M Facility Occupancy Readiness for the Non-O&M Facility;

(b) all Non-O&M Facilities Punch List items have been completed to the reasonable satisfaction of the Department;

(c) the Borrower has delivered to the Department a reasonable inventory of all spare parts, spare components, spare equipment, special tools, materials, expendables and consumables necessary for the operation and maintenance of the Non-O&M Facility;

(d) all Submittals that the Borrower is required by the Contract Documents to submit upon Non-O&M Facility Final Acceptance have been submitted to the Department;

(e) each Authority Having Jurisdiction has issued a Certificate of Occupancy, to the extent such certificate is required by applicable Law, and/or has provided other approvals required for operation of the Non-O&M Facility, as applicable;

(f) the Department has received a complete set of the as-built documents and documentation for the Non-O&M Facility;

(g) the Borrower has made all deposits to the IP Escrow required at or prior to Non-O&M Facility Final Acceptance; and



(h) there exists no uncured Developer Default (except for any Developer Default for which Non-O&M Facility Final Acceptance will effect its cure) that would directly or indirectly impact the operation of the Non-O&M Facility.

## **Operation and Maintenance**

### *General Operation and Maintenance Obligations*

The Borrower is responsible for performance of O&M Work in accordance with requirements specified in the Contract Documents, including the relevant Technical Provisions. O&M Work means Work to be performed during the O&M Period, including Technology Enhancements, Operations Work, Maintenance Work, supply of the Renewal Work, but excluding any D&C Work remaining to be performed following Passenger Service Availability.

The Borrower is required to ensure that:

(a) all O&M Work is performed in accordance with all applicable Laws, Governmental Approvals and Good Industry Practice, as it may evolve over time;

(b) the APM System remains safe, fit for use for the intended functions, meets the requirements of the Contract Documents, remains free of defects and meets the minimum performance standards for operations, as specified in the Technical Provisions throughout the O&M Period;

(c) all materials and equipment furnished are of good quality and new and all APM Operating System components and related consumables obtained during the O&M Period are of good quality, new and fit for their intended purpose; and

(d) all O&M Work is performed in accordance with the Department-approved plans required pursuant to the Technical Provisions.

The Borrower is required to obtain (as applicable), maintain, repair and replace elements of the APM System as appropriate throughout the duration of the O&M Period, including maintenance, repair and replacement of consumable and life-expired items and rehabilitation or overhaul of the APM Operating System.

The Borrower is required to develop the APM Project to accommodate future anticipated Technology Enhancements in keeping with Good Industry Practice and to implement or incorporate Technology Enhancements for the APM System throughout the duration of the O&M Period, at no cost to the Department, to the extent such enhancements are (a) scheduled in the Asset Management Plan, or (b) needed to correct Defects in the Work.

The Borrower is required to pay all direct and indirect costs for all Utility services relating to the operation and maintenance, throughout the Term, of the APM Operating System and APM Fixed Facilities in accordance with the Contract Documents.

### *Hazardous Materials*

The obligations of the Borrower in connection with the management of Hazardous Materials set forth above at “—Design and Construction—Hazardous Materials Management” also apply to the O&M Period.

### *Utility Accommodation*

Throughout the O&M Period, the Borrower is required to monitor Utilities and Utility Owners within the O&M Limits for compliance with applicable utility permits, easements and applicable Law, and use diligent efforts to obtain the cooperation of each Utility Owner having Utilities within the O&M Limits.

If the Borrower, despite diligent efforts, is unable to resolve any dispute with a Utility Owner, the Borrower may request the Department to provide reasonable assistance and the parties are required to consult regarding measures to be undertaken.

#### *Renewal Work*

##### Performance of Renewal Work; Asset Management Plan

The DBFOM Agreement requires the Borrower to diligently perform Renewal Work as and when necessary to comply with the Contract Documents, to achieve full design life for each asset, supporting reliable and quality-service operations and availability.

The Borrower undertakes to prepare and submit to the Department for review and approval an asset management plan prepared in accordance with the Technical Provisions (the “**Asset Management Plan**”) within 90 days before the beginning of the first full calendar year of the O&M Period. No later than 90 days before the beginning of each subsequent calendar year, the Borrower is required to update the Asset Management Plan and submit the updated plan together with the Borrower’s proposed budget for Renewal Work to the Department. The Borrower is required to use the Asset Management Plan, as updated from time to time, as the principal guide for scheduling and performing Renewal Work but may also perform Renewal Work not identified in such plan as necessary to maintain compliance with the Contract Documents, subject to the Department’s agreement to the scheduling of such other Renewal Work.

Any Renewal Work to be performed by the Borrower is required to be in compliance with the then current Standards and Specifications. The Department may, through a LAWA Change, require the Borrower to comply with updated Standards and Specifications prior to the date set forth in the Borrower’s scheduled for Renewal Work.

##### Performance by the Department

If at any time the Department determines that the Borrower has failed to perform the Renewal Work in accordance with the then current Asset Management Plan and applicable Technical Provisions, and performance of such Renewal Work is required to ensure continued performance of the APM Project in accordance with the Contract Documents, the Department may give written notice thereof to the Borrower. If the Borrower fails to complete the Renewal Work within 30 days after the Department delivers such notice, then the Department has the right to perform and complete such Renewal Work at the expense and for the account of the Borrower, and to deduct from payments otherwise payable to the Borrower by the Department to pay the costs of such action. The foregoing remedy is in addition to any other remedies available to the Department under the Contract Documents on account of such failure, including the assessment of Noncompliance Points, and the Department’s right to intervene immediately and without notice to address Safety Compliance.

##### Responsibility for Loss or Damage

The Borrower is required to take reasonable precautions against loss or damage to the APM System and other improvements and assets within the O&M Limits and to repair, restore and replace all Losses or damages to the APM System.

If any repair, restoration or replacement of the APM Project is required due to Vandalism, the Borrower will be responsible for the first \$250,000 of costs incurred in the aggregate per calendar year (the “**Annual Vandalism Deductible**”) to perform such repair, restoration or replacement, except (a) the Borrower is solely responsible for all costs incurred to perform any repair, restoration or replacement of the maintenance & storage facility and the Traction Power Substation and (b) the Borrower is not responsible for Vandalism-related damage to the ITF East Plaza Improvements (as described in its Proposal).

## **Deductions and Noncompliance Points System**

### *Noncompliance Occurrences and Events*

A Noncompliance Point system is to be used to measure the Borrower's performance levels and trigger certain remedies. The Borrower is required to establish and maintain an electronic database for recording and tracking Noncompliance Occurrences and Noncompliance Events and to provide the Department with full access to such database, including the ability to enter Noncompliance Occurrences.

Exhibit 4C (Noncompliance Occurrence Tables) of the DBFOM Agreement identifies certain breaches or failures by the Borrower in performance of its obligations under the Contract Documents (each, a "**Noncompliance Occurrence**"). A Noncompliance Occurrence becomes a "**Noncompliance Event**" if the Borrower has not rectified such occurrence within the applicable Rectification Period (if any); or following the expiration of a Rectification Period, the Borrower has not rectified such occurrence within any further Interval of Recurrence.

A Noncompliance Event may result in either or both the assessment of Noncompliance Points and the assessment of Noncompliance Deductions in each case as indicated in the Noncompliance Occurrence Tables.

As part of its reporting obligations the Borrower is required to prepare monthly performance monitoring reports and submit them to the Department. Each such performance monitoring report is required to include a report of all Noncompliance Occurrences and Noncompliance Events during the preceding month. Within a reasonable time after receiving the monthly performance monitoring report, the Department is required to deliver to the Borrower a notice setting forth for each Noncompliance Occurrence the Department's determination whether (i) the Noncompliance Occurrence was responded to or rectified within the required period; and (ii) a Noncompliance Event occurred and, if so, the Noncompliance Points and Noncompliance Deductions to be assessed with respect to such event.

The Borrower is required to rectify each Noncompliance Occurrence by the end of the applicable Rectification Period. The Rectification Period is deemed to start on the date and time the Borrower first obtained knowledge or should have first reasonably known of (exercising reasonable prudence) the Noncompliance Occurrence.

### *Assessment of Noncompliance Points*

If a Noncompliance Event has occurred (as indicated in the electronic database or performance monitoring report or the Department otherwise becomes aware of a Noncompliance Event) the Department may assess Noncompliance Points (i) immediately for any Noncompliance Event for which no Rectification Period is specified; (ii) the end of the Rectification Period (if any) if the Borrower has not rectified the Noncompliance Event; and (iii) the end of each Interval of Recurrence if the Borrower has not rectified the Noncompliance Event. The maximum number of Noncompliance Points that may be assessed for each event or circumstance that is a Noncompliance Event are listed in Exhibit 4C (Noncompliance Occurrence Tables) to the DBFOM Agreement. The Department may, in its sole discretion, assess less than the maximum.

No Noncompliance Points may be assessed for Noncompliance Events that occur during the first 90 days following the Passenger Service Availability Date, subject to certain specified events (relating to downtime, shutdowns and major service degradations) for which Noncompliance Points will be assessed at no more than 50 percent of the maximum number of Noncompliance Points applicable to the Noncompliance Event. To the extent that a breach or failure may constitute more than one Noncompliance Occurrence, such breach or failure is deemed to be solely the event or Noncompliance Occurrence to which the greatest number of Noncompliance Points applies and if a Noncompliance Event continues beyond its relevant Rectification Period, if any, each subsequent Interval of Recurrence, is to be treated as a new and separate Noncompliance Event, without necessity for further notice, for the purpose of assessing Noncompliance Points.

All Noncompliance Points assessed in connection with failures to achieve inclusivity requirements during the D&C Period and 50 percent of the balance of Noncompliance Points assessed during the D&C Period, may be

carried forward and used by the Department to calculate, after the Passenger Service Availability Date, accumulated Noncompliance Points for the purposes of triggering increased oversight or a Developer Default.

In addition to Noncompliance Points, Noncompliance Events also result in Deductions from Monthly Availability Payments. The Department also has certain rights to increase Oversight, “step-in” rights and rights to require the Borrower to replace the O&M Contractor relating to accumulation of Noncompliance Points.

The Department may assess twice the applicable number of Noncompliance Points with respect to any period for which the event resulting in the assessment of Noncompliance Points occurs on certain holidays and other specified dates.

#### *Amendments to the O&M Period Noncompliance Occurrence Table*

The Department has the right to replace Noncompliance Occurrences in the O&M Period Noncompliance Occurrence Table by removing a Noncompliance Occurrence and adding in its place an alternate Noncompliance Occurrence and to establish the category applicable to, and set a reasonable “Minimum Performance Requirement,” “Rectification Period” and “Interval of Recurrence” for, each alternate Noncompliance Occurrence.

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

(a) any existing contractual obligation of the Borrower may become an alternate Noncompliance Occurrence if: (i) the Borrower has failed to comply with that contractual obligation at least twice; (ii) the Department provides notice of such second failure; and (iii) the Borrower fails a third time to comply with the contractual obligation specified in the notice;

(b) the number of Noncompliance Points and the amount of the Deduction assessable for each alternate Noncompliance Occurrence must equal the Noncompliance Points and the amount of the Deduction assessable for the Noncompliance Occurrence being replaced by the alternate; and

(c) the replacement of Noncompliance Occurrences with alternate Noncompliance Occurrences may not result in an increase to the maximum aggregate Noncompliance Points assessable pursuant to the Noncompliance Points system.

#### **Payments to the Borrower**

The Borrower is compensated by the Department pursuant to the DBFOM Agreement through Milestone Payments, Additional D&C Payments and Availability Payments.

#### *Payments during D&C Period*

##### Milestone Payments

Subject to the terms of the DBFOM Agreement, the Borrower is entitled to receive six payments from the Department as partial compensation for its performance of a portion of the D&C Work, excluding the Additional D&C Work (each such payment, a “**Milestone Payment**”). The table below sets forth, for each Milestone Payment, the scheduled payment date, amount and required percentage of D&C Work to be completed prior to such payment.

Column A	Column B	Column C	Column D
Milestone Payment Number	Scheduled Milestone Payment Date	Milestone Payment Amount	Minimum D&C Percentage
1	March 31, 2019	\$168,291,515.12	15.0 percent
2	December 31, 2019	\$168,291,515.12	30.0 percent
3	September 30, 2020	\$168,291,515.12	50.0 percent
4	June 30, 2021	\$168,291,515.12	65.0 percent
5	March 31, 2022	\$168,291,515.12	80.0 percent
6	60 days after Final Completion Date	\$168,291,515.12	N/A

The Department is required to pay to the Borrower the Milestone Payment Amount listed in Column C of the table above, subject to any applicable Deductions, on the date requested by the Borrower (the “**Proposed Milestone Payment Date**”), provided that: (a) the Proposed Milestone Payment Date is not earlier than the corresponding Scheduled Milestone Payment Date listed in Column B; (b) the applicable Milestone Payment Request is complete (including supporting information) and is reasonably satisfactory to Department in form and content and Borrower has provided all other information reasonably requested by Department relating to the request; (c) in connection with Milestone Payments 1 through 5, the D&C Percentage completed as of the date of such Milestone Payment Request is equal to or greater than the applicable minimum D&C Percentage listed in Column D; (d) in connection with Milestone Payment 6, Final Completion has occurred; and (e) there are no Developer Defaults.

In each Milestone Payment Request, the Borrower is required to state (i) that the Milestone Payment will not be used to pay the principal of any outstanding obligations the interest on which is excludable from gross income for federal income tax purposes as set forth under the Code and (ii) the amount of such Milestone Payment to be used to pay interest, if any, that has accrued on and after the Passenger Service Availability Date on obligations the interest on which is excludable from gross income for federal income tax purposes as set forth under the Code.

#### D&C Period Noncompliance Deductions

The Department may make D&C Period Noncompliance Deductions from each Milestone Payment, if applicable, as calculated in accordance with the D&C Period Noncompliance Occurrences Table set forth in Exhibit 4C of the DBFOM Agreement. D&C Period Noncompliance Deductions will be made for Borrower breaches or failures in performance of obligations under the Contract Documents, these include, among other things, failures to submit certain plans or monthly reports by the times required, failure to utilize the minimum participation levels for local business enterprises, road lane closures outside of allotted time periods, parking garage closures, constructing without an approved design, changing key personnel for non-permitted reasons, failure to satisfy workforce and apprenticeship requirements and failure to comply with specific commitments of a remedial plan. See “RISK FACTORS—Risks Relating to the Project Agreement—*Risks Related to the DBFOM Agreement—Failure to Comply with the DBFOM Agreement; Termination of the DBFOM Agreement.*”

The assessable D&C Period Noncompliance Deductions are double the applicable amount with respect to any period for which the event resulting in the assessment of Deductions occurs on a Critical Day.

If the amount of D&C Period Noncompliance Deductions combined with the amount of any other adjustments that the Department makes to a Milestone Payment in accordance with the terms of the Contract Documents, would reduce any of Milestone Payments 1 through 5 to less than 90 percent of the applicable Milestone Payment Amount, then the excess of such D&C Period Noncompliance Deductions amount and any other

adjustment amount will accrue and be added to the D&C Period Noncompliance Deduction for the subsequent Milestone Payments until such accrued amount has been deducted in full.

#### Additional D&C Payments

Subject to the terms and conditions of the DBFOM Agreement, the Borrower is also entitled to receive a series of four Additional D&C Payments totaling \$21,520,825.30, as compensation for the Borrower's performance of certain D&C Work, comprised of stored back-up train control equipment, hardened walls and doors, parking gates and vehicle restriction equipment, minor highway, footpath and grade parking arrangements, relocation of a substation, various street realignments, removal of electrical vault MH-155A, addition for two new electric vaults, and relocation of an electrical duct (“**Additional D&C Work**”). This Additional D&C Work includes certain design and operational enhancements to address Threat and Vulnerability Assessment requirements specific to the Borrower’s design. The Additional D&C Work also accounts for the incorporation of minor scope modifications (including several unsuccessful proposers’ Alternative Technical Concepts) that were implemented between award of the APM Project to the Borrower and the execution of the DBFOM Agreement. Any amounts paid to the Borrower for the performance of Additional D&C Work (the “**Additional D&C Payments**”) are not included in the Milestone Payments or in the calculation or payment of Availability Payments. The table below sets forth, for each such payment, the payment date, amount and the conditions to payment.

<b>Payment Number</b>	<b>Payment Date</b>	<b>Conditions to Payment</b>	<b>Payment Amount</b>
1	September 30, 2018	Minimum D&C Percentage of 10 percent	\$2,152,082.50
2	Date that the Department pays Milestone Payment 1	Payment by the Department of Milestone Payment 1	\$6,456,247.60
3	Date that the Department pays Milestone Payment 2	Payment by the Department of Milestone Payment 2	\$6,456,247.60
4	Date that the Department pays Milestone Payment 3	Payment by the Department of Milestone Payment 3	\$6,456,247.60

The Department has agreed to pay to the Borrower each of the four payments comprising the Additional D&C Payments on or before the corresponding payment date, provided that the applicable request for the Additional D&C Payment is complete; there are no Developer Defaults; the conditions to payment listed in the table above have been satisfied; and with respect to Additional D&C Payments 2 through 4, the requests for such payments accompany the Borrower’s Milestone Payment Requests for Milestone Payments 1 through 3, respectively, and the requirements for payment of the applicable Milestone Payment are satisfied.

#### *Payments during the O&M Period*

#### Availability Payments

Subject to the terms and conditions of the DBFOM Agreement, the Department is required pay Availability Payments to the Borrower during the O&M Period, commencing from the later of: (i) the Planned Early PSA Date, (ii) the Passenger Service Availability Date and (iii) December 31, 2022.

The Maximum Annual Availability Payment for any year, i.e. the MaxAP for Operating Year (y) (“**MaxAP<sub>y</sub>**”), is calculated for any period commencing on or after the Passenger Service Availability Date as follows:

$$MaxAP_y = MAPC \times 1.03^{y-1} + MAPO \times ESC_y$$

Where:

*MAPC* means Base Capital MaxAP.

*MAPO* means Base Operating MaxAP.

*ESC<sub>y</sub>* means the escalation factor calculated in accordance with Section 1.4 (Availability Payment Escalation) of Part A of Exhibit 4B of the DBFOM Agreement (as described below).

*y* means the numbered Operating Year commencing on the first of the Month in which the Passenger Service Availability Date occurs and on each 12-month anniversary thereof.

The DBFOM Agreement provides for the annual Availability Payments to be paid to the Borrower in monthly installments. The Maximum Monthly Payment (“**MMP<sub>m</sub>**”) is calculated as the monthly amount of the annual MaxAP plus, for the Month immediately following the end of each Quarter, a Utility Rate Risk Adjustment (as described below), as follows:

For the first Month of a Quarter:

$$MMP_m = \frac{1}{12} \times MaxAP_y + URR A_{q-1}$$

Where:

*URRA<sub>q-1</sub>* means, for the first Month of a Quarter, any quarterly addition or reduction arising pursuant to the terms of Appendix B (Utility Rate Risk Adjustment) of Exhibit 4B of the DBFOM Agreement as described below.

For the second and third Months of a Quarter:

$$MMP_m = \frac{1}{12} \times MaxAP_y$$

#### Availability Payment Escalation

The Escalation Factor (“**ESC<sub>y</sub>**”) for each Operating Year (*y*) shall be calculated in accordance with the following formula:

$$ESC_y = 30\% \times \frac{CPI_y}{CPI_{base}} + 40\% \times \frac{LABI_y}{LABI_{base}} + 15\% \times \frac{MMPI_y}{MMPI_{base}} + 15\% \times \frac{TEI_y}{TEI_{base}}$$

Where:

*CPI<sub>y</sub>* means the value of CPI corresponding to the most recently published Month as of commencement of Operating Year (*y*)

*CPI<sub>base</sub>* means the value of CPI corresponding to the most recently published Month as of January 16, 2018

$LABI_y$	means the value of LABI corresponding to the most recently published Quarter as of commencement of Operating Year (y)
$LABI_{base}$	means the value of LABI corresponding to the most recently published Quarter as of January 16, 2018
$MMPI_y$	means the value of MMPI corresponding to the most recently published Month as of commencement of Operating Year (y)
$MMPI_{base}$	means the value of MMPI corresponding to the most recently published Month as of January 16, 2018
$TEI_y$	means the value of TEI corresponding to the most recently published Month as of commencement of Operating Year (y)
$TEI_{base}$	means the value of TEI corresponding to the most recently published Month as of January 16, 2018

#### Deductions from the Availability Payments

The Department may make Deductions from Availability Payments in respect of Unavailability Deductions and O&M Period Noncompliance Deductions as described in Exhibit 4B of the DBFOM Agreement. The Maximum Monthly Payment (“MMP<sub>m</sub>”) is subject to reductions based on the Applied Deductions and each Monthly Disbursement paid to the Borrower in a calendar Month (m) (“MD<sub>m</sub>”) is calculated as follows:

$$MD_m = MMP_m - AD_m$$

Where:

$AD_m$  means the Applied Deduction as described further below.

#### Maximum Quarterly Deductions

A maximum quarterly deduction for Unavailability Deductions and Noncompliance Deductions is calculated once per Quarter (during the first Month) and represents the maximum amount of O&M Period Deductions that the Department may apply in each Quarter (q) during the O&M Period (“**Maximum Quarterly Deduction**” or “MQD<sub>q</sub>”), provided that:

- (a) If the total amount of O&M Period Deductions calculated for Quarter (q-1) exceeds 40% of the aggregate Maximum Monthly Payments during Quarter (q), then: (i) the Maximum Quarterly Deduction is equal to 40% of the aggregate Maximum Monthly Payments; and (ii) any excess amount of O&M Period Deductions (“Excess Quarterly Deductions” (“EQD”)) is accumulated and added to the Maximum Quarterly Deduction for the subsequent Quarter.

$$\text{If } (\Sigma UA_m + \Sigma OMND_m) > 40\% \times \Sigma MMP_m$$

then:

$$(1) \quad MQD_q = 40\% \times \Sigma MMP_m$$

$$(2) \quad EQD_q = EQD_{q-1} + \Sigma UA_m + \Sigma OMND_m - MQD_q$$



Where:

$\Sigma OMND_m$	means the sum of all O&M Period Noncompliance Deductions for the previous Quarter (q-1), calculated in accordance with <u>Section 1.3 of Part B of Exhibit 4B</u> of the DBFOM Agreement (as described below)
$\Sigma UA_m$	means the sum of all Unavailability Deductions for the previous Quarter (q-1), calculated in accordance with the provisions set out in <u>Part B of Exhibit 4B</u> of the DBFOM Agreement (as described below)
$\Sigma MMP_m$	means the sum of the values of MMP for each Month in Quarter (q), calculated in accordance with <u>Section 1.2 of Part A of Exhibit 4B</u> of the DBFOM Agreement (as described below)
$EQD_q$	means the end of Quarter balance of Excess Quarterly Deductions for the Quarter (q)
$EQD_{q-1}$	means the end of Quarter balance of Excess Quarterly Deductions for the Quarter (q-1)

- (b) If the total amount of O&M Period Deductions for Quarter (q-1) is less than or equal to 40% of the aggregate Maximum Monthly Payments during Quarter (q), then the Maximum Quarterly Deduction amount shall equal the O&M Period Deductions plus, to the extent that it can be applied, any carried forward Excess Quarterly Deductions from previous Quarters, as follows:

$$\text{If } (\Sigma UA_m + \Sigma OMND_m) \leq 40\% \times \Sigma MMP_m$$

then:

$$(1) \quad MQD_q = \text{the lesser of:}$$

$$A: \Sigma UA_m + \Sigma OMND_m + EQD_{q-1}$$

$$B: 40\% \times \Sigma MMP_m$$

$$(2) \quad EQD_q = EQD_{q-1} + \Sigma UA_m + \Sigma OMND_m - MQD_q$$

#### Monthly Application of Deductions

The Maximum Quarterly Deduction is applied in the Month immediately following the Quarter for which the Maximum Quarterly Deduction was calculated, provided that:

- (a) If the Maximum Quarterly Deduction which may be applied to Month (m) exceeds the Maximum Monthly Payment for Month (m), then: (i) the amount of the Deduction actually applied (“Applied Deduction”) is equal to the Maximum Monthly Payment; and (ii) any unapplied amount of the Maximum Quarterly Deduction (“Unapplied Deductions” (“UD”)) is accumulated and applied to each subsequent Month until such accumulated amounts have been deducted in full.

$$\text{If } MQD_q > MMP_m$$

then:

$$(1) \quad AD_m = MMP_m$$

$$(2) \quad UD_m = UD_{m-1} + MQD_q - AD_m$$

Where:

$UD_m$  means the end of Month balance of Unapplied Deductions for the Month (m)

$UD_{m-1}$  means the end of Month balance of Unapplied Deductions for the previous Month (m-1)

(b) If the Maximum Quarterly Deduction which may be applied to Month (m) is less than or equal to the Maximum Monthly Payment for Month (m), then the amount of the Applied Deduction is the Maximum Quarterly Deduction plus, to the extent that it can be applied, any carried forward Unapplied Deductions from previous Months, as follows:

If  $MQD_q \leq MMP_m$

then:

(1)  $AD_m = \text{the lesser of:}$

A:  $MQD_q + UD_{m-1}$

B:  $MMP_m$

2)  $UD_m = UD_{m-1} + MQD_q - AD_m$

For the second and third Months of each Quarter (q), any Unapplied Deductions shall, to the extent possible, be fully applied but not exceed the Maximum Monthly Payment for that Month.

(1)  $AD_m = \text{the lesser of:}$

A:  $UD_{m-1}$

B:  $MMP_m$

(2)  $UD_m = UD_{m-1} - AD_m$

#### *Calculation of Unavailability Deductions and O&M Period Noncompliance Deductions*

Unavailability Deductions (“**UAm**”) with respect to Month (m) is calculated in accordance with the following formula:

$$UA_m = \left( OSUAF_m + \frac{SUA_m}{t_m} \right) \times MaxAP_y \times \frac{1}{12}$$

Where:

$SUA_m$  means the Station Unavailability Period during Month (m) calculated and adjusted in accordance with Section 2.1 of Appendix A to Exhibit 4B of the DBFOM Agreement and expressed in hours

$OSUAF_m$  means the APM OS Unavailability Factor calculated in accordance with Section 1.1 of Appendix A to Exhibit 4B of the DBFOM Agreement with reference to the percentage availability of the APM Operating System

$t_m$  Means the number of hours in Month (m)

O&M Period Noncompliance Deductions (“**OMND<sub>m</sub>**”) with respect to the relevant Month (m) is calculated in accordance with the following formula:

$$OMND_m = UOMND_m \times ESC_y$$

Where:

**UOMND<sub>m</sub>** means the sum of all O&M Period Noncompliance Deductions during Month (m), calculated in accordance with the O&M Period Noncompliance Occurrences Table set forth in Exhibit 4C (Noncompliance Occurrence Tables) of the DBFOM Agreement.

If an event results in both an Unavailability Deduction and an O&M Period Noncompliance Deduction, the higher Deduction applies. When such an event occurs, the higher Deduction is determined by comparing the potential Noncompliance Deduction for the event to the incremental contribution of the event to the Unavailability Deduction. The calculation of such Deductions, and the determination of which Deduction applies, is made at the end of each Month.

The assessable Unavailability Deductions and O&M Period Noncompliance Deductions will be double the applicable amount with respect to any period for which the event resulting in the assessment of Deductions occurs on a Critical Day.

#### Utility Rate Risk Adjustment

During the O&M Period, the Borrower is required to monitor and measure the consumption of electricity and water for the APM Project using monitoring equipment and systems suitable to enable the collection of the information required for the purposes of a Utility Rate Risk Adjustment which is applied to the calculation of the Availability Payment.

By the 15th day following each Month during the O&M Period, the Borrower is required to deliver to the Department a report showing its actual consumption of electricity and water for that previous Month and by the 15th day following each Quarter during the O&M Period, the Borrower is required to deliver to the Department a report showing actual electricity and water consumption and its weighted average rates for electricity and water for that previous Quarter calculated based on the Borrower’s total expenditure on such utilities for the Quarter.

For purposes of the calculation of the Availability Payments as set forth above, the Utility Rate Risk Adjustment (“**URRA<sub>q-1</sub>**”) is calculated as follows:

$$URRA_{q-1} = ERRS_{q-1} + WRRR_{q-1}$$

The electricity and water components of the adjustment are calculated as described below.

#### *Electricity*

The Electricity Rate Risk Share Consumption Cap for Quarter (q) means the forecasted electricity consumption in the Borrower’s Proposal:

- (a) If the electricity consumption for Quarter (q) is more than or equal to the Electricity Rate Risk Share Consumption Cap for Quarter (q), then the electricity consumption for the purpose of the ERRS is equal to the Electricity Rate Risk Share Consumption Cap for Quarter (q).
- (b)

If  $EC_q \geq ERRSCap_q$

then:

$$AEC_q = ERRSCap_q$$

Where:

$EC_q$  means the unadjusted electricity consumption (total electricity consumed for the Project in kWh) for Quarter (q)

$AEC_q$  means the adjusted electricity consumption for the purpose of the ERRS calculation for Quarter (q)

$ERRSCap_q$  means the Electricity Rate Risk Share Consumption Cap for Quarter (q)

- (c) If the electricity consumption for Quarter (q) is less than the Electricity Rate Risk Share Consumption Cap for Quarter (q), then the unadjusted electricity consumption is used for the purpose of the ERRS.

If  $EC_q < ERRSCap_q$

then:

$$AEC_q = EC_q$$

- (d) The ERRS for Quarter (q) is the adjusted electricity consumption multiplied by the difference between the actual average electricity rate less the baseline electricity rate.

$$ERRS_q = AEC_q \times (aer_q - ber_q)$$

Where:

$AEC_q$  means the adjusted electricity consumption for the purposes of the ERRS calculation for Quarter (q)

$aer_q$  means the weighted average electricity rate for Quarter (q)

$ber_q$  means the baseline electricity rate for Quarter (q)

$$ber_q = ber_{sd} \times 1.04^{n/12}$$

Where:

$ber_{sd}$  means the baseline electricity rate of \$0.17/kWh

$n$  means the number of Months between the Setting Date and the end of Quarter (q), rounded to the nearest whole number

#### Water

The WRRR for Quarter (q) is the actual water consumption multiplied by the difference between the actual average water rate less the baseline water rate.

$$WRRR_q = AWC_q \times (awr_q - bwr_q)$$

Where:

$AWC_q$  means the actual water consumption for Quarter (q)

$awr_q$  means the weighted average water rate for Quarter (q)

$bwr_q$  means the baseline water rate for Quarter (q)

$$bwr_q = bwr_{sd} \times 1.05^{n/12}$$

*Where:*

$bwr_{sd}$  means the baseline water rate of \$8.9/HCF

$n$  means the number of Months between the Setting Date and the end of Quarter (q), rounded to the nearest whole number

The Utility Rate Risk Adjustment is required to be applied to the calculation of the Availability Payment as noted above (see “—Payments to the Borrower—*Payments during the O&M Period—Availability Payments*”).

*Impact of Relief Events on the Payment of Milestone Payments and Commencement of Availability Payments*

If the Borrower demonstrates pursuant to the requirements of the Relief Event procedures in the DBFOM Agreement that a Compensation Event results in a Relief Event Delay and:

(a) that the Borrower has been delayed in achieving Passenger Service Availability by the original Planned Early PSA Date specified in the Initial Project Schedule and reset in accordance with the DBFOM Agreement, if applicable, because of a Compensation Event, then, to the extent that the Borrower incurs any Financing Costs during such applicable delay period (being amounts reflected in the Financial Model, that would have been paid to Lenders, or reserved for future debt service), then the Department will pay to the Borrower an amount equal to such Financing Costs (the “Delayed Payment Compensation”) throughout such delay period no later than the date the Borrower would have received the relevant Availability Payment; or

(b) that the Relief Event Delay prevents the Borrower from (i) timely achieving any of Milestone Payments 1 through 5 or (ii) Final Completion, then to the extent the Borrower incurs any Financing Costs during such delay period, the Department will pay the Borrower Delayed Payment Compensation throughout such delay period no later than the date the Borrower would have received the relevant Milestone Payment. See “—Relief Events—*Extension of Contract Deadlines*.” For any Relief Event that is not a Compensation Event the Borrower will not be entitled to any compensation, including Delayed Payment Compensation, in connection with such delay, but the Contract Deadlines are required to be extended to reflect the such non-Compensation Event.

“Financing Costs” only include such amounts as reflected in the Financial Model that would have been paid or reserved from the Milestone Payment or Availability Payment proceeds that were projected to be received by the Borrower during such period(s). Financing Costs also excludes any costs of financing that may be payable as, and included within the definition of, Incremental Costs.

*LAWA Allowances*

General

The DBFOM Agreement states that the Department has established the following allowances from which the Department is required to make payments to the Borrower for the Borrower’s performance of the following types of Work:

(a) an allowance of \$6 million for the required streetscaping, landscaping and improvements within the public realm for the Work, except to the extent (i) such requirements are included elsewhere in the Contract Documents, or (ii) such requirements apply to the Traction Power Substation or the maintenance & storage facility;

(b) an allowance of \$3.7 million for Hazardous Materials Management Work, subject to the risk allocations set forth above (see *SUMMARY OF CERTAIN PROVISIONS OF THE DBFOM AGREEMENT—Design and Construction—Hazardous Materials Management—Risk Allocation*); and

(c) subject to receipt of necessary approvals, a possible future allowance of \$15 million for Art Accommodation and Installation Work; and

(d) an allowance of \$118,450,000 for Work relating to a potential additional Station,

(collectively, the “**LAWA Allowances**”).

To the extent that the Borrower incurs amounts for the Work described in (a) through (d) above in excess of the applicable LAWA Allowance, such amounts are required to be paid by the Department pursuant to a Change Order.

#### *Maximum Payments*

The maximum aggregate amount payable to the Borrower for Milestone Payments, Availability Payments, LAWA Allowances and the Additional D&C Payments is \$4,895,750,000 (the “Maximum Invoice Amount”), without prejudice to any other claims for compensation or other payments otherwise available to the Borrower under the DBFOM Agreement, including the rights of the Borrower described above regarding Utility Rate Risk Adjustments. The Maximum Invoice Amount includes (i) projections for inflation adjustments to the Availability Payments based on historical measures of inflation; and (ii) an assumption that fluctuations in Base Interest Rates and/or credit spreads during the rate protection period between December 6, 2017 and pricing or the fixing of rates will not result, or in the reasonable opinion of the Department be likely to result, in an increase to the Base Capital MaxAP of 10% or greater. If (i) actual inflation exceeds these projections, the Borrower is entitled to payment of additional amounts based on the escalation factor described further above; or (ii) fluctuations in Base Interest Rates and/or credit spreads do have such a result, but the parties agree to proceed to Financial Close, the Borrower is entitled to payment of additional amounts based on the Financial Model Update agreed to by the parties at Financial Close, regardless, in each case, of whether such additional amounts exceed the Maximum Invoice Amount.

#### **Intellectual Property Rights**

Except for Developer Intellectual Property and Third Party Intellectual Property, title to any Intellectual Property to the extent made, conceived, prepared or reduced to practice as part of the Work, incorporated into the APM Project, including any improvements, modifications, enhancements or derivative works to or of the LAWA Intellectual Property, vests in the Department at the earliest of creation, conception, preparation or reduction to practice.

The Borrower grants to the Department an irrevocable, perpetual, nonexclusive, transferable, fully paid-up right and license to use, to use, exploit, manufacture, distribute, reproduce, adapt and display the Developer Intellectual Property in connection with the APM Project, Proposal or Work.

The Borrower is required to use commercially reasonable efforts to secure perpetual, nonexclusive, transferable, irrevocable, unconditional, royalty-free license(s) in the name of the Department to use, exploit, manufacture, distribute, reproduce, adapt and display the Third Party Intellectual Property in connection with the APM Project, Proposal or Work, and is required to pay any and all royalties and license fees required to be paid for any Intellectual Property incorporated into the Project Intellectual Property.

In lieu of delivering the IP Materials directly to the Department, the Borrower may elect to deposit the IP Materials with a neutral depository. In such event, the Department and the Borrower are required to: (a) mutually select one or more escrow companies or other neutral depositories (each an “**IP Escrow Agent**”) engaged in the business of receiving and maintaining escrows of software source code and/or other Intellectual Property; (b) establish one or more escrows (each an “**IP Escrow**”) with the IP Escrow Agent on terms and conditions reasonably acceptable to the Department and the Borrower for the deposit, retention, upkeep, authentication, confirmation and

release of IP Materials to the Department pursuant to the DBFOM Agreement; (c) determine a date for the Borrower's deposit of the IP Materials into the IP Escrow; and (d) determine a process for releasing from escrow the IP Materials to be delivered to the Department pursuant to the DBFOM Agreement. IP Escrows also may include Affiliates as parties and may include deposit of their Intellectual Property. The Borrower is responsible for the fees and costs of the IP Escrow Agent(s).

The IP Materials are required to be released and delivered to the Department in any of the following circumstances:

- (a) expiry of the Term;
- (b) early termination of the DBFOM Agreement for Developer Default;
- (c) the Borrower fails or ceases to provide services as necessary to permit continued use of any Developer Intellectual Property for purposes of the APM Project; or
- (d) termination of the DBFOM Agreement for any reason other than expiry of the Term or Developer Default, but only in accordance with the terms of the IP Materials Access Agreement.

The Department may use, exploit (including sublicensing any rights as necessary), manufacture, distribute, reproduce, adapt and display the IP Materials delivered to the Department or released to the Department as described above for the purposes of (a) completion of the APM System, and (b) operation, maintenance, renewal, resupply, expansion or extension of the APM System, which rights survive the termination, expiration or cancellation of the DBFOM Agreement and the IP Materials Access Agreement.

## **Insurance**

### *Required Insurances*

The Borrower is required to procure or cause to be procured and keep in effect certain Insurance Policies during the D&C Period and the O&M Period as specified in Section 10.1 and Exhibit 7 of the DBFOM Agreement. Unless the Department approves otherwise in writing in its reasonable discretion, or otherwise stated in the DBFOM Agreement, each Insurance Policy must be procured from an insurer licensed or authorized to do business in the State and have a current policyholder's management and financial size category rating of not less than A-:VII according to A.M. Best's Financial Strength Rating and Financial Size Category.

### *Deductibles and Self-Insured Retentions*

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

### *Primary Coverage*

Each Insurance Policy is required to expressly provide that its coverage is primary and noncontributory with respect to all named and City Additional Insureds. None of the Insurance Policies shall limit the primary and noncontributory provision to only those Insurance Policies on which City Additional Insureds are named insured.

### *Verification of Coverage*

As soon as they become available, the Borrower is required to deliver to the Department (a) a true and complete copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy and all related endorsements and (b) satisfactory evidence of payment of the applicable premium.

If the Borrower has not provided the Department with proof of coverage and payment within ten days after request by the Department, the Department may (i) upon five days written notice to the Borrower, obtain such an Insurance Policy and the Borrower is required to reimburse the Department for the cost thereof upon demand; and (ii) suspend all or any portion of Work until proof of coverage is provided.

### *Project-Specific Insurance*

Except for commercial automobile liability and workers compensation, all Insurance Policies are required to apply specifically and exclusively for the APM Project and extend to all aspects of the Work, with coverage limits devoted solely to the APM Project. Use of other insurance programs is acceptable, provided that coverage under such programs provides dedicated APM Project-specific limits and identified premiums and meets all other applicable insurance requirements described in the DBFOM Agreement.

### *Adjustments in Coverage Amounts*

At least once every two years during the Term (commencing initially on the Passenger Service Availability Date), the Department and the Borrower are required to review and adjust, as appropriate, the per occurrence and aggregate limits for the Insurance Policies that have stated dollar amounts set forth in Exhibit 7. In determining adjustments, the Borrower and the Department are required to take into account (i) claims and loss experience for the APM Project, (ii) the condition of the APM Project, (iii) the Safety Compliance and Noncompliance Points record for the APM Project and (iv) best practices in the insurance industry.

If a LAWA Change to increase required limits of Insurance Policies results in a net increase in applicable insurance premiums, the Borrower is entitled to the amount of such net increase, provided that to the extent such adjustments are made to reflect the Borrower's performance on the APM Project (including for reasons described in clauses (i), (ii) or (iii)), the Borrower is not entitled to any compensation.

### *Insurance Premium Benchmarking*

During the O&M Period, the risk and benefit of increases and decreases in insurance premiums is allocated through an insurance benchmarking process. Starting 90 days before the second anniversary of the commencement date for the initial O&M Period policies, and every two thereafter (each a "**Benchmarking Date**"), the Borrower is required to submit a report to the Department that includes (i) firm current quotes from three established and recognized insurance providers; copies of the premium invoices for the actual insurance policies obtained by the Borrower for the O&M Work for the prior three years ("**Actual Insurance Policies**"); and a comprehensive written explanation of any effect that a Borrower-Related Entity's loss experience has had on the premiums for the required and actual Insurance Policies. Premium increases that are caused by Project specific losses, changes in deductibles or matters within the control of the Borrower or any Borrower-Related Entity are not subject to the benchmarking exercise or risk sharing. The Department also retains the right to undertake its own independent review.



As of a Benchmarking Date:

(a) if the aggregate annual insurance premiums for the Actual Insurance Policies, after adjustment for any changes in coverage and deductibles and as such premiums may be adjusted to exclude the effect of insurances procured in excess of the minimum requirements, (the “**Actual Insurance Premiums**”) exceed 120 percent of the aggregate starting premiums as adjusted based on the percentage change in CPI in accordance with the DBFOM Agreement (the “**Escalated Benchmark Insurance Premiums**”), then the Department is required to, within 30 days of the Benchmarking Date and on each 12-month anniversary thereof until the next benchmarking period, make a lump sum payment to the Borrower in an amount equal to 85 percent of the Actual Insurance Premiums that are in excess of 120 percent of the aggregate Escalated Benchmark Insurance Premiums; and

(ii) if the Actual Insurance Premiums are less than 80 percent of the aggregate Escalated Benchmark Insurance Premiums, then the Department is required to, during each 12-month period commencing on the Benchmarking Date until the next benchmarking period, reduce the payments owed to the Borrower in an amount equal to 85 percent of the amount by which Actual Insurance Premiums are lower than 80 percent of the aggregate Escalated Benchmark Insurance Premiums.

#### *Inadequacy and Unavailability of Required Coverages*

If the Borrower demonstrates to the Department’s reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to procure the required insurance coverages, and if despite such diligent efforts and through no fault of the Borrower any of such coverages (or any of the required terms of such coverages, including policy limits) become completely unavailable or unavailable at commercially reasonable rates from insurers meeting the specified financial requirements, the Department is required to consider in good-faith alternative insurance packages and programs that provide coverage as comparable to the required insurances as is possible under then-existing insurance market conditions. For these purposes, commercially reasonable rates is deemed to mean premiums that are less than or equal to the greater of (a) rates that a reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude are justified by the risk protection afforded, and (b) 200 percent of the rates indicated for the period in question in the Base Case Financial Model and related financial modeling data. The Department will be entitled to a credit for any insurance premium savings resulting from the modification or elimination of the insurance requirements, and the Department is required to act as the insurer of last resort to cover the exposures that would have been covered by the unavailable insurance policy or portion thereof.

#### *Application of Insurance Proceeds*

All insurance proceeds received for physical-property damage to the APM Project under any Insurance Policies, are required to first be applied to repair, restore or replace each part or parts of the APM Project or the Work with respect to which such proceeds were received.

#### *Property Damage Caused By Earthquake and Terrorism*

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

If tangible property damage to the APM Project is caused by Earthquake or Terrorism, the Borrower is required to, within five days of such occurrence, submit to the Department written notice thereof and, within 20 days of such notice, or such extended period of time as the parties agree is reasonable under the circumstances, submit complete written and photographic documentation supporting its Claim, and provide detailed quantification of the damages caused thereby. The Department is required to evaluate, within 20 days, or such extended period as the parties agree is reasonable under the circumstances, the documentation supplied by the Borrower and provide its provisional determination of the cost to repair the tangible property damage to the APM Project. The Borrower is

required to comply with any Department request for explanation, elaboration or additional information reasonably necessary to facilitate the Department's analysis.

## **Payment and Performance Security**

### *Design and Construction Security Requirements*

The Borrower is required to deliver to the Department one or more payment bonds with an aggregate value equal to the sum of Milestone Payments 1 through 5 and one or more performance bonds with an aggregate value equal to the sum of Milestone Payments 1 through 5, in each case in substantially the form annexed to the DBFOM Agreement and issued by a surety or insurance company meeting the requirements of applicable Law, licensed or authorized to do business in the State and rated at least "A" (excellent or above) according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Size Rating (an "**Eligible Surety**").

Each payment bond and performance bond is required to include a multiple obligee rider naming the City as an additional obligee and may also name the Collateral Agent as an additional obligee, unless the Borrower elects to procure the bonds directly rather than rely upon its contractors to do so in which case, the City does not need to be named as an additional obligee under a multiple obligee rider and necessary adjustments to reflect such election are to be made to the form.

### *Operations and Maintenance Security Requirements*

If the Borrower obtains security for payment and/or performance from any APM Fixed Facilities O&M Provider or APM Operating System O&M Provider, then it is required to obtain the following from the issuer, maker or guarantor, as applicable, of such payment and/or performance security for delivery to the Department, within ten days after issuance of the payment and/or performance security:

- (a) a certified copy of the payment and/or performance security;
- (b) in the case of a letter of credit, documentation naming the City as a transferee beneficiary and providing for transfer of such facility to the City in certain circumstances and otherwise meet the requirements in the DBFOM Agreement for letters of credit;
- (c) in the case of a bond, a dual-obligee rider naming the City an additional obligee under the bond, on the same terms as described above for the design and construction bonds; and
- (d) in the case of a guaranty, the documentation described below (see—*Guarantees*”).

### *Guarantees*

If the Borrower, any Key Contractor, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, then either (a) the Borrower is required to cause such Person to expressly include the Department as a guaranteed party under such guaranty and deliver to the Department a duplicate original of such guaranty, which guaranty is required to provide that the rights and protections of the Department will not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of payment and performance to another guaranteed party; or (b) the Borrower is required to deliver to the Department concurrently with the issuance of such guaranty, a duplicate original of such guaranty, and upon receipt of written notice from the Department that its rights as a beneficiary are exercisable as described below, such other documents reasonably satisfactory to the Department permitting the Department, subject to the rights of the Collateral Agent under any Lenders' Direct Agreement, to become the transferee beneficiary under such guaranty and to enforce it, which transfer documents are required to include a certified copy of the guaranty and an executed transfer and assignment of the beneficiary rights from the Borrower or Collateral Agent, as applicable, to the Department; and the guaranty must expressly authorize such transfer without condition and permit draw without presentation of the original guaranty.

The Department's rights as a transfer beneficiary are exercisable if, subject to the immediately following paragraph and the Lenders' Direct Agreement, the Department determines that (a) a Key Contractor has breached or failed to perform any obligations under its Contract and any notice thereof required under such Contract has been provided and the applicable cure period has expired without full and complete cure, (b) such breach has caused a Developer Default and the applicable cure period has expired without cure and (c) the Borrower or the Collateral Agent has failed to call upon or otherwise enforce such guaranty for the purpose of causing the performance of such obligations by or on behalf of the Contractor within ten days after the Department delivers notice of such breach or expected breach to the Borrower and the Collateral Agent and the cure period granted under the Lenders' Direct Agreement has expired.

So long as the Borrower or a Lender is diligently pursuing remedies under a guaranty, the Department agrees to forbear from (a) exercising remedies under any such guaranty that names the Department as a direct beneficiary and (b) exercising its right to become a beneficiary; provided, however, that if the Developer Default giving rise to exercise remedies under any such guaranty remains uncured at the end of the applicable cure period in Section 16.1.2 (Cure Periods) of the DBFOM Agreement, the Department's obligation to forbear from exercising remedies as a guaranteed party ceases.

### **Borrower Indemnity**

The Borrower is obliged to fully indemnify and hold harmless the City, any and all of the City's Boards, their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees (the "**Indemnified Parties**"), from and against any and all claims, causes of action, suits, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any third party, to the extent caused by:

(a) any act, omission, neglect or misconduct of the Borrower or any Borrower-Related Entity in the manner or method of executing the Work satisfactorily or due to the failure to perform the Work;

(b) the failure or alleged failure by any Borrower-Related Entity to comply with the Governmental Approvals, or any applicable Laws relating to the performance of the Work;

(c) the actual or alleged negligence, willful misconduct or breach of contract of any Borrower-Related Entity in or associated with performance of the Work;

(d) any Borrower-Related Entity's performance of, or failure to perform, any obligation under the Cooperation Agreements;

(e) any and all stop payment notices and/or liens filed by a Contractor in connection with the Work, provided that the Department is not in default in payments owing to the Borrower with respect to such Work;

(f) any Borrower-Related Entity's breach of or failure to perform an obligation that the Department owes to a third party under Law or under any agreement between the Department and a third party, where performance of the obligation is delegated to the Borrower, or the acts or omissions of any Borrower-Related Entity, which render the Department unable to perform or abide by an obligation that the Department owes to a third party under any agreement between the Department and a third party, provided the agreement was previously disclosed or known to the Borrower;

(g) any alleged infringement or other allegedly improper appropriation or use of Intellectual Property in performance of the Work, or arising out of relating to or resulting from any use in connection with the APM Project of methods, processes, designs, information or other items furnished or communicated to the Department or another Indemnified Party under the Contract Documents; provided that this indemnity will not apply to any infringement resulting from the Department's failure to comply with specific written instructions regarding use provided to the Department by the Borrower that are consistent with the Borrower's obligations to convey and license Developer Intellectual Property under the DBFOM Agreement;

(h) any actual or threatened Release of Hazardous Materials by any Developer-Related Entity and any liabilities resulting therefrom;

(i) the fraud, bad faith, willful misconduct, negligence or violation of Law or contract by any Borrower-Related Entity in connection with the Borrower's performance of real-property acquisition services under the Contract Documents;

(j) any fines or penalties imposed on the Department by any Authority Having Jurisdiction arising out of, relating to or resulting from the Borrower's breach of or failure to comply with applicable requirements of the Contract Documents;

(k) except in respect of any possessory interest tax which is determined to be payable by the County of Los Angeles, any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Borrower-Related Entity with respect to any payment for the Work made to or earned by such Borrower-Related Entity under the Contract Documents; and

(l) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Borrower-Related Entity to comply with Good Industry Practice, requirements of the Contract Documents, the Project Management Plan or O&M Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Work, (ii) the intentional misconduct or negligence of any Borrower-Related Entity in connection with the performance of the Work or (iii) unauthorized physical entry onto or encroachment upon another's property by any Borrower-Related Entity in connection with the performance of the Work.

The Borrower is required to indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the Contract Drawings or Reference Documents. Subject to certain Borrower obligations under the DBFOM Agreement, to the extent that errors, omissions, inconsistencies and other defects exist in the Contract Drawings and must be corrected, such correction shall be treated as a LAWA Change.

Subject to the terms of the DBFOM Agreement, the Borrower's indemnity obligations do not extend to any claim, cause of action, suit, investigation, legal or administrative proceeding, demand or Loss to the extent caused by: (a) the active negligence, reckless or willful misconduct, bad faith or fraud of such Indemnified Party; (b) a Relief Event, subject to the Borrower's obligations in respect of such event; or (c) the Department's breach of any of its obligations under the Contract Documents.

## **Changes**

### *LAWA Changes*

The Department may, at any time, make changes to the Work, including additions or reductions in the scope of the D&C Work or O&M Work, as it may direct in its sole discretion (each a "**LAWA Change**").

A Department direction to the Borrower under the relevant Technical Provisions (including among other things, accommodation of site tours, conducting demonstrations of certain features of the APM System especially at the Central Control Facility, conducting emergency management exercises and accommodating special events) will not constitute a LAWA Change to the extent that such direction does not extend the scheduled annual Vehicle-miles operated by more than one percent.

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

The Borrower is not entitled to any additional compensation, time extension or other relief in connection with a LAWA Change except to the extent granted in accordance with the applicable provisions of Articles 12 or 14 of the DBFOM Agreement relating to the LAWA Changes and Relief Events.

*Restrictions on LAWA Changes*

The Borrower is not required to implement any LAWA Change to the extent the LAWA Change would: result in a breach of Law or breach of any conditions of a Governmental Approval or revocation of any Governmental Approval; require a new Governmental Approval which would not be reasonably obtainable; render any Insurance Policy void or voidable; materially and adversely affect the health and safety of any person; or materially and adversely affect the risk allocation and payment regime under the DBFOM Agreement.

*Department Request for Change Proposal*

If the Department desires to initiate or evaluate whether to initiate a Change Order, then the Department may issue a Request for Change Proposal. The Request for Change Proposal is required to state the nature, extent and details of the contemplated LAWA Change.

As soon as possible, and in any event within 60 days following the Department's delivery to the Borrower of a Request for Change Proposal, the Borrower is required to provide the Department with change proposal including the following (a **"Change Proposal"**):

- (a) a detailed description of the impact of the contemplated LAWA Change on the D&C Work and the O&M Work;
- (b) if the Request for Change Proposal is issued before the Passenger Service Availability Date, a detailed description of any proposed adjustments to the Project Schedule;
- (c) where adjustments to any Contract Deadline are proposed: (i) a time impact analysis that identifies Critical Path impacts, illustrates the effect of schedule changes or disruptions on the Contract Deadlines and complies with the Technical Provisions; (ii) an assessment of the feasibility of accelerating the Work to meet the original deadline or to reduce the total delay period; and (iii) if acceleration is feasible, an estimate of the cost to accelerate as well as information regarding the Compensation Amount, if any, payable by the Department if the schedule is not accelerated;
- (d) a detailed, itemized estimate of any Compensation Amount claimed;
- (e) an estimate of the cost savings, if any, resulting from the contemplated LAWA Change;
- (f) the effect (if any) of the contemplated LAWA Change on the Borrower's ability to perform the O&M Work stated by Contract year;
- (g) where relief from obligations under the Contract Documents is sought, the effect of the contemplated LAWA Change on the Borrower's ability to perform any of its obligations under the Contract Documents that if not performed would result in the accrual of Noncompliance Points, the assessment of Deductions or the occurrence of a Developer Default, in each case including details of the relevant obligations, the effect on each such obligation, the likely duration of that effect and the specific relief sought;
- (h) a description of any additional consents or approvals required, including required amendments, if any, of any Governmental Approval, required to implement the contemplated LAWA Change;
- (i) a detailed description of the steps the Borrower will take to implement the contemplated LAWA Change, including mitigation of the costs, delay and other consequences of the contemplated LAWA Change; and
- (j) any other relevant information related to the contemplated LAWA Change.

The parties agree to engage in good-faith negotiations to reach agreement on the terms of a change order and the LAWA Change will become effective upon mutual execution of a written change order. If the parties do not agree on a Change Proposal, then the Department may seek to resolve any points of disagreement through the Dispute Resolution Procedures without issuing a Directive Letter, or the Department may issue a Directive Letter (a “**Directive Letter**”). The Directive Letter is required to describe the Work to be performed, the basis for determining compensation, if any, and schedule adjustment, if any. The Directive Letter is also required to either: (a) direct the Borrower to implement a LAWA Change; or (b) state that disputed Work is within the Borrower’s original scope of Work or is necessary to comply with the requirements of the Contract Documents.

If the Directive Letter does not state that the Work constitutes a LAWA Change, the Borrower is required to proceed with the Work as directed but may assert a Claim that a LAWA Change has occurred under the Relief Event procedures in Article 13 of the DBFOM Agreement.

If the Directive Letter provides for the implementation of a LAWA Change, the Borrower is required to, within 21 Business Days after the issuance of the Directive Letter, deliver to the Department a Change Proposal, and the parties are required to subsequently follow the procedures and provisions for a Change Proposal set forth above.

### **Developer Change Requests & Deviations**

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

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

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

The Department may accept or reject any Developer Change Request proposed by the Borrower for any reason or for no reason in the Department’s sole discretion. If the Department is prepared to accept a Developer Change Request, the parties are required to engage in good-faith negotiations to reach agreement on the terms of a Change Order.

#### *Deviations*

The Borrower may also request the Department approval of certain minor changes to the Technical Provisions that do not impact schedule or costs (“**Deviations**”). Deviations may be approved by the Department on a “no-cost” basis and, in such event, do not require a Change Order. Any other change in the requirements of the Contract Documents does require a Change Order.

Except with respect to Deviation in connection with an error or safety or compliance issue in the specifications or Technical Provisions that the Borrower identifies, the Department’s disapproval of a requested Deviation is final without any right to appeal under the Dispute Resolution Procedures.

The Department may elect to process the application as a Developer Change Request rather than as an application for a Deviation.

## Relief Events

### *Compensation Events and Non-Compensation Events*

Relief Events are defined as Compensation Events and Non-Compensation Events. The nature of the relief will depend upon the type, and timing, of the Relief Event.

### *Claiming Relief*

As a condition to the Department's granting of any type of relief to the Borrower in connection with the occurrence of a Relief Event, the Borrower is required to give written notice ("**Relief Event Notice**") of the occurrence of the Relief Event to the Department as soon as practicable, and in any event within 30 days of the date the Borrower (or any of its Contractors) has knowledge that the Relief Event has caused or is likely to cause an entitlement under the DBFOM Agreement (or should have been discovered in the exercise of reasonable prudence). Time is of the essence in connection with Relief Event notices and Relief Event Claims.

As soon as practicable and in any event within 30 days after submittal of a Relief Event Notice, the Borrower is required to submit to the Department a formal claim ("**Relief Event Claim**") for any Compensation Amount for Compensation Events and for any extension of time and any other requested relief relating to the Relief Event. In addition to full details of the Relief Event, the Relief Event Claim is required to include the following information, among other things, to the maximum extent then available:

(a) if a request for an extension of time, combined with previous extension requests, evidences a delay equal to ten percent or more of the Project Schedule, and if the Department so requests, evidence that consent of the Lender and Sureties for the requested extension of time has either been obtained or is not required, either by providing written consent from the Lender and Sureties or a certification from the Borrower that such consent is not required;

(b) where a request for an extension of time is made, a time impact analysis that identifies Critical Path impacts, illustrates the effect of schedule changes or disruptions on the Contract Deadlines and complies with the requirements of the Technical Provisions. In connection with its time impact analysis, the Relief Event Claim is required to include: (i) a Project Schedule update comparing the proposed new schedule to the Project Schedule or most recent update to the Project Schedule and demonstrating that the event or circumstance (A) is the sole and direct cause of a delay to the Critical Path and such delay is not concurrent with any delay that is not caused by a Relief Event and (B) could not have reasonably been avoided by re-sequencing of the Work or other reasonable alternatives; (ii) information regarding the estimated costs of accelerating the schedule to reduce or avoid delay to the extent practicable, as well as information regarding the Compensation Amount, if any, payable by the Department if the schedule is not accelerated; and (iii) analysis of potential re-sequencing, rescheduling and other work-around measures and a comparison of the estimated costs of the work-around to the resulting estimated savings in the Compensation Amount, as applicable;

(c) a detailed, itemized estimate of any Compensation Amounts claimed for Compensation Events, with required breakdown of costs and for Compensation Events occurring during the D&C Period estimates of any Delayed Payment Compensation claimed for any MP Delay Period and any AP Delay Period is also required to be provided;

(d) where relief from the Borrower's obligations is sought, a description of the effect of the Relief Event on the Borrower's ability to perform any of its obligations under the Contract Documents that would otherwise result in accrual of Noncompliance Point(s), assessment of Deductions or occurrence of a Developer Default, including details of the relevant obligations, the effect on each such obligation, the likely duration of that effect and the specific relief sought;

(e) Relief Event Claims for Relief Events described in clauses (b), (c), (e), (f) and (g) of the definition of Compensation Event is required to be accompanied by a statement signed by a qualified professional: (i) describing the investigations undertaken by the Borrower to determine Site conditions; (ii) setting forth all relevant

assumptions made by the Borrower with respect to the condition of the Site; (iii) justifying the basis for such assumptions and explaining exactly how the existing conditions differ from those assumptions; and (iv) stating the efforts undertaken by the Borrower to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs;

(f) an explanation of the measures that the Borrower has previously taken to prevent, and proposes to undertake to prevent or mitigate, the consequences of the Relief Event;

(g) the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance; and

(h) such other supporting documentation as may reasonably be required by the Department.

The agreement of the parties as to the specific compensation, time extension and/or other relief to be given the Borrower on account of a Relief Event is required to be evidenced by a written amendment to the DBFOM Agreement, duly executed by both parties. In the event the parties are unable to agree as to the specific compensation, time extension and/or other relief to be given the Borrower on account of a Relief Event, the Department is required to pay or grant, as applicable, any undisputed portion of compensation, time extension and/or other relief, and either party may refer the matter to the Dispute Resolution Procedures. If the Department rejects the Relief Event Claim, the Borrower may refer the matter to the Dispute Resolution Procedures.

If the Department or the Borrower determines, after engaging in good-faith negotiations, that continuation of such negotiations is not likely to resolve the matters in dispute, then, except as otherwise provided in the delay notification section of the DBFOM Agreement, either Party may initiate the Dispute Resolution Procedures.

#### *Defense to Certain Obligations*

Subject to the terms of the DBFOM Agreement, if a Relief Event occurs and for so long as the Relief Event is continuing:

(a) (except in respect of event of an Earthquake with a magnitude up to and including the ODE level, in which case the Borrower is only entitled to permitted to the extent permitted in the Technical Proposals)), the Borrower is entitled to: (i) relief from accrual of Noncompliance Points; (ii) relief from Developer Default; and (iii) relief from assessment of Deductions, provided that (in each case) such relief applies only to the extent that the Relief Event would otherwise have caused such accrual, Developer Default or assessment, as the case may be; and

(b) to the extent that the Borrower is unable to comply with the Contract Documents, applicable Laws or Governmental Approvals as a direct result of the Relief Event, the Borrower is excused from such compliance.

#### *Relief Event During O&M Period*

If a Relief Event occurs during the O&M Period, the Base Operating MaxAP portion of the Availability Payment is reduced during the period when the Borrower is entitled to relief as described above under “*Defense to Certain Obligations*” to align with the percentage of O&M Work actually performed relative to the scope of O&M Work required to be performed had the Relief Event not occurred.

If the Borrower demonstrates to the Department’s reasonable satisfaction that the actual reduction in the Borrower’s operation and maintenance costs of performing the O&M Work is other than as set out in the immediately preceding paragraph, then the reduction in the Base Operating MaxAP portion of the Availability Payment is the actual reduction in costs as demonstrated to the Department’s reasonable satisfaction.



#### *Extension of Contract Deadlines*

Subject to the provisions of the DBFOM Agreement, if a Relief Event Delay occurs during the D&C Period, the Borrower is entitled to an extension of:

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

#### *Incremental Costs for Compensation Events*

Subject to the provisions of the DBFOM Agreement, if a Compensation Event occurs, the Borrower may be entitled to receive from the Department Incremental Costs incurred by the Borrower.

Incremental Costs include (a) certain costs incurred by Developer in the performance of Extra Work specifically related to, and solely attributable to, a Compensation Event, (b) the permitted mark up on those costs, (c) certain delay costs for Compensation Events that result in a Relief Event Delay, and (d) the costs to the Borrower of financing any of (a) through (c). Such costs are calculated in further detail under Exhibit 13 of the DBFOM Agreement in respect of certain amounts paid or actually incurred by the Borrower in the performance of Extra Work specifically related to, and solely attributable to, a Compensation Event (unless otherwise indicated). The total permitted markup for overhead and profit as a percentage of the Base Incremental Costs is limited to:

- (a) for the Borrower, 10% of the cost of that portion of the Extra Work to be performed by Borrower with its own forces;
- (b) for the Borrower, 3% of the cost of that portion of the Extra Work to be performed by Contractors;
- (c) for Contractors, 12% of the cost of that portion of the Extra Work to be performed by Contractors with their own forces;
- (d) subject to clause (e) below, for Contractors, 3% of the cost of that portion of the Extra Work to be performed by lower tier Contractors; and
- (e) the aggregate total markup is not permitted to exceed 20% irrespective of the number of tiers of Contractors performing the Extra Work.

#### *Delayed Payment Compensation*

If during the D&C Period, a Compensation Event results in a Relief Event Delay, the Borrower is (subject to the provisions of the DBFOM Agreement) entitled to Delayed Payment Compensation as follows:

- (a) to the extent that the Relief Event Delay prevents the Borrower from satisfying (i) the minimum D&C Percentage condition precedent to any of Milestone Payments 1 through 5 or (ii) the Final Completion condition precedent to Milestone Payment 6, in each case as set forth in Exhibit 4A (Milestone Payment Mechanism) to the DBFOM Agreement, the parties are required to determine the aggregate number of days beyond the applicable Scheduled Milestone Payment Date that the applicable Milestone Payment will be delayed as a direct result of the occurrence and subsistence of such Compensation Event (the “**MP Delay Period**”);
- (b) to the extent that any Financing Costs are incurred by the Borrower during the duration of the MP Delay Period, the Department is required to, commencing on the applicable Scheduled Milestone Payment Date, pay to the Borrower an amount equal to such Financing Costs no later than the date the Borrower would have otherwise received the relevant Milestone Payment(s);

(c) to the extent that, due to the Relief Event Delay, the Passenger Service Availability Date has not occurred by the original Planned Early PSA Date, the parties are required to determine the aggregate number of days beyond the original Planned Early PSA Date, that Passenger Service Availability will be delayed as a direct result of the occurrence and subsistence of such Compensation Event (the “**AP Delay Period**”);

(d) to the extent that any Financing Costs are incurred by the Borrower during the duration of the AP Delay Period, the Department is required to, commencing on the original Planned Early PSA Date, pay to the Borrower an amount equal to such Financing Costs no later than the date the Borrower would have received the relevant Availability Payment(s);

(e) no later than 30 days after the Final Completion Date, the Borrower is required to prepare a Financial Model Update to determine: (i) whether as a result of the Compensation Event(s) and any related MP Delay Period or AP Delay Period, and taking into account the payments made to the Borrower by the Department pursuant to paragraphs (b) and (d) above, the extent to which the Borrower was left in a better or worse financial position; and (ii) the amount, if any, that either the Borrower would need to pay the Department or that the Department would need to pay the Borrower to ensure that the Borrower would be in a position that was no better and no worse;

(f) to the extent that the Financial Model Update demonstrates that the Borrower was left in a worse position notwithstanding the payments made to the Borrower by the Department, the Department is required to, within 30 days of executing the amendment relating to such Financial Model Update, either make a lump-sum payment to the Borrower or adjust the Availability Payments to the Borrower, in either case in an amount equal to that which would result in the Borrower being left in a no better and no worse position; and

(g) to the extent that the Financial Model Update demonstrates that the Borrower was left in a better position as a result of the payments made to the Borrower by the Department, the Borrower is required to determine whether to make a lump-sum payment to the Department or reduce the Availability Payments to the Borrower, in either case in an amount equal to that which would result in the Borrower being left in a no better and no worse position, and the Department and the Borrower are required to execute the amendment relating to such Financial Model Update; the aggregate amount of the Financing Costs paid as described in clauses (b) and (d) and the adjustments made in the Financial Model as described in clause (f) and (g) are referred to herein as the “**Delayed Payment Compensation**.”

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

#### *Limitations on Relief*

The Borrower is not entitled to any kind of relief whatsoever from a Relief Event to the extent:

(a) that the Relief Event or consequences of the Relief Event arose out of (i) any breach of contract by a Borrower-Related Entity, (ii) any act or omission by a Borrower-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (iii) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Borrower-Related Entity; or

(b) the Relief Event or consequences of the Relief Event could reasonably have been avoided by any Borrower-Related Entity.

The Borrower may not claim that any Relief Event relieves the Borrower from compliance with any Safety Compliance Order and is not entitled to compensation for any Delay Costs in connection with Earthquake or Terrorism.

The Borrower is required to take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice. Any compensation, time extension or other relief to which the Borrower is entitled in connection with a Relief Event is required to be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Borrower.

Any entitlement of the Borrower to compensation, with respect to a Relief Event, is net of all insurance proceeds received by any Borrower-Related Entity pursuant to any Insurance Policy; any amounts which the Borrower is deemed to have self-insured; and any other insurance proceeds received by any Borrower-Related Entity in connection with the Relief Event.

#### *Reduced Relief for Delay in Investigating Site Conditions*

The Borrower is not entitled to any extension of Contract Deadlines or to Delayed Payment Compensation for Compensation Events under clause (e) or clause (f) of the definition of Compensation Event, unless the Borrower has conducted, in accordance with Good Industry Practice and the required standards, an investigation of site conditions within 180 days of the later of the Effective Date and Borrower's access to property in accordance with the DBFOM Agreement.

#### *Relief Event Claims involving Hazardous Materials*

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

- (a) costs incurred or extensions of time for investigation and characterization of Hazardous Materials;
- (b) costs incurred or extensions of time with respect to any discovery of Hazardous Materials within Additional Properties or Temporary Areas;
- (c) costs incurred or extensions of time, with respect to any discovery of Hazardous Materials, if the Department is not afforded the opportunity to inspect the area before the Borrower takes any action that would inhibit the Department's ability to ascertain the nature and extent of the materials, except for emergency actions necessary to stabilize and contain a sudden release or otherwise required by Law to immediately address the emergency;
- (d) costs incurred associated with discovery and management of Known Hazardous Materials;
- (e) extensions of time for delays associated with discovery and management of Known Hazardous Materials; and
- (f) with respect to Work for which unit prices are provided in Exhibit 2A-21 (Hazardous Material Management Pricing Sheet) of the DBFOM Agreement (i) costs of performing such Work that exceed the unit prices and (ii) costs of performing Work that is reasonably related to the unit priced Work, but is not included in the unit price scope description in such exhibit.

#### *Method of Payment of Compensation for Compensation Events*

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

to do so, the Department is required to compensate the Borrower through progress or other payments invoiced as Work is completed or by an up-front lump-sum payment, at the Department's election in its sole discretion.

If the Department chooses to adjust the Availability Payment to compensate the Borrower for any additional compensation due for a Compensation Event, the proposed adjustments to payments between the parties are required to be calculated such that the Borrower is a no better and no worse position. See “—Updates to the Financial Model—*No Better; No Worse.*”

#### *Force Majeure Events*

During the occurrence and continuance of any Force Majeure Event, the Department is excused from performing those of its obligations to the extent that the Department is prevented from carrying out such obligations by that Force Majeure Event. However, a Force Majeure Event does not excuse any party from performing its payment obligations under the Contract Documents unless expressly stated otherwise.

Force Majeure Events mean the occurrence of:

- (a) war, civil war, invasion, blockade, embargo or violent act of foreign enemy or armed conflict, except Terrorism;
- (b) any strike, lockout, work slowdown or other dispute generally affecting the construction, transit facility maintenance or transit facility operations industry in the State, but excluding any strike, lockout, work slowdown or similar dispute specific to the APM Project, the Borrower or any Contractor;
- (c) any act of riot, insurrection, civil commotion or sabotage that causes direct physical damage to the APM Project or material disruption to the O&M Work, but excluding any act of riot, insurrection, civil commotion or sabotage specific to the APM Project, the Borrower or any Contractor; or
- (d) nuclear, chemical or biological contamination, unless the source or cause is caused by a Borrower-Related Entity.

If the effects of the Force Majeure Event are continuing and the parties are not able to agree to terms for the continued performance within 180 consecutive days after the date of the commencement of the Force Majeure Event, then either party may terminate of the DBFOM Agreement. See also below “—Termination of the DBFOM Agreement—Termination for Extended Delay.”

Relief for Force Majeure Events is subject to the general limitations on relief in respect of relief Events as discussed above See “—Relief Events—Limitations on Relief.

#### **Default by the Borrower**

##### *Developer Default*

The following events or conditions each constitute a “**Developer Default**”:

- (a) the Borrower fails to satisfy the conditions for commencement of non-construction work within 30 days after the Department's issuance of NTP 1, to begin the D&C Work within ten days following the Department's issuance of NTP 2 or to diligently prosecute the Work to completion in accordance with the Contract Documents;
- (b) the Borrower abandons all or a material part of the APM Project;
- (c) the Borrower fails to achieve Passenger Service Availability by the Long Stop Date;

(d) the Borrower (i) fails to make any payment owing to the Department under the Contract Documents when due or (ii) fails to deposit other funds into any custodial account, trust account or other reserve or account as required by the Contract Documents;

(e) (i) any representation or warranty in the Contract Documents made by the Borrower is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made, or (ii) any certificate, schedule, report, instrument or other document delivered by or on behalf of the Borrower, any Equity Member, Controlling Affiliate of the Borrower, Prime Contractor or APM Operating System Supplier to the Department as part of the Proposal under the Contract Documents is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;

(f) the Borrower fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the Contract Documents for the benefit of relevant parties or fails to comply with any requirement of the Contract Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, retentions or any other such amounts as and when due;

(g) (i) the Borrower makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Contract Documents, the APM Project or the Borrower's Interest in violation of the limitations on assignment or transfer under the DBFOM Agreement, (ii) there occurs an Equity Transfer or a change of ownership not permitted under the DBFOM Agreement or (iii) any other violation of the limitations on assignment or transfer under the DBFOM Agreement occurs;

(h) the Borrower fails to timely observe or perform, or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by the Borrower under the Contract Documents, including failure to pay for or perform the Design Work, Construction Work, O&M Work or any portion thereof in accordance with the Contract Documents in any material respect, provided that any failure that constitutes a Noncompliance Event or Noncompliance Occurrence is not considered a default under this clause (h), although such failure may become a Developer Default in accordance with clause (r) or (s) below;

(i) the Borrower, an Equity Member, a Controlling Affiliate of the Borrower, a Prime Contractor, an APM Operating System Supplier or any of their respective partners, members, officers, directors, responsible managing officers or responsible managing employees, has been convicted in a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in California Public Contract Code section 1101, with any public entity, as defined in California Public Contract Code section 1100, provided that, if the conviction relates to an Equity Member, a Controlling Affiliate of the Borrower, a Prime Contractor, an APM Operating System Supplier, or any of their or the Borrower's respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, (i) such Person is involved in the APM Project at the time of such conviction and (ii) the Borrower fails to remove such Person from the APM Project;

(j) the Borrower fails to comply with the Department's order to suspend Work within the time reasonably allowed in such order;

(k) the Borrower commences a voluntary case seeking liquidation, reorganization or other relief with respect to the Borrower or its debts; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(l) an involuntary case is commenced against the Borrower seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such the Borrower or the Borrower's debts; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of

attachment, execution or similar process; or seeking like relief, and such involuntary case will not be contested by it in good faith or will remain undismissed and unstayed for a period of 60 days;

(m) the DBFOM Agreement or any of the other Contract Documents is rejected in any voluntary or involuntary case-seeking liquidation, reorganization or other relief with respect to the Borrower or its debts;

(n) any voluntary or involuntary case or other act or event described in clause (k) or (l) occurs (and in the case of an involuntary case will not be contested in good faith or will remain undismissed and unstayed for a period of 60 days) with respect to (i) any Equity Member, partner or joint venture member of the Borrower (unless said Person has fully met all financial obligations owing to the Borrower in the form of a Committed Investment and payments or transfers of money or property previously made to or for the benefit of the Borrower are not subject to any applicable state or federal law respecting the avoidance or recovery of preferences or fraudulent transfers), or (ii) any Equity Member, partner or joint venture member of the Borrower for whom transfer of ownership or management authority would constitute a change of ownership;

(o) the Borrower draws against any custodial account, trust account, allowance or other reserve or account in violation of the Contract Documents or makes a false or materially misleading representation in connection with a draw against any such account, allowance or reserve;

(p) the Borrower fails to comply with any applicable Governmental Approval or Law in any material respect;

(q) any use of the APM Project by any Developer-Related Entity that violates requirements of applicable Governmental Approvals or Laws or otherwise is not permitted under the Contract Documents;

(r) the Borrower receives a total of 400 or more Noncompliance Points over the course of 12 consecutive Months (determined on a rolling basis);

(s) the Borrower receives a total of 1,100 or more Noncompliance Points over the course of 36 consecutive Months (determined on a rolling basis);

(t) three or more Persistent Unavailability Events have occurred in the prior 12 months; or

(u) an APM Operating System Shutdown lasting 96 hours or more has occurred.

#### *Cure Period and Remedies*

Pursuant to the term of the DBFOM Agreement, the Borrower has certain rights to receive notice and opportunity to cure before the Department may exercise its right to terminate the DBFOM Agreement. The Department remedies in the event of a Developer Default include, among others: termination of the DBFOM Agreement (as described below under “—Termination of the DBFOM Agreement—Termination for Developer Default); immediate Department entry to cure wrongful use; step-in rights; any and all damages available at law (and the right to deduct and offset such damages from any amounts the Department may owe to the Borrower); the right to make demand upon, drawn on and enforce and collect performance security; and suspension of the Work. Certain of the Department’s remedies with respect to Developer Defaults (including termination and step-in) are subject to the rights of the Collateral Agent under the Lenders’ Direct Agreement.

#### *Step-In Rights of the Department*

Subject to the terms of any Lenders’ Direct Agreement, if the Borrower has not fully and completely cured a Developer Default by the expiration of any applicable cure period, the Department may pay and perform all or any portion of the Borrower’s obligations under the Contract Documents that are the subject of such Developer Default.

The Department may, to the extent necessary to cure a Developer Default: (a) perform or attempt to perform, or caused to be performed, such Work; (b) employ security guards and other safeguards to protect the APM

Project; (c) spend such sums as the Department deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such Work, without obligation or liability to the Borrower or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment; (d) in accordance with provisions regarding performance security, draw on and use proceeds from the performance security and any other available security or source of funds available to the Borrower for the purposes set forth in this paragraph including amounts held in an operating account, to the extent such instruments provide recourse to pay such sums, provided the Department's right to access amounts held in an operating account will not include a security interest in such funds nor will the exercise of such right by the Department interfere with the right of the Lenders, if any, under the security documents and the Lenders' Direct Agreement to access such funds; (e) execute all applications, certificates and other documents as may be required; (f) make decisions respecting, assume control over and continue Work as may be reasonably required; (g) modify or terminate any contractual arrangements in the Borrower's Contracts in the Department's discretion, without liability for termination fees, costs or other charges, in accordance with the terms of those Contracts; (h) meet with, coordinate with, direct and instruct Contractors and Suppliers, process invoices and applications for payment from Contractors and Suppliers, pay Contractors and Suppliers and resolve claims of Contractors, Subcontractors and suppliers; (i) take any and all other actions it may consider necessary to effect cure and perform the Work; and (j) prosecute and defend any action or proceeding incident to the Work. The Borrower is required to reimburse the Department on demand for its Recoverable Costs incurred in connection with the performance of any act or Work authorized by this paragraph.

If the Department exercises any right to pay or perform as described above, it nevertheless will have no liability to the Borrower for the sufficiency, adequacy or quality of any such payment or performance, or for any effect of such payment or performance on the Work or the APM Project, unless caused by the gross negligence, recklessness or willful misconduct of the Department.

The Department's abovementioned step-in rights are subject to the right of any Surety to assume performance and completion of all bonded work under a performance bond issued as performance security.

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

### **Default by the Department**

#### *LAWA Default*

The Department will be in breach under the DBFOM Agreement upon the occurrence of any one or more of the following events or conditions (each a "**LAWA Default**"):

- (a) the Department fails to make any payment due to the Borrower under the DBFOM Agreement when due, provided that such payment is not subject to a Dispute;
- (b) the Department ceases to be authorized to make any payment to the Borrower under the DBFOM Agreement; or
- (c) any representation or warranty made by the Department under Section 19.2 of the DBFOM Agreement is false, misleading or inaccurate in any material respect when made or omits material information when made.

#### *Cure Periods and Remedies*

The DBFOM Agreement provides the Department with certain rights to receive notice and opportunity to cure LAWA Defaults. The Borrower's remedies in the event of a LAWA Default include, among others:

termination of the DBFOM Agreement (as described below); interest on late payments and suspension of Work (for failure to pay undisputed amounts of US\$1 million or more).

### **Termination of the DBFOM Agreement**

#### *Termination for Convenience*

The Department may terminate the DBFOM Agreement in whole, but not in part, if the Department determines, in its discretion, that termination is in the Department's best interest (a "**Termination for Convenience**").

In the event of a Termination for Convenience, subject to the terms of the DBFOM Agreement, the Department is required to pay compensation to the Borrower (or to the Collateral Agent or the Borrower's Lenders, as applicable), in an amount equal to the Maximum Termination Compensation Amount, comprising:

(a) (i) all amounts shown in the Financial Model as payable by the Borrower to Equity Members from the effective date of termination, either as Distributions on Committed Investments or as payments of interest or repayments of principal made by the Borrower in respect of Equity Members Funding Agreements, each amount discounted back at the Equity IRR from the date on which it is shown to be payable in the Financial Model to the Early Termination Date, *minus* (ii) Deferred Equity Amounts as at the date of termination; plus

(b) Lenders' Liabilities; *plus*

(c) Developer Employee and Contractor Breakage Costs; *minus*

(d) Account Balances; *minus*

(e) Insurance Proceeds; *minus*

(f) any Deductions to the extent not deducted in full from Milestone Payments or Monthly Disbursements.

#### *Termination for Extended Delay*

##### Extended Delay Events

Subject to the terms of the DBFOM Agreement, either party, following consultation with the other party, may deliver to the other party notice of its conditional election to terminate the DBFOM Agreement if an Extended Delay Event has occurred and is continuing and, as a direct result of the Extended Delay Event, the Borrower is unable to perform all or substantially all of its obligations under the Contract Documents for a period of 180 consecutive days or more or, if in the O&M Period, all or substantially all of the APM Project has become and remains inoperable for a period of 180 consecutive days or more and such inability to perform or suspension of operations is not attributable to another concurrent non-Extended Delay Event. An Extended Delay Event is a *Force Majeure* Event, a Qualifying Change in Law (other than City ordinances), or an event as described in clause (h) (relating to an earthquake or tidal wave that causes physical damage to the APM Project) or clause (i) (relating to terrorism) of the definition of Compensation Events. However, there is no such right to terminate in the case of any Extended Delay Event that results in damage or partial destruction of the APM Project if insurance proceeds are available to fund work required to remedy the effects of the Extended Delay Event and the parties agree to a restoration plan in respect of such work required to remedy the effect of the Extended Delay Event.

If the Department gives notice of conditional election to terminate for extended delay, then the Borrower may either accept such notice or give notice to the Department to continue performing its obligations under the DBFOM Agreement. The Borrower is required to deliver to the Department notice of the Borrower's choice within 30 days after its receipt of notice from the Department. If the Borrower does not deliver such notice within such



30-day period, then the Borrower will be deemed to have accepted the Department's election to terminate the DBFOM Agreement.

If the Borrower delivers timely notice choosing to continue performing its obligations under the DBFOM Agreement following receipt of a conditional election to terminate for an Extended Delay Event, the DBFOM Agreement will continue in full force and effect and the Department will have no obligation to compensate the Borrower for any costs of restoration, repair or replacement arising out of, relating to or resulting from the extended delay but if the extended delay commences before the Passenger Service Availability Date, then the provisions of the DBFOM Agreement concerning time extensions ("—Relief Events—Extension of Contract Deadlines") will apply.

If the Borrower gives notice of conditional election to terminate, then the Department may either accept such notice or elects to continue the DBFOM Agreement in effect if, in its reasonable discretion determines that the APM Project can be completed or re-opened, as applicable, on a commercially reasonable basis, by delivering to the Borrower notice of the Department's choice within 30 days after the Borrower delivers its notice. If the Department does not deliver such notice within such 30-day period, then it will be deemed to have accepted the Borrower's election to terminate the DBFOM Agreement.

If the Department delivers timely notice choosing to continue the DBFOM Agreement in effect, then the DBFOM Agreement will continue in full force and effect and following provisions will apply:

(a) subject to the Borrower's obligation to mitigate, the Department is obligated to pay or reimburse the Borrower an amount equal to (without double-counting): (i) the Incremental Costs directly caused by the Extended Delay Event which are incurred after the date the Borrower delivers its written notice of conditional election to terminate; plus (ii) if the notice of conditional election to terminate is delivered before the Passenger Service Availability Date, an amount equal to the amount of Delayed Payment Compensation (see "—Relief Events—Delayed Payment Compensation"); and

(b) the Borrower's rights and relief in respect of certain obligations (as described in "—Relief Events—Defense to Certain Obligations") continue to apply to the Relief Event until the damages produced by such Extended Delay Event are compensated as provided in the DBFOM Agreement and the restoration works are completed.

#### *Compensation for Extended Delay*

If termination due to an Extended Delay Event occurs, subject to the terms of the DBFOM Agreement, the Borrower is entitled to receive compensation as described below:

(a) an amount equal to its Equity Investments less Distributions paid to the Equity Members, which will never be a negative number; *plus*

(b) Lenders' Liabilities; *plus*

(c) Developer Employee and Contractor Breakage Costs; *minus*

(d) Account Balances; *minus*

(e) Insurance Proceeds; *minus*

(f) any Deductions to the extent not deducted in full from Milestone Payments or Monthly Disbursements,

(the "Extended Delay/Insurance Unavailability Termination Amount").

#### *Termination for Insurance Unavailability*

If it becomes apparent that insurance required under the Contract Documents is not available as described in the definition of “Insurance Unavailability,” the Department may deliver to the Borrower notice of its conditional election to terminate the DBFOM Agreement for Insurance Unavailability.

In the event of a termination for Insurance Unavailability, subject to the terms of the DBFOM Agreement, the Borrower is entitled to receive compensation equal to the Extended Delay/Insurance Unavailability Termination Amount.

#### *Termination for Developer Default*

If the Department issues a notice of termination of the DBFOM Agreement due to a Developer Default, subject to the terms of the DBFOM Agreement, the Borrower is entitled to receive compensation in an amount equal to:

- (a) if termination occurs before the Passenger Service Availability Date, the lesser of:
  - (i) the D&C Work Value less any D&C Period Deductions to the extent not deducted in full from Milestone Payments; and
  - (ii) the amount equal to:
    - (A) Lenders’ Liabilities; *minus*
    - (B) Account Balances; *minus*
    - (C) Insurance Proceeds (excluding proceeds of personal injury, property damage or other Third Party liability insurance payable to or for the account of a Third Party); *minus*
    - (D) any D&C Period Deductions to the extent not deducted in full from Milestone Payments;
- (b) if termination occurs on or after the Passenger Service Availability Date:
  - (i) 80 percent of Lenders’ Liabilities; *minus*
  - (ii) Maintenance Rectification Costs; *minus*
  - (iii) Account Balances; *minus*
  - (iv) Deferred Equity Amounts; *minus*
  - (v) Insurance Proceeds; *minus*;
  - (vi) any Deductions to the extent not deducted in full from Milestone Payments or Monthly Disbursements; *plus*
  - (vii) the balance standing to the credit of the Handback Requirements Reserve Account on the Early Termination Date.

Provided in each case that if the calculation described above results in a negative number, the negative value represents damages recoverable by the Department.

### *Borrower Rights to Terminate*

#### Termination for LAWA Default

If a LAWA Default remains uncured following (a) notice and expiration of the applicable cure period and (b) the Borrower's compliance with the warning requirements described below, the Borrower has the right to terminate the DBFOM Agreement, effective immediately upon delivery of written notice of termination to the Department.

The Borrower is required to provide a warning notice to the Department at least 15 days before terminating, which (in the case of failure to pay or cessation of authorization to pay) may not be delivered until 30 days after delivery of the original notice of such LAWA Default. The Borrower is required to provide a second warning notice to the Department at least five days before terminating, which notice may not be delivered until ten days after delivery of the first warning notice. If the Department fails to effect cure within five days after the date of delivery of the second warning notice, the Borrower has the right to terminate.

In the event of such termination, subject to the terms of the DBFOM Agreement, the Borrower is entitled to receive compensation equal to the Maximum Termination Compensation Amount.

#### Termination for Suspension of Work

If the Department issues a suspension order, provided that (a) such suspension is not the result of the negligence, willful misconduct or breach of applicable Law or contract by any Borrower-Related Entity; and (b) the Borrower has delivered a warning notice to the Department at least 15 days before terminating, the Borrower has the right to terminate the DBFOM Agreement, effective immediately upon delivery of written notice of termination to the Department. In the event of such termination, the Borrower will be entitled to compensation equal to the Maximum Termination Compensation Amount. The Borrower may not terminate on such grounds if, at the time the Borrower's right to terminate would arise, circumstances exist entitling either party to terminate the DBFOM Agreement in respect of extended *Force Majeure*, Insurance Unavailability, Developer Default, court ruling or failure of Financial Close to occur.

#### Termination due to Court Ruling

Termination Due to Court Ruling means, and becomes effective upon: (a) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals to the effect that the DBFOM Agreement is void, voidable, and/or unenforceable or impossible to perform in its entirety for reasons beyond the reasonable control of the Borrower; or (b) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals upholding the binding effect on the Borrower and/or the Department of a Change in Law that causes impossibility of performance of a fundamental obligation by the Borrower or the Department under the Contract Documents or impossibility of exercising a fundamental right of the Borrower or the Department under the Contract Documents. The final court order is to be treated as the notice of termination.

In the event of such termination, subject to the terms of the DBFOM Agreement, the Borrower is entitled to receive compensation in an amount equal to the amount equal to the Extended Delay/Insurance Unavailability Termination Amount, provided that if the Termination Due to Court Ruling is caused solely by a LAWA Default or a LAWA-Caused Event, the Borrower is entitled to compensation in the amount to the Maximum Termination Compensation Amount.

#### *Payment of Termination Compensation*

In the case of termination for convenience, condemnation, an Extended Delay Event, Insurance Unavailability or any Borrower right to terminate, provided that the Borrower has timely provided to the Department the required statements and information, the Department is obligated to pay the Borrower, within 120 days of the Early Termination Date, an amount equal to the:

- (a) Termination Compensation; plus
- (b) interest and fees that accrued on the outstanding principal due to Lenders (excluding default interest) under the Financing Documents over the period between the Early Termination Date and such payment date.

In the case of termination for Developer Default, provided the Borrower has timely provided to the Department the required statements and information, is obligated to pay the Borrower, within 120 days of the Early Termination Date, an amount equal to the Termination Compensation.

If as of the date that the Department is required to tender payment of Termination Compensation, the parties have not agreed upon the amount of Termination Compensation due, then the Department is required to proceed to pay the undisputed portion of the Termination Compensation and then pay the disputed portion after it is agreed to by the parties or otherwise determined to be payable pursuant to the Dispute Resolution Procedures, as the case may be.

#### *Termination if Financial Close Fails to Occur*

The Department may, by delivering to the Borrower a notice specifying the Department's election to terminate and its effective date, terminate the DBFOM Agreement prior to Financial Close if the Department determines in its sole discretion that termination is in the Department's best interest.

Either party may terminate the DBFOM Agreement, without fault or penalty, upon 15 days prior notice to the other party, if Financial Close is not achieved by the Financial Close Deadline or Delayed Financial Close Date, as applicable, and such failure is excused pursuant to one of the permitted excuses from achieving Financial Close set forth in the DBFOM Agreement.

With respect to such a termination for failure of Financial Close to occur, in the circumstances described in the two immediately preceding paragraphs, the Borrower is entitled to Termination Compensation of \$2.5 million.

### **Handback**

#### *Handback Condition*

Upon the Termination Date, the Borrower is required to surrender the APM Project, including any Upgrades, to the Department, in the condition and meeting all of the terms, conditions, requirements and procedures governing the condition in which the Borrower is to deliver the APM Project assets upon expiration or early termination of the DBFOM Agreement (the "**Handback Requirements**"), provided that in the event of early termination, the Borrower is only required to comply with the Handback Requirements to the extent that any Renewal Work was scheduled to have been performed before the Early Termination Date.

The parties are required to conduct inspections of the APM Project at the times and according to the terms and procedures specified in the Handback Requirements, for the purposes of:

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

#### *Handback Reserve Amount*

The Borrower is required to calculate the cost of the Handback Renewal Work determined to be required to be expended to ensure the APM Project meets the Handback Requirements (the “**Handback Reserve Amount**”) and prepare a report specifying the estimate of such amount and how it was calculated, as well as the amount required to be deposited into the Handback Requirements Reserve Account for the next commencing Handback Year (as described below). Within 15 days of receipt of each such report, the Independent Engineer is required to review the report, conduct its own inspections of the condition of the APM Project relative to the Handback Requirements and provide a report to the Borrower and the Department setting forth the Independent Engineer’s determination of the Handback Reserve Amount.

With each update to the Handback Renewal Work Plan provided by the Borrower under the relevant Technical Provisions relating to the Handback Renewal Work Plan within the last five years of the Term, the Borrower is required to calculate the Handback Reserve Amount, prepare a report as described above and provide the update and report to the Department and the Independent Engineer. Following delivery of the update and report, the parties are required to meet to discuss whether any changes should be made to the scope or schedule for performance of the Handback Renewal Work or to the Handback Reserve Amount.

#### *Handback Requirements Reserve Account*

Beginning five full years before the expected end of the Term, the Borrower is required to establish a reserve account (the “**Handback Requirements Reserve Account**”) exclusively available for the uses set forth below. The City is required to have a first priority perfected security interest in the Handback Requirements Reserve Account, and the right to receive monthly account statements directly from the depository institution.

*In lieu* of establishing the Handback Requirements Reserve Account, the Borrower may deliver to the Department one or more letters of credit meeting the requirements of the DBFOM Agreement, including in respect of the rating of the issuer (“**Handback Requirements Letters of Credit**”). Any Handback Requirements Letter of Credit is required to name the City as the sole beneficiary.

For each consecutive 12-month period commencing five full years before the expected end of the Term (each a “**Handback Year**”), no later than five Business Days following the first day of such Handback Year, the Borrower is required to deposit to the Handback Requirements Reserve Account amounts determined as follows:

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

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

(b) if, as of the date of calculation, the MaxAPs projected to be paid to the Borrower during the period commencing on such date and ending upon the expiry of the Term are less than two times the Handback Reserve

Amount calculated on such date, then the Borrower is required to deposit to the Handback Requirements Reserve Account an amount sufficient to ensure that the Handback Requirements Reserve Account balance is equal to 100 percent of the Handback Reserve Amount calculated on such date.

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

Following completion of the Handback Renewal Work, any remaining Handback Requirements Reserve Balance may be drawn and retained by the Borrower. If the DBFOM Agreement is terminated for any reason before the completion of the Handback Renewal Work, any remaining Handback Requirements Reserve Balance may be drawn and retained by the Department.

#### *Right of the Department to Self-Perform Handback Requirements and Recover Costs*

If the Department determines that the APM Project does not comply with any Handback Requirement, or Handback Renewal Work is not timely or properly performed, then, in addition to the Department's rights under the Contract Documents, the Borrower is liable for the Department's Recoverable Costs incurred in bringing the APM Project into compliance with such Handback Requirement(s). In recovering such amounts, the Department may (a) reduce any Availability Payment then-due and owing from the Department to the Borrower, (b) invoice the Borrower for such amount, as a lump-sum payment, (c) set off such amount against any other amount then due and owing from the Department to the Borrower, (d) draw against funds withheld or against the letter of credit that the Borrower may provide to secure its obligation to perform Renewal Work, (e) require funds in the reserve account described below to be used to pay for required Renewal Work or (f) any combination of subsections (a) through (e).

### **Contracting and Labor Practices**

#### *Key Contracts*

The Borrower is required to provide the Department, for the Department's review and comment, draft copies of (a) any Key Contracts not executed before the Effective Date and (b) proposed material amendments to Key Contracts. Such drafts must be provided at least 30 days before execution of a Key Contract or an amendment to a Key Contract, as applicable.

The Borrower is not permitted to terminate or permit termination of any Key Contract or permit any substitution, replacement or assignment of any Key Contractor, except with the Department's prior approval; provided, however, that the Department's prior approval is not required in the event of (a) any termination of the DBFOM Agreement where the Department elects not to assume the Borrower's future obligations under such Key Contract, (b) any suspension, debarment, disqualification or removal (distinguished from ineligibility due to lack of financial qualifications) of the Key Contractor or (c) any agreement for voluntary exclusion of the Key Contractor, from bidding, proposing or contracting with any federal, State or local department or agency; and provided, further, that the Department is required to act reasonably with respect to approval of a replacement in the case of material uncured default by the Key Contractor under the Key Contract.

The Borrower is responsible for ensuring that each Key Contract complies with the requirements set forth in Exhibit 14 of the DBFOM Agreement.

#### *Prompt Payment to Contractors*

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

### *Key Personnel*

The Borrower is required to retain, employ and utilize the individuals specifically listed in Exhibit 2A-3 (Key Personnel Statement of Availability), and retain, employ and utilize individuals qualified for the positions described in the relevant Technical Provisions to fill Key Personnel positions for the relevant period provided that the Borrower acknowledges that if the Department reasonably determines that an individual is not qualified for a Key Personnel position, the Borrower is required to, at the Department's request, replace that individual with one that meets the required qualifications. The Borrower is not permitted to change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by the Department.

### *Inclusivity*

The Borrower is required to utilize the services of firms certified as Small Business Enterprise, Local Business Enterprise, Local Small Business Enterprise or Local State Disabled Veteran Business Enterprise firms at specified minimum participation levels for the D&C Work and the O&M Work.

The required participation levels for the Design Work (presented as a percentage of the Borrower's cost of the Design Work) are as follows:

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

The required participation levels for the Construction Work (presented as a percentage of the Borrower's cost of the Construction Work) are as follows:

SBE	18%
LBE	7%
LSBE (subset of LBE)	5%
DVBE	3%

The required participation levels during the period commencing on the Passenger Service Availability Date and ending on the day before the fifth anniversary of the Passenger Service Availability Date are as follows:

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

For the period commencing on the fifth anniversary of the Passenger Service Availability Date and ending on the Termination Date, the minimum annual participation levels are to be determined in accordance with the DBFOM Agreement. Pursuant to such process, every five years during the Term (commencing initially on the fifth

anniversary of the Passenger Service Availability Date), an adjustment to the minimum annual participation levels for SBEs, LBEs, LSBEs and DVBES in the performance of O&M Work is expected to be made by the Department. In determining such an adjustment, the Department is required to take into account (a) the market availability of SBEs, LBEs, LSBEs and DVBES as indicated by publicly available databases used by the Department for assessing market availability of such firms, (b) the anticipated scope of O&M Work for the next five year period as set forth in the Borrower's applicable maintenance plan and the technical requirements, and (c) other comparable projects expected to be active during the next five year period that will have an impact on utilization of SBEs, LBEs, LSBEs and DVBES in the City. The adjustment in the inclusivity requirements for any period cannot result in a change to the minimum annual participation levels for any SBE, LBE, LSBE or DVBE category of more than 33% of the minimum annual participation requirements for such category for the immediately preceding inclusivity period.

Noncompliance Points are assessable in the event of certain failures to comply with the inclusivity requirements described above.

The Borrower also agrees to strictly comply with the Department's Small Business Enterprise Program and Local Business, Local Small Business and Local-State Disabled Veterans Business Enterprise Program.

### **Advertising and Business Opportunities**

The Department reserves all rights and opportunities relating to advertising on the APM Project and, as between the Borrower and the Department, within the O&M Limits, including use of Stations, Vehicles and other APM Project physical assets for advertising purposes and to develop and pursue itself or through others, entrepreneurial, commercial and business activities that are ancillary or collateral to the use and operation of the APM Project and Site ("**Business Opportunities**").

The Borrower is required to cooperate and grant all necessary access to the Department and any third-party designees authorized by the Department in connection with the Department's exercise of its rights relating to advertising and Business Opportunities. The Department is required to compensate the Borrower for reasonable costs and expenses incurred directly by the Borrower in installing and maintaining facilities for advertising or Business Opportunities (other than routine maintenance), through a Change Order.

Except as authorized by the Department, the Borrower is not permitted to engage in or permit: any advertising within the O&M Limits (including on or within Vehicles); use of occupation of the APM Project for any Business Opportunities; or operation of any business on Vehicles, at Stations or within the Site, including (i) the sale of products or services or (ii) the sale or rental of any wire, cable, transmission or receiving device or any other utility on, or transmission or receipt of any electronic communication to or from, any part of the APM Project.

### **Dispute Resolution**

#### *General*

All Disputes are subject to the Dispute Resolution Procedures set forth in Article 18 to the DBFOM Agreement, except for:

(a) any decision, determination, judgment or other action of the Department that the Contract Documents state is subject to the Department's sole or absolute discretion (in which case the decision, determination, judgment or other action is final, binding and not subject to dispute resolution and does not constitute a basis for any claim for additional monetary compensation, time extension or any other relief); and

(b) any other matter for which the Contract Documents expressly provide otherwise.

Except where a party is disputing a finding of the Independent Engineer (in which case the conclusions and determinations of the Independent Engineer are provisionally binding upon the parties in respect of any payment obligations, pending any final determination of the Dispute), the Department's initial determination of Disputes that



are subject to the Dispute Resolution Procedures is binding upon the parties pending any final determination of the Dispute.

The Borrower is required to proceed diligently with performance of the Work pending resolution of any Dispute, including any Work that is the subject of the Dispute, except for any performance the Department determines in writing should be delayed, suspended or terminated as a result of such Dispute.

#### *Informal Dispute Resolution*

The parties agree to make good-faith efforts to resolve by amicable negotiations all Disputes arising between the parties before filing a Dispute Submittal as provided in Article 18 of the DBFOM Agreement.

#### *Resolution by the Parties*

The Dispute Resolution Procedures set forth specific processes for the resolution of disputes according to whether a dispute is a (a) Design Work, Construction Work and Renewal Work-related disputes, (b) an Independent Engineer related dispute or (c) a financial or O&M Work (except Renewal Work) related dispute.

In each case, any Dispute or Claim by the Borrower must be submitted to the Department in writing with all documentation that supports and relates to the issues raised in the Dispute (“**Dispute Submittal**”) within the specified timeframes. Upon receipt of a Dispute Submittal, the Department is required to conduct a reasonable review of the Dispute and provide the Borrower a written statement identifying what portion of the Dispute is disputed and what portion is undisputed at the time of the statement.

If the Borrower does not accept the results of the Department’s determination regarding a Design Work, Construction Work or Renewal Work related Dispute, or if the Department has failed to respond to such a Dispute within the specified time periods, the Borrower may demand an informal conference to meet and confer for settlement on the issues in dispute. Within ten days following the conclusion of the meet and confer conference, if the Dispute remains unresolved, the Department is required to provide the Borrower with a written statement identifying the portion of the Dispute that remains disputed and the portion that is undisputed and any disputed portion of a Claim is required to be submitted to project neutral proceedings as described below. An accelerated procedure is provided for Independent Engineer-related disputes.

If the Borrower does not accept the results of the Department’s determination regarding a financial or O&M Work Dispute, or the Department has failed to respond to such a Dispute within the specified time periods, the Borrower will have seven days from the date it receives the Department’s written statement to submit a written rebuttal to the Department. The Department is required to review the Borrower’s rebuttal and issue a final written determination to the Borrower within 15 days after receipt of the rebuttal. The Department’s written determination in response to the Borrower’s rebuttal is final and conclusive on the subject, unless the Borrower reserves the Dispute by filing a written appeal with the Department within ten days of receiving the final determination. If the Borrower files such an appeal with the Department, either the Department or the Borrower may refer the matter to project neutral proceedings as described below.

#### *Project Neutral Procedures*

If the parties are unable to reach agreement on the dispute pursuant to the abovementioned procedures, then the Department or the Borrower may submit such Dispute to consideration by a Project Neutral or the parties may mutually agree in writing to waive the project neutral proceedings and to proceed directly to the commencement of a civil action.

Upon receipt by the Project Neutral of the Dispute from either party, the Project Neutral is required to decide when to conduct the hearing, provided that Project Neutral is required to hold the hearing within 20 days of receipt, unless the parties mutually agree to a longer time period. Either party may furnish written evidence or documentation to the Project Neutral regarding the Dispute, with copies of such information to the other party. If the Project Neutral requests any additional documentation or evidence prior to, during or after the hearing, the

relevant party is required to provide the requested information to the Project Neutral and to the other party, in accordance with the deadlines set by the Project Neutral.

The Borrower and the Department must each be afforded an opportunity to be heard by the Project Neutral and to offer evidence. Neither the Department nor the Borrower may present information at the hearing that was not previously distributed to both the Project Neutral and the other party.

The Project Neutral's recommendations for resolution of the Dispute are required to be given in writing to both the Department and the Borrower within 15 days of completion of the hearings provided that the parties may agree to allow additional time for the Project Neutral to formulate its recommendations.

Within 15 days of receiving the Project Neutral's recommendations, both the Department and the Borrower are required to respond to the other and to the Project Neutral in writing, signifying either acceptance or rejection of the Project Neutral's recommendations. The Department and the Borrower are required to allocate the costs associated with any project-neutral proceedings equally.

No Project Neutral is empowered to render a binding decision as to any Dispute. However, agreements reached in project neutral proceedings may be enforceable as settlement agreements in any court having jurisdiction thereof.

#### *Litigation of Dispute*

At the conclusion of the proceedings provided for above, as applicable, any remaining Disputes will be deemed rejected by the Department. If the Borrower desires to pursue any remaining Disputes, the Borrower is required to file a Government Code Claim in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code ("**Government Code Claim**"). The Borrower is required to, as a condition precedent to filing a Government Code Claim, comply with the Dispute Resolution Procedures set forth in the DBFOM Agreement.

#### **Assignment and Transfer**

##### *Restrictions on Equity Transfers and Change of Control*

Subject to the exceptions noted below, any:

- (a) Change of Control of the Borrower; or
- (b) Equity Transfer that results in any Equity Member ceasing to own (directly or indirectly) the same percentage of the issued share capital, partnership or membership interests, as applicable, in the Borrower that it owned (directly or indirectly) as of the Financial Close Date,

is subject to the Department's prior written approval.

Neither an Equity Transfer to a Prohibited Person, nor a Change of Control that would involve the provision of any amount of Committed Investment directly or indirectly from a Prohibited Person, is permitted at any time.

Transfers and transactions within any of the exceptions described in clauses (a) through (g) of the definition of Change of Control are allowed at any time without necessity for the Department's approval, provided that:

- (a) for an exception described in clause (a) (with respect to any initial public offering), or clause (b), (c) or (d) of such definition, the Borrower is required to deliver to the Department, within ten days before the effectiveness of the transfer or transaction, written notice describing the transfer or transaction and (if applicable) the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is within such an exception; and

(b) for an exception described in clause (a) of such definition (other than with respect to an initial public offering), the Borrower is required to deliver to the Department, within five days after the effectiveness of the transfer or transaction, written notice describing the transfer or transaction and (if applicable) the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is within such an exception.

Where the Department's prior written approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry or grant of other special use, management or control, or for any proposed Equity Transfer or Change of Control and such transaction is proposed at any time during the period ending two years after the Passenger Service Availability Date, the Department may withhold or condition its approval in its sole discretion. Any such decision of the Department to withhold consent is final, binding and not subject to the Dispute Resolution Procedures. After the second anniversary of the Passenger Service Availability Date, the Department is not permitted to unreasonably withhold its approval of an Equity Transfer or Change of Control.

#### *Restrictions on Assignment, Subletting and Other Transfers of the Borrower's Interest or the APM Project*

The Borrower is not permitted to voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber the Borrower's Interest or any portion thereof without the Department's prior written approval, in its sole discretion, except:

(a) to Lenders for security as permitted by the DBFOM Agreement, provided the Borrower retains responsibility for the performance of the Borrower's obligations under the Contract Documents; or

(b) to any Substituted Entity approved by the Department in accordance with the Lenders' Direct Agreement, provided that such Substituted Entity assumes, in writing, full responsibility for performance of the obligations of the Borrower under the DBFOM Agreement, the other Contract Documents, and the Key Contracts and Financing Documents arising from and after the date of assignment.

#### *Assignment by the Department*

The Department may assign all or any portion of its right, title and interest in the Contract Documents, Payment Bonds and performance security, guarantees, letters of credit and other security for payment or performance, (a) any other Governmental Entity of the State that succeeds to the governmental powers and authority of the Department under the Los Angeles City Charter and Los Angeles Administrative Code and (b) to others with the prior written consent of the Borrower, which consent cannot be unreasonably withheld if the Department's assignee has a credit rating equal to or better than the Department's senior lien rating at the time of the assignment as measured by a Rating Agency.

#### *Assumption*

Each transferee of the Borrower's Interest, including any Person who acquires the Borrower's Interest through foreclosure, transfer *in lieu* of foreclosure or similar proceeding, is required to execute and deliver to the Department an assumption agreement in form acceptable to the Department, providing that the transferee takes the Borrower's Interest subject to, and will be bound by, the Project Management Plan, the Key Contracts, the Governmental Approvals, all agreements between the transferor and third parties and all agreements between the transferor and Governmental Entities with jurisdiction over the APM Project or the Work, except to the extent otherwise approved by the Department.

#### *Governing Law and Jurisdiction*

The Contract Documents are governed by and construed in accordance with the laws of the State, any applicable federal law, the Los Angeles City Charter, and the ordinances, regulations, codes, and Executive Orders enacted and/or promulgated pursuant thereto. The venue for any litigation arising from a Dispute is the Torrance Branch of the Los Angeles County Superior Court.

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## APPENDIX D-6

### SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT

*The following is a summary of selected provisions of the Design-Build Contract and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, from the Borrower or the Trustee upon request by a bona fide prospective investor. Unless otherwise stated, any reference in this Official Statement to the Design-Build Contract shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.*

#### Overview

Design and construction work for the APM Project will be undertaken by the Design-Build Contractor pursuant to the Design-Build Contract, dated as of April 11, 2018, between the Borrower and the Design-Build Contractor. The Design-Build Contract includes, on a fixed-price, lump-sum, date-certain, turn-key basis, substantially all work and services required or appropriate in connection with the design and construction of the APM Project (including performing the Borrower's obligations with respect to design and construction under the DBFOM Agreement), except to the extent expressly excluded in the Design-Build Contract.

#### Scope of Work

Subject to the limited exceptions specified in the Design-Build Contract, the scope of work under the Design-Build Contract includes the performance of all work required to be furnished and provided, and activities and services required to be performed, by Design-Build Contractor, and all other obligations of the Design-Build Contractor under the Design-Build Contract, the Design-Build Early Works Agreement and the Interface Agreement, including the responsibility for all deliverables required to obtain the relevant milestones provided under the Design-Build Contract.

The Design-Build Contractor is required to comply with all applicable laws, Governmental Approvals, Good Industry Practice, the requirements of the DBFOM Agreement applicable to the Contracted Work, and the other requirements specified in the Design-Build Contract and the other DB Documents.

Without limiting the foregoing, the Contracted Work includes: (a) the supply, commissioning, testing and integration of the Vehicles; (b) obtaining all Governmental Approvals required to perform the Contracted Work other than those approvals required to be procured by the Department under the DBFOM Agreement; and (c) coordinating with other contractors and utility owners that have a utility within the Site or which will be affected in any way by the Contracted Work.

The Contracted Work includes, without limitation, the following:

#### *Oversight and Inspection*

Under the DBFOM Agreement, the Department has the right at all times to conduct oversight as described in the relevant Technical Provisions. Such oversight may include assessments regarding compliance with the DB Documents, project management plan and requirements of applicable Governmental Entities and applicable law.

The Design-Build Contractor acknowledges in the Design-Build Contract that, in addition to other remedies available to the Department under the DBFOM Agreement, the Department is entitled to change the type and/or increase the level of the Department's oversight of the APM Project and the Work (including the Contracted Work), in such manner and to such level as the Department determines if at any time: (a) over the course of 12 consecutive months (determined on a rolling basis), the Borrower has accumulated 200 or more noncompliance points; (b) over the course of 36 consecutive months (determined on a rolling basis), the Borrower has accumulated

550 or more noncompliance points; or (c) the Borrower fails to submit a remedial plan in accordance with the DBFOM Agreement. The Borrower will provide the Design-Build Contractor with any notice given by the Department in respect thereof to the extent such oversight is in respect of the Contracted Work. To the extent such oversight is in respect of the Contracted Work, the Design-Build Contractor shall pay and reimburse the Borrower all reasonable increased costs and fees that the Department incurs in connection with such action. The Department may, at its sole discretion and at its own expense, increase its level of oversight at any time.

The Borrower has the right at all times at the Borrower's sole discretion to be present at, and to witness any of the Department's oversight activities as described in the Design-Build Contract and to access all information derived therefrom.

#### *Site Conditions*

Design-Build Contractor acknowledges and agrees that:

(a) it has investigated and satisfied itself as to the conditions affecting the Contracted Work, including those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather or similar physical conditions at the Site, the conformation and conditions of the ground, and the character of equipment and facilities needed in connection with the Contracted Work;

(b) it has satisfied itself, for the purposes of the Contracted Work, as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site including the results of exploratory work and other information publicly available or provided to Design-Build Contractor by the Borrower or the Department;

(c) any failure by Design-Build Contractor to acquaint itself with the available information relating to the conditions affecting the Contracted Work will not relieve the Borrower from responsibility for estimating properly the difficulty or cost of successfully performing the Contracted Work.

If, during the progress of the Contracted Work, Design-Build Contractor encounters any hazardous materials or other site conditions that may entitle Design-Build Contractor to claim that a Relief Event has occurred under the DBFOM Agreement, then Design-Build Contractor is required to notify the Borrower of the specific condition promptly before it is disturbed, or as soon as practicable afterwards, and before the affected Contracted Work continues. Design-Build Contractor acknowledges and agrees that the Department has agreed to promptly investigate such conditions pursuant to the DBFOM Agreement.

#### *Governmental Approvals*

The Design-Build Contractor is responsible for obtaining all Governmental Approvals required for the Contracted Work, other than the approvals provided by the Department, and bears the risk of any delay in obtaining such approvals (except as expressly set forth in the Design-Build Contract), as well as the risk of conditions imposed on performance of the Contracted Work by such approvals. The Design-Build Contractor is required to conduct all necessary environmental studies and prepare all necessary environmental documents in compliance with applicable environmental laws as needed to obtain Governmental Approvals other than the approvals provided by the Department, and is required to obtain all necessary modifications, renewals and extensions thereof to the extent related to the Contracted Work.

#### *Acquisition of Real Property*

##### Project ROW Property Acquisition

Under the DBFOM Agreement, the Department is required to provide the Borrower with rights of access to the Project ROW properties within the D&C Limits as identified in the relevant Technical Provisions by the dates specified in the Property Acquisition Schedule. Under the Design-Build Contract, Borrower will provide Design-Build Contractor with rights of access to such properties by the dates specified in the relevant Technical Provisions.

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

#### Additional Acquisitions

If the Design-Build Contractor identifies any property that is not subject to the above obligations of the Department but that the Design-Build Contractor seeks to add to the Project ROW to accommodate the Design-Build Contractor's particular design or for the Design-Build Contractor's convenience in performing the Contracted Work, then the Design-Build Contractor may submit to the Borrower a request for acquisition of additional property interests and related documentation in accordance with the relevant Technical Provisions, including appropriate documentation of basis of acquisition and justification of acquisition together with an analysis identifying alternative approaches that could be adopted to avoid the need for the acquisition.

Design-Build Contractor agrees that if the Department chooses to acquire such property proposed for acquisition by the Design-Build Contractor pursuant to the procedure above ("**Additional Properties**"), the Department is required to proceed with the acquisition and add such real property interests to the Property Acquisition Schedule.

Design-Build Contractor is responsible for the cost to acquire Additional Properties proposed by Design-Build Contractor, together with all costs and expenses incurred by the Department and the Borrower in connection with acquiring such Additional Properties, and shall bear all risk of delays related to the acquisition of such Additional Properties.

#### Temporary Interests in Property

Design-Build Contractor is solely responsible for acquisition of any temporary interests in property that Design-Build Contractor determines is necessary, desirable or advisable to obtain in connection with the APM Project or the Contracted Work. Design-Build Contractor is required to pay directly the cost to acquire, maintain, operate, and/or dispose of all such property interests. If the property is within the limits of any real property scheduled for acquisition by the Department or is intended to be used for permanent improvements, or if Design-Build Contractor intends to request the acquisition by the Department of such real property, Design-Build Contractor is required to coordinate with the Borrower and is not permitted to negotiate with the Department or the owner(s) of such interests except with express permission of the Borrower and in compliance with applicable law.

Design-Build Contractor agrees that neither the Department nor the Borrower have any obligation to acquire temporary interests in property and Design-Build Contractor solely bears the risk of any delays and cost impacts related to acquisition of temporary interests, regardless of whether the Department agrees to undertake any such acquisition.

#### *Utilities*

Utility Adjustments. The Design-Build Contractor is required to: (a) during the performance of the Contracted Work, coordinate with each utility owner that has a utility within the Site or which will be affected in any way by the Contracted Work and coordinate and cause all utility adjustments necessary for the timely construction of the APM Project to be completed in accordance with the APM Project schedule and the requirements of the DB Documents; (b) make all reasonable efforts to design around existing utilities, minimizing impacts; (c) conduct reasonable site investigation and exploration before commencement of Construction Work or renewal work in any particular area to correctly identify all utilities in the area and include in the design all identified utilities to ensure that utility services are not mistakenly disrupted by the Construction Work or the renewal work; (d) submit to the Department and the Borrower utility relocation plans identifying each utility adjustment to the extent related to the Contracted Work, together with the timelines for obtaining utility owner approval and completing each utility adjustment within 180 days of the Design-Build Contractor's access to the property; (e) develop project execution

plan(s) for the Contracted Work in accordance with the relevant Technical Provisions showing existing and proposed utility locations (including a composite utility plan) and their relationship to the proposed construction; provide each project execution plan to the applicable utility owner; and determine work responsibility for each utility adjustment to the extent related to the Contracted Work with the applicable utility owner; (f) for utility adjustments to the extent related to the Contracted Work involving the City, Los Angeles County or LA Metro, comply with the Design-Build Contractor's obligations relating to the applicable Cooperation Agreement; (g) obtain necessary permits for each utility adjustment to the extent related to the Contracted Work; (h) obtain utility owner pre-approval of subcontractors and/or suppliers performing certain utility work if required by utility owner; (i) before commencing Construction Work or renewal work on a particular utility adjustment, obtain the relevant utility owner's approval regarding the work to be performed, in accordance with the requirements of the relevant Technical Provisions and Good Industry Practice; (j) if a utility owner performs all or any part of the utility adjustments work, to the extent related to the Contracted Work, coordinate, monitor, and otherwise undertake the necessary efforts to cause such utility owner to perform such work timely, in coordination with the Contracted Work, and in compliance with the DB Documents; provided the Design-Build Contractor shall perform the required utility adjustments work to the extent that the utility owner fails to so perform; and (k) keep the Department and the Borrower informed of any issues with work by utility owners to the extent related to the Contracted Work that may affect the APM Project.

**Betterments.** Utility betterments may be added to the Contracted Work pursuant to the Design-Build Contract. If a utility owner requests that the Department permit the Borrower to perform work relating to utility betterments as a part of the Contracted Work, at the utility owner's expense, and if the Department's authorized representative approves any such request, the Design-Build Contractor shall perform such work to be carried out during the D&C Period, with the right to receive additional payment from the Borrower provided that the Borrower has received the corresponding payment from the utility owner.

**Applications for Utility Permits.** Utility owners may apply to an authority having jurisdiction for utility permits to install new utilities that would conflict with the APM Project, or to modify, upgrade, relocate or expand existing utilities within the Site, and that in such event, the authority having jurisdiction may request the Department's input in connection with the permitting decision. The Design-Build Contractor agrees to: (a) assist the Department and the Borrower in providing comments regarding such permit applications; (b) make available upon request the most recent APM Project design information and/or record documents, as applicable, to the applicants; (c) assist each applicant with information regarding the location of other proposed and existing utilities; and (d) use commercially reasonable efforts to coordinate work schedules with such applicants as appropriate to avoid interference, if possible, with the Work by applicants' activities.

#### *Hazardous Materials*

Subject to certain exceptions set forth in the Design-Build Contract, the Design-Build Contractor is required to, during the D&C Period and as part of the Contracted Work, perform, or cause to be performed, all hazardous materials management required in connection with the APM Project in accordance with applicable law, Governmental Approvals, the approved environmental protection program, and all applicable provisions of the DB Documents. If the Design-Build Contractor fails to undertake the hazardous materials management required under the Design-Build Contract within a reasonable time after discovery of hazardous materials, taking into consideration the nature and extent of the contamination and action required and the potential impact upon the Design-Build Contractor's schedule for use of and operations on the Site, the Department may notify the Borrower and the Design-Build Contractor that it will itself undertake the hazardous materials management or procure a contractor to perform such work, in which case the Department is required to do so in accordance with all applicable Environmental laws. The Design-Build Contractor is required to reimburse the Department on a current basis for fines, penalties or other assessments against the Department or the APM Project by Governmental Entities due to the Design-Build Contractor's delay or failure to undertake the hazardous materials management, so long as the Department has performed in accordance with the terms of the DBFOM Agreement.

The Design-Build Contractor shall have the following duties to identify, avoid, minimize and mitigate adverse monetary and non-monetary impacts to the APM Project and to the Borrower and the Department relating to hazardous materials: (a) the Design-Build Contractor shall adopt design and construction techniques for the APM Project, using Good Industry Practice, that avoid, to the maximum extent practicable, the need for hazardous materials management; (b) when performing hazardous materials management, the Design-Build Contractor shall



use Good Industry Practice, including design modifications and construction techniques, to minimize costs (including long-term costs) of hazardous materials management; and (c) the Design-Build Contractor shall use appropriately trained personnel to conduct hazardous materials management activities. The Design-Build Contractor is also responsible, on behalf of the Borrower, for the management of all pre-existing hazardous materials encountered in connection with the APM Project, in compliance with applicable law, subject to certain limitations set forth in the Design-Build Contract, including the Department's responsibility under the DBFOM Agreement for certain losses arising from the management of pre-existing hazardous materials. The Design-Build Contractor is also obligated to avoid exacerbating hazardous materials (including pre-existing hazardous materials and new releases) in, on under or migrating from the Site, and to take all reasonable efforts to ensure that no act or omission of any Design-Build Contractor-related entity will result in an unlawful release of hazardous materials to or into wastewater, storm or sanitary sewer systems, surface water, air, soils or groundwater in, on, under or migrating from the Site.

## **Contract Price and Payments**

### *Contract Price*

The Design-Build Contract provides for a firm, fixed-price, lump sum contract price in the amount of \$1,949,193,818.85 (the "**Contract Price**"). The contract price is not subject to adjustment for any reason other than pursuant to a scope change order authorized by the Borrower or that the Design-Build Contractor is entitled to claim as set forth in the Design-Build Contract, or as determined through the dispute resolution procedures under the Design-Build Contract.

### *Proposal Development Costs*

As reimbursement for the proposal development costs incurred by Design-Build Contractor and subject to the terms and conditions of the Design-Build Contract, the Borrower shall pay to the Design-Build Contractor the sum of \$15,561,000 no later than 3 business days following Financial Close.

### *Additional D&C Costs*

The Borrower shall pay to the Design-Build Contractor certain additional payments, provided that Design-Build Contractor shall not be entitled to such amounts unless and until Design-Build Contractor shall have achieved the minimum D&C Percentage for the payment of the relevant additional payment as provided in the Design-Build Contract. Design-Build Contractor shall not be entitled to such additional payments until the Borrower has received the corresponding amounts from the Department pursuant to the DBFOM Agreement. The Borrower shall pay to Design-Build Contractor such additional payments within five business days of receipt of such payments from the Department.

### *Allowances*

Design-Build Contractor acknowledges and agrees that the following allowances for Design-Build Contractor's performance of the following types of Contracted Work are available under the DBFOM Agreement:

- (a) an allowance of \$6,000,000 for the required streetscaping, landscaping and improvements within the public realm for the Work, except to the extent (i) such requirements are included elsewhere in the DB Documents, or (ii) such requirements apply to the Traction Power Substation or the maintenance and storage facility;
- (b) an allowance of \$3,700,000 for Hazardous Materials Management Work;
- (c) an allowance of \$15,000,000 for Art Accommodation and Installation Work; and
- (d) an allowance of \$118,450,000 for Contracted Work relating to a potential additional Station.

### *Payments*

Subject to the terms of the Design-Build Contract, payments of the Contract Price shall be paid on a monthly basis (each, a “**Monthly Progress Payment**”) in accordance with the terms and procedures set forth in the Design-Build Contract. Subject to the application of noncompliance deductions, Monthly Progress Payments shall (except in relation to the initial payment to be made by the Borrower around Financial Close) be based on Design-Build Contractor’s progress as measured against the schedule of values provided in the Design-Build Contract, such that the sum of all Monthly Progress Payments equals the Contract Price.

Upon satisfaction of the payment conditions set forth in the Design-Build Contract and subject to the application of noncompliance deductions, the Borrower shall pay the Monthly Progress Payments (other than the Financial Close Payment) to Design-Build Contractor on a monthly basis in accordance with a schedule of values, based on (a) Design-Build Contractor’s percentage completion of each item listed in the schedule of values not previously paid, and (b) in the corresponding amounts shown in the schedule of values, provided, however, that the cumulative Monthly Progress Payments, measured from the Financial Close Payment, shall not at any time exceed the corresponding maximum cumulative payments for the relevant month set forth in the Design-Build Contract, less any amounts the Borrower is otherwise entitled under the Design-Build Contract to withhold.

Commencing on the month following the month in which the Financial Close Payment is made, by the fifth day of each month, or if such day is not a business day, then the first business day of each month, Design-Build Contractor shall submit an accurate and complete invoice (each, an “**Invoice**”) in writing to the Borrower in an amount corresponding to (a) amounts claimed for the actual Contracted Work performed during the preceding month in accordance with the schedule of values, plus (b) other amounts, if any, due and payable by the Borrower under the Design-Build Contract, minus (c) any amounts to be deducted from the Contract Price under the Design-Build Contract or otherwise due from Design-Build Contractor to the Borrower in accordance with the Design-Build Contract.

The Invoice shall include:

- (a) a list and description, with sufficient detail, of the Contracted Work completed in the prior month;
- (b) information regarding the percentage completion actually achieved during such month for the items set forth in the schedule of values and the amount of the cumulative Monthly Progress Payments (after giving effect to such request) relative to the maximum payment curve;
- (c) a copy of Design-Build Contractor’s most recent monthly report, which shall be developed in accordance with the terms included in the Design-Build Contract (including unconditional lien releases in the statutory form for all contractors for every payment made during the previous month), certified by Design-Build Contractor as being correct and complete in all material respects and fairly presenting the progress of the Contracted Work as of the date of such report;
- (d) the amount claimed, if any, for Contracted Work resulting from a change order or an equivalent claim, together with an explanation of the basis for the amount claimed;
- (e) the cumulative total of Monthly Progress Payments paid or payable to Design-Build Contractor prior to the date of such Invoice; and
- (f) such additional information or supporting information as may be reasonably required by the Borrower, the Lenders, the Lenders’ Technical Advisor or the Department in accordance with the Financing Documents or the DBFOM Agreement, as applicable, and which has been notified to Design-Build Contractor by the Borrower.

Within three (3) days after receipt by the Borrower of the relevant Invoice, the Borrower and Design-Build Contractor shall meet to discuss the contents thereof, and the Borrower shall, within seven (7) days thereafter, accept or reject all or any portion of the amount requested by Design-Build Contractor in such Invoice. Subject to the

application of noncompliance deductions and the other rights of the Borrower under the Design-Build Contract to offset or withhold payment, the Borrower shall pay to Design-Build Contractor all accepted amounts due in connection with each Invoice pursuant to the Design-Build Contract by 20 days following receipt by the Borrower of the relevant Invoice.

To the extent that Design-Build Contractor fails to produce any of the documentation required pursuant to the Design-Build Contract, such that the Lenders' Technical Advisor is unable to certify all or a portion of the requested Monthly Progress Payment, the Borrower shall be entitled to withhold payment of the requested Monthly Progress Payment thereunder until such time as the relevant documentation and information have been provided.

### **Equivalent Project Relief**

The Borrower has certain rights, entitlements, remedies and defenses available to it under the DBFOM Agreement that relate to the Contracted Work or to the rights or obligations of the Design-Build Contractor under the Design-Build Contract, including, without limitation, such rights in respect of: (a) any contribution, indemnification, compensation, damages or other additional compensation or payment of any kind; (b) any other relief (including any extension of time or limitation of liability applicable to liabilities owed to the Department under the DBFOM Agreement) from the performance of the Borrower's obligations under, or from termination of, the DBFOM Agreement; (c) any entitlement of the Design-Build Contractor under the Design-Build Contract in respect of which any provision of the Design-Build Contract states that: (i) the equivalent project relief provisions shall apply; or (ii) the Design-Build Contractor may make an equivalent claim or issue an equivalent claim notice; (d) any certificate, consent or approval provided for under the Design-Build Contract, the DBFOM Agreement or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Contracted Work, including any entitlement of the Borrower to request or apply for such certificate, consent or approval from the Department or any other person; and (e) any LAWA Change order or Relief Event; but, in each case, excluding any payments made by the Department to the Borrower in respect of any payments to be made under the Financing Documents except to the extent that the Borrower has received compensation in respect of such amounts (including by way of liquidated damages) paid by the Design-Build Contractor to the Borrower under the Design-Build Contract. In accordance with and subject to the equivalent project relief provisions of the Design-Build Contract, the Design-Build Contractor is entitled to the benefit of such rights, entitlements, remedies and defenses in connection with the Contracted Work.

### **Liquidated Damages**

If the Design-Build Contractor fails to achieve Passenger Service Availability by the Original Planned Early PSA Date, the Design-Build Contractor shall pay to the Borrower \$183,171.90 per day for each day by which Passenger Service Availability is delayed beyond the Original Planned Early PSA Date (the "**Fixed Bridge Payments**"), but, to avoid duplication with AP Delay Liquidated Damages, excluding any day for which AP Delay Liquidated Damages are owing under the Design-Build Contract.

If the Design-Build Contractor fails to achieve Passenger Service Availability by the Planned Early PSA Date, the Design-Build Contractor shall pay to the Borrower \$219,193.80 per day for each day by which Passenger Service Availability is delayed beyond the Planned Early PSA Date (the "**AP Delay Liquidated Damages**," and collectively with the Fixed Bridge Payments, the "**Delay Liquidated Damages**").

If Final Completion is not achieved on or before the Scheduled Milestone Payment Date for Milestone Payment 6, the Design-Build Contractor shall pay to the Borrower the incremental amount of interest payable with respect to the short term facility due to the delay in achieving Milestone Payment 6, which amount will be at a floating rate for each day that Final Completion is delayed (the "**Final Completion Delay Costs**").

Delay Liquidated Damages and Final Completion Delay Costs shall accrue daily and shall be payable monthly on the third to last business day of each month during which they are incurred after receipt of a demand in writing by the Borrower and only to the extent that the Department has not paid the Borrower the corresponding Milestone Payment under the DBFOM Agreement. The Delay Liquidated Damages will be updated for interest rate adjustment in the amended and restated Design-Build Contract. See "PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—The Amended and Restated Design-Build Contract."

The aggregate liability of Design-Build Contractor to the Borrower in relation to Delay Liquidated Damages and Final Completion Delay Costs will be limited to 4.90% of the Contract Price (the “**LD Cap**”). The LD Cap will be updated for interest rate adjustment in the amended and restated Design-Build Contract. See “PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—the Amended and Restated Design-Build Contract.”

## **Warranties**

### *Warranty Periods*

Design-Build Contractor is required to provide warranties for the Contracted Work which are required to be effective for 12 months after the Passenger Service Availability Date, with the exception of (i) the warranties for Non-O&M Facilities as described below, (ii) the warranties for Utility Owners and Authorities Having Jurisdiction as described below, and (iii) the warranties from the APM Operating System as described below.

### *Defects*

During the applicable warranty period, Design-Build Contractor shall promptly notify the Borrower of any defect of which Design-Build Contractor or any Design-Build Contractor-related entity is or becomes aware. Design-Build Contractor shall, in a timely manner, correct, at its expense, all DB Defects which are notified to Design-Build Contractor or of which it or any Design-Build Contractor-related entity otherwise has knowledge during the applicable warranty period.

If Design-Build Contractor does not correct any DB Defect pursuant to the requirements described above within a reasonable time following awareness of such DB Defect, the Borrower, acting reasonably, may, upon 10 business days’ notice in its discretion remedy such DB Defect, in which event all reasonable costs associated with such DB Defect and any remedial or other works required as a result of such DB Defect shall be borne by Design-Build Contractor. If Design-Build Contractor carries out work to remedy any DB Defect referred to above during the applicable warranty period, work required to be carried out to remedy the relevant DB Defect and any asset or element of the Contracted Work affected by the DB Defect shall be warranted to be free of DB Defects for a period from the date on which the relevant remedial work is completed such that it conforms with the requirements of the Design-Build Contract and until the later of 12 months thereafter or the end of the applicable warranty period specified in the Design-Build Contract.

### *Product Warranties*

Design-Build Contractor is required to obtain from all subcontractors representations, warranties, guarantees and obligations in accordance with Good Industry Practice for work of similar scope and scale, with respect to design, materials, workmanship, equipment, tools and supplies furnished by all such subcontractors and suppliers, which are required to extend to Design-Build Contractor, the Borrower, the Department and any Utility Owner or Authority Having Jurisdiction for whom Contracted Work is being performed.

### *APM Operating System Supplier Warranties*

The Design-Build Contractor is required to obtain from the APM Operating System Supplier warranties for the APM Operating System which will be effective for 24 months after the Passenger Service Availability Date (the “**APM OPS Warranty Period**”). In addition, Design-Build Contractor is required to provide an epidemic warranty for all epidemic DB defects, which will also be effective for 24 months after the Passenger Service Availability Date. All APM Operating System Supplier warranties: (a) shall be written so as to survive all the Department, Borrower and any third party inspections, tests and approvals; and (b) shall provide that, in the event that the Design-Build Contract expires or is otherwise terminated before the expiration of the APM OPS Warranty Period, the APM Operating System Supplier warranties shall automatically be for the benefit of and enforceable by the Department, the Borrower, Design-Build Contractor, O&M Contractor and their respective successors and assigns, and any Utility Owner or Authority Having Jurisdiction for whom Contracted Work is being performed, subject to the rights of the Lenders as provided in the DB Lenders’ Direct Agreement.

### *Latent Defects*

Design-Build Contractor shall be responsible for or liable for the costs of the correction of all DB Defects present in the APM Fixed Facilities that could not reasonably have been identified by a competent person acting in accordance with Good Industry Practice during visual inspection(s) of the APM Fixed Facilities no later than three (3) months prior to the end of the warranty period applicable to the APM Fixed Facilities (a “**Latent Defect**”), provided that the Borrower has given Design-Build Contractor written notice of any Latent Defect as soon as reasonably practicable and in any event within 90 days following the date the Borrower first becomes aware of such Latent Defect.

The latent defects period ends 10 years after the Final Completion Date with respect to the APM Fixed Facilities, and the latent defects period for any other portion of the Contracted Work shall be determined pursuant to California law.

### *Warranties for Non-O&M Facilities*

Design-Build Contractor warrants each Non-O&M Facility against Non-O&M Facilities Defects during the period commencing on Non-O&M Facility Occupancy Readiness of the Non-O&M Facility and ending two years thereafter (each, a “**Non-O&M Facilities Warranty Period**”). Design-Build Contractor is required to perform, at the Design-Build Contractor’s sole cost and expense, Non-O&M Facilities Warranty Work for any Non-O&M Facilities Defect that Design-Build Contractor receives notice of, or otherwise has actual knowledge of, within the applicable Non-O&M Facilities Warranty Period.

Design-Build Contractor is required to commence the applicable Non-O&M Facilities Warranty Work within 11 days of written notice of the relevant Non-O&M Facilities Defect from the Borrower or the Design-Build Contractor’s actual knowledge thereof, whichever is earlier; or such shorter period as may be designated by the Borrower for emergency repairs and shall thereafter diligently complete the Non-O&M Facilities Warranty Work as soon as reasonably practicable. If Design-Build Contractor fails to commence or pursue with diligence and complete the Non-O&M Facilities Warranty Work as required, (a) Design-Build Contractor agrees that pursuant to the DBFOM Agreement, the Department may, in its sole discretion, perform the Non-O&M Facilities Warranty Work upon written notice to the Borrower (which written notice the Borrower shall forward to Design-Build Contractor), or (b) the Borrower may, in its sole discretion, perform the Non-O&M Facilities Warranty Work upon 10 business days prior written notice to Design-Build Contractor, and Design-Build Contractor shall reimburse (i) the Borrower in payment of any demand by the Department within four days after any written demand from the Borrower for all costs and expenses incurred by the Department in connection with the performance of the Non-O&M Facilities Warranty Work to the extent such amounts are claimed by the Department against the Borrower pursuant to the DBFOM Agreement, or (ii) the Borrower the reasonable costs and expenses incurred by the Borrower in connection with the performance of the Non-O&M Facilities Warranty Work, and any remedial or other works required as a result thereof, which costs and expenses shall be payable by Design-Build Contractor monthly on the third to last business day of each month during which such costs and expenses are incurred after receipt of a demand in writing by the Borrower.

In the event of an emergency constituting an immediate hazard to health or safety of users or of the Department’s or Borrower’s property due to a Non-O&M Facilities Defect, the Department or Borrower may undertake, at the Design-Build Contractor’s sole cost and expense and without prior notice, all work necessary to correct such hazardous condition(s).

Before expiry of the applicable Non-O&M Facilities Warranty Period, Design-Build Contractor is required to execute and deliver to the Borrower a written assignment, in form and substance reasonably acceptable to the Borrower, of all the Design-Build Contractor’s and subcontractors’ right, title and interest in and to all warranties, and to the extent assignable, claims and causes of action held by Design-Build Contractor or its subcontractors against third parties, concerning the Non-O&M Facilities or the Non-O&M Facilities Work.

### *Warranties for Utility Owners and Authorities Having Jurisdiction*

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

### **Limitation on Liability**

Design-Build Contractor's aggregate liability cap under the Design-Build Contract and the Interface Agreement is: (a) in the period up to and including the Final Completion Date, 35% of the Contract Price, and (b) in the period from the Final Completion Date until the DB Termination Date, the lesser of: (i) the remaining exposure pursuant to (a) above, reduced by liabilities up to and including the Final Completion Date, and (ii) 10% of the Contract Price.

The above aggregate liability cap shall not apply to, nor shall the calculation thereof include:

- (a) any liabilities or obligations to the extent that:
  - (i) the amount thereof is paid to Design-Build Contractor from the proceeds of insurance maintained by the Department or the Borrower or required to be maintained by Design-Build Contractor or any Design-Build Contractor-related entity under the Design-Build Contract; or
  - (ii) an amount is paid by Design-Build Contractor but subsequently recovered by Design-Build Contractor from such proceeds of insurance, or from the Department or any third party (other than an entity providing insurance or a Design-Build Contractor-related entity); or
  - (iii) the same would have been recovered by Design-Build Contractor through such insurance if Design-Build Contractor or any Design-Build Contractor-related entity had maintained the coverage required to be maintained by it under the Design-Build Contract or if Design-Build Contractor or any Design-Build Contractor-related entity had otherwise complied with its obligations under, and the limitations of, such insurance policies and diligently pursued the relevant insurance claim;
- (b) liabilities that arise out of (a) the injury to or death of persons, the loss of or the physical damage to the property of third parties, or third party intellectual property, or (b) any other third party claims (other than from the Department, the Lenders and any O&M Contractor), in each case associated with the Contracted Work or the performance by Design-Build Contractor or any Design-Build Contractor-related entity of any obligations under the Design-Build Contract;
- (c) liabilities that arise out of the gross negligence, willful misconduct or fraud of Design-Build Contractor or any Design-Build Contractor-related entity or abandonment by Design-Build Contractor;
- (d) liabilities on the part of Design-Build Contractor to pay interest, fees or penalties on overdue undisputed amounts;

(e) fines and penalties levied by a Governmental Entity under any law or any costs incurred by Design-Build Contractor or any Design-Build Contractor-related entity as a result of a failure by Design-Build Contractor or any Design-Build Contractor-related entity to comply with any laws (including workman's compensation, employment or health and safety laws or regulations);

(f) fines and penalties levied by a Governmental Entity under any law incurred by the Borrower or any Non-Sub Borrower-Related Entity as a result of a failure by Design-Build Contractor or any Design-Build Contractor-related Entity to comply with any laws (including workman's compensation, employment or health and safety laws or regulations);

(g) any amount paid to the Borrower by Design-Build Contractor, to the extent that same is subsequently recovered by Design-Build Contractor from O&M Contractor pursuant to the terms of the Interface Agreement; or

(h) any reasonable amount incurred by the Borrower in enforcing any claim, including any action necessary to vacate encumbrances, against Design-Build Contractor under or in connection with the Design-Build Contract, including any costs, losses, fees, liabilities, expenses or damages incurred in the enforcement of any of the performance security under the Design-Build Contract, which is settled or finally resolved in favor of the Borrower.

## **Performance Security**

### *Performance and Payment Bonds*

On or prior to Financial Close, Design-Build Contractor shall obtain or cause to be obtained and delivered to the Borrower one or more payment bonds with an aggregate value equal to the sum of Milestone Payments 1 through 5 under the DBFOM Agreement and one or more performance bonds with an aggregate value equal to the sum of Milestone Payments 1 through 5 under the DBFOM Agreement, in each case in substantially the form attached to the Design-Build Contract and issued by a surety or insurance company meeting the requirements of applicable law, licensed or authorized to do business in the State and rated at least "A" (excellent or above) according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Size Rating.

Each payment bond and performance bond shall include a multiple obligee rider naming the City as an additional obligee and may also name the Collateral Agent as an additional obligee.

### *Letters of Credit*

In addition to providing the payment and performance bonds, the Design-Build Contractor is obligated to provide to the Borrower, on or prior to Financial Close, one or more letters of credit (such letters of credit, collectively, the "**Liquid Performance Security**") with an aggregate amount available to be drawn thereunder equal to three percent (3%) of the Contract Price and reducing to one percent (1%) of the Contract Price following the Final Completion Date, and any remaining letter of credit shall be returned or released to the Design-Build Contractor after the end of the warranty period.

Upon the occurrence of any Contingent Security Triggering Event, the Design-Build Contractor shall provide one or more additional letters of credit ("**Contingent Letter of Credit**") with an aggregate value equal to (i) the LD Cap, less (ii) the amount of Liquid Performance Security that has been drawn as of the date of the occurrence of the Contingent Security Triggering Event, less (iii) the aggregate outstanding amount of the Liquid Performance Security ("**Contingent Security Amount**"). Where such Contingent Letter of Credit is not provided within the earlier of (a) 20 business days following a Contingent Security Triggering Event, or (b) the date of the next monthly progress payment, the Borrower shall be entitled to retain from any amounts due to Design-Build Contractor, a percentage equal to the Contingent Security Amount either (X) divided by six (6) or (Y) if there are less than six (6) months remaining before the Planned Early PSA Date, the remaining number of payment dates between the Contingent Security Triggering Event and the Planned Early PSA Date. Where the Lenders' Technical Advisor notifies the Borrower that the Design-Build Contractor has accelerated the Contracted Work and that the Passenger

Service Availability Date is reasonably likely to occur on or prior to the Planned Early PSA Date, the Borrower will be required to release or pay, as applicable to the Design-Build Contractor any Contingent Letter of Creditor or retainage amounts withheld (plus any interest accrued thereon) that was being held by the Borrower.

If at any time any letter of credit fails to meet the requirements of the Design-Build Contract, Design-Build Contractor shall provide a replacement letter of credit which meets the requirements of the Design-Build Contract, if Design-Build Contractor fails to provide such replacement within 20 business days, then the Borrower or the Collateral Agent shall be entitled to draw upon the full amount of the existing letter(s) of credit and hold the proceeds as cash security in accordance with the Design-Build Contract.

The Design-Build Contract requires that the letters of credit be issued by a bank or other financial institution with a credit rating of "A3" or better according to Moody's Investors Services, "A-" or better according to Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc., "A-" or better according to Fitch Ratings, or "A (low)" or better according to DBRS.

### *Guaranties*

Each Design-Build Guarantor is required to execute and deliver to the Borrower a guaranty, guarantying performance of the obligations of the Design-Build Contractor by its respective subsidiary Design-Build Contractor member. The rights and benefits of the parent guaranties are assignable, concurrent with a like assignment of the Design-Build Contract, to the Department and/or the Collateral Agent and its designees in accordance with the terms of the DB Lenders' Direct Agreement.

Any guaranty provided under the Design-Build Contract must meet the requirements set forth in the Design-Build Contract and be enforceable by the Borrower or the Department as a transferee beneficiary if, subject to the DBFOM Agreement, the Design-Build Contract and/or the Lenders' Direct Agreement, the Borrower or the Department, each with respect to itself, determines that (a) the APM Operating System Supplier has breached or failed to perform any obligations under the APM Operating System Subcontract and any notice thereof required under such contract has been provided and the applicable cure period has expired without full and complete cure, (b) such breach has caused, with respect to the Borrower, a Design-Build Contractor Default under the Design-Build Contract or, with respect to the Department, a Developer Default under the DBFOM Agreement, and the applicable cure period under any of the foregoing agreements, as the case may be, has expired without full and complete cure and (c) the Design-Build Contractor, or with respect to the Department only if applicable, the Collateral Agent has failed to call upon or otherwise enforce such guaranty for the purpose of causing the performance of such obligations by or on behalf of the APM Operating System Supplier after the Borrower or the Department, each with respect to itself, delivers notice of such breach or expected breach to the Design-Build Contractor and, with respect to the Department only if applicable, the Collateral Agent and the relevant cure period has expired. So long as the Design-Build Contractor or, with respect to the Department only, a Lender is diligently pursuing remedies under any such guaranty, each of the Borrower and the Department agrees to forbear from (a) exercising remedies under any such guaranty that names the Borrower or the Department as a direct beneficiary, and (b) exercising its right to become a beneficiary under the Design-Build Contractor. If, with respect to the Borrower only, the Design-Build Contractor Default under the Design-Build Contract or, with respect to the Department only, the Developer Default under the DBFOM Agreement, as the case may be, giving rise to exercise remedies under any such guaranty remains uncured at the end of the applicable cure period, the Borrower's and the Department's obligation to forbear from exercising remedies as a guaranteed party shall cease.

### **Title**

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

The passage of title to the Department shall not affect the Design-Build Contractor's care, custody and control responsibilities as contemplated in the Design-Build Contract. The Design-Build Contractor is responsible for care, custody and control of all components of the APM Project, including all materials, equipment, tools and



supplies as described in the foregoing, until the Passenger Service Availability Date. However, the Design-Build Contractor shall be responsible for care, custody and control of all elements of the APM Project that will be owned by utility owners or authorities having jurisdiction until acceptance of such elements by the relevant third party.

### **Schedule of Performance**

The Design-Build Contractor is required to complete the Contracted Work by the specified deadlines set forth in the Design-Build Contract, subject only to extensions of time arising from (a) any Relief Event, (b) a Borrower-caused delay, or (c) any other circumstances expressly set forth in the Design-Build Contract that extend the Contracted Work deadlines, in each case in accordance with the Design-Build Contract.

Design-Build Contractor shall exercise its best efforts to achieve Passenger Service Availability on or before the Planned Early PSA Date. Failure to achieve Passenger Service Availability by the date that is 10 months after the Planned Early PSA Date, as such deadline may be extended from time to time under the DBFOM Agreement or the Design-Build Contract, is a Design-Build Contractor default under the Design-Build Contract. Passenger Service Availability is achieved when all D&C Work is complete (except for APM System punch list items that do not affect normal and safe use and operation of the APM System and any D&C Work that, by its nature, is to be performed after the Passenger Service Availability Date), and all other prerequisites for start of Passenger Service have been met. Design-Build Contractor acknowledges and agrees that Passenger Service Availability is deemed to have occurred upon satisfaction of all the conditions for the APM Project provided in the DBFOM Agreement, as confirmed by the Independent Engineer's issuance of a certificate of Passenger Service Availability in accordance with the procedures and within the time frame established in the DBFOM Agreement. Design-Build Contractor committed to achieving Passenger Service Availability by March 31, 2023, as such date may be extended from time to time pursuant to the Design-Build Contract.

Promptly after achieving Passenger Service Availability, Design-Build Contractor shall perform all remaining Contracted Work required to achieve Final Completion.

### **Nonconforming Work**

Design-Build Contractor is required to perform all Contracted Work in conformity with the DB Documents. If Design-Build Contractor has not performed the Contracted Work in conformity with the DB Documents, then, in addition to any other remedies available to the Borrower, the Borrower may direct Design-Build Contractor to, and Design-Build Contractor shall, remove and replace or otherwise remedy the Nonconforming Work, without entitlement to make a claim in connection with such Contracted Work. Promptly, and in any event 7 Business Days after Nonconforming Work is identified, Design-Build Contractor shall submit a remedial plan to the Borrower, for review and approval, describing the error or defect giving rise to the Nonconforming Work and describing Design-Build Contractor's planned remedial action.

The Department or the Borrower (with respect to the Borrower only, prior to the Passenger Service Availability Date) shall have the right to cause Nonconforming Work to be removed, replaced or otherwise remedied and the Borrower shall have the right to withhold or deduct the costs from any monies due or that become due to Design-Build Contractor under the DB Documents upon (a) any failure of Design-Build Contractor to provide a proposed remedial plan as described above and obtain the Department and Borrower's approval thereof, or (b) any failure of Design-Build Contractor to comply with the Department's direction under the DBFOM Agreement or the Borrower's direction under the DBFOM Agreement relating to any safety issue, including safety compliance orders.

### **Subcontractors; Disadvantaged Business Enterprise Participation; Labor Standards**

#### *Subcontractors*

The Design-Build Contractor is entitled to enter into one or more subcontracts with subcontractors to perform portions of the Contracted Work. The retention of subcontractors by the Design-Build Contractor does not

relieve the Design-Build Contractor of its responsibilities under the Design-Build Contract or for the quality of the Contracted Work or materials or services provided by it.

Each subcontract is required to include (a) terms sufficient to ensure both the acknowledgement of and compliance by the subcontractor with the applicable requirements of the DB Documents and to ensure that the Department and the Borrower have the ability to exercise their rights specified in the DB Documents, (b) those terms that are specifically required by the DB Documents to be included in such subcontract, and (c) all applicable laws.

The Design-Build Contractor is required to ensure that each subcontractor familiarizes itself with the requirements of any and all applicable laws and the conditions of any required Governmental Approvals. The Design-Build Contractor is required to supervise and is fully responsible for the actions, omissions, negligence, willful misconduct, fraud, bad faith or breach of applicable law or contract by any Design-Build Contractor-related entity or by any member or employee of any Design-Build Contractor-related entity while performing Contracted Work under the Design-Build Contract or while on the Site, as though the Design-Build Contractor directly employed all such individuals.

Under the Design-Build Contract, the Design-Build Contractor shall require that the APM Operating System Subcontract comply with the requirements of Key Contracts set forth in the DBFOM Agreement to the extent applicable to the Contracted Work performed by the APM Operating System Supplier under the APM Operating System Subcontract. Any subcontract for the manufacture of Vehicles shall also include certain of these requirements, unless the Department and the Borrower agree otherwise. These provisions include, among other requirements, the following:

(a) not be assignable by the contractor without the Borrower's and the Department's prior consent, provided that this provision shall not prohibit subcontracting of portions of the Work to qualified subcontractors;

(b) without cost to the Borrower or the Department, and subject to the rights of the Collateral Agent under any Direct Agreement, permit assignment to the Department or its successors, assigns or designees of all the Borrower's or other contracting party's rights under the contract (with such assignment to include the benefit of all contractor warranties, indemnities, guarantees and professional responsibility), contingent only upon delivery of notice from the Department following the termination of the DBFOM Agreement, allowing the Department or its successor, assign or designee to obtain the benefit of the Borrower's or other contracting party's rights with liability only for those remaining obligations of the Borrower or the other contracting party accruing after the date of delivery of said notice from the Department, without extinguishing existing claims of the contractor against the Borrower or the corresponding claims of the Borrower against the Department; and

(c) include: (i) a covenant acknowledging that, subject to the rights of the Collateral Agent under any Direct Agreement, upon receipt of written notice from the Department, the Department is entitled to exercise step-in rights with respect to the contract (where the Department is also exercising its step-in rights under the DBFOM Agreement), without any necessity for a consent or approval from the Borrower or the making of a determination whether the Department validly exercised its step-in rights; and (ii) a waiver and release by the Borrower of any claim or cause of action against the contractor arising out of, relating to or resulting from its recognition of the Department's step-in rights in reliance on any such written notice from the Department.

In addition, the Design-Build Contractor shall ensure that each subcontract with any subcontractor includes indemnity provisions appropriate to the scope of the Contracted Work to be performed by the subcontractor or the supplier, naming the Indemnified Parties as indemnitees. In addition, neither the Design-Build Contractor nor any of its subcontractors may terminate or replace certain key personnel without the prior consent of the Borrower pursuant to the Design-Build Contract, except under certain limited circumstances.

#### *Inclusivity*

The Design-Build Contractor shall utilize as subcontractors in performance of the Design Work the services of firms certified as Small Business Enterprise, Local Business Enterprise, Local Small Business Enterprise

or Local State Disabled Veteran Business Enterprise firms at the following minimum participation levels, which are presented as a percentage of the Design-Build Contractor's cost of the Design Work: (i) in respect of SBE firms, 22%; (ii) in respect of LBE firms, 8%; (iii) in respect of LSBE (subset of LBE) firms, 3%; and (iv) in respect of DVBE firms, 3%.

The Design-Build Contractor shall utilize as subcontractors in performance of the Construction Work the services of firms certified as Small Business Enterprise, Local Business Enterprise, Local Small Business Enterprise or Local-State Disabled Veteran Business Enterprise firms at the following minimum participation levels, which are presented as a percentage of the Design-Build Contractor's cost for the Construction Work: (i) in respect of SBE firms, 18%; (ii) in respect of LBE firms, 7%; (iii) in respect of LSBE (subset of LBE) firms, 5%; and (iv) in respect of DVBE firms, 3%.

#### *Labor Standards*

In performing the Contracted Work, the Design-Build Contractor shall comply, and require all subcontractors to comply, with all applicable federal and California labor, occupational safety and health laws and orders, including payment of prevailing wages. All individuals performing the Contracted Work shall be qualified, experienced, competent and skilled in the performance of the portion of the Contracted Work assigned and related obligations of the Design-Build Contractor in accordance with the DB Documents and any applicable minimum levels in the relevant Technical Provisions.

### **Insurance**

#### *General Obligations*

The Design-Build Contractor shall procure and maintain, or cause to be procured or maintained, the insurance policies identified in the Design-Build Contract as the responsibility of the Design-Build Contractor strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in the Design-Build Contract. The Borrower shall procure and maintain, or cause to be procured or maintained, the insurance policies identified in the Design-Build Contract as the responsibility of the Borrower strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in the Design-Build Contract. Such requirements include insurance policies covering builder's risk, professional liability insurance, commercial excess liability, commercial general liability, worker's compensation and employer's liability, contractor's pollution liability, railroad protective liability and/or commercial automobile liability.

All insurance required under the Design-Build Contract shall be procured from insurers that at the time coverage commences are authorized to do business in California and have a current policyholder's management and financial size category rating of not less than A-:VII according to A.M. Best's Financial Strength Rating and Financial Size Category, except as otherwise approved in writing by the Borrower in its reasonable discretion.

Responsibility for paying all insurance deductibles is set forth in the Design-Build Contract, and the parties shall have no liability for deductibles, self-insured retentions or claim amounts exceeding the required policy limits. The Design-Build Contract sets forth certain procedures in the event that any required insurance coverage involves a self-insured retention.

Each policy shall provide that the coverage afforded under the policy is primary and noncontributory with respect to any other insurance available to all named insureds and City Additional Insureds.

For insurance required as a condition precedent to NTP 1 and NTP 2, a controlled insurance program is acceptable to satisfy all insurance requirements, provided that it otherwise meets the requirements described in the Design-Build Contract.

All insurance coverage required to be provided by the Design-Build Contractor and the APM Operating System Supplier, as applicable, with the exception of commercial automobile liability and worker's compensation, shall apply specifically and exclusively for the APM Project and extend to all aspects of the Contracted Work, with

coverage limits dedicated solely to the APM Project, except as otherwise specified in the Design-Build Contract. Use of other insurance programs is acceptable, provided that coverage under such programs provides dedicated APM Project-specific limits and identified premiums and meets all requirements described in the Design-Build Contract.

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

Except as expressly provided in the Design-Build Contract, there shall be no recourse against the City for payment of premiums or other amounts with respect to the insurance the Design-Build Contractor is required to provide under the Design-Build Contract.

The insurance coverage the Borrower or the Design-Build Contractor are required to provide under the Design-Build Contract shall support but is not intended to limit the Borrower's or the Design-Build Contractor's respective indemnification obligations under the DB Documents.

#### *Insurance Premium Benchmarking*

Except as otherwise provided in the Design-Build Contract, the Design-Build Contractor shall bear the full risk of any insurance premium increases with respect to insurance for which the Design-Build Contractor is responsible pursuant to the Design-Build Contract until the Passenger Service Availability Date, and shall not be entitled to any claim for relief for such increases.

#### *Inadequacy and Unavailability of Required Coverages*

If the Design-Build Contractor demonstrates to the Department's reasonable satisfaction that the Design-Build Contractor has used diligent efforts in the global insurance and reinsurance markets to procure the required insurance coverages, and if despite such diligent efforts and through no fault of the Design-Build Contractor any of such coverages (or any of the required terms of such coverages, including policy limits) become completely unavailable or unavailable at commercially reasonable insurance rates from insurers meeting the financial requirements set forth in the Design-Build Contract, the Design-Build Contractor is required to consider and discuss with the Borrower and the Department (subject to the Department's approval of the Design-Build Contractor's participation in such meetings) in good faith alternative insurance packages and programs that provide coverage as comparable to that contemplated in the Design-Build Contract as is possible under then-existing insurance market conditions. The Borrower will be entitled to a credit for any insurance premium savings resulting from the modification or elimination of the insurance requirements. The Design-Build Contractor acknowledges in the Design-Build Contract that the Department will act as the insurer of last resort to cover the exposures that would have been covered by the unavailable insurance policy or portion thereof.

#### *Additional Insurance Coverage*

If the Design-Build Contractor carries insurance coverage in addition to that required under the Design-Build Contract, then, except for any directors and officers liability insurance carried by the Design-Build Contractor, the Design-Build Contractor shall include the Borrower and the City Additional Insureds as additional insureds thereunder. If, however, the Design-Build Contractor demonstrates to the Borrower that inclusion of such City Additional Insureds as additional insureds will increase the premium, the Design-Build Contractor acknowledges in the Design-Build Contract that under the DBFOM Agreement, the Department has agreed to elect either to pay the increase in premium or forego additional insured status.

### *Property Damage*

All insurance proceeds received for physical property damage to the APM Project under any insurance policies required under the Design-Build Contract shall be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the APM Project with respect to which such proceeds were received.

The Design-Build Contractor acknowledges in the Design-Build Contract that, under the DBFOM Agreement, the Department has agreed to pay for the extra work costs to repair or replace tangible property damage to the APM Project caused by earthquake or terrorism. Any payment from the Borrower to the Design-Build Contractor with respect to such extra work shall be subject to the equivalent project relief provisions of the Design-Build Contract. However, the Department has not agreed to be responsible for tangible property damage to any tools, machinery, equipment, protective fencing, job trailers or other items used in the performance of the Work but not intended for permanent installation into the APM Project that is caused by earthquake or terrorism.

### **Indemnities**

#### *Indemnities by the Design-Build Contractor*

Subject to certain limitations on the Design-Build Contractor's indemnification obligations under the Design-Build Contract, the Design-Build Contractor shall indemnify and hold harmless the Indemnified Parties and the Borrower from and against any and all claims, causes of action, suits, investigations, legal or administrative proceedings, demands and losses, in each case if asserted or incurred by or awarded to any third party, to the extent that such amounts are claimed by any Indemnified Party against the Borrower pursuant to the DBFOM Agreement, and to the extent caused by:

(a) any act, omission, neglect or misconduct by any Design-Build Contractor-related entity in the manner or method of executing the Contracted Work satisfactorily or due to the failure to perform the Contracted Work, including (i) any neglect in safeguarding the Contracted Work, (ii) use of unacceptable materials in performance of the Contracted Work or other defect in the Contracted Work, (iii) faulty, inadequate or improper temporary drainage during construction, (iv) the use, misuse, storage or handling of explosives in performance of the Contracted Work, or (v) other breach, alleged breach or violation of the Design-Build Contractor's obligations under the DB Documents or any subcontract;

(b) the failure or alleged failure by any Design-Build Contractor-related entity to comply with the Governmental Approvals or any applicable laws relating to the performance of the Contracted Work;

(c) the actual or alleged negligence, willful misconduct or breach of contract of any Design-Build Contractor-related entity in or associated with performance of the Contracted Work;

(d) the Design-Build Contractor's performance of, or failure to perform, any obligation under the Cooperation Agreements;

(e) any and all stop payment notices and/or liens filed by a subcontractor in connection with the Contracted Work, including all reasonable expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop payment notice or lien, provided that the Borrower is not in default in payments owing to the Design-Build Contractor with respect to such Contracted Work;

(f) any Design-Build Contractor-related entity's breach of or failure to perform an obligation that the Department owes to a third party, including Governmental Entities, under law or under any agreement between the Department and a third party, where performance of the obligation is delegated to the Design-Build Contractor under the Design-Build Contract, or the acts or omissions of any Design-Build Contractor-related entity which render the Department unable to perform or abide by an obligation that the Department owes to a third party, including Governmental Entities, under any agreement between the Department and a third party, provided the agreement was previously disclosed or known to the Design-Build Contractor;

(g) any alleged infringement or other allegedly improper appropriation or use of intellectual property in performance of the Contracted Work, or arising out of, relating to or resulting from any use in connection with the APM Project of methods, processes, designs, information or other items furnished or communicated to the Borrower, the Department or another Indemnified Party under the DB Documents; provided that this indemnity shall not apply to any infringement resulting from the Borrower or the Department's failure to comply with specific written instructions regarding use provided to the Borrower by the Design-Build Contractor that are consistent with the Design-Build Contractor's obligations to convey and license such intellectual property under the Design-Build Contract;

(h) any actual or threatened release of hazardous materials by any Design-Build Contractor-related entity and liabilities resulting therefrom;

(i) the fraud, bad faith, willful misconduct, negligence or violation of law or contract by any Design-Build Contractor-related entity in connection with the Design-Build Contractor's performance of real property acquisition services under the Design-Build Contract;

(j) any fines or penalties imposed on the Borrower or the Department by any authority having jurisdiction arising out of, relating to or resulting from the Design-Build Contractor's breach of or failure to comply with applicable requirements of the DB Documents;

(k) any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Design-Build Contractor-related entity with respect to any payment for the Contracted Work made to or earned by such Design-Build Contractor-related entity under the DB Documents; or

(l) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Design-Build Contractor-related entity to comply with Good Industry Practice, requirements of the DB Documents, the project management plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Contracted Work, (ii) the intentional misconduct or negligence of any Design-Build Contractor-related entity in connection with the performance of the Contracted Work, or (iii) unauthorized physical entry onto or encroachment upon another's property by any Design-Build Contractor-related entity in connection with the performance of the Contracted Work.

Because the contract drawings and reference documents are subject to review and modification by the Design-Build Contractor, (a) it is appropriate for the Design-Build Contractor to assume liability for errors, omissions, inconsistencies and other defects in the completed APM Project even though they may be related to errors, omissions, inconsistencies and other defects in the contract drawings and reference documents, and (b) such documents shall not be deemed "design furnished" by the Borrower, the Department or any of the other Indemnified Parties. The Design-Build Contractor shall indemnify and hold harmless the Non-Sub Borrower-Related Entities and the Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the design documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the contract drawings or reference documents.

In claims by an employee of a Design-Build Contractor-related entity, the indemnification obligation under the Design-Build Contract shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for a Design-Build Contractor-related entity under workmen's compensation, disability benefit or other employee benefits laws. Such limitation is not a waiver in favor of any employee by the Design-Build Contractor or any subcontractor of any limitation of liability afforded by such laws.

The Design-Build Contractor shall indemnify and hold harmless each Non-Sub Borrower-Related Entity from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) the Design-Build Contractor's failure to comply with any of its obligations under the Design-Build Contract, other than (i) any such failure that arises from an act or omission of the Department, the Borrower, any Non-Sub Borrower-Related Entity, the O&M Contractor, any O&M Contractor-related entity, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the

Design-Build Contract (including as determined pursuant to dispute resolution procedures under the Design-Build Contract) or by applicable law; or (b) negligent acts or omissions, fraud or willful misconduct of the Design-Build Contractor or any Design-Build Contractor-related entity.

#### *Indemnities by the Borrower*

Subject to certain limitations on the Borrower's indemnification obligations under the Design-Build Contract, the Borrower shall indemnify and hold harmless each Design-Build Contractor-related entity from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) a failure to comply in any material respect with any of its obligations under the Design-Build Contract by the Borrower, other than (i) any such failure that arises from an act or omission of the Department, the Design-Build Contractor, any Design-Build Contractor-related entity, the O&M Contractor, any O&M Contractor-related entity, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the Design-Build Contract (including as determined pursuant to dispute resolution procedures under the Design-Build Contract) or by applicable law; or (b) negligent acts or omissions, fraud or willful misconduct of the Borrower or any Non-Sub Borrower-Related Entity.

### **Changes**

#### *LAWA Changes*

Pursuant to the procedures set forth in, and subject to certain restrictions under, the DBFOM Agreement, the Department may at any time make changes to the Work, including additions or reductions in the scope of the Contracted Work, or changes to the requirements applicable to the Contracted Work, as it may direct in its sole discretion (each, a "LAWA Change"). If the Department initiates a LAWA Change, the Design-Build Contractor shall, to the extent such LAWA Change relates to the Contracted Work and as part of the Contracted Work, fulfill the obligations of the Borrower under the DBFOM Agreement with respect to such LAWA Change.

The Design-Build Contractor shall not be required to implement any LAWA Change to the extent the LAWA Change would: (a) result in a breach of law or breach of any conditions of a Governmental Approval or revocation of any Governmental Approval; (b) require a new Governmental Approval which would not be reasonably obtainable; (c) render any insurance policy void or voidable; (d) materially and adversely affect the health and safety of any person; or (e) materially and adversely affect the risk allocation and payment regime under the Design-Build Contract.

If the Borrower receives a request for change proposal from the Department pursuant to the DBFOM Agreement which relates, in whole or in part to the Contracted Work, it will promptly forward a copy of such request to the Design-Build Contractor. The Borrower may also request a change proposal from the Design-Build Contractor if the Borrower desires to initiate or evaluate whether to initiate a Developer Change with respect to the Contracted Work. The Design-Build Contractor shall provide the Borrower with a change proposal to the extent that the request for change proposal relates to the Contracted Work.

Following the Borrower's receipt of the Design-Build Contractor's change proposal and the Borrower's further assessment of the cost, schedule and other impacts of the contemplated LAWA Change or Developer Change, as applicable, the Design-Build Contractor and the Borrower, giving due consideration to such assessments and based on the entitlements for LAWA Changes or any net cost and/or schedule savings, are required to engage in good faith negotiations to reach agreement on the terms of a change order. The Design-Build Contractor acknowledges in the Design-Build Contract that the Borrower and the Department shall also engage in good faith negotiations pursuant to the DBFOM Agreement, with the Design-Build Contractor's participation subject to the consent of the Department, to reach agreement on the terms of a change order. A LAWA Change or Developer Change will become effective upon mutual execution of a written change order. The change order shall be in a form provided by the Department or the Borrower, and shall specify, as applicable the timing and method for payment of any compensation, or for realizing any net savings in the cost of the Contracted Work.

If the parties do not agree on a change proposal, then the Borrower may seek to resolve any points of disagreement through the dispute resolution procedures under the Design-Build Contract. The Design-Build Contractor acknowledges in the Design-Build Contract that if the Borrower and the Department do not agree on a change proposal issued to the Department pursuant to the DBFOM Agreement, the Department may (in its discretion) deliver to the Borrower a directive letter or may seek to resolve any points of disagreement through the dispute resolution procedures under the DBFOM Agreement without issuing a directive letter. If the directive letter does not state that the Work constitutes a LAWA Change, the Design-Build Contractor shall proceed with the relevant portion of the Contracted Work as directed but may assert a Relief Event claim in accordance with the procedures under the Design-Build Contract. If the directive letter provides for the implementation of a LAWA Change, the Design-Build Contractor is required to deliver to the Borrower a change proposal and the parties are to subsequently follow the procedures and provisions under the Design-Build Contract relating to the negotiation of change orders.

#### *Scope Changes Initiated by the Borrower*

The Borrower may propose (a) a change request pursuant to the DBFOM Agreement, (b) deviations pursuant to the DBFOM Agreement and (c) a change to the Contracted Work. However, the Borrower shall not, without the prior consent of the Design-Build Contractor, initiate any such change proposal that would, singularly or in the aggregate, involve an alteration in the scope of the Contracted Work of such magnitude that it could reasonably be expected to materially impact the Design-Build Contractor's ability to achieve Passenger Service Availability by the Planned Early PSA Date, or to achieve any Milestone by the applicable date, or otherwise materially and adversely affect the Contracted Work. The Design-Build Contractor shall, to the extent applicable, reasonably cooperate with the Borrower in preparing information required by the DBFOM Agreement for seeking the Department's approval of a change proposal.

#### *Scope Changes Initiated by the Design-Build Contractor*

By submittal of a Design-Build Contractor change request, the Design-Build Contractor may request the Borrower to obtain the Department's approval of: (a) changes to the requirements of the relevant Technical Provisions; (b) changes to the proposal commitments of the Design-Build Contractor as set forth in the Design-Build Contract; or (c) adjustments to the D&C Limits.

The Borrower shall submit any Design-Build Contractor change request to the Department pursuant to the DBFOM Agreement and the provisions of the DBFOM Agreement applicable to a change request from the Borrower shall apply. If a proposed change would reasonably be expected to have an adverse effect on the Borrower, then the Borrower shall be under no obligation to submit the Design-Build Contractor change request to the Department, unless the Design-Build Contractor agrees to compensate the Borrower for any direct losses in relation to such adverse effect. In addition, the Borrower shall be under no obligation to submit the Design-Build Contractor change request to the Department if the proposed change is reasonably likely to create a material risk to human health or safety or a materially increased risk of third party claims (which risk is not adequately mitigated by the Design-Build Contractor in such Design-Build Contractor change request or cannot be mitigated by the Borrower with the compensation that the Design-Build Contractor has agreed to pay).

#### *Deviations*

The Design-Build Contractor may request the Borrower to obtain approval from the Department of certain minor changes to the relevant Technical Provisions that do not impact schedule or costs. Deviations may be approved by the Department on a "no-cost" basis, and in such event shall not require a change order. Any other change in the requirements of the DB Documents shall require a change order.

The Design-Build Contractor acknowledges in the Design-Build Contract that the Department may elect to process the application as a change request from the Borrower under the DBFOM Agreement rather than as an application for a deviation.



## **Relief Events**

### *Relief Event Process*

If a Relief Event occurs, subject to certain limitations and exclusions provided under the Design-Build Contract, the Design-Build Contractor may, in accordance with the process set forth in the Design-Build Contract, seek additional compensation, time extension and/or other relief based on the entitlements for specific Relief Events. Time is of the essence in the Design-Build Contractor's delivery of (a) Relief Event notices and updates thereto; and (b) Relief Event claims and updates thereto.

As a condition precedent to the Borrower's granting of any type of relief to the Design-Build Contractor in connection with the occurrence of a Relief Event, the Design-Build Contractor shall timely provide a Relief Event notice in form and substance required by the Design-Build Contract. The Design-Build Contractor shall thereafter timely submit to the Borrower a formal Relief Event claim, in form and substance required by the Design-Build Contract, for any compensation amount for Compensation Events and for any extension of time and any other requested relief relating to the Relief Event. Failure to submit a timely and properly documented Relief Event notice, Relief Event claim or any other required information shall constitute waiver by the Design-Build Contractor of the right to make any claim for additional compensation, extension time or other relief with respect to the Relief Event only to the extent that such delay constitutes a waiver by the Borrower of such rights under the DBFOM Agreement.

The Design-Build Contractor acknowledges in the Design-Build Contract that, in accordance with the process set forth in the DBFOM Agreement, the Department has agreed to issue a written determination as to the extent, if any, to which it concurs with the Borrower's request, which determination the Borrower shall promptly forward to the Design-Build Contractor to the extent related to the Contracted Work.

The Design-Build Contractor also acknowledges in the Design-Build Contract that subject to the agreement of the Design-Build Contractor with respect to any aspect of the Contracted Work, the Department and the Borrower have agreed pursuant to the DBFOM Agreement that the specific compensation, time extension and/or other relief to be given to the Borrower on account of a Relief Event shall be evidenced by a written amendment to the DBFOM Agreement, duly executed by the Department and the Borrower. The Borrower and the Design-Build Contractor agree that any specific compensation, time extension and/or other relief to be given to the Design-Build Contractor under the Design-Build Contract on account of a Relief Event shall be evidenced by a written amendment to the Design-Build Contract.

In the event that the Department and the Borrower are unable to agree as to the specific compensation, time extension and/or other relief to be given to the Borrower on account of a Relief Event under the DBFOM Agreement, the Department has agreed to pay or grant to the Borrower, as applicable, any undisputed portion of compensation, time extension and/or other relief (which the Borrower shall pay or grant to the Design-Build Contractor, if applicable, pursuant to the equivalent project relief provisions of the Design-Build Contract), and the Department or the Borrower may refer the matter to the dispute resolution procedures under the DBFOM Agreement. If the Department rejects the Relief Event claim, the Design-Build Contractor may request the Borrower to refer the matter to the dispute resolution procedures under the DBFOM Agreement.

### *Relief Events during Design-Build Early Works*

Any Relief Event that affected performance of the Design-Build Early Works shall be deemed to have occurred under the Design-Build Contract. The Design-Build Contractor shall be entitled to submit a corresponding relief event claim under the Design-Build Contract, subject to the limitations and exceptions expressly provided in the Design-Build Contract, and provided that the Design-Build Contractor has complied with the relief event provisions in the Design-Build Contract.

### *Compensation and Other Relief for Relief Events*

If a Relief Event occurs, subject to certain requirements under the Design-Build Contract and any limitations and exceptions expressly provided in the Design-Build Contract, the Design-Build Contractor may be entitled to the following types of relief: (a) defense to certain obligations; (b) extension of contract deadlines, (c) Incremental Costs; and (d) delayed payment compensation.

*Defense to Certain Obligations.* If a Relief Event occurs and for so long as the Relief Event is continuing:

(a) the Design-Build Contractor shall be entitled to: (i) relief from accrual of noncompliance points; (ii) relief from Design-Build Contractor Default; and (iii) relief from assessment of noncompliance deductions, provided that such relief shall apply only to the extent that the Relief Event would otherwise have caused such accrual, Design-Build Contractor Default or assessment, as the case may be; and

(b) to the extent that the Design-Build Contractor is unable to comply with the DB Documents, applicable laws or Governmental Approvals as a direct result of the Relief Event, the Design-Build Contractor shall be excused from such compliance.

*Extension of Contract Deadlines.* If a Relief Event delay occurs during the D&C Period, the Design-Build Contractor is entitled to an extension of: (a) the Planned Early PSA Date, solely to the extent that the Relief Event delay delays achievement of Passenger Service Availability beyond the then current Planned Early PSA Date; and (b) the DB Long Stop Date and the specific dates identified in the Design-Build Contract, commensurate with the extension of the Planned Early PSA Date described in the foregoing.

*Incremental Costs.* If a Compensation Event occurs, the Design-Build Contractor is entitled to Incremental Costs incurred by the Design-Build Contractor.

*Delayed Payment Compensation.* The Design-Build Contractor acknowledges in the Design-Build Contract that if, during the D&C Period, a Compensation Event results in a Relief Event delay, the Borrower is entitled to delayed payment compensation pursuant to the DBFOM Agreement. The Design-Build Contractor shall cooperate and assist the Borrower in making any claim for delayed payment compensation under the DBFOM Agreement and, to the extent such amounts relate to amounts paid by the Design-Build Contractor, the equivalent project relief provisions of the Design-Build Contract shall apply.

### *Limitations*

The Design-Build Contractor:

(a) is not entitled to any kind of relief whatsoever from a Relief Event to the extent that the Relief Event or consequences of the Relief Event arose out of (i) any breach of contract by a Design-Build Contractor-related entity, (ii) any act or omission by a Design-Build Contractor-related entity that is inconsistent with the Design-Build Contract, the DB Documents or Governmental Approvals, or (iii) any negligence, recklessness, willful misconduct, fraud or violation of laws by any Design-Build Contractor-related entity;

(b) is not entitled to any kind of relief whatsoever from a Relief Event to the extent that the Relief Event or consequences of the Relief Event could reasonably have been avoided by any Design-Build Contractor-related entity;

(c) may not claim that any Relief Event relieves the Design-Build Contractor from compliance with any safety compliance order; and

(d) is not entitled to compensation for any delay costs in connection with earthquake or terrorism.

### *Mitigation*

The Design-Build Contractor shall take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice. Any compensation, time extension or other relief to which the Design-Build Contractor is entitled under the Design-Build Contract shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Design-Build Contractor.

### *Insurance*

Any entitlement of the Design-Build Contractor to compensation with respect to a Relief Event shall be net of: (a) all insurance proceeds received by any Design-Build Contractor-related entity pursuant to any insurance policy; (b) any amounts which the Design-Build Contractor is deemed to have self-insured; and (c) any other insurance proceeds received by any Design-Build Contractor-related entity in connection with the Relief Event.

### *Method of Payment*

Any compensation due from the Borrower to the Design-Build Contractor for a Compensation Event shall be in the form of: (a) progress or other payments invoiced as the Contracted Work is completed; (b) an up-front lump sum payment; or (c) any combination of the above, as determined by the Borrower in its sole discretion.

If, due to changes in the payments made to the Borrower under the Financing Documents, the Borrower is required to make changes in the payment of all or part of compensation due from the Borrower to the Design-Build Contractor for a Compensation Event, the Borrower and the Design-Build Contractor, acting reasonably and in good faith, shall negotiate and execute an amendment to the Design-Build Contract, and payment shall be made to the Design-Build Contractor pursuant to and subject to the terms of the Design-Build Contract as amended.

### *Force Majeure*

If a Force Majeure Event occurs, subject to the equivalent project relief provisions of the Design-Build Contract, the Design-Build Contractor will be excused from certain of its obligations in accordance with the Design-Build Contract. During the occurrence and continuance of any Force Majeure Event, the Borrower shall be excused from performing those of its obligations to the extent that the Borrower is prevented from carrying out such obligations by such Force Majeure Event. Notwithstanding the foregoing, the occurrence or continuance of any Force Majeure Event shall not excuse any party from performing its payment obligations contemplated under the DB Documents (except as may be specifically limited in the Design-Build Contract).

Pursuant to the DBFOM Agreement, the Department and the Borrower have agreed to consult with each other in good faith and use all reasonable efforts to agree on the effects of and appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the DBFOM Agreement. To the extent applicable to the Design-Build Contractor or the Contracted Work, the Design-Build Contractor shall have the right to participate in such consultation, subject to the consent of the Department. If the effects of the Force Majeure Event are continuing and the parties are not able to agree to terms for the continued performance of the Design-Build Contract within 180 consecutive days after the date of the commencement of the Force Majeure Event, then either the Borrower or the Design-Build Contractor may terminate the Design-Build Contract in accordance with the termination provisions of the Design-Build Contract.

### **Noncompliance Points and Deductions**

The Design-Build Contract identifies certain breaches or failures in performance of obligations by the Design-Build Contractor under the DB Documents (each, a “**DB Noncompliance Occurrence**”). A DB Noncompliance Occurrence becomes a “**DB Noncompliance Event**” if: (a) Design-Build Contractor has not rectified such occurrence within the applicable rectification period (if any); or (b) following the expiration of a rectification period, the Design-Build Contractor has not rectified such occurrence within any further interval of

recurrence. A DB Noncompliance Event will result in the assessment of either or both (a) noncompliance points and (b) noncompliance deductions, in each case as indicated in the DB Noncompliance Occurrence tables.

Noncompliance points are a system to measure the Design-Build Contractor's performance levels during the design and construction phases of the APM Project. The Design-Build Contractor shall establish and maintain during the D&C Period an electronic database for recording and tracking DB Noncompliance Occurrences and DB Noncompliance Events. The format and design of the database shall be subject to the Department's and Borrower's approval. During the D&C Period, the Design-Build Contractor shall include in each monthly report, a report of all DB Noncompliance Occurrences and DB Noncompliance Events that occurred during such the preceding month, which reports shall include the same detailed information required to be recorded in the database. Within a reasonable time after receiving the monthly report, the Borrower will deliver to the Design-Build Contractor a notice setting forth, for each DB Noncompliance Occurrence the Department's determination, whether the DB Noncompliance Occurrence was responded to or rectified (as applicable) during the applicable rectification period or interval of recurrence (if any), the Department's determination whether a DB Noncompliance Event occurred, and the noncompliance points and noncompliance deductions to be assessed with respect to such DB Noncompliance Event. The Borrower may assess noncompliance points in accordance with the Design-Build Contract upon the occurrence of DB Noncompliance Events provided that such noncompliance points may only be assessed if the Department has levied corresponding D&C Period Noncompliance Points against the Borrower pursuant to the DBFOM Agreement, if at any time the noncompliance database or a monthly report indicates, or the Borrower is notified or otherwise becomes aware of a DB Noncompliance Event, or the Borrower provides the Design-Build Contractor with a notice of determination. In addition to noncompliance points, DB Noncompliance Events may result in the assessment of noncompliance deductions in accordance with the payment provisions of the Design-Build Contract. If the amount of noncompliance deductions calculated in accordance with the Design-Build Contract, combined with the amount of any other adjustments that the Borrower makes to a monthly progress payment in accordance with the terms of the DB Documents, would reduce any monthly progress payment to less than 90% of the applicable monthly progress payment amount, then the excess of such noncompliance deductions amount and any other adjustment amount shall accrue and be added to the noncompliance deduction for the subsequent monthly progress payment until such accrued amount has been deducted in full.

## **Termination of the Design-Build Contract**

### *Design-Build Contractor Default and Borrower Remedies*

Subject to certain limitations set forth in the Design-Build Contract (including applicable cure periods), the Design-Build Contractor shall be in breach under the Design-Build Contract upon the occurrence of any one or more of the following events or conditions (each an "**Design-Build Contractor Default**"):

(a) the Design-Build Contractor fails to satisfy the applicable conditions provided in the Design-Build Contract within 30 days after the Department's issuance of NTP 1, to begin the Contracted Work within 10 days following the Department's issuance of NTP 2, or to diligently prosecute the Contracted Work to completion in accordance with the DB Documents;

(b) the Design-Build Contractor abandons all or a material part of the Contracted Work, which abandonment is deemed to occur if (i) the Design-Build Contractor demonstrates through statements, acts or omissions an intent not to continue, for any reason other than a Relief Event that materially impairs the Design-Build Contractor's ability to continue, to design, construct, operate or maintain all or a material part of the Contracted Work or (ii) no significant Contracted Work (taking into account the project schedule, if applicable, and any Relief Event) on the APM Project is performed for a continuous period of more than 40 days unless due to the Design-Build Contractor's compliance with a Borrower or the Department suspension order issued under the Design-Build Contract;

(c) the Design-Build Contractor fails to achieve Passenger Service Availability by the DB Long Stop Date;

(d) the Design-Build Contractor (i) fails to make any payment owing to the Borrower under the Design-Build Contract when due, or (ii) fails to deposit other funds into any custodial account, trust account or other reserve or account in the amount and within the time period required by the Design-Build Contract;

(e) (i) any representation or warranty in the Design-Build Contract made by the Design-Build Contractor is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made, or (ii) any certificate, schedule, report, instrument or other document delivered by or on behalf of the Design-Build Contractor or a Design-Build Contractor-related entity to the Borrower or the Department as part of the Proposal or under the Design-Build Contract or the DB Documents is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;

(f) the Design-Build Contractor fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the DB Documents for the benefit of relevant parties, or the Design-Build Contractor fails to comply with any requirement of the DB Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, retain self-insured retentions, co-insurance or any other such amounts as and when due;

(g) (i) the Design-Build Contractor makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the O&M Contract, the APM Project or the Design-Build Contractor's interest in violation of the limitations on assignment or transfer under the Design-Build Contract, or (ii) any other violation of the limitations on assignment or transfer under the Design-Build Contract occurs;

(h) the Design-Build Contractor fails to timely observe or perform, or cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by the Design-Build Contractor under the DB Documents, including failure to pay or perform the Design Work, Construction Work, or any portion thereof in accordance with the DB Documents in any material respect, provided that any failure that constitutes a DB Noncompliance Event or DB Noncompliance Occurrence is not considered a default under this clause although such failure may become a Design-Build Contractor Default in accordance with clause (r) or (s) below;

(i) the Design-Build Contractor or a Design-Build Contractor-related entity, or any of their respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, has been convicted in a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in California Public Contract Code section 1101, with any public entity, as defined in California Public Contract Code section 1100, provided that (i) such person is involved in the APM Project at the time of such conviction and (ii) the Design-Build Contractor fails to remove such person from the APM Project;

(j) the Design-Build Contractor fails to comply with the Department's order to suspend Contracted Work issued in accordance with the Design-Build Contract within the time reasonably allowed in such order;

(k) the Design-Build Contractor commences a voluntary case seeking liquidation, reorganization or other relief with respect to such person or such person's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(l) an involuntary case is commenced against the Design-Build Contractor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such person or such person's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution, or similar process; or

seeking like relief, and such involuntary case shall not be contested by it in good faith or shall remain undismissed and unstayed for a period of 60 days;

(m) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to the Design-Build Contractor or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law, the O&M Contract is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute;

(n) subject to the Acceptable Remaining Party Principle, any voluntary or involuntary case or other act or event described in clause (k) or (l) above shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to any partner or joint venture member of the Design-Build Contractor, or any Design-Build Guarantor;

(o) Design-Build Contractor disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of its obligations under the DB Lenders' Direct Agreement;

(p) the Design-Build Contractor fails to comply with applicable Governmental Approvals or laws in any material respect;

(q) any use of the APM Project by any Design-Build Contractor-related entity that violates requirements of applicable Governmental Approvals or laws or otherwise is not permitted under the DB Documents;

(r) the Design-Build Contractor receives a total of 320 or more noncompliance points over the course of 12 consecutive months (determined on a rolling basis);

(s) the Design-Build Contractor receives a total of 880 or more noncompliance points over the course of 36 consecutive months (determined on a rolling basis);

(t) subject to the Acceptable Remaining Party Principle, any Design-Build Guarantor disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of its obligations under its parent guarantee;

(u) subject to the Acceptable Remaining Party Principle, any parent guarantee ceases to be in full force and effect and Design-Build Contractor has not delivered to the Borrower another guarantee or other credit support in a form, and from a person, reasonably acceptable to the Borrower to replace such parent guarantee;

(v) the aggregate liability of Design-Build Contractor to the Borrower in relation to AP Delay Liquidated Damages exceeds the amount of the LD Cap;

(w) the aggregate liability of Design-Build Contractor to the Borrower under the Design-Build Contract exceeds the maximum aggregate liability provided therein;

(x) Financial Close is not achieved by the Financial Close Deadline due to the failure of Design-Build Contractor to perform its obligations under the provisions of the Design-Build Contract relating to Financial Close requirements and deliverables; or

(y) Design-Build Contractor makes or permits an assignment, transfer, mortgage, pledge or encumbrance in breach of the Design-Build Contract.

*Termination.* If any Design-Build Contractor Default occurs and has not been cured within the applicable cure period, the Borrower may terminate the Design-Build Contract upon notice to the Design-Build Contractor. As a consequence of any termination for Design-Build Contractor Default, the Design-Build Contractor shall pay compensation to the Borrower as follows:

- (a) if the DBFOM Agreement is also terminated:
  - (i) direct losses incurred by the Borrower in connection with the terminations of the DBFOM Agreement and the Design-Build Contract, including amounts due and payable under the DBFOM Agreement and the Financing Documents that would not have been payable at that time but for the terminations of the DBFOM Agreement and the Design-Build Contract; *plus*
  - (ii) any deductions to the extent not deducted in full from Monthly Progress Payments in accordance with the payment mechanism of the Design-Build Contract; *plus*
  - (iii) without duplication of any amount described in clause (i) or (ii), any other outstanding sums due and payable by the Design-Build Contractor to the Borrower under the Design-Build Contract, including but not limited to any outstanding Delay Liquidated Damages, increased Milestone interest costs, or Final Completion Delay Costs, as applicable; or
- (b) if the DBFOM Agreement is not also terminated:
  - (i) direct losses incurred by the Borrower in connection with the termination of the Design-Build Contract, including (A) amounts due and payable under the DBFOM Agreement and the Financing Documents that would not have been payable at that time but for the termination of the Design-Build Contract and (B) to procure the performance of the Contracted Work by a replacement contractor (taking into account the then-existing circumstances of the Contracted Work) and, if necessary, any amounts in excess of the Contract Price that would be required to be paid to the replacement contractor to perform the Contracted Work in accordance with the terms and conditions of the Design-Build Contract as if they were applicable thereto; *plus*
  - (ii) without duplication of any amount described in clause (i), all other outstanding sums due and payable by Design-Build Contractor to the Borrower under the Design-Build Contract, including but not limited to any outstanding Delay Liquidated Damages, increased Milestone interest costs, or Final Completion Delay Costs, as applicable.

*Immediate Department Entry and Cure of Wrongful Use.* The Design-Build Contractor acknowledges in the Design-Build Contract that, pursuant to the DBFOM Agreement, without notice and without awaiting lapse of the period to cure, in the event of a default by the Design-Build Contractor relating to any use of the APM Project by any Design-Build Contractor-related entity that violates requirements of applicable Governmental Approvals or laws or otherwise is not permitted under the DB Documents, the Department may enter and take control of the relevant portion of the APM Project to restore the permitted uses and reopen and continue operations for the benefit of the public, until such breach is cured or the Department terminates the DBFOM Agreement. Subject to certain reimbursement rights, the Design-Build Contractor shall pay to the Borrower on demand the Department's recoverable costs in connection with such action (which the Borrower shall pay to the Department). The Design-Build Contractor further acknowledges that the Department has agreed to promptly relinquish control and possession of the relevant portion of the APM Project to the Borrower once the Department determines that the related Developer Default has been cured.

*Remedies for Failure to Meet Safety Standards or Perform Safety Compliance.* If at any time the Design-Build Contractor fails to meet any safety standard or timely perform safety compliance or if the Borrower and the Design-Build Contractor cannot reach an agreement regarding the interpretation or application of a safety standard or the valid issuance of a safety compliance order within a period of time acceptable to the Department, the Department may undertake or may direct the Borrower to undertake any work required to ensure implementation of and compliance with safety standards as interpreted or applied by the Department or with the safety compliance order, and to the extent applicable to the Contracted Work, Borrower may direct Design-Build Contractor to undertake the same. If at any time a condition or deficiency of the APM Project related to the Contracted Work violates any law respecting health, safety or right of use and access, the Department may take any immediate corrective actions required. To the extent that any work done pursuant to the foregoing is undertaken by the Department and is reasonably necessary to comply with safety standards, perform validly issued safety compliance orders or correct a violation of law respecting health, safety or right of use and access, the Design-Build Contractor

shall pay to the Borrower on demand the costs of such work claimed by the Department against the Borrower pursuant to the DBFOM Agreement, to the extent such work relates to the Contracted Work, including the Department's recoverable costs in connection with such work (which the Borrower shall pay to the Department).

If, in the good faith judgment of the Department, (a) the Design-Build Contractor has failed to meet any safety standards or perform safety compliance related to the Contracted Work and the failure results in an emergency or danger to persons or property; or (b) the Design-Build Contractor is not then diligently taking all necessary steps to rectify or deal with such emergency or danger, Design-Build Contractor acknowledges and agrees that the Department may without notice and without awaiting lapse of the period to cure any breach:

- (a) immediately take such action as may be reasonably necessary to rectify the emergency or danger, in which event, subject to certain reimbursement rights, the Design-Build Contractor shall pay to the Borrower on demand the cost of such action, including the Department's recoverable costs (which the Borrower shall pay to the Department); or
- (b) suspend the Contracted Work and/or close or cause to be closed any and all portions of APM Project affected by the emergency or danger.

Immediately following rectification of such emergency or danger, as determined by the Department, the Department is required to allow the Contracted Work to continue or such portions of the APM Project to reopen, as applicable.

*Borrower and Department Step-in Rights.* Design-Build Contractor agrees that in accordance with the Department's step-in rights under the DBFOM Agreement, if the Borrower has not fully and completely cured a Developer Default by the expiration of the applicable cure period, if any, under the DBFOM Agreement, the Department may, subject to the terms of any Direct Agreement and in accordance with the terms and conditions of the DBFOM Agreement, pay and perform all or any portion of the Borrower's obligations under the Contract Documents that are the subject of such Developer Default. The Borrower may also pay and perform all or any portion of the Design-Build Contractor's obligations under the DB Documents that are the subject of such Design-Build Contractor Default.

The Borrower may, to the extent necessary to cure a Design-Build Contractor Default:

- (a) perform or attempt to perform, or cause to be performed the Contracted Work;
- (b) employ security guards and other safeguards to protect the APM Project;
- (c) spend such sums as the Department or the Borrower, as applicable, deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such Contracted Work, without obligation or liability to Design-Build Contractor or any subcontractors for loss of opportunity to perform the same Contracted Work or supply the same materials and equipment;
- (d) to the extent permitted under the DBFOM Agreement, draw on and use proceeds from the performance bond and any other available security provided by Design-Build Contractor, to the extent such instruments provide recourse to pay such sums;
- (e) execute all applications, certificates and other documents as may be required;
- (f) make decisions respecting, assume control over and continue the Contracted Work as may be reasonably required;
- (g) meet with, coordinate with, direct and instruct subcontractors and suppliers, process invoices and applications for payment from subcontractors and suppliers, pay subcontractors and suppliers, and resolve claims of subcontractors and suppliers;



- (h) take any and all other actions it may consider necessary to effect cure and perform the Contracted Work; and
- (i) prosecute and defend any action or proceeding incident to the Contracted Work.

The Design-Build Contractor shall reimburse the Borrower on demand for (a) Borrower's recoverable costs incurred in connection with the performance of any act or work pursuant to the foregoing, or (b) the Department's recoverable costs incurred in connection with the performance of any act or work by the Department authorized pursuant to the DBFOM Agreement to the extent that such exercise of rights by Borrower or the Department is the result of any Design-Build Contractor Default or such other breaches or failures to perform by Design-Build Contractor under the Design-Build Contract.

*Performance Bond.* Upon the occurrence of a Design-Build Contractor Default and expiration, without full and complete cure, of the applicable cure period, if any, without waiving or releasing the Design-Build Contractor from any obligations or limiting other remedies that may be available to the City, Design-Build Contractor acknowledges that the City may make demand upon and enforce the performance bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to the City under the DBFOM Agreement with respect to such Design-Build Contractor Default in any order. Design-Build Contractor acknowledges that the City will apply the proceeds of any such action to the satisfaction of the Borrower's obligations under the DBFOM Agreement, including payment of amounts due to the Department.

*Suspension of Contracted Work.* Design-Build Contractor acknowledges in the Design-Build Contract the rights of the Department to suspend the Contracted Work, in whole or in part, pursuant to the DBFOM Agreement. In case of suspension of work for any cause, the Design-Build Contractor shall be responsible for the APM Project and shall take such precautions as may be necessary to prevent loss or damage to the materials, equipment and Contracted Work, provide for normal drainage and shall erect any necessary temporary structures, signs, or other facilities at the Design-Build Contractor's expense.

*Other Rights and Remedies.* The Borrower shall also be entitled to exercise any other rights and remedies available under the Design-Build Contract, or available at law.

#### *Developer DB Default and Design-Build Contractor Remedies*

Subject to certain limitations set forth in the Design-Build Contract (including applicable cure periods), the Borrower shall be in breach under the Design-Build Contract upon the occurrence of any one or more of the following events or conditions (each a "**Developer DB Default**");

- (a) the Borrower fails to make any payment due to the Design-Build Contractor under the Design-Build Contract when due, provided that such payment is not subject to a dispute;
- (b) a breach or breaches by the Borrower of any of its material obligations under the O&M Contract (other than any breach or breaches that constitute Developer DB Default under clause (a) or (c));
- (c) any representation or warranty made by the Borrower under the Design-Build Contract is false, misleading or inaccurate in any material respect when made or omits material information when made;
- (d) the Borrower fails to obtain, provide and maintain the insurance policies identified as responsibility of the Borrower in the Design-Build Contract, or the Borrower fails to comply with any applicable requirement pertaining to the amount, terms or coverage of the insurance or fails to pay the associated premiums, deductibles, retain self-insured retentions, co-insurance or any other such amounts as and when due;
- (e) the Borrower makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Design-Build Contract, the APM Project or the Borrower's interest in violation of the limitations on assignment or transfer under the Design-Build Contract, or (ii) any other violation of the limitations on assignment or transfer under the Design-Build Contract occurs;

(f) the Borrower commences a voluntary case seeking liquidation, reorganization or other relief with respect to Borrower or Borrower's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(g) an involuntary case is commenced against the Borrower seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Borrower or such Borrower's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by it in good faith or shall remain undismissed and unstayed for a period of 60 days; or

(h) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to the Borrower or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law, the Design-Build Contract is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute.

*Termination.* If a Developer DB Default remains uncured following (i) notice and expiration of the applicable cure period, and (ii) the Design-Build Contractor's compliance with the applicable warning requirements, the Design-Build Contractor shall have the right to terminate the Design-Build Contractor upon notice to the Borrower. In the event of such termination, the Borrower shall pay compensation to the Design-Build Contractor as follows: (a) DB Subcontractor Breakage Costs; *plus* (b) without duplication of any amount described in (a), direct losses incurred by Design-Build Contractor in connection with termination of the Design-Build Contract; *plus* (c) without duplication of any amount described in (a) or (b), all other outstanding sums due and payable by the Borrower to Design-Build Contractor under the Design-Build Contract; *minus* (d) DB Insurance Proceeds; *minus* (e) any deductions to the extent not deducted in full from Monthly Progress Payments in accordance with the payment mechanism of the Design-Build Contract.

*Interest on Late Payment.* If the Borrower fails to make payments that are due and owing to the Design-Build Contractor under the Design-Build Contract, then the Design-Build Contractor shall be entitled to interest in accordance with the Design-Build Contract.

*Suspension of Contracted Work.* Subject to the DB Lenders' Direct Agreement, Design-Build Contractor may suspend the Contracted Work based on the occurrence of the Developer DB Default described in (a) above.

*Other Rights and Remedies.* Subject to certain limitations on the Design-Build Contractor's remedies and except as specifically provided otherwise in the Design-Build Contract, upon breach of the Design-Build Contract by the Borrower, the Design-Build Contractor may exercise any remedies available at law or in equity.

*Termination Following Termination of the DBFOM Agreement for Convenience, Insurance Unavailability, Court Ruling or LAWA Default*

Upon any termination of the DBFOM Agreement for convenience, condemnation, insurance unavailability, court ruling or LAWA Default, the Borrower shall pay compensation to the Design-Build Contractor as follows: (a) DB Subcontractor Breakage Costs; *minus* (b) DB Insurance Proceeds; *minus* (c) any deductions to the extent not deducted in full from Monthly Progress Payments in accordance with the payment mechanism of the Design-Build Contract.

*Termination for Extended Delay Events*

Either party may deliver to the other party notice of its conditional election to terminate the Design-Build Contract if a Force Majeure Event, a Qualifying Change in Law (other than City ordinances), an earthquake or tidal wave that causes physical damage to the APM Project or terrorism has occurred and (a) (i) the notice of conditional

termination is delivered before the Passenger Service Availability Date; (ii) as a direct result of the Extended Delay Event, the Design-Build Contractor is unable to perform all or substantially all of its obligations under the DB Documents for a period of 180 consecutive days or more; and (iii) such inability to perform its obligations is not attributable to a concurrent non-Extended Delay Event; or (b)(i) the notice of conditional termination is delivered on or after the Passenger Service Availability Date; (ii) as a direct result of the Extended Delay Event all or substantially all of the APM Project has become and remains inoperable for a period of 180 consecutive days or more; and (iii) such suspension of operations is not attributable to another concurrent non-Extended Delay Event; and (c) the Design-Build Contractor could not have mitigated or cured such result through the exercise of diligent efforts. The Borrower shall not have the right to terminate the Design-Build Contract as a result of any Extended Delay Event unless the DBFOM Agreement is also terminated.

Neither party shall have the right to elect to terminate the Design-Build Contract following the occurrence of any Extended Delay Event that results in damage or partial destruction of the APM Project if insurance proceeds are available to fund work required to remedy the effects of the Extended Delay Event; and the parties agree to a restoration plan in respect of such work required to remedy the effect of the Extended Delay Event.

If the Department delivers a notice of conditional termination to the Borrower pursuant to the DBFOM Agreement, the Borrower shall have the option either to accept such notice or to continue with the Design-Build Contract.

The Design-Build Contractor acknowledges in the Design-Build Contract the options available to the Borrower if the Department delivers a notice of conditional termination to the Borrower pursuant to the DBFOM Agreement and the options available to the Department if the Borrower delivers a notice of conditional termination to the Department pursuant to the DBFOM Agreement. The Design-Build Contractor may issue an equivalent claim notice in relation to the Borrower's rights pursuant to the DBFOM Agreement.

If either the Department or the Borrower accepts, or is deemed to accept, the other party's conditional election to terminate, then the Design-Build Contract is deemed terminated on an early termination date that is 30 days after the date of acceptance or deemed acceptance of the conditional election to terminate, and the Borrower shall pay compensation to the Design-Build Contractor as follows: (a) DB Subcontractor Breakage Costs; *minus* (b) DB Insurance Proceeds; *minus* (c) any deductions to the extent not deducted in full from Monthly Progress Payments in accordance with the payment mechanism of the Design-Build Contract.

#### *Termination Following Termination of the DBFOM Agreement for Developer Default*

Upon any termination of the DBFOM Agreement for Developer Default that is not caused by a Design-Build Contractor Default, the Design-Build Contract shall terminate on the effective date of such termination and the Borrower shall pay compensation to the Design-Build Contractor as follows: (a) DB Subcontractor Breakage Costs; *plus* (b) without duplication of any amount described in (a), direct losses incurred by Design-Build Contractor in connection with termination of the Design-Build Contract; *plus* (c) without duplication of any amount described in (a) or (b), all other outstanding sums due and payable by the Borrower to Design-Build Contractor under the Design-Build Contract; *minus* (d) DB Insurance Proceeds; *minus* (e) any deductions to the extent not deducted in full from Monthly Progress Payments in accordance with the payment mechanism of the Design-Build Contract.

#### *Termination Following Termination of the DBFOM Agreement for Suspension of Work*

Upon any termination of the DBFOM Agreement for suspension of Work, the Design-Build Contract shall terminate on the effective date of such termination, and the Borrower shall pay compensation to the Design-Build Contractor as follows: (a) DB Subcontractor Breakage Costs; *minus* (b) DB Insurance Proceeds; *minus* (c) any deductions to the extent not deducted in full from Monthly Progress Payments in accordance with the payment mechanism of the Design-Build Contract.

### *Miscellaneous Compensation Provisions*

To the extent that any termination compensation calculated pursuant to the Design-Build Contract is calculated to be less than zero, then such termination compensation will be deemed to equal zero.

### **Dispute Resolution Procedures**

Any dispute, controversies or claims between the Borrower and the Design-Build Contractor concerning their respective rights and obligations under the Design-Build Contract shall be resolved in accordance with the dispute resolution procedures set forth in the Design-Build Contract. The Design-Build Contractor shall give evidence and otherwise participate in any dispute resolution proceeding between the Borrower and the Department pursuant to the dispute resolution procedures of the DBFOM Agreement, if the dispute relates to the Contracted Work and such participation is reasonably requested by either the Borrower or the Department.

At all times during any dispute resolution process under the Design-Build Contract, the Design-Build Contractor and all subcontractors shall continue with the performance of the Contracted Work and their obligations, including any disputed Contracted Work or obligations, diligently and without delay, in accordance with the Design-Build Contract, except to the extent enjoined by order of a court or otherwise approved by the Borrower in its discretion. In addition, during the pendency of resolution of a dispute relating to the Contracted Work, the parties shall continue to comply with all provisions of the Design-Build Contract.

### **Design-Build Contractor's Representations and Warranties**

The Design-Build Contractor has made certain representations and warranties for the benefit of the Borrower and those that are required to be made by the Borrower in the DBFOM Agreement to the extent they relate to the Design-Build Contractor and the Contracted Work.

### **Assignment**

#### *Assignments and Transfers by the Design-Build Contractor*

The Design-Build Contractor shall not, and shall not permit, any assignment, transfer, mortgage, pledge or encumbrance of any of its interests in the APM Project, the Site or the Contracted Work, or its interests in, or rights or obligations under the Design-Build Contract, the subcontracts, the performance bond, the payment bond and the insurance policies, without the Borrower's approval. In addition, the Design-Build Contractor shall not assign its interest in, or rights or obligations under the Design-Build Contract without the Department's prior consent. The foregoing shall not prohibit the subcontracting of portions of the Contracted Work to qualified subcontractors.

No Design-Build Contractor member shall assign, transfer, or reduce any of its rights or obligations with respect to the Design-Build Contractor without the written consent of the Borrower.

#### *Assignments and Transfers by the Borrower*

The Borrower may assign all or any portion of its rights and interests in the Design-Build Contract without the Design-Build Contractor's consent: (a) by way of security to the Lenders (or their representative) and the Lenders may subsequently assign the Design-Build Contract upon and after the exercise of their rights and enforcement of their remedies under the Financing Documents, at law, in equity, or otherwise; or (b) in accordance with the terms of the DB Lenders' Direct Agreement.

The Borrower may not otherwise assign, transfer or novate its rights or obligations under the Design-Build Contract without the prior written consent of the Design-Build Contractor, such consent not to be unreasonably withheld or delayed.

**Governing Law**

The DB Documents shall be governed by and construed in accordance with the laws of California, any applicable federal law, the Los Angeles City Charter, and the ordinances, regulations, codes, and executive orders enacted and/or promulgated pursuant thereto.

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## APPENDIX D-7

### SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT

*The following is a summary of selected provisions of the O&M Contract and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, from the Borrower or the Trustee upon request by a bona fide prospective investor. Unless otherwise stated, any reference in this Official Statement to the O&M Contract shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.*

#### Overview

Operations and maintenance work for the APM Project will be undertaken by the O&M Contractor, pursuant to the O&M Contract, dated as of April 11, 2018, between the Borrower and the O&M Contractor. The term of the O&M Contract ends on the earlier of (a) the effective date of any termination of the O&M Contract in accordance with the termination provisions set out in the O&M Contract and (b) 30 years after the Financial Close Date (the “**O&M Term**”).

#### Scope of O&M Activities

The O&M Contractor is responsible for performance of the O&M Activities in accordance with requirements specified in the O&M Documents. The O&M Activities include: (a) the performance of the following in accordance with the DBFOM Agreement and the O&M Contract: (i) Work to be performed during the O&M Period relating to the operation, management and administration of the APM Project, including the supply of machinery, equipment, materials, hardware, software, systems or any other appurtenance to the APM Project, (ii) all Work during the O&M Period to maintain, repair, preserve and modify the APM Project, including the supply of machinery, equipment, materials, hardware, software, systems or any other items related to such Work; (iii) modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to intellectual property, equipment, mechanism, operational technology, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements; (iv) all work related to the capital replacement, reconstruction, overhaul, refurbishment and reinstatement of the APM Project within the O&M Limits, including the APM Operating System, APM Fixed Facilities, fixed equipment, Vehicles and other APM Project assets to be, and including the supply of machinery, equipment, materials, hardware, software, systems or any other items related thereto, carried out within the O&M Limits by the O&M Contractor during the O&M Term to maintain compliance with the O&M Documents; (b) the performance of the O&M Contractor’s obligations under the Interface Agreement; and (c) the performance of all other obligations of the O&M Contractor under the O&M Contract, but in each case, excluding certain obligations as set forth in the O&M Contract.

The O&M Contractor is required to ensure that (a) all O&M Activities are performed in accordance with all applicable laws, Governmental Approvals and Good Industry Practice, as it may evolve over time; (b) the APM System remains safe, fit for use for the intended functions, meets the requirements of the O&M Documents, remains free of defects and meets the minimum performance standards for operations as specified in the relevant Technical Provisions throughout the O&M Period; (c)(i) all materials and equipment furnished during the O&M Period are of good quality and new and (ii) all APM Operating System components and related consumables obtained as part of the O&M Activities and supplied during the O&M Period are of good quality and new and fit for their intended purpose; and (d) all O&M Activities are performed in accordance with the approved plans from the Department required under the relevant Technical Provisions.

#### *Oversight and Inspection*

Under the DBFOM Agreement, the Department has the right at all times to conduct certain oversight of the O&M Activities. Such oversight may include assessments regarding compliance with the O&M Documents, O&M management plan and the requirements of applicable Governmental Entities and applicable law.

Under the DBFOM Agreement, the Department is entitled to change the type and/or increase the level of the Department's oversight of the APM Project and the O&M Activities, in such manner and to such level as the Department determines if at any time: (a) over the course of 12 consecutive months (determined on a rolling basis), the O&M Contractor has accumulated 200 or more noncompliance points; (b) over the course of 36 consecutive months (determined on a rolling basis), the O&M Contractor has accumulated 550 or more noncompliance points; (c) a persistent unavailability event has occurred in the prior month; or (d) an APM Operating System shutdown lasting 24 hours or more has occurred. Subject to certain limitations set forth in the O&M Contract, the O&M Contractor is required to pay and reimburse the Borrower all reasonable increased costs and fees that the Department incurs in connection with such action. The Department may, at its sole discretion and at its own expense, increase its level of oversight at any time.

The Borrower has the right at all times at the Borrower's sole discretion (a) to be present at, and to witness any of the Department's oversight activities as described in the O&M Contract (and the Borrower is responsible for its own costs and expenses in connection therewith) and (b) to access all information derived therefrom to the same extent such information is available to or accessible by the Department.

#### *Budget*

The O&M Contractor is required to deliver to the Borrower an operating budget for the upcoming calendar year, actual costs incurred in the performance of the O&M Activities during the preceding year, and any updates required by any of the Borrower's Lenders.

#### *Governmental Approvals*

The O&M Contractor is responsible for obtaining all Governmental Approvals required for the O&M Activities, other than the approvals provided by the Department, and bears the risk of any delay in obtaining such approvals (except as expressly set forth in the O&M Contract), as well as the risk of conditions imposed on performance of the O&M Activities by such approvals. The O&M Contractor is required to conduct all necessary environmental studies and prepare all necessary environmental documents in compliance with applicable environmental laws as needed to obtain Governmental Approvals other than the approvals provided by the Department, and is required to obtain all necessary modifications, renewals and extensions thereof.

#### *Security and Incident Response*

The O&M Contractor is responsible for protecting the APM System from damage and providing safe operation of the APM System throughout the O&M Period. The O&M Contractor is required to comply with all rules, directives and guidance of the U.S. Department of Homeland Security and other comparable agencies, and to coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services.

#### *Utilities*

Throughout the O&M Period, utility owners will apply for additional utility permits to install new utilities that may cross or longitudinally occupy the O&M Limits, or to modify, repair, upgrade, relocate or expand existing utilities within the O&M Limits. In such circumstances, the O&M Contractor is required to: (a) assist the Borrower and the Department in providing comments regarding such permit applications; (b) make available upon request the most recent APM Project design information and/or record documents, as applicable, to the applicants; (c) assist each applicant with information regarding the location of other proposed and existing utilities; and (d) use commercially reasonable efforts to coordinate work schedules with such applicants as appropriate to avoid interference, if possible, with the O&M Activities by applicants' activities.

The O&M Contractor is also required to monitor utilities and utility owners within the O&M Limits for compliance with applicable utility permits, easements, and applicable law, and to use diligent efforts to obtain the cooperation of each utility owner having utilities within the O&M Limits. The O&M Contractor is required to promptly notify the Borrower if (a) the O&M Contractor believes that any utility owner is not complying with the



terms of a utility permit, easement, or applicable law affecting a utility within the O&M Limits, or (b) any other dispute arises between the O&M Contractor and a utility owner with respect to a utility within the O&M Limits, despite the O&M Contractor having exercised its diligent efforts to obtain the utility owner's cooperation. If the O&M Contractor, despite diligent efforts, is unable to resolve any dispute with a utility owner, the O&M Contractor may request the Borrower to request the Department to provide reasonable assistance. Following delivery of such a request, the parties are required to consult regarding measures to be undertaken.

### *Hazardous Materials*

Subject to certain exceptions set forth in the O&M Contract, the O&M Contractor is required to perform, or cause to be performed, all hazardous materials management required in connection with the APM Project in accordance with applicable law, Governmental Approvals, the approved environmental protection program, and all applicable provisions of the O&M Contract and the other O&M Documents. If the O&M Contractor fails to undertake the hazardous materials management required under the O&M Contract within a reasonable time after discovery of hazardous materials, taking into consideration the nature and extent of the contamination and action required and the potential impact upon the O&M Contractor's schedule for use of and operations on the Site, the Department may notify the Borrower and the O&M Contractor that it will itself undertake the hazardous materials management or procure a contractor to perform such work, in which case the Department is required to do so in accordance with all applicable environmental laws. The O&M Contractor is required to reimburse the Department on a current basis for fines, penalties or other assessments against the Department or the APM Project by Governmental Entities due to the O&M Contractor's delay or failure to undertake the hazardous materials management, so long as the Department has performed in accordance with the terms of the DBFOM Agreement.

The O&M Contractor has the following duties to identify, avoid, minimize and mitigate adverse monetary and non-monetary impacts to the APM Project and to the Borrower and the Department relating to hazardous materials: (a) when performing hazardous materials management, the O&M Contractor will use Good Industry Practice to minimize costs (including long-term costs) of hazardous materials management; and (b) the O&M Contractor is required to use appropriately trained personnel to conduct hazardous materials management activities. The O&M Contractor is also responsible, on behalf of the Borrower, for the management of all pre-existing hazardous materials encountered in connection with the APM Project, in compliance with applicable law, subject to certain limitations set forth in the O&M Contract, including the Department's responsibility under the DBFOM Agreement for certain losses arising from the management of pre-existing hazardous materials. The O&M Contractor is also obligated to avoid exacerbating hazardous materials (including pre-existing hazardous materials and new releases) in, on under or migrating from the Site, and to take all reasonable efforts to ensure that no act or omission of any O&M Contractor-related entity will result in an unlawful release of hazardous materials to or into wastewater, storm or sanitary sewer systems, surface water, air, soils or groundwater in, on, under or migrating from the Site.

### *O&M Contractor Inspection, Testing and Reporting*

The O&M Contractor is required to carry out inspections and tests in accordance with the O&M management plan, the O&M Contract and the other O&M Documents. The O&M Contractor is required to use the results of such inspections and tests to develop and update the asset management plan, to maintain asset condition and service levels, and to develop programs of maintenance and renewal work to minimize the effect of O&M Activities on users and other members of the public. The O&M Contractor is required to submit all reports relating to the O&M Activities, including the O&M annual reports, in the form, with the content and within the time required under the O&M Documents.

### *Renewal Work*

The O&M Contractor is required to diligently perform renewal work as and when necessary to comply with the O&M Documents, to achieve full design life for each asset, supporting reliable and quality service operations and availability.

The O&M Contractor is required to use the asset management plan, as updated from time to time, as the principal guide for scheduling and performing renewal work. The O&M Contractor may perform renewal work not

identified in the asset management plan as necessary to maintain compliance with the O&M Documents, subject to scheduling the performance of such renewal work at times agreed to by the Department.

#### *Handback*

The O&M Contractor is required to diligently perform and complete all renewal work required to be performed and completed before the termination of the O&M Contract, based on the required adjustments and changes to the asset management plan resulting from the inspections and analysis under the handback requirements. Upon the termination of the O&M Contract, the O&M Contractor is required to surrender the APM Project, including any upgrades, to the Borrower, in the condition and meeting all of the handback requirements. In the event of early termination of the O&M Contract, the O&M Contractor is only required to comply with the handback requirements under the O&M Contract to the extent that any renewal work was scheduled to have been performed before the early termination date.

The parties are required to conduct inspections of the APM Project at the times and according to the terms and procedures specified in the handback requirements, for the purposes of: (a) determining and verifying the condition of all elements and their residual lives; (b) adjusting, to the extent necessary based on inspection and analysis, element useful lives, ages, residual lives, handback reserve amount and timing of handback renewal work; (c) revising and updating the asset management plan to incorporate such adjustments; and (d) determining the handback renewal work required to be performed and completed before the termination of the O&M Contract, based on the handback requirements for residual life at the conclusion of the O&M Term, the foregoing adjustments and the foregoing changes to the asset management plan.

If the Department determines that the APM Project does not comply with any handback requirement, or if handback renewal work is not timely or properly performed, then, in addition to the Borrower's rights under the O&M Documents, the O&M Contractor is required to, subject to the limitations on liability provided in the O&M Contract, indemnify the Borrower for any liability to the Department for the Department's recoverable costs incurred in bringing the APM Project into compliance with such handback requirements. In recovering such amounts, the Borrower may (a) reduce any O&M Payment then due and owing from the Borrower to the O&M Contractor, (b) invoice the O&M Contractor for such amount, as a lump sum payment, (c) set off such amount against any other amount then due and owing from the Borrower to the O&M Contractor, (d) draw against funds withheld under the O&M Contract or against the letter of credit described in the handback provisions of the O&M Contract, (e) require funds in the handback requirements reserve account described in the O&M Contract to be used to pay for required renewal work, or (f) any combination of clauses (a) through (e).

The O&M Contract sets forth the procedures relating to the calculation of the handback reserve amount and the mechanics of the handback requirements reserve account and the handback requirements letters of credit.

#### **Payments to the O&M Contractor**

##### *O&M Payments*

In consideration of the O&M Contractor performing its obligations under the O&M Contract, and subject to the terms and conditions of the O&M Contract, the Borrower is required to pay the O&M Contractor monthly performance payments (including, for certainty, electricity and water costs) (the "**O&M Monthly Performance Payments**") and rehabilitation payments (together with the O&M Monthly Performance Payment, the "**O&M Payments**"). Each O&M Payment will be subject to escalation by the escalation factor applicable as of the date of such payment determined in accordance with the DBFOM Agreement.

The total amount of O&M Payments paid in any month under the O&M Contract will be adjusted to equal O&M Payments *less* Applied O&M Adjustment, where "**Applied O&M Adjustment**" means, for any month, an amount equal to the lesser of the total O&M Payments for such month and the Total O&M Adjustment. "**Total O&M Adjustment**" means, for any month, an amount equal to Carry Forward O&M Adjustment *plus* O&M Deductions *plus* Utility Rate Risk Adjustment, where:

(a) **“Carry Forward O&M Adjustment”** means, for any month, an amount equal to Total O&M Adjustment for the immediately preceding month less the Applied O&M Adjustment for the immediately preceding month; provided that in no event will Carry Forward O&M Adjustments be less than zero;

(b) **“O&M Deductions”** are calculated in accordance with the provisions in the O&M Contract relating to deductions from O&M Payments; and

(c) **“Utility Rate Risk Adjustment”** means the amount calculated pursuant to the DBFOM Agreement.

#### *Deductions*

The Borrower may make deductions from O&M Payments in accordance with the payment mechanism of the O&M Contract. The O&M Contract sets forth the procedures relating to the calculation of unavailability deductions and noncompliance deductions. The Borrower is entitled to reduce the O&M Payment for any month that would otherwise be due to the O&M Contractor by an amount equal to: (a) amounts payable by the O&M Contractor to the Borrower, or subject to offset, under the terms of the O&M Contract; *plus* (b) the amounts of the deductions that the Borrower is entitled to deduct from the corresponding O&M Payments for such month as calculated in accordance with the payment mechanism of the O&M Contract.

#### *Mobilization Payments*

In addition, in consideration of such mobilization activities undertaken by the O&M Contractor pursuant to the O&M Contract, the Borrower is required to pay the O&M Contractor mobilization payments. The Borrower will also pay the O&M Contractor additional mobilization payments relating to a potential additional station (the **“Additional TVA O&M Mobilization Payments”**). The Additional TVA O&M Mobilization Payments are payable by the Borrower to the O&M Contractor only to the extent that corresponding payments have been paid by the Department to the Borrower in accordance with the DBFOM Agreement, and the O&M Contractor is not entitled to such amounts unless and until the Design-Build Contractor has achieved the minimum D&C Percentage for the payment of such payments.

#### *Pay-if-Paid Provisions*

Whenever a provision in the O&M Contract provides that any compensation payable to the O&M Contractor, or any relief from deductions to the O&M Payments, is subject to the pay-if-paid provisions of the O&M Contract, the O&M Contractor's entitlement to such compensation or relief from deductions under the O&M Contract is conditional upon and will only be provided by the Borrower to the O&M Contractor to the extent that the Borrower actually receives the corresponding amount of compensation or relief from deductions from the Department under the DBFOM Agreement.

With respect to any payment owed by the Borrower to the O&M Contractor under the O&M Contract that is subject to the pay-if-paid provisions, and subject to the compliance of the Borrower with all obligations under the DBFOM Agreement and the O&M Contract necessary for payment by the Department of the required amounts owed to the O&M Contractor, (a) the O&M Contractor is required to comply with the requirements of the DBFOM Agreement in order to ensure that any corresponding payments owed by the Department under the DBFOM Agreement are paid to the Borrower as and when contemplated by the DBFOM Agreement, (b) the O&M Contractor is required to provide the Borrower, along with any request for such payment as required by the O&M Contract, all necessary certifications, affidavits and information required to be delivered by the Borrower to the Department pursuant to the DBFOM Agreement for the disbursement of the corresponding payment from the Department to the Borrower under the DBFOM Agreement, and (c) any failure of the Borrower to pay any such payment to the O&M Contractor shall not constitute a breach or default of the Borrower under the O&M Contract to the extent resulting from the failure by the Department to make the corresponding payment to the Borrower under the DBFOM Agreement at the time and in the amounts contemplated by the DBFOM Agreement, and the O&M Contractor fully assumes the risk of non-payment by the Department to the Borrower for any such payment owed by the Borrower to the O&M Contractor under the O&M Contract.

## **Equivalent Project Relief**

To the extent that the Borrower has a right, entitlement, remedy or defense under the DBFOM Agreement which relates to the O&M Activities or the rights or obligations of the O&M Contractor under the O&M Contract, the O&M Contractor is entitled to receive the benefit of such rights in accordance with and subject to the equivalent project relief provisions of the O&M Contract, including without limitation, such rights in respect of: (a) any contribution, indemnification, compensation, damages or other additional compensation or payment of any kind; (b) any other relief (including, without limitation, any extension of time or limitation of liability applicable to liabilities owed to the Department under the DBFOM Agreement) from the performance of the Borrower's obligations under, or from termination of, the DBFOM Agreement; (c) any entitlement of the O&M Contractor under the O&M Contract in respect of which any provision of the O&M Contract states that: (i) the equivalent project relief provisions of the O&M Contract shall apply; or (ii) the O&M Contractor may make an equivalent claim or issue an equivalent claim notice; (d) any certificate, consent or approval provided for under the O&M Contract, the DBFOM Agreement or any other agreement, statute, bylaw or regulation in regard to any matter relating to the O&M Activities, including any entitlement of the Borrower to request or apply for such certificate, consent or approval from the Department or any other person; and (e) any LAWA Change order or Relief Event; but, in each case, excluding any payments made by the Department to the Borrower in respect of any payments to be made under the Financing Documents.

## **Limitations on Liability**

The maximum aggregate liability of the O&M Contractor to the Borrower under the O&M Contract, including for default, breach, negligence, indemnity obligations or otherwise in connection with the O&M Activities, arising during any calendar year during the O&M Term, up to and but not including the Termination Event Date (as defined below), shall not exceed the liability cap for that calendar year. The liability cap (a) for any calendar year ending on or before the end of the first 12 months of the O&M Period is equal to 100% of the Service Fee Reference Amount for the first calendar year of the O&M Period and (b) for any calendar year ending after the end of the first 12 months of the O&M Period, up to but not including the Termination Event Date, is equal to 100% of the Service Fee Reference Amount for the preceding calendar year.

If, at any time, the O&M Contractor has incurred liability under the O&M Contract or otherwise in connection with the O&M Activities in an aggregate amount that exceeds 150% of the average Service Fee Reference Amount over the O&M Period, the O&M Contractor may terminate the O&M Contract by giving 90 calendar days' written notice to the Borrower. Such termination shall be deemed to be a termination of the O&M Contract for an O&M Contractor Default.

The above limitations of liability do not apply to, nor shall the calculation thereof include:

- (a) any liabilities or obligations to the extent that:
  - (i) the amount thereof is paid from the proceeds of insurance maintained by the Department or the Borrower or required to be maintained by the O&M Contractor or any O&M Contractor-related entity under the O&M Contract;
  - (ii) an amount is paid by the O&M Contractor but subsequently recovered by the O&M Contractor from such insurance proceeds, or from the Department or any third party (other than an entity providing insurance or an O&M Contractor-related entity); or
  - (iii) the same would have been recovered through such insurance if the O&M Contractor or any O&M Contractor-related entity had maintained the coverage required to be maintained by it under the O&M Contract and the O&M Contractor and the O&M Contractor-related entities had otherwise complied with its obligations thereunder;
- (b) liabilities that arise out of (a) the injury to or death of persons, the loss of or the physical damage to the property of third parties, or third party intellectual property, or (b) any other third party claims arising out of an

act or omission of the O&M Contractor (other than from the Department, the Lenders, Design-Build Contractor-related entities and Non-Sub Borrower-Related Entities), in each case associated with the O&M Activities or the performance by the O&M Contractor or any O&M Contractor-related entity of any obligations under the O&M Contract;

(c) liabilities that arise out of the gross negligence, willful misconduct, deliberate acts of wrongdoing or fraud of the O&M Contractor or any O&M Contractor-related entity or abandonment by the O&M Contractor;

(d) liabilities on the part of the O&M Contractor to pay interest, fees or penalties on overdue undisputed amounts;

(e) fines and penalties under any law or any costs incurred by the O&M Contractor or any O&M Contractor-related entity that arise out of any failure by the O&M Contractor or any O&M Contractor-related entity to comply with any laws (including workman's compensation, employment or health and safety laws or regulations);

(f) fines and penalties under any law incurred by the Borrower or any Non-Sub Borrower-Related Entity (other than any O&M Contractor-related entity) as a result of a failure by the O&M Contractor or any O&M Contractor-related entity to comply with any laws (including workman's compensation, employment or health and safety laws or regulations);

(g) any amount paid to the Borrower by the O&M Contractor, to the extent that the same is subsequently recovered by the O&M Contractor from the Design-Build Contractor pursuant to the terms of the Interface Agreement;

(h) any reasonable amount incurred by the Borrower in enforcing any claim, including any action necessary to vacate encumbrances, against the O&M Contractor under or in connection with the O&M Contract, including any costs, losses, fees, liabilities, expenses or damages incurred in the enforcement of any of the performance security under the O&M Contract, which is settled or finally resolved in favor of the Borrower; or

(i) any costs and expenses incurred by the O&M Contractor for and in respect of the O&M Activities, including any cost overruns with respect to the O&M Activities.

If by reason of an O&M Contractor Default: (a) the O&M Contract is terminated, or (b) the O&M Contract is subject to termination but has not been terminated by the Borrower (the earlier of such dates being the "**Termination Event Date**"), the maximum aggregate liability of the O&M Contractor to the Borrower on the occurrence of the events referred to in the limitations on liability above, and in respect of any and all losses, events, costs, expenses or claims flowing therefrom or accruing thereafter, shall not exceed an amount equal to 150% of the Service Fee Reference Amount for the 12-month period ending on the Termination Event Date. Such limitation on liability will not be reduced on account of any liabilities incurred by the O&M Contractor prior to the Termination Event Date.

In addition, such limitation on liability shall not apply to, nor shall the calculation thereof include:

(a) any liabilities or obligations to the extent that:

- (i) the amount thereof is paid from the proceeds of insurance maintained by the Department or the Borrower or required to be maintained by the O&M Contractor or any O&M Contractor-related entity under the O&M Contract; or
- (ii) the same would have been recovered through such insurance if the O&M Contractor or any O&M Contractor-related entity had maintained the coverage required to be maintained by it under the O&M Contract or if the O&M Contractor or any O&M Contractor-related entity had otherwise complied with its obligations under, and the limitations of, such insurance policies and diligently pursued the relevant insurance claim;

(b) liabilities that arise out of gross negligence, willful misconduct, deliberate acts of wrongdoing or fraud of the O&M Contractor or any O&M Contractor-related entity or abandonment by the O&M Contractor; or

(c) any costs and expenses incurred by the O&M Contractor for and in respect of the O&M Activities, including any cost overruns with respect to the O&M Activities.

Neither party shall be liable to the other for any punitive damages or special, indirect or incidental consequential damages, whether arising out of breach of the O&M Contract, tort or any other theory of liability. Such limitation on liability will not apply or limit any right of recovery the Borrower or the O&M Contractor may have with respect to the following:

(a) (i) any loss or reduction of any amounts received or receivable under the DBFOM Agreement, in the case of the Borrower and (ii) any loss or reduction of the O&M Payments received or receivable under the O&M Contract, in the case of the O&M Contractor;

(b) any amounts that the Borrower may owe or be obligated to pay or indemnify the Department, or that the Department may set-off or deduct from payments to the Borrower, pursuant to the DBFOM Agreement;

(c) the O&M Contractor's liability for:

(i) claims and/or losses to the extent covered by (a) the proceeds of insurance required to be carried under the O&M Contract, (b) the proceeds of insurance actually carried by or insuring O&M Contractor under policies solely with respect to the APM Project and the O&M Activities, regardless of whether required to be carried under the O&M Contract, or (c) an obligation for O&M Contractor to self-insure the loss as provided under the O&M Contract;

(ii) fines and/or penalties issued by a Governmental Entity and/or losses arising out of or relating to any release of hazardous materials by the O&M Contractor;

(iii) amounts payable by the O&M Contractor under an indemnity pursuant to the O&M Contract (but only to the extent such indemnity relates to a claim asserted and/or losses suffered by any third party);

(iv) losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence on the part of any O&M Contractor-related entity; and

(v) amounts the O&M Contractor may owe or be obligated to reimburse to the Borrower under the express provisions of the O&M Contract;

(d) any party's liability for losses arising out of fraud, willful misconduct, criminal conduct, recklessness, bad faith or gross negligence on the part of the relevant party; and

(e) interest, late charges, fees, transaction fees and charges, penalties and similar charges expressly provided under the O&M Contract and the Contract Documents that arise out of the O&M Activities and are directly attributable to O&M Contractor or any other O&M Contractor-related entity.

## **Performance Security**

### *Letters of Credit*

Prior to the Passenger Service Availability Date, the O&M Contractor is required to deliver to the Borrower, and thereafter maintain, an irrevocable, direct pay standby letter of credit or multiple letters of credit, or any other form of liquid security reasonably acceptable to the Borrower and the Collateral Agent, securing the performance of the obligations of the O&M Contractor under the O&M Contract and in an aggregate amount equal to 40% of the Service Fee Reference Amount payable to the O&M Contractor in the first 12 months following the

Passenger Service Availability Date. For the remainder of the O&M Term, upon each anniversary date of the delivery by the O&M Contractor of such letters of credit, such letters of credit must be replaced or renewed by the O&M Contractor by the delivery to the Borrower prior to each such anniversary date of a replacement for such letters of credit (or a renewal of the previous letters of credit) in an aggregate amount equal to 40% of the Service Fee Reference Amount payable for the immediately following 12-month period. The O&M Contract requires that the letters of credit be issued by a financial institution with a credit rating of "A3" or better according to Moody's Investors Services, "A-" or better according to Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc., or "A-" or better according to Fitch Ratings, and with an office in New York, New York or Los Angeles, California at which the letter of credit can be presented for payment, or if such financial institution does not have an office in any of such cities at which the letter of credit may be presented for payment, then it must accept presentation of the letter of credit, sight draft and certificate by facsimile transmission to a location in the United States. In addition, the City is required to be a transferee beneficiary under the letters of credit, and the letters of credit will be transferable to the City in certain circumstances specified in the DBFOM Agreement.

If O&M Contractor fails to maintain or renew the letters of credit, the Borrower is entitled to draw on the full amount of the letters of credit and to hold the proceeds thereof, as cash security for the performance of the obligations of the O&M Contractor under the O&M Contract.

If at any time any letter of credit fails to meet the requirements of the O&M Contract (including the issuer of such letter of credit failing to meet the requirements of a permitted letter of credit provider), the O&M Contractor is required to provide a replacement letter of credit which meets the requirements of the O&M Contractor. If the O&M Contractor fails to provide such replacement, then the Borrower or the Collateral Agent are entitled to draw upon the full amount of the existing letter of credit and hold the proceeds as cash security in accordance with the terms of the O&M Contract.

Except as expressly set forth in the O&M Contract, the Borrower may draw ratably upon the letters of credit: (a) in order to satisfy any unpaid amounts owed by the O&M Contractor to the Borrower under the O&M Contract; (b) upon the occurrence of any O&M Contractor Default; or (c) in the other circumstances set out in the drawing certificate attached to the relevant letters of credit.

#### *Guaranties*

Each O&M Guarantor is required to execute and deliver to the Borrower a guaranty, guarantying performance of the obligations of the O&M Contractor by its respective subsidiary O&M Contractor member. The rights and benefits of the parent guaranties are assignable, concurrent with a like assignment of the O&M Contract, to the Collateral Agent and its designees in accordance with the terms of the O&M Lenders' Direct Agreement.

Any guaranty provided under the O&M Contract must meet the requirements set forth in the DBFOM Agreement and be enforceable by the Department as a transferee beneficiary if, subject to the DBFOM Agreement and the Lenders' Direct Agreement, the Department determines that (a) the O&M Contractor has breached or failed to perform any obligations under the O&M Contract and any notice thereof required under the O&M Contract has been provided and the applicable cure period has expired without full and complete cure, (b) such breach has caused a Developer Default under the DBFOM Agreement and the applicable cure period has expired without full and complete cure and (c) the Borrower or the Collateral Agent has failed to call upon or otherwise enforce such guaranty for the purpose of causing the performance of such obligations by or on behalf of the O&M Contractor after the Department delivers notice of such breach or expected breach to the Borrower and the Collateral Agent and the cure period under the Lenders' Direct Agreement has expired. So long as the Borrower or a Lender is diligently pursuing remedies under a guaranty, the Department agrees to forbear from exercising remedies under any such guaranty that names the Department as a direct beneficiary, and exercising its right to become a beneficiary under the DBFOM Agreement. However, if the Developer Default giving rise to exercise remedies under any such guaranty remains uncured at the end of the applicable cure period, the Department's obligation to forbear from exercising remedies as a guaranteed party ceases.

## **Title**

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

The passage of title to the Department does not affect the O&M Contractor's care, custody and control responsibilities. The O&M Contractor will, from and after the Passenger Service Availability Date, be responsible for care, custody and control of all components of the APM Project, including all materials, equipment, tools and supplies described in the O&M Contract, until the termination of the O&M Contract.

## **Subcontractors; Disadvantaged Business Enterprise Participation; Labor Standards**

### *Subcontractors*

The O&M Contractor is entitled to enter into one or more subcontracts with subcontractors to perform portions of the O&M Activities. The retention of subcontractors by the O&M Contractor does not relieve the O&M Contractor of its responsibilities under the O&M Contract or for the quality of the O&M Activities or materials or services provided by it.

Each subcontract is required to include (a) terms sufficient to ensure both the acknowledgement of and compliance by the subcontractor with the applicable requirements of the O&M Documents and to ensure that the Department and the Borrower have the ability to exercise their rights specified in the O&M Documents, (b) those terms that are specifically required by the O&M Documents to be included in such subcontract, and (c) all applicable laws.

The O&M Contractor is required to ensure that each subcontractor familiarizes itself with the requirements of any and all applicable laws and the conditions of any required Governmental Approvals. The O&M Contractor is required to supervise and is fully responsible for the actions, omissions, negligence, willful misconduct, fraud, bad faith or breach of applicable law or contract by any O&M Contractor-related entity or by any member or employee of any O&M Contractor-related entity while performing O&M Activities under the O&M Contract or while on the Site, as though the O&M Contractor directly employed all such individuals.

Under the O&M Contract, the O&M Contractor is also required to include certain provisions in all subcontracts that are Key Subcontracts. These provisions include, among other things, the following:

(a) not be assignable by the Key Subcontractor without the Borrower's and the Department's prior consent, provided that the Key Subcontractor may subcontract portions of the O&M Activities to qualified subcontractors;

(b) require the Key Subcontractor to participate in meetings between the Borrower and the Department concerning matters pertaining to such Key Subcontractor, its work or the coordination of its work with other contractors in accordance with direction to such Key Subcontractor provided by the Borrower or other party to the Key Subcontract, provided that the Department retains authority to give such direction or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

(c) without cost to the Borrower or the Department, and subject to the rights of the Collateral Agent under any Direct Agreement, permit assignment to the Department or its successors, assigns or designees of all the Borrower's or other contracting party's rights under the Key Subcontract (with such assignment to include the benefit of all Key Subcontractor warranties, indemnities, guarantees and professional responsibility), contingent only upon delivery of notice from the Department following the termination of the DBFOM Agreement, allowing the Department or its successor, assign or designee to obtain the benefit of the Borrower's or other contracting party's rights with liability only for those remaining obligations of the Borrower or the other contracting party



accruing after the date of delivery of said notice from the Department, without extinguishing existing claims of the Key Subcontractor against the Borrower or the corresponding claims of the Borrower against the Department; and

(d) include: (i) a covenant acknowledging that, subject to the rights of the Collateral Agent under any Direct Agreement, upon receipt of written notice from the Department, the Department is entitled to exercise step-in rights with respect to the Key Subcontract (where the Department is also exercising its step-in rights under the DBFOM Agreement), without any necessity for a consent or approval from the Borrower or the making of a determination whether the Department validly exercised its step-in rights; and (ii) a waiver and release by the O&M Contractor of any claim or cause of action against the Key Subcontractor arising out of, relating to or resulting from its recognition of the Department's step-in rights in reliance on any such written notice from the Department.

In addition, the O&M Contractor is required to ensure that each subcontract with any subcontractor includes indemnity provisions appropriate to the scope of the O&M Activities to be performed by such subcontractor, naming the Indemnified Parties as indemnitees. In addition, neither the O&M Contractor nor any of its subcontractors may terminate or replace certain key personnel, except under certain limited circumstances, without the prior consent of the Department pursuant to the O&M Contract.

#### *Inclusivity*

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

(a) during the period commencing on the Passenger Service Availability Date and ending on the day before the fifth anniversary of the Passenger Service Availability Date: (i) in respect of SBE firms, 17%; (ii) in respect of LBE firms, 10%; (iii) in respect of LSBE (subset of LBE) firms, 5%; and (iv) in respect of DVBE firms, 3%; and

(b) for the period commencing on the fifth anniversary of the Passenger Service Availability Date and ending on the termination of the O&M Contract, at the minimum annual participation levels determined in accordance with the inclusivity adjustments under the O&M Contract.

#### *Labor Standards*

In performing the O&M Activities, the O&M Contractor is required to comply, and to require all subcontractors to comply, with all applicable federal and California labor, occupational safety and health laws and orders, including payment of prevailing wages. All individuals performing the O&M Activities are required to be qualified, experienced, competent and skilled in the performance of the portion of the O&M Activities assigned and related obligations of O&M Contractor in accordance with the O&M Documents and any applicable minimum levels in the relevant Technical Provisions.

### **Insurance**

#### *General Obligations*

The O&M Contractor shall procure and maintain, or cause to be procured or maintained, the insurance policies identified in the O&M Contract as the responsibility of the O&M Contractor strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in the O&M Contract. The Borrower shall procure and maintain, or cause to be procured or maintained, the insurance policies identified in the O&M Contract as the responsibility of the Borrower strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in the O&M Contract. Such requirements include insurance policies covering commercial

automobile liability, worker's compensation and employer's liability, all risk property, equipment breakdown, commercial general liability, excess liability and/or contractor's pollution liability.

All insurance required under the O&M Contract shall be procured from insurers that at the time coverage commences are authorized to do business in California and have a current policyholder's management and financial size category rating of not less than A-VII according to A.M. Best's Financial Strength Rating and Financial Size Category, except as (a) otherwise provided in the O&M Contract or (b) approved in writing by (i) the Department pursuant to the DBFOM Agreement and (ii) in the case of insurance procured by the O&M Contractor, by the Borrower, in its reasonable discretion, and taking into account any related requirements under the Financing Documents or any insurance reports prepared by the Lenders' insurance advisors.

Responsibility for paying all insurance deductibles is set forth in the O&M Contract, and the parties shall have no liability for deductibles, self-insured retentions or claim amounts exceeding the required policy limits. The O&M Contract sets forth certain procedures in the event that any required insurance coverage involves a self-insured retention.

Each policy shall provide that the coverage afforded under the policy is primary and noncontributory with respect to any other insurance available to all named insureds and City Additional Insureds.

All insurance coverage required to be provided by the Borrower or the O&M Contractor, as applicable, with the exception of commercial automobile liability and worker's compensation, shall apply specifically and exclusively for the APM Project and extend to all aspects of the O&M Activities, with coverage limits dedicated solely to the APM Project, except as otherwise specified in the O&M Contract. Use of other insurance programs is acceptable, provided that coverage under such programs provides dedicated APM Project-specific limits and identified premiums and meets all requirements described in the O&M Contract.

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

Except as expressly provided in the O&M Contract, there shall be no recourse against the City or the Borrower for payment of premiums or other amounts with respect to the insurance the O&M Contractor is required to provide under the O&M Contract.

The insurance coverage the Borrower and the O&M Contractor are required to provide under the O&M Contract shall support but is not intended to limit such party's indemnification obligations under the O&M Contract.

The O&M Contractor shall pay the Borrower the amount of any insurance premium increases with respect to insurance for which the Borrower is responsible pursuant to the O&M Contract to the extent caused by an O&M Contractor Act.

#### *Adjustments in Coverage Amounts*

At least once every two years during the O&M Term (commencing initially on the Passenger Service Availability Date), the Borrower and the O&M Contractor shall review and adjust, as appropriate, the per occurrence and aggregate limits for the insurance policies that have stated dollar amounts set forth in the O&M Contract. In determining adjustments, the Borrower and the O&M Contractor shall take into account claims and loss experience for the APM Project, the condition of the APM Project, the safety compliance and noncompliance points record for the APM Project and best practices in the insurance industry.

If a LAWA Change to increase required limits of insurance policies results in a net increase in applicable insurance premiums payable under the insurance policies procured by the O&M Contractor as required under the O&M Contract, subject to the equivalent project relief provisions of the O&M Contract, the O&M Contractor shall be entitled to the amount of such net increase. However, to the extent such adjustments are made to reflect the O&M Contractor's performance on the APM Project, the O&M Contractor shall not be entitled to any compensation.

#### *Inadequacy and Unavailability of Required Coverages*

If the O&M Contractor demonstrates to the Department's reasonable satisfaction that the O&M Contractor has used diligent efforts in the global insurance and reinsurance markets to procure the required insurance coverages, and if despite such diligent efforts and through no fault of the O&M Contractor any of such coverages (or any of the required terms of such coverages, including policy limits) become completely unavailable or unavailable at commercially reasonable insurance rates from insurers meeting the financial requirements set forth in the O&M Contract, the Borrower will discuss with the Department in good faith alternative insurance packages and programs that provide coverage as comparable to that contemplated in the O&M Contract as is possible under then-existing insurance market conditions. The Borrower will be entitled to a credit for any insurance premium savings resulting from the modification or elimination of the insurance requirements. The O&M Contractor acknowledges in the O&M Contract that the Department will act as the insurer of last resort to cover the exposures that would have been covered by the unavailable insurance policy or portion thereof.

#### *Additional Insurance Coverage*

If the O&M Contractor carries insurance coverage in addition to that required under the O&M Contract, then, except for any directors and officers liability insurance carried by the O&M Contractor, the O&M Contractor shall include the Borrower and the City Additional Insureds as additional insureds thereunder. If, however, the O&M Contractor demonstrates to the Borrower that inclusion of such City Additional Insureds as additional insureds will increase the premium, the O&M Contractor acknowledges in the O&M Contract that under the DBFOM Agreement, the Department has agreed to elect either to pay the increase in premium or forego additional insured status.

#### *Property Damage*

All insurance proceeds received for physical property damage to the APM Project under any insurance policies required under the O&M Contract shall be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the APM Project with respect to which such proceeds were received.

The O&M Contractor acknowledges in the O&M Contract that, under the DBFOM Agreement, the Department has agreed to pay for the extra work costs to repair or replace tangible property damage to the APM Project caused by earthquake or terrorism. Any payment from the Borrower to the O&M Contractor with respect to such extra work shall be subject to the equivalent project relief provisions of the O&M Contract. However, the Department has not agreed to be responsible for tangible property damage to any tools, machinery, equipment, protective fencing, job trailers or other items used in the performance of the Work but not intended for permanent installation into the APM Project that is caused by earthquake or terrorism.

### **Indemnities**

#### *Indemnities by the O&M Contractor*

Subject to certain limitations on the O&M Contractor's indemnification obligations under the O&M Contract, the O&M Contractor shall indemnify and hold harmless the Indemnified Parties and the Borrower from and against any and all claims, causes of action, suits, investigations, legal or administrative proceedings, demands and losses, in each case if asserted or incurred by or awarded to any third party, to the extent that such amounts are claimed by any Indemnified Party against the Borrower pursuant to the DBFOM Agreement, and to the extent caused by:

(a) any act, omission, neglect or misconduct by any O&M Contractor-related entity in the manner or method of executing the O&M Activities satisfactorily or due to the failure to perform the O&M Activities, including (i) any neglect in safeguarding the O&M Activities, (ii) use of unacceptable materials in performance of the O&M Activities, (iii) faulty, inadequate or improper temporary drainage during construction, (iv) the use, misuse, storage or handling of explosives in performance of the O&M Activities, or (v) other breach, alleged breach or violation of the O&M Contractor's obligations under the O&M Contract, the O&M Documents or any subcontract;

(b) the failure or alleged failure by any O&M Contractor-related entity to comply with the Governmental Approvals or any applicable laws relating to the performance of the O&M Activities;

(c) the actual or alleged negligence, willful misconduct or breach of contract of any O&M Contractor-related entity in or associated with performance of the O&M Activities;

(d) any O&M Contractor-related entity's performance or failure to perform any obligation under the Cooperation Agreements;

(e) any and all stop payment notices and/or liens filed by a subcontractor in connection with the O&M Activities, including all reasonable expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop payment notice or lien, provided that the Borrower is not in default in payments owing to the O&M Contractor with respect to such O&M Activities;

(f) any O&M Contractor-related entity's breach of or failure to perform an obligation that the Department owes to a third party, including Governmental Entities, under law or under any agreement between the Department and a third party, where performance of the obligation is delegated to the O&M Contractor under the O&M Contract, or the acts or omissions of any O&M Contractor-related entity which render the Department unable to perform or abide by an obligation that the Department owes to a third party, including Governmental Entities, under any agreement between the Department and a third party, provided the agreement was previously disclosed or known to the O&M Contractor;

(g) any alleged infringement or other allegedly improper appropriation or use of intellectual property in performance of the O&M Activities, or arising out of, relating to or resulting from any use in connection with the APM Project of methods, processes, designs, information or other items furnished or communicated to the Borrower, the Department or another Indemnified Party under the O&M Contract or the O&M Documents; provided that such indemnity shall not apply to any infringement resulting from the Borrower or the Department's failure to comply with specific written instructions regarding use provided to the Borrower by the O&M Contractor that are consistent with the O&M Contractor's obligations to convey and license such intellectual property under the O&M Contract;

(h) any actual or threatened release of hazardous materials by any O&M Contractor-related entity and liabilities resulting therefrom;

(i) any fines or penalties imposed on the Borrower or the Department by any authority having jurisdiction arising out of, relating to or resulting from the O&M Contractor's breach of or failure to comply with applicable requirements of the O&M Contract or the O&M Documents;

(j) any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any O&M Contractor-related entity with respect to any payment for the O&M Activities made to or earned by such O&M Contractor-related entity under the O&M Contract or the O&M Documents; or

(k) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any O&M Contractor-related entity to comply with Good Industry Practice, requirements of the O&M Contract, the O&M Documents, the O&M management plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the O&M

Activities, (ii) the intentional misconduct or negligence of any O&M Contractor-related entity in connection with the performance of the O&M Activities, or (iii) unauthorized physical entry onto or encroachment upon another's property by any O&M Contractor-related entity in connection with the performance of the O&M Activities.

In claims by an employee of an O&M Contractor-related entity, the O&M Contractor's indemnification obligations shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for an O&M Contractor-related entity under workmen's compensation, disability benefit or other employee benefits laws. Such limitation is not a waiver in favor of any employee by the O&M Contractor or any subcontractor of any limitation of liability afforded by such laws.

Subject to the provisions on limitations on liability under the O&M Contract, the O&M Contractor shall indemnify and hold harmless each Non-Sub Borrower-Related Entity from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) the O&M Contractor's failure to comply with any of its obligations under the O&M Contract, other than (i) any such failure that arises from an act or omission of the Department, the Borrower, any Non-Sub Borrower-Related Entity, the Design-Build Contractor, any Design-Build Contractor-related entity, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the O&M Contract (including as determined pursuant to the dispute resolution procedures under the O&M Contract); or (b) negligent acts or omissions, fraud or willful misconduct of the O&M Contractor or any O&M Contractor-related entity.

#### *Indemnities by the Borrower*

Subject to certain limitations on the Borrower's indemnification obligations under the O&M Contract, the Borrower shall indemnify and hold harmless each O&M Contractor-related entity from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) a failure to comply in any material respect with any of its obligations under the O&M Contract by the Borrower, other than (i) any such failure that arises from an act or omission of the Department, the Design-Build Contractor, any Design-Build Contractor-related entity, the O&M Contractor, any O&M Contractor-related entity or a Relief Event, including any Compensation Event or Non-Compensation Event, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the O&M Contract (including as determined pursuant to the dispute resolution procedures under the O&M Contract) or by applicable law; or (b) grossly negligent acts or omissions, fraud or willful misconduct of the Borrower or any Non-Sub Borrower-Related Entity.

## **Changes**

#### *LAWA Changes*

Pursuant to the procedures set forth in, and subject to certain restrictions under, the DBFOM Agreement, the Department may at any time make changes to the Work, including additions or reductions in the scope of the O&M Activities, or changes to the requirements applicable to the O&M Activities, as it may direct in its sole discretion (each, a "**LAWA Change**"). If the Department initiates such LAWA Change, the O&M Contractor shall, to the extent applicable to the O&M Activities and as part of the O&M Activities, fulfill the obligations of the Borrower under the DBFOM Agreement with respect to such LAWA Change.

The O&M Contractor shall not be required to implement any LAWA Change to the extent the LAWA Change would: (a) result in a breach of law or breach of any conditions of a Governmental Approval or revocation of any Governmental Approval; (b) require a new Governmental Approval which would not be reasonably obtainable; (c) render any insurance policy void or voidable; (d) materially and adversely affect the health and safety of any person; or (e) materially and adversely affect the risk allocation and payment regime under the O&M Contract.

If the Borrower receives a request for change proposal from the Department pursuant to the DBFOM Agreement which relates, in whole or in part to the O&M Activities, it will promptly forward a copy of such request to the O&M Contractor. The Borrower may also request a change proposal from the O&M Contractor if the Borrower desires to initiate or evaluate whether to initiate a Developer Change Order. The O&M Contractor shall

provide the Borrower with a change proposal to the extent that the request for change proposal relates to the O&M Activities.

Following the Borrower's receipt of the O&M Contractor's change proposal and the Borrower's further assessment of the cost, schedule and other impacts of the contemplated LAWA Change or Developer Change Order, as applicable, the O&M Contractor and the Borrower, giving due consideration to such assessments and based on the entitlements for LAWA Changes or any net cost and/or schedule savings, are required to engage in good faith negotiations to reach agreement on the terms of a change order. The O&M Contractor acknowledges in the O&M Contract that the Borrower and the Department shall also engage in good faith negotiations pursuant to the DBFOM Agreement, with the O&M Contractor's participation subject to the consent of the Department, to reach agreement on the terms of a change order. A LAWA Change or Developer Change Order will become effective upon mutual execution of a written change order. The change order shall be in a form provided by the Borrower, and shall specify, as applicable the timing and method for payment of any compensation amount, or for realizing any net savings in the cost of the O&M Activities.

If the parties do not agree on a change proposal, then the Borrower may seek to resolve any points of disagreement through the dispute resolution procedures under the O&M Contract. The O&M Contractor acknowledges in the O&M Contract that if the Borrower and the Department do not agree on a change proposal issued to the Department pursuant to the DBFOM Agreement, the Department may (in its discretion) deliver to the Borrower a directive letter. If the directive letter does not state that the Work constitutes a LAWA Change, the O&M Contractor shall proceed with the relevant portion of the O&M Activities as directed but may assert a Relief Event claim in accordance with the procedures under the O&M Contract. If the directive letter provides for the implementation of a LAWA Change, the O&M Contractor is required to deliver to the Borrower a change proposal and the parties are to subsequently follow the procedures and provisions under the O&M Contract relating to the negotiation of change orders.

#### *Scope Changes Initiated by the Borrower*

The Borrower may propose a change request pursuant to the DBFOM Agreement. However, the Borrower (a) shall not, without prior consent of the O&M Contractor, initiate any change request that would, singularly or in the aggregate, involve an alteration in the scope of the O&M Activities of such magnitude that it could reasonably be expected to materially and adversely affect the O&M Activities or (b) otherwise initiate any change order that relates to the O&M Activities without first consulting with the O&M Contractor. The O&M Contractor shall reasonably cooperate with the Borrower in preparing information required under the DBFOM Agreement to seek the Department's approval of a change request.

The O&M Contractor acknowledges in the O&M Contract that the Department may accept or reject any change request initiated by the Borrower under the DBFOM Agreement for any reason or for no reason in the Department's sole discretion. If the Department is prepared to accept a change request, the parties shall engage in good faith negotiations to reach agreement on the terms of a Developer Change Order.

#### *Scope Changes Initiated by the O&M Contractor*

By submittal of an O&M Contractor change request, the O&M Contractor may request the Borrower to seek the Department's approval of: (a) changes to the requirements of the relevant Technical Provisions; or (b) changes to proposal commitments under the DBFOM Agreement.

The Borrower shall submit any O&M Contractor change request to the Department pursuant to the DBFOM Agreement and the provisions of the DBFOM Agreement applicable to a change request from the Borrower shall apply. If a proposed change would reasonably be expected to have an adverse effect on the Borrower, then the Borrower shall be under no obligation to submit the O&M Contractor change request to the Department, unless the O&M Contractor agrees to compensate the Borrower for any direct losses in relation to such adverse effect. In addition, the Borrower shall be under no obligation to submit the O&M Contractor change request to the Department if the proposed change is reasonably likely to create a material risk to human health or safety or a materially increased risk of third party claims (which risk is not adequately mitigated by the O&M Contractor in

such O&M Contractor change request or cannot be mitigated by the Borrower with the compensation that the O&M Contractor has agreed to pay).

#### *Deviations*

The O&M Contractor may request approval from the Borrower of certain minor changes to the relevant Technical Provisions that do not impact schedule or costs. Deviations may be approved by the Borrower (if approved by the Department) on a “no-cost” basis, and in such event shall not require a change order. Any other change in the requirements of the O&M Contract or the O&M Documents shall require a change order.

Unless a proposed deviation would reasonably be expected to have an adverse effect on the Borrower, the Borrower will apply for a corresponding deviation pursuant to the DBFOM Agreement upon receipt of a deviation request and may approve or reject the request based solely on the Department’s approval or rejection of the corresponding request under the DBFOM Agreement. The Borrower may elect to process the application as an O&M Contractor change request rather than as an application for a deviation only if the Department processes the corresponding application as a change request from the Borrower under the DBFOM Agreement.

### **Relief Events**

#### *Relief Event Process*

If a Relief Event occurs, subject to certain limitations and exclusions provided under the O&M Contract, the O&M Contractor may, in accordance with the process set forth in the O&M Contract, seek additional compensation, time extension and/or other relief based on the entitlements for specific Relief Events. Time is of the essence in the O&M Contractor’s delivery of (a) Relief Event notices and updates thereto; and (b) Relief Event claims and updates thereto.

As a condition precedent to the Borrower’s granting of any type of relief to the O&M Contractor in connection with the occurrence of a Relief Event, the O&M Contractor shall timely provide a Relief Event notice in form and substance required by the O&M Contract. The O&M Contractor shall thereafter timely submit to the Borrower a formal Relief Event claim, in form and substance required by the O&M Contract, for any compensation amount for Compensation Events and for any extension of time and any other requested relief relating to the Relief Event. Failure to submit a timely and properly documented Relief Event notice, Relief Event claim or any other required information shall constitute waiver by the O&M Contractor of the right to make any claim for additional compensation, extension time or other relief with respect to the Relief Event.

The O&M Contractor acknowledges in the O&M Contract that, in accordance with the process set forth in the DBFOM Agreement, the Department has agreed to issue a written determination as to the extent, if any, to which it concurs with the Borrower’s request, which determination the Borrower shall promptly forward to the O&M Contractor to the extent related to the O&M Activities.

The O&M Contractor also acknowledges in the O&M Contract that subject to the agreement of the O&M Contractor with respect to any aspect of the O&M Activities, the Department and the Borrower have agreed pursuant to the DBFOM Agreement that the specific compensation, time extension and/or other relief to be given to the Borrower on account of a Relief Event shall be evidenced by a written amendment to the DBFOM Agreement, duly executed by the Department and the Borrower. The Borrower and the O&M Contractor agree that any specific compensation and/or other relief to be given to the O&M Contractor under the O&M Contract on account of a Relief Event shall be evidenced by a corresponding written amendment to the O&M Contract.

In the event that the Department and the Borrower are unable to agree as to the specific compensation, time extension and/or other relief to be given to the Borrower on account of a Relief Event under the DBFOM Agreement, the Department has agreed to pay or grant to the Borrower, as applicable, any undisputed portion of compensation, time extension and/or other relief (which the Borrower shall pay or grant to the O&M Contractor, if applicable, pursuant to the equivalent project relief provisions of the O&M Contract), and the Department or the Borrower may refer the matter to the dispute resolution procedures under the DBFOM Agreement. If the

Department rejects the Relief Event claim, the O&M Contractor may request the Borrower to refer the matter to the dispute resolution procedures under the DBFOM Agreement.

#### *Compensation and Other Relief for Relief Events*

If a Relief Event occurs, subject to certain requirements under the O&M Contract and any limitations and exceptions expressly provided in the O&M Contract, the O&M Contractor may be entitled to the following types of relief: (a) defense to certain obligations; and (b) Incremental Costs.

*Defense to Certain Obligations.* If a Relief Event occurs and for so long as the Relief Event is continuing:

(a) except as noted below, the O&M Contractor shall be entitled to: (i) relief from accrual of noncompliance points; (ii) relief from O&M Contractor Default; and (iii) relief from assessment of deduction, provided that such relief shall apply only to the extent that the Relief Event would otherwise have caused such accrual, O&M Contractor Default or assessment, as the case may be; and

(b) to the extent that the O&M Contractor is unable to comply with the O&M Contract, the O&M Documents, applicable laws or Governmental Approvals as a direct result of the Relief Event, the O&M Contractor shall be excused from such compliance.

In the event of an earthquake with a magnitude up to and including the ODE level, the O&M Contractor shall be entitled to relief from accrual of noncompliance points and from the assessment of deductions with respect to the APM Operating System only to the extent permitted under the relevant Technical Provisions.

During the period when the O&M Contractor is entitled to such relief, the O&M Payments shall be reduced to align with the percentage of O&M Activities actually performed relative to the scope of O&M Activities required to be performed had the Relief Event not occurred. The Borrower shall make such reduced O&M Payments to the O&M Contractor only to the extent that such reduced payments are made by the Department to the Borrower under the DBFOM Agreement.

*Incremental Costs.* If a Compensation Event occurs, the O&M Contractor is entitled to Incremental Costs incurred by the O&M Contractor.

#### *Limitations*

The O&M Contractor:

(a) is not entitled to any kind of relief whatsoever from a Relief Event to the extent that the Relief Event or consequences of the Relief Event arose out of (i) any breach of contract by an O&M Contractor-related entity, (ii) any act or omission by an O&M Contractor-related entity that is inconsistent with the O&M Contract, the O&M Documents or Governmental Approvals, or (iii) any negligence, recklessness, willful misconduct, fraud or violation of laws by any O&M Contractor-related entity;

(b) is not entitled to any kind of relief whatsoever from a Relief Event to the extent that the Relief Event or consequences of the Relief Event could reasonably have been avoided by any O&M Contractor-related entity;

(c) may not claim that any Relief Event relieves the O&M Contractor from compliance with any safety compliance order; and

(d) is not entitled to compensation for any delay costs in connection with earthquake or terrorism.

#### *Mitigation*

The O&M Contractor shall take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice. Any



compensation, time extension or other relief to which the O&M Contractor is entitled under the O&M Contract shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the O&M Contractor.

#### *Insurance*

Any entitlement of the O&M Contractor to compensation with respect to a Relief Event shall be net of: (a) all insurance proceeds received by any O&M Contractor-related entity pursuant to any insurance policy; (b) any amounts which the O&M Contractor is deemed to have self-insured; and (c) any other insurance proceeds received by any O&M Contractor-related entity in connection with the Relief Event.

#### *Method of Payment*

Any compensation due from the Borrower to the O&M Contractor for a Compensation Event shall be in the form of: (a) periodic payments over the O&M Term; (b) an adjustment to the O&M Payments over the O&M Term; (c) progress or other payments invoiced as O&M Activities are completed, (d) an up-front lump sum payment; or (e) any combination of the above, as determined by the Borrower in its sole discretion.

If, due to changes in the payments made to the Borrower under the Financing Documents, the Borrower is required to make changes in the payment of all or part of compensation due from the Borrower to the O&M Contractor for a Compensation Event, the Borrower and the O&M Contractor, acting reasonably and in good faith, shall negotiate and execute an amendment to the O&M Contract, and payment shall be made to the O&M Contractor pursuant to and subject to the terms of the O&M Contract as amended.

#### *Force Majeure Events*

If a Force Majeure Event occurs, subject to the equivalent project relief provisions of the O&M Contract, the O&M Contractor will be excused from certain of its obligations in accordance with the O&M Contract. During the occurrence and continuance of any Force Majeure Event, the Borrower shall be excused from performing those of its obligations to the extent that the Borrower or the Department is prevented from carrying out such obligations by such Force Majeure Event. Notwithstanding the foregoing, the occurrence or continuance of any Force Majeure Event shall not excuse any party from performing its payment obligations contemplated under the O&M Contract or the O&M Documents (except as may be specifically limited in the O&M Contract).

O&M Contractor acknowledges in the O&M Contract that, pursuant to the DBFOM Agreement, the Department and the Borrower have agreed to consult with each other in good faith and use all reasonable efforts to agree on the effects of and appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the DBFOM Agreement. To the extent applicable to the O&M Contractor or the O&M Activities, the O&M Contractor shall have the right to participate in such consultation, subject to the consent of the Department. If the effects of the Force Majeure Event are continuing and the parties are not able to agree to terms for the continued performance of the O&M Contract within 180 consecutive days after the date of the commencement of the Force Majeure Event, then either the Borrower or the O&M Contractor may terminate the O&M Contract in accordance with the termination provisions of the O&M Contract.

#### **Noncompliance Points and Deductions**

The O&M Contract identifies certain breaches or failures in performance of obligations by the O&M Contractor under the O&M Documents (each, an “**O&M Noncompliance Occurrence**”). An O&M Noncompliance Occurrence becomes an “**O&M Noncompliance Event**” if: (a) the O&M Contractor has not rectified such occurrence within the applicable rectification period (if any); or (b) following the expiration of a rectification period, the O&M Contractor has not rectified such occurrence within any further interval of recurrence. An O&M Noncompliance Event will result in the assessment of either or both (a) noncompliance points and (b) noncompliance deductions, in each case as indicated in the O&M Noncompliance Occurrence tables.

Noncompliance points are a system to measure the O&M Contractor's performance levels during the operations and maintenance phases of the APM Project. The O&M Contractor shall, in consultation with the Borrower, establish and maintain an electronic database for recording and tracking O&M Noncompliance Occurrences and O&M Noncompliance Events. The format and design of the database shall be subject to the Department's approval. The O&M Contractor shall include in each monthly and quarterly performance monitoring reports, a report of all O&M Noncompliance Occurrences and O&M Noncompliance Events that occurred during such period, which reports shall include the same detailed information required to be recorded in the database. Within a reasonable time after receiving the monthly or quarterly performance monitoring report, the Borrower will deliver to the O&M Contractor a notice setting forth, for each O&M Noncompliance Occurrence determination by the Department, whether the O&M Noncompliance Occurrence was responded to or rectified (as applicable) during the applicable rectification period or interval of recurrence (if any), the Department's determination of whether an O&M Noncompliance Event occurred, and the noncompliance points and noncompliance deductions to be assessed with respect to such O&M Noncompliance Event. The Borrower may, if assessed by the Department pursuant to the DBFOM Agreement, assess corresponding noncompliance points if at any time the noncompliance database or a monthly or quarterly performance monitoring report indicates that an O&M Noncompliance Event has occurred, or if the Department is notified or otherwise becomes aware of an O&M Noncompliance Event, or the Borrower provides the O&M Contractor with a notice of determination.

In addition to noncompliance points, O&M Noncompliance Events may result in the assessment of noncompliance deductions and unavailability deductions in accordance with the payment provisions of the O&M Contract.

### **Termination of the O&M Contract**

#### *O&M Contractor Default and Borrower Remedies*

Subject to certain limitations set forth in the O&M Contract (including applicable cure periods), the O&M Contractor shall be in breach under the O&M Contract upon the occurrence of any one or more of the following events or conditions (each an "**O&M Contractor Default**"):

(a) the O&M Contractor abandons all or a material part of the O&M Activities, which abandonment is deemed to occur if (i) the O&M Contractor demonstrates through statements, acts or omissions an intent not to continue, for any reason other than a Relief Event that materially impairs the O&M Contractor's ability to continue, to operate or maintain all or a material part of the O&M Activities or (ii) no significant O&M Activities (taking into account if applicable, and any Relief Event) on the APM Project are performed for a continuous period of more than 40 days unless due to the O&M Contractor's compliance with a Borrower suspension order issued under the O&M Contract;

(b) the O&M Contractor (i) fails to make any payment owing to the Borrower under the O&M Contract when due, or (ii) fails to deposit other funds into any custodial account, trust account or other reserve or account in the amount and within the time period required by the O&M Contract;

(c) (i) any representation or warranty in the O&M Contract made by the O&M Contractor is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made, or (ii) any certificate, schedule, report, instrument or other document delivered by or on behalf of the O&M Contractor or an O&M Contractor-related entity to the Borrower or the Department as part of the Proposal or under the O&M Contract or the O&M Documents is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;

(d) the O&M Contractor fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the O&M Contract or the O&M Documents for the benefit of relevant parties, or the O&M Contractor fails to comply with any requirement of the O&M Contract or the O&M Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, retain self-insured retentions, co-insurance or any other such amounts as and when due;

(e) (i) the O&M Contractor makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the O&M Contract, the APM Project or the O&M Contractor's interest in violation of the limitations on assignment or transfer under the O&M Contract, or (ii) any other violation of the limitations on assignment or transfer under the O&M Contract occurs;

(f) the O&M Contractor fails to timely observe or perform, or cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by the O&M Contractor under the O&M Contract or the O&M Documents in any material respect, provided that any failure that constitutes an O&M Noncompliance Event or O&M Noncompliance Occurrence is not considered a default under this clause although such failure may become an O&M Contractor Default in accordance with clause (o) or (p) below;

(g) the O&M Contractor or an O&M Contractor-related entity, or any of their respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, has been convicted in a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in California Public Contract Code section 1101, with any public entity, as defined in California Public Contract Code section 1100, provided that (i) such person is involved in the APM Project at the time of such conviction and (ii) the O&M Contractor fails to remove such person from the APM Project;

(h) the O&M Contractor fails to comply with the Department's (or, where applicable, the Borrower's) order to suspend O&M Activities issued in accordance with the O&M Contract within the time reasonably allowed in such order;

(i) the O&M Contractor or any O&M Guarantor commences a voluntary case seeking liquidation, reorganization or other relief with respect to such person or such person's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(j) an involuntary case is commenced against the O&M Contractor or any O&M Guarantor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such person or such person's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by it in good faith or shall remain undismissed and unstayed for a period of 60 days;

(k) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to the O&M Contractor or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law, the O&M Contract is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute;

(l) any voluntary or involuntary case or other act or event described in clause (i) or (j) shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to any partner or joint venture member of the O&M Contractor;

(m) the O&M Contractor fails to comply with applicable Governmental Approvals or laws in any material respect;

(n) any use of the APM Project by any O&M Contractor-related entity that violates requirements of applicable Governmental Approvals or laws or otherwise is not permitted under the O&M Contract or the O&M Documents;

(o) the O&M Contractor receives a total of 320 or more noncompliance points over the course of 12 consecutive months (determined on a rolling basis);

(p) the O&M Contractor receives a total of 880 or more noncompliance points over the course of 36 consecutive months (determined on a rolling basis);

(q) three or more persistent unavailability events have occurred in the prior 12 months;

(r) an APM Operating System shutdown lasting 96 hours or more has occurred;

(s) the aggregate liability of the O&M Contractor to the Borrower under the O&M Contract exceeds the liability cap;

(t) Financial Close is not achieved by the Financial Close Deadline solely due to the failure of the O&M Contractor to perform its obligations under the provisions of the O&M Contract relating to Financial Close requirements and deliverables;

(u) the O&M Contractor disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of its obligations under the O&M Lenders' Direct Agreement; or

(v) any O&M Guarantor disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of its obligations under its respective parent guaranty.

*Termination.* If any O&M Contractor Default occurs and has not been cured within the applicable cure period, the Borrower may terminate the O&M Contract upon notice to the O&M Contractor. As a consequence of any termination for O&M Contractor Default, the O&M Contractor shall pay compensation to the Borrower as follows:

(a) if the DBFOM Agreement is also terminated:

(i) direct losses incurred by the Borrower in connection with the terminations of the DBFOM Agreement and the O&M Contract, including amounts due and payable under the DBFOM Agreement and the Financing Documents that would not have been payable at that time but for the terminations of the DBFOM Agreement and the O&M Contract; *plus*

(ii) any deductions to the extent not deducted in full from O&M Payments in accordance with the payment mechanism of the O&M Contract; *plus*

(iii) without duplication of any amount described in clause (i) or (ii), any other outstanding sums due and payable by the O&M Contractor to the Borrower under the O&M Contract; or

(b) if the DBFOM Agreement is not also terminated:

(i) direct losses incurred by the Borrower in connection with the termination of the O&M Contract, including (A) amounts due and payable under the DBFOM Agreement and the Financing Documents that would not have been payable at that time but for the termination of the O&M Contract and (B) to procure the performance of the O&M Activities by a replacement contractor (taking into account the then-existing circumstances of the O&M Activities) and, if necessary, any amounts in excess of the O&M Payments that would be required to be paid to the replacement contractor to perform the O&M Activities; *plus*

(ii) any deductions to the extent not deducted in full from O&M Payments in accordance with the payment mechanism of the O&M Contract, unless the replacement contractor agrees to be liable therefor; *plus*

(iii) without duplication of any amount described in clause (i), all other outstanding sums due and payable by O&M Contractor to the Borrower under the O&M Contract.

*Immediate Department Entry and Cure of Wrongful Use.* The O&M Contractor acknowledges in the O&M Contract that, pursuant to the DBFOM Agreement, without notice and without awaiting lapse of the period to cure, in the event of a default by the O&M Contractor relating to any use of the APM Project by any O&M Contractor-related entity that violates requirements of applicable Governmental Approvals or laws or otherwise is not permitted under the O&M Contract or the O&M Documents, the Department may enter and take control of the relevant portion of the APM Project to restore the permitted uses and reopen and continue operations for the benefit of the public, until such breach is cured or the Department terminates the DBFOM Agreement. Subject to certain reimbursement rights, the O&M Contractor shall pay to the Borrower on demand the Department's recoverable costs in connection with such action (which the Borrower shall pay to the Department). The O&M Contractor further acknowledges that the Department has agreed to promptly relinquish control and possession of the relevant portion of the APM Project to the Borrower once the Department determines that the related Developer Default has been cured.

*Remedies for Failure to Meet Safety Standards or Perform Safety Compliance.* If at any time the O&M Contractor fails to meet any safety standard or timely perform safety compliance or if the Borrower and the O&M Contractor cannot reach an agreement regarding the interpretation or application of a safety standard or the valid issuance of a safety compliance order within a period of time acceptable to the Borrower, the Department or the Borrower may undertake or the Borrower may direct the O&M Contractor to undertake any work required to ensure implementation of and compliance with safety standards as interpreted or applied by the Borrower or the Department or with the safety compliance order. If at any time a condition or deficiency of the APM Project related to the O&M Activities violates any law respecting health, safety or right of use and access, the Borrower or the Department may take any immediate corrective actions required. To the extent that any work done pursuant to the foregoing is undertaken by the Borrower or the Department and is reasonably necessary to comply with safety standards, perform validly issued safety compliance orders or correct a violation of law respecting health, safety or right of use and access, the O&M Contractor shall pay to the Borrower on demand the costs of such work including the Department's recoverable costs in connection with such work (which the Borrower shall pay to the Department).

If, in the good faith judgment of the Department, (a) the O&M Contractor has failed to meet any safety standards or perform safety compliance and the failure results in an emergency or danger to persons or property; or (b) the O&M Contractor is not then diligently taking all necessary steps to rectify or deal with such emergency or danger, the Borrower or the Department may without notice and without awaiting lapse of the period to cure any breach:

(a) immediately take such action as may be reasonably necessary to rectify the emergency or danger, in which event, subject to certain reimbursement rights, the O&M Contractor shall pay to the Borrower on demand the cost of such action, including the Department's recoverable costs (which the Borrower shall pay to the Department); or

(b) suspend the O&M Activities and/or close or cause to be closed any and all portions of APM Project affected by the emergency or danger.

Immediately following rectification of such emergency or danger, as determined by the Borrower and the Department, the Borrower and the Department will allow the O&M Activities to continue or such portions of the APM Project to reopen, as applicable.

*Borrower and Department Step-in Rights.* The O&M Contractor agrees that in accordance with the Department's step-in rights under the DBFOM Agreement, if the O&M Contractor has not fully and completely cured an O&M Contractor Default by the expiration of the applicable cure period, if any, the Department may, subject to the terms of any Direct Agreement and in accordance with the terms and conditions of the O&M Contract, pay and perform all or any portion of the O&M Contractor's obligations under the O&M Documents that are the subject of such O&M Contractor Default. The Borrower may also pay and perform all or any portion of the O&M Contractor's obligations under the O&M Contract that are the subject of such O&M Contractor Default and under any other then-existing breaches or failures to perform for which the O&M Contractor received prior notice from the Borrower but has not commenced or does not continue diligent efforts to cure.

The Department and the Borrower may, to the extent necessary to cure an O&M Contractor Default or such other breaches or failures to perform under the O&M Contract:

- (a) perform or attempt to perform, or cause to be performed the O&M Activities;
- (b) employ security guards and other safeguards to protect the APM Project;
- (c) spend such sums as the Department or the Borrower, as applicable, deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such O&M Activities, without obligation or liability to O&M Contractor or any subcontractors for loss of opportunity to perform the same O&M Activities or supply the same materials and equipment;
- (d) in accordance with the DBFOM Agreement or the O&M Contract, as applicable, call on and use proceeds from the parent guaranties and any other available security or source of funds available to the Borrower or other purposes specified in the DBFOM Agreement or the O&M Contract, as applicable, including amounts held in an operating account, to the extent such instruments provide recourse to pay such sums;
- (e) execute all applications, certificates and other documents as may be required;
- (f) make decisions respecting, assume control over and continue O&M Activities as may be reasonably required;
- (g) modify or terminate any contractual arrangements in the Borrower's contracts in the Department's discretion (including the O&M Contract), or the O&M Contractor's contracts in the Borrower's discretion, as applicable, without liability for termination fees, costs or other charges in accordance with the terms of such contracts;
- (h) meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors and suppliers (in all cases, including the O&M Contractor and the subcontractors);
- (i) take any and all other actions it may consider necessary to effect cure and perform the O&M Activities; and
- (j) prosecute and defend any action or proceeding incident to the O&M Activities.

The O&M Contractor shall reimburse the Borrower and the Department, as applicable, on demand for their respective recoverable costs incurred in connection with the performance of any act or work pursuant to the foregoing.

*Performance Security.* Upon the occurrence of an O&M Contractor Default and expiration, without full and complete cure, of the applicable cure period, if any, without waiving or releasing the O&M Contractor from any obligations or limiting other remedies that may be available to the Borrower, the Borrower may make demand upon and enforce the parent guaranties, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to the Borrower with respect to such O&M Contractor Default in any order. The O&M Contractor acknowledges that the Borrower will apply the proceeds of any such action to the satisfaction of the Borrower's obligations under the DBFOM Agreement, including payment of amounts due to the Department.

*Suspension of O&M Activities.* The O&M Contractor acknowledges in the O&M Contract the rights of the Department to suspend the O&M Activities, in whole or in part, pursuant to the DBFOM Agreement. In addition, the Borrower may suspend, in whole or in part, the O&M Activities under the O&M Contract if the O&M Contractor fails to cure and correct, within the applicable cure period available to O&M Contractor (if any), the following: (a) failure to provide proof of certain insurance coverage required to be provided by the O&M Contractor

under the O&M Contract; (b) failure to deliver or maintain any parent guaranty or any other security required to be provided by the O&M Contractor under the O&M Contract; (c) the existence of conditions unsafe for workers, other APM Project personnel or the general public, including failures to comply with safety standards or perform safety compliance in accordance with the O&M Contract; and (d) for certain other reasons as specified in the O&M Contract.

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

*Other Rights and Remedies.* The Borrower shall also be entitled to exercise any other rights and remedies available under the O&M Contract, or available at law.

#### *Developer O&M Default and O&M Contractor Remedies*

Subject to certain limitations set forth in the O&M Contract (including applicable cure periods), the Borrower shall be in breach under the O&M Contract upon the occurrence of any one or more of the following events or conditions (each a "**Developer O&M Default**"):

(a) the Borrower fails to make any payment due to the O&M Contractor under the O&M Contract when due, provided that such payment is not subject to a dispute;

(b) a breach or breaches by the Borrower of any of its material obligations under the O&M Contract (other than any breach or breaches that constitute Developer O&M Default under clause (a) or (c)); or

(c) any representation or warranty made by the Borrower under the O&M Contract is false, misleading or inaccurate in any material respect when made or omits material information when made.

*Termination.* If a Developer O&M Default remains uncured following (a) notice and expiration of the applicable cure period, and (b) the O&M Contractor's compliance with the applicable warning requirements, the O&M Contractor shall have the right to terminate the O&M Contractor upon notice to the Borrower. In the event of such termination, the Borrower shall pay compensation to the O&M Contractor as follows: (a) O&M Subcontractor Breakage Costs; *minus* (b) O&M Insurance Proceeds; *minus* (c) any deductions to the extent not deducted in full from O&M Payments in accordance with the payment mechanism of the O&M Contract.

*Interest on Late Payment.* If the Borrower fails to make payments that are due and owing to the O&M Contractor under the O&M Contract, then the O&M Contractor shall be entitled to interest in accordance with the O&M Contract.

*Suspension of O&M Activities.* The O&M Contractor may suspend the O&M Activities (a) based on the Borrower's failure to pay undisputed amounts owing to the O&M Contractor of \$1,000,000 or more if such amounts are payable by the Department to the Borrower under the DBFOM Agreement, or (b) otherwise based on the Borrower's failure to pay undisputed amounts owing to the O&M Contractor of \$500,000, subject, in each case, to the O&M Contractor providing the Borrower with notice regarding its intent to suspend before implementing the suspension, and implementing the suspension only if the breach remains uncured as of the suspension date.

*Other Rights and Remedies.* Subject to certain limitations on the O&M Contractor's remedies and except as specifically provided otherwise in the O&M Contract, upon breach of the O&M Contract by the Borrower, the O&M Contractor may exercise any remedies available at law or in equity.

*Termination Following Termination of the DBFOM Agreement for Convenience, Insurance Unavailability, Court Ruling or LAWA Default*

Upon any termination of the DBFOM Agreement for convenience, condemnation, insurance unavailability, court ruling or LAWA Default, the Borrower shall pay compensation to the O&M Contractor as follows: (a) O&M Subcontractor Breakage Costs; *minus* (b) O&M Insurance Proceeds; *minus* (c) any deductions to the extent not deducted in full from O&M Payments in accordance with the payment mechanism of the O&M Contract.

#### *Termination for Extended Delay Events*

Either party may deliver to the other party notice of its conditional election to terminate the O&M Contract if a Force Majeure Event, a Qualifying Change in Law (other than City ordinances), an earthquake or tidal wave that causes physical damage to the APM Project or terrorism has occurred and (a) (i) the notice of conditional termination is delivered before the Passenger Service Availability Date; (ii) as a direct result of the Extended Delay Event, the O&M Contractor is unable to perform all or substantially all of its obligations under the O&M Documents for a period of 180 consecutive days or more; and (iii) such inability to perform its obligations is not attributable to a concurrent non-Extended Delay Event; or (b)(i) the notice of conditional termination is delivered on or after the Passenger Service Availability Date; (ii) as a direct result of the Extended Delay Event all or substantially all of the APM Project has become and remains inoperable for a period of 180 consecutive days or more; and (iii) such suspension of operations is not attributable to another concurrent non-Extended Delay Event; and (c) the O&M Contractor could not have mitigated or cured such result through the exercise of diligent efforts.

Neither party shall have the right to elect to terminate the O&M Contract following the occurrence of any Extended Delay Event that results in damage or partial destruction of the APM Project if insurance proceeds are available to fund work required to remedy the effects of the Extended Delay Event; and the parties agree to a restoration plan in respect of such work required to remedy the effect of the Extended Delay Event.

If the O&M Contractor delivers a notice of conditional termination to the Borrower, the Borrower shall have the option either to accept such notice or to continue with the O&M Agreement. If the Borrower chooses to continue with the O&M Contract notwithstanding the Extended Delay Event, subject to the O&M Contractor's duty to mitigate under the O&M Contract, the Borrower shall be obligated to pay or reimburse the O&M Contractor for all direct losses caused by the Extended Delay Event which are incurred after the date the O&M Contractor delivers its notice of conditional termination.

The O&M Contractor acknowledges in the O&M Contract the options available to the Borrower if the Department delivers a notice of conditional termination to the Borrower pursuant to the DBFOM Agreement and the options available to the Department if the Borrower delivers a notice of conditional termination to the Department pursuant to the DBFOM Agreement. The O&M Contractor may issue an equivalent claim notice in relation to the Borrower's rights pursuant to the DBFOM Agreement.

If either the Department or the Borrower accepts, or is deemed to accept, the other party's conditional election to terminate, then the O&M Contract is deemed terminated on an early termination date that is 30 days after the date of acceptance or deemed acceptance of the conditional election to terminate, and the Borrower shall pay compensation to the O&M Contractor as follows: (a) O&M Subcontractor Breakage Costs; *minus* (b) O&M Insurance Proceeds; *minus* (c) any deductions to the extent not deducted in full from O&M Payments in accordance with the payment mechanism of the O&M Contract.

#### *Termination Following Termination of the DBFOM Agreement for Developer Default*

Upon any termination of the DBFOM Agreement for Developer Default that is not caused by an O&M Contractor Default, and subject to the Department's step-in rights under the Lenders' Direct Agreement, the O&M Contract shall terminate on the effective date of such termination and the Borrower shall pay compensation to the O&M Contractor as follows: (a) O&M Subcontractor Breakage Costs (but excluding any payment due under the payment mechanism of the O&M Contract); *plus* (b) without duplication of any amount described in clause (a), direct losses incurred by the O&M Contractor in connection with the termination of the O&M Contract; *plus* (c) without duplication of any amount described in clause (a) or (b), all other outstanding sums due and payable by the Borrower to the O&M Contractor under the O&M Contract; *minus* (d) O&M Insurance Proceeds; *minus* (e) any deductions to the extent not deducted in full from O&M Payments in accordance with the payment mechanism of the O&M Contract; *plus* (f) the balance, if any, standing to the credit of the handback requirements reserve account



on the early termination date. If the calculation described in the foregoing results in a negative number, the negative value shall represent damages recoverable by the Borrower in accordance with the damages and offset provisions of the O&M Contract.

#### *Termination Following Termination of the DBFOM Agreement for Suspension of Work*

Upon any termination of the DBFOM Agreement for suspension of Work that is not caused by an O&M Contractor Default, the O&M Contract shall terminate on the effective date of such termination, and the Borrower shall pay compensation to the O&M Contractor as follows: (a) O&M Subcontractor Breakage Costs; *minus* (b) O&M Insurance Proceeds; *minus* (c) any deductions to the extent not deducted in full from O&M Payments in accordance with the payment mechanism of the O&M Contract.

#### *Miscellaneous Compensation Provisions and Transition Plan*

To the extent that any termination compensation calculated pursuant to the O&M Contract is calculated to be less than zero, then such termination compensation will be deemed to equal zero.

Upon termination of the O&M Contract where the DBFOM Agreement is also terminated, the O&M Contractor must comply with certain obligations included in the O&M Contract, including the development of a transition plan, as a condition precedent to the Borrower's payment to the O&M Contractor of any termination compensation. Within 100 days before the expiry of the O&M Term, or, if applicable, within three days after the O&M Contractor receives or delivers a notice of termination, the O&M Contractor must meet and confer with the Borrower for the purpose of developing a transition plan for the orderly transition of O&M Activities, demobilization and transfer of APM Project management, maintenance, operation, care, custody and control to the Borrower, the Department and/or the O&M Contractor.

#### **Dispute Resolution Procedures**

Any dispute, disagreement or controversy between the Borrower and the O&M Contractor concerning their respective rights and obligations under the O&M Documents shall be resolved in accordance with the dispute resolution procedures set forth in the O&M Contract. The O&M Contractor shall give evidence and otherwise participate in any dispute resolution proceeding between the Borrower and the Department pursuant to the DBFOM Agreement, if such participation is reasonably requested by either the Borrower or the Department.

At all times during any dispute resolution process under the O&M Contract, the O&M Contractor and all subcontractors shall continue with the performance of the O&M Activities and their obligations, including any disputed O&M Activities or obligations, diligently and without delay, in accordance with the O&M Contract, except to the extent enjoined by order of a court or otherwise approved by the Borrower in its discretion. The O&M Contractor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a dispute relating to the O&M Activities even if the O&M Contractor's position in connection with the dispute ultimately prevails. In addition, during the pendency of resolution of a dispute relating to the O&M Activities, the parties shall continue to comply with all provisions of the O&M Contract.

#### **O&M Contractor's Representations and Warranties**

The O&M Contractor has made certain representations and warranties for the benefit of the Borrower and those that are required to be made by the Borrower in the DBFOM Agreement to the extent they relate to the O&M Contractor and the O&M Activities.

The O&M Contractor represents to the Borrower that all O&M Activities furnished by the O&M Contractor will be performed by or under the supervision of persons who hold all necessary licenses, certifications, registrations, permits or approvals to practice in California, by personnel who are experienced, competent and skilled in their respective trades or professions, who are professionally qualified to perform the O&M Activities in

accordance with the O&M Documents and who shall assume professional responsibility for the accuracy and completeness of the documents prepared or checked by them.

## **Assignment**

### *Assignments and Transfers by the O&M Contractor*

The O&M Contractor shall not, and shall not permit, any assignment, transfer, mortgage, pledge or encumbrance of any of its interests in the APM Project, the Site or the O&M Activities, or its interests in, or rights or obligations under the O&M Contract, the subcontracts, the parent guaranties and the insurance policies, without the Department's and the Borrower's approval. However, an O&M Contractor member is permitted to, or to permit any such assignment or transfer, to an affiliate if (a) such O&M Guarantor acknowledges in writing that it guarantees the obligations of such assignee or transferee in accordance with the O&M Contract, (b) such assignee or transferee remains an affiliate of the assigning or transferring O&M Contractor member for the remaining duration of the O&M Term, (c) such assignee or transferee has the ability to perform the assigning or transferring O&M Contractor member's obligations under the O&M Contract, (d) such assignment or transfer is permitted by the Financing Documents and (e) the Department has approved such assignment or transfer if required pursuant to the terms of the DBFOM Agreement.

No O&M Contractor member shall assign, transfer, or reduce any of its rights or obligations with respect to the O&M Contractor without the written consent of the Borrower.

### *Assignments and Transfers by the Borrower*

The Borrower may assign all or any portion of its rights and interests in the O&M Contract without the O&M Contractor's consent: (a) by way of security to the Lenders (or their representative) and the Lenders may subsequently assign the O&M Contract upon and after the exercise of their rights and enforcement of their remedies under the Financing Documents, at law, in equity, or otherwise; or (b) in accordance with the terms of the O&M Lenders' Direct Agreement.

The Borrower may not otherwise assign, transfer or novate its rights or obligations under the O&M Contract without the prior written consent of the O&M Contractor, such consent not to be unreasonably withheld or delayed.

## **Governing Law**

The O&M Documents shall be governed by and construed in accordance with the laws of California, any applicable federal law, the Los Angeles City Charter, and the ordinances, regulations, codes, and executive orders enacted and/or promulgated pursuant thereto.

## **APPENDIX D-8**

### **SUMMARY OF CERTAIN PROVISIONS OF THE APM OPERATING SYSTEM SUBCONTRACT**

*The following is a summary of selected provisions of the APM Operating System Subcontract and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, from the Borrower or the Trustee upon request by a bona fide prospective investor. Unless otherwise stated, any reference in this Official Statement to the APM Operating System Subcontract shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.*

#### **Overview**

Design and construction work for the APM Operating System will be undertaken by Bombardier pursuant to the APM Operating System Subcontract, dated as of April 11, 2018, between the Design-Build Contractor and Bombardier. The APM Operating System Subcontract includes, on a fixed-price, lump-sum, date-certain, turn-key basis, substantially all work and services required or appropriate in connection with the design, supply, installation and integration of the APM Operating System, except to the extent expressly excluded in the APM Operating System Subcontract.

#### **Scope of Work**

Subject to the limited exceptions specified in the APM Operating System Subcontract, the scope of work under the APM Operating System Subcontract includes the performance of all work required to be furnished and provided, and activities and services required to be performed, by Bombardier, and all other obligations of Bombardier, under the APM Operating System Subcontract, including the responsibility for all deliverables required to obtain the relevant milestones provided under the APM Operating System Subcontract.

Bombardier is required to comply with all applicable laws, Governmental Approvals, Good Industry Practice, the requirements of the Design-Build Contract applicable to the Subcontracted Work, the requirements of the DBFOM Agreement applicable to the Contracted Work, and the other requirements specified in the APM Operating System Subcontract and the other BT Documents. Without limiting the foregoing, the Subcontracted Work includes: (a) the design, supply, installation and integration of the APM Operating System; (b) obtaining all Governmental Approvals required to perform the Subcontracted Work; and (c) coordinating with other subcontractors and utility owners that have a utility within the Site or which will be affected in any way by the Subcontracted Work.

Bombardier shall carry out and perform all of the Subcontracted Work, in accordance with, and subject to, the terms of the APM Operating System Subcontract and the Contract Documents, including all relevant Technical Provisions, so as to enable Design-Build Contractor to fully and completely discharge its obligations to Borrower and O&M Contractor in respect of the Subcontracted Work under the Contract Documents. All obligations, liabilities and risks of Design-Build Contractor under the Design-Build Contract (including all obligations, liabilities and risks of the Borrower under the DBFOM Agreement that are passed through to Design-Build Contractor and any deductions or penalties levied against Design-Build Contractor under the terms of the Design-Build Contract subject to the relevant caps under the APM Operating System Subcontract) are passed through to, and assumed by, Bombardier on a back-to-back basis, to the extent that they relate to the Subcontracted Work or the acts and omissions of Bombardier or any other Bombardier-Related Entity.

#### **Payment of Subcontract Price**

Subject to the terms and conditions of the APM Operating System Subcontract, provided that Bombardier performs the Subcontracted Work in accordance with the APM Operating System Subcontract, Design-Build Contractor shall make payment to Bombardier of the Subcontract Price based on the performance and progress milestones. Bombardier shall not request payments in excess of the payment schedule, except to the extent such payment schedule is adjusted pursuant to any change order, a different payment schedule is agreed between the Design-Build Contractor and Bombardier, or otherwise in accordance with the APM Operating System Subcontract.

Payment of any other amounts, including any adjustments of the Subcontract Price and any amounts payable in respect of the equivalent project relief provisions of the APM Operating System Subcontract, will be paid as provided in the relevant sections of the APM Operating System Subcontract that provide for payment of the same.

#### *Subcontract Price*

Bombardier provides for a firm, fixed-price, lump sum subcontract price in the amount of \$219,452,244 (the “**Subcontract Price**”), inclusive of applicable tax, but exclusive of certain sales tax.

#### *BT Milestone Payments*

Payments of the Subcontract Price (each, a “**BT Milestone Payment**”) shall be paid on the basis of completion of the payment milestones (each, a “**Payment Milestone**”). Design-Build Contractor has no obligation to finance Bombardier’s performance except for payment of the Subcontract Price.

#### *BT Noncompliance Deductions*

Bombardier acknowledges that Borrower may assess noncompliance points against Design-Build Contractor under the Design-Build Contract upon the occurrence of D&C Period Noncompliance Events under the DBFOM Agreement provided that such noncompliance points under the Design-Build Contract may only be assessed if the Department has levied corresponding D&C Period Noncompliance Points against Borrower pursuant to the DBFOM Agreement and provided that such D&C Period Noncompliance Points do not result from an excluded obligation or a Borrower Act. Bombardier acknowledges that Borrower may make noncompliance deductions from the relevant monthly progress payment payable to Design-Build Contractor in accordance with the Design-Build Contract.

To the extent that any noncompliance deductions under the Design-Build Contract are incurred by Design-Build Contractor as a result of the Subcontracted Work or any act or omission of Bombardier or any Bombardier-Related Entity, such deductions shall be correspondingly made by Design-Build Contractor from milestone payments payable to Bombardier under the APM Operating System Subcontract. Subject to the terms and conditions of the APM Operating System Subcontract, the amount of the noncompliance deduction under the APM Operating System Subcontract will be equal to the portion of the corresponding noncompliance deduction under the Design-Build Contract that results from the Subcontracted Work or any act or omission of Bombardier or any Bombardier-Related Entity.

#### *BT Early Works*

Responsibility for DB Early Works under the Design-Build Contract was passed down to Bombardier pursuant to the Bombardier Early Works Agreement dated as of February 15, 2018, between the Design-Build Contractor and Bombardier.

### **Equivalent Project Relief**

Design-Build Contractor has certain rights, entitlements, remedies and defenses available to it under the Design-Build Contract and the Interface Agreement that relate to the Subcontracted Work or to the rights or obligations of Bombardier under the APM Operating System Subcontract (such rights, entitlements, remedies and defenses, “**DB Rights**”), including, without limitation: (a) any contribution, indemnification, compensation, damages or other additional compensation or payment of any kind; (b) any other relief (including any extension of time or limitation of liability applicable to liabilities owed to Borrower under the Design-Build Contract) from the performance of Design-Build Contractor’s obligations under, or from termination of, the Design-Build Contract or the Interface Agreement; (c) any entitlement of Bombardier in respect of which any provision states that: (i) the provisions generally relating to equivalent project relief shall apply, or (ii) Bombardier may make an equivalent claim or issue an equivalent claim notice; (d) any certificate, consent or approval provided for, the Design-Build Contract, the DBFOM Agreement or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Subcontracted Work, including any entitlement of Design-Build Contractor to request or apply for such certificate, consent or approval from Borrower, the Department or any other person; and (e) any change order (as defined in the Design-Build Contract) or Relief Event. Bombardier is entitled to the benefit of DB Rights in connection with the Subcontracted Work.

## **Delay in Subcontracted Work**

### *Delay Damages*

With respect to any delay in the Subcontracted Work or any delay to Design-Build Contractor caused by Bombardier or any other Bombardier-Related Entity, Bombardier is required to pay to Design-Build Contractor: (a) the amount of any liquidated damages levied against Design-Build Contractor under the Design-Build Contract (“**BT Delay Liquidated Damages**”) and (b) Design-Build Contractor’s direct losses arising out of such delay (whether or not liquidated damages against Design-Build Contractor under the Design-Build Contract have been assessed, but without double counting) including any acceleration costs or extended APM Project-specific costs incurred by Design-Build Contractor in mitigating the effects of Bombardier’s delay. The daily rate of BT Delay Liquidated Damages shall not exceed the following amounts: (i) for days 1 to 30 that liquidated damages are levied under the Design-Build Contract, a maximum of \$200,000 per day, (ii) for days 31 to 60 that liquidated damages are levied under the Design-Build Contract, a maximum of \$125,000 per day, (iii) for days 61 to 365 that liquidated damages are levied under the Design-Build Contract, a maximum of \$100,000 per day. Design-Build Contractor shall be entitled to draw upon the BT Delay Reserve Account (or any letter of credit provided by Bombardier pursuant to the APM Operating System Subcontract) in order to pay any BT Delay Liquidated Damages. Any amounts remaining in the BT Delay Reserve Account and not required to meet Bombardier’s liability for BT Delay Liquidated Damages shall be released to Bombardier on the third business day after the Passenger Service Availability Date.

### *Delay Remedial Plans*

If Design-Build Contractor reasonably determines at any time that any Subcontracted Work milestone will be delayed beyond the corresponding milestone payment date, Design-Build Contractor shall provide written notice to Bombardier and Bombardier shall provide Design-Build Contractor with a written remedial plan (the “**Remedial Plan**”) satisfactory to Design-Build Contractor, acting reasonably, setting forth the reason for such delay, demonstrating that Bombardier will use commercially reasonable efforts to achieve the relevant Subcontracted Work milestone(s) as close as possible to the original Subcontracted Work milestone target date and to achieve Passenger Service Availability by the Planned Early PSA Date, and demonstrating that, in all events, Bombardier will achieve Passenger Service Availability by no later than the BT Long Stop Date, and explaining how Bombardier will achieve such deadlines. Bombardier shall commence corrective efforts to achieve such Subcontracted Work milestone and submit the Remedial Plan to Design-Build Contractor for its approval as soon as possible but no later than ten (10) days after such written notice from Design-Build Contractor. Bombardier shall comply in all material respects with the Remedial Plan.

### *Milestone Delay Payments*

If Bombardier fails to achieve a Subcontracted Work milestone by the corresponding Subcontracted Work milestone payment date (other than to the extent caused by a Design-Build Contractor act, a Relief Event or a Milestone Force Majeure Event but, in the case of a Milestone Force Majeure Event, provided that Bombardier has provided notice to Design-Build Contractor, within a reasonable time after knowledge of the occurrence of such event), then Bombardier shall pay to Design-Build Contractor the amount of \$5,000 for each day by which the relevant Subcontracted Work milestone is delayed beyond the corresponding Subcontracted Work milestone payment date (“**Milestone Delay Payment**”) up to a maximum aggregate amount equal to 5% of the Subcontract Price. Milestone Delay Payments shall be paid by Bombardier monthly in arrears on the first business day of the calendar month after the calendar month in which they are incurred and shall be released to Bombardier if the delay in achieving the Subcontracted Work milestone has not caused BT Delay Liquidated Damages to be incurred.

### *Milestone Default*

A “**Milestone Default**” means the occurrence of any of the following events: (a) Bombardier fails to deliver a Remedial Plan to Design-Build Contractor within the time period; (b) Bombardier has delivered a Remedial Plan which demonstrates that Bombardier will not use commercially reasonable efforts to achieve the Subcontracted Work milestone as close as possible to the original Subcontracted Work milestone target date or to achieve Passenger Service Availability by the Planned Early PSA Date; (c) Design-Build Contractor, acting reasonably, does not approve the Remedial Plan delivered pursuant to the Design-Build Contractor and Bombardier cannot agree to a revised Remedial Plan that is acceptable to Design-Build Contractor, acting reasonably, within ten

(10) business days of such disapproval; or (d) the Remedial Plan that has been approved by Design-Build Contractor is not being carried out by Bombardier in accordance with its terms in any material respect.

### **BT Defects**

Bombardier is required to provide warranties with respect to (a) defects in the Subcontracted Work, and (b) epidemic defects, during the period beginning on the Passenger Service Availability Date and ending 24 months after the Passenger Service Availability Date (the “**BT Warranty Period**”).

During the applicable BT Warranty Period, Bombardier shall promptly notify Design-Build Contractor of any defect of which Bombardier or any Bombardier-Related Entity is or becomes aware. Bombardier shall, in a timely manner, correct, at its expense, all defects which are notified to Bombardier or of which it or any Bombardier-Related Entity otherwise has knowledge during the applicable BT Warranty Period. Bombardier shall use reasonable efforts to conduct such work at such times so as to minimize disruption to operation of the APM Project.

If Bombardier does not correct any defect within a reasonable time following awareness of such defect, Design-Build Contractor, acting reasonably, may, upon ten (10) business days’ notice (or upon no notice or a shorter notice period, as is reasonable in the circumstances, where the defect requires immediate attention in accordance with Good Industry Practice or would result in the incurrence by Design-Build Contractor of any noncompliance points under the Design-Build Contract) in its discretion remedy, either itself or by retaining qualified third parties, such defect, in which event all reasonable costs associated with such defect and any remedial or other works required as a result of such defect shall be borne by Bombardier.

If Bombardier carries out work to remedy any defect during the applicable BT Warranty Period, (i) the work required to be carried out to remedy the relevant defect and any asset or element of the Subcontracted Work affected by the defect shall be warranted to be free of defects for a period from the date on which the relevant remedial work is completed such that it conforms with the requirements of the APM Operating System Subcontract and until the later of 12 months thereafter or the end of the applicable BT Warranty Period specified (such period being the “**BT Defect Rectification Work Warranty Period**”), and (ii) Bombardier shall comply with Bombardier’s obligations with respect to the relevant remedial work during the BT Defect Rectification Work Warranty Period.

The Bombardier warranties provided shall survive all Department, Borrower, Design-Build Contractor and any third party inspections, tests and approvals. Bombardier acknowledges that, in the event that the Design-Build Contract expires or is otherwise terminated before the expiration of the BT Warranty Period, the warranties shall automatically be for the benefit of and enforceable by the Department, Borrower, Design-Build Contractor, O&M Contractor and their respective successors and assigns, and any utility owner or Authority Having Jurisdiction for whom Contracted Work is being performed, subject to the rights of the Lenders as provided in the DB Lenders’ Direct Agreement.

### **Limitations on Liability**

The aggregate liability of Bombardier to Design-Build Contractor in relation to BT Delay Liquidated Damages (including, for greater certainty, BT Delay Liquidated Damages paid out of the BT Delay Reserve Account) will be limited to an amount equal to 20% of the Subcontract Price (the “**Delay Cap**”). The maximum aggregate liability of Bombardier, including for default, breach, negligence, whether in contract, tort, or any other legal theory, any delay damages, indemnity obligations or otherwise in connection with the Subcontracted Work, shall be limited to an amount equal to 150% of the Subcontract Price (the “**Liability Cap**”). Any delay damages paid by Bombardier (including, for greater certainty, any amounts drawn by Design-Build Contractor in order to pay any BT Delay Liquidated Damages) shall count toward both the Delay Cap and the Liability Cap.

The limitations of liability do not apply to, nor shall the calculation thereof include:

(a) any liabilities or obligations to the extent that: (a) the amount thereof is paid to Bombardier from the proceeds of insurance maintained by the Department, Borrower, or Design-Build Contractor, or required to be maintained by Bombardier or any other Bombardier-Related Entity; or (b) an amount is paid by Bombardier but subsequently recovered by Bombardier from proceeds of insurance, or from any third party (other than an entity

providing insurance or a Bombardier-Related Entity); or (c) the same would have been recovered by Bombardier through such insurance if Bombardier or any Bombardier-Related Entity had maintained the coverage required to be maintained by it or if Bombardier or any Bombardier-Related Entity had otherwise complied with its obligations under, and the limitations of, such insurance policies and diligently pursued the relevant insurance claim;

(b) liabilities that arise out of (i) the injury to or death of persons, the loss of or the physical damage to the property of third parties, or third party intellectual property, or (ii) any other third party claims (other than from Borrower, O&M Contractor or the Department), in each case associated with the Subcontracted Work or the performance by Bombardier or any Bombardier-Related Entity of any obligations under the APM Operating System Subcontract;

(c) liabilities that arise out of the gross negligence, willful misconduct or fraud of Bombardier or any Bombardier-Related Entity or abandonment by Bombardier;

(d) liabilities on the part of Bombardier to pay interest, fees or penalties on overdue undisputed amounts;

(e) fines and penalties levied by a Governmental Entity under any law or any costs incurred by Bombardier or any Bombardier-Related Entity as a result of a failure by Bombardier or any Bombardier-Related Entity to comply with any laws (including workman's compensation, employment or health and safety laws or regulations);

(f) fines and penalties levied by a Governmental Entity under any law incurred by Design-Build Contractor or any Design-Build Contractor-related entity as a result of a failure by Bombardier or any other Bombardier-Related Entity to comply with any laws (including workman's compensation, employment or health and safety laws or regulations);

(g) any reasonable amount incurred by Design-Build Contractor in enforcing any claim, including any action necessary to vacate encumbrances, against Bombardier, including any costs, losses, fees, liabilities, expenses or damages incurred in the enforcement of any of the performance security, which is settled or finally resolved in favor of Design-Build Contractor.

## **Performance Security**

### *Guaranty*

Bombardier is required to deliver to the Design-Build Contractor a parent guaranty pursuant to which the Bombardier Guarantor guarantees performance of the APM Operating System Subcontract by Bombardier. The parent guaranty delivered is required to be released and returned to Bombardier after Bombardier complies with all of its obligations under the APM Operating System Subcontract. The rights and benefits of the parent guaranty are assignable, concurrent with a like assignment of the APM Operating System Subcontract, to the Department, the Borrower and/or the Collateral Agent.

### *Payment and Performance Bonds*

Bombardier is required to deliver to the Design-Build Contractor a payment and performance bond (or separate payment and performance bonds) in an amount equal to 55% of the Subcontract Price. The payment and performance bond (or separate payment and performance bonds) delivered is required to be reduced to an amount equal to 27.5% of the Subcontract Price within two Business Days after achievement of Passenger Service Availability and, subject to Bombardier providing the warranty bond in accordance with the APM Operating System Subcontract, shall be released and returned to Bombardier after the achievement of Final Completion.

Bombardier shall cause to be delivered to the Design-Build Contractor, on or before the date of release of the payment and performance bond (or separate payment and performance bonds), a warranty bond in form and substance satisfactory to Design-Build Contractor, acting reasonably, in an amount equal to 5% of the Subcontract Price. The warranty bond shall be released and returned to Bombardier after the end of the last BT Warranty Period to expire.

### *Letters of Credit*

Bombardier is required to deliver to the Design-Build Contractor a letter of credit from a permitted letter of credit provider or other form of liquid security (in a form acceptable to the Design-Build Contractor) with an aggregate amount available to be drawn thereunder equal to 20% of the Subcontract Price. The letter of credit is required to be reduced to an amount equal to 2.5% of the Subcontract Price within two Business Days after achievement of Passenger Service Availability and released and returned to Bombardier after achievement of Final Completion.

Each letter of credit required to be maintained shall provide an expiration date not earlier than one (1) year from the date of issue and be renewed no later than 10 days before its expiry and any failure so to renew shall entitle the Design-Build Contractor to draw on the full amount of the letter of credit and to hold the proceeds thereof in a cash security account, as security for the performance of the obligations of Bombardier.

If at any time any letter of credit fails to meet the definition of letter of credit (including the issuer of such letter of credit failing to meet the requirements of a permitted letter of credit provider), Bombardier shall provide a replacement letter of credit and, if Bombardier fails to provide such replacement, then the Design-Build Contractor shall be entitled to draw upon the full amount of the existing letter(s) of credit and hold the proceeds as cash security in accordance with the terms of the APM Operating System Subcontract. Bombardier shall not be considered to be in breach of its obligation to provide a letter of credit with respect to the same amounts to the extent that Design-Build Contractor is holding amounts as cash security.

### **Bombardier's Representations and Warranties**

Bombardier has made certain representations and warranties for the benefit of the Design-Build Contractor and those that are required to be made by the Design-Build Contractor in the Design-Build Contract to the extent they relate to Bombardier and the Subcontracted Work.

Bombardier represents to the Design-Build Contractor that all Subcontracted Work furnished by Bombardier will be performed by or under the supervision of persons who hold all necessary licenses, certifications, registrations, permits or approvals to practice in California, by personnel who are experienced, competent and skilled in their respective trades or professions, who are professionally qualified to perform the Subcontracted Work in accordance with the BT Documents and who shall assume professional responsibility for the accuracy and completeness of the relevant design documents, construction documents and other documents prepared or checked by them.

### **Indemnities**

#### *Indemnities by Bombardier*

Subject to certain limitations on Bombardier's indemnification obligations under the APM Operating System Subcontract, Bombardier shall indemnify and hold harmless Indemnified Parties and the Design-Build Contractor from and against any and all claims, causes of action, suits, investigations, legal or administrative proceedings, demands and losses, in each case if asserted or incurred by or awarded to any third party, to the extent that such amounts are claimed against the Design-Build Contractor pursuant to the Design-Build Contract, and to the extent caused by:

(a) any act, omission, neglect or misconduct by any Bombardier-Related Entity in the manner or method of executing the Subcontracted Work satisfactorily or due to the failure to perform the Subcontracted Work, including: (i) any neglect in safeguarding the Subcontracted Work, (ii) use of unacceptable materials in performance of the Subcontracted Work or other defect in the Subcontracted Work, or (iii) other breach, alleged breach or violation of Bombardier's obligations under the BT Documents or any APM Operating System Subcontract;

(b) the failure or alleged failure by any Bombardier-Related Entity to comply with the Governmental Approvals or any applicable laws relating to the performance of the Subcontracted Work;

(c) the actual or alleged negligence, willful misconduct or breach of contract of any Bombardier-Related Entity in or associated with performance of the Subcontracted Work;



(d) Bombardier's performance of, or failure to perform, any obligation under the Cooperation Agreements in relation to the Subcontracted Work;

(e) any and all stop payment notices and/or liens filed by a Bombardier subcontractor in connection with the Subcontracted Work, including all reasonable expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop payment notice or lien, provided that the Design-Build Contractor is not in default in payments owing to Bombardier with respect to such Subcontracted Work;

(f) any Bombardier-Related Entity's breach of or failure to perform an obligation that the Department owes to a third party, including Governmental Entities, under law or under any agreement between the Department and a third party, where performance of the obligation is delegated to Bombardier under the APM Operating System Subcontract, or the acts or omissions of any Bombardier-Related Entity which render the Department unable to perform or abide by an obligation that the Department owes to a third party, including Governmental Entities, under any agreement between the Department and a third party, provided the agreement was previously disclosed or known to Bombardier;

(g) any alleged infringement or other allegedly improper appropriation or use of intellectual property in performance of the Subcontracted Work, or arising out of, relating to or resulting from any use in connection with the APM Project of methods, processes, designs, information or other items furnished or communicated to the Design-Build Contractor, the Borrower, the Department or another Indemnified Party under the BT Documents; provided that this indemnity shall not apply to any infringement resulting from the Design-Build Contractor's, the Borrower's or the Department's failure to comply with specific written instructions regarding use provided to any of them by Bombardier that are consistent with Bombardier's obligations to convey and license such intellectual property under the APM Operating System Subcontract;

(h) any actual or threatened release of hazardous materials by any Bombardier-Related Entity and liabilities resulting therefrom;

(i) any fines or penalties imposed on the Design-Build Contractor, the Borrower or the Department by any Authority Having Jurisdiction arising out of, relating to or resulting from Bombardier's breach of or failure to comply with applicable requirements of the BT Documents;

(j) any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Bombardier-Related Entity with respect to any payment for the Subcontracted Work made to or earned by such Bombardier-Related Entity under the BT Documents; or

(k) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Bombardier-Related Entity to comply with Good Industry Practice, requirements of the BT Documents, the project management plan (to the extent applicable to the Subcontracted Work) or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Subcontracted Work, (ii) the intentional misconduct or negligence of any Bombardier-Related Entity in connection with the performance of the Subcontracted Work, or (iii) unauthorized physical entry onto or encroachment upon another's property by any Bombardier-Related Entity in connection with the performance of the Subcontracted Work.

Subject to the provision on limitations on liability under the APM Operating System Subcontract, in claims by an employee of a Bombardier-Related Entity, Bombardier's indemnification obligations shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for a Bombardier-Related Entity under workmen's compensation, disability benefit or other employee benefits laws. Such limitation is not a waiver in favor of any employee by Bombardier or any Bombardier subcontractor of any limitation of liability afforded by such laws.

Bombardier shall indemnify and hold harmless the Design-Build Contractor from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) Bombardier's failure to comply with any of its obligations under the APM Operating System Subcontract, other than (i) any such failure that arises from an act or omission of the Department, the Borrower, any Non-Sub Borrower-Related Entity, the Design-Build Contractor, any Design-Build Contractor-related entity, the O&M Contractor, any O&M Contractor-related entity or a Relief Event, or (ii) in respect of any failure to comply

that is otherwise excused or waived under the terms of the APM Operating System Subcontract (including as determined pursuant to the dispute resolution procedures under the APM Operating System Subcontract); or (b) negligent acts or omissions, fraud or willful misconduct of Bombardier or any Bombardier-Related Entity.

#### *Indemnities by Design-Build Contractor*

The Design-Build Contractor shall indemnify and hold harmless Bombardier from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from (a) the Design-Build Contractor's failure to comply with any of its obligations under the APM Operating System Subcontract, other than (i) any such failure that arises from an act or omission of the Department, the Borrower, any Non-Sub Borrower-Related Entity, the O&M Contractor, any O&M Contractor-related entity, Bombardier, any Bombardier-Related Entity or a Relief Event, or (ii) in respect of any failure to comply that is otherwise excused or waived under the terms of the APM Operating System Subcontract (including as determined pursuant to the dispute resolution procedures under the APM Operating System Subcontract); or (b) negligent acts or omissions, fraud or willful misconduct of the Design-Build Contractor or any Design-Build Contractor-related entity.

#### **Inclusivity**

Bombardier is required to provide reasonable cooperation requested by the Design-Build Contractor in relation to the inclusivity requirements specified in the Design-Build Contract or otherwise in accordance with applicable law, as such requirements are applicable to the Subcontracted Work.

#### **Delivery and Shipment**

Bombardier will be responsible for delivering the Vehicles and other components of the Subcontracted Work to and from the test sites, if required, and to the project site at LAX airport and in accordance with the baseline schedule set forth in the APM Operating System Subcontract.

#### **Title**

Full legal title to each Vehicle and all other components of the Subcontracted Work shall pass to, and become the sole property of, the Department, free and clear of all security interests and all other claims whatsoever, in accordance with the DBFOM Agreement.

#### **Dispute Resolution Procedure**

All disputes, controversies, or claims arising out of or relating to any provision of the APM Operating System Subcontract shall be resolved in accordance with the dispute resolution procedures under the APM Operating System Subcontract. Bombardier shall provide reasonable assistance and cooperation in the dispute resolution procedures under the Design-Build Contract or the DBFOM Agreement if such participation is requested by any of the Department, the Borrower or the Design-Build Contractor.

The Design-Build Contractor and Bombardier shall diligently carry out their respective obligations under the APM Operating System Subcontract (including, for greater certainty, payment of any undisputed amounts and payment of any BT Delay Liquidated Damages) during the pendency of any disputes under the APM Operating System Subcontract.

#### **Insurance**

Bombardier shall, at its sole cost, obtain and maintain in force for the duration of the BT Term, unless otherwise specified in the APM Operating System Subcontract, insurance of the following types, as further described in and with limits not less than those set forth in the APM Operating System Subcontract: workers' compensation insurance, commercial general liability insurance, automobile liability insurance and marine cargo/transit insurance.

All insurance provided by Bombardier under the APM Operating System Subcontract shall include a waiver of subrogation by Bombardier and its insurers in favor of the Design-Build Contractor, the Borrower, the Department, Indemnified Parties, and financing parties, including their respective officers, directors and employees.

Bombardier shall require all Bombardier subcontractors and their respective insurance carriers to provide similar waivers. The insurance policies provided by Bombardier under the APM Operating System Subcontract shall incorporate such requirements of the Secured Parties, as are acceptable to Bombardier, acting reasonably.

Each policy shall be primary and non-contributing with respect to any other insurance, whether primary or excess or self-insurance, which may be maintained by the Design-Build Contractor, the Borrower, the Department, the Indemnified Parties or the financing parties.

Bombardier is fully and solely responsible for any physical loss or damage to all tools, equipment, construction office trailers and their contents, vehicles or any other personal property utilized in the performance of the Subcontracted Work. Bombardier has agreed to waive its rights of recovery and cause its insurers, if any, to waive their rights of subrogation against the Design-Build Contractor, the Borrower, the Department, the Indemnified Parties and the financing parties for any such damage or loss, howsoever caused.

Bombardier shall be responsible for each Vehicle, all Subcontracted Work performed and equipment and materials furnished to or by Bombardier under the APM Operating System Subcontract until (i) each Vehicle is delivered to the Site and simultaneously accepted or (ii) the equipment and materials are delivered to site and simultaneously accepted. In the event of loss, damage or destruction of such work, equipment or materials, Bombardier at its sole expense shall promptly repair, restore or replace such to the satisfaction of the Design-Build Contractor.

### **Intellectual Property**

Bombardier acknowledges in the APM Operating System Subcontract that, except for Developer Intellectual Property (which, for greater certainty, includes Bombardier Intellectual Property) and third party intellectual property, title to any Intellectual Property to the extent made, conceived, prepared or reduced to practice as part of the Work, incorporated into the APM Project, including any improvements, modifications, enhancements or derivative works to or of the LAWA Intellectual Property shall vest in the Department at the earliest of creation, conception, preparation or reduction to practice.

Bombardier acknowledges in the APM Operating System Subcontract that all LAWA Intellectual Property, in any medium, is either owned by the Department or specially ordered or commissioned by the Department. Bombardier has assigned to the Department all rights, title and interest in and to the LAWA Intellectual Property including any and all software, work product and designs.

Bombardier acknowledges in the APM Operating System Subcontract that, pursuant to the Design-Build Contract, the Borrower granted to the Design-Build Contractor a limited, non-exclusive license to use such LAWA Intellectual Property and Project Intellectual Property solely in connection with the Contracted Work (based on a corresponding grant of such license by the Department to the Borrower pursuant to the DBFOM Agreement). The Design-Build Contractor has granted to Bombardier a limited, non-exclusive license to use such LAWA Intellectual Property and Project Intellectual Property solely in connection with the Subcontracted Work. Bombardier acknowledges that all Intellectual Property rights of the Department, including the Los Angeles World Airport's name and other trademarks, not specifically granted to Borrower pursuant to the Contract Documents are reserved to the Department. All rights granted under the APM Operating System Subcontract shall terminate on the BT Termination Date.

Bombardier has granted to the Design-Build Contractor an irrevocable, perpetual, non-exclusive, transferable (solely to the Borrower, a permitted assignee of the Borrower under the Design-Build Contract, the Department or a permitted assignee of the Department under the DBFOM Agreement), fully paid-up right and license to use, exploit, manufacture, distribute, reproduce, adapt and display the Bombardier Intellectual Property, including any Technology Enhancements that are Bombardier Intellectual Property, in connection with the APM Project, Proposal or Subcontracted Work. The rights granted under the APM Operating System Subcontract shall survive the termination, expiration or cancellation of the APM Operating System Subcontract or any rights related thereto.

## Changes

If the Design-Build Contractor receives a Department Request for Change Proposal or a Borrower request for change proposal pursuant to the Design-Build Contract which relates, in whole or in part, to the Subcontracted Work, the Design-Build Contractor shall forward a copy of such request to Bombardier. The Design-Build Contractor may also request a change proposal from Bombardier if the Design-Build Contractor desires to initiate or evaluate whether to initiate a BT Change, provided that the Design-Build Contractor shall not initiate any BT Change that would be in breach of the relevant provisions of the APM Operating System Subcontract. Bombardier shall provide the Design-Build Contractor with a change proposal to the extent that the Request for Change Proposal relates to the Subcontracted Work.

Following the Design-Build Contractor's receipt of Bombardier's change proposal and the Design-Build Contractor's further assessment of the cost, schedule and other impacts of the contemplated change, Bombardier and the Design-Build Contractor, giving due consideration to such assessments and entitlements available (subject to the relevant equivalent project relief provisions, as applicable, with respect to a Department Request for Change Proposal or a Borrower request for change proposal) or any net cost and/or schedule savings, shall engage in good faith negotiations to reach agreement on the terms of a change order. A change will become effective upon mutual execution by the Design-Build Contractor and Bombardier of a written change order.

If the Design-Build Contractor and Bombardier do not agree on a change proposal issued in response to a Department Request for Change Proposal or Borrower request for change proposal, then the Design-Build Contractor may seek to resolve any points of disagreement through the dispute resolution procedures under the APM Operating System Subcontract. Bombardier acknowledges that if the Borrower and the Department do not agree on a Change Proposal issued to the Department pursuant to the DBFOM Agreement, the Department may (in its discretion) deliver to the Borrower a directive letter. If the Design-Build Contractor and Bombardier do not agree on a change proposal issued in response to a request for change proposal under the APM Operating System Subcontract, the Design-Build Contractor may (in its discretion) deliver to Bombardier a directive letter. If such directive letters provides for the implementation of a LAWA Change or a BT Change, Bombardier shall deliver to the Design-Build Contractor a change proposal and the parties are to subsequently follow the procedures and provisions under the APM Operating System Subcontract relating to the negotiation of change orders.

## Termination

### *Bombardier Default and Design-Build Contractor Remedies*

#### **Bombardier Default**

Subject to certain limitations set forth in the APM Operating System Subcontract (including applicable cure periods), Bombardier shall be in breach under the APM Operating System Subcontract upon the occurrence of any one or more of the following events or conditions (each a "**Bombardier Default**"):

(a) Bombardier fails to diligently prosecute the Subcontracted Work to completion in accordance with the BT Documents;

(b) Bombardier abandons all or a material part of the Subcontracted Work, which abandonment is deemed to occur if (i) Bombardier demonstrates through statements, acts or omissions an intent not to continue, for any reason other than a Relief Event that materially impairs Bombardier's ability to perform all or a material part of the Subcontracted Work or (ii) no significant Subcontracted Work (taking into account the project schedule, if applicable, and any Relief Event) on the APM Project is performed for a continuous period of more than 35 days unless due to Bombardier's compliance with a suspension order issued under the APM Operating System Subcontract;

(c) Bombardier (i) fails to make any payment owing to the Design-Build Contractor when due, or (ii) fails to deposit other funds into any custodial account, trust account or other reserve or account in the amount and within the time period required by the APM Operating System Subcontract;

(d) (i) any representation or warranty made by Bombardier is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made, or (ii) any

certificate, schedule, report, instrument or other document delivered by or on behalf of Bombardier or a Bombardier-Related Entity as part of the Proposal or under the BT Documents is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;

(e) Bombardier fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the BT Documents for the benefit of relevant parties, or Bombardier fails to comply with any requirement of the BT Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, retain self-insured retentions, co-insurance or any other such amounts as and when due;

(f) (i) Bombardier makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the APM Operating System Subcontract, the Subcontracted Work, the APM Project or Bombardier's interest in violation of the limitations on assignment or transfer, or (ii) any other violation of the limitations on assignment or transfer occurs;

(g) Bombardier fails to timely observe or perform, or cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by Bombardier under the BT Documents in any material respect;

(h) Bombardier or a Bombardier-Related Entity, or any of their respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, has been convicted in a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in California Public Contract Code section 1101, with any public entity, as defined in California Public Contract Code section 1100, provided that (i) such person is involved in the APM Project at the time of such conviction and (ii) Bombardier fails to remove such person from the APM Project;

(i) Bombardier fails to comply with any order to suspend the Subcontracted Work issued in accordance with the APM Operating System Subcontract within the time allowed in such order;

(j) Bombardier or the Bombardier Guarantor commences a voluntary case seeking liquidation, reorganization or other relief with respect to such person or such person's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(k) an involuntary case is commenced against Bombardier or the Bombardier Guarantor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such person or such person's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by it in good faith or shall remain undismissed and unstayed for a period of 60 days;

(l) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Bombardier or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law, the APM Operating System Subcontract is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute;

(m) Bombardier fails to comply with applicable Governmental Approvals or laws in any material respect;

(n) any use of the APM Project by any Bombardier-Related Entity that violates requirements of applicable Governmental Approvals or laws or otherwise is not permitted under the BT Documents;

(o) the Bombardier Guarantor disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of its obligations under the parent guaranty;

(p) the parent guaranty ceases to be in full force and effect and Bombardier has not delivered to the Design-Build Contractor another guaranty or other credit support in a form, and from a person, reasonably acceptable to the Design-Build Contractor to replace the parent guaranty;

(q) the aggregate liability of Bombardier to the Design-Build Contractor in relation to the liquidated damages under the BT Subcontract exceeds the amount of the Delay Cap;

(r) the aggregate liability of Bombardier to the Design-Build Contractor exceeds the amount of the Liability Cap;

(s) Bombardier fails to achieve Passenger Service Availability by the BT Long Stop Date;

(t) Bombardier makes or permits an assignment, transfer, mortgage, pledge or encumbrance without Borrower's or the Department's prior consent; or

(u) Bombardier fails to demonstrate to the Design-Build Contractor's satisfaction that Bombardier will achieve Passenger Service Availability by the BT Long Stop Date within 10 Business Days of the Milestone default notice.

*Termination.* If any Bombardier Default occurs and has not been cured within the applicable cure period, the Design-Build Contractor may terminate the APM Operating System Subcontract upon notice to Bombardier. In the event of such termination, Bombardier shall make payment to the Design-Build Contractor as follows:

(a) if the Design-Build Contract is also terminated: (i) direct losses incurred by the Design-Build Contractor in connection with the terminations of the Design-Build Contract and the APM Operating System Subcontract, including any termination compensation payable by the Design-Build Contractor to the Borrower pursuant to the Design-Build Contract; *plus* (ii) any noncompliance deductions to the extent not deducted in full; *plus* (iii) without duplication of any amount, all other outstanding sums due and payable by Bombardier to the Design-Build Contractor under the APM Operating System Subcontract; or

(b) if the Design-Build Contract is not also terminated: (i) direct losses incurred by the Design-Build Contractor in connection with the termination of the APM Operating System Subcontract, including to procure the performance of the Subcontracted Work by a replacement subcontractor (taking into account the then-existing circumstances of the Subcontracted Work) and, if necessary, any amounts in excess of the Subcontract Price that would be required to be paid to the replacement subcontractor to complete the Subcontracted Work in accordance with the terms and conditions of the APM Operating System Subcontract as if they were applicable thereto; *plus* (ii) without duplication of any amount, all other outstanding sums due and payable by Bombardier to the Design-Build Contractor under the APM Operating System Subcontract.

*Design-Build Contractor and Department Step-In Rights.* If Bombardier has not fully and completely cured a Bombardier Default by the expiration of the applicable cure period, if any, the Design-Build Contractor may pay and perform all or any portion of Bombardier's obligations under the BT Documents that are the subject of such Bombardier Default. Upon exercising its rights pursuant to the foregoing, and without limitation to the performance security provisions of the APM Operating System Subcontract, the Design-Build Contractor may, to the extent necessary to cure a Bombardier Default:

(a) perform or attempt to perform, or cause to be performed the Subcontracted Work;

(b) employ security guards and other safeguards to protect the APM Project;

(c) spend such sums as the Design-Build Contractor deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such Subcontracted Work, without obligation or liability to Bombardier or any Bombardier subcontractors for loss of opportunity to perform the same Subcontracted Work or supply the same materials and equipment;

(d) draw on and use proceeds from the performance security provided by Bombardier;

(e) execute all applications, certificates and other documents as may be required;

(f) make decisions respecting, assume control over and continue the Subcontracted Work as may be reasonably required;

(g) meet with, coordinate with, direct and instruct Bombardier subcontractors, process invoices and applications for payment from Bombardier subcontractors, pay Bombardier subcontractors, and resolve claims of Bombardier subcontractors;

(h) take any and all other actions it may consider necessary to effect cure and perform the Subcontracted Work; and

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

Bombardier acknowledges in the APM Operating System Subcontract that, subject to the BT Lenders' Direct Agreement, upon receipt of written notice from the Department, the Department is entitled to exercise step-in rights with respect to the APM Operating System Subcontract (where the Department is also exercising its step-in rights under the DBFOM Agreement), without any necessity for a consent or approval from the Design-Build Contractor or the Borrower or the making of a determination whether the Department validly exercised its step-in rights.

*Suspension of Subcontracted Work.* The Design-Build Contractor shall have the right at any time in the event of a Bombardier Default and where the applicable cure periods have expired, or for any health and safety issues, to suspend further performance of all or any portion of the Subcontracted Work at any stage of undertaking by notice in writing to Bombardier until such Bombardier Default or health and safety issue has been resolved, provided that the Design-Build Contractor has given Bombardier the opportunity to, within a reasonable time, resolve such health and safety issues.

#### *Design-Build Contractor BT Default and Bombardier Remedies*

##### Design-Build Contractor BT Default

Subject to certain limitations set forth in the APM Operating System Subcontract, the Design-Build Contractor shall be in breach under the APM Operating System Subcontract upon the occurrence of any one or more of the following events or conditions (each a "**Design-Build Contractor BT Default**"):

(a) the Design-Build Contractor fails to make any payment due to Bombardier when due, provided that such payment is not subject to a dispute under the APM Operating System Subcontract, the Design-Build Contractor or the DBFOM Agreement;

(b) any representation or warranty made by the Design-Build Contractor or any Design-Build Contractor member is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;

(c) (i) the Design-Build Contractor makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the APM Operating System Subcontract in violation of the limitations on assignment or transfer, or (ii) any other violation of the limitations on assignment or transfer occurs;

(d) the Design-Build Contractor fails to timely observe or perform, or cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by the Design-Build Contractor under the BT Documents in any material respect;

(e) the Design-Build Contractor commences a voluntary case seeking liquidation, reorganization or other relief with respect to the Design-Build Contractor or the Design-Build Contractor's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(f) an involuntary case is commenced against the Design-Build Contractor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or

other relief with respect to the Design-Build Contractor or such Design-Build Contractor's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by it in good faith or shall remain undismissed and unstayed for a period of 60 days;

(g) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Design-Build Contractor or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law, the APM Operating System Subcontract is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute;

(h) subject to the Acceptable Remaining Party Principle, any voluntary or involuntary case or other act or event described in items (c), (e), (f) or (g) above shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to any Design-Build Contractor member;

(i) the Design-Build Contractor or a Design-Build Contractor-related entity, or any of their respective partners, members, officers, directors, responsible managing officers, or responsible managing employees, has been convicted in a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in California Public Contract Code section 1101, with any public entity, as defined in California Public Contract Code section 1100, provided that (i) such person is involved in the APM Project at the time of such conviction and (ii) the Design-Build Contractor fails to remove such person from the APM Project; or

(j) the Design-Build Contractor fails to obtain, provide and maintain the project professional liability and builders risk insurance or payment and performance bonding, in each case as required under the Design-Build Contract for the benefit of relevant parties.

*Termination.* If a Design-Build Contractor BT Default remains uncured following notice and expiration of the applicable cure period, if any, Bombardier may, subject to the BT Lenders' Direct Agreement, terminate the APM Operating System Subcontract upon notice to the Design-Build Contractor. In the event of such termination, Design-Build Contractor shall make payment to Bombardier as follows: (a) BT Subcontractor Breakage Costs; *plus* (b) without duplication of any amount, direct losses incurred by Bombardier in connection with the termination; *plus* (c) without duplication of any amount, all other outstanding sums due and payable by the Design-Build Contractor to Bombardier; *minus* (d) BT Insurance Proceeds; *minus* (e) any noncompliance deductions to the extent not deducted in full.

*Suspension of Subcontracted Work.* Bombardier may suspend the Subcontracted Work if the Design-Build Contractor fails to make any payment due to Bombardier under the APM Operating System Subcontract when due, provided that such payment is not subject to a dispute under the APM Operating System Subcontract, Design-Build Contract or the DBFOM Agreement. Bombardier may not suspend the Subcontracted Work unless and until Bombardier delivers to the Department notice of the Design-Build Contractor's failure to pay and allows the Department reasonable opportunity to cure such failure.

*Termination of the APM Operating System Subcontract Following Termination of the Design-Build Contract*

*Following Termination of the DBFOM Agreement for Convenience, Insurance Unavailability, Court Ruling for LAWA Default; For Extended Delay Events; Following Termination of the DBFOM Agreement for Suspension of Work.* Upon any termination of the Design-Build Contract (a) following termination of the DBFOM Agreement for convenience, insurance unavailability, court ruling for LAWA Default, (b) for Extended Delay Events and (c) following termination of the DBFOM Agreement for suspension of Work, the Design-Build Contractor shall make payment to Bombardier as follows: (a) BT Subcontractor Breakage Costs; *minus* (b) BT Insurance Proceeds; *minus* (c) any noncompliance deductions to the extent not deducted in full.

*Following Termination of the DBFOM Agreement for Developer Default; For Developer DB Default.* Upon any termination of the Design-Build Contract (a) following termination of the DBFOM Agreement for



Developer Default and (b) for Developer DB Default that, in each case, is not caused by a Bombardier Default, the Design-Build Contractor shall make payment to Bombardier as follows: (a) BT Subcontractor Breakage Costs; *plus* (b) without duplication of any amount, direct losses incurred by Bombardier in connection with the termination; *plus* (c) without duplication of any amount, all other outstanding sums due and payable by the Design-Build Contractor to Bombardier; *minus* (d) BT Insurance Proceeds; *minus* (e) any noncompliance deductions to the extent not deducted in full.

*For Design-Build Contractor Default.* Upon any termination of the Design-Build Contract for Design-Build Contractor Default that is not caused by a Bombardier Default, the Design-Build Contractor shall make payment to Bombardier as follows: (a) BT Subcontractor Breakage Costs; *plus* (b) without duplication of any amount, direct losses incurred by Bombardier in connection with the termination; *plus* (c) without duplication of any amount, all other outstanding sums due and payable by Design-Build Contractor to Bombardier; *minus* (d) BT Insurance Proceeds; *minus* (e) any noncompliance deductions to the extent not deducted in full.

#### *Miscellaneous Compensation Provisions*

To the extent that any termination compensation under the APM Operating System Subcontract calculated pursuant to the APM Operating System Subcontract is calculated to be less than zero, then such termination compensation shall be deemed to equal zero.

#### **Spare Parts**

Six months prior to the Passenger Service Availability Date, Bombardier is required to deliver to the Design-Build Contractor spare parts listed in the APM Operating System Subcontract, under the specifications provided for in the APM Operating System Subcontract. The Design-Build Contractor may, by written notice to Bombardier, implement changes to such spare parts and the amounts thereof upon notice, and provided that, as a result of such changes, the aggregate value of the spare parts does not exceed \$4,732,840. Bombardier shall not use any such spare parts to rectify BT Defects unless Bombardier promptly replenishes the supply of spare parts used. Bombardier shall compensate the Design-Build Contractor for any reasonable costs it incurs as a result of Bombardier's use of such spare parts.

#### **Assignments**

Bombardier shall not, and shall not permit, any assignment, transfer, mortgage, pledge or encumbrance of any of its interests in the Subcontracted Work, or its interests in, or rights or obligations under the APM Operating System Subcontract or any relevant insurance policies without the Design-Build Contractor's approval, not to be unreasonably withheld. In addition, Bombardier shall not assign its interest in, or rights or obligations under the APM Operating System Subcontract without the Borrower's or the Department's prior consent. Such limitation shall not prohibit the subcontracting of portions of the Subcontracted Work to qualified Bombardier subcontractors.

#### **Governing Law**

The BT Documents shall be governed by and construed and interpreted in accordance with the laws of California, any applicable federal law, the Los Angeles City Charter, and the ordinances, regulations, codes, and Executive Orders enacted and/or promulgated pursuant thereto.

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## APPENDIX D-9

### FUNDAMENTAL EVENTS OF DEFAULT UNDER THE INTERCREDITOR AGREEMENT

“Fundamental Events of Default” are the following:

(a) With respect to the Credit Agreement:

- (i) **Payment** - the Borrower fails to pay principal when due pursuant to the Credit Agreement within three (3) Business Days after the same has become due and payable, and interest or any other sum owed under the Credit Agreement within three (3) Business Days after the same has become due and payable; provided that where such failure to pay is a result of a technical or an administrative error caused by a party other than the Borrower in connection with the administration of the accounts from which such payment is made or is due to be made (and, for clarity, without limiting the Borrower’s other cure rights set forth in the Credit Agreement), the Borrower shall have seven (7) additional Business Days after notice is received by the Borrower from the Administrative Agent requiring such payment to be made in which to cure such failure to pay;
- (ii) **Funding Shortfall** - any Funding Shortfall (as defined in the Credit Agreement) occurs and continues unwaived and unremedied for a period in excess of sixty (60) days of written notice having been received by the Borrower from the Administrative Agent or the Collateral Agent;
- (iii) **Contingent LC** - any failure by the Borrower under the Credit Agreement to procure a Contingent Letter of Credit or retain the required amounts from the Design-Build Contractor, all in accordance with the Design-Build Contract, and such failure has not been remedied or waived within twenty (20) Business Days;
- (iv) **Bankruptcy** - a Bankruptcy Event occurs with respect to the Borrower;
- (v) **Financing Documents** - any Financing Document (except to the extent otherwise permitted) ceases to be in effect against the Borrower unless such document shall be replaced by a contract on substantially similar terms with a counterparty reasonably acceptable to the Administrative Agent within five (5) Business Days following the earlier of (i) the Borrower’s actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Collateral Agent and the Administrative Agent, or such longer period, reasonably necessary to effect such replacement except in the case of any rescission or repudiation of a Financing Document by the Borrower in writing, in which case no cure period shall apply;
- (vi) **Project Documents** - a Developer Default under and as defined in the DBFOM Agreement occurs and is continuing beyond any applicable cure period or has not been waived by LAWA, and LAWA is entitled to and serves a notice of termination to the Borrower pursuant to the terms of the DBFOM Agreement as a result thereof;
- (vii) **Security Documents** - any Security Document shall cease (other than as expressly permitted under the Financing Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described in such agreement other than as a result of actions or failure to act by the applicable Agent or any other Senior Creditor, and with the priority purported to be created thereby;

- (viii) **DBFOM Agreement** - the DBFOM Agreement ceases to be valid and binding and in full force and effect (other than as a result of its expiration or any termination of the DBFOM Agreement in accordance with its terms) and such invalidity has not been remedied within ten (10) Business Days following the earlier of (i) the Borrower's actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Collateral Agent, LAWA or the Administrative Agent;
  - (ix) **Termination of DBFOM** - a termination of the DBFOM Agreement pursuant to Section 17.3 thereof shall have occurred;
  - (x) **DB Contract** - the Design-Build Contract becomes void, voidable, unenforceable or illegal or is terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless the Design-Build Contract is replaced in accordance with the requirements of Schedule IV, paragraph (f) of the Credit Agreement, under "Negative Covenants" within thirty (30) days following delivery of written notice thereof to the Borrower by the Administrative Agent or such longer period reasonably necessary to effect such replacement so long as the Borrower is diligently pursuing such replacement;
  - (xi) **PSA Failure** - the Borrower fails to achieve Passenger Service Availability by the Lenders' Long Stop Date; and
  - (xii) **Termination of Financing Document** - any Financing Document is terminated by any Senior Creditor, in accordance with its terms, by reason of any default or breach on the part of the Borrower or any Material Project Party, except as expressly permitted under any Financing Document.
- (b) With respect to the Issuer Loan Agreement:
- (i) **Payment** - the Borrower fails to pay (i) principal on the Bonds within three (3) Business Days after the same has become due and payable, and (ii) interest on the Bonds or any other sum (other than principal on the Bonds) owed under the Issuer Loan Agreement within three (3) Business Days after the same has become due and payable; provided that where such failure to pay is a result of a technical or an administrative error caused by a party other than the Borrower in connection with the administration of the accounts from which such payment is made or is due to be made (and, for clarity, without limiting the Borrower's other cure rights set forth herein), the Borrower shall have seven (7) additional Business Days after notice is received by the Borrower from the Trustee requiring such payment to be made in which to cure such failure to pay;
  - (ii) **Funding Shortfall** -any Funding Shortfall (as defined in the Collateral Agency and Accounts Agreement) occurs and continues unwaived and unremedied for a period in excess of sixty (60) days of written notice having been received by the Borrower from the Trustee or the Collateral Agent;
  - (iii) **Contingent LC** - any failure by the Borrower under the Issuer Loan Agreement to procure a Contingent Letter of Credit or retain the required amounts from the Design-Build Contractor, all in accordance with the Design-Build Contract, and such failure has not been remedied or waived within twenty (20) Business Days;
  - (iv) **Bankruptcy** - a Bankruptcy Event occurs with respect to the Borrower;

- (v) **Financing Documents** - any Financing Document (except to the extent otherwise permitted) ceases to be in effect against the Borrower unless such document shall be replaced by a contract on substantially similar terms with a counterparty reasonably acceptable to the Trustee (at the instructions of the Majority Owners, if so requested by the Trustee) within five (5) Business Days following the earlier of (i) the Borrower's actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Collateral Agent and the Trustee, or such longer period, reasonably necessary to effect such replacement except in the case of any rescission or repudiation of a Financing Document by the Borrower in writing, in which case no cure period shall apply;
- (vi) **Project Documents** - a Developer Default under and as defined in the DBFOM Agreement occurs and is continuing beyond any applicable cure period or has not been waived by LAWA, and LAWA is entitled to and serves a notice of termination to the Borrower pursuant to the terms of the DBFOM Agreement as a result thereof;
- (vii) **Security Documents** - any Security Document shall cease (other than as expressly permitted under the Financing Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described therein other than as a result of actions or failure to act by the applicable Agent or any other Senior Secured Party, and with the priority purported to be created thereby;
- (viii) **DBFOM Agreement** - the DBFOM Agreement ceases to be valid and binding and in full force and effect (other than as a result of its expiration or any termination of the DBFOM Agreement in accordance with its terms) and such invalidity has not been remedied within ten (10) Business Days following the earlier of (i) the Borrower's actual knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Collateral Agent, LAWA or the Trustee;
- (ix) **Termination of DBFOM** - a termination of the DBFOM Agreement pursuant to Section 17.3 thereof shall have occurred;
- (x) **DB Contract** - the Design-Build Contract becomes void, voidable, unenforceable or illegal or is terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless the Design-Build Contract is replaced in accordance with the requirements of Schedule 6.01, paragraph (f)(ii) of the Issuer Loan Agreement under "Negative Covenants" within thirty (30) days following delivery of written notice thereof to the Borrower by the Trustee or Collateral Agent or such longer period reasonably necessary to effect such replacement so long as the Borrower is diligently pursuing such replacement;
- (xi) **PSA Failure** - the Borrower fails to achieve Passenger Service Availability by the Lenders' Long Stop Date; and
- (xii) **Termination of Financing Document** - any Financing Document is terminated by any Senior Creditor, in accordance with its terms, by reason of any default or breach on the part of the Borrower or any Material Project Party, except as expressly permitted under any Financing Document.

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**APPENDIX E-1**

**FORM OF BORROWER CONTINUING DISCLOSURE AGREEMENT**

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**CALIFORNIA MUNICIPAL FINANCE AUTHORITY  
SENIOR LIEN REVENUE BONDS  
(LINXS APM PROJECT), SERIES 2018**

**\$1,181,525,000**

**CONTINUING DISCLOSURE AGREEMENT**

This Continuing Disclosure Agreement (the "**Agreement**") dated June 8, 2018 is executed and delivered by LAX Integrated Express Solutions, LLC (the "**Borrower**") and U.S. Bank National Association, as trustee under the Indenture referred to below (the "**Trustee**"), in connection with the issuance by the California Municipal Finance Authority, a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (the "**State**" and the "**Issuer**"), of its Senior Lien Revenue Bonds (LINXS APM Project), Series 2018A and its Senior Lien Revenue Bonds (LINXS APM Project), Series 2018B (collectively, the "**Series 2018 Bonds**"), in the aggregate principal amount of \$1,181,525,000. The Series 2018 Bonds are being issued pursuant to the Indenture (as defined below). The proceeds of the Series 2018 Bonds are being loaned to the Borrower pursuant to the Loan Agreement (as defined below) for the purpose of paying a portion of the costs of the Project (as defined below) which is being undertaken pursuant to the DBFOM Agreement (as defined below).

In consideration of the mutual promises and agreements made herein, the receipt and sufficiency of which consideration is hereby mutually acknowledged, the parties hereto agree as follows:

**Section 1. Purpose of the Agreement.** This Agreement is being executed and delivered by the Borrower and the Trustee for the benefit of the Beneficial Owners (as defined below) and in order to assist the Underwriters (as defined below) in complying with paragraph (b)(5) of the Rule (as defined below).

**Section 2. Definitions.** All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to them in the Indenture or the Collateral Agency and Accounts Agreement. In addition, the following capitalized terms as used in this Agreement shall have the following meanings:

"**Annual Report**" shall mean, collectively, the filings described in Section 3(a) hereof.

"**Audited Financial Statements**" shall mean the annual financial statements of the Borrower, audited by an independent firm of certified public accountants in accordance with GAAP or such other accounting principles as the Borrower may be required to employ from time to time or as it may otherwise elect, provided that such election does not cause a violation of the Rule.

"**Beneficial Owner**" shall have the meaning given in the Indenture.

"**Collateral Agency and Accounts Agreement**" shall mean that certain Collateral Agency and Accounts Agreement, dated as of June 1, 2018 among, the Borrower, U.S. Bank National Association, as collateral agent, securities intermediary, U.S. Bank National Association, as depositary agent, and U.S. Bank National Association, as trustee on behalf of, amongst others, the Beneficial Owners, as it may be amended or supplemented from time to time.

**"Commission"** shall mean the United States Securities and Exchange Commission, or any successor body thereto.

**"DBFOM Agreement"** shall mean that certain DBFOM Agreement, dated as of April 11, 2018, between Los Angeles World Airports (the **"Department"**), a department of the City of Los Angeles (the **"City"**) and the Borrower, as may be amended or supplemented from time to time.

**"Dissemination Agent"** means the Borrower or any successor Dissemination Agent designated in writing by the Borrower and which has filed with the Borrower a written acceptance of such designation.

**"EMMA"** shall mean the Electronic Municipal Market Access system and the EMMA Continuing Disclosure Service of MSRB, or any successor thereto approved by the Commission, as a repository for municipal continuing disclosure information pursuant to the Rule.

**"Exchange Act"** shall mean the Securities Exchange Act of 1934, as amended.

**"GAAP"** shall mean generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America.

**"Indenture"** shall mean that certain Indenture of Trust, dated as of June 1, 2018, between the Issuer and the Trustee, as it may be amended or supplemented from time to time.

**"IFRS"** shall mean the International Financial Reporting Standards as in effect from time to time promulgated by the International Accounting Standards Board or any successor board or agency as endorsed by the European Union.

**"Issuer"** shall mean California Municipal Finance Authority, a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California.

**"Listed Events"** shall mean any of the events referenced in Section 4 of this Agreement.

**"Loan Agreement"** shall mean that certain Loan Agreement, dated as of June 1, 2018, by and between the Issuer and the Borrower, as it may be amended or supplemented from time to time.

**"MSRB"** shall mean the Municipal Securities Rulemaking Board, or any successor thereto. On July 1, 2009, the MSRB became the sole repository to which the Borrower must electronically submit annual and quarterly reports pursuant to Section 3 hereof and notices of Listed Events pursuant to Section 4 hereof. Reference is made to Securities and Exchange Commission Release No. 34-59062, December 5, 2008 (the **"Release"**) relating to EMMA, which became effective on July 1, 2009. To the extent applicable to this Agreement, the Borrower shall comply with the Release, as amended or supplemented from time to time.

**"Official Statement"** shall mean the official statement dated \_\_\_\_\_, 2018 relating to the Series 2018 Bonds.

**"Person"** means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

**"Project"** shall have the meaning assigned to it in the DBFOM Agreement.

"**Rule**" shall mean Rule 15c2-12 adopted by the Commission under the Exchange Act, as the same may be amended from time to time.

"**Trustee**" shall mean U.S. Bank National Association, in its capacity as trustee under the Indenture, and any successors or assigns.

"**Underwriters**" shall mean Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and Ramirez & Co., Inc.

***Section 3. Provision of Annual Reports, Quarterly Reports and Monthly Reports.***

(a) The Borrower shall, or shall cause the Dissemination Agent to file with the MSRB: (A) audited financial statements for the Borrower, within one hundred and twenty (120) days after the end of each fiscal year of the Borrower, (B) unaudited financial statements for Borrower within forty-five (45) days after the end of each fiscal quarter of the Borrower and (C) an annual operating budget not later than thirty (30) days prior to the commencement of each calendar year, in case of clause (A) and (B), prepared in accordance with GAAP and/or IFRS (except as approved by the auditor or the responsible officer, as the case may be, and disclosed therein) and delivered together with certificates from the Borrower certifying to its knowledge that there is no Event of Default.

(b) The Borrower shall, or shall cause the Dissemination Agent to file with the MSRB: from the commencement of Work (as defined in the DBFOM Agreement) to the Final Completion Date (as defined in the DBFOM Agreement), (i) a copy of the Monthly Report submitted to LAWA pursuant to Part 2A, Section 3.3.2 of the Technical Provisions of the DBFOM Agreement and (ii) a copy of the Lenders' Technical Advisor monthly report, in each case within ten (10) Business Days of each report becoming available.

(c) The Borrower shall, or shall cause the Dissemination Agent to file with the MSRB the following additional information:

(i) not later than forty-five (45) days after the end of each fiscal quarter of the Borrower following the Passenger Service Availability Date, an operating report setting forth (i) the operating data for the Project for the previous quarter, including total Project Revenues, total O&M Expenditures and total Renewal Expenditures incurred, (ii) the variances for such period between the actual Project Revenues, actual O&M Expenditures and actual Renewal Expenditures incurred, and the projected Project Revenues, budgeted O&M Expenditures and budgeted Renewal Expenditures, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more; and

(ii) promptly, but in any event within five (5) Business Days of the Borrower obtaining knowledge thereof, provide:

(A) details of any litigation in respect of the Borrower, pending or threatened in writing, by or before any arbitrator or Governmental Authority (A) in which the amount involved exceeds ten million dollars (\$10,000,000) and is not covered by insurance or (B) a remedy requested in the litigation is the stoppage or delay of the Project;

(B) details of any event of default or "Default" as defined in, or any material breach (in each case by the Borrower) under, any Material Project Contract and copies of

all notices of any such default or termination of any Material Project Contract delivered to the Borrower;

(C) notice and details of any Default or Event of Default;

(D) notice of any material insurance claims in excess of five million dollars (\$5,000,000);

(E) notice of any claim by the Borrower under the DBFOM Agreement in respect of the occurrence of a Compensation Event or Relief Event;

(F) notice of any suspension of the Work (except to the extent the suspension is permitted under the DBFOM Agreement, in which case no notice is required, and except to the extent the suspension is as a result of an emergency, in which case the Borrower shall provide notice as reasonably promptly as possible following the Borrower's knowledge thereof);

(G) notice of any new, or newly discovered historical, material release of hazardous materials; and

(H) notice of the occurrence of any other event or condition that would reasonably be expected to have a Material Adverse Effect.

(d) If the Borrower changes its Fiscal Year, it will notify the MSRB, the Dissemination Agent and the Trustee of the change (and the date of the new Fiscal Year end) prior to the next date by which the Borrower otherwise would be required to provide financial information and operating data pursuant to this Agreement.

(e) Financial information and operating data to be provided pursuant to Section 3 of this Undertaking may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document) publicly filed with the MSRB or the SEC. The Borrower or the Dissemination Agent (at the direction of the Borrower), as applicable, shall clearly identify each such other document so incorporated by reference.

(f) If the Borrower is unable to provide or cause to be provided the information required in this Section 3 by the applicable specified dates, the Borrower shall (or shall cause the Dissemination Agent to), in a timely manner on or before the specified dates, send a notice in substantially the form attached as Exhibit A to the MSRB.

**Section 4. Reporting of Material Events.** The Borrower shall give, or cause to be given, notice to the MSRB in a timely manner not in excess of ten (10) Business Days after the occurrence of the event, notice of the occurrence of any of the events referred to at paragraph (b)(5)(C) of the Rule, which as at the date of this Agreement consist of the following events with respect to the Series 2018 Bonds (or, in the case of paragraphs (13) or (14) below, the Borrower):

(1) principal and interest payment delinquencies;

(2) non-payment related defaults, if material;

(3) any unscheduled draws on debt service reserves reflecting financial difficulties;

- (4) unscheduled draws on credit facilities reflecting financial difficulties;
- (5) substitution of credit or liquidity providers or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Series 2018 Bonds, or other material events affecting the tax status of the Series 2018 Bonds;
- (7) modifications to rights of the holders of the Series 2018 Bonds, if material;
- (8) bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the Series 2018 Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the Borrower;
- (13) the consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) appointment of a successor or additional trustee or the change of name of a trustee, if material

For the purposes of the event identified in paragraph (12) of this Section 4, the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

**Section 5. Dissemination Agent.** The Borrower may from time to time appoint or engage a dissemination agent to assist it in carrying out its obligations under this Undertaking and may discharge any such dissemination agent with or without appointing a successor dissemination agent. If the Borrower appoints a dissemination agent, the Borrower shall forthwith give notice thereof to MSRB, but in no event, no later than thirty (30) days after the appointment of such new dissemination agent. It is understood and agreed that any information that any dissemination agent appointed by the Borrower may

be instructed to file with MSRB, except as may be otherwise expressly provided for herein, shall be prepared and provided to it by the Borrower. Any dissemination agent appointed hereunder shall not be responsible in any manner for the content of any notice or report prepared by the Borrower.

**Section 6. Termination of Reporting Obligation.** The Borrower's obligations under this Agreement shall terminate upon the defeasance, prior redemption or payment in full of all of the Series 2018 Bonds. The Borrower shall file (or cause to be filed) with the MSRB a written notice that its obligations under this Agreement have terminated. If obligations of the Borrower under this Agreement are assumed in full by some other entity, such entity shall be responsible for compliance with this Agreement in the same manner as if it were the Borrower and the Borrower shall have no further responsibility hereunder. The Borrower will only be obligated to perform the covenants specified in this Disclosure Agreement for so long as it remains an "obligated person" with respect to the Series 2018 Bonds within the meaning of the Rule.

**Section 7. Amendment; Waiver.** The provisions of this Undertaking may be amended by the Borrower, and any provision of this Undertaking may be waived, from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Borrower, but only if (1) the provisions of this Undertaking, as so amended or waived, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment as well as such changed circumstances, and (2) either (a) the holders of a majority in aggregate principal amount of the Outstanding Bonds consent to such amendment or waiver or (b) a person that is unaffiliated with the Borrower (such as nationally recognized co-bond counsel) determines that such amendment or waiver will not materially impair the interests of the holders and beneficial owners of the Bonds. If the Borrower so amends the provisions of Section 3, the Borrower shall include with any amended financial information or operating data next provided in accordance with Section 3 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

**Section 8. Additional Information.** Nothing in this Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Report, quarterly disclosure or monthly disclosure or notice of occurrence of a Listed Event, in addition to that which is required by this Agreement. If the Borrower chooses to include any information in any Annual Report, quarterly disclosure or monthly disclosure or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Agreement, the Borrower shall have no obligation under this Agreement to update such information or to include it in any future Annual Report, quarterly disclosure or monthly disclosure or notice of occurrence of a Listed Event.

**Section 9. Default.** In the event of the failure by the Borrower to comply with any provision of this Agreement, the Trustee may (and, at the request of the Beneficial Owners of at least 25% aggregate principal amount of outstanding Series 2018 Bonds, shall) and any Beneficial Owner may take such actions as may be necessary and appropriate, including seeking a mandate or specific performance by court order, to cause the Borrower to comply with its obligations under this Agreement.

**Section 10. Beneficiaries.** This Agreement shall inure solely to the benefit of the Borrower, the Trustee, the Underwriters and the Beneficial Owners, and shall create no rights in any other Person.

**Section 11. Submission of Documents to the MSRB through EMMA.** Unless otherwise required by law, all documents provided to the MSRB pursuant to this Agreement shall be provided to the MSRB in an electronic format and shall be accompanied by identifying information, in each case as prescribed by the MSRB. As of the date of this undertaking, the MSRB has established EMMA as its continuing disclosure service for purposes of the Rule, and unless otherwise prescribed by the MSRB, all documents provided to the MSRB in compliance with Section 4 shall be submitted through EMMA in the format prescribed by the MSRB.

**Section 12. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 13. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the Rule.

**Section 14. Notices.** Unless otherwise provided herein, all notices, certificates, requests or other communications hereunder shall be given by telephone and promptly confirmed in writing and shall be deemed given when given by telephone or addressed as follows:

LAX Integrated Express Solutions, LLC: LAX Integrated Express Solutions, LLC  
c/o ACS Infrastructure Development, Inc.  
One Alhambra Plaza, Suite 1200  
Coral Gables, FL 33134  
Attention: General Counsel  
Telephone: (305) 424-5400  
E-mail: USnotices@acsinfra.com

with a copy to: White & Case LLP  
1221 Avenue of the Americas  
Attention: Dolly Mirchandani, Partner  
Telephone: +1 212 819 8200  
Email: dolly.mirchandani@whitecase.com

Trustee: U.S. Bank National Association  
633 N. 5th Street  
Los Angeles, CA 90071  
Attention: Corporate Trust Services  
LM-CA-T24T  
Telephone:  
Email:

Each of the above parties may, by written notice given hereunder to the others, designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent. In addition, the parties hereto may agree to any other means by which subsequent notices, certificates, requests or other communications may be sent.

[signatures on the following page]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Agreement to be duly executed and delivered as of the date first above written.

**LAX INTEGRATED EXPRESS SOLUTIONS, LLC**  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:



**U.S. BANK NATIONAL ASSOCIATION**, as Trustee

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**  
**NOTICE TO MSRB OF**  
**FAILURE TO FILE ANNUAL FINANCIAL INFORMATION**

Name of Obligated Person: LAX Integrated Express Solutions, LLC

Name of Bond Issue: California Municipal Finance Authority Senior Lien Revenue Bonds (LINXS APM Project), Series 2018, \$1.181.525.000 (the "*Series 2018 Bonds*").

Issued on [●], 2018

NOTICE IS HEREBY GIVEN that LAX Integrated Express Solutions, LLC has not provided its [audited financial statements] [information required by Section 3(a)(iii) with respect to the above-named Series 2018 Bonds as required by that certain Continuing Disclosure Agreement dated June 8, 2018 (the "*Agreement*") between LAX Integrated Express Solutions, LLC and U.S. Bank National Association. LAX Integrated Express Solutions, LLC represented that [audited financial statements] [information required by Section 3(a)(iii) of the Agreement will be filed by [date].

Date: \_\_\_\_\_

[[DISSEMINATION AGENT], as dissemination  
agent [OR] [BORROWER], as obligated party]

By: \_\_\_\_\_  
Title \_\_\_\_\_

**APPENDIX E-2**

**FORM OF DEPARTMENT CONTINUING DISCLOSURE CERTIFICATE**

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## APPENDIX E-2

### CONTINUING DISCLOSURE CERTIFICATE OF THE DEPARTMENT

This Continuing Disclosure Certificate (the “**Disclosure Certificate**”) is executed and delivered by the City of Los Angeles, California (the “**City**”) acting by and through the Board of Airport Commissioners of the City of Los Angeles, California (the “**Department**”) in connection with the issuance by the California Municipal Finance Authority (the “**Issuer**”) of California Municipal Finance Authority Senior Lien Revenue Bonds (LINXS APM Project), Series 2018 (the “**Bonds**”). The Bonds are being issued pursuant to the Indenture (as defined below).

The Department hereby covenants and agrees as follows:

**Section 1. Definitions.** In addition to the definitions set forth in the Indenture or Collateral Agency and Accounts Agreement, which applies to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms have the following meanings:

“**Annual Report**” means any Annual Report provided by the Department pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“**Beneficial Owner**” means any person that (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“**Borrower**” means LAX Integrated Express Solutions, LLC.

“**City**” shall mean City of Los Angeles, California.

“**Collateral Agency Agreement**” means that certain Collateral Agency and Accounts Agreement, dated as of June 1, 2018 among, the Borrower, U.S. Bank National Association, as the Intercreditor Agent, Mizuho Bank, LTD, as the Administrative Agent, U.S. Bank National Association, as the Trustee and U.S. Bank National Association, as collateral agent and securities intermediary, as it may be amended or supplemented from time to time.

“**Dissemination Agent**” means the dissemination agent for the Bonds, or any other successor Dissemination Agent designated in writing by the Issuer, and which has delivered to the Department a written acceptance of such designation.

“**EMMA System**” means the MSRB’s Electronic Municipal Market Access system, or such other electronic system designated by the MSRB.

“**Fiscal Year**” means the one-year period ending on June 30 of each year or such other period of 12 months designated by the Department as its Fiscal Year.

“**GASB**” means the Governmental Accounting Standards Board.

“**Indenture**” means that certain Indenture of Trust, dated as of June 5, 2018, between the Issuer and the Trustee, as it may be amended or supplemented from time to time.

“**Issuer**” means the California Municipal Finance Authority, a joint powers authority organized under the laws of the State of California.

“**Listed Events**” means any of the events listed in Section 5(a) this Disclosure Certificate.

“**Loan Agreement**” means that certain Loan Agreement, dated as of June 5, 2018 between the Issuer and the Borrower, as it may be amended or supplemented from time to time.

“**MSRB**” means the Municipal Securities Rulemaking Board or any successor thereto.

**“Official Statement”** means the final official statement of the Issuer relating to the Bonds.

**“Owner”** means a registered owner of Bonds.

**“Participating Underwriter”** means any of the original underwriters of the Bonds required to comply with the Rule in connection with offering the Bonds.

**“Rule”** means Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

**“SEC”** means the Securities and Exchange Commission.

**“State”** means the State of California.

**“Trustee”** means U.S. Bank National Association, in its capacity as trustee under the Indenture and any successors or assigns.

**Section 2. Purpose of this Disclosure Certificate.** This Disclosure Certificate is being executed and delivered by the Department for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with paragraph (b)(5) of the Rule.

### **Section 3. Provision of Annual Reports.**

(a) The Department must, not later than 180 days following the end of each Fiscal Year (which Fiscal Year currently ends on June 30) of the Department, commencing with the report for Fiscal Year ending June 30, 2018, provide to the Dissemination Agent, in an electronic format, an Annual Report relating to the immediately preceding Fiscal Year that is consistent with the requirements of Section 4 of this Disclosure Certificate, which Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that any audited financial statements may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Fiscal Year for the Department changes, the Department must give notice of such change in the same manner as for a Listed Event under Section 5(a).

(b) If in any year, the Department does not provide the Annual Report to the Dissemination Agent by the time specified above, the Department must deliver a notice to the Dissemination Agent in substantially the form attached as Exhibit A hereto.

(c) The Dissemination Agent must:

1. Deliver a report to the Department certifying that the Annual Report has been filed pursuant to this Disclosure Certificate and listing the date(s) of the filing(s); and
2. take any other actions mutually agreed to between the Dissemination Agent and the Department.

**Section 4. Content of Annual Reports.** The Annual Report shall contain or incorporate by reference the following:

(a) The Department’s audited financial statements for the prior Fiscal Year, prepared in accordance with generally accepted accounting principles as promulgated from time to time by GASB and all statements and interpretations issued by the Financial Accounting Standards Board which are not in conflict with the statements issued by GASB, provided however that the Department may from time to time, in order to comply with federal or State legal requirements, modify the basis upon which such financial statements are provided by notice to the Dissemination Agent which notice must include a reference to the applicable law or requirement describing such accounting basis. If the Department’s audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain comparable information derived from unaudited

financial statements and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Information in form and substance similar to the information set forth in the following portions of Appendix B “Certain Information Regarding the Department of Airports of the City Of Los Angeles” of the Official Statement for the most recently completed Fiscal Year:

3. Table 2 – “Air Carriers Serving LAX” (as of the first day of the current Fiscal Year);
4. Table 4 – “Air Traffic Data”;
5. Table 5 – “Historical Total Enplanements by Airline”;
6. Table 6 – “Total Revenue Landed Weight”;
7. Table 7 – “Enplaned and Deplaned Cargo”;
8. Table 8 – “Historical Operating Statements”;
9. Table 9 – “Top Ten Revenue Providers”;
10. Table 10 – “Top Ten Revenue Sources”;
11. Table 12 – “Historical Debt Service Coverage”; and
12. The columns entitled “Department Market Value” and “LAX Market Value” in Table 13 – “City of Los Angeles Pooled Investment Fund”; and
13. Unless otherwise provided in “Historical Operating Statements,” the total amount of PFC revenues received by the Department with respect to Los Angeles International Airport.
14. Table 14 – “Existing Senior Bonds”;
15. Table 15 – “Existing Subordinate Bonds and Subordinate Commercial Paper Notes”;
16. Table 16 – “Senior Bonds and Subordinate Bonds Debt Service Requirements” (only if such information changes);

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Department or related public entities that have been submitted to the MSRB through the EMMA System. In the event that information necessary to prepare the tables listed above becomes unavailable due to changes in accounting practices, legislative changes or organizational changes, the Department must state in its Annual Report that such table will no longer be included in the Annual Report and the reason therefore and the Department must provide comparable information if available.

#### **Section 5. Reporting of Significant Events.**

(a) The Department must give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds not later than ten business days after the occurrence of the event:

1. Bankruptcy, insolvency, receivership or similar event of the Department; or
2. The consummation of a merger, consolidation, or acquisition involving the Department or the sale of all or substantially all of the assets of the Department, other than in the ordinary course of business, the entry into a definitive agreement

to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms.

Note: for the purposes of the event identified in Section 5(a)(1) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Department in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Department, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Department.

(b) If the Department learns of an occurrence of a Listed Event described in Section 5(a), the Department must within ten business days of occurrence deliver a notice of such occurrence to the Dissemination Agent.

**Section 6. Termination of Obligation.** The Department's obligations under this Disclosure Certificate will terminate upon the maturity, legal defeasance, prior redemption or payment in full of all of the Bonds. In addition, in the event that the Rule is amended, modified or repealed such that compliance by the Department with its obligations under this Disclosure Certificate no longer is required in any or all respects, then the Department's obligations under this Disclosure Certificate will terminate to a like extent.

**Section 7. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Certificate, without the consent of the Owners of the Bonds, the Department may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that, in the opinion of nationally recognized bond counsel, such amendment or waiver is not prohibited by the Rule. The Department must give notice of any amendment in the same manner as for a Listed Event under Section 5(a).

**Section 8. Additional Information.** Nothing in this Disclosure Certificate will be deemed to prevent the Department from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the Department chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the Department will not thereby have any obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**Section 9. Default.** In the event of a failure of the Department to comply with any provision of this Disclosure Certificate, any Owner or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Department to comply with its obligations under this Disclosure Certificate; provided that any such Owner or Beneficial Owner may not take any enforcement action without the consent of the Owners of not less than 25% (twenty-five percent) in aggregate principal amount of the Bonds that at the time are outstanding. A default under this Disclosure Certificate will not be deemed a default under the Indenture, the Loan Agreement, the Collateral Agency Agreement, the Bonds or any other Financing Document or the Security Documents and the sole remedy under this Disclosure Certificate in the event of any failure of the Department to comply with this Disclosure Certificate will be an action to compel performance. Under no circumstances shall any person or entity be entitled to recover monetary damages under this



Disclosure Certificate in the event of any failure of the Department to comply with this Disclosure Certificate. No Owner or Beneficial Owner of the Bonds may institute such action, suit or proceeding to compel performance unless they have first delivered to the Department satisfactory written evidence of their status as such, and a written notice of and request to cure such failure, and the Department will have refused to comply therewith within a reasonable time.

**Section 10. Beneficiaries.** This Disclosure Certificate will inure solely to the benefit of the Department and the Owners and Beneficial Owners from time to time of the Bonds, and will create no rights in any other person or entity. This Disclosure Certificate is not intended to create any monetary rights on behalf of any person or entity based upon the Rule.

**Section 11. Notices.** Any notices or communications to the Department may be given as follows:

Los Angeles World Airports  
One World Way  
Los Angeles, California 90045  
Attention: Ryan Yakubik, Chief Financial Officer  
Fax: (310) 646-9223  
Telephone: (424) 646-5251

**Section 12. Partial Invalidity.** If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the Department is contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof will be null and void and will be deemed separable from the remaining agreements and covenants or portions thereof and will in no way affect the validity hereof, and the Beneficial Owners of the Bonds will retain all the benefits afforded to them under this Disclosure Certificate. The Department hereby declares that it would have executed and delivered this Disclosure Certificate and each and every other article, section, paragraph, subdivision, sentence, clause and phrase of this Disclosure Certificate irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases of this Disclosure Certificate or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

**Section 13. Governing Law.** This Disclosure Certificate was made in the City of Los Angeles and is governed by, interpreted and enforced in accordance with the laws of the State of California and the City of Los Angeles, without regard to conflict of law principles. Any litigation, action or proceeding to enforce or interpret any provision of this Disclosure Certificate or otherwise arising out of, or relating to this Disclosure Certificate, must be brought, commenced or prosecuted in a State or Federal court in the County of Los Angeles in the State of California. By its acceptance of the benefits of this Disclosure Certificate, any person or entity bringing any such litigation, action or proceeding submits to the exclusive jurisdiction of the State of California and waives any defense of forum non conveniens.

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Certificate this \_\_ day of June, 2018.

DEPARTMENT OF AIRPORTS OF THE CITY OF  
LOS ANGELES, CALIFORNIA

By: \_\_\_\_\_  
Chief Financial Officer

EXHIBIT A

NOTICE TO DISSEMINATION AGENT OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: California Municipal Finance Authority

Name of Bond Issue: California Municipal Finance Authority Senior Lien Revenue Bonds  
(LINXS APM Project), Series 2018

Date of Issuance: [\_\_\_\_], 2018

CUSIP: \_\_\_\_\_

NOTICE IS HEREBY GIVEN that the Department of Airports of the City of Los Angeles, California (the "Department") has not provided an Annual Report with respect to the above referenced Bonds as required by Section 3 of the Continuing Disclosure Certificate, dated [\_\_\_\_], 2018, executed by the Department for the benefit of the Owners and Beneficial Owners of the above referenced Bonds. The Department anticipates that the Annual Report will be filed by \_\_\_\_\_, 20\_\_.

Dated: \_\_\_\_\_

DEPARTMENT OF AIRPORTS OF THE CITY OF  
LOS ANGELES, CALIFORNIA

By: \_\_\_\_\_  
Authorized Representative

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## APPENDIX F

### DTC – BOOK-ENTRY-ONLY-SYSTEM

*The information in this section concerning DTC and DTC's book-entry-only system has been obtained from DTC, and the Borrower, the Issuer and the Underwriters take no responsibility for the accuracy thereof.* DTC will act as the securities depository for the Series 2018 Bonds. The Series 2018 Bonds will be issued as fully-registered securities in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Series 2018 Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC. If, however, the aggregate principal amount of any maturity exceeds \$500 million, one Bond certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such maturity.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for the physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). *Please note that this website address is included herein as an active textual reference only, and the information contained on (or accessed through) this website is not incorporated herein and should not be construed as part of this Official Statement.*

Purchases of the Series 2018 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2018 Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (the "Beneficial Owner") will in turn be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2018 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2018 Bonds, except in the event that use of the book-entry system for the Series 2018 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2018 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2018 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee does not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2018 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2018 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2018 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2018 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Security Documents. For example, Beneficial Owners of Series 2018 Bonds may wish to ascertain that the nominee holding the Series 2018 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar (which initially will be the Trustee) and request that copies of notices be provided directly to them. Redemption notices will be sent to DTC. If less than all of the Series 2018 Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest in such maturity of each Direct Participant to be redeemed.

Neither DTC nor Cede & Co. (nor any such other DTC nominee) will consent or vote with respect to the Series 2018 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI (money market instrument) procedures. Under its usual procedures, DTC mails an omnibus proxy to the Issuer as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2018 Bonds are credited on the record date (identified in a listing attached to the omnibus proxy).

Redemption proceeds and payments of principal of and interest of the Series 2018 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Trustee or the Issuer, on the payment date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, the Issuer or the Borrower, subject to any statutory or regulatory requirements as may be in effect from time to time. Payments of redemption proceeds and principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) are the responsibility of the Trustee. Disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2018 Bonds at any time by giving reasonable notice to the Issuer or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, Bond certificates are required to be printed and delivered to the Beneficial Owners.

If at any time DTC is no longer able to act as, or is no longer satisfactorily performing its duties as, securities depository for the Series 2018 Bonds, the Trustee may, at its discretion, either (a) designate a substitute securities depository for DTC and reregister the Series 2018 Bonds as directed by such substitute securities depository or (b) terminate the book-entry registration system and reregister the Series 2018 Bonds in the names of the beneficial owners thereof provided to it by DTC.

THE INFORMATION PROVIDED ABOVE HAS BEEN PROVIDED BY DTC. NO REPRESENTATION IS MADE BY THE ISSUER, THE BORROWER, THE DEPARTMENT, THE CITY OR THE UNDERWRITERS AS TO THE ACCURACY OR ADEQUACY OF SUCH INFORMATION PROVIDED BY DTC OR AS TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE HEREOF.

**APPENDIX G**

**FORM OF LEGAL OPINION OF BOND COUNSEL**

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June 8, 2018

California Municipal Finance Authority  
Carlsbad, California

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance of \$1,162,150,000 aggregate principal amount of the Senior Lien Revenue Bonds (LINXS APM Project), Series 2018A and the \$19,375,000 aggregate principal amount of the Senior Lien Revenue Bonds (LINXS APM Project), Series 2018B (collectively, the “Series 2018 Bonds”) by the California Municipal Finance Authority (the “Issuer”), a public entity created by certain California communities through the exercise of a joint powers agreement (the “JPA Agreement”), in accordance with Title 1, Division 7, Chapter 5 of the California Government Code (the “JPA Act”). Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings given to them in the Collateral Agency Agreement (as such term is defined below).

The Series 2018 Bonds are issued under and pursuant to the JPA Act, the JPA Agreement and a Trust Indenture, by and between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”), dated as of June 5, 2018 (the “Indenture”). The Indenture provides, under the conditions and limitations set forth therein, for the issuance of additional bonds on parity with the Series 2018 Bonds (the “Additional Senior Bonds”).

The Series 2018 Bonds are being issued to finance a loan by the Issuer to LAX Integrated Express Solutions, LLC, a Delaware limited liability company (the “Borrower”). The Issuer and the Borrower have entered into a Senior Loan Agreement, dated as of June 5, 2018 (the “Senior Loan Agreement”), by which the Borrower is required to make payments sufficient to pay, when due, the principal and Redemption Price of and interest on the Series 2018 Bonds, as well as a part of the Issuer’s administrative expenditures and costs. All amounts payable under the Senior Loan Agreement for payment of the principal and Redemption Price of and interest on the Series 2018 Bonds are required to be paid to the Trustee under the Indenture and have been pledged by the Issuer for the benefit of the Owners of the Series 2018 Bonds.

The Borrower and the City of Los Angeles, acting by and through the Los Angeles World Airport (“LAWA”) entered into a Design-Build-Finance-Operate-Maintain Agreement, dated as of April 11, 2018 (as amended, restated, modified and/or otherwise supplemented from time to time, the “DBFOM Agreement”), pursuant to which the Borrower has agreed to design, build,

finance, operate and maintain the Automated People Mover Project (the “APM Project”) at the Los Angeles International Airport, Los Angeles, California. The Borrower will use a portion of the proceeds of the Series 2018 Bonds to pay a portion of the costs incurred in connection with the design and construction of the APM Project.

The Series 2018 Bonds are secured by the Trust Estate, which consists primarily of the payments to be made by the Borrower under the Senior Loan Agreement and the certain funds and accounts held pursuant to the Collateral Agency and Accounts Agreement, among the Borrower, Mizuho Bank, Ltd., as administrative agent, U.S. Bank National Association, as intercreditor agent and collateral agent, and U.S. Bank National Association, as trustee, dated as of June 5, 2018 (the “Collateral Agency Agreement”).

The Internal Revenue Code of 1986, as amended (the “Code”) sets forth certain requirements which must be met subsequent to the issuance and delivery of the Series 2018 Bonds for interest thereon to be and remain excluded from gross income for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Series 2018 Bonds to be included in gross income for federal income tax purposes retroactive to the date of issue of the Series 2018 Bonds. Pursuant to the Indenture, the Senior Loan Agreement and the Tax Regulatory Agreements, the Issuer and the Borrower have covenanted to maintain the exclusion from gross income of the interest on the Series 2018 Bonds pursuant to Section 103 of the Code. In addition, the Issuer and the Borrower have made certain representations and certifications in the Indenture, the Senior Loan Agreement and the Tax Regulatory Agreements. LAWA has made certain representations and certifications in its Tax Regulatory Agreement. We have not independently verified the accuracy of those certifications and representations.

We have reviewed the JPA Act, the JPA Agreement the Indenture, the Senior Loan Agreement, the Collateral Agency Agreement, the Intercreditor Agreement certificates of the Issuer, the Borrower and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

Based on the foregoing, we are of the opinion that:

1. The Senior Loan Agreement has been duly authorized, executed and delivered by the Issuer, constitutes a valid and binding agreement of the Issuer and is enforceable against the Issuer in accordance with its terms.
2. The Indenture has been duly authorized, executed and delivered by the Issuer, constitutes a valid and binding agreement of the Issuer and is enforceable against the Issuer in accordance with its terms. The Indenture assigns and pledges to the

Trustee as security for the Bonds, subject to the Security Documents (including the Collateral Agency Agreement) and the Intercreditor Agreement, the Trust Estate.

3. The Series 2018 Bonds have been duly authorized, executed and delivered by the Issuer in accordance with the JPA Act and constitute valid and binding limited non-recourse obligations of the Issuer, and are enforceable against the Issuer in accordance with their terms, payable solely from the Trust Estate, subject to the Security Documents (including the Collateral Agency Agreement) and the Intercreditor Agreement). The Series 2018 Bonds do not constitute a debt, liability or general obligation of the State or any political subdivision thereof (other than the Issuer to the extent described in the Indenture), or a pledge of the full faith and credit of the State or any political subdivision thereof and are payable solely by the Issuer as provided in the Indenture. Neither the State, nor any political subdivision thereof, will be obligated to pay principal of the Series 2018 Bonds, the interest thereon or other costs incidental thereto, and the Issuer will be obligated to pay such amounts in respect of the Series 2018 Bonds only from the Trust Estate pledged therefor in the Indenture.
4. Under existing law and assuming compliance with the tax covenants described herein and the accuracy of the aforementioned representations and certifications of the Issuer and the Borrower, interest on the Series 2018 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code, except that no opinion is expressed as to the exclusion of interest from gross income for any period during which such Series 2018 Bond is held by a person who, within the meaning of Section 147(a) of the Code, is a “substantial user” of the facilities financed with proceeds of the Series 2018 Bonds or a “related person.” We are also of the opinion that such interest on the Series 2018 Bonds is treated as an item of tax preference for purposes of calculating the alternative minimum tax that may be imposed under the Code with respect to individuals and corporations with taxable years beginning before January 1, 2018 and on individuals.
5. The excess of the principal amount of a maturity of the Series 2018 Bonds over its issue price (i.e., the price at which price a substantial amount of such maturity of the Series 2018 Bonds was sold to the public, excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) (each, a “Discount Bond” and collectively the “Discount Bonds”) constitutes original issue discount which is excluded from gross income for federal income tax purposes to the same extent as interest on the Series 2018

Bonds. Further, such original issue discount accrues actuarially on a constant interest rate basis over the term of each Discount Bond and the basis of each Discount Bond acquired at such issue price by an initial purchaser thereof will be increased by the amount of such accrued original issue discount. The accrual of original issue discount may be taken into account as an increase in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Discount Bonds, even though there will not be a corresponding cash payment. Owners of the Discount Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Discount Bonds.

6. Under existing law, interest on the Series 2018 Bonds will be exempt from State of California personal income taxes.

The opinions expressed in paragraphs 1, 2 and 3 above are subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws heretofore or hereafter enacted affecting creditors' rights and are subject to the application of principles of equity relating to or affecting the enforcement of contractual obligations, whether such enforcement is considered in a proceeding in equity or at law.

Except as stated in paragraphs 4, 5 and 6, we express no opinion as to any other federal, state or local tax consequences of the ownership or disposition of the Series 2018 Bonds. Furthermore, we express no opinion as to any federal, state or local tax law consequences with respect to the Series 2018 Bonds, or the interest thereon, if any action is taken with respect to the Series 2018 Bonds or the proceeds thereof upon the advice or approval of other counsel.

We express no opinion as to the accuracy or sufficiency of any financial or other information which has been or will be supplied to purchasers of the Series 2018 Bonds.

This opinion letter is rendered solely with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or other material of any kind not specifically opined on above. No other opinions are intended nor should they be inferred. This opinion letter is issued as of the date hereof, and we assume no obligation to update, revise or supplement this opinion letter to reflect any future actions, facts or circumstances that may hereafter come to our attention, or any changes in law, or in interpretations thereof, that may hereafter occur, or for any reason whatsoever.

Very truly yours,

## **APPENDIX H**

### **SPECIMEN MUNICIPAL BOND INSURANCE POLICY**

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## MUNICIPAL BOND INSURANCE POLICY

ISSUER:

BONDS: \$ in aggregate principal amount of

Policy No: -N

Effective Date:

Premium: \$

ASSURED GUARANTY MUNICIPAL CORP. ("AGM"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") (as set forth in the documentation providing for the issuance of and securing the Bonds) for the Bonds, for the benefit of the Owners or, at the election of AGM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the Business Day next following the Business Day on which AGM shall have received Notice of Nonpayment, AGM will disburse to or for the benefit of each Owner of a Bond the face amount of principal of and interest on the Bond that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by AGM, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of the principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in AGM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by AGM is incomplete, it shall be deemed not to have been received by AGM for purposes of the preceding sentence and AGM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, who may submit an amended Notice of Nonpayment. Upon disbursement in respect of a Bond, AGM shall become the owner of the Bond, any appurtenant coupon to the Bond or right to receipt of payment of principal of or interest on the Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under the Bond, to the extent of any payment by AGM hereunder. Payment by AGM to the Trustee or Paying Agent for the benefit of the Owners shall, to the extent thereof, discharge the obligation of AGM under this Policy.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity unless AGM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment of principal or interest that is Due for Payment made to an Owner by or on behalf of the Issuer which has been recovered from such Owner pursuant to the

United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from an Owner, the Trustee or the Paying Agent to AGM which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount and (d) the date such claimed amount became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

AGM may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee and the Paying Agent specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee and the Paying Agent, (a) copies of all notices required to be delivered to AGM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to AGM and shall not be deemed received until received by both and (b) all payments required to be made by AGM under this Policy may be made directly by AGM or by the Insurer's Fiscal Agent on behalf of AGM. The Insurer's Fiscal Agent is the agent of AGM only and the Insurer's Fiscal Agent shall in no event be liable to any Owner for any act of the Insurer's Fiscal Agent or any failure of AGM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, AGM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to AGM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy.

This Policy sets forth in full the undertaking of AGM, and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, (a) any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity and (b) this Policy may not be canceled or revoked. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW.

In witness whereof, ASSURED GUARANTY MUNICIPAL CORP. has caused this Policy to be executed on its behalf by its Authorized Officer.

ASSURED GUARANTY MUNICIPAL CORP.

By \_\_\_\_\_  
Authorized Officer

A subsidiary of Assured Guaranty Municipal Holdings Inc.  
1633 Broadway, New York, N.Y. 10019  
(212) 974-0100

Form 500NY (5/90)



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