EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

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Unless otherwise specified, wherever the following abbreviations or terms are used in the Agreement and the Technical Provisions, they shall have the meanings set forth below:

AAP	AASHTO Accreditation Program
AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ACM/AVI	Automatic Coin Machine / Automatic Vehicle Information
ACORD	Association for Cooperative Operations Research and Development
ACT	Antiquities Code of Texas
ADAAG	Americans with Disabilities Act Accessibility Guidelines
ADT	Average Daily Traffic
AISC	American Institute of Steel Construction, Inc
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATT/AVI	Attendant / Automatic Vehicle Identification
AUI	Advanced Utility Installation
AVI	Automatic Vehicle Identification
AWS	American Welding Society
BI	Base Index
BMP	Best Management Practice
BO	Biological Opinion
CADD	Computer Aided Drafting and Design
CCI	Construction Cost Index
CCTV	Closed Circuit Television
CDA	Comprehensive Development Agreement
CD-R	Compact Disc Recordable
CD ROM	Compact Disc Read Only Memory
CEPP	Comprehensive Environmental Protection Program
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CFR	Code of Federal Regulations

CMP	Construction Monitoring Plan
CO	Carbon Monoxide
CQAF	(Independent) Construction Quality Acceptance Firm
CQAM	(Independent) Construction Quality Acceptance Manager
CQP	Construction Quality Program
CRCP	Continuous Reinforced Concrete Pavement
CSJ	Control Section Job
CSTM	Materials and Pavements Section of TxDOT Construction Division
CWA	Clean Water Act
CZP	Contributing Zone Plan
DBE	Disadvantaged Business Enterprise
DSS	Decent Safe and Sanitary (dwelling)
DWC	Deferred Work Component
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
EDMS	Electronic Data Management System
EMR	Environmental Monitoring Report
EMS	Environmental Management System
EP	Extraction Procedure (toxicity)
EPD	Escrowed Proposal Documents
EPIC	Environmental Permits Issues and Commitments
EPTP	Environmental Protection Training Plan
ESA	Endangered Species Act of 1973, as amended
ESAL	Equivalent Single-Axle Load
ET	Environmental Team
ETCS	Electronic Toll Collection System
FAPG	Federal-Aid Policy Guide
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FM	Farm to Market Road
FOB	Field Operation Building
FONSI	Finding of No Significant Impact
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
GIS	Geographical Information System
HEC	Hydraulic Engineering Circular

HVAC	Heating Ventilation and Air Conditioning
ID	Identification
IH	Interstate Highway
IRI	International Roughness Index
ISDN	Integrated Services Digital Network
ISI	Initial Serviceability Index
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Traffic Sub-system
IWP	Investigative Work Plan
JSA	Job Safety Analysis
LRFD	Load and Resistance Factor Design
LSLS	Licensed State Land Surveyor
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSE	Mechanically Stabilized Earth
MUAA	Master Utility Adjustment Agreement
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historical Preservation Act
NICET	National Institute for Certified Engineering Technicians
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NTP	Notice to Proceed
OSHA	Occupational Safety and Health Administration
PA	Programmatic Agreement
PCO	Potential Change Order
PCS	Pavement Condition Survey
PH	Percent Hydrogen
PI	Plasticity Index
PrI	Principle Investigator

PIAP	Project Independent Acceptance Program
PM	Project Manager
PMP	Project Management Plan
PSQCM	Professional Services Quality Control Manager
PUA	Possession and Use Agreement
PVC	Polyvinyl Chloride
QC / QRP	Quality Control / Quality Review Program
QMP	Quality Management Plan
RFI	Request For Information
QS	Qualifications Submittal
RCP	Reinforced Concrete Pipe
RFP	Request for Proposals
RFQ	Request for Qualifications
RHA	Rivers and Harbors Act
ROE	Right of Entry
ROW	Right of Way
ROWIS	Right of Way Information System
ROW AM	Right of Way Acquisition Manager
RPLS	Registered Professional Land Surveyor
RTP	Ramp Toll Plazas
SDPP	Special Deposit and Possession Procedure
SEC	Securities and Exchange Commission
SF	Square Foot
SH	State Highway
SHPO	State Historic Preservation Officer
SI	System Integrator
SIR	Site Investigation Report
SSCB	Single Slope Concrete Barrier
SSTR	Single Slope Traffic Railing
SUE	Subsurface Utility Engineering
SW3P	Storm Water Pollution Prevention Plan
TAS	Texas Accessibility Standards
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TCLP	Toxicity Characteristic Leaching Procedure
THC	Texas Historical Commission
TIM/OS	Turnpikes Intelligent Management / Operation System
TL	Testing Level

TMUTCD	Texas Manual on Uniform Traffic Control Devices
TP	Technical Provisions
TPDES	Texas Pollutant Discharge Elimination System
TSI	Terminal Serviceability Index
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
UAP	TxDOT Utility Accommodation Policy
UAR	TxDOT Utility Accommodation Rules
UAdR	Utility Adjustment Report
UCS	Utility Coordination Specialist
UDC	Utility Design Coordinator
UM	Utility Manager
UPA	Utility and Personnel Access-way
UPS	Uninterruptible Power Supply
US	United States Highway
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
USPAP	Uniform Standard of Professional Appraisal Practices
UST	Underground Storage Tank
VE	Value Engineering
VMS	Variable Message Sign
WBS	Work Breakdown Structure

AASHTO Guidelines shall mean the standards for design and construction of roadways and related facilities promulgated by American Association of State Highway and Transportation Officials.

Abbreviated Utility Assembly shall mean the collection of plans and other information and materials which Developer is required to submit to TxDOT in connection with each Utility proposed to remain at its original location within the Project ROW, as more particularly described in Section 6.3.4.5 of the Technical Provisions; a single Abbreviated Utility Assembly may address more than one such Utility.

Acceleration Costs shall mean those fully documented increased costs reasonably incurred by Developer (that is, costs over and above what Developer would otherwise have incurred) which are directly and solely attributable to increasing the rate at which the Work is performed in an attempt to complete necessary elements of the Work earlier than otherwise anticipated, such as for additional equipment, additional

crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for re-sequencing in connection with acceleration efforts and/or a Recovery Schedule.

Acquisition Packages shall mean the packages of documentation and information for the acquisition of parcels for the Project ROW described in Section 7.3.6 of the Technical Provisions.

Act shall have the meaning set forth in Recital A of the Agreement.

Additional Properties shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the Schematic ROW, that will be acquired in connection with the Project, including (a) rest area sites, (b) the Developer-Designated ROW, and (c) any additional real property outside of the Schematic ROW that must be acquired due to a TxDOT-Directed Change, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs Developer to acquire for the Project. The term specifically excludes: (i) Replacement Utility Property Interests and (ii) any temporary easements or other real property interests that Developer may deem necessary or advisable to acquire, at its own cost and expense, for work space, contractor lay-down areas, material storage areas, borrow sites, or other convenience of Developer.

Adjacent Work shall mean any project, work, improvement or development to be planned, designed or constructed which could or does impact the Project and/or is adjacent to the Project. Examples of Adjacent Work include proposed subdivisions, other roads constructed by Governmental Entities, site grading and drainage and other development improvement plans and Utility projects.

Adjust shall mean to perform a Utility Adjustment.

Adjustment Permits shall mean all Governmental Approvals and any private approvals, including the consent of a property owner, necessary for any Utility Adjustment. The term specifically excludes Utility Joint Use Agreements.

Adjustment Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the CDA Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 6.8.3.5 of the Agreement.

Advanced Utility Installation shall mean an installation of a Utility granted, and any additional cost for accommodations for the roadway may be paid for by TxDOT allowing the said Utility to be installed to accommodate the construction of the highway features set forth by Developer. This procedure is typically utilized when the Utility has acquired an easement prior to the Department acquiring land for the Project. Developer

under contract with TxDOT must participate in such installation by providing the most current plans for the installation and signing off that the Utility will not be in conflict with any of the roadway design features.

Administrative Settlement Committee shall mean a committee appointed by the District Engineer or his designee consisting of the ROW Administrator or his designee and two or more members who will analyze pertinent information and reach consensus on whether an administrative settlement should or should not be recommended.

Aesthetic Committee shall mean a committee comprised of TxDOT representatives that will review and approve the overall landscape and aesthetic layouts prepared by Developer in conformance with the Landscape Aesthetic Guidelines found in Attachment 15-1 to the Technical Provisions.

Affidavit of Property Interest shall mean the document describing an Existing Utility Property Interest claimed by a Utility Owner, as more particularly described in Section 6.2.4.1 of the Technical Provisions.

Affiliate shall mean:

(a) any shareholder, member, partner or joint venture member of Developer,

(b) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any of its shareholders, members, partners or joint venture members; and

(c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any of the shareholders, members, partners or joint venture members of Developer, or (iii) any Affiliate of Developer under clause (b) of this definition.

For purposes of this definition the term "control" shall mean the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. "**Affiliated**" shall mean having the status of an Affiliate.

Agreement shall mean that certain Comprehensive Development Agreement, to which this Exhibit 1 is attached, executed by TxDOT and Developer, including any and all amendments thereto.

Alternate Procedure shall mean the alternate procedure for processing Utility Adjustments for FHWA approval pursuant to 23 CFR Section 645.119, which was approved by the FHWA for TxDOT by letter dated October 16, 1973.

Alternate Procedure List shall mean the list of Utilities to be Adjusted (and related information) which TxDOT will submit to the FHWA, as the same may be amended from time to time.

Alternative Technical Concept shall have the meaning set forth in Section 3.1 of the ITP.

Appeal Period has the meaning set forth in Section 19.3.5.1(a) of the Agreement.

Archaeologist shall mean a member of the Project Environmental Team responsible for assessment of cultural resources potentially impacted by the Work as more particularly described in Section 4.4 of the Technical Provisions.

Authorized Representative shall have the meaning set forth in Section 24.6.1 of the Agreement.

BAFO means Best and Final Offer, as described in ITP Section 9.0.

BAFO Due Date means the deadline (date and time) for submission of BAFOs identified in ITP Section 1.6.

Basic Configuration shall mean, for each configuration of the Project, as applicable, the following elements defining the Project as set forth in the Schematic Design plans:

(a) the Schematic ROW and control of access as shown in the Schematic Design plans;

(b) the number of lanes for the Schematic Design;

(c) the approximate location of the Tolling Zones;

(d) the approximate location of ramps, and

(e) the approximate location of interchanges and the type of interchanges.

Basic Costs shall mean the costs for the following, whether incurred by Developer directly or reimbursed by Developer to a Utility Owner: (i) Professional Services associated with, and construction, of a Utility Adjustment, plus (ii) acquisition of New Utility Property Interests or compensation to the Utility Owner for relinquishment of Existing Utility Property Interests within the Final ROW required for a Utility Adjustment.

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

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreement(s); in all other cases, "Betterment" shall mean any upgrading of such facility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments:

(a) any upgrading which is required by the Project;

(b) replacement devices or materials that are of equivalent standards although not identical;

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

(d) any upgrading required by applicable Law;

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

(f) any upgrading required by the Utility Owner's written "standards" meeting the requirements described in Section 6.1.2.2 of the Technical Provisions; or

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

For fiber optic Utilities, extension of a Utility Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Utility Owner in order to maintain its written telephony standards.

Book 1 shall mean the Agreement, all exhibits thereto, and the executed originals of Exhibits that are contracts (if any).

Book 2 means the project-specific technical provisions entitled "Design-Build Technical Provisions for Comprehensive Development Agreement Book 2."

Book 3 means TxDOT's standard technical provisions for CDA's entitled "Programmatic Design-Build Technical Provisions for Comprehensive Development Agreement – Book 3".

Business Day shall mean days on which TxDOT is officially open for business.

Capital Maintenance Agreement or **CMA** shall mean that certain Capital Maintenance Agreement executed by TxDOT and Maintenance Contractor for Maintenance Contractor to perform, at TxDOT's sole option, certain maintenance for the Project.

CDA Documents has the meaning set forth in Section 1.2.1 of the Agreement.

Certificate of Final Acceptance shall mean the certificate issued by TxDOT indicating that the Project has achieved the conditions for Final Acceptance.

Certificate of Substantial Completion shall mean the certificate issued by TxDOT indicating that the Project has achieved the conditions for Substantial Completion.

Change in Law shall mean: (a) the adoption of any Law after the Proposal Due Date, or (b) any change in any Law or in the interpretation or application thereof by any Governmental Entity after the Proposal Due Date, in each case that is materially inconsistent with Laws in effect on the Proposal Due Date; excluding, however, any such Change in or new Law that also constitutes or causes a change in or new Adjustment Standards, as well as any change in or new Law passed or adopted but not yet effective as of the Proposal Due Date. The term **"Change in Law"** also excludes any change in or new Law relating to Developer's general business operations, including licensing and registration fees, income taxes, gross receipts taxes, social security, medicare, unemployment and other payroll-related taxes.

Change of Control means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business. A Change of Control of a shareholder, member, partner or joint venture member of Developer may constitute a Change of Control of Developer if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of Developer, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;

(b) An upstream reorganization or transfer of direct or indirect interests in Developer so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;

(c) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls Developer; or

(d) The exercise of minority veto or voting rights (whether provided by applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, TxDOT has received copies of such agreements.

Change Order shall mean a written order issued by TxDOT to Developer delineating changes in the Work within the general scope of the CDA Documents or in the terms and conditions of the CDA Documents in accordance with Section 13 of the Agreement and establishing, if appropriate, an adjustment to the Price or a Completion Deadline.

Claim shall mean: (a) a demand by Developer, which is or potentially could be disputed by TxDOT, for a time extension under the CDA Documents or payment of money or damages from TxDOT to Developer or (b) a demand by TxDOT, which is or potentially could be disputed by Developer, for payment of money or damages from Developer to TxDOT.

CMA Documents shall mean the documents identified in Sections 1.2.1 and 1.2.2 of the Capital Maintenance Agreement.

Code shall mean the Texas Transportation Code.

Commercial Rules has the meaning set forth in the Disputes Board Agreement.

Commission shall mean the Texas Transportation Commission.

Competent Person shall mean an individual who, by way of training and/or experience, is knowledgeable of applicable health and safety standards, is capable of identifying workplace hazards, is designated, and has authority to take appropriate actions as referred to in OSHA standards and documents.

Comprehensive Environmental Protection Program shall mean the document obligating Developer to protect the environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the environment as further described in Section 4 of the Technical Provisions.

Completion Deadline shall mean the Substantial Completion Deadline and/or Final Acceptance Deadline, as the case may be.

Configuration(s) 1, 2 or 3 mean the Project configuration(s), individually or collectively as applicable, described in Section 1.1 of Book 2.

Conflict of Interest means, with respect to any individual who is or is proposed to be a Disputes Board Member, any one or more of the following:

(a) Such individual is currently or was in the past employed by any member of the Conflicts Group, except that service as a member of other disputes review boards on other contracts or retention as an independent consultant on other contracts does not create a Conflict of Interest so as to preclude an individual from serving as a Disputes Board Member;

(b) Such individual has or is reasonably likely to have a pecuniary interest in the outcome of the applicable Dispute or such individual has any (i) ownership interest in any member of the Conflicts Group, except a remote interest or (ii) financial interest in any of the CDA Documents or any Contract (except that such individual's interest in receiving, and receipt of, payment for service on the Disputes Board shall not be considered a financial interest for purposes of this definition), in either case except for a remote interest. An ownership interest is remote only if it is less than 0.5% of the issued and outstanding shares or other legal or beneficial ownership interest, or less than 0.5% of the issued and outstanding indebtedness, of a member of the Conflicts Group. Mere use of the Facility shall not constitute a pecuniary, ownership or financial interest for purposes of this definition;

(c) Such individual shall not have had substantial prior involvement in any aspect of the FCA, a Contract or the Facility of a nature which could reasonably be expected to affect his or her ability to impartially resolve Disputes;

(d) Such individual shall not know of any reason, including but not limited to the existence of any of the Conflicts of Interest as described in this definition, why he or she cannot be impartial in resolving Disputes; and

(e) In addition to the Conflicts of Interest described above, any other circumstance arising out of such individual's existing or past activities, business interests and/or contractual relationships with any member of the Conflicts Group such that such individual is or is reasonably likely to be unable to render a Disputes Board Decision impartially or such individual's objectivity in performing his or her role on the Disputes Board is or is reasonably likely to be impaired.

Conflicts Group means a Party, a Party's Affiliates and its and their agents, contractors, subcontractors or suppliers and any other Person that is a party to a Contract.

Construction Documents shall mean all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project and/or the Utility Adjustments in accordance with the CDA Documents.

Construction General Permit shall mean a permit under the TPDES program for the management of storm water discharges from construction sites as more particularly described in Section 4.3.2 of the Technical Provisions.

Construction Monitoring Plan (CMP) shall mean the plan indicating times, locations, and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with Environmental Laws and the CDA Documents as more particularly described in Section 4.3.7 of the Technical Provisions.

Construction Quality Acceptance Firm (CQAF) shall mean the independent firm identified in the Proposal (or such other firm approved by TxDOT in its sole discretion) responsible for performing independent quality assurance material testing, inspection, and audits of the CQP. The initial approved CQAF is PSI.

Construction Quality Acceptance Manager (CQAM) shall mean the person appointed by the CQAF who is responsible for management and quality acceptance functions, as more particularly described in Section 2.2.8.1.3 of the Technical Provisions.

Construction Quality Management Plan (CQMP) shall mean the plan that establishes quality control and quality acceptance procedures for the Work as more particularly described in Section 2.2.8 of the Technical Provisions.

Construction Work means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver or equip the Project and/or the Utility Adjustments. Construction Work includes landscaping.

Contract means any agreement, and any supplement or amendment thereto, by Developer with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term "Contract" excludes Utility Agreements.

Corridor Structure Type Study and Report shall mean a preliminary bridge type study report to evaluate potential superstructure and substructure configurations which may be suitable for the proposed bridges based on span lengths, deck widths, soil parameters, hydraulic and scour issues, environmental issues, wetland impacts, safety and maintenance of traffic, highway alignments, constructability, aesthetic requirements, future widening, construction schedule and costs. The Corridor Structure Type Study Report recommends configurations for the proposed bridges based on the above analysis and also provides the rationale for recommending the proposed alternatives as more particularly described in Section 13 of the Technical Provisions.

Cost and Schedule Proposal shall mean Developer's proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with Section 13.2.1.3 of the Agreement.

Cost to Cure shall mean an appraisal method applied to estimate a proper adjustment for damages to a property that can be physically and economically corrected, as described in further detail in the TxDOT Appraisal and Review Manual.

Critical Path shall mean each critical path on the Project Schedule, which ends on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e. the term shall apply only following consumption of all available Float in the schedule for Substantial Completion or Final Acceptance, as applicable). The lower case term "critical path" shall mean the activities and durations associated with the longest chain(s) of logically connected activities through the Project Schedule with the least amount of positive slack or the greatest amount of negative slack.

Customer Groups shall mean groups, Persons and entities having a perceived stake or interest in the Project, including: the media, elected officials, Governmental Entities, general public residing or working within the general vicinity of the Project or traveling within or across the limits of the Project, business owners within or adjacent to the Project, Utility Owners, operating railroads, community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.) and other Persons or entities affected by the Project, including those identified in Section 3.2.4 of the Technical Provisions.

Day or **day** shall mean calendar days unless otherwise expressly specified.

DBE Performance Plan shall mean Developer's plan for meeting the DBE participation goals set forth in Section 7.1 of the Agreement.

DBE Special Provisions shall mean TxDOT's special provisions for the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, which special provisions are set forth in Exhibit 6 to the Agreement.

Decent, Safe and Sanitary (DSS) Dwelling shall mean the condition of a dwelling such that it meets applicable housing and occupancy codes as defined in 49 CFR Part 24.

Deferred Work Component(s) shall mean each of the items described in Attachment 1-7 to Book 2.

Deferred Work Component Notice to Proceed shall mean a notice to proceed with one or more of the Deferred Work Components, pursuant to Section 4.1.6.

Deferred Work Component (DWC) Prices shall mean the individual prices associated with each Deferred Work Component, as set forth in Section 12.1.6.

Deliverable shall mean an end product or other item/element/submission requiring TxDOT concurrence and/or acceptance.

Design Documents shall mean all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports,

studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project and/or the Utility Adjustments in accordance with the CDA Documents, the Governmental Approvals and applicable Law.

Design Exception shall mean a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual. The procedures for requesting a Design Exception are found in the TxDOT Project Development Policy Manual.

Design Firm shall mean the qualified Registered Professional Engineer's firm responsible for the design of the Project.

Design Quality Management Plan (DQMP) shall mean the plan prepared by Developer setting forth the internal quality control & quality assurance procedures to be followed during performance of Professional Services, as more particularly described in Section 2.2.7 of the Technical Provisions.

Design Speed means the speed used to determine the various geometric design features of the roadway.

Design Waiver shall mean a deviation from the minimum requirements in a non-controlling category as identified in the TxDOT Roadway Design Manual.

Design Work means all Work of design, engineering or architecture for the Project, Project ROW acquisition or Utility Adjustments.

Developer shall mean NorthGate Constructors, J.V., a Texas joint venture, together with its successors and assigns.

Developer Default has the meaning set forth in Section 16.1.1 of the Agreement.

Developer-Designated ROW shall mean any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Schematic ROW that Developer determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT to be acquired at Developer's cost and expense. The term specifically includes any easements required for drainage for the Project and any air space, surface rights and subsurface rights within the Developer-Designated ROW. The term specifically excludes the Replacement Utility Property Interests, any temporary easements or other temporary real property interests that Developer may deem necessary or advisable to acquire, at its own cost and expense, for excessive work space, contractor lay-down areas, material storage areas, or other convenience of Developer.

Developer-Initiated VE shall have the meaning set forth in Section 22.1 of the Agreement.

Developer-Related Entities shall mean: (a) Developer, (b) Developer's shareholders, partners, joint venturers and/or members, (c) Subcontractors (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom Developer may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

Developer Release(s) of Hazardous Materials means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Developer-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Developer-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Developer-Related Entity in violation of the requirements of the CDA Documents or any applicable Law or Governmental Approval.

Developer's Utility Tracking Report shall mean an electronic report regarding Utilities likely to be impacted by the Project which Developer shall maintain on a current basis and shall submit quarterly to TxDOT, as more particularly described in Section 6.5.2 of the Technical Provisions.

Deviations shall mean: (a) any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions, or (b) a change in the Work or other requirements of the CDA Documents issued under Section 13.13 of the Agreement. "**Deviation**" includes a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual.

DFW-Airport Parcels shall mean the parcels identified in Section 7.5 of the Technical Provisions, which are labeled as "Fort Worth, City of (Airport)" in the ROW ownership map.

Differing Site Condition shall mean: (a) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents listed in Exhibit 19, which differ materially from those conditions indicated in the geotechnical reports for such boring holes; or (b) subsurface or surface physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Agreement. The term shall specifically exclude all such conditions of which Developer had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography; (ii) variations in subsurface moisture content; (iii) Utility facilities; (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; and (vi) any conditions which constitute or are caused by a Force Majeure Event.

Directive Letter shall have the meaning set forth in Section 13.1.1.2 of the Agreement.

Disadvantaged Business Enterprise or **DBE** shall have the meaning set forth in Exhibit 6 to the Agreement.

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

Dispute Resolution Procedures means collectively, the procedures established under Sections 19.3.4 and 19.3.5 of the Agreement and in Section 5 of the Disputes Board Agreement and the applicable portions of Section 201.112 of the Code and the DRP Rules. None of the Informal Resolution Procedures are included in the Dispute Resolution Procedures.

Disputes Board has the meaning set forth in the Disputes Board Agreement.

Disputes Board Agreement means the agreement in the form attached to the Agreement as Exhibit 20.

Disputes Board Chair has the meaning set forth in the Disputes Board Agreement.

Disputes Board Decision has the meaning set forth in the Disputes Board Agreement.

Disputes Board Error has the meaning set forth in Section 19.3.5.2 of the Agreement.

Disputes Board Member means an individual serving as one of the three members of the Disputes Board.

Disputes Board Member Candidate Evaluation Period has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Candidates' List has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Joinder Agreement has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Qualifications has the meaning set forth in the Disputes Board Agreement.

Draw Request shall mean a Draw Request and Certificate in the form of Exhibit 15 to the Agreement or Exhibit 11 to the Capital Maintenance Agreement.

DRP Rules means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act and effective under Rule §9.6 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding dispute resolution procedures applicable to the resolution of all claims and disputes of every kind or character arising under comprehensive development agreements such as and including the CDA Documents.

Early Start of Construction shall mean the initiation of construction before the Final Design Plans have been approved by TxDOT, as more particularly described in Section 2.2.7.9 of the Technical Provisions.

Effective Date shall mean the date of the Agreement or such other date as shall be mutually agreed upon in writing by TxDOT and Developer.

Electronic Data Management System shall mean the secure data management system provided by Developer containing all of the data Developer is required to submit to TxDOT in connection with the Work and compatible with data systems, standards and procedures employed by TxDOT, as more particularly described in Section 2.1.2.2 of the Technical Provisions.

Electronic Toll Collection System shall mean the toll collection system to be provided by the Systems Integrator, in connection with which Developer provides support and coordination, as more particularly described in Section 21 of the Technical Provisions.

Element means an individual component, system or subsystem of the Project or of a Utility Adjustment included in the Construction Work, and shall include at a minimum a breakdown into the items described in the Performance and Measurement Table Baseline, further subdivided by Auditable Section where appropriate.

Emergency means any unplanned event within the Project Right of Way that (a) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the Safety of Users or the public; or (c) is recognized by the Texas Department of Public Safety as an emergency.

Emergency Services shall mean law enforcement, ambulance service and other similar services from agencies with whom Developer establishes protocols for incident response, safety and security procedures, as set forth in the Emergency Management Plan.

Engineer in Responsible Charge shall mean the professional engineer accountable for direction, control and supervision to assure that the Work has been critically examined and evaluated for compliance with appropriate professional standards and the requirements of the CDA Documents and the CMA Documents, as applicable.

ENR Construction Cost Index shall mean the 12-month "Construction Cost Index" published by Engineering News-Record, Two Penn Plaza, 9th Floor, New York, NY 10121.

Environmental Approvals shall mean all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project, including New Environmental Approvals, approvals and permits required under NEPA and those approvals identified in Section 4 of the Technical Provisions.

Environmental Commitment (also **Environmental Permits, Issues and Commitments**) shall mean an environmental requirement that must be fulfilled before, during or after construction. Environmental Commitments include commitments to avoid impacts in specified areas, complete environmental investigations before construction impacts, or to perform specified actions after completion of construction.

Environmental Commitments Document shall mean the draft document describing anticipated environmental commitments released to Proposers on May 9, 2008, including any updates provided to Proposers prior to December 3, 2008.

Environmental Compliance and Mitigation Plan shall mean the Developer's plan, to be prepared under the CEPP described in the Project Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, and for complying with all other conditions and requirements of the Environmental Approvals, as more particularly described in Section 4.3.2 of the Technical Provisions.

Environmental Compliance Inspectors (ECIs) shall mean the person(s) retained or employed by Developer who provide on-site monitoring of the Project and the Work under direction of the Environmental Compliance Manager as more particularly described in Section 4.4.2 of the Technical Provisions.

Environmental Compliance Manager (ECM) shall mean the person retained or employed by Developer who has the authority and responsibility for monitoring, documenting, and reporting environmental compliance for the Work as more particularly described in Section 4.4.1 of the Technical Provisions.

Environmental Law shall mean any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any

present and future amendments thereto and reauthorizations thereof) including those relating to:

(a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;

(b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

(c) Releases of Hazardous Materials;

(d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;

(e) The operation and closure of underground storage tanks;

(f) and safety of employees and other persons; and

(g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following:

(i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;

(ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;

(iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);

(iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;

(v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);

(vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;

(viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;

(ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;

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

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

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

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

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

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

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

(xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;

(xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;

(xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Project Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know-Act);

(xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);

(xxi) The Texas Water Code;

(xxii) The Texas Parks and Wildlife Code;

(xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);

(xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and

(xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Act).

Environmental Management System shall mean the system and program that the Environmental Compliance Manager supervises. The system and program includes monitoring field activities for environmental compliance by environmental inspectors, producing weekly reports, providing an environmental training program including a training staff, and developing an environmental team as more particularly described in Section 4.3.1 of the Technical Provisions.

Environmental Protection Training Program (EPTP) shall mean that program to be initiated by Developer and overseen by TxDOT personnel to ensure the Work is conducted in accordance with the environmental commitments and requirements set forth in all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.3.3 of the Technical Provisions.

Environmental Team (ET) shall mean the personnel team appointed by Developer, and led by the ECM, to ensure compliance with all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.4 of the Technical Provisions.

Environmental Training Staff shall mean Project personnel with experience as set forth in the Technical Provisions and appointed by the ECM to develop and implement an Environmental Protection Training Program as more particularly described in Section 4.4 of the Technical Provisions.

Error shall mean an error, omission, inconsistency, inaccuracy, deficiency or other defect.

Escrowed Proposal Documents or **EPDs** shall have the meaning set forth in Section 21.1 of the Agreement.

Evaluating Party has the meaning set forth in the Disputes Board Agreement.

Event of Default shall have the meaning set forth in Section 16.1.3 of the Agreement.

Existing Utility Property Interest shall mean any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

Expendable Materials shall mean: (a) tangible personal property that loses its distinct and separate identity when incorporated into real property (examples include framing lumber, bricks, steel, re-bar, concrete) and (b) consumable items, defined as nondurable tangible personal property that is used to improve real property and that, after being used once for its intended purpose, is completely used or destroyed so that it has no salvage value (examples include non-reusable concrete forms, non-reusable drop cloths, barricade tape, natural gas, and electricity).

Federal Requirements shall mean the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 3 to the Agreement.

Final Acceptance shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the Agreement, as and when confirmed by TxDOT's issuance of a Certificate of Final Acceptance.

Final Acceptance Deadline shall mean the deadline set forth in Section 4.2.2 of the Agreement, as such deadline may be adjusted by Change Order pursuant to the Agreement.

Final Design shall mean, depending on the context: (a) the Final Design Documents, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents.

Final Design Documents shall mean the complete final construction drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals necessary or related to the construction of the Project and any Utility Adjustments, and satisfying the requirements presented in Section 2.2.7.7 of the Technical Provisions.

Final Design Submittal shall mean the submittal by Developer for review and comment by TxDOT of Design Documents certified by the PSQCM demonstrating compliance with the CDA Documents and incorporating all Intermediate Design Submittal review comments, as more particularly described in Section 2.2.7.5 of the Technical Provisions.

Final Draw Request shall mean the written request for Final Payment under the Agreement as described in Section 12.4 of the Agreement.

Final Order means the order issued by the Executive Director pursuant to Section 19.3.5.1 or 19.3.5.4 of the Agreement.

Final Order Implementing Decision has the meaning set forth in Section 19.3.5.1(b) and 19.3.5.4(a)(ii) of the Agreement.

Final Order Vacating Decision has the meaning set forth in Section 19.3.5.4(a)(i) of the Agreement.

Final Payment shall mean payment by TxDOT of the final installment of the Price.

Final Reconciliation means the process described in Section 12.4 for determining the undisputed amount owed to Developer after Final Acceptance, and a schedule for payment of such amount.

Fiscal Year shall mean the calendar year or any other consecutive 12-month period selected by Developer and approved by TxDOT.

Float shall mean the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect the Substantial Completion Deadline or Final Acceptance Deadline, as applicable. Such Float is generally identified as the difference between the early completion date and late completion date for activities as shown on the Project Schedule.

Force Majeure Event shall mean any of the events listed in clauses (a) through (j) below, subject to the exclusions listed in clauses (i) through (viii) below, which materially and adversely affects Developer's obligations, provided such events are beyond the control of the Developer-Related Entities and are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or Law of any of the Developer-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer:

(a) Any earthquake, tornado, hurricane or other natural disaster that causes direct physical damage to the Project;

(b) Any epidemic in the Dallas-Fort Worth area;

(c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;

(d) The discovery at, near or on the Project ROW (excluding Developer-Designated ROW) of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Developer prior to the Proposal Due Date and would not have become known to Developer by undertaking reasonable investigation prior to the Proposal Due Date;

(e) The discovery at, near or on the Project ROW (excluding Developer-Designated ROW) of any species listed of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Proposal Due Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Developer prior to the Proposal

Due Date and would not have become known to Developer by undertaking reasonable investigation prior to the Proposal Due Date;

(f) Any Change in Law, which (1) requires a material modification of the Project design, (2) requires Developer to obtain a new major State or federal environmental approval not previously required for the Project, (3) results in an increase in Developer's costs directly attributable to the Change in Law of at least $250,000, (4) results in imposition of additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources, or (5) specifically targets the Project or Developer;

(g) Any spill of Hazardous Material by a third party who is not acting in a capacity of a Developer-Related Entity which: (1) occurs after the Proposal Due Date, (2) is required to be reported to a Governmental Entity and (3) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation;

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

(i) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the TxDOT-Provided Approvals or other Governmental Approval; and

(j) The addition of any new condition or requirement in the NEPA Approval or the final USACE Nationwide Permit based on the Schematic Design and the Schematic ROW, subject to the limitations and conditions described in Section 6.10.1 of the Agreement.

The term "**Force Majeure Event**" shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:

(i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;

(ii) except as provided in clause (b) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;

(iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;

(iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e), (h), (i) or (j) above;

(v) any increased costs or delays related to any Utility Adjustment Work or failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (j) above;

(vi) the presence at, near or on the Site, as of the Effective Date, of any Hazardous Material, including substances disclosed in the Reference Information Documents as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;

(vii) any Change in Law which has the effect of modifying a Utility Owner's required specifications, standards of practice and/or construction methods for the Utility Adjustment Work to be furnished or performed by Developer (or reimbursed by Developer), which occurs after the Proposal Due Date but prior to the date on which the applicable Utility Agreement is signed by the Utility Owner; and

(viii) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (j) above.

Generally Accepted Accounting Principles shall mean such accepted accounting practice as, in the opinion of the accountant, conforms at the time to a body of generally accepted accounting principles.

Geotechnical Engineering Reports shall mean the reports documenting the assumptions, conditions and results of geotechnical investigations and analysis, as more particularly described in Section 8.4 of the Technical Provisions.

Good Industry Practice shall mean the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor or maintenance contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic area as the Project.

Governmental Approval shall mean any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities, including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the

Work or the Project, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner.

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

Guarantor shall mean each of the entities which provided a guaranty in the form of Exhibit 13 of some or all of the obligations of Developer under the CDA Documents.

Guaranteed Obligations shall have the meaning set forth in the Guaranty.

Guaranty shall mean each guaranty executed by a Guarantor guaranteeing some or all of the obligations of Developer under the CDA Documents.

Hazardous Materials shall mean any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. The term "**Hazardous Materials**" includes the following:

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

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

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

(d) Any flammable substances or explosives;

(e) Any radioactive materials;

(f) Any asbestos or asbestos-containing materials;

(g) Any lead and lead-based paint;

(h) Any radon or radon gas;

(i) Any methane gas or similar gaseous materials;

(j) Any urea formaldehyde foam insulation;

(k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;

(l) Pesticides;

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

(n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

Hazardous Materials Management shall mean 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 Work, as well as 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 is the most cost-effective approach authorized under applicable Law.

Hazardous Materials Management Plan shall mean the plan prepared by Developer for the safe handling, storage, treatment and/or disposal of Hazardous Materials both within and outside the Project ROW, as more particularly described in Section 4.3.5 of the Technical Provisions.

Hazardous Materials Manager shall mean the person designated by the Environmental Compliance Manager to provide expertise in the safe handling of Hazardous Materials, as more particularly described in Section 4.4.7 of the Technical Provisions.

Identified Utility shall mean any Utility impacted by the Project to which any one or more of the following applies:

(a) The Utility line is shown on the Utility Strip Map (irrespective of whether correct ownership is shown).

(b) The Utility type (e.g., gas, water, communication, electric) is shown on the Utility Strip Map (differences in material, e.g., clay vs. plastic, shall not be considered a difference in type).

(c) The Utility is an overhead Utility existing as of the Proposal Date or which commenced installation prior to the Proposal Date.

(d) The Utility is an extension of an Identified Utility (including a Service Line extending from an Identified Utility).

(e) The Utility is located in the same trench as an Identified Utility (e.g. communication duct bank and joint communication cable facilities).

Any appurtenance, including manholes, pedestals, handholes, fire hydrants, and Fxboxes, not shown on the Utility Strip Map that is a component or extension of an Identified Utility is considered a part of the Identified Utility.

If a Utility falls within any of the categories listed above, then it is an Identified Utility regardless of any discrepancy between (i) the information provided on the Utility Strip Map, and (ii) the actual characteristics of that Utility with respect to its size, its horizontal or vertical location, its ownership, its type (e.g., gas, water, communication, electric), or any other characteristic. Without limiting the generality of the foregoing, if a Utility is shown on the Utility Strip Map as being on public right of way, and it is in fact located on private right of way, or vice versa, that discrepancy is of no relevance in determining whether or not that Utility is an Identified Utility.

Incident shall mean a localized disruption to the free flow of traffic on or safety of users of the Project.

Incidental Utility Adjustment Work shall mean all of the following work that Developer is responsible for performing, or causing to be performed, at its own expense and that is necessary or determined by Developer to be required for the construction and/or accommodation of the Project:

(a) Service Line Adjustments including appurtenances (excluding any Service Line Adjustment for which the owner of the affected real property has been compensated pursuant to Section 6 - Right of Way, and provided that Developer shall obtain all temporary rights of entry needed for such Adjustments in accordance with Section 6 - Right of Way);

(b) Temporary Utility Adjustments;

(c) Utility Appurtenance Adjustments;

(d) Temporary Protections in Place; and

(e) Resurfacing and re-striping of streets (including sidewalks) and reconstruction of curb, gutter, sidewalks and landscaping where necessary due to Utility Adjustment Work, whether performed by the Utility Owner or by Developer.

Indemnified Parties shall mean TXDOT, the State, the Texas Transportation Commission, FHWA, the Program Manager and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

Informal Resolution Procedures has the meaning set forth in Section 19.3.2 of the Agreement.

Instructions to Proposers (ITP) shall mean the Instructions to Proposers issued by TxDOT on February 22, 2008 as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

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

Intelligent Transportation System (ITS) shall mean the system to monitor traffic flow, detect traffic and traffic operational conditions and communicate relevant traffic information to users of the Project as more particularly described in Section 17 of the Technical Provisions.

Investigative Work Plan (IWP) shall mean a plan prepared by Developer addressing the methods, techniques, and analytical testing requirements to adequately characterize the extent of impacts by Hazardous Materials to an area of concern.

Job Training and Small Business Mentoring Plan shall mean the plan set forth in Exhibit 8 to the Agreement.

Key Personnel shall mean the following positions:

(1) Project Director; (2) Deputy Project Director – Design; (3) Deputy Project Director – Construction; (4) Public Relations Manager; (5) Right of Way Manager; (6) Utility Manager; (7) Design Manager; (8) Construction Manager; (9) Professional Services Quality Control Manager; (10) Construction Quality Control Manager; (11)

Environmental Compliance Manager; (12) Independent Construction Quality Acceptance Manager; (13) Maintenance Manager; and (14) Maintenance QC Manager.

Lane Closure shall mean full or partial closure of any traffic lane in any portion of the Project and for any duration, including main lanes, ramps, direct connectors, frontage roads and cross roads.

Lane Rental Charges shall mean the liquidated damages described in Exhibit 17 to the Agreement.

Law or **Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or 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 TxDOT within the scope of its administration of the CDA Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws", however, excludes Governmental Approvals.

Lien shall mean any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Liquidated Damages shall have the meaning set forth in Section 17.1.1 of the Agreement.

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

Maintaining Agency shall mean the agency responsible for the maintenance of traffic signals along crossing streets or roads.

Maintenance Contractor shall mean NorthGate Constructors, J.V..

Maintenance NTP1 shall have the meaning set forth in Exhibit 1 of the Capital Maintenance Agreement.

Maintenance Services shall have the meaning set forth in Exhibit 1 of the Capital Maintenance Agreement.

Maintenance Term shall have the meaning set forth in Exhibit 1 of the Capital Maintenance Agreement.

Major Culvert shall mean a culvert that provides an opening of more than 35 square feet in a single or multiple installations. A major culvert may consist of a single round pipe, pipe arch, open or closed-bottom box, bottomless arch, or multiple installations of these structures placed adjacent or contiguous as a unit. Certain major culverts are classified as bridges when they provide an opening of more than 20 feet, measured parallel to the roadway; such culverts may be included in the bridge inventory.

Major River Crossing shall mean a crossing with a 100-year storm event flow in excess of 10,000 cubic feet per second (cfs).

Major Subcontracts shall mean a Subcontract in excess of $3,000,000.

Major Subcontractor shall mean a Subcontractor who has entered into a Major Subcontract with Developer.

Management Plans shall mean all of the management plans listed in Section 2 of the Technical Provisions.

Master Utility Adjustment Agreement (MUAA) shall mean an agreement between Developer and a Utility Owner which sets forth terms and conditions for one or more Utility Adjustments, as the same may be amended or supplemented from time to time and as more particularly described in Section 6.1.4.1 of the Technical Provisions. A document is a "Master Utility Adjustment Agreement" if it meets the foregoing definition, without regard to the title of the document.

(a) **Master Utility Adjustment Agreement (Developer-Managed)** shall mean a Master Utility Adjustment Agreement providing for design and construction by Developer of the Utility Adjustment(s) addressed therein.

(b) **Master Utility Adjustment Agreement (Owner-Managed)** shall mean a Master Utility Adjustment Agreement providing for design and construction by the Utility Owner of the Utility Adjustment(s) addressed therein.

Maximum Payment Schedule shall mean the curve described in Section 4.3.3 of the Agreement which constitutes a cap on the aggregate amount of payments which may be made to Developer hereunder at any specified time.

Minor Culvert shall mean any culvert that is not classified as a major culvert.

Misconduct means, with respect to any individual who is a Disputes Board Member, any one or more of the following:

(a) Any *ex parte* communication or discussion between any Disputes Board Member and either Party (or a member of the Conflicts Group on behalf of either Party) or other *ex parte* communication prohibited under R-10 of the Commercial Rules;

(b) Any offer, solicitation, discussion, agreement or understanding between any Disputes Board Member and any Party or any other Person regarding (i) remuneration conditioned upon the nature or result of a certain Disputes Board Decision or (ii) employment of the Disputes Board Member by any member of the Conflicts Group following termination of such member's services on the Disputes Board, except for employment as a member of a subsequent Disputes Board or similar disputes board for a project other than the Facility;

(c) The rendition of advice or consultative services to either Party or member of the Conflicts Group; or

(d) A material lack of the requisite experience under Section 4.1 of the Disputes Board Agreement that was not and could not reasonably have been discovered by the Nominating Party or the Evaluating Party at the time such individual was proposed and approved for inclusion on the Nominating Party's Disputes Board Member Candidates' List, including, by way of example and not limitation, a situation where such individual has materially misrepresented his or her experience to the Parties.

Municipal Separate Storm Sewer System shall mean the classification of a storm water sewer system of communities that exceed population thresholds established under the TPDES program as more particularly described in Section 4.3.2 of the Technical Provisions.

National Flood Insurance Program shall mean the insurance program managed by the Federal Emergency Management Agency which provides flood insurance to property owners located in participating communities.

Nationwide Permit Program shall have the meaning set forth in 33 CFR Part 330.

Natural Resource Biologist shall mean the team member designated by the Environmental Compliance Manager to provide expertise on monitoring impacts on wildlife and the natural environment due to construction activities related to the Work as more particularly described in Section 4.4.5 of the Technical Provisions.

Necessary Basic Configuration Change shall mean a change in the Basic Configuration which is necessary to meet the requirements of the CDA Documents as the result of an Error in the Schematic Design (with the understanding that a change shall be deemed "necessary" only if the Error creates a problem in which Developer is unable to meet the requirements of the CDA Documents without a material change in the Basic Configuration).

NEPA Approval shall mean the Finding of No Significant Impact issued by FHWA and FAA on April 23, 2009,, and all approved supplements and reevaluations pertaining to the Project as of the Effective Date.

New Environmental Approval shall mean: (a) any Environmental Approval required for the Project, other than TxDOT-Provided Approvals, and (b) any revision, modification, or amendment to any TxDOT-Provided Approval, including any such approval, revision, modification, or amendment required for the drainage easements described in Section 6.2.2 of the Agreement.

New Utility shall mean a Utility installed within the Schematic ROW after the Proposal Due Date, not contained in the Utility Strip Map, and not otherwise known to Developer prior to the Proposal Due Date.

Nominating Party has the meaning set forth in the Disputes Board Agreement.

Nonconforming Work shall mean Work that does not conform to the requirements of the CDA Documents, the Governmental Approvals, applicable Law or the Design Documents.

Notice of Intent shall mean the notice of intent prepared and submitted by Developer to the TCEQ under the Construction General Permit for storm water discharges from construction sites as more particularly described in Section 4.3.2 of the Technical Provisions.

Notice of Partial Termination for Convenience shall mean written notice issued by TxDOT to Developer terminating part of the Work of Developer for convenience under Section 15.1 of the Agreement.

Notice of Termination for Convenience shall mean written notice issued by TxDOT to Developer terminating the Work of Developer for convenience under Section 15.1 of the Agreement.

NTP1 means a written notice issued by TxDOT to Developer authorizing Developer to proceed with the portion of the Work described in Section 4.1.3 of the Agreement.

NTP2 means a written notice issued by TxDOT to Developer pursuant to Section 4.1.4 of the Agreement authorizing Developer to proceed with the remaining Work and other activities pertaining to Configuration 1, Configuration 2 or Configuration 3, as applicable.

Off-Peak Times shall mean all times not defined as Peak Times.

Open Book Basis shall mean providing TxDOT all underlying assumptions and data associated with pricing or compensation (whether of Developer or TxDOT) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating

factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by TxDOT to satisfy itself as to the reasonableness of the amount.

Option(s) shall mean the options held by TxDOT for performance of the Configuration 2 and Configuration 3 Work.

Option Notice to Proceed shall mean the notice to be issued by TxDOT in order to exercise an Option pursuant to Section 4.1.5.

Option Price means the Proposer's Price for Configuration 2 or Configuration 3, reflected in Form N-1.b or N-1.c, as applicable, with ATC adjustments reflected in Form N-1.2.b or N-1.2.c, as applicable, and Maintenance Price reflected in Form O.b or O.c, as applicable.

Outstanding Natural Resource Waters shall have the meaning set forth in Section 4 of the Technical Provisions.

Party shall mean Developer or TxDOT, as the context may require, and "**Parties**" shall mean Developer and TxDOT, collectively.

Payment Bond shall mean the NTP1 Payment Bond described in Section 8..1.2 and/or NTP2 Payment Bond described in Section 8.1.4, as applicable.

PCO Notice shall have the meaning set forth in Section 13.3.2.3 of the Agreement.

Peak Times shall have the meaning set forth in Exhibit 17. .

Performance Bond shall mean the NTP1 Performance Bond described in Section 8.1.1 and/or NTP2 Performance Bond described in Section 8.1.3, as applicable.

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

Plans means (only where capitalized) contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Construction Work to be done.

Pre-existing Hazardous Materials means Hazardous Materials that meet all of the following criteria:

(a) The Hazardous Materials are in, on or under the Project ROW (excluding Developer-Designated ROW) as of the date TxDOT makes available to Developer the affected parcel; and

(b) The Hazardous Materials are not required to be removed and disposed of due to a Developer Release of Hazardous Materials.

For purposes of this definition, "makes available" means the Effective Date, except for parcels not yet acquired as of the Effective Date.

Preliminary Design Submittal shall mean the submittal by Developer for review and comment by TxDOT of horizontal and vertical geometrics, bridge clearances and limits of Work as required under Section 2.2.7.5 of the Technical Provisions.

Preliminary Bridge Layouts shall mean the bridge layouts prepared subsequent to the Corridor Structure Type Study Report described in Section 13.1 of the Technical Provisions.

Preliminary Project Baseline Schedule shall mean the original Project Schedule submitted with the Proposal.

Price Proposal shall mean Forms BAFO N-1.a, BAFO N-1.b, BAFO N-1.c, BAFO N1.1a, BAFO N-1.1b, BAFO N-1.1c, BAFO N-1.2.a, BAFO N-1.2.b, BAFO N-1.2.c, BAFO O.a, BAFO O.b and BAFO O.c, and revised Forms N-1.a, N-1.1a, and N-1.2.a, as submitted with the Proposal.

Price shall mean the price set forth in Section 12.1 of the Agreement, as it may be modified from time to time in accordance with the express provisions of the Agreement.

Professional Services shall mean all Work performed under the Agreement other than Construction Work, including the following services and Work: (a) design and engineering; (b) right of way acquisition services; (c) surveying; (d) Utility Adjustment design; and (e) environmental permitting and compliance services.

Professional Services Quality Control Manager (PSQCM) shall mean the person assigned by Developer with responsibility to cause the methods and procedures contained in the approved PSQP to be implemented and followed by Developer's design staff in the performance of the Work, as more particularly described in Section 2.2.7.4 of the Technical Provisions.

Program Manager shall mean Carter & Burgess, Inc. or such other Person (including the entity, as well as its personnel) designated in writing by TxDOT as its Program Manager.

Programmatic Agreement shall mean the agreement between FHWA, the Advisory Council on Historic Preservation and the Texas Historical Commission.

Project shall have the meaning set forth in Recital B to the Agreement.

Project Baseline Schedule shall mean the schedule consistent with the Completion Deadlines, submitted by Developer as a condition of Notice to Proceed,

setting forth the approved schedule of Work against which any subsequent schedule amendments are tracked, as more particularly described in Section 2.1.1.2 of the Technical Provisions.

Project Management Plan shall mean the document complying with BS ENO ISO 9001 and BS EN ISO 14001, as appropriate, and approved by TxDOT, describing quality assurance and quality control activities necessary to manage the development, design, construction, operation and maintenance of the Project, containing the TxDOT-approved component parts, plans and documentation described in Section 2 and Attachment 2-1 to the Technical Provisions.

Project Manager shall mean the individual designated by Developer and approved in writing by TxDOT in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of Developer, pursuant to Section 2.2.2 of the Agreement.

Project ROW shall mean the Schematic ROW and the Additional Properties, but excluding therefrom any portion of the Schematic ROW eliminated from the Project by a Change Order.

Project Schedule shall mean one or more, as applicable, of the logic-based critical path schedules (the Project Baseline Schedule, the Project Status Schedule and the Project Recovery Schedule) for all Work leading up to and including Final Acceptance, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with Section 2.1.1.2 of the Technical Provisions.

Project Specific Locations shall mean areas in which Developer proposes Project-specific activities in connection with the Work not within the Project ROW boundaries identified in the NEPA Approval, such as construction work sites, field office locations, temporary work areas, staging areas, storage areas, and earth work material borrow sites.

Project Status Schedule Update shall mean the update of the Project Schedule to reflect the current status of the Project, as more particularly described in Section 2.1.1.2.2 of the Technical Provisions.

Proposal shall mean Developer's original Proposal submitted in response to the RFP, as modified by the BAFO in accordance with ITP Section 5.8.

Proposal Due Date shall mean July 15, 2008, the deadline for submission of the Proposal to TxDOT .

Proposal Pavement Design shall mean a pavement designs submitted as part of the Developer's Proposal.

Proposer shall mean each entity that was shortlisted based on TxDOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on December 29, 2006, as amended.

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

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

Public Information Act shall mean the Texas Government Code Chapter 552.001 *et seq.*, as amended from time to time.

Public Information and Communications Plan (PICP) shall mean the plan setting forth procedures by which Developer works with TxDOT to inform, coordinate with, educate and engage Customer Groups, as more particularly described in Section 3.2.1 of the Technical Provisions.

Public Information Coordinator shall mean the person designated by Developer to manage Developer's public information activities as more particularly described in Section 3.2.2 of the Technical Provisions.

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

Quality Management Plan (QMP) shall mean the set of TxDOT-approved plans for quality management and control of the Project and Work, as described in Section 2.2 of the Technical Provisions.

Quitclaim Deed shall mean a quitclaim deed to be executed by a Utility Owner relinquishing its rights to maintain a Utility in a particular location, as more particularly described in Section 6.2.4.4 of the Technical Provisions.

Recognized Environmental Condition shall have the meaning set forth in ASTM E-1527-00.

Record Drawings means construction drawings and related documentation revised to show significant changes made during the construction process; usually

based on marked-up Final Design Documents furnished by Developer; also known as as-built plans.

Recovery Schedule shall mean the schedule Developer is required to provide under Section 4.5 of the Agreement.

Reference Information Documents shall mean those documents listed in Exhibit 19 to the Agreement. Except as expressly provided in the CDA Documents, the Reference Information Documents are not considered CDA Documents and were provided to Developer for informational purposes only and without representation or warranty by TxDOT.

Registered Landscape Architect shall mean a person who is duly licensed and registered by the State to engage in the practice of landscaping.

Registered Professional Engineer shall mean a person who is duly licensed and registered by the Texas Board of Professional Engineers to engage in the practice of engineering in the State.

Registered Professional Land Surveyor shall mean a person registered by the Texas Board of Professional Land Surveying to practice the profession of land, boundary, or property surveying or other similar professional practices.

Reimbursable Hazardous Materials Costs shall mean Developer's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 13.9.4 of the Agreement, provided that the 25% and 145% mark-ups allowed under Section 13.7.1 of the Agreement shall be reduced to 12.5% and 130%, and the 15% mark-up allowed under Section 13.7.2 of the Agreement shall be reduced to 7.5%.

Release of Hazardous Materials means 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.

Replacement Housing Calculation shall mean the opportunity to provide the displaced person with the financial assistance to purchase or rent and occupy a comparable replacement dwelling without involuntarily incurring additional financial means due to the displacement.

Replacement Utility Property Interest shall mean any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

Request for Best and Final Offer or **Request for BAFO** means Addendum 7 to the RFP.

Request for Change Order shall mean a written notice issued by Developer to TxDOT under Section 13.3.2.5 of the Agreement, advising TxDOT that Developer seeks a Change Order.

Request for Change Proposal shall mean a written notice issued by TxDOT to Developer under Section 13.2.1 of the Agreement, advising Developer that TxDOT may issue a TxDOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant to Section 13.2.1 of the Agreement.

Request for Information shall mean a written request prepared by Developer after Design Documents have been released for construction to initiate the process for potential design changes or clarifications.

Request for Partnering shall have the meaning set forth in Section 13.3.2.2 of the Agreement.

Request for Proposals (RFP) shall mean the Request for Proposals issued by TxDOT on March 28, 2008 with respect to the Project, including all exhibits, forms, and attachments thereto and any subsequent addenda.

Reserved Rights shall mean all of the following:

(a) TxDOT's right to use, possess, develop and enjoy any real and personal property over, on, under or adjacent to the Project ROW for other transportation or related facilities, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways; and

(b) all right to use, and use of:

(i) all electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing over, on, under or adjacent to any Project ROW installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, to the extent not necessary and required for traffic management for the Project or for other project purposes;

(ii) any area or space over, on, under or adjacent to the Project ROW for development and operation of any office, commercial, industrial, residential, retail or mixed use real estate project, including revenue-generating service or rest areas;

(iii) any equipment, facilities or capabilities for ITS studies or applications installed by or on behalf of TxDOT and the right to install any such equipment, facilities or capabilities; and

(iv) any area or space over, on, under or adjacent to the Project ROW for any other commercial or non-commercial development or use.

RFP Documents shall mean all of the information and materials supplied to Developer in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the CDA Documents, the CMA Documents and the Reference Information Documents and any addenda issued in connection therewith.

Right of Entry Agreement shall mean a written agreement between the record title owner and Developer granting TxDOT, Developer or assignees permission to enter the applicable parcel that is to be acquired.

ROW Acquisition Plan shall mean the Developer's plan, approved by TxDOT in accordance with Section 7 of the Technical Provisions, for acquisition of real property for the Project.

ROW Administrator shall mean TxDOT's representative responsible for the management of all matters pertaining to real property for the Project.

ROW Manager shall mean Developer's representative responsible for the preparation and quality review of all documents required for the acquisition of the Project ROW.

Rules shall mean Sections 27.1-27.9 of Title 43, Texas Administrative Code..

Safety and Health Plan shall mean the plan describing Developer's policies, plans and controls to ensure the health and safety of personnel and the general public affected by the Project, as more particularly described in Section 2.5 of the Technical Provisions.

Schematic Design shall mean the roadway schematic plans attached as Appendix 3 to Exhibit 2.

Schematic ROW shall mean any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the proposed ROW lines established by TxDOT to delineate the outside limits of the Schematic Design, as such limits may be adjusted from time to time in accordance with the CDA Documents. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

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

Site shall mean Schematic ROW, Additional Properties, Replacement Utility Property Interests, and any temporary rights or interests that Developer may acquire at its own cost and expense in connection with the Project.

Site Investigative Report (SIR) shall mean the report summarizing the Developer's Hazardous Materials investigative work as required by Section 4.3.5 of the Technical Provisions.

Small Bridge shall mean a bridge that is not crossing a Major River Crossing.

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

Special Deposit and Possession shall mean a declaration of taking in condemnation. This Special Deposit and Possession is a process of acquiring real property through a special condemnation procedure, to be approved by TxDOT and authorized by the Texas Transportation Commission.

State shall mean the State of Texas.

State Highway means a highway designated as part of the state highway system under Section 201.103, Texas Transportation Code.

Subcontract shall mean any agreement by Developer with any other Person, Subcontractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at all tiers.

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

Subcontractor Dispute shall have the meaning set forth in Section 19.4 of the Agreement.

Submittal shall mean any document, work product or other written or electronic end product or item required under the CDA Documents to be delivered or submitted to TxDOT.

Substantial Completion shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.1.1.2 of the Agreement, as and when confirmed by TxDOT's issuance of a Certificate of Substantial Completion.

Substantial Completion Deadline shall mean the deadline set forth in Section 4.2.1 of the Agreement, as such deadline may be adjusted by Change Order pursuant to the Agreement.

Supplemental Utility Assembly shall mean the collection of agreements, plans and other information and materials which Developer is required to submit to TxDOT in connection with each Utility Adjustment being added to an existing MUAA by means of a UAAA, as more particularly described in Section 6 of the Technical Provisions.

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

Surety shall mean each properly licensed surety company, insurance company or other Person approved by TxDOT, which has issued any Payment Bond, Performance Bond, or Warranty Bond.

Systems Integrator shall mean the contractor, under separate contract to TxDOT, that shall design, supply, install, test and commission the ETCS for the Project, including scanners, readers, loops, enforcement mechanisms and manual and automated cash collection systems.

Tangible Net Worth shall mean the difference between (the sum of paid-in capital stock plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority interest plus intangible assets e.g., goodwill, patents, licenses), all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.

Technical Provisions means Book 2 and Book 3, as such documents may be revised or amended pursuant to the Agreement.

Term shall mean the period of time commencing upon issuance by TxDOT of NTP1 and continuing thereafter through Final Acceptance of the Project, unless terminated earlier in accordance with this Agreement.

Termination for Convenience shall mean a termination pursuant to Section 15.1 of the Agreement.

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

Threatened or Endangered Species shall mean any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

Time and Materials Change Order shall mean a Change Order issued in accordance with Section 13.7 of the Agreement.

Tolling Zone shall mean the zone within which a toll transaction takes place, in connection with which Developer shall provide coordination services with the Systems Integrator.

Traffic Control Coordinator shall mean the person designated by Developer to oversee the implementation of the traffic control plans, as more particularly described in Section 18 of the Technical Provisions.

Traffic Management Plan shall mean the plan prepared by Developer for the management of traffic during construction, as more particularly described in Section 18.2.1 of the Technical Provisions.

TxDOT shall mean the Texas Department of Transportation, and any entity succeeding to the powers, authorities and responsibilities of TxDOT invoked by or under the CDA Documents.

TxDOT Administrative Settlement Committee shall mean the committee established within TxDOT under the direction of the Right of Way Administrator.

TxDOT-Caused Delays shall mean unavoidable delays arising from the following matters and no others, but only to the extent that they (i) materially adversely affect a Critical Path, (ii) are not mitigated by or susceptible to handling by a work around or consumption of Project Float, and (iii) are not due to an act, omission, negligence, recklessness, intentional misconduct, breach of contract or violation of Law or a Governmental Approval of or by any of the Developer-Related Entities:

(a) TxDOT-Directed Changes;

(b) failure or inability of TxDOT to make Schematic ROW available within the time period set forth in Section 6.5.3 of the Agreement, and subject to the risk allocation contained therein;

(c) failure or inability of TxDOT to make DFW-Airport Parcels available for the applicable Configuration prior to issuance of NTP2;

(d) failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters for which response is required under the CDA Documents as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the CDA Documents, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following delivery of written notice from Developer requesting such action in accordance with the terms and requirements of the CDA Documents;

(e) uncovering, removing and restoring Work pursuant to Section 5.4.3 of the Agreement, if such Work exposed or examined is in conformance with the requirements of the CDA Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT; and

(f) failure or inability of TxDOT to obtain the USACE Nationwide Permit based on the Schematic Design and the Schematic ROW or a Section 401 Water Quality Certification for the Project by the later of NTP2 or July 30, 2009, provided, however that if the USACE Nationwide Permit is not obtained because individual permits are required, then the failure to obtain the USACE Nationwide Permit shall not be a TxDOT-Caused Delay.

Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Force Majeure Event under clause (g) of the definition of "**Force Majeure Event**") despite the fact that TxDOT may specifically direct Developer to suspend the Work.

TxDOT-Directed Changes shall mean any changes in the scope of the Work or terms and conditions of the CDA Documents (including changes in the standards applicable to the Work) that increase Developer's costs by more than $5,000, which TxDOT has directed Developer to perform as described in Section 13.2 of the Agreement.

TxDOT-Initiated VE shall have the meaning set forth in Section 22.1 of the Agreement.

TxDOT-Provided Approvals shall mean the following:

(a) the Finding of No Significant Impact issued by FHWA and FAA on April 23, 2009; and

(b) USACE Nationwide Permit under Section 404 of the Clean Water Act based upon the Schematic Design and the Schematic ROW and certification that the actions permitted under the USACE Nationwide Permit are in compliance with State water quality requirements and other applicable State laws under Section 401 Water Quality Certification (33 U.S.C. §1341)(1986).

TxDOT Release(s) of Hazardous Material means, except as provided below, the introduction in, on or under the Project ROW of Hazardous Material directly by TxDOT, or by its contractors, subcontractors, agents or employees acting in such capacity (other than any Developer-Related Entity). TxDOT Release(s) of Hazardous Material excludes, however, (i) any Hazardous Materials so introduced that in or part of construction materials and equipment incorporated into the Project; and (ii) any Hazardous Materials so introduced that were in, on or under Developer-Designated ROW.

TxDOT's Recoverable Costs means:

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

(b) Third-party costs TxDOT 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 TxDOT's Office of General Counsel or the Texas Attorney General's Office), 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 a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the CDA Documents and continuing until paid.

TxDOT Standard Specifications shall mean the Texas Department of Transportation Standard Specifications for Construction of Highways, Streets and Bridges, adopted by the Texas Department of Transportation including all revisions thereto applicable on the Effective Date.

TxDOT Utility Manual shall mean the Utility Manual issued by the Right of Way Division of TxDOT on November 5, 1990, as the same may be amended, supplemented or replaced from time to time.

Unidentified Utility(ies) shall mean any Utility impacted by the Project (other than a Service Line) which is neither an Identified Utility nor a New Utility, including any Utility which would be a New Utility but for the fact that it is an extension of an Identified Utility.

Uniform Act shall mean the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

User(s) means the registered owner of a vehicle traveling on the Project or any portion thereof.

USACE Nationwide Permit shall mean the nationwide permit issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (33 U.S.C. §1344) for the placement of dredged and fill material into waters of the United States, based upon the Schematic Design and the Schematic ROW.

Utility or **utility** shall mean a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public. The term "Utility" or "utility" specifically excludes: (a) storm water facilities providing drainage for the Project ROW, (b) street lights and traffic signals. and (c) ITS and IVHS facilities. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any Service Line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line.

Utility Accommodation Rules (UAR) shall mean the Utility Accommodation Rules issued by TxDOT, at 43 Tex. Admin. Code, Part 1, Chapter 21, Subchapter C, as the same may be amended, supplemented or replaced by TxDOT from time to time.

Utility Adjustment shall mean each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term "**Utility Adjustment**" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

Utility Adjustment Agreement Amendment (UAAA) shall mean an agreement between Developer and the Utility Owner that amends a Master Utility Adjustment Agreement, as more particularly described in Section 6.1.4 of the Technical Provisions.

Utility Adjustment Field Modifications has the meaning set forth in Section 6.4.7 of the Technical Provisions.

Utility Adjustment Concept Plan shall mean a conceptual design document for Utility Adjustments for the entire Project, which shows all of the approximate existing locations, and Developer's recommendation for all of the Adjusted locations, of each Utility impacted by the Project, as more particularly described in Section 6.3.3 of the Technical Provisions.

Utility Adjustment Work shall mean all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by Developer or by the Utility Owners. The term also includes any reimbursement of Utility Owners which is Developer's responsibility pursuant to Section 6.8 of the Agreement. Any Utility Adjustment Work furnished or performed by Developer is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Agreement shall mean a MUAA and/or UAAA, as the context may require.

Utility Appurtenance Adjustment shall mean the adjustment of Utility appurtenances (e.g. manholes, valve boxes, and vaults) for line and grade upon completion of roadway work.

Utility Assembly shall mean the collection of agreements, plans and other information and materials which Developer is required to submit to TxDOT in connection with each Utility Adjustment (or group of Utility Adjustments subject to the same Master Utility Adjustment Agreement and any applicable Amendments), as more particularly described in Section 6.3.4.5 of the Technical Provisions. Depending on the context, the term also refers to Supplemental Utility Assemblies and Abbreviated Utility Assemblies.

Utility Assembly Checklist shall mean a checklist listing the required components of a Utility Assembly, as referenced in Section 6.3.4.5 of the Technical Provisions.

Utility Assembly Number or **Assembly Tracking Number** shall mean the unique number given by the Developer to each Utility Assembly using the form "YYY-U-XXXX." The "YYY" shall refer to the assigned number of the highway and "XXXX" shall refer to the 4-digit number assigned to each Utility Assembly (beginning with 0500 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding Utility Agreement.

Utility Coordinator shall mean the utility staff personnel designated by the Developer to coordinate the utility adjustments, the adjustment agreements, the adjustment costs, the Utility Assemblies, and coordinate all meetings held with either the Utility Owner and/or TxDOT and its consultants.

Utility Design Coordinator (UDC) shall mean the Registered Professional Engineer designated by the Developer to be responsible to coordinate the Utility Adjustment design with the overall highway design features during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

Utility Enhancement shall mean a Betterment or a Utility Owner Project, as referenced in Section 6.8.2 of the Agreement.

Utility Joint Use Agreement or **Utility Joint Use Acknowledgment** shall mean an agreement between TxDOT and a Utility Owner that establishes the rights and obligations of TxDOT and the Utility Owner with respect to occupancy of the Project ROW by a Utility owned by such Utility Owner.

Utility Manager (UM) shall mean the senior staff utility administrator designated by Developer to be responsible for coordination and oversight of Utility operations during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

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

Utility Owner Delay shall have the meaning set forth in Section 6.8.5.2 of the Agreement.

Utility Owner Project shall mean the design and construction by or at the direction of a Utility Owner (or by Developer pursuant to Section 6.8.2.3 of the Agreement) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Owner Projects. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

Utility Strip Map shall mean the map depicting existing Utilities identified by TxDOT which are included in the Reference Information Documents.

Utility Tracking Report shall mean Developer's Utility Tracking Report.

Value Engineering (VEs) shall have the meaning set forth in Section 22.1 of the Agreement.

Warranty(ies) shall have the meaning set forth in Section 11.1.1 of the Agreement.

Warranty Bond shall have the meaning set forth in Section 8.1.5 of the Agreement.

Warranty Term shall have the meaning set forth in Section 11.1.2 of the Agreement.

Water Quality Specialist shall mean the person designated by the Environmental Compliance Manager to provide expertise in water quality, as more particularly described in Section 4.4.6 of the Technical Provisions.

Work shall mean all of the work required under the CDA Documents, including all administrative, design, engineering, real property acquisition and occupant relocation, support services, Utility Adjustment Work to be furnished or provided by Developer, reimbursement of Utility Owners for Utility Adjustment Work furnished or provided by such Utility Owners or their contractors and consultants, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by Developer as required by the CDA Documents, including all efforts necessary or appropriate to achieve Final Acceptance, except for those efforts which such CDA Documents expressly specify will be performed by Persons other than the Developer-Related Entities.

[END OF DEFINITIONS]