

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in the CMA Documents, they shall have the meanings set forth below:

AASHTO	American Association of State Highway and Transportation Officials
ACORD	Association for Cooperative Operations Research and Development
AMRL	AASHTO Materials Reference Laboratory
ASTM	American Society of Testing and Materials
BI	Base Index
CADD	Computer Aided Drafting and Design
CCTV	Closed Circuit Television
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CFR	Code of Federal Regulations
CMA	Capital Maintenance Agreement
CRP	Community Rehabilitation Programs
DBE	Disadvantaged Business Enterprise
DRP	Dispute Resolution Procedure
ENR CCI	Engineering News Record 20 City Construction Cost Index
EPD	Escrowed Proposal Documents
ETCS	Electronic Toll Collection System
FHWA	Federal Highway Administration
GAAP	Generally Accepted Accounting Principles
GIS	Geographical Information System
HUB	Historically Underutilized Business
IRI	International Roughness Index
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
IVHS	Intelligent Vehicle Highway System
MMP	Maintenance Management Plan
MP	Maintenance Price
MPH	Miles Per Hour
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NTP	Notice to Proceed
PCO	Potential Change Order
PUAA	Project Utility Adjustment Agreement

QC	Quality Control
RFP	Request for Proposals
RFQ	Request for Qualifications
ROW	Right of Way
SH	State Highway
SOAH	Texas State Office of Administrative Hearings
TCLP	Toxicity Characteristic Leaching Procedure
TIBH	Texas Industries for the Blind and Handicapped
TMP	Traffic Management Plan
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
USFWS	United States Fish and Wildlife Service
VES	Violation Enforcement System
WBS	Work Breakdown Structure

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 issued under the Development Agreement, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs Developer to acquire for the Project. For purposes of clarity, “Additional Properties” excludes Replacement Utility Property Interests.

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.

Affiliate(s) shall mean:

- (a) any shareholder, member, partner or joint venture member of Maintenance Contractor,
- (b) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Maintenance Contractor, or any of its respective 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) Maintenance Contractor, (ii) any of the shareholders, members, partners or joint venture members of Maintenance Contractor; or (iii) any Affiliate of Maintenance Contractor 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.

Appeal Period has the meaning set forth in Section 16.3.6.1(a) of the Capital Maintenance Agreement.

Asset Condition Score shall mean the score (from one to five) assigned by Maintenance Contractor following Maintenance Contractor's Audit Inspection, which records, for each Maintained Element and for all of the Auditable Sections audited in any quarter, the extent to which Maintenance Contractor has met the Target for each measurement record according to the criteria set forth in Section 1900 of Exhibit 2.

Auditable Section shall mean a defined section of the Project for the purpose of audit, inspection and measurement during performance of the Maintenance Services. An Auditable Section includes all travel lanes including mainlanes, ramps and frontage roads of the roadway operating in one direction over a length of 0.1 miles in length, together with all Maintained Elements of the Project associated with such 0.1 mile length.

Audit Inspection shall mean a detailed inspection of the specified proportion of Auditable Sections undertaken quarterly by Maintenance Contractor as part of the Maintenance Services in accordance with Section 1900 of Exhibit 2 to establish an Asset Condition Score for each Maintained Element and verify compliance with the Performance Requirements.

Authorized Representatives shall have the meaning set forth in Section 18.5.1 of the Capital Maintenance Agreement.

Base Index shall have the meaning set forth in Section 8.1.3(a) of the Capital Maintenance Agreement.

Bond Trustee shall mean the Person or Persons acting as bond trustee, paying agent or other designated representative of the bondholders under any bond indenture or resolution for the bonds or any other indebtedness issued by TxDOT or the Corporation to finance the Project, its legal successor, or any other commercial bank or trust company duly organized and existing under the laws of any state or the United States of America, which is authorized under the laws of the State to exercise corporate trust powers and is subject to examination by federal authority, appointed pursuant to the Project finance documents as its successor or its successors.

Business Day(s) shall mean day(s) on which TxDOT is officially open for business.

Capital Asset Replacement Work shall mean the Maintenance Services described in Section 3.2 of the Capital Maintenance Agreement.

Capital Asset Replacement Work Submittal shall mean the submittal described in Section 3.2.2 of the Capital Maintenance Agreement.

Capital Maintenance Agreement or **CMA** shall mean that certain Capital Maintenance Agreement executed by TxDOT and Maintenance Contractor providing for Maintenance Contractor to perform, at TxDOT's sole option, certain Maintenance Services for the Project, to which this Exhibit 1 is attached, including any and all amendments thereto.

Category 1 Defect means a Defect which requires prompt attention because it represents an immediate or imminent hazard, or there is a risk of immediate or imminent structural deterioration, or there is an immediate or imminent risk of damage to a third party's property or equipment, or there is an immediate or imminent risk of damage to the environment.

Category 2 Defect means any Defect other than a Category 1 Defect.

CMA Documents or **Capital Maintenance Agreement Documents** shall have the meaning set forth in **Section 1.2.1** of the Capital Maintenance Agreement.

Change in Law shall mean: (a) the enactment, adoption, modification, repeal or other change in any Law that occurs after the Proposal Due Date, including any change in the judicial or administrative interpretation of any Law, or (b) adoption of any new Law, which in each case is materially inconsistent with Laws in effect on the Proposal Due Date. The term “**Change in Law**” excludes: (i) any such change in or new Law which was passed or adopted but not yet effective as of the Proposal Due Date and (ii) any change in or new Law relating to Maintenance Contractor’s general business operations, including licensing and registration fees, income taxes, gross receipts taxes, social security, Medicare, unemployment and other payroll-related taxes.

Change Order(s) shall mean a written order issued by TxDOT to Maintenance Contractor delineating changes in the Maintenance Services within the general scope of the Capital Maintenance Agreement Documents or in the terms and conditions of the CMA Documents in accordance with **Section 10** of the Capital Maintenance Agreement and establishing, if appropriate, an adjustment to the Maintenance Price or a time extension.

Chief Executive Officer of Maintenance Contractor means the chief executive officer, president or other senior officer of Maintenance Contractor, or the governing body of Maintenance Contractor in each case having authority to negotiate and resolve a Dispute with the Executive Director and bind Maintenance Contractor by his or her decision in regard to such Dispute.

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

Code shall mean the Texas Transportation Code, including specifically Chapter 223.

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

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 CMA 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 Project shall not constitute a pecuniary, ownership or financial interest for purposes of this definition;

- (c) Such individual has or had substantial prior involvement in any aspect of the Development Agreement or CMA, a Contract or the Project of a nature which could reasonably be expected to affect his or her ability to impartially resolve Disputes;
- (d) Such individual knows 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 means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of Maintenance Services under the terms of the CMA.

Consultant(s) means company or companies working directly for TxDOT.

Contract Documents shall have the meaning set forth in Section 1.2 of the Development Agreement.

Corporation shall have the meaning set forth in Recital O of the Development Agreement.

Cost and Schedule Proposal shall mean Maintenance Contractor's proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with Section 10.2.1 of the Capital Maintenance Agreement.

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(s) or **day(s)** shall mean calendar days unless otherwise expressly specified.

Defect shall mean, in connection with the Maintenance Services, a defect, whether by design, construction, installation, repair, rehabilitation, reconstruction, operation, damage or wear, affecting the condition, use, functionality or operation of any Maintained Element, which would cause or have the potential to cause one or more of the following:

- (i) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of users of the Project;

- (ii) a structural deterioration of the affected Maintained Element or any other part of the Project affected by it;
- (iii) damage to the property or equipment of TxDOT or a third party;
- (iv) damage to the environment;
- (v) failure of the affected Maintained Element to meet a Performance Requirement; or
- (vi) failure of a Maintained Element to meet the Target for a measurement record as set forth in the columns headed “Target” and “Measurement Record” in the Performance and Measurement Table.

Defense and Indemnification Procedures has the meaning set forth in Section 15.9 of the CMA.

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 performance of design services required under the Capital Maintenance Agreement in accordance with the CMA Documents, the Governmental Approvals and applicable Law.

Developer shall mean Zachry-Odebrecht Parkway Builders, a Texas joint venture comprised of Zachry Construction Corporation and Odebrecht Construction, Inc., together with its successors and assigns.

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, except that TxDOT shall be responsible for the purchase price of drainage easements approved by TxDOT. The term specifically includes 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 Event of Default shall mean Event of Default defined under the Development Agreement.

Developer-Related Entity(ies) shall mean (a) Developer, (b) Developer’s shareholders, partners, joint venturers and/or members, (c) Subcontractors to the Developer (including Suppliers), (d) any other Persons performing any of the Maintenance Services, (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.

Development Agreement shall have the meaning set forth in Recital I of the Capital Maintenance Agreement.

Deviation(s) shall mean: a no-cost change in the Maintenance Services or other requirements of the CMA Documents issued in writing by TxDOT’s Authorized Representative or his/her designee under Section 10.12 of the Capital Maintenance Agreement, including any no-cost change, deviation, modification, alteration or exception from the Maintenance Specifications.

Directive Letter shall have the meaning set forth in Section 10.1.1.2 of the Capital Maintenance Agreement.

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

Dispute Resolution Procedures means collectively, the procedures established under Sections 16.3.4 and 16.3.5 of the Capital Maintenance 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 Capital Maintenance Agreement as Exhibit 15.

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 16.3.6.2 of the Capital Maintenance Agreement.

Disputes Board Member(s) 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(s) shall mean a Draw Request and Certificate in the form of 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 CMA Documents.

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

Element shall mean any of the elements set forth and numbered 1.1 to 19.2 in Attachment 1 to Exhibit 2.

Element Category shall mean any of the element categories set forth and numbered 1 to 19 in Attachment 1 to Exhibit 2.

Emergency or Emergencies shall mean, in connection with the Maintenance Services, any unforeseen event affecting the Project, whether directly or indirectly which occurs on or originates from the Project or Project ROW and: (a) causes or has the potential to cause disruption to the free flow of traffic on the Project or a threat to the safety of the public or workers; (b) is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the environment or to Adjacent Work; or (c) is recognized by the Texas Department of Public Safety as an emergency.

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

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

Environmental Laws shall mean any Law applicable to the Project or the Maintenance Services 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 Government Approvals, other permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project, Maintenance Contractor or the Maintenance Services, 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) Health 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).

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

Escrowed Proposal Documents or **EPDs** shall have the meaning set forth in Section 17.1 of the Capital Maintenance Agreement.

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

Event of Default shall have the meaning set forth in Section 12.3.1 of the Capital Maintenance Agreement.

Exchange Act shall mean 15 U.S.C. § 78a et seq., as amended.

Executive Director shall mean the Executive Director of TxDOT.

Fast-Track Dispute shall mean a Dispute so designated by the Parties in respect of Section 16.3.4.2.

Final Acceptance shall mean for each Segment the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the Development Agreement.

Final Order means the order issued by the Executive Director pursuant to Section 16.3.6.1 or 16.3.6.4 of the Capital Maintenance Agreement.

Final Order Implementing Decision has the meaning set forth in Section 16.3.6.4(a)(ii) of the Capital Maintenance Agreement.

Final Order Vacating Decision has the meaning set forth in Section 16.3.6.4(a)(i) of the Capital Maintenance Agreement.

Final Payment shall mean the last payment made under the Capital Maintenance Agreement.

Float means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect the schedule deadline. 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 (i) below, subject to the exclusions listed in clauses (i) through (vi) below, which materially and adversely affects Maintenance

Contractor's obligations, provided such events are beyond the control of the Maintenance Contractor-Related Entities and are not due to an act, omission, negligence, recklessness, willful misconduct, breach of contract or Law of any Maintenance Contractor-Related Entity, and further 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 Maintenance Contractor:

- (a) Any earthquake, tornado, hurricane (Category 3 and higher) or other natural disaster that (i) causes direct physical damage to the Project and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway Administrator, unless such damage is caused by the Developer's action or inaction or the Developer's means and methods of construction;
- (b) Any epidemic in the Houston area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) Any Change in Law which (1) requires Maintenance Contractor to obtain a new major State or federal environmental approval not previously required for the Project, (2) results in an increase in Maintenance Contractor's costs directly attributable to the Change in Law of at least \$500,000, or (3) specifically targets the Project or Maintenance Contractor;
- (e) Any spill of Hazardous Material by a third party which occurs after Maintenance NTP1 and is required to be reported to a Governmental Entity, and which renders use of the roadway or construction area unsafe absent assessment, containment, and/or remediation;
- (f) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Maintenance Services, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any member of the Maintenance Contractor-Related Entities;
- (g) Total failure of a bridge such that it requires replacement, except to the extent arising out of, related to or caused by, the act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any Maintenance Contractor Related-Entity or Developer-Related Entity;
- (h) Malicious or other acts by a third party intended to cause loss or damage or other similar occurrence, including vandalism or theft; and
- (i) A collision (motor vehicle, aircraft or railroad train) by a third party that causes damage to the Project, except to the extent arising out of, related to or caused by, the act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any Maintenance Contractor Related-Entity or Developer-Related Entity.

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) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iii) the suspension, termination, interruption, denial or failure to obtain, nonrenewal or change in any Governmental Approval, except for any such matter falling within the scope of clause (c) or clause (e) above;
- (iv) any delay or cost risk for which coverage is to be provided through insurance required under the Capital Maintenance Agreement or by Law; and
- (v) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (g) above.

General Inspection(s) means an inspection of Maintained Elements to identify Defects and assess asset condition. Results of a General Inspection shall be used to develop a renewal work schedule, to maintain asset condition and service levels and to develop programs of maintenance and renewal work to minimize the effect of Maintenance Services on Users.

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.

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 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, valid waiver, valid exemption, variance or other approval, guidance, protocol, mitigation agreement or order, 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 Maintenance Services 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/Entities 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, in each case having jurisdiction over the party, the Project or, the Maintenance Services .

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

Guarantor shall mean each of the entities which provided a guarantee in the form of Exhibit 9 of some or all of the obligations of Maintenance Contractor under the Capital Maintenance Agreement.

Guaranty shall mean each guarantee executed by a Guarantor guaranteeing some or all of the obligations of Maintenance Contractor under the Capital Maintenance Agreement.

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 Maintenance Services, 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 Maintenance Contractor for Hazardous Materials Management both within and outside the Project ROW, as more particularly described in Section 2200 of Exhibit 2.

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

Incident Management Plan shall mean the Maintenance Contractor's plan for detection and response to incidents or emergencies pursuant to Section 0205 of Exhibit 2.

Indemnified Party(ies) shall mean TXDOT, the State, the Texas Transportation Commission, FHWA, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

Ineligible Matters shall have the meaning set forth in Section 16.3.2.1 of the Capital Maintenance Agreement.

Informal Resolution Procedures has the meaning set forth in Section 16.3.3 of the Capital Maintenance Agreement.

Initial Maintenance Term shall have the meaning set forth in Section 4.1 of the Capital Maintenance Agreement.

Initial Maintenance Term Commencement Date shall have the meaning set forth in Section 4.1 of the Capital Maintenance Agreement.

Key Maintenance Personnel shall mean those individuals and personnel of the Maintenance Contractor filling the role and job description of:

1. Maintenance Manager
2. 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.

Law or **Laws** shall mean (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 CMA 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 Maintenance Services, whether taking effect before or after the Proposal Due Date, including Environmental Laws. "Law" or "Laws," however, exclude Governmental Approvals.

LIBOR shall mean the offered rate per annum (rounded up to the next highest one one-thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Telerate Page 3750 at approximately 11:00 A.M., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next succeeding day on which such dealings were transacted in such market. All interest based on LIBOR shall be calculated on the basis of a 360-day year for the actual days elapsed.

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 or similar notification under the Uniform Commercial Code or similar Law of any jurisdiction).

Liquidated Damages shall mean any of (i) Liquidated Damages for Lane Closures, (ii) Liquidated Damages for Asset Condition Score, (iii) liquidated damages assessed in respect of Key Maintenance Personnel pursuant to Section 5.4.6 and Section 5.4.7 of the Capital Maintenance Agreement, and (iv) the liquidated damages specified in Section 12.4.3 of the Capital Maintenance Agreement.

Liquidated Damages for Asset Condition Score shall have the meaning set forth in Section 12.4.2 of the Capital Maintenance Agreement.

Liquidated Damages for Lane Closures shall have the meaning set forth in Section 12.4.1 of the Capital Maintenance 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 Capital Maintenance 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.

Maintained Element(s) shall mean an element set forth in Attachment 2 to the Maintenance Specification.

Maintenance Communication Plan shall have the meaning set forth in Section 0206 of the Maintenance Specification.

Maintenance Contractor shall mean Zachry-Odebrecht Parkway Builders, a Texas joint venture comprised of Zachry Construction Corporation and Odebrecht Construction, Inc., together with its successors and assigns.

Maintenance Contractor Default shall have the meaning set forth in Section 12.1 of the Capital Maintenance Agreement.

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

Maintenance Contractor Release of Hazardous Materials means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the actions, omissions, negligence, intentional

misconduct, or breach of applicable Law or contract by any Maintenance Contractor-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Maintenance Contractor-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Maintenance Contractor-Related Entity in violation of the requirements of the CMA Documents or any applicable Law or Governmental Approval.

Maintenance Document Management Plan shall have the meaning set forth in Section 0203 of Exhibit 2.

Maintenance Management Information System shall have the meaning set forth in Section 1907 of Exhibit 2.

Maintenance Management Plan shall mean the plan prepared by Maintenance Contractor and approved by TxDOT as set forth in Section 5.5 of the Capital Maintenance Agreement.

Maintenance Manager means the Maintenance Contractor's manager who is responsible to oversee and perform the Maintenance Services in accordance with the CMA.

Maintenance NTP1 shall mean a written notice issued by TxDOT to Maintenance Contractor authorizing Maintenance Contractor to proceed with the Maintenance Services for the Initial Maintenance Term and establishing the date of commencement of the Initial Maintenance Term.

Maintenance NTP2 shall mean a written notice issued by the TxDOT to Maintenance Contractor authorizing Maintenance Contractor to proceed with the Maintenance Services for the Second Maintenance Term and establishing the date of commencement of the Second Maintenance Term.

Maintenance NTP3 shall mean a written notice issued by TxDOT to Maintenance Contractor authorizing Maintenance Contractor to proceed with the Maintenance Services for the Third Maintenance Term and establishing the date of commencement of the Third Maintenance Term.

Maintenance Payment Bond shall mean the payment bond delivered by Maintenance Contractor in the form attached to the Capital Maintenance Agreement as Exhibit 7.

Maintenance Performance Bond shall the performance bond delivered by Maintenance Contractor in the form attached to the Capital Maintenance Agreement as Exhibit 6.

Maintenance Period means the period starting at the Commencement of Capital Maintenance Agreement and ending at the end of the Maintenance Term.

Maintenance Price or **MP** shall have the meaning set forth in Section 8.1.1 of the Capital Maintenance Agreement.

Maintenance QC Manager means the Maintenance Contractor's quality control manager who is responsible to independently oversee and perform quality control for the Maintenance Services in accordance with the Maintenance QCP.

Maintenance Records shall mean all data in connection with maintenance of the Project including (a) all inspection and inventory records, whether generated by Developer or a third party, (b) any communication to and/or from TxDOT or other third party, and (c) any information system (as may be introduced or amended by TxDOT from time to time) in connection with maintenance of the Project that TxDOT requires Developer to use or operate.

Maintenance Safety Plan shall have the meaning set forth in Section 0205 of the Maintenance Specification.

Maintenance Services shall mean all of the services and obligations required to be performed by Maintenance Contractor under the CMA Documents, including all required maintenance, repairs, rehabilitation and replacements of the Maintained Elements.

Maintenance Services Change Orders shall mean a written order issued by TxDOT to Maintenance Contractor delineating changes in the Maintenance Services within the general scope of the Capital Maintenance Agreement Documents or in the terms and conditions of the CMA Documents in accordance with Section 10 of the Capital Maintenance Agreement and establishing, if appropriate, an adjustment to the Maintenance Price or a time extension.

Maintenance Services Deliverables Schedule shall have the meaning set forth in Section 0202 of the Maintenance Specification.

Maintenance Services Quality Control Plan or Maintenance Services QCP shall have the meaning set forth in Section 0204 of Exhibit 2.

Maintenance Specification shall mean Exhibit 2 of the Capital Maintenance Agreement

Maintenance Term shall mean the Initial Maintenance Term, Second Maintenance Term or Third Maintenance Term, as appropriate.

Maintenance Transition shall mean the terms, conditions, requirements and procedures governing the conditions in which Maintenance Contractor is to deliver the Project upon expiration or termination of the Capital Maintenance Agreement, as set forth in Section 0208 of Exhibit 2.

Maintenance Transition Plan shall have the meaning set forth in Section 3.6 of the Capital Maintenance Agreement.

Major Project Office shall mean a TxDOT office located at 7721 Washington Ave in Houston, TX.

Major Subcontract shall mean a Subcontract in excess of \$250,000.

Major Subcontractor shall mean a Subcontractor whose contract with the Maintenance Contractor is a Major Subcontract.

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 Project;

- (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.

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

Nonconforming Work shall mean Maintenance Services that do not conform to the requirements of the CMA Documents, the Governmental Approvals or applicable Law.

Non-maintained Element(s) shall mean an element not set forth in Attachment 2 to Exhibit 2 of the Maintenance Specification.

Notice of Partial Termination for Convenience shall mean written notice issued by TxDOT to Developer terminating part of the Maintenance Services of Maintenance Contractor for convenience under Section 14.1 of the Capital Maintenance Agreement.

Notice of Termination for Convenience shall mean written notice issued by TxDOT to Developer terminating the Maintenance Services of Maintenance Contractor for convenience under Section 14.1 of the Capital Maintenance Agreement.

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

Open Book Basis shall mean providing TxDOT all underlying assumptions and data associated with pricing or compensation (whether of Maintenance Contractor or TxDOT) or adjustments thereto, including assumptions as to costs of the Maintenance Services, 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.

Party shall mean Maintenance Contractor or TxDOT, as the context may require, and “**Parties**” shall mean Maintenance Contractor and TxDOT, collectively.

Pavement Condition Score shall have the meaning set forth in Section 1911 of the Maintenance Specification.

PCO Notice shall have the meaning set forth in Section 10.3.2.3 of the Capital Maintenance Agreement.

Peak Periods shall mean between 5:30 A.M. and 8:00 P.M. Monday through Thursday and between 5:30 A.M. Friday and 3:00 A.M. Saturday.

Performance Requirement(s) shall mean, for each Maintained Element in connection with the Maintenance Services, the requirements set forth in the Performance and Measurement Table Baseline in the column headed “Performance Requirement” in Attachment 1 to Exhibit 2.

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

Plan or 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 Maintenance Services to be done.

PMIS shall have the meaning set forth in Section 1909 of the Maintenance Specification.

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

Project Float shall have the meaning set forth in Section 0202 of Exhibit 2.

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 under the Development Agreement.

Project Schedule shall have the meaning set forth in Section 0202 of Exhibit 2.

Proposal shall mean Developer's response to the RFP.

Proposal Commitments shall have the meaning set forth in Exhibit 3 of the CMA.

Proposal Due Date shall mean August 22, 2012, the deadline for submission of the Proposal to TxDOT.

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 Tex. Gov't Code Ann. ch. 555, as amended.

Recognized Environmental Condition shall have the meaning set forth in ASTM E-1527-05.

Reference Information Documents shall mean those documents listed in Exhibit 14 to the Capital Maintenance Agreement. Except as expressly provided in the CMA Documents, the Reference Information Documents are not considered CMA Documents and were provided to Maintenance Contractor for informational purposes only and without representation or warranty by TxDOT.

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.

Reimbursable Hazardous Materials Costs shall mean Maintenance Contractor's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 10.8.2 of the Capital Maintenance Agreement, provided that the 25% and 145% mark-ups allowed under Section 10.7.1 shall be reduced to 12.5% and 130%, and the 15% mark-up allowed under Section 10.7.2 shall be reduced to 7.5%.

Released for Construction Document or **released for construction documents** means the portions of the Final Design Documents, as set forth in Section 2.2.7.1 of the Technical Provisions, that are required to be signed and sealed by the Maintenance Contractor's Registered Professional Engineer.

Release(s) of Hazardous Materials shall mean 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 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 Change Order shall mean shall mean a written notice issued by Developer to TxDOT under Section 10.3.2.5 of the Capital Maintenance Agreement, advising TxDOT that Developer seeks a Change Order..

Request for Change Proposal shall mean a written notice issued by TxDOT to Maintenance Contractor under Section 10.2.1 of the Capital Maintenance Agreement, advising Maintenance Contractor that TxDOT may issue a TxDOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant to Section 10.2.1 of the Capital Maintenance Agreement.

Request for Partnering shall have the meaning set forth in Section 10.3.2.2 of the Capital Maintenance Agreement.

Request for Proposals (RFP) shall have the meaning set forth in Recital E.

Request for Qualification (RFQ) shall have the meaning set forth in Recital C of the Capital Maintenance Agreement.

Retainage Bond shall mean the retainage bond delivered by Maintenance Contractor in the Form attached to the Capital Maintenance Agreement or Exhibit 8.

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

Schedule Activity(ies) means the smallest division of the Maintenance Services at each WBS level to be tracked in the Maintenance Services Deliverables Schedule.

Scheduling and Procedure Order shall have the meaning set forth in Section L-2 of Attachment 2 to Exhibit 15.

Schematic Design shall mean the roadway schematic attached as Appendix 3 to Development Agreement 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 Schematic 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 CMA Documents. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the Schematic ROW.

Second Maintenance Term shall have the meaning set forth in Section 4.2.1 of the Capital Maintenance Agreement.

Segment shall mean any of the three individual Project segments of the Grand Parkway, F-1, F-2 or G.

Service Line shall mean a utility line, up to and including the meter, that connects to a main line and services individuals, businesses and other entities.

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.

Specialist Inspection(s) means an inspection requiring specialist qualifications or equipment as specified in Section 1909 of the Maintenance Specification.

State shall mean the State of Texas.

Subcontract(s) shall mean any agreement by Maintenance Contractor with any other Person, Subcontractor or Supplier to perform any part of the Maintenance Services or provide any materials, equipment or supplies for any part of the Maintenance Services, 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(s) shall mean any Person with whom Maintenance Contractor has entered into any Subcontract to perform any part of the Maintenance Services or provide any materials, equipment or supplies for the Project on behalf of Maintenance Contractor (and any other Person with whom any Subcontractor has further subcontracted any part of the Maintenance Services), at all tiers.

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 of the Development Agreement, as and when confirmed by TxDOT's issuance of a certificate in accordance with Section 20.1.1 of the Development Agreement.

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

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

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.

Target shall mean the target value for the measurement record set forth in the column headed "Target" in the Performance and Measurement Table, Attachment 1 to Exhibit 2.

Technical Provisions means Book 2, as such document may be revised or amended pursuant to the Development Agreement.

Termination for Convenience shall mean a termination pursuant to Section 14.1 of the Capital Maintenance Agreement.

Third Maintenance Term shall have the meaning set forth in Section 4.3.1 of the Capital Maintenance 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 10.7 of the Capital Maintenance Agreement.

Traffic Management Plan shall mean the plan prepared by Maintenance Contractor for the management of traffic as described in Section 1802 of Exhibit 2.

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 CMA Documents.

TxDOT-Directed Change(s) shall mean any changes in the scope of the Maintenance Services or terms and conditions of the Capital Maintenance Agreement Documents (including changes in the standards applicable to the Maintenance Services), which TxDOT has directed Developer to perform as described in Section 10.2 of the Capital Maintenance Agreement.

TxDOT's Recoverable Costs means:

- (a) The costs of any assistance, action, activity or Maintenance Services undertaken by TxDOT which Maintenance Contractor is liable for or is to reimburse under the terms of the CMA 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 Maintenance Services; 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 Maintenance Services, 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 CMA Documents and continuing until paid.

Unit-priced Change Order shall mean a Change Order issued in accordance with Section 10.6.7 of the Capital Maintenance Agreement.

Unplanned Capital Maintenance shall mean Maintenance Services consisting of replacement or reconstruction of an asset that, at the Effective Date the Maintenance Contractor does not anticipate carrying out during the term of the CMA.

Useful Life shall mean, for a Maintained Element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the Maintained Element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

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

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 up to and including the meter, connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line.

Utility Adjustment(s) 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 Agreement shall mean a PUA and/or UAA, as the context may require.

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).

Warranty(ies) shall have the meaning set forth in Section 9.1 of the Capital Maintenance Agreement.

Warranty Period shall have the meaning set forth in Section 9.2.1 of the Capital Maintenance Agreement.