EXHIBIT 1
ABBREVIATIONS AND DEFINITIONS

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

AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ADA	Americans with Disabilities Act
AGC	Associated General Contractors of America
ALJ	Administrative Law Judge
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
APE	Area of Potential Effects
AREMA	American Railway Engineering and Maintenance of Way Association
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASTM	American Society of Testing and Materials
AVI	Automatic Vehicle Identification
BMP	Best Management Practice
CCTV	Closed Circuit Television
CEPP	Comprehensive Environmental Protection Program
CFR	Code of Federal Regulations
CMP	Construction Monitoring Plan
CPI	Consumer Price Index
CPR	Cardiopulmonary Resuscitation
CQAF	Construction Quality Assurance Firm
CSC	Customer Service Center
CSJ	Control Section Job
CWA	Clean Water Act
DAR	Daughters of the American Revolution
DBE	Disadvantaged Business Enterprise
DSS	Decent, Safe and Sanitary
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
EIA	Electrical Industries Alliance
EMS	Environmental Management System
EP	Extraction Procedure (toxicity)
EPIC	Environmental Permits Issues and Commitments
EPTP	Environmental Protection Training Program
ESA	Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq.
ET	Environmental Team
ETCS	Electronic Toll Collection System
FAA	Federal Aviation Administration
FAPG	Federal-Aid Policy Guide
FEIS	Fire Effects Information System
FEMA	Federal Emergency Management Agency
FHWA	U.S. Federal Highway Administration
FSLSC	Fire, Security and Life Safety Committee
FTP	File Transfer Protocol
FWCA	Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 et seq.

GIS	Geographical Information System
HARN	High Accuracy Reference Network
HEC	Hydraulic Engineering Circular
HCR	Highway Conditions Report
HCTRA	Harris County Toll Road Authority
HMMP	Hazardous Materials Management Plan
ICD	Interface Control Document
ID	Identification
IH	Interstate Highway
IRI	International Roughness Index
IRR	Internal Rate of Return
ISO	International Organization for Standardization
ITS	Intelligent Traffic Sub-system
IWP	Investigative Work Plan
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSDS	Materials Safety Data Sheets
MSE	Mechanically Stabilized Earth
MTTR	Mean Time To Repair
NAD83	North American Datum 83
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NCTCOG	North Central Texas Council of Governments
NEC	National Electrical Code
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 et seq.
NFIP	National Flood Insurance Program
NFPA	National Fire Protection Association
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NRHP	National Register of Historic Places
NTSC	National Television System Committee
NTTA	North Texas Tollway Authority
OCR	Optical Character Recognition
ORT	Open Road Tolling
OSHA	Occupational Safety and Health Administration
OVT	Owner Verification Tests
PA	Programmatic Agreement
PICP	Public Information and Communications Plan
PMIS	Pavement Management Information System
PMP	Project Management Plan
PUA	Possession and Use Agreement
PUAA	Project Utility Adjustment Agreement
QMP	Quality Management Plan
RID	Reference Information Documents
RLM	Residual Life Methodology
ROW	Right of Way

ROW AM	Right of Way Acquisition Manager
ROWIS	Right of Way Information System
RPLS	Registered Professional Land Surveyor
SIR	Site Investigative Report
SOAH	State Office of Administrative Hearings
RTF	Related Transportation Facilities
SDPP	Special Deposit and Possession Procedure
SH	State Highway
SHPO	State Historic Preservation Officer
SOAH	State Office of Administrative Hearings
SOV	Single Occupancy Vehicle
SPCC	Spill Prevention and Control Plan
SSTR	Single Slope Traffic Railing
SUE	Subsurface Utility Engineering
SW3P	Storm Water Pollution Prevention Plan
TAC	Texas Administrative Code
TQEC	Texas Commission on Environmental Quality
TCLP	Toxicity Characteristic Leaching Procedure
TDLR	Texas Department of Licensing and Regulation
THC	Texas Historical Commission
TIFIA	Transportation Infrastructure Finance and Innovation Act, 23 U.S.C. § 601 et seq.
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TPDES	Texas Pollutant Discharge Elimination System
TPWD	Texas Parks and Wildlife Department
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
UAR	Utility Accommodation Rules
UC	Ultimate Configuration
UDC	Utility Design Coordinator
UJUA	Utility Joint Use Acknowledgment or Utility Joint Use Agreement
UM	Utility Manager
US	United States Highway
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USFWS	United States Fish and Wildlife Service
US GAAP	United States Generally Accepted Accounting Principles
USPAP	Uniform Standard of Professional Appraisal Practices
UTM	Universal Transverse Mercator
WBS	Work Breakdown Structure

"**Abbreviated Utility Assembly**" means 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 Right of Way; a single Abbreviated Utility Assembly may address more than one such Utility.

"**Acquisition Package(s)**" means the package(s) of information for the acquisition of parcels for the Project Right of Way described in Section 7 of the Technical Provisions.

"**Acquisition Survey Document**" has the meaning set forth in Section 7 of the Technical Provisions.

"**Actual TIFIA Financial Terms**" means the same set of terms as the Assumed TIFIA Financial Terms, but in each case as finally indicated in the TIFIA loan agreement obtained at Financial Close.

"**Additional Equity Investment**" means any form of direct investment, including the purchase of newly issued Equity in and/or the provision of Equity Member Debt to Developer, made solely by the Qualified Investors through the Equity Member(s) after Financial Close that is not a Committed Investment (or otherwise contractually committed to by the relevant Qualified Investors) as at Financial Close.

"**Additional Properties**" means properties proposed by Developer to be added to the Project Right of Way to be used for Project-related purposes that are not within the Project Right of Way boundaries identified in the NEPA Approvals, including those properties outside such boundaries to be used as Project Specific Locations.

"**Adjusted Equity IRR**" means 21%, calculated over the same period as Equity IRR.

"**Adjustment**" means to perform a Utility Adjustment.

"**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 11.3.

"**Administrative Fees**" means (a) reasonable amounts for the purchase or rental of transponders or other electronic toll devices; (b) reasonable, refundable security deposits for the distribution of transponders or other electronic toll devices; (c) reasonable administrative fees for account maintenance and account statements; (d) reasonable fees, penalties and interest for toll violations, including costs of collection; and (e) other reasonable fees and charges for customary incidental services to Users for whom Developer or its Contractor manages electronic tolling accounts.

"**Administrative Settlement Committee**" means a committee appointed by TxDOT's local District Engineer or their designee consisting of the ROW Administrator or their 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.

"**Affidavit of Property Interest**" has the meaning set forth in Section 6 of the Technical Provisions.

"**Affiliates**" means (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 10% or more of the equity interest in such Person is held directly

or indirectly, beneficially or of record by (i) Developer, (ii) any of Developer's shareholders, members, partners or joint venture members or (iii) any Affiliate of Developer under clause (b) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. "Affiliated" means having the status of an Affiliate.

"**Age**" means the elapsed time since an Element was first constructed or installed or, if applicable, last reconstructed, rehabilitated, restored, renewed or replaced.

"**Agreement**" has the meaning set forth in the Preamble.

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

"**Alternate Procedure List**" means the list of Utilities to be adjusted as identified by Developer pursuant to Section 11.4 of the CDA and Section 6 of the Technical Provisions (and related information), as such list may be amended.

"**Annual Tolling Method Gain**" means the amount determined pursuant to Section 4.8.6(a).

"**Appraisal**" has the meaning set forth in Section 7 of the Technical Provisions.

"**Appraiser**" has the meaning set forth in Section 31.7.1.

"**Assumed TIFIA Financial Terms**" means all of the indicative terms for TIFIA financing included in the Conditional TIFIA Term Sheet.

"**Audit Inspection**" means a detailed inspection of the specified proportion of Auditable Sections undertaken quarterly by Developer and/or by the Independent Engineer during the Operating Period in accordance with Section 19.3 of the Technical Provisions to establish an Asset Condition Score for each Element Category and verify compliance with the Performance Requirements.

"**Auditable Section**" means a defined section of the Project for the purpose of audit, inspection and measurement. An Auditable Section includes all travel lanes including Toll Lanes, General Purpose Lanes, ramps and Frontage Roads of the roadway operating in one direction over a length of approximately 0.1 miles in length, together with all Elements of the Project and Related Transportation Facilities within the Project Right of Way associated with the relevant 0.1-mile length of roadway.

"**Authorized Representative**" has the meaning set forth in Section 35.7.

"**Average of Average Speeds**" has the meaning set forth in Exhibit 10.

"**Average Speed**" has the meaning set forth in Exhibit 10.

"**Average Volume**" has the meaning set forth in Exhibit 10.

"**Base Case Financial Model**" means the Financial Model Formulas, with the assumptions and information used by or incorporated in the Financial Model Formulas, approved by the Parties as of the Effective Date for the Project, as subsequently adjusted pursuant to the procedures described in Section 3.6.3.

"**Base Case Financial Model Update**" means the Base Case Financial Model as most recently updated pursuant to Section 4.3 prior to any event identified therein or prior to termination of the Agreement.

"**Base Case Traffic Model**" means the traffic and revenue model and the assumptions and information used by or incorporated in the traffic and revenue model, the results of operation of which are incorporated into the Base Case Financial Model.

"**Base Tax Liability**" means at any given point in time the present value of the cumulative federal income tax liability of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and State margin tax liability of Developer that would be incurred over the remainder of the original Term absent termination, determined by (a) Calculating the anticipated income tax and margin tax liability for each year of the remaining Term (as if no early termination occurred) by applying a reasonable assumption regarding the combined marginal federal income tax rate of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and the margin tax rate of Developer; and (b) applying to such cumulative federal income tax and State margin tax liability a discount factor as used in the Base Case Financial Model.

"**Base Toll**" has the meaning set forth in Exhibit 10.

"**Base Toll Rate Soft Cap**" has the meaning set forth in Exhibit 10.

"**Base Toll Soft Cap**" has the meaning set forth in Exhibit 10.

"**Beltway 8 Direct Connectors**" means the eight direct connectors at Beltway 8.

"**Benchmark Rates**" means the rates for PABs and TIFIA financing, taxable bonds and bank debt contained in Section 5.2(f) of Exhibit 4.

"**Betterment**" has, with respect to a given Utility being adjusted, the meaning (if any) set forth in the Utility Agreement applicable to the Utility; in all other cases, "Betterment" means any upgrading of the Utility 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. Notwithstanding the foregoing, the following are not considered Betterments unless otherwise provided in the applicable Utility Agreement(s): (a) any upgrading which is required for accommodation of the Project; (b) replacement devices or materials that are 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); and (f) any upgrading required by the Utility Owner's applicable Adjustment Standards. With respect to any Replacement Utility Property Interest, "Betterment" has the meaning (if any) set forth in the applicable Utility Agreement(s). In all other cases, a Replacement Utility Property Interest shall be considered a Betterment, except to the extent that reinstallation of a Utility in the Replacement Utility Property Interest (i) is necessary in order to meet the requirements of the CDA Documents, or (ii) is called for by Developer in the interest of overall economy for the Project.

"**Borrowed Cash and Credit Balances**" means proceeds of Project Debt included in the Senior Debt Termination Amount that are held on the Early Termination Date as cash and credit balances in accounts held by or on behalf of Developer, and which are secured in favor of the Lenders or the Collateral Agent pursuant to the Security Documents, but excluding the Handback Requirements Reserve (if any).

"**Brazoria County Project**" means the development of toll lanes along SH 288 in Brazoria County, Texas, by Brazoria County or the Brazoria County Toll Road Authority, which project connects to the Toll Lanes.

"**Breakage Costs**" means any commercially reasonable prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate hedging arrangements, that Developer must pay under any Funding Agreement or Security Document as a result of the payment of all or any portion of the principal amount of Project Debt prior to its scheduled payment date, excluding, however, any such amounts included in the principal amount of any Refinancing.

"**Business Day**" means any day on which TxDOT is officially open for business.

"**Business Opportunity**" has the meaning set forth in Section 24.2.2.

"**BW 8 Direct Connectors**" means the eight Direct Connectors that connect BW 8 to the Toll Lanes.

"**Candidate Vehicle**" has the meaning set forth in Exhibit 11.

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

"**Cash and Credit Balances**" means proceeds of Project Debt and Contributed Unreturned Equity, as well as Toll Revenues and interest earnings, that are held on the Early Termination Date as cash and credit balances in accounts held by or on behalf of Developer, including in Lender accounts and reserve accounts, but excluding the Handback Requirements Reserve (if any).

"**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.

"**CDA Documents**" has the meaning set forth in Section 1.2.

"**Change in Law**" means (a) the adoption of any Law after the Setting Date or (b) any change, amendment to, repeal or revocation of any Law or any change in the interpretation or application thereof by any Governmental Entity after the Setting Date, in each case that is materially inconsistent with Laws in effect on the Setting 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 Setting Date.

"**Change Order**" means a written order issued by TxDOT to Developer under Article 13.

"**Change Request**" means a written request from Developer seeking to change the character, quantity, quality, description, scope or location of any part of the Work, to modify or deviate from the CDA Documents, or to develop non-mandatory Upgrades.

"**Claim**" means (a) a demand by Developer (which is, or potentially could be, disputed by TxDOT) for a time extension under the CDA Documents, payment of money or damages from TxDOT to Developer, or for payment from TxDOT of a Compensation Amount or Termination Compensation 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.

"**Class Factor**" has the meaning set forth in Exhibit 10.

"**Class I Qualified Investor**" means each of ACS Infrastructure Development, Inc., a Delaware corporation, and Shikun & Binui Concessions USA, Inc., a Delaware corporation.

"**Class II Qualified Investor**" means each of InfraRed Infrastructure III (No.1) LP, an English Limited Partnership, InfraRed Infrastructure III (No.2) LP, an English Limited Partnership, InfraRed Infrastructure III (No.4) LP, an English Limited Partnership, InfraRed Infrastructure III (No.6) LP, an English Limited Partnership, InfraRed Infrastructure III (No.7) LP, an English Limited Partnership, InfraRed Infrastructure (SH288) LP, a Guernsey Limited Partnership, Northleaf Mid-Market Infrastructure Partners LP, a Quebec limited partnership, Clal Insurance Company Ltd., an Israeli company, Star America Infrastructure Fund, LP, a Delaware limited partnership, and Star America Infrastructure Fund Affiliates, LP, a Delaware limited partnership.

"**Code**" has the meaning set forth in the Recitals.

"**Collateral Agent**" means the Institutional Lender listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the other Lenders in the Security Documents, or the Institutional Lender designated to act as trustee or agent on behalf of or at the direction of the other Lenders in an intercreditor agreement or other document executed by all Lenders to whom Security Documents are outstanding at the time of execution of such document, a copy of which shall be delivered by Developer to TxDOT. In the event of any Project Debt issued and held by a single Lender, Collateral Agent means such Lender.

"**Commission**" means the Texas Transportation Commission.

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

"**Committed Investment** means, collectively, (a) Equity Investment and (b) Deferred Equity Amounts.

"**Comparable Limited Access Highways**" means (a) Highways that have full control of access, are divided, have grade separations at intersections and are in other respects substantially similar to the Project and (b) associated facilities including frontage roads, as applicable. For purposes of this definition, determination of the aspects in which a Limited Access Highway system is substantially similar to the Project shall be based on, but not limited to, any one or more of age, design, engineering, construction, operating systems and features, other features or situations or a geographical area in which Highways have been or are susceptible to being affected by a common event (such as but not limited to hurricane or tornado). The presence or absence of tolling and tolling facilities shall not be a factor in determining whether a Highway is substantially similar to the Project.

"**Compensation Amount**" means the amount determined in accordance with Section 27.2.3.

"**Compensation Event**" means any of the following events, without fault by Developer:

(a) Discriminatory Change in Law;

(b) Discriminatory Action;

(c) Breach by TxDOT of its material obligations under the Agreement or other CDA Documents, including unreasonable failure to issue a certificate of Substantial Completion or certificate of satisfaction of conditions precedent to Service Commencement or Final Acceptance after Developer satisfies all applicable conditions and requirements for obtaining such a certificate;

(d) TxDOT-Caused Delay;

(e) TxDOT Change;

(f) Development, use or operation of the Airspace by TxDOT or anyone (other than a Developer-Related Entity) claiming under or through TxDOT, or development or operation by TxDOT of a Business Opportunity in the Airspace; *provided, however*, that no Compensation Event shall result from, and TxDOT shall have no liability for the loss of Toll Revenues or increase in Developer's costs resulting from, the use of the Airspace for the construction, operation, maintenance, repair, reconstruction, renewal, replacement and expansion of Related Transportation Facilities; and *provided further* that if the development, use or operation of the Airspace involves an Unplanned Revenue Impacting Facility, no Compensation Event shall result under this clause (f) (instead refer to Section 24.3 and clause (k) below);

(g) [RESERVED]

(h) Material adverse change after the Setting Date in the real property tax exemption set forth in Texas Tax Code Sections 11.11(j), 25.06(c) and 25.07(c), including any loss of such tax exemption for the Project due to the acts or omissions of TxDOT, where such change results in imposition of new or added real property taxes on Developer's leasehold or possessory interest in the Project or Project Right of Way;

(i) TxDOT's suspension of tolling pursuant to Section 14.3.1 (except to the extent provided in the second sentence of Section 14.3.1) or Section 14.3.2.

(j) A TxDOT Release of Hazardous Material;

(k) Material adverse effect of the operation of an Unplanned Revenue Impacting Facility;

(l) Issuance by a court in a legal proceeding challenging any NEPA Approval or a temporary restraining order or other form of temporary injunction that prohibits prosecution of any portion of the Work or imposition of tolls;

(m) Any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to any NEPA Approval as compared to the design concept indicated in the alternative that was the subject of the NEPA Approval, except to the extent the change in design concept had already been incorporated into Developer's design schematics assumed in connection with the Base Case Financial Model;

(n) A Change in Law consisting of the imposition of new or added federal, State or local taxes on tolls or gross toll receipts;

(o) A local Governmental Entity's unreasonable and unjustified failure to issue or unreasonable and unjustified delay in issuing a Governmental Approval, except to the extent that such failure or delay results from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the NEPA Approval or other Governmental Approval (which Developer-Related Entity's failure may include (i) modification by or on behalf of Developer of the design concept included in the NEPA Approval, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Additional Property);

(p) A cardinal change in or from the Electronic Toll Collection System technology, but only where such change is required under Section 25.2(c) (for this purpose, "cardinal change" means a fundamental, categorical change in the nature or scope of such technology, not merely changes in radio frequencies, transponder modes, evolutionary upgrades and similar Technology Enhancements; *provided* that a change in technology required to implement Dynamic Mode shall not be considered a "cardinal change" or a Compensation Event);

(q) (i) TxDOT's lack of good and sufficient title to any parcel in the Project Right of Way after conclusion of TxDOT's purported acquisition of the parcel through negotiation or condemnation proceeding, to the extent it interferes with or adversely affects performance of Work or imposition of tolls, or (ii) the existence at any time following issuance of NTP2 of any title reservation, condition, easement or encumbrance on any parcel in the Project Right of Way owned by TxDOT, of record or not of record, to the extent it interferes with or adversely affects performance of Work or imposition of tolls, except any title reservations, conditions, easements or encumbrances (1) concerning Utilities or (2) caused, permitted or suffered by a Developer-Related Entity;

(r) The termination of the TxDOT Tolling Services Agreement by TxDOT pursuant to Section 7.10 of the TxDOT Tolling Services Agreement;

(s) Certain Relief Events for which an extension of the Term is not available due to limits under applicable Laws as more particularly set forth in Section 27.1.4;

(t) If TxDOT undertakes the IH 610 Interchange Work pursuant to Section 24.3.3, the construction activities undertaken by TxDOT until the initial opening of the reconstructed interchange; *provided*, *however*, that no Compensation Event shall result from, and TxDOT shall have no liability for, the loss of Toll Revenues or increase in Developer's costs resulting from any subsequent operation or maintenance of the IH 610 Interchange (whether by TxDOT, Developer or a third party); or

(u) The failure of the City of Houston or the City of Pearland to maintain and operate lighting in the Project Right of Way, as each is obligated under those certain Illumination and Maintenance Agreement and Traffic Signal Maintenance Agreements with TxDOT;

provided, however, that except as provided in clause (r) of this definition of "Compensation Event", no Compensation Event shall result from any breach by TxDOT under the TxDOT Tolling Services Agreement (for clarity, the remedies set out in the TxDOT Tolling Services Agreement are the exclusive remedies for breaches thereof except as otherwise expressly provided in the Agreement).

"**Compensation Event Notice**" means the notice submitted by Developer in accordance with Section 27.2.

"**Concession Payment**" has the meaning set forth in Section 4.1.

"**Condemnation Package(s)**" means the packages of documentation and information for the condemnation of parcels for the Project ROW described in Section 7 the Technical Provisions.

"**Conditional TIFIA Term Sheet**" means the conditional TIFIA term sheet provided by TxDOT to Proposers prior to the Financial Proposal Due Date for the purposes of preparing Proposals.

"**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 the Project and/or the Utility Adjustments included in the Construction Work, in accordance with the CDA Documents.

"**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, demolition, grading, clearing, grubbing and staking.

"**Consumer Price Index**" (**CPI**) means the Consumer Price Index for All Urban Wage Earners and Clerical Workers (CPI-W), All City Average, All Items, as published by the United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1982-1984 = 100, or if such publication ceases to exist a comparable index selected by TxDOT and approved by Developer. If such index is revised so that the base year differs from that set forth above, the CPI shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics. If the Bureau of Labor Statistics otherwise alters its method of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index.

"**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 and the TxDOT Tolling Services Agreement.

"**Contractors**" means any Person with whom Developer has entered into any Contract to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Adjustments included in the Construction Work, on behalf of Developer, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers; *provided, however*, that "Contractor" excludes TxDOT.

"**Contributed Unreturned Equity**" means the outstanding contributed and unreturned equity paid to Developer by Affiliates or other equity investors in Developer, as well as the outstanding principal balance at the Early Termination Date, including accrued unpaid interest, as of such date, of equity bridge loans (as defined in the definition of Senior Debt Termination Amount), excluding any portion of such equity or principal used or expended, or committed or available to be used or expended, for anything other than the purposes listed in Section 3.5.2(a).

"**Critical Path**" means the longest chain(s), in terms of time, of logically connected activities on the Project Schedule ending with Final Acceptance for the last Project Segment.

"**CSC Host**" means the central computer system of the Person (which may include TxDOT) that supports customer service center account management functions for the Project.

"**Cumulative Tolling Method Gain**" means the amount determined pursuant to Section 4.8.5(a).

"**Custodian**" has the meaning set forth in Exhibit 11.

"**Customer Groups**" has the meaning as set forth in Section 3.2.4 of the Technical Provisions.

"**D&C Direct Agreement**" means the agreement in the form attached as Exhibit 22 entered into by and among Developer, TxDOT, Guarantors and the Design-Build Contractor.

"**DBE Performance Plan**" means Developer's plan for meeting the DBE participation goals set forth in Section 23.9.2. The DBE Performance Plan is Exhibit 14.

"**DBE Special Provisions**" means TxDOT's special provisions for the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26 and set forth in Exhibit 13.

"**Debarment Regulations**" means (a) Federal Executive Order no. 12549 (Feb. 18, 1986), (b) Federal Executive Order no. 12689 (Aug. 16, 1989), (c) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327) and (d) 49 CFR Part 29 "Government wide Debarment and Suspension (Nonprocurement)".

"**Decent, Safe and Sanitary (DSS) Dwelling**" means a dwelling which meets applicable housing and occupancy codes.

"**Default Termination Event**" has the meaning set forth in Section 31.3.1.

"**Defect**" means a defect, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any Element of the Project, which would cause or have the potential to cause one or more of the following: (a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users; (b) a structural deterioration of the affected Element or any other part of the Project; (c) damage to a third party's property or equipment; (d) damage to the Environment; (e) failure of the affected Element or any other part of the Project to meet a Performance Requirement; or (f) failure of an 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.

"**Deferred Equity Amounts**" means, on any date, any amount of unfunded equity that has been committed to Developer (including commitments to provide an Equity Investment or Equity Member Debt) and is shown to be available for use in the Project Plan of Finance prior to the commencement of the Operating Period.

"**Demand Factor**" has the meaning set forth in Exhibit 10.

"**Demolition and Abandonment Plan**" means the plan prepared by Developer that considers the types and sizes of Utilities and structure that will be abandoned during the Term as more particularly described in Section 10.2 of the Technical Provisions.

"**Design-Build Contract**" means that certain agreement between Developer and the Design-Build Contractor of even date herewith for the design and construction of the Project and the Utility Adjustments included in the Design Work and/or the Construction Work.

"**Design-Build Contractor**" means Almeda-Genoa Constructors, an unincorporated joint venture consisting of (a) Dragados USA, Inc., a Delaware corporation, (b) Pulice Construction, Inc., an Arizona corporation, and (c) Shikun & Binui - America Inc., a Delaware corporation.

"**Design Documents**" means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project and/or the Utility Adjustments included in the Design Work, Construction Work or O&M Work. Design Documents include the Final Design Documents.

"**Design Work**" means all Work of design, engineering or architecture for the Project, Project Right of Way acquisition or Utility Adjustments.

"**Developer**" has the meaning set forth in the Preamble.

"**Developer Default**" has the meaning set forth in Section 29.1.

"**Developer-Related Entities**" means (a) Developer, (b) Developer's shareholders, partners, joint venture members and/or members, (c) Contractors (including Suppliers and Design-Build Contractor), (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 and assign of any of the foregoing; *provided*, *however*, that "Developer-Related Entities" excludes TxDOT.

"**Developer Release 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, willful 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 Interest**" means all right, title, interest and estate, real or personal, of Developer in, to, under or derived from the Agreement, the Lease and the other CDA Documents, including Developer's right, title and interest in and to the Project, Project Right of Way, Toll Revenues, Principal Project Documents, Project Management Plan, Contracts, Submittals, Claims and Intellectual Property.

"**Deviation**" means any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions.

"**Direct Connector**" has the meaning set forth in Exhibit 10.

"**Directive Letter**" means the letter described in Section 13.3.

"**Discriminatory**" or "**Discriminatory Action**" means (a) materially more onerous application to Developer or the Project of changes or additions to Technical Provisions than the application thereof to other Comparable Limited Access Highways, or (b) selective application of changes or additions to

Technical Provisions to Developer or the Project and not to other Comparable Limited Access Highways. Notwithstanding the foregoing, the following actions are not Discriminatory or Discriminatory Actions: (i) any such application in response to any act or omission by or on behalf of Developer in violation of Law or the CDA Documents; (ii) Safety Compliance; (iii) any such application in response to a directive by the U.S. Department of Homeland Security or comparable State agency, unless such directive is directed solely at or solely affects the Project and such application requires specific changes in Developer's normal design, construction, operation or maintenance procedures in order to comply; (iv) planning, design, construction, operation and maintenance of Unplanned Revenue Impacting Facilities; and (v) any other actions necessary to address potential safety concerns arising from a specific condition or feature peculiar to the Project.

"**Discriminatory Change in Law**" means any Change in Law during the Term which is principally directed at and the effect of which is principally borne by Developer or private toll road operators in the State, except where such change (a) is in response, in whole or in part, to any failure to perform or breach of the CDA Documents, violation of applicable Law or Governmental Approval, culpable act or culpable omission on the part of any Developer-Related Entity, (b) is a directive by the U.S. Department of Homeland Security or comparable State agency, unless such directive is directed solely at or solely affects the Project and requires specific changes in Developer's normal design, construction, operation or maintenance procedures in order to comply, or (c) is otherwise expressly permitted under the CDA Documents.

"**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 the procedures for resolving Disputes set forth in Article 30.

"**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 19.

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

"**Disputes Board Decision**" means a written decision that the Disputes Board issues to the Parties on any Dispute submitted to the Disputes Board, together with its written findings of fact and conclusions of law in support of the decision.

"**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 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 Disputes Board Member 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 Principal Project 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), 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 shall not have had substantial prior involvement in any aspect of the Agreement or its procurement, 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 shall not know of any reason, including the existence of any of the Disputes Board Member Conflicts of Interest as described in this definition, why he or she cannot be impartial in resolving Disputes; and

(e) In addition to the Disputes Board Member 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.

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

"**Disputes Board Member 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 Disputes Board 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) In connection with procurement of a Disputes Board Decision, evident partiality due to corruption or fraud;

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

(e) 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, a situation where such individual has materially misrepresented his or her experience to the Parties.

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

"**Distribution**" means any distribution, dividend, interest payment, repayment of principal, breakage cost, guaranteed payment, reduction in capital, redemption or purchase of shares or variation of share capital, loan, transfer of assets or rights not received in the ordinary course of business, other payment, monetary or in-kind, or other delivery of any other benefit which is not in the ordinary course of business, made or projected to be made by Developer to the shareholders, members, partners, joint venture members or other holders of an equity interest in Developer (collectively "equity investors") or to Affiliates, including from proceeds of any Refinancing, on account of or related to equity investment in Developer or Affiliates or on account of or related to any loan from any such Person to Developer or Affiliates, that is not secured by Security Documents. Used in the context of Refinancing Gain and when the same is realized or distributed by Developer, in the context of any internal rate of return on equity described in the CDA Documents or in the context of a Compensation Amount or Termination Compensation, "Distribution" also means and includes (a) fees and surcharges of all kinds, however denominated or characterized, paid or projected to be paid from Toll Revenues or proceeds of equity or debt financing to equity investors or Affiliates, and (b) interest and principal paid or projected to be paid from Toll Revenues on debt, other than senior lien Project Debt, held by equity investors or Affiliates, including Subordinate Debt.

"**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.

"**Dynamic Mode**" has the meaning set forth in Exhibit 10.

"**Early Termination Date**" means the effective date of termination of the Agreement and Lease for any reason prior to the stated expiration of the Term, as specified in the relevant provisions of Article 31 and Exhibit 20.

"**Effective Date**" means the date of execution of the Agreement by both parties.

"**Electronic Toll Collection System**" (**ETCS**) means the electronic toll collection system, including its components, systems and subsystems), the hardware and physical infrastructure, and the software provided by Developer.

"**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.

"**Element Category**" means each of the main headings numbered 1 to 19 in the column entitled "Element Category" in the Performance and Measurement Table Baseline.

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

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

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

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

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

(e) Other investments then customarily accepted by the State in similar circumstances; *provided, however*, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

"**Emergency**" means any unplanned event that affects the Project, whether directly or indirectly and whether or not 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 traveling public, (b) has jeopardized the safety of Users or the traveling public or (c) is recognized by the Texas Department of Public Safety as an emergency.

"**Emergency Services**" means law enforcement, ambulance service and other similar services from agencies with which Developer establishes protocols for incident response, safety and security procedures, as set forth in the Incident Management Plan.

"**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, or if such publication ceases to be in existence, a comparable index selected by TxDOT and approved by Developer.

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

"**Environmental Approvals**" means all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project, including approvals and permits required under NEPA.

"**Environmental Commitment**" (also environmental commitment, Environmental Permits, Issues and Commitments and environmental permits, issues and commitments) means 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 Compliance and Mitigation Plan**" means 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, including the NEPA Approval and similar Governmental Approvals for the Project or the Work, or set forth in the CDA Documents, and for complying with all other conditions and requirements of the Environmental Approvals.

"**Environmental Compliance Inspectors**" means the individual(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 4.4.3 of the Technical Provisions.

"**Environmental Compliance Manager**" means the individual 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**" means 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) the 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).

"**Environmental Management System**" means 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 4.4 of the Technical Provisions.

"**Environmental Monitoring Reports**" **(EMRs)** means the weekly reports prepared by the ECM providing detailed information on development activities, species or resources monitored, and compliance / non-compliance issues as more particularly described in Section 4 of the Technical Provisions.

"**Environmental Protection Training Program**" means the program to be initiated by Developer to ensure the Work is conducted in compliance with all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.3 of the Technical Provisions.

"**Environmental Team**" means 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 and the Work as more particularly described in Section 4.4 of the Technical Provisions.

"**Environmental Training Staff**" means 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 4.4.2 of the Technical Provisions.

"**Equity**" means any capital stock, shares, partnership, membership or limited liability company interests, or any other security or equity interests representing an ownership interest in any Person.

"**Equity Investment**" means (a) any form of direct investment by Equity Members, including the purchase of newly issued Equity in and/or the provision of Equity Member Debt to Developer, and (b) any draws by or on behalf of Developer, as applicable, of any letter of credit that may have been issued for the account of an Equity Member to support its commitment to provide Deferred Equity Amounts.

"**Equity IRR**" means a blended nominal Post-Tax rate of return on Contributed Unreturned Equity and Subordinate Debt over the full Term (excluding potential extensions of the Term) equal to that projected in the Base Case Financial Model, which rate of return will be confirmed by the Parties promptly after the applicable date or dates under clause (a) or (b) below takes effect, calculated from the first to occur of the following dates through the end of the Term (excluding potential extensions of the Term): (a) the date or dates on or after the Effective Date that actual funding to Developer occurs; or (b) the date on or after the

Effective Date that both the following exist or occur: (i) Developer receives a binding, written, unconditional commitment of equity and/or, if applicable, Subordinate Debt, available on demand; and (ii) the committed equity amount and/or, if applicable, Subordinate Debt amount, or a letter of credit, parent guaranty or other good security in like amount is delivered to Developer to assure and secure full funding of the binding commitment.

"**Equity Member**" means any Person with a direct equity interest in Developer (whether as a member, partner, joint venture member, or otherwise).

"**Equity Member Debt**" means any obligations created, issued or incurred by Developer for borrowed money that (a) is owed to any Equity Member, Qualified Investor or any affiliate thereof or of Developer, as applicable, and (b) is subordinated in priority of payment and security to all Project Debt held by Persons who are not Equity Members, other than any mezzanine debt that is provided by a party referred to in clause (a) on an arm's length basis.

"**Equity Transfer**" means (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the Equity in Developer, in an Equity Member or in any Related Entity (including the direct or indirect control over the exercise of voting rights conferred with respect to such Equity, direct or indirect control over the right to appoint or remove directors, or the rights to receive dividends or distributions); or (b) any other arrangements that have or may have or which result in the same effect as clause (a); in each case, whether voluntary, involuntary or by operation of Law.

"**Escalated Annually – CPI**" has the meaning set forth in Exhibit 10.

"**Escalated Annually – GSP**" has the meaning set forth in Exhibit 10.

"**Excuse from Closing**" has the meaning set forth in Section 3.4.2.

"**Executive Director**" means the Executive Director of TxDOT appointed by the Commission and any successor thereto having substantially similar powers and authority.

"**Exempt Refinancing**" means:

(a) Any Refinancing that was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment;

(b) Amendments, modifications, supplements or consents to Funding Agreements and Security Documents, and the exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision;

(c) Movement of monies between the Project accounts in accordance with the terms of Funding Agreements and Security Documents;

(d) Any of the following acts by a Lender of senior lien priority Project Debt: (i) The syndication of any of such Lender's rights and interests in the senior Funding Agreements; (ii) the grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, in respect of the senior Funding Agreements in favor of any other Lender of senior lien Project Debt or any other investor; or (iii) the grant by such Lender of any other form of benefit or interest in either the senior Funding Agreements or the revenues or assets of Developer, whether by way of security or otherwise, in favor of any other Lender of senior lien Project Debt or any investor;

(e) Periodic resetting and remarketing of tax-exempt or taxable bonds that bear interest at a variable or floating rate and are money market eligible under SEC Rule 2a-7; and

(f) Any Refinancing to the extent (and only to the extent) that the proceeds are used to make payments to TxDOT pursuant to Section 4.8.

"**Exempt Vehicles**" has the meaning set forth in Exhibit 10.

"**Existing Element**" means an Element in place and operating prior to the Financial Proposal Due Date.

"**Existing Utility Property Interest**" means 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**" means (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).

"**Fair Market Value**" means with respect to the Developer's Interest the following, determined according to the procedures set forth in Section 31.7:

(a) The amount that a willing and able buyer would offer, and a willing and able seller would accept, for the purchase, and sale of the Developer's Interest, in an arm's length transaction, assuming:

(i) Neither party is under economic compulsion or has special bargaining power;

(ii) Subject to clause (e) below, the buyer possesses all information in the possession of Developer relating to the Project, its condition, the Work, the CDA Documents, and the revenues and expenses of Developer;

(iii) The event or circumstance that requires determination of fair market value had not occurred and accordingly the Developer's Interest would remain in effect and Developer would remain a going concern for the balance of the original Term and would not receive or be entitled to receive any compensation for fair market value from TxDOT under the Agreement;

(iv) Subject to clause (e) below, there exists no prior, known or reasonably foreseeable unusual temporary event or circumstance specific to the Project (e.g. damage or destruction) or to the toll road project financing market (as distinguished from general market, economic and environmental conditions), positive or negative, except to the extent such an event or circumstance is not yet rectified and affects the existing or future condition or continued viability of the Project or the cost to rectify and recover, in which case Fair Market Value will reflect the cost of such event or circumstance, positive or negative (if such event or circumstance consists of damage or destruction, Fair Market Value will reflect (1) the estimated cost to repair and replace the damage or destruction and (2) the loss of Toll Revenues during the estimated time to repair and replace the damage or destruction, and Developer will retain the right to insurance coverage for loss occasioned thereby);

(v) There would occur no future unusual temporary event or circumstance specific to the Project (e.g. damage or destruction) or the toll road project financing market (as distinguished from

general market, economic and environmental conditions), positive or negative, not known or reasonably foreseeable at the time of appraisal;

(vi) There would occur no future Change in Law not known or reasonably foreseeable at the time of appraisal; and

(vii) There exists no adverse effect from a TxDOT Default, and both Parties would generally continue to perform their respective obligations (including Developer's Renewal Work and Upgrade obligations) under the CDA Documents for the remainder of the Term absent early termination.

(b) If the event triggering Fair Market Value determination occurs prior to the Last Service Commencement Date of the Initial Configuration, then it also shall be assumed that Service Commencement for all Project Segments will occur or has occurred by the Service Commencement Deadline and that the Term will continue thereafter for the full originally stated Term; and valuation shall take into account the capital costs previously expended and expected capital costs to achieve Substantial Completion, Service Commencement and Final Acceptance for all Project Segments, expected dates of Substantial Completion and Service Commencement for all Project Segments under the then Project Schedule, and existing and expected circumstances affecting cost and the schedule for performance, including existing and expected delay both due to Relief Events and to other circumstances that are not Relief Events. The foregoing amount shall be subject to reduction as provided in clause (c) below.

(c) If Fair Market Value is being determined where the Termination Date precedes Service Commencement for all Project Segments, then there shall be subtracted from the amount under clause (b) above the amount of capital costs and investment (including capitalized interest) that Developer would be reasonably expected to incur from and after the Termination Date to achieve Substantial Completion, Service Commencement and Final Acceptance for all Project Segments.

(d) Fair Market Value excludes the value of cash in accounts held by or on behalf of Developer, including in Lender accounts and reserve accounts. Fair Market Value also excludes the value of cash held in the Handback Requirements Reserve, if any.

(e) The effect of any Compensation Event occurring prior to determination of Fair Market Value shall be addressed as follows:

(i) To the extent Developer previously received payment of a Compensation Amount for adverse cost and revenue impacts accruing from and after the Early Termination Date from such Compensation Event, Fair Market Value shall not further compensate Developer for such impacts, and accordingly Fair Market Value shall be determined by taking into account the adverse cost and revenue impacts accruing from and after the Early Termination Date;

(ii) To the extent a Compensation Amount has previously been determined by mutual agreement or pursuant to the Dispute Resolution Procedures and would be payable to Developer after the Early Termination Date for adverse cost and revenue impacts accruing from and after the Early Termination Date from such Compensation Event, Fair Market Value shall include the present value of the right to such future payments (and Developer shall have no other Claim for such future adverse cost and revenue impacts); and

(iii) To the extent no Compensation Amount has previously been determined for such Compensation Event, then Fair Market Value shall be determined as if the Compensation Event had not occurred and therefore is unaffected by any adverse cost and revenue impacts of the Compensation Event

accruing from and after the Early Termination Date (and Developer shall have no other Claim for such future adverse cost and revenue impacts).

"**Fast-Track Dispute**" means any Claim or Dispute that Developer and TxDOT mutually agree merits expedited resolution because of its impact on the performance or progress of the Work.

"**Federal Requirements**" means the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 12.

"**Final Acceptance**" means, for each Project Segment, the occurrence of all the events and satisfaction of all the conditions for the Project Segment set forth in Section 9.6, as and when confirmed by TxDOT's issuance of a certificate in accordance with the procedures and within the time frame established in Section 9.6.

"**Final Acceptance Deadline**" means the applicable deadline for achieving Final Acceptance for each Project Segment included in the Initial Configuration, as set forth in Table 1 of Exhibit 8, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement; *provided* that the Final Acceptance Deadline for the General Purpose Lane Capacity Improvements means the deadline for achieving Final Acceptance for such Project Segment set forth in Section 25.1.5(c).

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

"**Final Design Documents**" means the Design Documents which provide the complete and final documents necessary or related to construction, operations and maintenance of the Project or any portion thereof and any Utility Adjustments included in the Design Work, Construction Work or O&M Work.

"**Financial Close**" means satisfaction of all of the conditions set forth in Section 3.3.

"**Financial Close Deadline**" means November 30, 2015, as such deadline may be extended pursuant to Section 3.3.1.

"**Financial Close Security**" means the Closing Security (as defined in the ITP) in the amount of $30,000,000 provided by Developer to TxDOT under Section 3.3 of Exhibit B to the ITP.

"**Financial Model Formulas**" means the financial formulas that Developer submitted with its Project Plan of Finance for projecting Post-Tax internal rates of return over the Term to equity investors in Developer, which financial formulas are used as part of the Base Case Financial Model, including the traffic and revenue model that Developer and TxDOT have agreed upon as of the Effective Date, and are used as part of each Base Case Financial Model Update, but without the data and information used by or incorporated in the Base Case Financial Model or Base Case Financial Model Update.

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

(a) Form O of the Proposal (Detailed Costing Form);

(b) The data book submitted with the Proposal, fully describing all assumptions underlying the estimates, projections and calculations in the Base Case Financial Model, and updates to such data book related to Base Case Financial Model Updates;

(c) The step by step instructions on the procedure to run and to optimize the Financial Model Formulas and Base Case Financial Model submitted with the Proposal, and updates thereto related to Base Case Financial Model Updates;

(d) The Base Case Traffic Model and any future updates thereto or new traffic models and traffic data prepared by or on behalf of Developer related to Base Case Financial Model Updates;

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

(f) Copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) related to any Compensation Event or Change Order;

(g) All information and documents in the sealed container Developer submitted with its Proposal labeled "[Proposer Name]: Financial Proposal for the TxDOT SH 288 Toll Lanes Project in Harris County—Detailed Financing Terms," describing the amounts, timing, terms and other commercially sensitive provisions associated with each equity source, loan facility and debt instrument included in the Project Plan of Finance; and

(h) All other supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge, fee and revenue information used by Developer in the creation and derivation of its Proposal or of any Base Case Financial Model Update, or related to any Compensation Event or Change Order.

"**Financial Proposal Due Date**" has the meaning set forth in the Recitals.

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

"**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 Service Commencement 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.

"**For Cause**" has the meaning set forth in the Disputes Board Agreement.

"**Force Majeure Event**" means the occurrence of any of the following events that materially and adversely affects performance of Developer's obligations; *provided* that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the State; (b) any act of terrorism or sabotage that causes direct physical damage to the Project; (c) nuclear explosion or contamination, in each case occurring within the State; (d) riot and civil commotion on or in the immediate vicinity of the Project; and (e) flood, earthquake, hurricane and tornado, in each case that causes direct physical damage to the Project, to the extent any such event is no longer deemed a

Relief Event under clause (b) of the definition of Relief Event because insurance for the risks of such events became commercially unavailable under Section 26.1.2(l).

"**Formal Consultation**" means any discussions or correspondence about listed species that takes place subsequent to FHWA submitting a written request for consultation and USFWS submitting a written response acknowledging initiation or consultation.

"**Frontage Roads**" means the Highways located along Limited Access Highways for service to abutting property and adjacent areas with respect to the Project as delineated in Section 1 of the Technical Provisions.

"**Functional Availability**" has the meaning set forth in Section 21.5 of the Technical Provisions.

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

"**General Inspection**" means an inspection to identify Defects and assess asset condition. Results of a General Inspection shall be used to develop the Renewal Work Schedule, to maintain asset condition and service levels and to develop programs of maintenance and Renewal Work to minimize the effect of O&M Work on Users.

"**General Purpose Lane Capacity Improvements**" (**GPCLI**) means the addition of a new General Purpose Lane in each direction of SH 288 and associated improvements to the General Purpose Lanes as described in the Ultimate Configuration.

"**General Purpose Lanes**" means the Limited Access Highway lanes or main lanes with respect to the Project as delineated in Section 1 of the Technical Provisions.

"**Geotechnical Engineering Reports**" means the reports which meet the requirements described in Section 8.2 of the Technical Provisions.

"**Good Industry Practice**" means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, operator or maintenance provider seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and engaged in the same type of undertaking in the United States under similar circumstances and conditions.

"**Governmental Approval**" means 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 Project or the Work.

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

"**GPLCI Conformity Year**" has the meaning set forth in Section 25.1.3.

"**GPLCI Design-Build Contract**" has the meaning set forth in Section 25.1.6.

"**GPLCI Design-Build Contractor**" means the design-build contractor with which Developer has contracted pursuant to Section 25.1.6 to perform the GPLCI Design-Build Work under the terms of the GPLCI Design-Build Contract.

"**GPLCI Design-Build Work**" means all Work in respect of the design and construction of the General Purpose Lane Capacity Improvements, which shall be undertaken by the GPLCI Design-Build Contractor on Developer's behalf pursuant to Section 25.1.6.

"**GPLCI Work**" means all Work in respect of the General Purpose Lane Capacity Improvements, including the design, construction, operation and maintenance thereof.

"**Green Ribbon Project Guidelines**" means the set of aesthetic guidelines entitled "Green Ribbon Project: Houston District Guidelines for the Construction of Highways, Streets, and Bridges" and standard sheets adopted by the TxDOT Houston District.

"**Gross State Product**" (**GSP**) has the meaning set forth in Exhibit 10.

"**Grounds for Appeal**" means one or more of the following, each of which is acknowledged by the Parties to constitute Disputes Board error within the scope of SOAH authority to hear on appeal: (a) the Disputes Board acted beyond the limits on its authority set forth in Section 30.3.1; (b) the Disputes Board failed, in any material respect, to properly follow or apply the procedures for handling, hearing and deciding on the Dispute required under Article 30 and the Disputes Board Agreement; or (c) a Disputes Board Member Conflict of Interest or Disputes Board Member Misconduct existed or occurred.

"**GSP Per Capita**" has the meaning set forth in Exhibit 10.

"**Guarantor**" means any Person that is the obligor under any guaranty in favor of TxDOT required under the Agreement, including any guaranty of the Design-Build Contract or any O&M Contract.

"**Handback Requirements**" means the terms, conditions, requirements and procedures governing the condition in which Developer is to deliver the Project and Project Right of Way to TxDOT upon expiration or earlier termination of the Agreement and Lease, as set forth in Section 19.4 of the Technical Provisions.

"**Handback Requirements Letter of Credit**" has the meaning set forth in Section 20.2.6(a).

"**Handback Requirements Reserve**" has the meaning set forth in Section 20.2.1(a)

"**Hazardous Materials**" means 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. "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**" means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Project, Project Right of Way or 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 approach is effective, most cost-efficient and authorized under applicable Law.

"**Hazardous Materials Management Plan**" means Developer's plan for Hazardous Materials Management both within and outside the Project Right of Way during construction and operation of the Project and/or construction of the Utility Adjustments included in the Construction Work, as more particularly set forth in Section 4.3.5 of the Technical Provisions.

"**Hazardous Materials Manager**" means the person designated by the Environmental Compliance Manager to provide expertise in the safe handling of Hazardous Materials in accordance with Section 4.4 of the Technical Provisions.

"**HCTRA Transaction**" means a Toll Transaction charged to a Tolling Account maintained by HCTRA or its successor agency. For the purpose of this definition, "successor agency" means a legal or statutory successor to HCTRA or any other Person that assumes obligations to maintain Toll Accounts previously maintained by HCTRA.

"**HCTRA-TxDOT Interoperable Relationship**" means a relationship or arrangement, whether by contract, statute, or otherwise, under which HCTRA (or its successor agency) has agreed to be, or is obligated to be, an Interoperable Toll Account Provider with respect to the (SH 288) Toll Lanes. For the purpose of this definition, "successor agency" means a legal or statutory successor to HCTRA or any other Person that assumes obligations to maintain Toll Accounts previously maintained by HCTRA.

"**Highway**" means a travel way for vehicular traffic that is included in the State highway system.

"**Highway Service Systems**" means TxDOT's or a Governmental Entity's lighting and electrical systems, traffic control systems, communications systems and irrigation systems serving street or highway purposes (including ITS and Intelligent Vehicle Highway System facilities).

"**Historic Property**" means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places.

"**Holiday**" has the meaning set forth in Exhibit 10.

"**IH 610 Interchange**" means the interchange of IH 610 and SH 288.

"**IH 610 Interchange Work**" means the re-construction of and improvements to the IH 610 Interchange and the operation and maintenance of the IH 610 Interchange, all as described in the Technical Provisions.

"**Image-Based Billing**" has the meaning set forth in Exhibit 10.

"**Image-Based Billing Toll Premium**" has the meaning set forth in Exhibit 10.

"**Incident**" means any unplanned event within the Project Right of Way that causes potential or actual disruption to the free flow of traffic.

"**Incident Management Plan**" means Developer's plan for detection and response to Incidents or Emergencies, as part of the PMP.

"**Indemnified Parties**" means TXDOT, the State, the Commission, the Independent Engineer, and their respective successors, assigns, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees.

"**Independent Engineer**" means the Person retained from time to time by TxDOT and Developer under an Independent Engineer Agreement.

"**Independent Engineer Agreement**" means a three-party agreement among TxDOT, Developer and a Person setting forth the terms and conditions under which such Person is to perform the functions and services of an independent, neutral observer, inspector and auditor of the Work, and any supplements and amendments of any such agreement.

"**Informal Consultations**" means any discussions or correspondence about listed species that take place before the beginning of Formal Consultations.

"**Informal Resolution Procedures**" has the meaning set forth in Section 30.2.

"**Initial Base Case Senior Project Debt**" means the senior lien debt financing for Developer, and the first tier subordinate debt financing for Developer that meets the parameters set forth in clause (a)(iii)(B) of the definition of Senior Debt Termination Amount, in the face amount set forth in the Base Case Financial Model (without regard to the actual Initial Project Debt).

"**Initial Configuration**" means the scope of the Project defined in Section 1.3.1 of the ITP, and as further described in Section 1.3.1 of the Technical Provisions, with the exception of the General Purpose Lane Capacity Improvements described in Section 1.3.1(d) of the ITP.

"**Initial Project Debt**" means the Project Debt to originally finance the Project and Work, as established at Financial Close and evidenced or to be evidenced by the Initial Funding Agreements and secured or to be secured by the Initial Security Documents.

"**Initial Funding Agreements**" means the Funding Agreements establishing the rights and obligations pertaining to the Initial Project Debt, either (a) as specifically identified in Exhibit 5 if executed and delivered by Developer on or before the Effective Date or (b) as executed and delivered by Developer at the Financial Close, if the Financial Close occurs after the Effective Date.

"**Initial Security Documents**" means the Security Documents securing the Initial Project Debt, either (a) as specifically identified in Exhibit 5 if executed and delivered by Developer on or before the Effective Date or (b) as executed and delivered by Developer at the Financial Close, if the Financial Close occurs after the Effective Date.

"**Initial Senior Debt Termination Amount**" means the Senior Debt Termination Amount as determined for the amount of the Initial Base Case Senior Project Debt that would be outstanding at the Early Termination Date assuming that the Initial Project Debt were the Initial Base Case Senior Project Debt and amortized according to the amortization of the Initial Base Case Senior Project Debt set forth in the Base Case Financial Model; *provided* that if the Early Termination Date occurs before Financial Close, then Initial Senior Debt Termination Amount means zero.

"**Institutional Lender**" means:

(a) The United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;

(b) Any (i) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of any state, (iii) pension fund, foundation or university or college endowment fund, (iv) entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (v) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within one year of its making (*provided* that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and federal courts in the State in any actions);

(c) Any "qualified institutional buyer" under Rule 144(a) under the U.S. Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms; or

(d) Any other financial institution or entity designated by Developer and approved by TxDOT (*provided* that such institution or entity, in its activity under this Agreement, is acceptable under then current guidelines and practices of TxDOT); *provided, however*, that each such entity (other than entities described in clause (b)(iv), clause (c) and clause (d) of this definition), or combination of such entities if the Institutional Lender is a combination of such entities, shall have individual or combined assets, as the case may be, of not less than $1,000,000,000; *provided*, further, that an entity described in

clause (b)(iv) of this definition must have assets of not less than $100,000,000. The foregoing dollar minimums shall automatically increase at the beginning of each calendar year by the percentage increase, if any, in the CPI during the immediately preceding calendar year.

"**Insurance Policies**" means all of the insurance policies Developer is required to carry pursuant to Section 16.1 and Exhibit 16.

"**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 also includes the Financial Model Formulas, Base Case Financial Model, Financial Modeling Data and trade secret information contained in the Project Plan of Finance. 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**" has the meaning set forth in Section 17 of the Technical Provisions.

"**Intelligent Vehicle Highway System**" means smart vehicle and smart highway technologies to improve the safety, efficiency and environmental impact of highway facilities.

"**Interface Control Document**" (**ITC**) means the then-current TxDOT document setting forth interface standards including the manner in which data shall be transmitted and received between the CSC Host and the ETCS, as the same may be changed from time to time at TxDOT's discretion.

"**Interoperability Agreement**" means an agreement between TxDOT and one or more other Toll Account Providers that sets out protocols and arrangements pursuant to which the parties thereto covenant to remit payment to one another for all Toll Transactions that meet the terms for transmission, debiting and payment, and are required to be included in the current payment cycle, as set forth in the protocols and arrangements specified in such agreement.

"**Interoperability Fee**" means the interoperability fee charged by an Interoperable Toll Account Provider in connection with an Interoperable Transaction.

"**Interoperable Toll Account Provider**" means a Toll Account Provider, other than TxDOT, that is party to a valid and enforceable Interoperability Agreement with TxDOT.

"**Interoperable Transaction**" means a Toll Transaction with an electronic tolling account maintained by an Interoperable Toll Account Provider.

"**Investigative Work Plan**" means the plan of investigative and remedial action required by applicable Law, Environmental Approvals or the Hazardous Materials Management Plan to be prepared if Hazardous Materials are encountered or spilled, dumped, discharged or released at any time on, under, within or about the Project Right of Way.

"**ITP**" means Volume I of the RFP (Instructions to Proposers).

"**Job Training Plan**" means the plan attached to the Agreement as Exhibit 15A.

"**Key Contract**" means any one of the following Contracts for Work Developer causes to be performed: (a) all prime construction Contracts, including the Design-Build Contract; (b) all prime Contracts for design or construction of the Electronic Toll Collection System, unless with TxDOT; (c) all O&M Contracts, including any to operate the Electronic Toll Collection System or collect tolls, unless with TxDOT; (d) all project or program management services Contracts; (e) all prime maintenance contracts, if any, unless with TxDOT; and (f) all other prime contracts with a single contractor which individually or in the aggregate total in excess of $25,000,000; and the term "Key Contracts" shall mean all such Contracts in the aggregate or more than one of such Contracts.

"**Key Contractor**" means the Contractor under any Key Contract.

"**Key Personnel**" means those individuals appointed by Developer and approved by TxDOT from time to time to fill the "Key Personnel" positions. The specific individuals appointed by Developer and approved by TxDOT to initially fill certain of the Key Personnel positions are identified in Exhibit 7.

"**Lane Rental Charges**" means the liquidated damages described in Section 29.5.4.

"**Last Service Commencement Date for the Initial Configuration**" means the date upon which the all Project Segments included in the Initial Configuration are open for normal and continuous operations and use by the traveling public, after occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 9.5.

"**Law**" 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. The term "Law", however, excludes Governmental Approvals.

"**Lease**" means the Project Lease to be entered into between TxDOT and Developer pursuant to Section 2.3, in the form attached as Exhibit 3, as amended from time to time.

"**Lender**" means each of the holders and beneficiaries of Security Documents and their respective successors, assigns, participating parties, trustees and agents, including the Collateral Agent.

"**Lenders' Direct Agreement**" means the agreement in the form attached as Exhibit 21 entered into by and among Developer, TxDOT and the Lender(s) (or the Collateral Agent on behalf of the Lenders).

"**Level of Service F**" means the level of service denoted as "F" as defined and described by the most recent edition of the Highway Capacity Manual published by the Transportation Research Board.

"**LIBOR**" means 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

preceding day on which such dealings were transacted in such market. All interest based on LIBOR shall be calculated on the basis of a 360-day year for the actual days elapsed.

"**Limited Access Highway**" means any Highway to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, Highways, alleys or other public or private ways.

"**Line**" or "**line**" means, in the context of Utilities or Highway Service Systems, a line, pipeline, conduit or cable used for utility purposes, including underground, surface or overhead facilities.

"**Long Stop Date**" means the outside deadline for achieving Service Commencement for all Project Segments, as set forth in Table 1 of Exhibit 8, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

"**Losses**" means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty, 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.

"**Master Lockbox and Custodial Account Agreement**" means that certain Master Lockbox and Custodial Account Agreement, dated as of November 9, 2007, between TxDOT and The Bank of New York Mellon Trust Company, N.A., as Custodian.

"**Mean Time Between Failures**" means the average time between failures of an Element or an individual component, system or subsystem of an Element.

"**Mean Time To Repair**" means the average time between failure of an Element or an individual component, system or subsystem of an Element and such Element or individual component, system or subsystem of an Element being returned to full service.

"**Memorandum of Lease**" means a recordable memorandum of the essential terms of the Lease, in the form in Exhibit 3, executed, acknowledged and delivered by the Parties pursuant to Section 2.3.

"**Milestone**" means each of the events set forth in Table 1 of Exhibit 8.

"**Milestone Deadline**" means, with respect to each Milestone, the deadline for each achievement of that Milestone set forth in Table 1 of Exhibit 8, including the NTP2 Conditions Deadline, the Service Commencement Deadline, the Final Acceptance Deadline and the Long Stop Date.

"**Minimum Base Toll**" has the meaning set forth in Exhibit 10.

"**Minimum Base Toll Rate**" has the meaning set forth in Exhibit 10.

"**National Contingency Plan**" means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300).

"**Natural Resource Biologist**" means 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 of the Technical Provisions.

"**NEPA Approval**" means each decision document issued by FHWA for the Project or a portion of the Project, including all those identified in Section 4.2 of the Technical Provisions and all approved supplements and reevaluations pertaining to the Project, as of the Effective Date.

"**NEPA Finality Date**" means the date of expiration, without the filing of a legal action, of the federal statute of limitations for commencing legal action to challenge the validity of any NEPA Approval; *provided, however*, that if any such legal action is filed within the statute of limitations, then NEPA Finality Date means the date of entry, if later, of a final, non-appealable dismissal with prejudice or judgment denying permanent injunctive relief in all legal actions brought challenging the validity of any NEPA Approval.

"**Net Present Value**" means the aggregate of the discounted values, calculated as of the Valuation Date or the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Equity IRR.

"**Net Project Cash Flows**" means (a) all Toll Revenues and all Violation Fees collected (based on collection dates, regardless of when such revenues are accrued or earned), less (b) Transaction Fees, Interoperability Fees, and the portion of Violation Fees shared with TxDOT.

"**Net Revenue Payment**" means the Revenue Payment minus fees paid by Developer to TxDOT in accordance with Article 5 of Exhibit 11.

"**New Agreements**" has the meaning set forth in Section 2.4.8 of Exhibit 21.

"**Nominal Equity IRR**" means a blended nominal Post-Tax rate of return on Contributed Unreturned Equity and Subordinate Debt over the full Term (excluding potential extensions of the Term) equal to 12%.

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

"**Noncompliance Event**" means a breach or failure by Developer to perform its obligations under the CDA Documents identified in Table 2 of Exhibit 18.

"**Noncompliance Points**" means the points that may be assessed for certain breaches or failures to perform by Developer, as set forth in Table 2 of Exhibit 18.

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

"**Notice of Termination for Convenience**" means notice issued by TxDOT to Developer terminating the Agreement and the Lease in whole or in part for convenience.

"**NTP1**" means a notice issued by TxDOT to Developer authorizing Developer to proceed with the portion of the Work described in Section 9.2.1.

"**NTP2**" means a notice issued by TxDOT to Developer pursuant to Section 9.2.2 authorizing Developer to proceed with the remaining Work and other activities pertaining to the Project.

"**NTP3**" has the meaning set forth in Section 25.1.2.

"**NTP2 Conditions Deadline**" means the outside date set forth in Table 1 of Exhibit 8 by which Developer is obligated under the Agreement to satisfy all conditions to issuance of NTP2, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

"**O&M Contract**" means any direct Contract between Developer or an Affiliate and a third party (i.e. a Person other than TxDOT) for management, direction, supervision or performance of the O&M Work or any significant portion thereof. O&M Contract includes any direct Contract between Developer or an Affiliate and a third party for operation or maintenance of all or any part of the tolling system for the Project. There may be more than one O&M Contract concurrently in effect. For the purpose hereof, "significant portion" means that the third party's annual contract price equals or is reasonably expected to equal at least 15% of Developer's annual budget for O&M Work (excluding budgeted costs for Renewal Work).

"**O&M Contractor**" means the Contractor under any O&M Contract. There may be more than one O&M Contractor concurrently performing O&M Work.

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

"**O&M Work**" means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project during the Operating Period, including Renewal Work and potential Upgrades. Commencing on the Service Commencement Date for each Project Segment, "O&M Work" shall also include tolling of the Toll Lanes for the Project Segment.

"**Open Book Basis**" means allowing TxDOT to review all underlying assumptions and data associated with the Base Case Financial Model, each Base Case Financial Model Update, Schedule of Values, 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, inflation and deflation rates, traffic volumes by User Classification, Toll Revenues, changes in toll rates, and other items reasonably required by TxDOT to satisfy itself as to the reasonableness of the amount.

"**Open Road Tolling**" means toll collection conducted (a) exclusively via vehicle identification with transponders and/or video capture of the license plate and (b) in an open multilane free-flow highway environment with no constraints on speed, vehicle type or vehicle location.

"**Operating Commencement Date**" means the date of issuance of NTP2.

"**Operating Period**" means the period starting on the Operating Commencement Date and ending at the end of the Term.

"**Operating Railroad**" means the owner or operator of a railroad line.

"**Operations Management Plan**" means the plan described in Section 22.2 of the Technical Provisions.

"**Optical Character Recognition**" (**OCR**) means the process of converting alphanumeric information captured in an image to text.

"**Owner Verification Tests**" means the material tests performed in accordance with the applicable TxDOT test method to verify the accuracy of the tests performed by Developer and the CQAF pursuant to the approved Quality Management Plan to ensure that only materials of specified quality or better are accepted and incorporated into the Project.

"**PABs**" means bonds, notes or other evidence of indebtedness issued by the PABs Issuer pursuant to the provisions of Internal Revenue Code Sections 142(a)(15) and (m) (which acronym stands for "private activity bonds").

"**PABs Agreement**" means that certain agreement to be entered into by TxDOT, Developer and the PABs Issuer relating to the responsibilities of the parties with respect to the issuance of the PABs in the form provided to proposers prior to the Financial Proposal Due Date.

"**PABs Issuer**" means the Texas Private Activity Bond Surface Transportation Corporation or other corporation or similar entity authorized under Texas Law to issue the PABs.

"**Participating Agency**" means a public, quasi-public, or private agency that has agreed to cooperate with and assist Developer during an Emergency.

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

"**Passenger Car Equivalent per Hour**" has the meaning set forth in Exhibit 10.

"**Patron Confidential Information**" has the meaning set forth in Section 14.6.2.

"**Pavement Condition Score**" means the Pavement Management Information System (PMIS) condition score calculated by Developer in accordance with Technical Provisions and forming one component of the Asset Condition Score. (The PMIS is as defined in TxDOT's Pavement Management Information System Rater's Manual.)

"**Payment Activity**" means a Schedule Activity at WBS Level V that represents all of the Work that is eligible for reimbursement under Federal Law and has been cost-loaded in accordance with Section 2.1.1.2.1 of the Technical Provisions, as well as mobilization costs (as defined in Section 2.1.1.2.1 of the Technical Provisions). Mobilization costs shall not exceed 10% of the sum of all Payment Activities (other than mobilization costs) and shall be eligible for payment in four Payment Activities as follows: (a) 25% of the mobilization amount after commencement of the Construction Work; (b) 25% of the mobilization amount after 1% of the total summarized cost of the Preliminary Project Baseline Schedule less the lump sum for mobilization is earned; (c) 25% of the mobilization amount after 5% of the total summarized cost less the lump sum for mobilization is earned; and (d) 25% of the mobilization amount after 10% of the total summarized cost less the lump sum for mobilization is earned. Developer's indirect costs such as project management, administration, design, contingencies, site cleanup and maintenance, temporary roads and access, off site access roads and security costs related to design-build costs shall be prorated through all Payment Activities for which the indirect costs are incurred. Projected operations and maintenance costs are non-reimbursable.

"**Payment and Performance Bonds**" means each of the Payment Bond and Performance Bond.

"**Payment Bond**" has the meaning set forth in Section 26.2.2.

"**Peak Periods**" mean 6:30 a.m. to 9:00 a.m. and 3:00 p.m. to 6:30 p.m. on Business Days or any other six-hour or four-hour period as designated by TxDOT in TxDOT's discretion.

"**Performance and Measurement Table**" means the table setting forth Performance Requirements, time periods for response to Defects, inspection and measurement methods, measurement records and Targets, as submitted by Developer annually for TxDOT approval in accordance with Section 19 of the Technical Provisions.

"**Performance and Measurement Table Baseline**" means Attachment 19-1 to the Technical Provisions.

"**Performance Bond**" has the meaning set forth in Section 26.2.1.

"**Performance Requirements**" means, for each Element of the Project during the Operating Period, the requirements set forth in Attachment 19-1 to the Technical Provisions in the Column headed "Performance Requirement".

"**Persistent Developer Default**" has the meaning set forth in Section 28.4.

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

"**Phase 1 Hazardous Materials Investigation**" means an environmental assessment conducted in accordance with ASTM E-1527-05, or any future revision or replacement thereof, to identify Recognized Environmental Conditions and potential Recognized Environmental Conditions.

"**Phase 2 Hazardous Materials Investigation**" means an environmental assessment conducted in accordance with ASTM E-1903-11, or any future revision or replacement thereof, to evaluate Recognized Environmental Conditions and potential Recognized Environmental Conditions.

"**Post-Tax**" means payment of or provision for the federal income tax liability of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and State margin tax liability of Developer (and not any foreign income tax or other tax of any kind), calculated by (a) applying a reasonable assumption regarding the combined marginal federal income tax rate of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and the State margin tax rate of Developer and (b) applying to such cumulative federal income tax and State margin tax liability a discount factor as used in the Base Case Financial Model.

"**Pre-existing Hazardous Materials**" means Hazardous Materials that either:

(a) Meet all the following criteria: (i) the Hazardous Materials are in, on or under the Project Right of Way as of the date TxDOT makes available to Developer the affected parcel; (ii) the Hazardous Materials are not located in, on or under any Project Specific Locations or Additional Properties, except Additional Properties required due to TxDOT Changes (including TxDOT Changes regarding the initial construction or Upgrades); and (iii) the Hazardous Materials are not required to be removed and disposed of due to a Developer Release of Hazardous Materials; or

(b) Meet all the following criteria: (i) the Hazardous Materials migrated into, onto or under the Project Right of Way from a location outside the Project Right of Way ; (ii) the Hazardous Materials existed on such location outside of the Project Right of Way as of the date TxDOT makes available to

Developer the affected Project Right of Way parcel; (iii) excludes such migration to the extent exacerbated by any negligent act or failure to act of a Developer-Related Entity; and (iv) Developer has made reasonable efforts to mitigate the damages allowed for under law and provides reasonable assistance to TxDOT in any TxDOT action seeking remuneration or indemnification from the responsible owners and operators of the property(ies) from which the Hazardous Materials migrated.

For purposes of determining whether Hazardous Materials were in, on or under the Project Right of Way, or any Additional Properties required by TxDOT to be included in the Project Right of Way as a result of TxDOT Changes, as of the date on which TxDOT makes available to Developer the affected parcel, Developer shall have the burden of proof as to any Hazardous Materials not identified as being present as of such date in the following:

(i) The limited phase 1 investigations of the Project conducted by TxDOT prior to the Effective Date entitled "Phase I Corridor Phase I Initial Site Assessment (ISA) SH 288 Corridor and Medical Center Connector (FC 110) – Houston SPO GEC", prepared by HVJ Associates, Inc., dated December 27, 2013, "Addendum to Corridor Phase I Initial Site Assessment (ISA) SH 288 Corridor & Texas Medical Center Connector (FC 110) – Houston SPO GEC", prepared by HVJ Associates, Inc., dated May 14, 2014, "Phase II Corridor Phase I Environmental Site Assessment SH 288 Corridor & Texas Medical Center Connector (FC 110) – Houston SPO GEC", prepared by HVJ Associates, Inc., dated May 14, 2014, or any Phase 1 Hazardous Materials Investigation or Phase 2 Hazardous Materials Investigation supplementing the foregoing reports; and

(ii) As to any Additional Properties required by TxDOT to be included in the Project Right of Way as a result of TxDOT Changes, any Phase 1 Hazardous Materials Investigation or Phase 2 Hazardous Materials Investigation thereof.

For the purpose of this definition, "makes available" means:

(1) The Effective Date, except for parcels not yet acquired as of the Effective Date; and

(2) As to parcels not yet acquired as of the Effective Date and as to Additional Properties required by TxDOT to be included in the Project Right of Way as a result of TxDOT Changes, the date Developer first receives the right to take and maintain possession of the parcel for all purposes for the remainder of the Term in accordance with the CDA Documents, including commencement of construction, as the result of TxDOT's having secured title or right of possession by contract or title instrument or by a special commissioners' award through the eminent domain process or otherwise.

"**Preliminary Project Baseline Schedule**" means the preliminary schedule submitted with the Proposal, as set forth in Attachment 2 to Exhibit 7.

"**Pre-Refinancing Data**" means all relevant data in relation to a proposed Refinancing other than a proposed Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing and calculation of the estimated Refinancing Gain, including:

(a) Details of actual and projected timing and amounts of the investment of equity and shareholder subordinated debt from the Effective Date to the anticipated date of Refinancing, and of projected timing and amounts of the investment of equity and shareholder subordinated debt, if any, from the anticipated date of Refinancing to the end of the Term;

(b) Information on the actual and projected cash flows of Developer from the Effective Date to the anticipated date of Refinancing, and of projected cash flows of Developer from the anticipated date of Refinancing to the end of the Term;

(c) Details of the actual and projected timing and amounts of Distributions from the Effective Date to the anticipated date of Refinancing and of projected timing and amounts of Distributions from the anticipated date of Refinancing to the end of the Term;

(d) A copy of the pre-Refinancing Base Case Financial Model as updated by Developer, which shall be identical to any presented to the proposed Refinancing Lender(s);

(e) A copy of all term sheets or all other relevant documentation and information in relation to the terms of the proposed Refinancing;

(f) A copy of the proposed post-Refinancing Base Case Financial Model as updated by Developer, which shall be identical to any presented to the proposed Refinancing Lender(s);

(g) Information on all relevant assumptions, including tax assumptions taking into account any Revenue Payment Amount to be paid to TxDOT, including where appropriate back up data and tax letters, assumptions and other documentation, for the projections in the pre-Refinancing and post-Refinancing Base Case Financial Models as updated by Developer;

(h) A detailed calculation of the estimated Refinancing Gain; and

(i) All other information TxDOT may reasonably request in relation to the proposed Refinancing and related calculations and assumptions.

"**Pre-Refinancing Equity IRR**" means the blended nominal Post-Tax rate of return on Contributed Unreturned Equity over the full Term, having regard to Distributions made and projected to be made, reasonably calculated under the Base Case Financial Model Update immediately prior to (and without giving effect to) the Refinancing.

"**Principal Project Documents**" means the Design-Build Contract, the TxDOT Tolling Services Agreement, O&M Contracts (if applicable) and Independent Engineer Agreement.

"**Progress Report**" means the report described in Section 2.1.1.2.5 of the Technical Provisions.

"**Prohibited Person**" means any Person who is:

(a) Debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or nonprocurement transactions with the United States federal government or any department, agency or instrumentality thereof pursuant to any of the Debarment Regulations;

(b) Indicted, convicted or had a civil or administrative judgment rendered against such Person for any of the offenses listed in any of the Debarment Regulations and no event has occurred and no condition exists that is likely to result in the debarment or suspension of such Person from contracting with the United States federal government or any department, agency or instrumentality thereof;

(c) Listed on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs" issued by the US General Services Administration;

(d) Located within, or doing business or operating from, a country or other territory subject to a general embargo administered by the United States Office of Foreign Assets Control (OFAC);

(e) Designated on the OFAC list of "Specially Designated Nationals";

(f) Otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC or any other U.S. federal economic sanctions authority or any divestment or sanctions program of the State;

(g) A banking institution chartered or licensed in a jurisdiction against which the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act (Section 311);

(h) Located within or is operating from a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles by the Financial Action Task Force on Money Laundering;

(i) A financial institution against which the United States Secretary of the Treasury has imposed special measures under Section 311;

(j) A "senior foreign political figure" or a prohibited "foreign shell bank" within the meaning of 31 CFR Section 103.175; or

(k) Any Person with whom TxDOT is engaged in litigation relating to performance of contract or business practices (unless TxDOT has first waived (in TxDOT's discretion) by written notice to the transferring equity holder, with a copy to Developer, the prohibition on a transfer to such Person during the continuance of the relevant litigation).

"**Project**" means the transportation facilities and all related structures and improvements, including an Electronic Toll Collection System and communications systems used in connection with operation of such transportation facilities, to be financed, developed, designed, constructed, operated and maintained pursuant to the terms of the CDA Documents, as more particularly described in Section 1.1 of the Technical Provisions. "Project" includes the Toll Lanes, General Purpose Lanes, Frontage Roads, Upgrades and the BW 8 Direct Connectors.

"**Project Baseline Schedule**" means the logic-based critical path schedule for all Work leading up to and including Final Acceptance for all Project Segments, as described in Section 2 of the Technical Provisions.

"**Project Debt**" means bona fide indebtedness (including subordinated indebtedness) for or in respect of funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received, the repayment of which has specified payment dates and is secured by one or more Security Documents. Project Debt includes principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses, premiums and indemnities with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, lease financing obligations, and Breakage Costs. Project Debt excludes any indebtedness of Developer or any shareholder, member, partner or joint venture member of Developer that is secured by anything less than the entire Developer's Interest, such as indebtedness secured only by an assignment of economic interest in Developer or of rights to cash flow or dividends from Developer. Project Debt also excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement Developer enters into or first becomes obligated to repay after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination giving rise to an obligation of TxDOT to pay Termination Compensation, including Developer's receipt of a Notice of Termination for Convenience and

Developer's declaration of a TxDOT default of the type entitling Developer to terminate the Agreement and Lease. In addition, no debt shall constitute Project Debt unless and until the Collateral Agent provides TxDOT with notice thereof and the related Funding Agreements and Security Documents in accordance with Section 2.1 of the Lenders' Direct Agreement. Subject to the foregoing exclusions, Project Debt includes the PABs and obligations arising thereunder and TIFIA loans, guaranties and credit support, and obligations arising thereunder.

"**Project IRR**" means the rate of return that causes the net present value of all Project cash flows to be equal to zero. For this purpose, "Project cash flows" means, with respect to any period, the amount equal to (a) all Project revenues received by Developer during such period minus (b) the sum of the following (without duplication): (i) all operating expenses paid during such period (excluding those operating expenses that are paid directly under the Master Lockbox and Custodial Account Agreement, such as Transaction Fees paid to TxDOT, to the extent such amounts are not included in the Project revenues received by Developer), (ii) all major, non-routine maintenance costs (excluding those costs funded by the Handback Requirements Reserve or Handback Requirements Letter of Credit), (iii) the amount deposited in the Handback Requirements Reserve during such period, (iv) all Construction Costs and all capital expenditures paid during such period and (v) all Revenue Payment Amounts, Tolling Method Gain amounts and Refinancing Gain amounts paid to TxDOT during such period.

"**Project Manager**" means the individual designated by Developer and approved 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 as described in the approved Project Management Plan.

"**Project Management Plan**" means the document described in Section 2 of the Technical Provisions and Attachment 2-1 to the Technical Provisions.

"**Project Plan of Finance**" means Developer's plan for financing the Project, including Upgrades, set forth in Exhibit 4.

"**Project Right of Way**" or "**Project ROW**" means any real property (which term is inclusive of all estates and interests in real property), which is (a) necessary for ownership and operation of the Project and (b) within the lines established by the NEPA Approval to delineate the outside limits of the Project, as such limits may be adjusted from time to time in accordance with the CDA Documents (including adjustments for Additional Properties). The term specifically includes all air space, surface rights and subsurface rights within the limits of the Project Right of Way.

"**Project Schedule**" means one or more, as applicable, of the following logic-based critical path schedules: the Preliminary Project Baseline Schedule, the Project Baseline Schedule and the Revised Project Baseline Schedule.

"**Project Segment**" means a part of the Project extending the full width of the Project Right of Way, including the applicable portions of the Toll Lanes, General Purpose Lanes, Frontage Roads and cross streets and applicable transitions and connections to adjacent infrastructure, as identified in the Project Segment Plan submitted to and approved by TxDOT pursuant to Section 1.3 of the Technical Provisions.

"**Project Specific Locations**" means areas in which Developer proposes Project-specific activities in connection with the Construction Work not within the Project Right of Way 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**" means the logic-based critical path schedule submitted monthly containing progress status and enabling comparison to the Project Baseline Schedule.

"**Project Utility Adjustment Agreement**" (**PUAA**) means 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 6.1.3.1 of the Technical Provisions. A document is a "Project Utility Adjustment Agreement" if it meets the foregoing definition, without regard to the title of the document.

"**Project Utility Adjustment Agreement (Developer-Managed)**" means a Project Utility Adjustment Agreement providing for design and construction by Developer of the Utility Adjustment(s) addressed therein.

"**Project Utility Adjustment Agreement (Owner-Managed)**" means a Project Utility Adjustment Agreement providing for design and construction by the Utility Owner of the Utility Adjustment(s) addressed therein.

"**Proposal**" has the meaning set forth in the Recitals to the Agreement.

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

"**Protection in Place**" means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of 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. This term includes both temporary measures and permanent installations meeting the foregoing definition.

"**Public Funds Payments**" means each payment set out in Table 2 to Exhibit 8.

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

"**Public Information and Communications Plan**" has the meaning set forth in Section 3.2 of the Technical Provisions.

"**Public Information Coordinator**" means 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**" means an itemized list of Construction Work which remains to be completed after Substantial Completion for a Project Segment has been achieved and before Final Acceptance for the Project Segment, 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.

"**Qualified Investor**" means each of the Class I Qualified Investors and each of the Class II Qualified Investors.

"**Quality Management Plan**" means the set of TxDOT-approved plans for quality management and control of the Project and Work, as set forth in Attachment 2-1 to the Technical Provisions.

"**Quality Manager**" means the individual retained by Developer as the Key Personnel with the authority and responsibility for ensuring establishment and maintenance of, and compliance with, the Quality Management Plan.

"**Quitclaim Deed**" means 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.

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

"**Recognized Environmental Condition**" has the meaning set forth in ASTM E-1527-05.

"**Record Drawings**" means construction drawings and related documentation revised to show significant changes to the Project made during the construction process or during the Operating Period, usually based on marked-up Final Design Documents furnished by Developer; also known as as-built plans.

"**Reference Information Documents**" means the collection of information, data, documents and other materials that TxDOT has provided to Developer for general or reference information only.

"**Refinancing**" means:

(a) Any amendment, variation, novation, supplement, refunding, defeasance or replacement of any Project Debt, Funding Agreement or Security Document (other than any Subordinated Security Documents);

(b) The issuance by Developer of any indebtedness in addition to or in replacement of the then existing Project Debt, secured or unsecured;

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

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

"**Refinancing Data**" means all relevant data in relation to a Refinancing other than an Exempt Refinancing and calculation of the Refinancing Gain, including:

(a) Details of actual timing and amounts of the investment of equity and shareholder subordinated debt from the Effective Date to the date of Refinancing, and of projected timing and amounts of the investment of equity and shareholder subordinated debt, if any, from the date of Refinancing to the end of the Term;

(b) Information on the actual cash flows of Developer from the Effective Date to the date of Refinancing, and of projected cash flows of Developer from the date of Refinancing to the end of the Term;

(c) Details of the actual timing and amounts of Distributions from the Effective Date to the date of Refinancing and of projected timing and amounts of Distributions from the date of Refinancing to the end of the Term;

(d) A copy of the final pre-Refinancing Base Case Financial Model as updated by Developer, which shall be identical to any presented to the Refinancing Lender(s);

(e) A copy of the final post-Refinancing Base Case Financial Model as updated by Developer, which shall be identical to any presented to the Refinancing Lender(s);

(f) Information on all relevant assumptions, including tax assumptions taking into account any Revenue Payment Amount to be paid to TxDOT, including where appropriate back up data and tax letters, assumptions and other documentation (if any), for the projections in the pre-Refinancing and post-Refinancing Base Case Financial Models as updated by Developer;

(g) A detailed calculation of the Refinancing Gain; and

(h) All other information TxDOT may reasonably request in relation to the Refinancing and related calculations and assumptions.

"**Refinancing Gain**" means for any Refinancing, other than an Exempt Refinancing and other than as set forth below, an amount equal to the greater of zero and the amount equal to (A – B) – C, where:

A = the Net Present Value of the Distributions to be made over the remaining Term following the Refinancing, as projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and any previous Refinancings which resulted in no Refinancing Gain (other than any Exempt Refinancing under clause (a) of the definition of Exempt Refinancing) being paid to TxDOT and using the relevant Base Case Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing);

The intention is to share in incremental increases in Distributions above the Base Case Financial Model projections of Distributions resulting solely from the initial financing and Refinancings. Among other things, the Parties shall (a) include in Distributions under factor "A" of the Refinancing Gain definition changes to any Distributions made prior to the date of Refinancing or projected to be made, resulting from changes to the financing terms (including changes to equity funding arrangements resulting therefrom) as compared to the Base Case Financial Model, and (b) adjust Distributions under factor "A" of the Refinancing Gain definition to reflect changes in equity contributions paid or projected to be paid to Developer resulting from changes to the financing terms as compared to the Base Case Financial Model.

B = the Net Present Value of the Distributions to be made over the remaining Term following the Refinancing, as projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing or any previous Refinancings which resulted in no Refinancing Gain (other than any Exempt Refinancing under clause (a) of the definition of Exempt Refinancing) being paid to TxDOT and using the Base Case Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing); and

C = any adjustment equal to the aggregate Distributions that would be required to increase the Pre-Refinancing Equity IRR to the Nominal Equity IRR, calculated immediately prior to (and without giving effect to) the Refinancing.

"**Registered Professional Engineer**" means 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 of Texas.

"**Registered Professional Land Surveyor**" means 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.

"**Related Entity**" means each of ACS 288 Holdings, LLC, a Delaware limited liability company, S&B 288 Holdings, LLC, a Delaware limited liability company, InfraRed 288 LLC, a Delaware limited liability company, Northleaf SH288, LLC, a Delaware limited liability company, Clal Shoreland RH, LP, a Delaware limited partnership, Clal Houston Road RH, LP, a Delaware limited partnership, and Star America SH-288, LLC, a Delaware limited liability company.

"**Related Transportation Facility(ies)**" means all existing and future highways, streets and roads, including upgrades and expansions thereof, that are or will be adjacent to, connecting with or crossing under or over the Project.

"**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.

"**Released for Construction Documents**" or released for construction documents means any of the Final Design Documents for any part of the Project that are required to be signed and sealed by the engineer of record for the Project.

"**Reliability**" shall have the meaning set forth in Section 19.2.5 of the Technical Provisions.

"**Relief Event**" means any of the following events, to the extent they result in a delay or interruption in performance of any obligation under the Agreement, and provided such events are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval 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) Force Majeure Event;

(b) (i) Fire, explosion, flood, earthquake, hurricane, tornado, in each case that causes direct physical damage to the Project, or (ii) national or statewide (i.e. State of Texas) strike that has a direct adverse impact on Developer's ability to obtain materials, equipment or labor for the Project; *provided, however*, that if insurance for the risks of flood, earthquake, hurricane or tornado become commercially unavailable under Section 26.1.2(l), such event shall be deemed a Force Majeure Event and not a Relief Event under this clause (b);

(c) Change in Law;

(d) Discriminatory Action;

(e) TxDOT failure to perform or observe any of its covenants or obligations under the Agreement or other CDA Documents, including failure to issue a certificate of Substantial Completion or

certificate of satisfaction of conditions precedent to Service Commencement or Final Acceptance after Developer satisfies all applicable conditions and requirements for obtaining such a certificate;

(f) TxDOT Change;

(g) TxDOT-Caused Delay;

(h) Performance of works in the vicinity of the Project Right of Way carried out by TxDOT or a Governmental Entity, excluding any Utility Adjustment Work by a Utility Owner, that disrupts Developer's onsite Work;

(i) Development, use or operation of the Airspace by TxDOT or anyone (other than a Developer-Related Entity) claiming under or through TxDOT, or development or operation by TxDOT of a Business Opportunity in the Airspace;

(j) Discovery at, near or on the Project Right of Way of any Hazardous Materials (including TxDOT Release(s) of Hazardous Material) or archeological, paleontological or cultural resources (including historic properties), excluding any such substances or resources known to Developer prior to the Setting Date or that would have become known to Developer by undertaking reasonable investigation prior to the Setting Date (*provided* that the phase 1 investigation and report described in clause (i) of the definition of Pre-existing Hazardous Materials is deemed to be a reasonable investigation of Hazardous Materials prior to the Setting Date);

(k) Discovery at, near or on the Project Right of Way of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Setting Date), excluding any such presence of species known to Developer prior to the Setting Date or that would become known to Developer by undertaking reasonable investigation prior to the Setting Date;

(l) Any spill of Hazardous Material by a third party who is not acting in the capacity of a Developer-Related Entity which (i) occurs after the Setting Date, (ii) is required to be reported to a Governmental Entity and (iii) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation;

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

(n) Suspension, termination or interruption of a NEPA Approval, except to the extent that such suspension, termination or interruption results from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the NEPA Approval or other Governmental Approval (which failure may include (i) modification by or on behalf of Developer of the design concept included in the NEPA Approval, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Additional Property);

(o) Any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to any NEPA Approval as compared to the design concept indicated in the alternative that was the subject of the NEPA Approval, except to the extent the change in design concept had already been incorporated into Developer's design schematics assumed in connection with the Base Case Financial Model;

(p) A local Governmental Entity's unreasonable and unjustified failure to issue or unreasonable and unjustified delay in issuing a Governmental Approval, except to the extent that such failure or delay results from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the NEPA Approval or other Governmental Approval (which Developer-Related Entity's failure may include (i) modification by or on behalf of Developer of the design concept included in the NEPA Approval, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Additional Property);

(q) (i) TxDOT's lack of good and sufficient title to any parcel in the Project Right of Way after conclusion of TxDOT's purported acquisition of the parcel through negotiation or condemnation proceeding, to the extent it interferes with or adversely affects performance of Work or imposition of tolls, or (ii) the existence at any time following issuance of NTP2 of any title reservation, condition, easement or encumbrance on any parcel in the Project Right of Way owned by TxDOT, of record or not of record, to the extent it interferes with or adversely affects performance of Work or imposition of tolls, except any title reservations, conditions, easements or encumbrances (1) concerning Utilities or (2) caused, permitted or suffered by a Developer-Related Entity; or

(r) (i) Unreasonable and unjustified delay by a Utility Owner with whom Developer has been unable to enter into a Utility Agreement in connection with a Utility Adjustment or (ii) unreasonable and unjustified delay by a Utility Owner with whom Developer has entered into a Utility Agreement in carrying out an agreed-upon Utility Adjustment; *provided* that, in either case, all of the "conditions to assistance" described in Section 11.6.2 have been satisfied.

(s) Discovery of subsurface or latent physical conditions at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents that differ materially from the subsurface conditions indicated in such geotechnical reports at such boring holes, excluding any such conditions known to Developer prior to the Setting Date.

"**Relief Event Determination**" has the meaning set forth in Section 27.1.3.

"**Relief Event Notice**" means the notice required to be provided by Developer pursuant to Section 27.1.1.

"**Relief Request**" has the meaning set forth in Section 27.1.2.

"**Renewal Work**" means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element of a type that is not normally included as an annually recurring cost in highway maintenance and repair budgets.

"**Renewal Work Schedule**" means the schedule for Renewal Work to be prepared and updated by Developer pursuant to Section 19.2.

"**Replacement Housing Calculation**" means 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**" means any permanent right, title or interest in real property outside of the Project Right of Way (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.

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

"**Residual Life at Handback**" means the calculated duration that any Element of the Project, subject to the type of routine maintenance of the Element which is normally included as an annually recurring cost in highway maintenance and repair budgets, will continue to comply with any applicable Performance Requirement or standard after expiration or earlier termination of the Agreement and Lease, before Renewal Work is required, determined through the application of the Residual Life Methodology and Residual Life Inspections.

"**Residual Life Inspection**" means the inspection undertaken in accordance with Table 19-2 of the Technical Provisions (including any testing undertaken by an independent testing organization) to determine the Residual Life of all Elements of the Project.

(a) "First Inspection" means the first Residual Life Inspection as set forth in Section 19.4.1.1 of the Technical Provisions.

(b) "Second Inspection" means the second Residual Life Inspection as set forth in Section 19.4.1.2 of the Technical Provisions.

(c) "Final Inspection" means the final Residual Life Inspection as set forth in Section 19.4.1.3 of the Technical Provisions.

"**Residual Life Methodology**" (**RLM**) is the evaluation and calculation methodology by which the Residual Life of any Element of the Project will be calculated at expiration or earlier termination of the Agreement and Lease and contains the method by which any necessary Renewal Work will be identified to ensure that each Element of the Project for which a minimum Residual Life at Handback is required under Section 19 of the Technical Provisions meets such requirement.

"**Revenue Payment**" has the meaning set forth in Section 4.2(a).

"**Revenue Payment Amount**" has the meaning set forth in Section 4.2.1.

"**Revised Project Baseline Schedule**" means the Project Baseline Schedule revised from time to time with any changes to any schedule components (e.g., activity titles, durations, ties, dates, resources, costs) accepted by TxDOT as revisions to the Project Baseline Schedule and earlier Revised Project Baseline Schedules.

"**RFP**" has the meaning set forth in the Recitals.

"**Right of Entry Agreement**" has the meaning set forth in Section 7.3.5.1 of the Technical Provisions.

"**Right of Way Acquisition Plan**" or "**ROW Acquisition Plan**" means Developer's written plan for acquisition of all parcels of land necessary to construct, obtain access to and operate the Project and any Additional Properties, prepared under the Project Management Plan and approved by TxDOT.

"**Right of Way Acquisition Manager**" or "**ROW Acquisition Manager**" or "**ROW AM**" means Developer's representative responsible for the preparation and quality review of all documents required for the acquisition of the Project Right of Way.

"**Right of Way Administrator**" or "**ROW Administrator**" means TxDOT's representative responsible for the management of all matters pertaining to real property for the Project.

"**Rules**" has the meaning set forth in the Recitals.

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

"**Safety Compliance Order**" means a written order or directive from TxDOT to Developer to implement Safety Compliance.

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

"**Schedule Activity**" means the smallest division of the Work at each WBS Level to be tracked in the Project Schedule. Schedule activities are activities critical in ensuring the timely achievement of Service Commencement of each Project Segment, Renewal Work and the Handback Requirements. Schedule Activities include quality assurance tasks, environmental tasks, fabrication of structural steel and precast and prestressed concrete structures, material and equipment procurement, Utility Adjustment Work and delivery to the site or storage locations and maintenance of traffic tasks, as well as O&M Work.

"**Schedule of Values**" means a listing of all Payment Activities in the format and to the detail as described in Section 2.1.1.2.4 of the Technical Provisions.

"**Secured Work**" means (a) all Design Work, Construction Work and other obligations of Developer starting at the issuance of NTP2 through Final Acceptance of all Project Segments, but excluding all routine O&M Work during that period and all financing obligations (referred to as "original Secured Work"), and (b) all Design Work and Construction Work, including Upgrades, new improvements and major reconstruction or rehabilitation, at any time during the balance of the Term, and all other obligations of Developer associated with performance, completion and acceptance of any of the same but excluding all financing obligations (referred to as "subsequent Secured Work"). Secured Work specifically includes acquisition of property rights, agreements with third parties (e.g. Utility Owners, Governmental Entities, railroads), making payments to third parties, obtaining and administering insurance required hereunder, and all related activities.

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

"**Senior Debt Termination Amount**" means:

(a) All amounts outstanding at the Early Termination Date, including accrued unpaid interest as of such date (but excluding any such interest on first subordinate lien debt that is part of the Initial Project Debt at a rate in excess of LIBOR plus 450 basis points) and any outstanding fees and expenses, on Project Debt secured by Funding Agreements and Security Documents that (i) satisfy the terms and conditions set forth in Section 3.5, (ii) are not equity bridge loans and (iii) in the absence of termination and in the absence of any bankruptcy, insolvency or liquidation of Developer, would constitute (1) the senior lien on and pledge of the Developer's Interest and (2) a first subordinate lien on and pledge of the Developer's Interest, but only where (A) the non-default interest rate on such subordinate Project Debt (before any swap or hedging) does not exceed a floating rate equal to LIBOR plus 450 basis points; *provided* that any first subordinate lien debt that is part of the Initial Project Debt and that bears a higher interest rate is includable so long as it is treated as debt for federal income tax purposes, (B) the aggregate debt coverage ratio at the time of financial closing (i.e. considering the combined debt service for such subordinate Project Debt and the senior Project Debt) does not exceed 1.1 to 1, (C) none of the Lenders (including participating Lenders) of such subordinate Project Debt is an Affiliate or an equity investor in Developer and none directly or indirectly controls an equity investor in Developer, and (D) such subordinate Project Debt does not constitute consideration paid for the sale of the economic rights in Developer or Developer's shareholders, partners, joint venture members or members. Aggregate debt coverage ratio shall be determined in accordance with the terms of the written loan commitment for such subordinate Project Debt. For the avoidance of doubt, TIFIA financing that satisfies the terms and conditions set forth in Section 3.5 is expressly included and deemed to meet the terms set forth in clause (iii)(B) above. For purposes hereof, an equity bridge loan is a loan provided to Developer during the construction period of the Project for an amount of equity to be contributed by Affiliates or other equity investors, typically (but not necessarily) supported by one or more of a parent guaranty, recourse to the parent or letter of credit from another lending institution; plus

(b) Without double counting in relation to such Project Debt, all Breakage Costs payable by Developer as a result of prepayment of the outstanding amounts of such Project Debt, subject to Developer and the Lenders mitigating all such costs to the extent reasonably possible and *provided* that the maximum interest rate for determining Breakage Costs for first subordinate lien debt that is part of the Initial Project Debt shall be limited to LIBOR plus 450 basis points; minus

(c) To the extent it is a positive amount, the aggregate of:

(i) So much of the amounts under subsections (a) and (b) above that constitute or accumulate by reason of (1) accrued interest that Developer failed to pay when due, including any such interest that has been added to principal, or (2) default rates of interest, late charges and penalties, including any such items added to principal;

(ii) All amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Lenders to Developer as a result of prepayment of outstanding amounts of such Project Debt; and

(iii) All other amounts received by the Lenders of such Project Debt on or after the Early Termination Date and before the date on which any compensation is payable by TxDOT to Developer as a result of enforcing any other rights they may have, to the extent such amounts reduce principal or accrued interest (or would have done so if not applied to default rates of interest, late charges or penalties).

The foregoing amount shall be determined without regard to any Refinancing that may occur between the date notice of termination is delivered and the Early Termination Date.

"**Service Commencement**" means, for each Project Segment, the opening of the Project Segment for normal and continuous operations and use by the traveling public, after occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 9.5.

"**Service Commencement Date"** means, for each Project Segment included in the Initial Configuration and for the General Purpose Lane Capacity Improvements, the date on which Service Commencement occurs.

"**Service Commencement Deadline**" means the deadline for achieving Service Commencement (a) for all Project Segments included in the Initial Configuration, as set forth in Table 1 of Exhibit 8, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement, and (b) for the General Purpose Lane Capacity Improvements, as set forth in Section 25.1.5(b), as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

"**Service Line**" means 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. However, unless noted otherwise in the Technical Provisions, the term "Service Line" excludes any line that supplies an active feed from a Utility Owner's facilities to supply, activate or energize TxDOT's or a Governmental Entity's Highway Service Systems. Such line, including its actual connection to the Utility facility, shall instead be considered to be part of the applicable Highway Service System.

"**Setting Date**" means the date which is 45 days prior to the Financial Proposal Due Date.

"**Site**" means Project Right of Way and any temporary rights or interests that Developer may acquire in connection with the Project or the Utility Adjustments included in the Construction Work, including Project Specific Locations.

"**Site Investigative Report**" means the report summarizing Developer's Hazardous Materials investigative work as described in Section 4.3 of the Technical Provisions.

"**Small Business Opportunity Plan**" means the plan attached to the Agreement as Exhibit 15B.

"**Small Claims**" has the meaning set forth in the Disputes Board Agreement.

"**Source Code**" and "**Source Code Documentation**" 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**" means a declaration of taking in condemnation. The 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 Commission.

"**Specialist Inspection**" means an inspection requiring specialist qualifications or equipment as specified in Section 19 of the Technical Provisions.

"**Standard & Poor's**" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc.

"**State**" has the meaning set forth in the Recitals.

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

"**Submittal**" means any document, work product or other written or electronic end product or item pertaining to the Work and required under the CDA Documents to be delivered or submitted to TxDOT.

"**Subordinate Debt**" means the outstanding principal balance of Project Debt secured by Subordinated Security Documents, excluding Breakage Costs. Subordinate Debt does not include any Project Debt included within the definition of Senior Debt Termination Amount, including TIFIA financing as and to the extent provided in the definition of Senior Debt Termination Amount.

"**Subordinated Security Documents**" means any Security Documents inferior in priority to the most senior Security Documents and to first tier subordinate Security Documents securing mezzanine financing, and generally includes any sub-debt held by Affiliates or other equity investors in Developer.

"**Substantial Completion**" means, for each Project Segment, satisfaction of the criteria for completion of construction of the Project Segment set forth in Section 9.3, as and when confirmed by. TxDOT's issuance of a certificate in accordance with the procedures and within the time frame established in Section 9.3.

"**Substituted Entity**" means any person or entity selected by Lenders and approved by TxDOT in accordance with Section 2.6 of the Lenders' Direct Agreement to perform Developer's obligations and succeed to Developer's rights hereunder after any such Lender has acquired the Developer's Interest by foreclosure or other lawful means or has otherwise assumed possession and control of the Project.

"**Subsurface Utility Engineering**" means an engineering process for accurately identifying the quality of subsurface utility information needed for highway plans, and for acquiring and managing that level of information during the development of a highway project, as more particularly described by the American Society of Civil Engineers (ASCE) standard, ASCE C-I 38-02, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data.

"**Supplemental Utility Assembly**" means 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 PUAA by means of a UAAA, as more particularly described in Section 6.3 of the Technical Provisions.

"**Supplier**" means 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 Contractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

"**Surety**" means each properly licensed surety company, insurance company or other Person approved by TxDOT, which has issued any of the Payment and Performance Bonds.

"**Target**" means, for each Element of the Project, the target during the Operating Period for the measurement record set forth in the column headed "Target" in the Performance and Measurement Table.

"**Target Speed**" has the meaning set forth in Exhibit 10.

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

"**Technical Provisions**" means the document describing the scope of the Work and related standards, criteria requirements, conditions, procedures, specifications and other provisions for the Project and/or the Utility Adjustments, as such provisions may be changed, added to or replaced pursuant to the Agreement.

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

"**Term**" has the meaning set forth in Section 2.2.

"**Termination by Court Ruling**" has the meaning set forth in Section 31.5.

"**Termination Compensation**" means each measure of compensation owing from TxDOT to Developer upon termination of the Agreement and Lease prior to the stated expiration of the Term.

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

"**Termination for Convenience**" has the meaning set forth in Section 31.1.1.

"**Third-Party Claims**" means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by or awarded to 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**" means 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-of-Day Mode**" has the meaning set forth in Exhibit 10.

"**TMC Direct Connector**" means the Direct Connector to be constructed by Developer that connects SH 288 to Holcombe Boulevard near the Texas Medical Center.

"**TMC Public Funds Payment**" has the meaning set forth in Section 4.5.

"**Toll Account**" means a User's electronic toll account with a Toll Account Provider from which the User's toll payments are debited.

"**Toll Account Provider**" means an agency or other Person that provides and maintains Toll Accounts for Users.

"**Toll Information Sign**" has the meaning set forth in Exhibit 10.

"**Toll Lanes**" means the Limited Access Highway lanes with respect to the Project as delineated in Section 1 of the Technical Provisions, in conformance with applicable Law.

"**Toll Revenues**" means all revenues actually received by or on behalf of Developer in connection with the Project or the tolling thereof, including:

(a) Gross toll revenues received (for the avoidance of doubt, including any gross toll revenues received on behalf of Developer, before any reductions thereto including reductions for toll collection fees);

(b) Other revenues received by Developer from the Project or the Users thereof the disposition of which is not specifically addressed by an agreement regarding Business Opportunities;

(c) Image-Based Billing Toll Premiums, if any, imposed and received by Developer (but not by TxDOT);

(d) Administrative Fees, if any, imposed and received by Developer (but not by TxDOT);

(e) Proceeds of business interruption or similar insurance against loss of revenues from operation of the Project;

(f) Payments from TxDOT or any Contractor retained to provide back office toll collection and enforcement services of any of the foregoing revenues it collects or of any toll revenues or other amounts it owes in respect of User trips on the Project;

(g) Payments from TxDOT of Compensation Amounts in replacement of or substitution for any of the foregoing revenues;

(h) Amounts received pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues;

(i) Amounts received as liquidated or other damages under contracts to which Developer is a party with respect to any of the foregoing revenues; and

(j) Amounts received pursuant to Section 25.1.7(d).

Toll Revenues exclude (i) capital contributions to Developer, (ii) proceeds of Project Debt, (iii) proceeds of capital asset dispositions, (iv) interest earned by Developer on Toll Revenues, and (v) insurance proceeds, judgments, awards, and payments from TxDOT, to the extent they do not replace, reimburse, compensate or substitute for any of the foregoing revenues.

"**Toll Segment**" has the meaning set forth in Exhibit 10.

"**Toll Transaction**" has the meaning set forth in Exhibit 10.

"**Tolling Method Change**" means (a) the approval or directive of TxDOT to operate the Toll Lanes in Dynamic Mode pursuant to Section 7(a) of Exhibit 10 or (b) the approval or directive of TxDOT to use Image-Based Billing pursuant to Section 10(a) of Exhibit 10 or Section 14.5.7(a).

"**Tolling Method Gain**" means the amount or schedule of amounts determined pursuant to Section 4.8.5 or 4.8.6, as applicable.

"**Traffic Management Center**" is a center for the management and distribution of traffic-related information to Users on a regional or statewide basis.

"**Traffic Management Plan**" means Developer's plan for traffic management throughout the Term, as more particularly described in Section 22.2 (of the Agreement) and in Section 18.2.1 of the Technical Provisions.

"**Transaction**" means (only where capitalized) either a Transponder Transaction or a Video Transaction; and Transactions means all Transponder Transactions and Video Transactions.

"**Transaction Fee**" has the meaning set forth in Exhibit 11.

"**Transferee Parties**" has the meaning set forth in Section 33.2.1(d).

"**Transponder Issuer**" means any Person, including TxDOT, HCTRA and NTTA, who or which (a) issues transponders for mounting in vehicles and transacting Transponder Transactions on tolled roadways in the State or in any other state of the United States, (b) participates with TxDOT in interoperability protocols, agreements and arrangements, and (c) under such interoperability protocols, agreements and arrangements, covenants to remit payments to the other participants of all Toll Transactions that meet the terms for transmission, debiting and payment, and are required to be included in the current payment cycle, as set forth in such protocols, agreements and arrangements.

"**Transponder Transaction**" has the meaning set forth in Exhibit 10.

"**TxDOT**" has the meaning set forth in the Preamble.

"**TxDOT Benchmark Interest Rate Portion**" has the meaning set forth in Section 3.6.3(b).

"**TxDOT-Caused Delays**" means any of the following events, to the extent they result in a material delay or interruption in performance of any obligation under the Agreement, and provided such events are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful 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) Failure of TxDOT to issue NTP1 or NTP2 within 30 days after the anticipated issuance date set forth in Section 9.2;

(b) TxDOT Changes;

(c) Failure or inability of TxDOT to make available to Developer an Additional Property that TxDOT is to condemn, within 345 Days after TxDOT's receipt of a complete condemnation packet approved by TxDOT staff for the Additional Property; *provided* that "make available" means that Developer shall have the right to take and maintain possession of the parcel for all purposes for the remainder of the Term in accordance with the CDA Documents, including commencement of construction, as the result of TxDOT's having secured a special commissioners' award through the eminent domain process or otherwise; or

(d) Failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters submitted to TxDOT after the Effective Date 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 notice from Developer requesting such action in accordance with the terms and requirements of the CDA Documents.

Any proper suspension of Work pursuant to Section 29.4.10 shall not be considered a TxDOT-Caused Delay.

"**TxDOT Change**" means a change described in Section 13.1 or any other event that the CDA Documents expressly state shall be treated as a TxDOT Change, but in each case only if the change increases Developer's costs or adversely impacts Toll Revenues by more than $10,000.

"**TxDOT Credit Spread Portion**" has the meaning set forth in Section 3.6.3(d).

"**TxDOT Default**" has the meaning set forth in Section 29.6.

"**TxDOT-Provided Approvals**" means the Governmental Approvals for the Project obtained or to be obtained by TxDOT as specifically listed in Section 4.2.4 of the Technical Provisions.

"**TxDOT Release(s) of Hazardous Material**" means, except as provided below, the introduction in, on or under the Site of Hazardous Material (a) by TxDOT, or by its contractors, subcontractors, agents or employees acting in such capacity (other than any Developer-Related Entity), including any such introduction in the course of TxDOT's operation and maintenance of a portion of the Project pursuant to Section 24.3 or (b) resulting from or arising out of any Release(s) of Hazardous Material (other than any Pre-existing Hazardous Material or Developer Release(s) of Hazardous Material) at, in, on or under any location other than the Site. TxDOT Release(s) of Hazardous Material excludes, however, (i) any Hazardous Materials so introduced that are in or part of construction materials and equipment incorporated into the Project and (ii) any Pre-existing Hazardous Materials.

"**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 allocated fees and costs of TxDOT's Office of General Counsel and the Office of the Attorney General), 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 TIFIA Portion**" has the meaning set forth in Section 3.6.3(f).

"**TxDOT Tolling Services Agreement**" has the meaning set forth in Section 14.5.3.

"**TxTag**" has the meaning set forth in Exhibit 11.

"**TxTag Account**" has the meaning set forth in Exhibit 11.

"**TxTag Holder**" has the meaning set forth in Exhibit 11.

"**TxTag Transaction**" has the meaning set forth in Exhibit 11.

"**Ultimate Configuration**" means the ultimate footprint of the Project with corresponding roadways (including Frontage Roads), interchanges and toll plazas as planned for and presented in the final environmental documents and NEPA Approvals. For the avoidance of doubt, the Ultimate Configuration includes (a) the IH 610 Interchange Work and (b) the General Purpose Lane Capacity Improvements.

"**Unaffordability Determination**" means a determination by TxDOT that the net change required, or expected to be required (based on then-available information), by Section 3.6.3 is not acceptable to TxDOT.

"**Uncured Noncompliance Points**" means Noncompliance Points assessed on account of breaches or failures that remain uncured. Uncured Noncompliance Points excludes Noncompliance Points assessed for breaches or failures identified by the assessment category "C" in Table 2 of Exhibit 18 (no applicable cure period).

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

"**Uniform Toll Account Rules**" means those rules and regulations that may be established from time to time for uniform account maintenance and reconciliation among operators of electronically tolled facilities in the State.

"**Unplanned Revenue Impacting Facilities**" means any limited access main lane of a highway that did not exist prior to the Effective Date, which TxDOT, or an entity pursuant to a contract with TxDOT and on TxDOT's behalf, builds within the Airspace and opens to traffic during the Term, whether resulting from new construction or upgrade of an existing non-limited access facility, excluding, for the avoidance of doubt, the following:

(a) All those limited access highway projects excluded by statutes in effect on the Setting Date;

(b) All projects included in the Ultimate Configuration, including the IH 610 Interchange Work, whether undertaken by Developer or by TxDOT; it being understood that the foregoing exclusion is without prejudice to a claim pursuant to clause (t) of the definition of "Compensation Event";

(c) All projects included in the 2035 Regional Transportation Plan Update adopted by the Houston-Galveston Area Council as of the Setting Date;

(d) (i) The Toll Lanes and General Purpose Lanes that are part of the Initial Configuration and (ii) the General Purpose Lane Capacity Improvements (it being understood that payments in respect of the General Purpose Lane Capacity Improvements shall be determined exclusively by Section 25.1);

(e) A Capacity Improvement that Developer builds;

(f) A Capacity Improvement for which TxDOT grants to Developer the exclusive right to operate, toll and maintain during the balance of the Term under the terms and conditions of the CDA Documents;

(g) All work and improvements on highway projects necessary for improved safety, maintenance or operational purposes;

(h) All high occupancy vehicle exclusive lane additions, or other work, on any highway project required by environmental regulatory agencies;

(i) Any work and improvements undertaken to increase traffic capacity by modifying already-constituted highway projects through the installation of traffic sensors, metering devices, Intelligent Vehicle Highway System equipment or other intelligent transportation systems, through reconstructing existing lanes including localized operational improvements that add lanes, through new or improved frontage roads, crossing streets or crossing street by-pass lanes, through intersection grade separations, or localized operational improvements through the restriping of traffic lanes, medians and shoulders, including restriping that adds lanes (it being understood, however, that any directive to restripe the General Purpose Lanes prior to the issuance of NTP3 shall be considered a TxDOT Change); and

(j) All transportation projects and facilities that are not specifically newly constructed, limited access main lanes of a highway, including passenger and freight rail facilities and other modes of transportation not included in the Project.

"**Upgrades**" means alterations, improvements, modifications or changes that Developer makes to any Project Segment and the corresponding portions of the General Purpose Lanes and Frontage Roads, as

originally designed and constructed, at any time after the Service Commencement Date for such Project Segment, except as part of ordinary maintenance or Renewal Work. Upgrades include Capacity Improvements. Upgrades may include alterations, improvements, modifications or changes that require an amendment or supplement to the final environmental impact documents for the Project or that are to be located outside the boundaries of the original Project Right of Way. Upgrades exclude Technology Enhancements and any alterations, improvements, modifications or changes undertaken in the use or development of a Business Opportunity.

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

"**User**" means the registered owner of, or any other Person responsible under the Texas Transportation Code for payment of a toll for, a vehicle traveling on the Project or any portion thereof.

"**User Classification**" means each established category of vehicles or persons using the Project under like conditions as set forth in Exhibit 10. User Classifications are subject to change only as provided in Section 14.2.

"**Utility**", or "**utility**" means 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" also includes radio towers and/or transmission towers (including cellular), but when used in the context of Utility Adjustments, the term excludes (a) storm water facilities providing drainage for the Project ROW and (b) TxDOT's or a Governmental Entity's Highway Service Systems. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, up to and including the meter, regardless of the ownership of such Service Line.

"**Utility Accommodation Rules**" **(UAR)** means 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**" means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; *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 Right of Way, the Utility Adjustment Work for each crossing of the Project Right of Way by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project Right of Way, the Utility Adjustment Work for each continuous segment of that Utility located within the Project Right of Way shall be considered a separate Utility Adjustment.

"**Utility Adjustment Agreement Amendment**" (**UAAA**) means an agreement between Developer and a Utility Owner that amends a PUAA, as more particularly described in Section 6.1.3.2 of the Technical Provisions.

"**Utility Adjustment Concept Plan**" means a conceptual design document for Utility Adjustments for the entire Project or for a segment thereof, 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 or segment, as more particularly described in Section 6.3.3 of the Technical Provisions.

"**Utility Adjustment Field Modification**" means any horizontal or vertical design change to a Utility Adjustment required by Developer or proposed by a Utility Owner due either to roadway design or to conditions not accurately reflected in the corresponding Utility Assembly for which the review and comment/approval process has been completed, that alters the design included in the approved Utility Assembly. An example would be shifting the alignment of an 8" water line to miss a roadway drainage structure. A minor change (e.g., an additional water valve, an added Utility marker at ROW line, a change in vertical bend, etc.) will not be considered a Utility Adjustment Field Modification, but shall be shown in the Record Drawings.

"**Utility Adjustment Plans**" means the plans, specifications, and cost estimates furnished for a particular Utility Adjustment, as more particularly described in Section 6.3.4 of the Technical Provisions.

"**Utility Adjustment Work**" means 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, whether occupied by a Utility facility or not, 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 Article 11.

"**Utility Agreement**" means a PUAA and/or UAAA, as the context may require.

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

"**Utility Assembly**" means 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 original Project Utility Adjustment Agreement), 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 (both also described in Section 6.3.4.5 of the Technical Provisions).

"**Utility Assembly Checklist**" means 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**" means the unique number given by Developer to each Utility Assembly, using the form "YYY-U-XXXX." The "YYY" shall refer to the assigned number of the highway and if applicable, the highway segment reference ID, and the "XXXX" shall refer to the 4-digit number assigned to each Utility Assembly (beginning with 0001 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding Utility Agreement (PUAA, UAA, and UAAA).

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

"**Utility Enhancement**" has the meaning set forth in Section 11.5.

"**Utility Installation Request (UIR) Form 1082**" shall mean a request by the Utility to install a Utility facility within the Project ROW which is not located within an Existing Utility Property Interest.

"**Utility Joint Use Acknowledgment**" or "**Utility Joint Use Agreement**" **(UJUA)** means 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 such Utility located within an existing Utility Property Interest owned by the Utility Owner.

"**Utility Manager**" **(UM)** means the senior staff person designated by Developer to be responsible for coordination and oversight of Utility Adjustment operations during the planning, design, and construction phases of the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

"**Utility Memorandum of Understanding**" **(MOU)** means a non-binding agreement or memorandum of understanding between TxDOT and a Utility Owner, establishing a cooperative general framework for the Utility Adjustment of such Utility Owner's Utilities, as more particularly described in the Technical Provisions. A document is a Utility MOU if it meets the foregoing definition regardless of the title of the document.

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

"**Utility Owner Project**" means the design and construction by or at the direction of a Utility Owner (or by Developer) of a new Utility other than (a) as part of a Utility Adjustment or (b) to provide service to the Project. Betterments are not Utility Owner Projects. Utility Owner Projects are entirely the financial obligation of the Utility Owner.

"**Utility Strip Map**" means a SUE map depicting existing Utilities potentially impacted by the Project.

"**Utility Tracking Report**" **(UTR)** means the report regarding Utilities likely to be impacted by the Project which Developer shall maintain on a current basis, as more particularly described in Section 6.5.2 of the Technical Provisions.

"**Valuation Date**" means (a) for the purposes of Section 3.6.3 only, the date of Financial Close and (b) for all other purposes, the date notice of election to terminate is delivered by one or the other Party.

"**Vehicle Speed**" has the meaning set forth in Exhibit 10.

"**Vehicle Volume**" has the meaning set forth in Exhibit 10.

"**Video Transaction**" means each electronic record of a toll and set of contemporaneous video images that are properly transmitted to a CSC Host respecting a vehicle that passes through a toll lane on the Project and (a) is not equipped with a transponder issued by a Transponder Issuer, or (b) is equipped with such a transponder but the account associated with the transponder either (i) is closed or (ii) has an insufficient balance at the times of debit and re-debits as provided in Exhibit 10 to pay in full the applicable Transponder Transaction toll rate. A Video Transaction also means each electronic record of a toll and set of contemporaneous video images as set forth in Exhibit 10.

"**Video Transaction User**" means a User who makes a Video Transaction.

"**Violation**" has the meaning set forth in Exhibit 10.

"**Violation Fee**" has the meaning set forth in Exhibit 10.

"**Warning Notice**" means a notice that TxDOT delivers to Developer pursuant to Section 29.3.

"**Work**" means all of the work required to be furnished and provided by Developer under the CDA Documents, including all administrative, design, engineering, real property acquisition and occupant relocation, construction, Utility Adjustment, utility accommodation, support services, operations, maintenance and management services, except for those efforts which such CDA Documents expressly specify will be performed by Persons other than Developer-Related Entities.

"**Work Breakdown Structure**" means a deliverable-oriented hierarchical structure that breaks the Work into elements that have distinct identification and that contain specific scope characteristics. Each descending WBS level represents an increasingly detailed delineation of elements of the total Project scope. The WBS will contain elements of Design Work, Construction Work and O&M Work. There shall be clearly identifiable linkage between the WBS and Schedule Activities. The WBS numbering convention shall be compatible with Project Schedule coding and may be compatible with document control coding.

"**WBS Level**" means a level of detail of the Work Breakdown Structure as set forth in Section 2 of the Technical Provisions.