EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

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

AAP	AASHTO Accreditation Program
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACT	Antiquities Code of Texas
ADA	Americans with Disabilities Act
ADAAG	Americans with Disabilities Act Accessibility Guidelines
ADT	Average Daily Traffic
ADUT	Austin District Utility Permit
AISC	American Institute of Steel Construction, Inc
ANSI	American National Standards Institute
AP	Associated Press Stylebook
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
ATT/AVI	Attendant / Automatic Vehicle Identification
AVC	Automatic Vehicle Classification
AVI	Automatic Vehicle Identification
AWS	American Welding Society
BC	Basic Configuration
BMP	Best Management Practice
CADD	Computer Aided Drafting and Design
CAMPO	Capital Area Metropolitan Planning Organization
CCI	Construction Cost Index
CCTV	Closed Circuit Television
CDA	Comprehensive Development Agreement between TxDOT and Developer for TTC-35 dated March 11, 2005, as amended and as it may be amended from time to time.
CD-R	Compact Disc Recordable
CD ROM	Compact Disc Read Only Memory
CD-RW	Compact Disc Rewriteable
CE	Categorical Exclusion
CEPP	Comprehensive Environmental Protection Program
CFR	Code of Federal Regulations
CLOMR	Conditional Letter of Map Revision
CMP	Construction Monitoring Plan
CO	Carbon Monoxide

CPM	Critical Path Method
CQP	Construction Quality Program
CRCP	Continuous Reinforced Concrete Pavement
CSC	Customer Service Center
CSJ	Control Section Job
CSTM	Materials and Pavements Section of TxDOT Construction Division
CWA	Clean Water Act
DBE	Disadvantaged Business Enterprise
DCS	Document Control System
DSS	Decent, Safe and Sanitary
DTM	Digital Terrain Model
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
EDMS	Electronic Data Management System
ELMS	Electrical and Lighting Management System
EMR	Environmental Monitoring Report
EMS	Environmental Management System
EP	Extraction Procedure (toxicity)
EPD	Escrowed Proposal Documents
EPIC	Environmental Permits Issues and Commitments
EPTP	Environmental Protection Training Plan
ERCOT	Electric Reliability Council of Texas
ESA	Endangered Species Act of 1973, 16 U.S.C. §§1531 *et seq.*, as amended and as it may be amended from time to time
ESAL	Equivalent Single-Axle Load
ET	Environmental Team
ETCS	Electronic Toll Collection System
FAPG	Federal-Aid Policy Guide
FCA	Facility Concession Agreement
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FEMP	Facility Environmental Mitigation Plan
FHWA	U.S. Federal Highway Administration
FIAP	Facility Independent Acceptance Program
FM	Facility Manager
FMP	Facility Management Plan
FOB	Field Operations Building
FONSI	Findings of No Significant Impact
FOS	Facility Operating Sub-system
FSL	Facility Specific Location

FTP	File Transfer Protocol
FHWA	Federal Highway Administration
FWCA	Fish and Wildlife Coordination Act, 16 U.S.C. §§661 *et seq.*, as amended and as it may be amended from time to time
GAAP	U.S. Generally Accepted Accounting Principles
GIS	Geographical Information System
HAZWOPER	Hazardous Waste Operations and Emergency Response
HEC	Hydraulic Engineering Circular
HCR	Highway Conditions Report
HMMP	Hazardous Materials Management Plan
HOV	High Occupancy Vehicle
HVAC	Heating Ventilation and Air Conditioning
ICD	Interface Control Document
ID	Identification
IH	Interstate Highway
IRI	International Roughness Index
IRR	Internal Rate of Return
ISDN	Integrated Services Digital Network
ISI	Initial Serviceability Index
ISO	International Organization for Standardization
ITS	Intelligent Traffic Sub-system
IVHS	Intelligent Vehicle Highway System
IWP	Investigative Work Plan
JRCP	Jointed Reinforced Concrete Pavement
JSA	Job Safety Analysis
LAN	Local Area Network
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
MT	Mainline Tolling
MUAA	Master Utility Adjustment Agreement
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, as amended and as it may be amended from time to time

NFIP	National Flood Insurance Program
NHPA	National Historical Preservation Act
NICET	National Institute for Certified Engineering Technicians
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NRHP	National Register of Historic Places
NTP	Notice to Proceed
OCR	Optical Character Recognition
ORT	Open Road Toll
OSHA	Occupational Safety and Health Administration
PA	Programmatic Agreement
PGL	Profile Grade Line
PH	Percent Hydrogen
PI	Plasticity Index
PICP	Public Information and Communications Plan
PMIS	Pavement Management Information System
POS	Facility Operating Sub-system
PUA	Possession and Use Agreement
PVC	Polyvinyl Chloride
QMP	Quality Management Plan
RAID	Redundant Array of Independent Disks
RFID	Radio Frequency Identification
RHA	Rivers and Harbors Act
RLM	Residual Life Methodology
ROD	Record of Decision
ROE	Right of Entry
ROW	Right of Way
ROW AM	Right of Way Acquisition Manager
ROWIS	Right of Way Information System
RPLS	Registered Professional Land Surveyor
RRC	Railroad Commission
RT	Ramp Tolling
RTF	Related Transportation Facilities
SDPP	Special Deposit and Possession Procedure
SH	State Highway
SHPO	State Historic Preservation Officer
SI	System Integrator
SIR	Site Investigation Report
SPCC	Spill Prevention and Control Plan
SSCB	Single Slope Concrete Barrier

SSTR	Single Slope Traffic Railing
STB	Surface Transportation Board
STIP	State Transportation Improvement Plan
SUE	Subsurface Utility Engineering
SW3P	Storm Water Pollution Prevention Plan
TAS	Texas Accessibility Standards
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TCLP	Toxicity Characteristic Leaching Procedure
TDLR	Texas Department of Licensing and Regulation
TE	Texas Commission on Environmental Quality
THC	Texas Historical Commission
TIFIA	Transportation Infrastructure Finance and Innovation Act
TIP	Transportation Improvement Plan
TL	Testing Level
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TPDES	Texas Pollutant Discharge Elimination System
TPWD	Texas Parks and Wildlife Department
TSI	Terminal Serviceability Index
TxDOT	Texas Department of Transportation
UAA	Utility Adjustment Agreement
UAAA	Utility Adjustment Agreement Amendment
UAR	Utility Accommodation Rules
UC	Ultimate Configuration
UCS	User Classification Subsystem
UDC	Utility Design Coordinator
UJUA	Utility Joint Use Acknowledgment or Agreement
UM	Utility Manager
UPA	Utility and Personnel Access-way
UPS	Uninterruptible Power Supply
US	United States Highway
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
USPAP	Uniform Standard of Professional Appraisal Practices
UTM	Universal Trans Mercator
VCS	Vehicle Classification Sub-system
VES	Video Exception Sub-system
VPS	Violation Processing Sub-system

WAN	Wide Area Network
WBS	Work Breakdown Structure

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

Abandonment means that Developer abandons all or a material part of the Facility, which abandonment shall have occurred if (a) Developer demonstrates through statements, acts or omissions an intent not to continue, for any reason other than a Relief Event that materially interferes with ability to continue, to construct or operate all or a material part of the Facility and (b) no significant Work (taking into account the Facility Schedule, if applicable, and any Relief Event) on the Facility or a material part thereof is performed for a continuous period of more than 60 days.

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 Facility Right of Way, as more particularly described in Section 6.3.5 of the Technical Requirements; a single Abbreviated Utility Assembly may address more than one such Utility.

Acceleration Costs means those fully documented increased costs reasonably incurred by Developer (that is, costs over and above what Developer would otherwise have incurred) which are directly and solely attributable to increasing the rate at which the Work is performed in an attempt to complete necessary elements of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for re-sequencing in connection with acceleration efforts and/or a Facility Recovery Schedule.

Acquisition Packages means the packages of documentation and information for the acquisition of parcels for the Facility Right of Way described in Section 7.3.6 of the Technical Requirements.

Acquisition Survey Document Package has the meaning set forth in Section 7.3 of the Technical Requirements.

Act has the meaning set forth in Recital A of this Agreement.

Actual Revenue means gross toll revenue measured by Developer, including cash payments charged by Developer at toll booths and card payments charged by agent, whether collected or not, but excluding tolls not collected, penalties and interest paid or due on toll violations, or any third party revenues.

Additional Properties means properties proposed by Developer to be added to the Facility Right of Way to be used for Facility-related purposes that are not within the Facility Right of Way boundaries identified in the NEPA Approval, including those properties outside such boundaries to be used as staging areas, field office sites, borrow sites, stockpile locations and other areas.

Additional Termination Amount means the positive difference, if any, between the Termination Compensation that would have been payable to Developer under Section A.2 of Exhibit 22 (based upon the procedures described in Section A.3 of Exhibit 22) and the amount of Termination Compensation paid to Developer under Section A.4 of Exhibit 22, plus interest

thereon at LIBOR from the date of payment of the Termination Compensation under Section A.4 to the date the Additional Termination Amount is paid.

Adjacent Work means any facility, work, improvement or development to be planned, designed or constructed which could or does impact the Facility and/or is adjacent to the Facility. Examples of Adjacent Work include proposed subdivisions, other roads constructed by Governmental Entities, site grading and drainage and other development improvement plans and Utility Owner Projects.

Adjust 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 Facility) 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 FCA Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 7.5.3 of the Agreement.

Affiliate means:

(a) any shareholder, member, partner or joint venturer 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 venturers; and

(c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any of Developer's shareholders, members, partners or joint venturers 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.

Affidavit of Property Interest has the meaning set forth in Section 6.2 of the Technical Requirements.

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

Agreement means that certain Facility Concession Agreement, to which this Exhibit 1 is attached, executed by TxDOT and Developer, including any and all Exhibits and amendments thereto.

Airspace means any and all real property, including but not limited to the surface of the ground, within the vertical column extending above and below the surface boundaries of the Facility Right of Way and not necessary or required for the Facility (including Upgrades) or developing, permitting, designing, financing, constructing, installing, equipping, operating, tolling maintaining, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Facility

(including Upgrades) or Developer's timely fulfillment of its obligations under the FCA Documents..

ALJ means an administrative law judge employed by SOAH.

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

Alternate Procedure List means the list of Utilities to be Adjusted (and related information) which Developer will prepare and TxDOT will submit to the FHWA pursuant to Section 7.5.5.2 of the Agreement, as such list may be amended from time to time.

Annual Report means the report to be submitted by Developer in accordance with Section 2 of the Technical Requirements.

Antiquities Permit means a permit obtained by Developer from the Texas Historical Commission (THC) for archeological surveys, testing and data recovery.

Appeal Period has the meaning set forth in Section 17.8.5.1(a) of the Agreement.

Applicable Percentage means, in respect of each Band specified for each Fiscal Year referred to in Tables 4-6 of Attachment 1 to Exhibit 7 to the Agreement, the percentage specified opposite such Band in the relevant table in such Attachment.

Appraisal has the meaning set forth in Section 7.2.1 of the Technical Requirements.

Archeologist means a member of the Facility Environmental Team responsible for assessment of cultural resources potentially impacted by the Work as more particularly described in Section 4.3 of the Technical Requirements.

Asset Condition Score means the score (from one to five) assigned by Developer following a Developer's Audit Inspection, as may be modified as a result of the Independent Engineer's Audit Inspections, which records, for each Element Category and for all of the Auditable Sections audited in any quarter, the extent to which Developer has met the Target for each measurement record according to the criteria set forth in Section 19.7 of the Technical Requirements.

Auditable Section means a defined section of the Facility for the purpose of audit, inspection and measurement. An Auditable Section includes all travel lanes including mainlanes, ramps and frontage roads of the roadway operating in one direction over a length of 0.1 miles in length, together with all Elements of the Facility and Related Transportation Facilities within the Facility Right of Way associated with the relevant 0.1 mile length of roadway.

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 of the Technical Requirements to establish an Asset Condition Score for each Element Category and verify compliance with the Performance Requirements.

Authorized Representative means the individuals authorized to make decisions and bind the parties on matters relating to the FCA Documents pursuant to Section 24.7 of the Agreement.

Band means the difference between a Band Floor and the next highest Band Ceiling (inclusive) or, where there is no higher Band Ceiling, any amount in excess of the highest Band Floor as set out in Table 3 of Attachment 1 to Exhibit 7 to the Agreement.

Band Ceiling means, in respect of each Band Floor, the next highest Band Floor minus one, if such a Band Floor exists.

Band Floor means each amount specified as the minimum amount for a Band as set out in Table 3 of Attachment 1 to Exhibit 7 to the Agreement.

Base Case Financial Model means the Financial Model Formulas and the assumptions and information used by or incorporated in the Financial Model Formulas as of the Setting Date and deposited in the Intellectual Property Escrow as of the Effective Date:

(a) On the basis of which Developer and TxDOT entered into this Agreement;

(b) Which include certain projections and calculations with respect to revenues, expenses, the repayment of Facility Debt and Distributions to notional initial equity investors that result in achievement of a real after tax (i.e. U.S. federal and state income tax, and State business income tax, State margin or gross receipts tax, but not any foreign income tax or other tax of any kind) internal rate of return on equity investment over the Term (assuming no early termination or extension); and

(c) Which is prepared on the basis of the Base Case Traffic Model.

Base Case Financial Model Update means the Base Case Financial Model as most recently updated pursuant to Section 5.3.1 of the Agreement prior to a Compensation Event or 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.

Basic Configuration (BC) means the Facility configuration as defined in Section 1.3 of the Technical Requirements.

Basic Transaction Fee has the meaning set forth in Exhibit 14 to the Agreement.

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

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the Utility Agreement(s) applicable to the Utility; in all other cases, "Betterment" means any upgrading of the Utility in the course of such Utility Adjustment that is not attributable to the construction of the Facility 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 Facility;

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

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

(d) any upgrading required by applicable Law;

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

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

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

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 FCA Documents, or (ii) is called for by Developer in the interest of overall economy for the Facility.

Book 1 means the Agreement, all Exhibits thereto, and the executed originals of Exhibits that are contracts.

Book 2 means the Technical Requirements.

Book 3 means the FCA Document setting forth or incorporating by reference the Technical Documents, as the same is revised from time to time pursuant to the Agreement.

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 Facility Debt prior to its scheduled payment date.

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

Business Opportunity has the meaning set forth in Section 11.2.2 of the Agreement.

Candidate Vehicle means a vehicle for which the CSC Host has received one of the following:

(a) A valid Tag Trip transaction;

(b) An unobstructed readable video image of a license plate; or

(c) A video image that is not an unobstructed readable video image of a license plate due only to one or more of the following conditions:

(i) The vehicle either has no license plate or the license plate is not mounted in the legally required position;

(ii) The license plate is covered or obstructed by dirt, snow, grease or other substance or element rendering it unreadable;

(iii) The license plate is damaged, rusted, bent or broken rendering it unreadable;

(iv) The license plate is blocked by an object or other obscuring device carried by the vehicle (such as a plate frame, overhanging cargo or a trailer towing ball);

(v) The license plate is blocked by something in the lane such as a person or another vehicle; or

For this purpose, a "readable video image" means an image produced by the VES and transmitted to the CSC Host in which both plate number and issuing jurisdiction can be reliably read by the human eye (or but for one of the conditions described in clauses (c)(i) through (c)(vi) above would be reliably read by the human eye).

Capacity Improvement means any Facility expansion, improvement, measure or procedure that both (a) increases the throughput capacity of the Facility or any portion thereof and (b) improves the level of service of the Facility. 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 Facility Extensions.

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.

Change in Law means (a) the adoption of any Law after the Setting Date, or (b) any change in any Law or in the interpretation or application thereof by any Governmental Entity after the Setting Date, in each case that is materially inconsistent with or that materially adds to Laws in effect on the Setting Date; excluding, however, any such change in or new Law passed or adopted but not yet effective as of the Setting Date.

Change of Control means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting

securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or cause the direction of the management of Developer or a material aspect of its business, except for (i) any approval rights granted to any equity investor or lender in the ordinary course of any financing or minority equity investment in Developer, (ii) any such transaction involving beneficial interests in Cintra S.A. or Zachry American Infrastructure or any of their respective direct or indirect beneficial owners, and (iii) any Internal Change of Control. For avoidance of doubt, a Change of Control of a shareholder, member, partner or joint venturer of Developer or of any entity in the chain of ownership between Developer and Cintra S.A. or Zachry American Infrastructure will constitute a Change of Control of Developer if such shareholder, member, partner or joint venturer, or such entity, possesses the power, directly or indirectly, to direct or cause the direction of the management of Developer or material aspects of Developer's business. Notwithstanding the foregoing, neither the grant of Security Documents, including the Initial Security Documents, in strict compliance with Section 4.3 of the Agreement nor the exercise of Lender remedies thereunder, including foreclosure, shall constitute a Change of Control.

Change Order means a written order issued by TxDOT to Developer delineating changes in the Work within the general scope of the FCA Documents or in terms and conditions of the Technical Requirements or Technical Documents (including changes in the standards applicable to the Work) in accordance with Section 14 of the Agreement and establishing, if appropriate, an adjustment to Developer's compensation or Milestone Schedule Deadlines.

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, or to modify or deviate from the FCA Documents.

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

Cintra SA means Cintra Concesiones de Infraestructuras de Transporte, S.A.

Claim means (a) a demand by Developer, which is or potentially could be disputed by TxDOT, for a time extension under the DRP Governed Agreements, payment of money or damages from TxDOT to Developer, or TxDOT's payment to Developer of a Compensation Amount or Termination Compensation under the Governed Agreements 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 under the DRP Governed Agreements.

Code means the Texas Transportation Code.

Collateral Agent means the Institutional Lender listed as the collateral agent for the Lenders in the Initial Security Documents, the Institutional Lender designated to act as trustee or agent on behalf of or at the direction of the other Lenders in any future 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 Facility Debt issued and held by a single Lender, Collateral Agent means such Lender.

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

Commission means the Texas Transportation Commission and any Governmental Entity successor thereto.

Committed Equity Amount means $331,400,000, which amount Developer represents and warrants constitutes the total contractually committed equity and loan amount from Developer's members under its organizational documents as of the Effective Date.

Comparable Limited Access State Highways means State Highways that have full control of access, are divided, have grade separations at intersections and are in other respects substantially similar to the Facility.

Compensation Amount means, except as specifically provided otherwise in the Agreement, the amount necessary to restore Developer to the same economic position, on an after-tax basis, it would have been in if the Compensation Event had not occurred, regardless of which method or timing for payment is used under Section 13.2.6 of the Agreement.

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

(a) Discriminatory Change in Law;

(b) Discriminatory Action;

(c) Material breach by TxDOT of its material obligations under the Agreement or other FCA Documents, including failure to pay the Termination Compensation in accordance with the requirements, and within the time period, set forth in Section E.5 of Exhibit 22;

(d) TxDOT-Caused Delay;

(e) TxDOT Change;

(f) Material adverse effect of the operation of a Competing Facility;

(g) Development, use or operation of the Airspace by TxDOT or anyone (other than a Developer-Related Entity acting in such capacity) claiming under or through TxDOT, or development or operation by TxDOT of a Business Opportunity in the Airspace, to the extent set forth in Section 11.2.4 of the Agreement;

(h) Material adverse change after the Effective 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 Facility due to the acts or omissions of TxDOT;

(i) Failure of TxDOT to open for regular public use SH130, Segments 1 through 4, on or prior to the later of (i) the originally scheduled target for Service Commencement for the entire Facility as set forth in the Facility Baseline Schedule or (ii) the actual Service Commencement Date for the entire Facility;

(j) The posting of a maximum speed limit for passenger vehicles on all or a substantial portion of I-35 where it runs generally parallel to the Facility above the posted speed limit on the Setting Date;

(k) The direction by TxDOT to reduce the maximum daytime posted speed limit for passenger vehicles on all or a substantial portion of the Facility to less than 79 mph, if such reduction occurs more than one year after receipt by TxDOT of the increased Concession Payment described in Section 13.2.3.5;

(l) A Change in Law that is legally binding on Developer and (a) eliminates or suspends Developer's right to impose or collect tolls, or (b) reduces the maximum toll rates (including Video Toll Premiums) that Developer is entitled to charge under the Agreement.

Compensation Event Notice means the written notice submitted by Developer in accordance with Section 13.2 of the Agreement.

Competing Facilities means any newly constructed or materially expanded highway project that is built and opened to traffic during the Term:

(a) By TxDOT or the State or by a private entity pursuant to a contract with TxDOT or the State; or

(b) By any other Governmental Entity or by a private entity pursuant to a contract with the Governmental Entity, but only where the Texas Transportation Commission or TxDOT has discretionary authority to effectively prevent its construction or opening to traffic or to control its location;

excluding, however, in each case, the following:

(i) All those highway projects excluded by statutes in effect on the Effective Date;

(ii) All highway projects included in any of the long range transportation plans and programs set forth in Exhibit 17 to the Agreement;

(iii) All highway projects located outside the Competing Facilities Zone set forth in Exhibit 17 to the Agreement, and all projects located inside the Competing Facilities Zone that are specifically listed as exclusions in Exhibit 17;

(iv) All transportation projects and facilities that are not highway projects, including passenger and freight rail facilities;

(v) Any and all frontage roads, except as otherwise set forth in Exhibit 17 to the Agreement;

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

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

(viii) 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 intersection grade separations, or localized operational improvements through the restriping of traffic lanes, medians and shoulders, including restriping that adds lanes;

(ix) Capacity Improvements (including the addition of truck lanes) to the Facility, unless such improvements are required by TxDOT Change prior to the second trigger event regarding mandatory Capacity Improvements set forth in Section 5 of Exhibit 18 to the Agreement, and are operated by TxDOT or a Person other than Developer; and

(x) If the Trans Texas Corridor 35 is within the Competing Facilities Zone but does not include the Facility, the development of truck lanes or other facilities on Trans Texas Corridor 35 through self-performance by Developer or an Affiliate.

Competing Facilities Zone means the zone depicted or described in Exhibit 17 to the Agreement, outside of which no TxDOT Project or other transportation facility can be deemed a Competing Facility.

Comprehensive Environmental Protection Program has the meaning set forth in Section 4.3 of the Technical Requirements.

Concession Payment means the amount, if any, to be paid TxDOT as set forth in Part A of Exhibit 7 to the Agreement.

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

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

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

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

of a member of the Conflicts Group. Mere use of the Facility shall not constitute a pecuniary, ownership or financial interest for purposes of this definition;

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

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

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

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

Construction Documents 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 Facility and/or the Utility Adjustments included in the Construction Work, in accordance with the FCA Documents.

Construction Monitoring Plan (CMP) means the plan indicating times, locations, and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with Environmental Laws and FCA Documents as more particularly described in Section 4.6.5 of the Technical Requirements.

Construction Traffic Management Plan means Developer's plan for traffic management during construction of the Facility and/or the Utility Adjustments included in the Construction Work, prepared under the Facility Implementation Plan and approved by TxDOT prior to the Effective Date.

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

Construction Work Commencement Deadline means the outside date that Developer is obligated under the Agreement to satisfy all conditions to commencement of the Construction Work and commence the Construction Work, as set forth in the Milestone Schedule attached as Exhibit 9 to the Agreement, as extended by Relief Events.

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.

Consumer Price Index or **CPI** has the meaning set forth in Section 4.5.2 of Exhibit 20 to the Agreement.

Contractor 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 Facility 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.

Convenience Hard Copy(ies) means copies provided for use only and that are not to be used for records purposes and will not require maintenance.

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

Covered Liability has the meaning set forth in Section 16.5.6.1 of the Agreement.

Critical Path means each critical path on the Facility Schedule, which ends on the Service Commencement Deadline or the Final Acceptance Deadline, as applicable. The lower case term "critical path" means the activities and durations associated with the longest path(s) through the Facility Schedule.

CSC Host means TxDOT's central computer system that supports customer service center account management functions.

Custodial Arrangement Date means the date that TxDOT and the Custodian execute and deliver a Master Lockbox and Custodial Account Agreement and Joinder Agreement in all material respects in form and substance as set forth in Exhibit 25 to the Agreement, subject to any changes required by the selected Custodian so long as such changes are reasonably acceptable to TxDOT and Developer.

Custodian means the entity acting as custodian under and meeting the requirements set forth in the form of Master Lockbox and Custodial Account Agreement.

Customer Groups means groups, Persons and entities having a perceived stake or interest in the Facility, including: the media, elected officials, Governmental Entities, general public residing, traveling, working adjacent to or within the vicinity of the Facility, business owners adjacent to or within the vicinity of the Facility, Utility Owners, railroads, transportation providers (e.g. D/FW International Airport and the Trinity Railway Express), community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.) and other Persons or entities affected by the Facility as defined in Section 3.2 of the Technical Requirements.

Day or **day** means calendar days unless otherwise expressly specified.

DBE Performance Plan means Developer's plan for meeting the DBE participation goals prepared under the Facility Implementation Plan and approved by TxDOT, set forth in Exhibit 15 to the Agreement.

DBE Program means the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

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

Default Termination Event means each of the Developer Defaults listed in Section 19.3.1 and 19.3.2 of the Agreement.

Defect means a defect, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any Element of the Facility, 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 Facility;

(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 Facility 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.

Design-Build Contract means the certain agreement to be entered into between Developer and the Design-Build Contractor for the design and construction of the Facility and/or the Utility Adjustments included in the Construction Work.

Design-Build Contractor means (a) a Texas limited liability company to be formed and wholly owned, directly or indirectly, by Ferrovial Agroman U.S. Corp. and Zachry Construction Corporation named "Ferrovial/Zachry Constructors 56, LLC," or (b) Ferrovial Agroman U.S. Corp. and Zachry Construction Corporation or any of their respective wholly owned Affiliates.

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 Facility and/or the Utility Adjustments included in the Design Work and/or the Construction Work. Design Documents include the Final Design Documents.

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

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

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

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

Developer means SH 130 Concession Company, LLC, a Delaware limited liability company, together with its permitted successors and assigns.

Developer Claims Account means the account of that name established and maintained under the Facility Trust Agreement.

Developer Default has the meaning set forth in Section 17.1.1 of the Agreement.

Developer-Managed Master Utility Adjustment Agreement has the meaning set forth in the definition of "Master Utility Adjustment Agreement" in this Exhibit 1.

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

Developer Release(s) of Hazardous Material 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 FCA 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 FCA Documents, including Developer's right, title and interest in and to the Facility, Facility Right of Way, Toll Revenues, Principal Facility Documents, Facility Management Plan, Contracts, Submittals, Claims and Intellectual Property.

Developer's Utility Tracking Report means the report regarding Utilities likely to be impacted by the Facility which Developer shall maintain on a current basis, as more particularly described in Section 6.5.4 of the Technical Requirements.

Development Fees Amount means the amount of $20,000,000, as specified in Developer's Base Case Financial Model.

Deviation means any proposed or actual change, deviation, modification, alteration or exception from the Technical Requirements or Technical Documents.

Direct Agreement means an agreement between TxDOT and Design-Build Contractor substantially in the form attached as Exhibit 12 to the Agreement.

Directive Letter has the meaning set forth in Section 14.3 of the Agreement.

Disadvantaged Business Enterprise or **DBE** has the meaning set forth in Exhibit 15 to the Agreement.

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

Discriminatory or **Discriminatory Action** means (a) materially more onerous application to Developer or the Facility of changes or additions to Technical Requirements or Technical Documents than the application thereof to other Comparable Limited Access State Highways, or (b) selective application of changes or additions to Technical Requirements or Technical Documents to Developer or the Facility and not to other Comparable Limited Access State 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 FCA Documents; (ii) Safety Compliance; (iii) planning, design, construction, operation and maintenance of Competing Facilities; (iv) action to include the Facility as part of TTC-35 or to not so include it; and (v) any other actions addressing a specific condition or risk of the Facility.

Discriminatory Change in Law means any Change in Law 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 is in response, in whole or in part, to any act or omission on the part of Developer or such change is otherwise expressly permitted under the FCA Documents. No Change in Law or action to include Segments 5 and 6 as part of TTC-35 or to not so include it shall constitute a Discriminatory Change in Law.

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

Dispute Resolution Procedures means collectively, the procedures established under Sections 17.8.4 and 17.8.5 of the Agreement and in Section 5 of the Disputes Board Agreement and the applicable portions of Section 201.112 of the Code and the DRP Rules. None of the Informal Resolution Procedures are included in the Dispute Resolution Procedures.

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

Disputes Board Agreement means the agreement in the form attached to the Agreement as Exhibit 21.

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

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

Disputes Board Error has the meaning set forth in Section 17.8.5.2 of the Agreement.

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

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

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

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

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

Distribution means any distribution, dividend or other payment, monetary or in-kind, made or projected to be made by Developer to the shareholders, members, partners, joint venturers or other holders of an equity interest in Developer, including from proceeds of any Refinancing, on account of equity investment in Developer.

DRP Governed Agreements means the FCA Documents, the Facility Trust & Security Documents, the Facility Right of Entry Agreement, the Intellectual Property Escrows, the Lease Escrow Agreement and the Independent Engineer Agreement

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

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 19 and Exhibit 22 of the Agreement.

Effective Date means the date of the Agreement unless another date is mutually agreed upon in writing by TxDOT and Developer as the Effective Date.

Electrical and Lighting Management System has the meaning set forth in Section 5 of the TxDOT Highway Illumination Manual.

Electronic Data Management System has the meaning set forth in Section 2.5 of the Technical Requirements.

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

Element means an individual component, system or subsystem of the Facility 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 unforeseen event affecting the Facility whether directly or indirectly which occurs on or originates from the Facility or Facility Right of Way and (a) causes or has the potential to cause disruption to the free flow of traffic on the Facility or a threat to the safety of the public; (b) is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Facility, to the Environment or to property adjacent to the Facility; or (c) is recognized by the Texas Department of Public Safety as an emergency.

Emergency Management Plan means Developer's plan for emergency prevention, response and services, as part of the FMP.

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

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 Facility, including approvals and permits required under NEPA.

Environmental Compliance and Mitigation Plan (ECMP) means Developer's plan, to be prepared under the CEPP described in the Facility Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, including the NEPA Approval and similar Governmental Approvals for the Facility or the Work, or set forth in the FCA Documents, and for complying with all other conditions and requirements of the Environmental Approvals.

Environmental Compliance Inspectors (ECIs) means the individual(s) retained or employed by Developer who provide on-site monitoring of the Facility and the Work under direction of the Environmental Compliance Manager as more particularly described in Section 4.4 of the Technical Requirements.

Environmental Compliance Manager (ECM) 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 of the Technical Requirements.

Environmental Law means any Law applicable to the Facility or the Work regulating or imposing liability or standards of conduct that pertains to the Environment, Hazardous Materials management, releases of Hazardous Materials into the Environment, contamination of any type whatsoever, and any requirements and standards that pertain to the Environment, Hazardous Materials management or releases of Hazardous Materials into the Environment, 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 Facility 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, endangered, threatened, and 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; and

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

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

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

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

(xviii) 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 Facility 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);

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

(xx) The Texas Water Code;

(xxi) The Texas Parks and Wildlife Code;

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

(xxiii) The Texas Asbestos Health Protection Act (Article 4477-3a, Texas Civil Statutes); and

(xxiv) The Surface Coal Mining and Reclamation Act (Article 5920-11, Texas Civil Statutes).

Environmental Management System (EMS) 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 4.3 of the Technical Requirements.

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 4.3 of the Technical Requirements.

Environmental Protection Training Program (EPTP) means that program to be initiated by Developer and overseen by TxDOT personnel to ensure the Work is conducted in accordance with the environmental commitments and requirements set forth in all Laws, rules, regulations, and environmental approvals applicable to the Facility as more particularly described in Section 4.3 of the Technical Requirements.

Environmental Team (ET) means the personnel team appointed by Developer, and led by the ECM, to ensure compliance with all Laws and Environmental Approvals applicable to the Facility and the Work as more particularly described in Section 4.3 of the Technical Requirements.

Environmental Training Staff means Facility personnel with experience as set forth in the Technical Requirements and appointed by the ECM to develop and implement an Environmental Protection Training Program as more particularly described in Section 4.9.5 of the Technical Requirements.

Equity Subscribed means all amounts paid to the Developer by way of subscription for shares in the capital of Developer.

Escrow Agent has the meaning set forth in Section 22.5.2 of the Agreement.

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

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

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 construction materials (e.g. lumber, steel, concrete, re-bar) that are completely incorporated into the Work or have no salvage value at completion of the Work.

Extended Relief Event means and is limited to the occurrence of any of the following events that is beyond Developer's control and directly causes one of the results described in Section 19.2.1.2 of the Agreement for more than 270 consecutive Days:

(a) Discovery at, near or on the Facility Right of Way of any Hazardous Materials or archeological, paleontological or cultural resources, excluding any such substances or resources known to Developer prior to the Setting Date or that would have become known to Developer prior to the Setting Date by undertaking reasonable investigation (taking into account TxDOT's and Developer's lack of access rights to the Inaccessible Parcels prior to the Setting Date);

(b) Discovery at, near or on the Facility Right of Way of any species listed as threatened or endangered under the federal or State endangered species act (regardless of whether the species is listed as threatened or endangered as of the Effective Date), excluding any presence of listed, threatened or endangered species known to Developer prior to the Setting Date or that would have become known to prior to the Setting Date by undertaking reasonable investigation (taking into account TxDOT's and Developer's lack of access rights to the Inaccessible Parcels prior to the Setting Date); or

(c) The issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of any portion of the Work, except (i) any temporary restraining order or other form of injunction arising out of any action

challenging the validity of the NEPA Approval and (ii) to the extent resulting from the delay, act, omission, negligence, willful misconduct, recklessness, breach of contract or Law, or violation of a Governmental Approval by any Developer-Related Entity (which failure may include (A) modification by or on behalf of Developer of the design concept included in the FEIS, (B) means or methods used by any Developer-Related Entity for carrying out the Work, or (C) decision or action by or on behalf of Developer to use or acquire Additional Property). For the avoidance of doubt, no circumstance that gives rise to a right to terminate under Section 19.5 of the Agreement shall constitute an Extended Relief Event.

Facility 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 FCA Documents, as more particularly described in Sections 1.3 and 1.4 of the Technical Requirements. "Facility" includes frontage roads and Upgrades.

Facility Baseline Schedule means the logic-based critical path schedule for all Work leading up to and including Service Commencement, as set forth in Exhibit 10 to the Agreement, as the same may be revised pursuant to Section 2.3.3B of the Technical Requirements.

Facility Debt means bona fide indebtedness (including subordinated indebtedness) for 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 (which shall include payments by cash sweep of available cash after payment of expenses and other amounts) and is secured by one or more Security Documents. Facility Debt includes principal, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, all 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. Facility Debt includes the Initial Facility Debt. Facility Debt excludes any indebtedness of Developer or any shareholder, member, partner or joint venturer 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. Facility 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 (a) TxDOT delivers to Developer a Warning Notice, until all Developer Defaults are cured, (b) there exists an Extended Relief Event or Force Majeure Event entitling either Party to terminate the Agreement, until the event ceases to exist, (c) TxDOT delivers to Developer a Notice of Termination for Convenience or (d) Developer declares a TxDOT Default of the type entitling Developer to terminate the Agreement and Lease, until all TxDOT Defaults are cured. In addition, no debt shall constitute Facility Debt unless and until the Collateral Agent or Developer provides TxDOT with notice thereof and the related Funding Agreements and Security Documents in accordance with Section 20.1.3 of the Facility Agreement.

Facility Extension means a linear addition to the original Facility by Developer, including any at either terminus of the original Facility and any linear improvement that interconnects with the original Facility at a Facility interchange.

Facility Financing Deadline means:

(a) If the NEPA Finality Date and Custodial Arrangement Date both occur within one year after the Effective Date, then 30 days after the last to occur of (i) the Effective Date, (ii) the NEPA Finality Date and (iii) the Custodial Arrangement Date; or

(b) if either the NEPA Finality Date or Custodial Arrangement Date occurs more than one year after the Effective Date, then 90 days after the later to occur of (i) the NEPA Finality Date and (ii) the Custodial Arrangement Date.

Facility Implementation Plan means Developer's plan for development activities for the Facility leading to this Agreement, as required by Section 7.2 of the CDA, prepared by Developer and agreed to by TxDOT prior to the Effective Date.

Facility Manager means the individual designated by Developer and approved in writing by TxDOT in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of Developer as described in the approved Facility Management Plan.

Facility Management Plan means the document generally following the requirements of BS ENO ISO 9001 and BS EN ISO 14001, as appropriate, and approved by TxDOT, describing quality assurance and quality control activities necessary to manage the development, design, construction, operation and maintenance of the Facility, containing the TxDOT-approved component parts, plans and documentation described in Section 2 and Attachment 1 of the Technical Requirements. ISO certification is not required for Developer or any Contractor.

Facility Plan of Finance means Developer's plan for financing the Facility, including Upgrades, set forth in Exhibit 5 to the Agreement.

Facility Recovery Schedule means the logic-based critical path schedule for all Work leading up to and including Service Commencement prepared by Developer for recovering delay in such Work, and reviewed by TxDOT with no exceptions, pursuant to Section 2.3.3A of the Technical Requirements.

Facility Right of Entry Agreement has the meaning set forth in Section 2.1.2 of the Agreement.

Facility Right of Way or **Facility ROW** means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines established by the NEPA Approval to delineate the outside limits of the Facility, as such limits may be adjusted from time to time in accordance with the FCA Documents. The term specifically includes all air space, surface rights and subsurface rights within the limits of the Facility Right of Way.

Facility Schedule means one or more, as applicable, of the logic-based critical path schedules (the Facility Baseline Schedule, the Facility Status Schedule and the Facility Recovery Schedule) for all Work leading up to and including Service Commencement, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with Section 7.7.5 of the Agreement and Section 2.3 of the Technical Requirements.

Facility Status Schedule Update means the logic-based critical path schedule submitted monthly containing progress status and enabling comparison to the Facility Baseline Schedule.

Facility Trust Account means an account maintained under the Facility Trust Agreement as part of the Facility Trust Fund.

Facility Trust and Security Documents means the Facility Trust Agreement, the Security Agreement, the Financing Statement, the Master Lockbox and Custodial Account Agreement and the Joinder Agreement.

Facility Trust Agreement means the agreement by that name dated as of the Effective Date between Developer and Wells Fargo Bank, N.A., as trustee, to which TxDOT has executed a joinder agreement for certain specified purposes, as from time to time amended, modified, replaced or superseded in accordance with its terms.

Facility Trustee means the entity appointed to act as the Trustee under the Facility Trust Agreement.

Facility Trust Fund means the trust fund and accounts thereof established and maintained under the Facility Trust Agreement.

Factor of Safety means that safety factor determined by limiting equilibrium methods of analysis such as the STABL computer program, which employs generally accepted methods of slope stability analysis, such as the Modified Bishop, simplified Janbu, Spencer or other generally accepted methods.

Fair Market Value means with respect to the Developer's Interest the following, determined according to the procedures set forth in Exhibit 22 to the Agreement:

(a) The amount that a willing buyer would offer, and a willing 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) the buyer possesses all information in the possession of Developer relating to the Facility, its condition, the Work, the FCA 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, Developer would continue as a going concern for the remainder of the originally stated Term notwithstanding the early termination of the Term, and Developer would not receive or be entitled to receive any compensation for fair market value from TxDOT under the Agreement, and (iv) both Parties would generally continue to perform their respective obligations under the FCA Documents for the remainder of the originally stated Term notwithstanding the early termination. If the event triggering Fair Market Value determination occurs prior to the Service Commencement Date, then it also shall be assumed that Service Commencement 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, expected dates of Substantial

Completion and Service Commencement under the then Facility 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 (b) below. In addition, at TxDOT's sole election, the fair value of any Claim of TxDOT against Developer arising prior to the triggering event or circumstance shall be deducted in determining fair market value. If TxDOT elects not to take a deduction for any such Claim, it shall survive and not be considered in determining fair market value. At Developer's sole election, the fair value of any Claim of Developer against TxDOT arising prior to, and independent of, the triggering event or circumstance shall be taken into account in determining fair market value. If Developer elects not to take any such Claim into account, it shall survive and not be considered in determining fair market value.

(b) If Fair Market Value is being determined where the Termination Date precedes Service Commencement, then there shall be subtracted from the amount under clause (a) 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.

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

Fast-Track Procedure means the procedure described in Section 17.8.3.2 of the Agreement.

Fast-Track Dispute means a Dispute that the Developer and TxDOT mutually agree merits prompt resolution.

Fast-Track Resolution Procedures means (a) the Informal Resolution Procedures, other than the procedure described in Sections 17.8.3.3, and (b) the procedures specified for resolution of Fast-Track Disputes under the Disputes Board Agreement and/or the Commercial Rules under which the Disputes Board resolves a Dispute thereunder.

FCA Documents means this Agreement, including all exhibits (and the executed originals of exhibits that are contracts) other than Exhibit 12, and the other documents listed in Section 1.2 of the Agreement, including all amendments to the foregoing and all Change Orders issued.

Federal Requirements means the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 8 to the Agreement.

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions set forth in Section 7.8.4 of the Agreement, as and when confirmed by TxDOT's issuance of a certificate in accordance with the procedures and within the time frame established in Section 7.8.4 of the Agreement.

Final Acceptance Deadline means the deadline for achieving Final Acceptance set forth in the Milestone Schedule attached as Exhibit 9 to the Agreement, as such deadline may be extended for Relief Events and Extended Relief Events from time to time pursuant to the Agreement.

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

Final Design Documents means the complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, specifications, reports, studies, calculations, electronic files, records and submittals, necessary or related to construction and maintenance of the Facility and any Utility Adjustments included in the Design Work or the Construction Work.

Final Environmental Impact Statement (FEIS) means the final environmental impact statement respecting the Facility entitled State Highway 130 From I-35 North of Georgetown to I-10 Near Seguin, dated March, 2001.

Final Order means the order issued by the Executive Director pursuant to Section 17.8.5.1 or 17.8.5.4 of the Agreement.

Final Order Implementing Decision has the meaning set forth in Section 17.8.5.1(b) and 17.8.5.4(a)(ii).

Final Order Vacating Decision has the meaning set forth in Section 17.8.5.4(a)(i).

Financial Model Formulas means the financial formulas that Developer and TxDOT have agreed upon as of the Setting Date, as the same may be changed pursuant to Section 5.3 of the Agreement, for projecting after 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 Setting 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. The phrase "after tax" refers to U.S. federal and state income tax, and State business income tax, but excludes any foreign income tax and other tax of any kind.

Financing Statement means the UCC Financing Statement made by TxDOT, as debtor, in favor of Developer, as secured party, and filed with the Texas Secretary of State on or around the Effective Date and all continuations thereof.

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 path of activities shown on the Facility Schedule may be delayed before it will affect the Service Commencement Deadline. Such Float is generally identified as the difference between early completion times and late completion times for activities as shown on the Facility 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 Facility, in each case occurring within the State of Texas; (b) any act of terrorism or sabotage that causes direct physical damage to the Facility; and (c) nuclear explosion.

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.

Funding Agreement means:

(a) Any loan agreement, funding agreement, account maintenance or control agreement, insurance or reimbursement agreement, intercreditor agreement, subordination agreement, agreement from any shareholder, member, partner or joint venturer 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 Facility 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 Facility 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.

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

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

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 or operator seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and engaged in the same type of undertaking 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 Facility 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.

Governmental Tolling Entity means TxDOT or any Texas local government or any political subdivision or governmental agency of the State of Texas or any Texas local government.

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 Facility and Facility Right of Way to TxDOT upon expiration or earlier termination of the Agreement and Lease, as set forth in Section 19.8 of the Technical Requirements.

Handback Requirements Letter of Credit means a letter of credit delivered to TxDOT in lieu of the Handback Requirements Reserve, in accordance with Sections 8.11 and 16.3 of the Agreement.

Handback Requirements Reserve has the meaning set forth in Section 8.11.1 of the Agreement.

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 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 Facility 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 and requirements to address Hazardous Materials encountered, impacted, caused by or occurring in connection with the Facility, Facility 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 during construction and operation of the Facility and/or construction of the Utility Adjustments included in the Construction Work,, addressing Hazardous Materials both within and outside the Facility Right of Way, as set forth in Section 4.3 of the Technical Requirements.

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 Requirements.

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.

Horizontal control has the meaning set forth in Section 9.2 of the Technical Requirements, and is to be established (at a minimum) on the Texas State Plane Coordinate System NAD 83.

Hourly Flows means the number of passenger car units (pcus) traveling in one direction on the Facility in one hour per lane passing by or through a measurement location approved by TxDOT, measured and reported by Developer for each approved measurement location for hour long time periods commencing every 15 minutes of every hour after Service Commencement, 24 hours a day, seven days per week.

Hourly Speed means the average speed of traffic on the Facility in miles per hour (mph) in one direction, measured and reported by Developer for each Developer-defined section established to meet the requirements of Section 3.1 of Exhibit 18 to the Agreement, for hour long time periods commencing every 15 minutes of every hour after installation of the Speed Measurement System, 24 hours a day, seven days per week.

Inaccessible Parcel means one of the five parcels identified as Inaccessible Parcels in Exhibit 2 to the Agreement.

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

Incidental Charges has the meaning set forth in Exhibit 14 to the Agreement.

Incidental Charges Account means the account of that name established and maintained under the Facility Trust Agreement.

Incident Management Plan means Developer's plan for detection and response to Incidents, as part of the FMP.

Indemnified Parties means TXDOT, the State, the Texas Transportation 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.

Ineligible Matters has the meaning set forth in Section 17.8.1.4 of the Agreement.

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

Informal Resolution Procedures has the meaning set forth in Section 17.8.2 of the Agreement.

Initial Facility Debt means the Facility Debt to originally finance the Facility and Work, in at least the total amount set forth in Exhibit 5 to the Agreement, evidenced and secured, or to be evidenced and secured, by the Initial Funding Agreements and Initial Security Documents, consisting of (a) the Initial Senior Facility Debt, and (b) a mezzanine (i.e. first tier subordinate) loan from the U.S. Department of Transportation under TIFIA.

Initial Funding Agreements means the Funding Agreements establishing the rights and obligations pertaining to the Initial Facility Debt, either (a) as specifically identified in Exhibit 6 to the Agreement if executed and delivered by Developer on or before the Effective Date, or (b) as executed and delivered by Developer at closing of the Initial Facility Debt financing, if such closing occurs after the Effective Date.

Initial Security Documents means the Security Documents securing the Initial Facility Debt, either (a) as specifically identified in Exhibit 6 to the Agreement if executed and delivered by Developer on or before the Effective Date or (b) as executed and delivered by Developer at closing of the Initial Facility Debt financing, if such closing occurs after the Effective Date.

Initial Senior Debt Termination Amount means the Senior Debt Termination Amount as determined for the amount outstanding at the Early Termination Date of the Initial Senior Facility Debt, or, if prior to such date the Initial Senior Facility Debt is refinanced, redeemed or refunded, the Senior Debt Termination Amount that would be calculated at the Early Termination Date on the Initial Senior Facility Debt had it not been refinanced, redeemed or refunded and continued to amortize according to its terms up to the Early Termination Date.

Initial Senior Facility Debt means the senior lien debt financing for Developer as described, and in the face amount of at least that set forth, in the Plan of Finance attached to the Agreement as Exhibit 5 from one or more Institutional Lenders, secured by the Initial Funding Agreements and Initial Security Documents in favor of such Lender(s).

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 the 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) and clause (c) 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 billion; provided, further, that an entity described in clause (b)(iv) of this definition must have assets of not less than $100 million. 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 procure and keep in force, or cause to be procured and kept in force, as and when required pursuant to, and in accordance with the specifications in, Section 16.1 and Sections 1 through 8 of Exhibit 19 of the Agreement.

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 Facility, Facility design data or Facility traffic data. Intellectual Property includes toll-setting and traffic management algorithms, and software used in connection with the Facility (including but not limited to software used for management of traffic on the Facility), and software source code. Intellectual Property also includes the Financial Model Formulas and Base Case Financial Model. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

Intellectual Property Escrow has the meaning set forth in Section 22.5.2 of the Agreement.

Intelligent Traffic Sub-system (ITS) has the meaning set forth in Section 17.2 of the Technical Requirements.

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

Interface Control Document (ICD) means the document setting forth interface standards including the manner in which data shall be transmitted and received between the CSC Host and the ETCS.

Internal Change of Control means any change in the voting rights or equity ownership interests in Developer held by any shareholder, partner or member of Developer that (a) is the result of a reallocation among the shareholders, partners or members of Developer of any of their respective voting rights or equity ownership interests in Developer pursuant to the terms of Developer's constituent governing documents, (b) does not result in the withdrawal or removal of any shareholder, partner or member of Developer as a shareholder, partner or member in Developer, and (c) is caused by (i) any loss of a shareholder's, partner's or member's voting rights in Developer as a result of such shareholder, partner or member being in default or having a conflict of interest under the terms of Developer's constituent governing documents or (ii) any dilution or reduction of a shareholder's, partner's or member's equity ownership interest in Developer as a result of such shareholder, partner or member being in default under the terms of Developer's constituent governing documents and the corresponding increase in the equity ownership interest in Developer of any other shareholder, partner or member in Developer.

Job Training and Small Business Mentoring Plan means the plan attached to the Agreement as Exhibit 16.

Joinder Agreement means an agreement by that name among Developer, TxDOT and the Custodian, as custodian, in all material respects in form and substance as set forth in Exhibit 25 to the Agreement, as from time to time amended, modified, replaced or superseded.

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 prime maintenance contracts, if any, unless with TxDOT; and

(e) All other prime contracts with a single contractor which individually or in the aggregate total in excess of $25 million; 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 identified in Table A1-2 of the "Facility Management Plan Contents" in Attachment 1 of the Technical Requirements.

Law or **Laws** means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any interpretation or

administration of any of the foregoing by, any Governmental Entity, which is applicable to or has an impact on the Facility or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws", however, excludes Governmental Approvals.

Lease means the certain Facility Lease to be entered into between TxDOT and Developer pursuant to Section 2.1 of the Agreement, in the form attached as Exhibit 3 to the Agreement.

Lease Escrow Agreement means the agreement by that name dated as of the Effective Date between Developer and Wells Fargo Bank, N.A., as escrow agent, to which TxDOT has executed a joinder agreement for certain specified purposes, as from time to time amended, modified, replaced or superseded in accordance with its terms.

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

LIBOR means the offered rate (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.

Liquidated Damages has the meaning set forth in Section 17.4 of the Agreement.

Long-Stop Date means the outside deadline for achieving Service Commencement, as set forth in the Milestone Schedule attached as Exhibit 9 to the Agreement, as such deadline may be extended for Relief Events and Extended 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.

Mainline Tolling (MT) means that part of the ETCS physically located on the mainlanes to enable the collection of tolls.

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

Management Plans means all of the management plans listed in Attachment 1 of the Technical Requirements.

Master Lockbox and Custodial Account Agreement means an agreement between TxDOT and the Custodian in all material respects in form and substance as set forth in Exhibit 25 to the Agreement, as from time to time amended or modified in accordance with its terms, or as replaced or superseded, and provided that the attached form of the Master Lockbox and Custodial Account Agreement shall be subject to any changes required by the selected Custodian so long as such changes are reasonably acceptable to TxDOT and Developer.

Master Utility Adjustment Agreement (MUAA) 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 6.1.6.2 of the Technical Requirements. A document is a "Master Utility Adjustment Agreement" if it meets the foregoing definition, without regard to the title of the document.

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

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

Maximum Daytime Posted Speed Table means each of Tables 1, 2 and 3 contained in Attachment 1 of Exhibit 7 to the Agreement.

Milestone Schedule means the schedule of deadlines set forth in Exhibit 9 to the Agreement.

Milestone Schedule Deadline means one or more of the Construction Work Commencement Deadline, Service Commencement Deadline, Final Acceptance Deadline and Long Stop Date, as the case may be.

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

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

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

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

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

Monthly Report means the report Developer is to submit in accordance with Section 2 of the Technical Requirements.

Monthly Schedule Update has the meaning set forth in Section 2.4.4 of the Technical Requirements.

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

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

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 Requirements.

NEPA Approval means the decision document issued by FHWA for the Facility with a Record of Decision dated June 5, 2001, and all approved supplements and reevaluations pertaining to SH 130 as of the Effective Date.

NEPA Finality Date means the first to occur of (a) the date of expiration of the federal statute of limitations for commencing legal action to challenge the validity of the NEPA Approval, without such legal action having been filed; or (b) the date of entry of a final, non-appealable dismissal with prejudice or judgment denying permanent injunctive relief in all legal actions brought challenging the validity of the NEPA Approval.

New Agreements has the meaning set forth in Section 20.4.8 of the Agreement.

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

Noncompliance Points means the points that may be assessed for certain breaches or failures to perform by Developer, as set forth in Exhibit 20 to the Agreement.

Nonconforming Work means Work that Developer, the Independent Engineer, any Governmental Entity or TxDOT determines does not conform to the requirements of the FCA Documents, the Governmental Approvals, applicable Law or the Design Documents.

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

Notice to Proceed means a written notice issued by TxDOT to Developer authorizing Developer to proceed with Work or, pending the NEPA Finality Date, a portion of the Work. Such written notice for a portion of the Work is referred to as a "limited Notice to Proceed"; such written notice for all the Work is referred to as a "full Notice to Proceed".

O&M Contract means any Contract entered into by Developer for third party management, direction, supervision or performance of the O&M Work or any significant portion thereof. O&M Contract includes any Contract that Developer enters into for operation or maintenance of all or any part of the tolling system for the Facility (which may consist of any separate agreement that Developer may execute with the developer under the certain "Comprehensive Development Agreement, TxDOT Statewide Open-Road Toll Collection System" to which TxDOT is or becomes a party, pursuant to Article 26 of such Comprehensive Development Agreement). There may be more than one O&M Contract concurrently in effect.

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 Facility 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 Facility that TxDOT requires Developer to use or operate.

O&M Work means any and all operation, management, administration, tolling, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Facility from and after the Service Commencement Date, including Renewal Work and potential Upgrades.

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, 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 Toll (ORT) 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 Period means the period starting on the Service Commencement Date and ending at the end of the Term.

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

Operating Traffic Management Plan means Developer's plan for traffic management during the Operating Period.

Operation and Maintenance Quality Management Plan means the TxDOT-approved plan for quality management and control of the O&M Work, as set forth in Attachment 1 to the Technical Requirements.

Operator means an entity performing more than 50% of all of the O&M Work necessary to operate, toll, maintain and repair the Facility in accordance with the requirements of the FCA Documents.

Optical Character Recognition (OCR) means the process of converting an image to text.

Owner-Managed Master Utility Adjustment Agreement has the meaning set forth in the definition of "Master Utility Adjustment Agreement" in this Exhibit 1.

Owner Verification Tests (OVT) 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 Facility.

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

Patron Confidential Information has the meaning set forth in Section 8.8.2 of the Agreement.

Pavement Condition Score means the Pavement Management Information System (PMIS) condition score calculated by Developer in accordance with Technical Documents 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 and Performance Bond has the meaning set forth in Section 16.2 of the Agreement.

Pending Toll Change has the meaning set forth in Section 3.3.1 of the Agreement.

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 19.2 of the Technical Requirements.

Performance and Measurement Table Baseline means Attachment 9 to the Technical Requirements.

Performance Requirements means, for each Element of the Facility during the Operating Period, the requirements set forth in Attachment 9 to the Technical Requirements in the Column headed "Performance Requirement".

Persistent Developer Default means:

(a) Accumulation of assessed Noncompliance Points, including those assessed on account of breaches or failures that have been cured, at or above any of the trigger points set forth in Section 3.1 of Exhibit 20 to the Agreement; or

(b) Accumulation at or above any of the trigger points set forth in Section 3.2 of Exhibit 20 to the Agreement of non-material breaches or failures to timely observe or perform or to cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the FCA Documents and not otherwise the subject of a notice declaring a Developer Default, including non-material breaches or failures to perform the Design Work, Construction Work, O&M Work in accordance with the FCA Documents.

For the purpose of clause (b) above, a breach or failure to perform shall be counted:

(i) Only if it is the subject of a written notice from TxDOT to Developer, except that no notice shall be required to count continuation of the breach or failure to perform beyond the applicable cure period as a new breach or failure to perform as described in Section 18.3.1.3 and 18.3.1.4 of the Agreement;

(ii) Regardless of whether it is cured;

(iii) Regardless of whether it is of the same or different type, nature or character as any other breach or failure to perform included in the count; and

(iv) Regardless of whether it is the basis for assessment of Noncompliance Points.

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

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

Post Termination Revenue Account means the account of that name established and maintained under the Facility Trust Agreement.

Principal Facility Documents means the FCA Documents (other than the Agreement and Lease) Design-Build Contract, O&M Contracts (if applicable), Facility Trust and Security Documents, the Facility Right of Entry Agreement, the Intellectual Property Escrows, the Lease Escrow Agreement and the Independent Engineer Agreement.

Project Specific Locations means areas in which Developer proposes Facility-specific activities in connection with the Construction Work not within the Facility 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.

Proposal means Developer's updated revised submission to TxDOT for the Facility, dated May 26, 2006, including the further updated pricing given to TxDOT on June 1, 2006.

Proprietary Intellectual Property means Intellectual Property that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law.

Protection-in-Place (or 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. The term includes both temporary measures and permanent installations meeting the foregoing definition.

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

Public Information and Communications Plan (PICP) has the meaning set forth in Section 3.2 of the Technical Requirements.

Public Information Coordinator means the person designated by Developer to manage Developer's public information activities as more particularly described in Section 3.3 of the Technical Requirements.

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

Quality Management Plan (QMP) means the set of TxDOT-approved plans for quality management and control of the Facility and Work, as set forth in Attachment 1 of the Technical Requirements.

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.

Quarterly Report means the report to be submitted by Developer in accordance with Section 2.4 of the Technical Requirements.

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 6.2.9.4 of the Technical Requirements.

Ramp Tolling (RT) means that part of the ETCS physically located on a ramp to enable the collection of tolls.

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.

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

Record Drawings means construction drawings revised to show significant changes made during the construction process; usually based on marked-up Final Design Documents furnished by Developer; also known as as-built plans.

Referenced Standard means any standard applicable to the Facility and/or the Utility Adjustments included in the Construction Work, established by reference contained in the FCA Documents to a described publication.

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 Facility Debt, Funding Agreement or Security Document (other than any Subordinated Security Documents);

(b) The issuance by Developer of any indebtedness in addition to the Initial Facility Debt, secured or unsecured; or

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

Refinancing Gain has the meaning set forth in Part C of Exhibit 7 to the Agreement.

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 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 Facility.

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.

Relief Event 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) Force Majeure Event;

(b) Fire, explosion, flood, earthquake, hurricane, tornado, riot, national strike or act of terrorism;

(c) Change in Law;

(d) Discriminatory Action;

(e) TxDOT failure to perform or observe any of its material covenants or obligations under the Agreement or other FCA Documents, including failure to pay the Termination Compensation in accordance with the requirements, and within the time period, set forth in Section E5 of Exhibit 22;

(f) TxDOT Change;

(g) TxDOT-Caused Delay;

(h) Performance of works in the vicinity of the Facility Right of Way carried out by TxDOT or another 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 acting in such capacity) 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 Facility Right of Way of any Hazardous Materials or archeological, paleontological or cultural resources, excluding any such substances or resources known to Developer prior to the Setting Date or that would have become known to Developer prior to the Setting Date by undertaking reasonable investigation (taking into account Developer's and TxDOT's lack of access rights to the Inaccessible Parcels prior to the Setting Date);

(k) Discovery of surface or subsurface physical conditions within the Facility Right of Way of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Agreement, excluding any such conditions known to Developer prior to the Effective Date or that would have become known to Developer prior to the Setting Date by undertaking reasonable investigation (taking into account Developer's and TxDOT's lack of access rights to the Inaccessible Parcels prior to the Setting Date);

(l) Discovery at, near or on the Facility Right of Way of any species listed as threatened or endangered under the federal or State endangered species act (regardless of whether the species is listed as threatened or endangered as of the Effective Date), excluding any presence of listed, threatened or endangered species known to Developer prior to the Setting Date or that would have become known to Developer prior to the Setting Date by undertaking reasonable investigation (taking into account Developer's and TxDOT's lack of access rights to the Inaccessible Parcels described in Exhibit 2 prior to the Setting Date);

(m) Any spill of Hazardous Material by a third party who is not 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 absent assessment, containment and/or remediation;

(n) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of any portion of the Work, except to the extent resulting from the delay, act, omission, negligence, willful misconduct, recklessness, breach of contract or Law, or violation of a Governmental Approval by any Developer-Related Entity;

(o) Suspension, termination or interruption of the 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 Facility 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 FEIS, (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); and

(p) Failure to obtain, or unreasonable and unjustified delay in obtaining, a Governmental Approval from any Governmental Entity, or unreasonable and unjustified delay by a Utility Owner in connection with a Utility Adjustment, provided that such delay is not caused or contributed to by any action or failure to act on the part of Developer or any Contractor.

Relief Event Determination has the meaning set forth in Section 13.1.4 of the Agreement.

Relief Event Notice means the written notice required to be provided by Developer under Section 13.1.1 of the Agreement.

Relief Request has the meaning set forth in Section 13.1.2 of the Agreement.

Renewal Work means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element of a type which 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 8.6 of the Agreement.

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

Required Final Residual Life means the required Residual Life at Handback set forth in the Table 19.8.5.1 – Residual Life Table of the Technical Requirements.

Reserved Rights means all of the following:

(a) TxDOT's right to use, possess, develop and enjoy any real and personal property within or adjacent to the Facility Right of Way for other transportation or related facilities, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways; and

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

(i) All electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications

equipment, hardware and capacity existing within or adjacent to any Facility Right of Way installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, to the extent not necessary and required for traffic management for the Facility, operation of the Electronic Toll Collection System or for other Facility purposes;

(ii) Any area or space within or adjacent to the Facility Right of Way for development and operation of any office, commercial, industrial, residential, retail or mixed use real estate Facility, including revenue-generating service or rest areas;

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

(iv) Any area or space within or adjacent to the Facility Right of Way for any other commercial or non-commercial development or use.

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 Facility, 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 Handback, 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 19.8.5.1 - Residual Life Table of the Technical Requirements (including any testing undertaken by an independent testing organization) to determine the Residual Life of all Elements of the Facility.

(a) **First Inspection** means the first Residual Life Inspection as set forth in Section 19.8.2 of the Technical Requirements.

(b) **Second Inspection** means the second Residual Life Inspection as set forth in Section 19.8.2 of the Technical Requirements.

(c) **Final Inspection** means the final Residual Life Inspection as set forth in Section 19.8.2 of the Technical Requirements.

Residual Life Methodology (RLM) is the evaluation and calculation methodology by which the Residual Life of any Element of the Facility will be calculated at the end of the Term and contains the method by which any necessary Renewal Work will be identified to ensure that each Element of the Facility for which a minimum Residual Life at Handback is required under Section 19 of the Technical Requirements meets such requirement.

Revenue Share Amount has the meaning set forth in Part B of Exhibit 7 to the Agreement.

Revenue Share Applicable Percentage Table means each of Tables 4, 5 and 6 in Attachment 1 of Exhibit 7 to the Agreement.

Right of Entry Agreement has the meaning set forth in Section 7.3.5.1 of the Technical Requirements.

Right of Way 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 Facility Right of Way.

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 Facility, prepared under the Facility Implementation Plan and approved by TxDOT.

ROW Administrator means TxDOT's representative responsible for the management of all matters pertaining to real property for the Facility.

ROW Negotiations has the meaning set forth in Section 7.2.1 of the Technical Requirements.

Rules has the meaning set forth in Recital C of this Agreement.

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

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

Safety Inspection means an inspection to identify Category 1 Defects.

Safety Standards means those provisions of the Technical Requirements or Technical Documents that TxDOT, FHWA or AASHTO considers to be important measures to protect public safety or worker safety. As a matter of clarification, provisions of Technical Requirements or Technical Documents 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.

Sales Tax Amount means the amount payable to TxDOT pursuant to Section 5 of Exhibit 23 to the Agreement.

Section 404 Permit means Permit Number 199600228 issued to TxDOT on July 17, 2002 by the U.S. Army Corps of Engineers.

Security Agreement means the agreement by that name dated as of the Effective Date between Developer and TxDOT.

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

Senior Debt Termination Amount means:

(a) All amounts outstanding at the Early Termination Date, including accrued unpaid interest as of such date, on Facility Debt secured by Funding Agreements and Security Documents that, in the absence of termination and in the absence of any bankruptcy, insolvency or liquidation of Developer, (i) would constitute the senior lien on and pledge of the Developer's Interest and (ii) satisfy the terms and conditions set forth in Section 4.3 of the Agreement; plus

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

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

(i) So much of the amounts under subsections (a) and (b) above that do not constitute interest that has accrued on such Facility Debt prior to the Service Commencement Date, but does constitute or accumulate by reason of (A) accrued interest that Developer failed to pay when due, including any such interest that has been added to principal, or (B) 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 Facility Debt; and

(iii) All other amounts received by the Lenders of such Facility 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 not previously applied to the reduction of such Facility Debt), less the amount of reasonable costs and expenses incurred by such Lenders and directly related to such enforcement action.

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 the opening of the Facility 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 7.8.3 of the Agreement and Sections 19 and 22 of the Technical Requirements.

Service Commencement Date means the date on which Service Commencement occurs.

Service Commencement Deadline means the deadline for achieving Service Commencement set forth in the Milestone Schedule attached as Exhibit 9 to the Agreement, as such deadline may be extended for Relief Events and Extended Relief Events from time to time pursuant to the Agreement.

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

Setting Date means June 29, 2006.

Site means Facility Right of Way and any temporary rights or interests that Developer may acquire in connection with the Facility or the Utility Adjustments included in the Construction Work, including for construction, staging, storage, lay down and borrow areas.

Site Investigation Report (SIR) means the report summarizing Developer's Hazardous Materials investigative work as described in Section 4.3 of the Technical Requirements.

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

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

Specialist Inspection means an inspection requiring specialist qualifications or equipment as specified in Section 19.6 of the Technical Requirements.

Specified Personnel means those individuals appointed by Developer from time to time to fill the "Specified Personnel" positions identified in Table A1-3 of the "Facility Management Plan Contents" in Attachment 1 of the Technical Requirements.

Speed Measurement System means the system detailed in Section 3 of Exhibit 18 to the Agreement.

State means the State of Texas.

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

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

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 (if any), and generally includes any sub-debt (sometimes referred to as quasi-equity) held by Affiliates or other equity investors in Developer.

Substantial Completion means completion of construction of the Facility in accordance with the FCA Documents and Design Documents, such that the Facility is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, with a fully operable Electronic Toll Collection System meeting the Technical Requirements, subject only to Punch List items and other items of work that do not affect the ability to safely open the Facility for such normal use by the traveling public and for normal tolling operation, as and when confirmed by TxDOT's issuance of a certificate in accordance with the procedures and within the time frame established in Section 7.8.1 of the Agreement .

Substituted Entity means any person or entity selected by Lenders and approved by TxDOT in accordance with Section 20.6 of the 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 Facility.

Subsurface Utility Engineering (SUE) 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 at the FHWA website http://www.fhwa.dot.gov/programadmin/sueindex.htm.

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 MUAA by means of a UAAA, as more particularly described in Section 6.3 of the Technical Requirements.

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 Facility 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 Payment and Performance Bond.

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

Tag Trip means a trip on the Facility or any portion thereof by any vehicle equipped with a working, properly mounted, valid transponder.

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

Taxes means federal, State, local or foreign income, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Facility, 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 Documents means all the standards, criteria, requirements, conditions, procedures, specifications and other provisions set forth in the manuals and documents identified in Book 3, to the extent described or referenced in the errata sheets of Book 3, as such provisions may (a) have been generally revised from time to time up to the Effective Date (or, where applicable, other date specifically set forth in the Agreement) or (b) be changed, added to or replaced pursuant to the Agreement.

Technical Requirements means Book 2, the document describing the Scope of the Work and related standards, criteria requirements, conditions, procedures, specifications and other provisions for the Facility 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 Facility or to any other computer systems or other technology used for the operation of the Facility, 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 2.2.1 of the Agreement.

Termination by Court Ruling has the meaning set forth in Section 19.12 of the Agreement.

Termination Compensation means each of the measure of compensation owing from TxDOT to Developer upon termination of the Agreement and Lease prior to the stated expiration of the Term, as set forth in Exhibit 22 to the Agreement.

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

Section 19.1.4 Termination Deadline means June 1, 2010.

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

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

Threatened and 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.

Tolling Performance Standards has the meaning set forth in Section 21.6 of the Technical Requirements.

Tolling Performance Standards Baseline means the baseline standards for performance of the ETCS set forth in Table 21.3 of the Technical Requirements.

Tolling Zone means the zone within which a toll transaction takes place.

Toll Revenue Account means the account of that name established and maintained under the Facility Trust Agreement.

Toll Revenues means all revenues actually received by Developer, either directly or when deposited into the Toll Revenue Account, in connection with the Facility or the tolling thereof, including:

(a) Gross toll revenues received;

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

(c) Video Trip Toll Premiums, if any, imposed and received by Developer (but not by TxDOT);

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

(e) Payments from TxDOT of any of the foregoing revenues TxDOT collects or of any toll revenues TxDOT owes in respect of User trips on the Facility;

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

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

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

Toll Revenues exclude capital contributions to Developer, proceeds of debt, insurance proceeds, judgments, awards, Video Toll Trip Premiums and Incidental Charges charged by TxDOT, interest earned by Developer on Toll Revenues, payments from TxDOT which reduce or reimburse capital expenditures, and proceeds from disposition of capital assets in the ordinary course of business to the extent applied to reduce or replace capital expenditures.

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

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

Transponder Issuer means any Person, other than TxDOT, that has issued a Transponder to a User and that participates with TxDOT in interoperability protocols, agreements and arrangements, including clearinghouse arrangements.

Trip means an electronic record of a toll and set of contemporaneous video images respecting a vehicle that is operated on the Facility.

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

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 the full Notice to Proceed by 60 Days after the latter of the NEPA Finality Date and the Custodial Arrangement Date;

(b) TxDOT Changes;

(c) Failure or inability of TxDOT to make available to Developer a Facility Right of Way parcel within 345 Days after receipt of a complete condemnation packet approved by TxDOT staff for the parcel, 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 Facility Right of Entry Agreement and other FCA Documents, including commencement of construction, as the result of TxDOT's having secured a special commissioners' award through the eminent domain process or otherwise;

(d) Subject to Section 7.9.4.5, failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters for which response is required as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the FCA Documents, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following delivery of written notice from Developer requesting such action in accordance with the terms and requirements of the FCA Documents, where such failure continues after the five Business Day notice under Section 6.3.4.2 of the Agreement; or

(e) Subject to Section 7.9.4.5, TxDOT's disapproval of a matter, or its failure to provide an approval or certificate (including with respect to conditions precedent to commencement of construction or Service Commencement, or with respect to Substantial Completion) required under the FCA Documents within the time required, where it continues after the five Business Day notice under Section 6.3.4.2 of the Agreement and it is finally determined according to the Dispute Resolution Procedures that approval should have been given. Any election under clause (g) of the definition of Relief Event shall not be considered a TxDOT-Caused Delay. Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Relief Event under clause (n) of the definition of "Relief Event" or an Extended Relief Event under clause (d) of the definition of "Extended Relief Event") despite the fact that TxDOT may specifically direct Developer to suspend the Work. Any delay or suspension of Work arising from TxDOT's performance of data recovery respecting archeological, paleontological or cultural resources shall not be considered a TxDOT-Caused Delay (although it may qualify as a Relief Event under clause (j) of the definition of "Relief Event" or an Extended Relief Event under clause (a) of the definition of "Extended Relief Event") despite the fact that TxDOT may specifically direct Developer to suspend the Work.

TxDOT Change means any change in the scope of the Work or terms and conditions of the Technical Requirements or Technical Documents (including changes in the standards applicable to the Work) that TxDOT has directed Developer to perform through a Change Order as described in Section 14.1 or a Directive Letter pursuant to Section 14.3 of the Agreement.

TxDOT Claims Account means the account of that name established and maintained under the Facility Trust Agreement.

TxDOT Default has the meaning set forth in Section 17.5.1 of the Agreement.

TxDOT Projects has the meaning set forth in Section 11.3.1 of the Agreement.

TxDOT Standard Specifications means the Texas Department of Transportation Standard Specifications for Construction of Highways, Streets and Bridges, adopted by the Texas Department of Transportation on June 1, 2004, as revised or updated from time to time.

TxDOT Utility Manual means the TxDOT Utility Manual issued by the Right of Way Division of TxDOT dated January 5, 2004, as the same may be amended, supplemented or replaced from time to time.

TxDOT's Recoverable Costs means:

(a) The reasonable 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 FCA 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 reasonably incurs to publicly procure any such third party contractors; plus

(c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of TxDOT's Office of General Counsel or the Texas Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third party contractors; plus

(d) Interest on all the foregoing sums at LIBOR, commencing on the date due under the applicable terms of the FCA Documents and continuing until paid;

(e) But does not include costs incurred by TxDOT to review Submittals that are not necessary for TxDOT to review in order to render effective assistance pursuant to Section 6.2.5 of the Agreement.

TxDOT's Referencing System means the system operated by TxDOT for allocating data to a particular part of the road system.

TxDOT Security Obligations means TxDOT's payment obligations under the FCA documents, including TxDOT's obligations to fund the Post-Termination Revenue Account as set forth in Section 19.11 of the Agreement and as secured by the security interests granted by TxDOT to Developer under the Facility Trust and Security Documents. TxDOT Security Obligations do not include Incidental Charges.

Ultimate Configuration (UC) means the ultimate footprint of the Facility with corresponding roadways (including frontage roads), interchanges and toll plazas as planned for and presented in the NEPA Approval.

Uncured Noncompliance Points means Noncompliance Points assessed on account of breaches or failures that remain uncured.

Uncured Persistent Developer Default means:

(a) Accumulation of assessed Uncured Noncompliance Points at or above any of the trigger points set forth in Section 2 of Exhibit 20 to the Agreement; or

(b) Accumulation of a number of breaches or failures to perform that remain uncured at or above any of the trigger points set forth in Section 2.2 of Exhibit 20 to the Agreement.

For the purpose of clause (b) above, a breach or failure to perform beyond the applicable cure period as shall be counted:

(i) Only if it is the subject of a written notice of default from TxDOT to Developer, except that no notice of Developer Default shall be required to count a new breach or failure to perform as described in Section 18.3.1.2 and 18.3.1.4 of the Agreement;

(ii) Only so long as it remains uncured;

(iii) Regardless of whether it is of the same or different type, nature or character as any other breach or failure to perform included in the count; and

(iv) Regardless of whether it is the basis for assessment of Noncompliance Points.

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

Unlisted Failure has the meaning set forth in Section 18.1.2 of the Agreement.

Upgrades means alterations, improvements, modifications or changes that Developer makes to the Facility, as originally designed and constructed, at any time after the Service Commencement Date, except as part of ordinary maintenance or Renewal Work. Upgrades include Capacity Improvements and Facility Extensions (if any). Upgrades may include alterations, improvements, modifications or changes that require an amendment or supplement to the final environmental impact documents for the Facility or that are to be located outside the boundaries of the original Facility 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(s) means (i) the traveling public and any others who use the Facility, whether by motorized or non-motorized vehicles or on foot or (ii) the registered owner of a vehicle traveling on the Facility or any portion thereof.

User Classification means each established category of vehicles or persons using the Facility under like conditions. For this purpose "like conditions" may take into consideration type, weight, size and occupancy of the vehicle (e.g. overweight, oversize or obstructing vehicles), number of axles, time-of-day and/or day-of-week travel, traffic congestion, and other traffic conditions. The tolling schedule included in Exhibit 4 to the Agreement sets forth the User Classifications. User Classifications are subject to change only as provided in Section 3.4 of the Agreement.

User Classification Subsystem (UCS) means the subsystem of the ETCS that determines User Classification.

User Railroad means a railroad that has an agreement with TxDOT or Developer and STB approval to use a railroad track.

Utility(ies) or **utility(ies)** 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 Facility, and similar substances that directly or indirectly serve the public. The term "Utility" or "utility" also includes radio towers and/or transmission towers, and excludes (a) storm water facilities providing drainage for the Final ROW, (b) street lights and traffic signals, and (c) ITS and IVHS facilities. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

Utility Accommodation Rules (UAR) 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 Facility; 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 Facility Right of Way, the Utility Adjustment Work for each crossing of the Facility Right of Way by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Facility Right of Way, the Utility Adjustment Work for each continuous segment of that Utility located within the Facility 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 MUAA, as more particularly described in Section 6.1.7.3 of the Technical Requirements.

Utility Adjustment Concept Plan means a conceptual design document for the entire Facility 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 Facility or segment, as more particularly described in Section 6.3.3 of the Technical Requirements.

Utility Adjustment Field Modification means any horizontal or vertical design change to a Utility Adjustment proposed by Developer or 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 that 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 Requirements.

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, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by Developer or by the Utility Owners. The term also includes any reimbursement of Utility Owners which is Developer's responsibility pursuant to Section 7.5 of the Agreement. Any Utility Adjustment Work furnished or performed by Developer is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Agreement means a MUAA 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 Master Utility Adjustment Agreement), as more particularly described in Section 6.3.5 of the Technical Requirements. Depending on the context, the term also refers to Supplemental Utility Assemblies and Abbreviated Utility Assemblies (both also described in Section 6.3.5 of the Technical Requirements).

Utility Assembly Checklist means a checklist listing the required components of a Utility Assembly, as referenced in Section 6.3.5 of the Technical Requirements.

Utility Assembly Number (also 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 the "XXXX" shall refer to the 4-digit number assigned to each Utility Assembly (beginning with 0500 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding MUAA, 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 6.2.8 of the Technical Requirements.

Utility Enhancement means a Betterment or a Utility Owner Project, as referenced in Section 7.5.6 of the Agreement .

Utility Joint Use Acknowledgment or **Utility Joint Use Agreement** 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 Facility ROW by such Utility Owner's Utility.

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 6.2.8 of the Technical Requirements.

Utility Memorandum of Understanding ("Utility MOU" or "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 Book 2. 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 as part of a Utility Adjustment. 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 Facility.

Utility Tracking Report means Developer's Utility Tracking Report.

Vertical Control shall be established (at a minimum) on the North American Vertical Datum of 1988 (NAVD 1988) as defined in Section 9.3 of the Technical Requirements.

Video Exception Subsystem (VES) means the subsystem to the ETCS that captures images of a vehicle license plate, to accurately and reliably create the required text data from the images and to transmit the images and data to the CSC Host.

Video Trip means a Trip on the Facility or any portion thereof by any vehicle not equipped with a valid, working, properly mounted transponder, as more particularly described in Exhibit 14 to the Agreement.

Video Trip Toll Premium has the meaning set forth in Exhibit 14 to the Agreement.

Video Trip Toll Premium Account means the account of that name established and maintained under the Facility Trust Agreement.

Warning Notice means a written notice that TxDOT delivers to Developer pursuant to Section 17.2.1 of the Agreement.

Work means all of the work required to be furnished and provided by Developer under the FCA 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 FCA Documents expressly specify will be performed by Persons other than Developer-Related Entities.

[END OF DEFINITIONS]