

## EXHIBIT 1

### ABBREVIATIONS AND DEFINITIONS

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

<b>AAP</b>	AASHTO Accreditation Program
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ACHP</b>	Advisory Council on Historic Preservation
<b>ACI</b>	American Concrete Institute
<b>ACM/AVI</b>	Automatic Coin Machine / Automatic Vehicle Information
<b>ACORD</b>	Association for Cooperative Operations Research and Development
<b>ACM</b>	Asbestos-containing materials
<b>ACT</b>	Antiquities Code of Texas
<b>ADA</b>	Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
<b>ADAAG</b>	Americans with Disabilities Act Accessibility Guidelines
<b>ADT</b>	Average Daily Traffic
<b>AEP</b>	Annual Exceedance Probability
<b>AISC</b>	American Institute of Steel Construction, Inc
<b>ALJ</b>	Administrative Law Judge
<b>AMRL</b>	AASHTO Materials Reference Laboratory
<b>ANSI</b>	American National Standards Institute
<b>APS</b>	Accessible Pedestrian Signal
<b>AREMA</b>	American Railway Engineering and Maintenance of Way Association
<b>ASB</b>	Asphalt Bond Breaker
<b>ASTM</b>	American Society of Testing and Materials
<b>ATC</b>	Alternative Technical Concept
<b>ATP</b>	Acceptance Test Plan
<b>ATT/AVI</b>	Attendant / Automatic Vehicle Identification
<b>AUI</b>	Advanced Utility Installation
<b>AVI</b>	Automatic Vehicle Identification
<b>AWS</b>	American Welding Society
<b>BI</b>	Base Index
<b>BMP</b>	Best Management Practice
<b>BO</b>	Biological Opinion
<b>C&amp;M</b>	Construction and Maintenance
<b>CAD</b>	Computer-Aided Design
<b>CADD</b>	Computer Aided Drafting and Design

<b>CAP</b>	(Environmental) Compliance Action Plan
<b>CCI</b>	ENR Construction Cost Index
<b>CCTV</b>	Closed Circuit Television
<b>CDA</b>	Comprehensive Development Agreement
<b>CD-R</b>	Compact Disc Recordable
<b>CD ROM</b>	Compact Disc Read Only Memory
<b>CEPP</b>	Comprehensive Environmental Protection Program
<b>CERCLA</b>	Comprehensive Environmental Response Compensation and Liability Act
<b>CFR</b>	Code of Federal Regulations
<b>CGP</b>	Construction General Permit
<b>CIPR</b>	Cold In-Place Recycling
<b>CMP</b>	Construction Monitoring Plan
<b>CO</b>	Carbon Monoxide
<b>CP</b>	Communication Plan
<b>CPCD</b>	Concrete Pavement Contraction Design
<b>CQAF</b>	(Independent) Construction Quality Acceptance Firm
<b>CQAM</b>	(Independent) Construction Quality Acceptance Manager
<b>CQCM</b>	Construction Quality Control Manager
<b>CQP</b>	Construction Quality Program
<b>CQMP</b>	Construction Quality Management Plan
<b>CRCP</b>	Continuously Reinforced Concrete Pavement
<b>CSBE</b>	Cement Stabilized Backfill Embankment
<b>CSJ</b>	Control Section Job
<b>CSTM</b>	Materials and Pavements Section of TxDOT Construction Division
<b>CTB</b>	Cement Treatment Base
<b>CTE</b>	Coefficient Thermal Expansion
<b>CTMS</b>	Computerized Traffic Management System
<b>CTS</b>	Cement Treatment Sub-Grade
<b>CWA</b>	Clean Water Act
<b>CZP</b>	Contributing Zone Plan
<b>CP</b>	Communication Plan
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DCFCDD</b>	Dallas County Flood Control District
<b>DMS</b>	Dynamic Message Signs
<b>DQMP</b>	Design Quality Management Plan
<b>DRP</b>	Dispute Resolution Procedure
<b>DSS</b>	Decent, Safe and Sanitary (dwelling)

<b>DUC</b>	Developer Utility Coordinator
<b>DWC</b>	Deferred Work Component
<b>EA</b>	Environmental Assessment
<b>ECI</b>	Environmental Compliance Inspector
<b>ECM</b>	Environmental Compliance Manager
<b>ECMP</b>	Environmental Compliance and Mitigation Plan
<b>EDMS</b>	Electronic Data Management System
<b>EMR</b>	Environmental Monitoring Report
<b>EMS</b>	Environmental Management System
<b>EMT</b>	Electrical Metallic Tubing
<b>ENR</b>	Engineering News Record
<b>EP</b>	Extraction Procedure (toxicity)
<b>EPD</b>	Escrowed Proposal Documents
<b>EPIC</b>	Environmental Permits, Issues and Commitments
<b>EPTP</b>	Environmental Protection Training Plan
<b>ESA</b>	Endangered Species Act of 1973, as amended
<b>ESAL</b>	Equivalent Single-Axle Load
<b>ET</b>	Environmental Team
<b>ETCS</b>	Electronic Toll Collection System
<b>FAPG</b>	Federal-Aid Policy Guide
<b>FDR</b>	Full Depth Repair
<b>FEIS</b>	Final Environmental Impact Statement
<b>FEMA</b>	Federal Emergency Management Agency
<b>FHWA</b>	Federal Highway Administration
<b>FIS</b>	Flood Insurance Study
<b>FM</b>	Farm to Market Road
<b>FWCA</b>	Fish and Wildlife Coordination Act
<b>FOB</b>	Field Operation Building
<b>FONSI</b>	Finding of No Significant Impact
<b>FTP</b>	File Transfer Protocol
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GIS</b>	Geographical Information System
<b>GPS</b>	Global Positioning System
<b>HCR</b>	Highway Condition Report
<b>HEC</b>	Hydraulic Engineering Circular
<b>HIPR</b>	Hot In-Place Recycling
<b>HMMP</b>	Hazardous Materials Management Plan

<b>HVAC</b>	Heating Ventilation and Air Conditioning
<b>ID</b>	Identification
<b>IEEE</b>	Institute of Electrical and Electronics Engineers
<b>IH</b>	Interstate Highway
<b>IRI</b>	International Roughness Index
<b>ISDN</b>	Integrated Services Digital Network
<b>ISI</b>	Initial Serviceability Index
<b>ISO</b>	International Standards Organization
<b>ITP</b>	Instructions to Proposers
<b>ITS</b>	Intelligent Transportation System
<b>IWP</b>	Investigative Work Plan
<b>JSA</b>	Job Safety Analysis
<b>LCN</b>	Lane Closure Notice
<b>LCS</b>	Lane Closure System
<b>LOMR</b>	Letters of Map Revision
<b>LPA</b>	Local Public Agency
<b>LRFD</b>	Load and Resistance Factor Design
<b>LSLS</b>	Licensed State Land Surveyor
<b>LTS</b>	Lime Treatment Sub-Grade
<b>MMP</b>	Maintenance Management Plan
<b>MOA</b>	Memorandum of Agreement(s)
<b>MOU</b>	Memorandum of Understanding
<b>MPH</b>	Miles Per Hour
<b>MPLS</b>	Multiple Protocol Label Switching
<b>MPO</b>	Metropolitan Planning Organization
<b>MR</b>	Effective Resilient Modulus
<b>MS4</b>	Municipal Separate Storm Sewer System
<b>MSDS</b>	Material Safety Data Sheet
<b>MSE</b>	Mechanically Stabilized Earth
<b>MUAA</b>	Master Utility Adjustment Agreement
<b>MUTCD</b>	Manual of Uniform Traffic Control Devices
<b>NAVD</b>	North American Vertical Datum
<b>NBIS</b>	National Bridge Inspection Standards
<b>NBI</b>	National Bridge Inventory
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NCR</b>	Non-Conformance Report
<b>NEC</b>	National Electrical Code

<b>NEPA</b>	National Environmental Policy Act
<b>NFIP</b>	National Flood Insurance Program
<b>NHPA</b>	National Historical Preservation Act
<b>NICET</b>	National Institute for Certified Engineering Technicians
<b>NOI</b>	Notice of Intent
<b>NOT</b>	Notice of Termination
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NRCS</b>	Natural Resource Conservation Service
<b>NSBA</b>	National Steel Bridge Alliance
<b>NTP</b>	Notice to Proceed
<b>NTCIP</b>	National Transportation Communications for ITS Protocol
<b>NTSC</b>	National Television System Committee
<b>NTTA</b>	North Texas Tollway Authority
<b>OSR</b>	Old San Antonio Road
<b>OSHA</b>	Occupational Safety and Health Administration
<b>PA</b>	Programmatic Agreement
<b>PBS</b>	Project Baseline Schedule
<b>PBS-1</b>	Preliminary Project Baseline Schedule
<b>PC</b>	Point of Curvature
<b>PCC</b>	Point of Compound Curvature
<b>PCO</b>	Potential Change Order
<b>PCS</b>	Pavement Condition Survey
<b>PDF</b>	Portable Document Format
<b>PGBT</b>	President George Bush Turnpike
<b>PH</b>	Percent Hydrogen
<b>PI</b>	Plasticity Index or Point of Intersection, as appropriate
<b>PLI</b>	Property Line Intersections
<b>PrI</b>	Principle Investigator
<b>PIAP</b>	Project Independent Acceptance Program
<b>PICP</b>	Public Information and Communications Plan
<b>PM</b>	D&C Project Manager or O&M Project Manager, as appropriate
<b>PMP</b>	Project Management Plan
<b>POB</b>	Point of Beginning
<b>POC</b>	Point of Commencing
<b>PRC</b>	Point of Reverse Curvature
<b>PVC</b>	Polyvinyl Chloride
<b>PVR</b>	Potential Vertical Rise

<b>PSL</b>	Project Specific Location
<b>PSQCM</b>	Professional Services Quality Control Manager
<b>PT</b>	Point of Tangency
<b>PUA</b>	Possession and Use Agreement
<b>PUAA</b>	Project Utility Adjustment Agreement
<b>PVC</b>	Polyvinyl Chloride
<b>QA</b>	Quality Assurance
<b>QC</b>	Quality Control
<b>QC / QRP</b>	Quality Control / Quality Review Program
<b>QMP</b>	Quality Management Plan
<b>QS</b>	Qualifications Submittal
<b>RDVCS</b>	Regional Data and Video Communications System
<b>RFI</b>	Request For Information
<b>RCP</b>	Reinforced Concrete Pipe
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>RHA</b>	Rivers and Harbors Act
<b>RID</b>	Reference Information Document(s)
<b>ROD</b>	Record of Decision
<b>ROE</b>	Right of Entry
<b>ROW</b>	Right of Way
<b>ROWIS</b>	Right of Way Information System
<b>ROW AM</b>	Right of Way Acquisition Manager
<b>RP</b>	Recycling Program
<b>RPLS</b>	Registered Professional Land Surveyor
<b>RQD</b>	Rock-Quality Designation
<b>RTP</b>	Ramp Toll Plazas
<b>SDP</b>	Special Deposit and Possession
<b>SDPP</b>	Special Deposit and Possession Procedure
<b>SEC</b>	Securities and Exchange Commission
<b>SF</b>	Square Foot
<b>SH</b>	State Highway
<b>SHPO</b>	State Historic Preservation Officer
<b>SHSD</b>	Standard Highway Sign Design for Texas
<b>SI</b>	System Integrator
<b>SIR</b>	Site Investigation Report
<b>SOAH</b>	Texas State Office of Administrative Hearings

<b>SSCB</b>	Single Slope Concrete Barrier
<b>SSTR</b>	Single Slope Traffic Railing
<b>SUE</b>	Subsurface Utility Engineering
<b>SW3P</b>	Storm Water Pollution Prevention Plan
<b>TAS</b>	Texas Accessibility Standards
<b>TAC</b>	Texas Administrative Code
<b>TBPLS</b>	Texas Board of Professional Land Surveying
<b>TCEQ</b>	Texas Commission on Environmental Quality
<b>TCLP</b>	Toxicity Characteristic Leaching Procedure
<b>TDLR</b>	Texas Department of Licensing and Regulation
<b>TCP</b>	Traffic Control Plan
<b>TDWR</b>	Terminal Doppler Weather Radar
<b>THC</b>	Texas Historical Commission
<b>TIA</b>	Time Impact Analysis
<b>TIM/OS</b>	Turnpikes Intelligent Management / Operation System
<b>TL</b>	Testing Level
<b>TMC</b>	Traffic Management Center
<b>TMP</b>	Traffic Management Plan
<b>TMUTCD</b>	Texas Manual on Uniform Traffic Control Devices
<b>TP</b>	Technical Provisions
<b>TPDES</b>	Texas Pollutant Discharge Elimination System
<b>TPWD</b>	Texas Parks and Wildlife Department
<b>TREC</b>	Texas Real Estate Commission
<b>TSI</b>	Terminal Serviceability Index
<b>TTI</b>	Texas Transportation Institute
<b>TxDOT</b>	Texas Department of Transportation
<b>UAAA</b>	Utility Adjustment Agreement Amendment
<b>UAFM</b>	Utility Adjustment Field Modification
<b>UAP</b>	TxDOT Utility Accommodation Policy
<b>UAR</b>	TxDOT Utility Accommodation Rules
<b>UAdR</b>	Utility Adjustment Report
<b>UCS</b>	Utility Coordination Specialist
<b>UDC</b>	Utility Design Coordinator
<b>UJUA</b>	Utility Joint Use Agreement
<b>UM</b>	Utility Manager
<b>UPA</b>	Utility and Personnel Access-way
<b>USPAP</b>	Uniform Standards of Professional Appraisal Practice

<b>UPS</b>	Uninterruptible Power Supply
<b>US</b>	United States Highway
<b>USACE</b>	United States Army Corps of Engineers
<b>USDOT</b>	United States Department of Transportation
<b>USEPA</b>	United States Environmental Protection Agency
<b>USFWS</b>	United States Fish and Wildlife Service
<b>USGS</b>	United States Geological Survey
<b>USPAP</b>	Uniform Standard of Professional Appraisal Practices
<b>UST</b>	Underground Storage Tank
<b>UTM</b>	Universal Transverse Mercator
<b>UTP</b>	Unshielded Twisted Pair
<b>VE</b>	Value Engineering
<b>VES</b>	Violation Enforcement System
<b>VGA/HDMI</b>	Video Graphics Adaptor/High Definition Multimedia Interface
<b>VMS</b>	Variable Message Sign
<b>WBS</b>	Work Breakdown Structure
<b>XML</b>	Extensible Markup Language

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

**Acceleration Costs** 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 Recovery Schedule.

**Acquisition Packages** means the series of documents and information for the acquisition of parcels for the Project ROW described in Section 7.3.6 of the Technical Provisions.

**Acquisition Survey Documents** means the packages of documentation and information for the acquisition of parcel for the Project ROW described Section 7.3.1 of the Technical Provisions.

**Additional Scope Components** means the Additional Scope Components 1-4 described in Section 1.2 of the Technical Provisions.



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

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

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

**Adjustment Standards** means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the Contract Documents to a Utility Owner’s “applicable Adjustment Standards” refer to those that are applicable pursuant to Section 3.14.3(e) of the Agreement.

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

**Aesthetics and Landscaping Plan** means the plan the Developer prepares in conformance with the Project’s final aesthetic concept as more particularly described in Section 15.2.2 of the Technical Provisions.

**Aesthetic Enhancements** has the meaning set forth in Section 15.5 of the Technical Provisions.

**Affected Third Parties Plan** has the meaning set forth in Section 5.5 of the Technical Provisions.

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

**Affiliate** means:

- (a) any shareholder, member, partner or joint venture member of Developer,
- (b) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any of its shareholders, members, partners or joint venture members; and
- (c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any of the shareholders, members, partners or joint venture members of Developer, or (iii) any Affiliate of Developer under clause (b) of this definition.

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

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

**Agreement** shall mean this Development Agreement, including all exhibits attached hereto, as such agreement or any such exhibits may be amended, supplemented, amended and restated, or otherwise modified from time to time in accordance with the terms hereof.

**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 TxDOT will submit to the FHWA, as the same may be amended from time to time.

**Alternative Technical Concept (ATC)** has the meaning set forth in Section 3.1 of the ITP.

**Annual Non-Discriminatory O&M Change Deductible** has the meaning set forth in Section 12.8.7 of the Agreement.

**Antiquities Permit** means the permit(s) required under the Antiquities Code of Texas enacted in 1969, to be obtained from the Texas Historical Commission as per Section 4.3.2 of the Technical Provisions.

**Annual O&M Payment** has the meaning set forth in Section 11.4.1(a) of the Agreement.

**Annual Unit Cost** means the total annual Pavement Payment divided by the total number of square yards of pavement Renewal Work for the applicable year set forth in Exhibit 23-3.1 of the Agreement.

**Appeal Period** has the meaning set forth in Section 19.3.5(a) of the Agreement.

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

**Assembly** means the additional Utility Assembly that Developer shall prepare for any Project Utility Adjustment Agreement to cover all Utility Adjustments addressed in the corresponding Utility Adjustment Agreement Amendment as more particularly described in Section 6.3.4.5 of the Technical Provisions.

**Asset Condition Score** shall mean the score (from one to five) assigned by Developer following Developer's Audit Inspection, which records, for each Maintained Element 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 19.11 of the Technical Provisions.

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

**Audit Inspection** shall mean a detailed inspection of the specified proportion of Auditable Sections undertaken quarterly by Developer as part of the O&M Work in accordance with Section 19.11.5 of the Technical Provisions to establish an Asset Condition Score for each Maintained Element and verify compliance with the Performance Requirements.

**Authorized Representative** has the meaning set forth in Section 24.6.1 of the Agreement.

**Bank Secrecy Act** means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

**Base Scope** means the Minimum Base Scope, Additional Scope Component 1, Additional Scope Component 2, Additional Scope Component 3 and Additional Scope Component 4.

**Basic Configuration** means the following elements defining the Project as set forth in the Draft Schematic:

- (a) the Draft Schematic ROW;
- (b) the number and type of lanes;
- (c) the approximate location of the Toll Zones;
- (d) the approximate location of ramps, and
- (e) the approximate location and type of interchanges.

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

**Benchmark Rates** means the rates set forth in Exhibit 21 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 applicable Utility Agreement(s); in all other cases, “Betterment” means any upgrading of such facility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; *provided, however*, that the following shall not be considered Betterments:

- (a) any upgrading which is required by the Project;
- (b) replacement devices or materials that are of equivalent standards although not identical;
- (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) any upgrading required by applicable Law;
- (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) any upgrading required by the Utility Owner’s written “standards” meeting the requirements described in Section 6 of the Technical Provisions; or
- (g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

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

**Borrower** means the issuer of Developer Debt, which may be Developer or, if Developer arranges for the sale or assignment of the Deferred D&C Payment Certificates to another Person other than the Lender, such Person.

**Breakage Costs** means any reasonable prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate hedging, swap, collar or cap arrangements, that Borrower must pay, or that may be payable or credited to Borrower, under any Funding Agreement or otherwise as a result of (i) the payment, redemption or acceleration of all or any portion of the principal amount of Developer Debt prior to its scheduled payment date, (ii) the cancellation of committed Developer Debt for the purchase or financing of Deferred D&C Payment Certificates, or (iii) early termination of any interest rate hedging, swap, collar or cap arrangements for the purchase or financing of Deferred D&C Payment Certificates. Notwithstanding the foregoing, if Developer has not previously submitted a Financial Model to TxDOT, Breakage Costs shall be equal to zero.

**Bridge Payment** has the meaning set forth in Section 11.4.1 of the Agreement.

**Bridge Renewal Work and Payment Schedule** means the schedule set forth in Exhibit 23-4.

**Broker** has the meaning set forth in Section 3.13.6 of the Agreement.

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

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

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

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

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

- (a) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of Developer, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;
- (b) An upstream reorganization or transfer of direct or indirect interests in Developer so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;
- (c) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls Developer;
- (d) The exercise of minority veto or voting rights (whether provided by applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, TxDOT has received copies of such agreements; or
- (e) A transfer of interests in Developer solely between or among Persons who were members or partners of Developer or subsidiaries of such Persons as of the Effective Date.

**Change Order** means a written order issued by TxDOT to Developer delineating changes in the Work within the general scope of the Contract Documents or in the terms and conditions of the Contract Documents in accordance with Section 12 of the Agreement and establishing, if appropriate, an adjustment to the Price or a Completion Deadline.

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

**Code** has the meaning set forth in Recital A.

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

**Communications Plan** means the TxDOT-Developer Communications Plan as described in Section 2.4 of the Technical Provisions.

**Comparable Limited Access Highways** means highways that are substantially similar to the Project and associated facilities including frontage roads, as applicable. For purposes of this definition, determination of what highways are substantially similar to the Project shall be based on any one or more of similar age, design, engineering, construction, topographical features, operating systems and features, or other features or situations, and/or based on a geographical area in which highways have been or are susceptible to being affected by a common event (such as but not limited to flood or tornado). The presence or absence of tolling and tolling facilities shall not be a factor in determining whether a highway is substantially similar to the Project.

**Comprehensive Environmental Protection Program (CEPP)** means the document obligating Developer to protect the environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the environment, as further described in Section 4 of the Technical Provisions.

**Completion Deadline(s)** means the Substantial Completion Deadline(s), Final Acceptance Deadline(s) set forth in Sections 3.6.1 and 3.6.2 of the Agreement, and/or deadline for completion of Toll Zone Work set forth in the Technical Provisions, as the case may be.

**Condemnation Packages** means the packages of documentation and information for the condemnation of parcels for the Project ROW described in Section 7.4.4 of the Technical Provisions.

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

- (c) Such individual shall not have had substantial prior involvement in any aspect of the Contract Documents or the Project of a nature which could reasonably be expected to affect his or her ability to impartially resolve Disputes;
- (d) Such individual shall not know of any reason, including 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.

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

**Construction Liquidated Damages** has the meaning set forth in Exhibit 17, Section 3.

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

**Construction Monitoring Plan (CMP)** 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 the Contract Documents as more particularly described in Section 4.3.7 of the Technical Provisions.

**Construction Period** or **D&C Period** means the period of the Term from the Effective Date up to Substantial Completion Date.

**Construction Quality Acceptance Firm (CQAF)** means the independent firm identified in the Proposal (or such other firm approved by TxDOT in its discretion) responsible for performing independent quality assurance material testing, inspection, and audits of the CQP. The initial approved CQAF is Lamb-Star Engineering, L.P., a Texas limited partnership.

**Construction Quality Management Plan** means the plan that establishes quality control and quality acceptance procedures for the Work as more particularly described in Section 2.2.8 of the Technical Provisions.

**Construction Violation Event** means the events set forth in Table 19-4 of the Technical Provisions for which the Developer may be assessed Construction Liquidated Damages pursuant to Section 17.3 and Exhibit 17.



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

**Contract Documents** has the meaning set forth in Section 1.2 of the Agreement.

**Controlling** means for purposes of Section 1.10.2 of the Agreement, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise.

**Corridor Structure Type Study and Report** means a preliminary bridge type study report to evaluate potential superstructure and substructure configurations which may be suitable for the proposed bridges based on span lengths, deck widths, soil parameters, hydraulic and scour issues, environmental issues, wetland impacts, safety and maintenance of traffic, highway alignments, constructability, aesthetic requirements, future widening, construction schedule and costs. The Corridor Structure Type Study Report recommends configurations for the proposed bridges based on the above analysis and also provides the rationale for recommending the proposed alternatives as more particularly described in Section 13.2 of the Technical Provisions.

**Cost and Schedule Proposal** means Developer's proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with Section 12.2.1 of the Agreement.

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

**Cultural Resource Management Personnel** means the Archeologist and the Historian, and each of their respective staffs.

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

**D&C Guaranty** has the meaning set forth in Section 8.7.2 of the Agreement.

**D&C Payment Bond** means the bond required in accordance with Section 8.1.4 of the Agreement.

**D&C Performance Bond** means the bond required in accordance with Section 8.1.3 of the Agreement.

**D&C Payments** means the schedule of payments for D&C Work set forth in Exhibit 5 of the Agreement.

**D&C Period** or **Construction Period** means the period of the Term from the Effective Date up to Substantial Completion Date.

**D&C Price** means the lump sum price for D&C Work set forth in Section 11.1 of the Agreement, as it may be modified from time to time in accordance with the express provisions of the Agreement.

**D&C Project Manager (PM)** means the Key Personnel position responsible for overall design, construction, maintenance, contract administration, safety and environmental compliance on behalf of Developer during the Construction Period. The D&C Project Manager shall be 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 during the Construction Period, pursuant to Section 3.1.2 of the Agreement. The D&C Project Manager shall be assigned to the Project full time and co-located/on-site until Substantial Completion.

**D&C Retainage Bond** means the bond required in accordance with Section 8.1.5 of the Agreement.

**D&C Safety Manager** means the Key Personnel position with the responsibility for carrying out the Developer's safety plan and all safety-related activities, including training and enforcement of safety operations for the D&C Work and meeting the requirements set forth in Section 2.3 of the Technical Provisions.

**D&C Surety** means each Surety that has issued a D&C Payment Bond or D&C Performance Bond.

**D&C Warranty** means the warranty of the D&C Work provided by Developer pursuant to Section 10.1 of the Agreement.

**D&C Warranty Term** has the meaning set forth in Section 10.1.2(a) of the Agreement.

**D&C Work** means all Design Work and Construction Work, including all efforts necessary or appropriate to achieve Final Acceptance and all operations and maintenance of the Project during the D&C Period in accordance with the Technical Provisions.

**Dallas District Green Ribbon Guidelines** means the set of aesthetic guidelines and standards adopted by the TxDOT Dallas District.

**Dallas District Standards** means the set of standard drawings and/or details prepared by the TxDOT Dallas District for use on projects within the district.

**DalTrans** means the regional traffic management center for the Dallas area of the same name.

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

**DB Substantial Completion** means satisfaction of all conditions as set forth in Section 3.10.1(a) 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 3.10.1(a) of the Agreement.

**DBE Performance Plan** means Developer's TxDOT-approved plan for meeting the DBE participation goals set forth in Section 7.1 of the Agreement.

**DBE Special Provisions for Non-Traditional Projects** means TxDOT's special provisions for the TxDOT Disadvantaged Business Enterprise Program adopted for design-build, CDA and other non-traditional projects pursuant to 49 CFR Part 26, which special provisions are set forth in Exhibit 6 to the Agreement.

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

**Defect** means a defect, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any Element of the Project, which would cause or have the potential to cause one or more of the following:

- (a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users;
- (b) a structural deterioration of the affected Element or any other part of the Project;
- (c) damage to a third party's property or equipment;
- (d) damage to the Environment; or
- (e) failure of the affected Element or any other part of the Project to meet a requirement of the Contract Documents.

**Defect Hazard Mitigation Classifications** means the classifications described in Section 19.4.1 of the Technical Provisions.

**Deferred D&C Payment Certificate** has the meaning set forth in Section 11.3.2 of the Agreement.

**Deferred D&C Payments** has the meaning set forth in Section 11.3 of the Agreement.

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

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

**Design-Build Contractor** means SouthGate Constructors, JV, a joint venture between Austin Bridge & Road, LP, a Delaware limited partnership and Kiewit Infrastructure South Co., a Delaware corporation.

**Design Deviation** means a Design Exception or a Design Waiver.

**Design Documents** means all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project and/or the Utility Adjustments in accordance with the Contract Documents, the Governmental Approvals and applicable Law.

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

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

**Design Manager** means the Key Personnel position responsible for ensuring the Design Work is completed and design criteria requirements are met. The Design Manager shall be co-located/on-site whenever design activities for the Project are being performed, including design activities related to field design changes.

**Design Submittal** means the submittal by Developer for review and comment by TxDOT of horizontal and vertical geometrics, bridge clearances and limits of Work as required under Section 2.2.7.1 of the Technical Provisions.

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

**Design 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 Project, Project ROW acquisition or Utility Adjustments.

**Developer** means SouthGate Mobility Partners LLC, a Delaware limited liability company, together with its successors and assigns.

**Developer Debt** means (i) bona fide indebtedness (including subordinated indebtedness) for or in respect of funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received or (ii) bona fide financing or factoring obligations in connection with the purchase of the Deferred D&C Payment Certificates, the repayment or payment of which has specified payment dates set forth in the Funding Agreements and is secured by one or more Security Documents, incurred for the purpose of paying the D&C Work to be paid out of the Deferred D&C Payments pursuant to Section 11.3 of the Agreement. Developer Debt includes principal, capitalized interest, accrued interest, purchase price, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, lease financing obligations, and Breakage Costs. Developer Debt excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement Borrower enters into or first becomes obligated to repay after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination, including Developer's receipt of a Notice of Termination for Convenience or occurrence of a TxDOT payment default entitling Developer to deem such non-payment as a Termination for Convenience. In addition, no debt shall constitute Developer Debt unless and until the Developer or any collateral agent provides TxDOT with notice thereof and the related Funding Agreements and Security Documents in accordance with the Agreement.

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

**Developer-Designated ROW** means any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Draft Schematic ROW, including any parcels identified on Appendix 4 to Exhibit 2 of the Agreement, that Developer determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT to be acquired at Developer's cost and expense. The term specifically includes any easements required for drainage for the Project and any air space, surface rights and subsurface rights within the Developer-Designated ROW. The term specifically excludes the Replacement Utility Property Interests, any temporary easements or other temporary real property interests that Developer may deem necessary or advisable to acquire, at its own cost and expense, for excessive work space, contractor lay-down areas, material storage areas, or other convenience of Developer.

**Developer-Initiated VE** has the meaning set forth in Section 21.1 of the Agreement.

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

**Developer Release(s) of Hazardous Materials** means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Developer-

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

**Deviations** means: (a) any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions, or (b) a change in the Work or other requirements of the Contract Documents issued under Section 12.12 of the Agreement. “**Deviation**” includes a Design Deviation.

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

**Directive Letter** has the meaning set forth in Section 12.1.1 of the Agreement.

**Disadvantaged Business Enterprise** or **DBE** has the meaning set forth in 49 CFR Section 26.5.

**Discriminatory O&M Change** means (a) materially more onerous application to Developer or the Project of alterations or changes (including additions) to the Technical Provisions and Safety Standards relating to the O&M Work than the application thereof to other comparable TxDOT projects, or (b) selective application of alterations or changes (including additions) to the Technical Provisions and Safety Standards relating to the O&M Work to Developer or the Project and not to other comparable TxDOT projects. Notwithstanding the foregoing, such application in response to any negligence, willful misconduct, or breach of applicable Law, Governmental Approval or contract by Developer or any Developer-Related Entity shall not be Discriminatory O&M Changes.

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

**Dispute Resolution Procedures** means collectively, the procedures established under Section 19.3 of the Agreement and in Section 5 of the Disputes Board Agreement and the applicable portions of Section 201.112 of the Code and the DRP Rules. None of the Informal Resolution Procedures are included in the Dispute Resolution Procedures.

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

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

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

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

**Disputes Board Error** has the meaning set forth in Section 19.3.5(b) 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.

**Draft Schematic** means the preliminary design plans for the Project identified in the RID.

**Draft Schematic ROW** means any real property (which term is inclusive of all estates and interests in real property), as well as improvements and fixtures, within the proposed ROW lines established on the Draft Schematic, as such limits may be adjusted from time to time in accordance with the Contract Documents, but excluding such parcels that are identified in Appendix 4 of Exhibit 2. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

**Drainage Design Report** means the report documenting all components of the Project's drainage system as more particularly described in Section 12.4 of the Technical Provisions.

**Draw Request** means a Draw Request and Certificate in the form of Exhibit 15 to the 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 Contract Documents.

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

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

**Electronic Data Management System (EDMS)** means the secure data management system provided by Developer containing all of the data Developer is required to submit to TxDOT in connection with the Work and compatible with data systems, standards and procedures employed by TxDOT, as more particularly described in Section 2.1.2 of the Technical Provisions.

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

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

**Element Category** shall mean any of the project element categories set forth in Tables 19-4 and 19-5 in Section 19 of the Technical Provisions.

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

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

**ENR Construction Cost Index** means the 12-month “Construction Cost Index” published by Engineering News-Record, Two Penn Plaza, 9th Floor, New York, NY 10121.

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

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



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

**Environmental Compliance Inspectors (ECIs)** means the person(s) retained or employed by Developer who provide on-site monitoring of the Project and the Work under direction of the Environmental Compliance Manager as more particularly described in Section 4.4.3 of the Technical Provisions.

**Environmental Compliance Manager (ECM)** means the Key Personnel position responsible for monitoring, documenting, reporting on and ensuring compliance of all on-site activities with the requirements of all permits and regulatory requirements. The Environmental Compliance Manager shall be independent of the Developer-Related Entity’s production team, and shall have the authority to stop work. The role of the Environmental Compliance Manager is more particularly described in Section 4.4.1 of the Technical Provisions.

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

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) and safety of employees and other persons; and
- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

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

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;
- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq.*), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;
- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;
- (xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste

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

- (xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);
- (xxi) The Texas Water Code;
- (xxii) The Texas Parks and Wildlife Code;
- (xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);
- (xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and
- (xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Act).

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

**Environmental Monitoring Report** means the method by which the Developer documents compliance with the CMP as described in Section 4.3.7 of the Technical Provisions.

**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 Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.3.3 of the Technical Provisions.

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

**Environmental Training Staff** means Project personnel with experience as set forth in the Technical Provisions and appointed by the ECM to develop and implement an Environmental Protection Training Program as more particularly described in Section 4.4.2 of the Technical Provisions.

**Equity Member** means (a) each entity with a direct equity interest in the Developer (whether as a member, partner, joint venture member or otherwise) and (b) each entity with a 10% or greater indirect interest in the Developer. Notwithstanding the foregoing, if the Developer is a publicly traded company, shareholders with less than a 10% interest in the Developer shall not be considered Equity Members.

**Error** means an error, omission, inconsistency, inaccuracy, deficiency or other defect.

**Escrowed Proposal Documents** or **EPDs** has the meaning set forth in Section 20.1 of the Agreement.

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

**Event of Default** has the meaning set forth in Section 16.1.3 of the Agreement.

**Executive Director** means the executive director of the Texas Department of Transportation, or his or her successor.

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

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

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

**Fast-Track Dispute** has the meaning set forth in the Disputes Board Agreement.

**Final Acceptance** means the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 3.10.4 of the Agreement, as and when confirmed by TxDOT's issuance of a Certificate of Final Acceptance.

**Final Acceptance Deadline** means each of the deadlines as determined pursuant to Section 3.6.2 of the Agreement, as such deadlines may be adjusted by Change Order pursuant to the Agreement.

**Final D&C Payment** means payment by TxDOT of the final installment of the D&C Price.

**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, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals necessary or related to the construction of the Project and any Utility Adjustments, and satisfying the requirements presented in Section 13.2 of the Technical Provisions.

**Final Design Submittal** means the submittal by Developer for review and comment by TxDOT of Design Documents certified by the PSQCM demonstrating compliance with the Contract Documents and incorporating all Intermediate Design Submittal review comments, as more particularly described in Section 2.2.7.5.1 of the Technical Provisions.

**Final Order** means the order issued by the Executive Director pursuant to Section 19.3.5 of the Agreement.

**Final Order Implementing Decision** has the meaning set forth in Section 19.3.5(d)(ii) of the Agreement.

**Final Order Vacating Decision** has the meaning set forth in Section 19.3.5(d)(i) of the Agreement.

**Final Payment** means payment by TxDOT of the final installment of the Price.

**Final Reconciliation** means the process described in Section 11.7 for determining the undisputed amount owed to Developer after Final Acceptance, and a schedule for payment of such amount.

**Financial Model** means the financial model delivered by Developer pursuant to Section 11.3.1(d) meeting the requirements of Exhibit 25 and approved by TxDOT (as such Financial Model may be updated from time to time in accordance with the terms of this Agreement).

**Fiscal Year** means the consecutive 12-month period starting on September 1 and ending on August 31, or such other 12-month period as determined by TxDOT.

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

**Force Majeure Change Order** means a Change Order executed due to a Force Majeure Event in accordance with Section 12.8.3 of the Agreement.

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

- (a) Any earthquake, tornado, hurricane (Category 3 and higher) or other natural disaster that (i) causes direct physical damage to the Project and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway Administrator, unless such damage is caused by the Developer's action or inaction or the Developer's means and methods of construction;
- (b) Any epidemic in the Dallas area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) The discovery at, near or on the Project ROW (excluding Developer-Designated ROW) of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Developer prior to the Proposal Due Date and would not have become known to Developer by undertaking reasonable investigation prior to the Proposal Due Date;
- (e) The discovery at, near or on the Project ROW (excluding Developer-Designated ROW) of any species listed of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Proposal Due Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Developer prior to the Proposal Due Date and would not have become known to Developer by undertaking reasonable investigation prior to the Proposal Due Date;
- (f) Any Change in Law that (1) requires a material modification of the Project design, (2) requires Developer to obtain a new major State or federal environmental approval not previously required for the Project, (3) results in an increase in Developer's costs directly attributable to the Change in Law of at least \$500,000, or (4) specifically targets the Project or Developer;
- (g) Any Third Party Release of Hazardous Materials or TxDOT Release of Hazardous Materials that: (1) occurs after the Proposal Due Date (and for Third Party Releases, also after the date TxDOT makes the parcel available to Developer for the Work) and before the end of the Term, (2) is required to be reported to a Governmental Entity, (3) renders use of the roadway or construction

area unsafe or potentially unsafe absent assessment, containment and/or remediation, and (4) with respect to Third Party Releases of Hazardous Materials, does not result from Developer's failure to exercise reasonable efforts to protect the Site from third parties;

- (h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work;
- (i) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the TxDOT-Provided Approvals or other Governmental Approval; and
- (j) Issuance of a Homeland Security Advisory System (HSAS) threat level "Severe (Red)" or issuance of a rule, order or directive from the U.S. Department of Homeland Security or any Governmental Entity regarding specific, material environmental or security threats to the Project or the region in which the Project is located or which the Project serves, to the extent such rule, order or directive requires specific, material changes in the Developer's normal design, construction, operation or maintenance procedures in order to comply.

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

- (i) any fire or other physical destruction or damage, or delays to the Project that occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;
- (ii) except as provided in clause (c) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
- (iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e), (h), (i) or (j) above;
- (v) any increased costs or delays related to any Utility Adjustment Work or failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (j) above;
- (vi) the presence at, near or on the Site, as of the Effective Date, of any Hazardous Material, including substances disclosed in the Reference Information

Documents, as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;

- (vii) any Change in Law that has the effect of modifying a Utility Owner's required specifications, standards of practice and/or construction methods for the Utility Adjustment Work to be furnished or performed by Developer (or reimbursed by Developer), which Change in Law occurs after the Proposal Due Date but prior to the date on which the applicable Utility Agreement is signed by the Utility Owner; and
- (viii) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (j) above.

**Funding Agreement** means:

- (a) Any loan agreement, funding agreement, factoring agreement, accounts receivable purchase agreement or receivables sales agreement, account maintenance or control agreement, insurance or reimbursement agreement, intercreditor agreement, subordination agreement, trust indenture, agreement from Borrower 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 Developer Debt, other than Security Documents;
- (b) Any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of Borrower for Developer Debt; and
- (c) Any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments.

**Future Improvements** means any construction, rehabilitation, repair, rebuilding or other similar improvements on or near the Project Right of Way outside the scope of the Work, including the construction of additional lanes, interchanges, bridges, systems and other structures and improvements necessary to reach the Ultimate Configuration.

**General Conditions** has the meaning set forth in Section 3.16.1 of the Agreement.

**General Inspection(s)** means an inspection of Elements to identify Defects and assess asset condition. Results of a General Inspection shall be used to develop an O&M Work Schedule, to maintain asset condition and service levels and to develop programs of maintenance and renewal work to minimize the effect of the O&M Work.

**General Purpose Lane(s)** means the limited access highway lanes or main lanes with respect to the Project as delineated in Section 1.2 of the Technical Provisions.



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

**Geotechnical Engineering Reports** means the reports documenting the assumptions, conditions and results of geotechnical investigations and analysis, as more particularly described in Section 8.2.1 of the Technical Provisions.

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

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

**Governmental Entity** 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.

**Guarantor** means each of the entities that provided a guaranty in the applicable form of Exhibit 13 of the Agreement of some or all of the obligations of Developer under the Contract Documents.

**Guaranteed Obligations** has the meaning set forth in the Guaranty.

**Guaranty** means each guaranty executed by a Guarantor guaranteeing some or all of the obligations of Developer under the Contract Documents.

**Handback Requirements** means the terms, conditions, requirements and procedures governing the condition in which the Developer is to deliver the assets within the O&M Limits to TxDOT upon expiration or earlier termination of the Agreement, as set forth in Section 19 of the Technical Provisions.

**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. The term “**Hazardous Materials**” includes the following:

- (a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of “hazardous substance”, “hazardous waste”, “hazardous material”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “radioactive materials”, “bio-hazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substance”, “toxic waste”, “toxic material”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP” toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws);
- (b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (d) Any flammable substances or explosives;
- (e) Any radioactive materials;
- (f) Any asbestos or asbestos-containing materials;
- (g) Any lead and lead-based paint;
- (h) Any radon or radon gas;
- (i) Any methane gas or similar gaseous materials;
- (j) Any urea formaldehyde foam insulation;
- (k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
- (l) Pesticides;
- (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment; and

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

**Hazardous Materials Delay** has the meaning set forth in Section 12.8.4 of the Agreement.

**Hazardous Materials Management** means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Work, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Law.

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

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

**Historian** means a member of the project Environmental Team responsible for assessment of historic resources potentially impacted by the Work as referenced in Section 4.4 of the Technical Provisions.

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

- (a) The Utility line is shown on the Utility Strip Map (irrespective of whether correct ownership is shown).
- (b) The Utility type (e.g., gas, water, communication, electric) is shown on the Utility Strip Map (differences in material, e.g., clay vs. plastic, shall not be considered a difference in type).
- (c) The Utility is an overhead Utility existing as of the Proposal Date or which commenced installation prior to the Proposal Date.
- (d) The Utility is an extension of an Identified Utility (including a Service Line extending from an Identified Utility).
- (e) The Utility is located in the same trench as an Identified Utility (e.g. communication duct bank and joint communication cable facilities).

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

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

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

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

- (a) Service Line Adjustments including appurtenances (excluding any Service Line Adjustment for which the owner of the affected real property has been compensated pursuant to Section 7 of the Technical Provisions, and provided that Developer shall obtain all temporary rights of entry needed for such adjustments in accordance with Section 7 of the Technical Provisions);
- (b) Temporary Utility adjustments;
- (c) Utility Appurtenance adjustments;
- (d) Temporary Protections in Place; and
- (e) Resurfacing and re-striping of streets (including sidewalks) and reconstruction of curb, gutter, sidewalks and landscaping where necessary due to Utility Adjustment Work, whether performed by the Utility Owner or by Developer.

**Indemnified Parties** means TxDOT, the State, the Texas Transportation Commission, the Program Manager and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

**Ineligible Matters** has the meaning set forth in Section 19.3.1(h) of the Agreement.

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

**Instructions to Proposers (ITP)** means the Instructions to Proposers issued by TxDOT on November 7, 2013 as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

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

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

**Interest Rate Adjustment Expiration Date** has the meaning set forth in Section 11.1.3(a) of the Agreement.

**Interim Area** means an area within Project ROW in which Elements of the Project shall be constructed in their Interim Configuration with respect to the Ultimate Project.

**Interim Configuration** means the initial configuration of the Project with respect to the Ultimate Project.

**Internal Revenue Code** has the meaning set forth in Section 11.3.2(h) of the Agreement.

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

**Job Training and Small Business Opportunity Plan** means the plan set forth in Exhibit 8 to the Agreement.

**Key Personnel** means the following positions: (1) D&C Project Manager; (2) O&M Project Manager; (3) Superintendent; (4) Lead Quality Manager; (5) Environmental Compliance Manager; (6) Design Manager; (7) Lead Roadway Design Engineer; (8) Lead Bridge Design Engineer; (9) Professional Services Quality Control Manager; (10) Maintenance Manager; (11) Maintenance QC Manager; (12) Public Information Coordinator; (13) Right of Way Acquisition Manager; (14) Utility Manager; (15) D&C Safety Manager and (16) O&M Safety Manager.

**Key Subcontractor** means the Subcontractors identified on Exhibit 22.

**Lane Closure** means full or partial closure of any lane in any portion of the Project or a connecting highway, as applicable, and for any duration.

**Lane Rental Bank** means the lane rental bank specified in Exhibit 17(1.2) of the Agreement.

**Lane Rental Fees** means the lane rental fees specified in Section 17 and in Exhibit 17(1.2) of the Agreement.

**Law** or **Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by TxDOT within the scope of its administration of the Contract Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. “Laws”, however, excludes Governmental Approvals.

**Lead Bridge Design Engineer** means the Key Personnel position responsible for ensuring the design of the Project’s bridges is completed and applicable design criteria requirements are met. The Lead Bridge Design Engineer shall be the engineer of record for the Project’s bridges.

**Lead Engineering Firm** means Parsons Transportation Group Inc., an Illinois corporation.

**Lead Roadway Design Engineer** means the Key Personnel position responsible for ensuring that the design of the Project’s roadway is completed and applicable design criteria requirements are met. The Lead Roadway Design Engineer shall be the engineer of record for the Project’s roadway design.

**Lead Quality Manager** means the Key Personnel position responsible for the overall design, construction and life cycle quality of the Project, implementing quality planning and training, and managing Proposer’s quality management processes. Reports directly to an individual on Developer’s management team who is outside the production team and bears no direct immediate profit and loss responsibility for the Project. The Lead Quality Manager shall be co-located and on-site until Final Acceptance, and shall have the authority to stop work. The Lead Quality Manager may also serve as Construction Quality Control Manager, but not as the Professional Services Quality Control Manager.

**Lender** has the meaning set forth in Section 11.3.2(c) of the Agreement.

**License Agreement** means any license agreement for construction, maintenance, and use of railroad ROW between an operating railroad and TxDOT as more particularly described in Section 14.3.3 of the Technical Provisions.

**License to Cross** means a permit issued by a railroad owner which permits a street crossing at the owner’s railroad.

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

**Liquidated Damages** means the liquidated damages specified in Sections 1.10.2, 7, 13 and 17 and in Exhibit 17 of the Agreement, and in any other part of the Agreement, including the Liquidated Damages for Lane Closures and O&M Liquidated Damages.

**Liquidated Damages for Construction Period Lane Closures** means the liquidated damages specified in Section 17 and in Exhibit 17(1.2) of the Agreement.

**Liquidated Damages for Lane Closures** means the Liquidated Damages for Construction Period Lane Closures and Liquidated Damages for O&M Period Lane Closures.

**Liquidated Damages for O&M Period Lane Closures** means the liquidated damages specified in Section 17 and in Exhibit 17(2) of 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.

**Maintained Element(s)** shall mean an element set forth in Section 19 to the Technical Provisions.

**Maintenance Management Plan** means the plan prepared by Developer and which defines the process and procedures for the maintenance of the Project for the O&M Period as more particularly described in Section 19.9 of the Technical Provisions.

**Maintenance Manager** means the O&M Key Personnel position responsible for overall management of maintenance activities related to design, construction, maintenance and contract administration matters, including safety and environmental compliance, on behalf of Developer, following NTP2 until the end of the Term. The Maintenance Manager shall interface with TxDOT, on behalf of Developer, in compliance with the Agreement and Technical Provisions, as applicable.

**Maintenance of Traffic Manager** shall be the individual approved in writing by TxDOT prior to NTP2 and responsible for managing and approving all maintenance of traffic operations for the duration of the Construction Work. The Maintenance of Traffic Manager shall fill a critical role in Developer's management team and shall have prior experience managing maintenance of traffic operations on similarly complex projects. The Maintenance of Traffic Manager shall be independent of Developer's production team, and shall have the authority to stop work. The

Maintenance of Traffic Manager shall report and coordinate all issues directly with TxDOT and Developer's D&C Project Manager.

**Maintenance QC Manager** means the Key Personnel position whose responsibilities include, creation and execution of Developer's maintenance quality program, appointing quality personnel, assurance activities independent of production, enforcement of quality procedures, and documentation of quality records including public information and environmental compliance.

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

**Major Subcontract** means a Subcontract in excess of \$3,000,000.

**Major Subcontractor** means a Subcontractor who has entered into a Major Subcontract with Developer.

**Managed Lane(s)** means the limited access highway lanes with respect to the Project as delineated in Section 1.2 of the Technical Provisions and Managed Lanes Policy of the Regional Transportation Council.

**Management Plans** means all of the management plans listed in Section 2 of the Technical Provisions.

**Maximum O&M LC Amount** has the meaning set forth in Section 8.3.1 of the Agreement.

**Maximum D&C Payment Schedule** means the curve described in Section 3.7.3 and Exhibits 5-1 and 5-2, as applicable, of the Agreement, which constitutes a cap on the aggregate amount of payments of the D&C Price that may be made to Developer hereunder at any specified time.

**Minor Culvert** means any culvert that is not classified as a Major Culvert.

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

- (a) Any *ex parte* communication or discussion between any Disputes Board Member and either Party (or a member of the Conflicts Group on behalf of either Party) or other *ex parte* communication prohibited under R-10 of the Commercial Rules;
- (b) Any offer, solicitation, discussion, agreement or understanding between any Disputes Board Member and any Party or any other Person regarding (i) remuneration conditioned upon the nature or result of a certain Disputes Board Decision or (ii) employment of the Disputes Board Member by any member of



the Conflicts Group following termination of such member's services on the Disputes Board, except for employment as a member of a subsequent Disputes Board or similar disputes board for a project other than the Facility;

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

**Monthly Disbursement** has the meaning set forth in Section 11.4.2 of the Agreement.

**Multiple Use Agreement** means an agreement (or license) for the use of highway right of way for a purpose other than highway use by a political subdivision, the state and federal agencies.

**Municipal Separate Storm Sewer System (MS4)** means the classification of a storm water sewer system of communities that exceed population thresholds established under the TPDES program as more particularly described in Section 4.3.2 of the Technical Provisions.

**National Wetland Inventory** means the system of mapping wetlands in U.S. by the U.S. Fish and Wildlife Service.

**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 4.4.5 of the Technical Provisions.

**Necessary Basic Configuration Change** means a material change in the Basic Configuration that (a) is necessary to meet the requirements of the Contract Documents as the direct result of an Error in the Draft Schematic (with the understanding that a change shall be deemed "necessary" only if the Error creates a problem in which Developer is unable to meet the requirements of the Contract Documents without a material change in the Basic Configuration), (b) necessitates the acquisition of TxDOT Additional Properties, (c) could not be avoided by the exercise of caution, due diligence, or reasonable efforts by Developer, such as the construction of retaining walls or other reasonable mitigation efforts, and (d) could not be avoided through the granting of a waiver, deviation or design exception from requirements of the Contract Documents by TxDOT.

**NEPA Approvals** means the Finding of No Significant Impacts (FONSI) issued by FHWA on December 11, 2002 for the Loop 12/IH 35E Corridor, the FONSI issued in February 10, 2004 by FHWA for SH 183 from SH 360 to IH 35E, the FONSI issued on October 26, 2009 by FHWA for SH 121/SH 183 from IH 820 to SH 161, the FONSI issued in April 2009 by FHWA for SH

114 from International Parkway to SH 183, Loop 12 from Texas Plaza Drive to Loop 12/IH 35E Split, the Loop 12/IH 35E Environmental Assessment Re-Evaluation, the SH 183 Environmental Assessment Re-Evaluation, the SH 121/SH 183 (Segment 2E) Environmental Assessment Re-Evaluation, the SH 114 Environmental Assessment Re-Evaluation and all approved supplements and reevaluations pertaining to the Project as of the Effective Date.

**New Environmental Approval** means: (a) any Environmental Approval required for the Project, other than TxDOT-Provided Approvals, and (b) any revision, modification, or amendment to any TxDOT-Provided Approval, including any such approval, revision, modification, or amendment required for the drainage easements described in Section 3.13.4(b) of the Agreement.

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

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

**Noncompliance Event** means any Developer breach or failure to meet the minimum performance requirements during the O&M Period set forth in Exhibit 24 to the Agreement, as those requirements may be revised from time to time.

**Noncompliance Points** means the points that may be assessed for certain breaches or failures to perform by Developer during the O&M Period, as set forth in Section 13 and Exhibit 24 to the Agreement.

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

**Non-Discriminatory O&M Change** means any alteration or change (including addition) to provisions in the Technical Provisions and Safety Standards relating to the O&M Work of general application to TxDOT transportation facilities, including revision to manuals, publications and guidelines, adoption of new manuals, publications and guidelines, changed, added or replacement standards, criteria, requirements, conditions, procedures and specifications, including Safety Standards, relating to O&M Work of general application to TxDOT transportation facilities; *provided*, that, for purposes of changes in Price permitted pursuant to Section 12 of the Agreement, a Non-Discriminatory O&M Change that is required to implement a Change in Law shall be treated as a Change in Law rather than a Non-Discriminatory O&M Change.

**North Texas ITS Architecture** means the technical requirements, protocols, guidelines and/or procedures adopted or commonly used within the DFW region for ITS equipment, installation and operation.

**Notice of Determination** has the meaning set forth in Section 13.2.1 of the Agreement.

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

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

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

**NTP1** means a written notice issued by TxDOT to Developer authorizing Developer to proceed with the portion of the Work described in Section 3.5.3 of the Agreement.

**NTP2** means a written notice issued by TxDOT to Developer pursuant to Section 3.5.4 of the Agreement authorizing Developer to proceed with the remaining Work and other activities pertaining to the Project.

**O&M Bonds** means the O&M Performance Bond and O&M Payment Bond.

**O&M Conditions Precedent** means the conditions set forth in Section 3.10.3 of the Agreement to the commencement of the O&M Work.

**O&M Contract** means a direct Contract between Developer or an Affiliate and a third party (i.e. a Person other than TxDOT) for management, direction, supervision or performance of the O&M Work or any significant portion thereof.

**O&M Contractor** means the Contractor under the O&M Contract.

**O&M Draw Request** means a Draw Request and Certificate in the form of Exhibit 12 to the Agreement.

**O&M Guaranty** has the meaning set forth in Section 8.7.4 of the Agreement.

**O&M LC Obligor** has the meaning set forth in Section 8.3.1 of the Agreement.

**O&M Letter of Credit** has the meaning set forth in Section 8.3 of the Agreement.

**O&M Limits** has the meaning set forth in Section 19 of the Technical Provisions.

**O&M Liquidated Damages** has the meaning set forth in Section 17.4 of the Agreement.

**O&M Payment Bond** has the meaning set forth in Section 8.5.3 of the Agreement.

**O&M Performance Bond** has the meaning set forth in Section 8.5.1 of the Agreement.

**O&M Period** means 25 years after the Substantial Completion Date.

**O&M Price** means the price for all O&M Work to be performed during the O&M Period as set forth in Section 11.4.1 of the Agreement, as it may be modified from time to time in accordance with the express provisions of the Agreement.

**O&M Project Manager** means the Key Personnel position responsible for overall operations, maintenance, contract administration, safety and environmental compliance on behalf of Developer during the O&M Period. The O&M Project Manager shall be 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 during the O&M Period, pursuant to Section 5.1.1 of the Agreement.

**O&M Quality Management Plan or O&M-QMP** has the meaning set forth in Section 5.9 of the Agreement and Section 2.2.9 of the Technical Provisions.

**O&M Records** means all data in connection with the O&M Work, including (a) all inspection and inventory records, whether generated by Developer or a third party, (b) any communication to and/or from TxDOT or a third party, and (c) any information system (as may be introduced or amended by TxDOT from time to time) in connection with the O&M Work that TxDOT requires Developer to use, implement or operate.

**O&M Safety Manager** means the Key Personnel position with the responsibility for carrying out the Developer's safety plan and all safety-related activities, including training and enforcement of safety operations for the O&M Work and meeting the requirements set forth in Section 2.3 of the Technical Provisions.

**O&M Security** means the O&M Letter of Credit or O&M Bonds required to be provided in accordance with Section 8 of the Agreement.

**O&M Warranty** means the warranty of the O&M Work provided by Developer pursuant to Section 10.1 of the Agreement.

**O&M Warranty Period** has the meaning set forth in Section 10.1.2(b) of the Agreement.

**O&M Work** means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement, including Planned Maintenance, Renewal Work and Handback Requirements Work, during the O&M Period.

**O&M Work Schedule** means the schedule for O&M Work set forth in Section 19.10.1 of the Technical Provisions.

**OFAC** means the Office of Foreign Assets Control of the United States Department of the Treasury.

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

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

**Operations Report** means the quarterly operations report Developer submits to TxDOT for the O&M Work as set forth in Section 22.2 of the Technical Provisions.

**Ordinary Surface Finish** has the meaning set forth in Section 13.3.1 of the Technical Provisions.

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

**Pavement Condition Score** means, in the context of a Pavement Management Information System or PMIS, the score describing the overall condition of a pavement with respect to ride quality and pavement distress. The Pavement Condition Score ranges from 1 (worst condition) to 100 (best condition).

**Pavement Payment** has the meaning set forth in Section 11.4.1(b) of the Agreement.

**Pavement Renewal Work and Payment Schedule** means the schedule set forth in Exhibit 23-3.1 of the Agreement.

**PCO Notice** has the meaning set forth in Section 12.3.2(c) of the Agreement.

**Performance and Measurement Criteria** means Exhibit 24 to the Agreement.

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

**Performance Inspection** means a detailed inspection of the Performance Sections undertaken by Developer during the O&M Period in accordance with Section 19.1.2 of the Technical Provisions to establish an Asset Condition Score for each Element Category and verify compliance with the Performance Requirements and the other requirements of the Contract Documents.

**Performance Requirements** means for each Element of the Project during the O&M Period, the requirements set forth in Performance and Measurement Criteria in the column headed “Failure to” or in succeeding Performance and Measurement Tables under such column, in Exhibit 24 to the Agreement.

**Performance Section** means a defined section of the Project for the purpose of audit, inspection and measurement. A Performance Section includes all travel lanes including mainline lanes, shoulders and ramps of the roadway operating in one direction over a length of approximately 0.1 miles, together with all Elements of the Project within the Project Right of Way associated with the relevant approximately 0.1 mile length of roadway.

**Period A** has the meaning set forth in Table 18-1A and Table 18-1B of the Technical Provisions.

**Period B** has the meaning set forth in Table 18-1A and Table 18-1B of the Technical Provisions.

**Period C** has the meaning set forth in Table 18-1A and Table 18-1B of the Technical Provisions.

**Period D** has the meaning set forth in Table 18-1A and Table 18-1B of the Technical Provisions.

**Permitted Closure** means (a) a closure of one or more lanes, on mainlines, ramps, frontage roads or crossing streets (a “Closure”) due to a TxDOT-Directed Change, provided Developer is using commercially reasonable efforts to: (i) mitigate the impact of such TxDOT-Directed Change, (ii) reopen the affected segment to traffic, and (iii) minimize the impact of Developer’s activities and the Closure to traffic flow; (b) a Closure specified, caused or ordered by, and continuing only for so long as required by, TxDOT or any Governmental Entity, or a Utility Owner performing work under a permit issued by TxDOT, except to the extent such Closure is the result of the negligence, willful misconduct, or breach of applicable Law or contract, by Developer or any Developer-Related Entity; (c) Closures for performance of properly scheduled and executed Planned Maintenance; or (d) Closures required due to a Force Majeure Event.

**Persistent Developer Default** has the meaning set forth in Section 13.5.1 of the Agreement.

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

**Phase 1 Investigations** means Environmental Site Assessment that conforms with ASTM E 1527-05 standard practices.

**Phase 2 Investigations** means Environmental Site Assessment that conforms with ASTM E 1903-11 standard practices.

**Planned Maintenance** means Work that has been properly scheduled and executed in accordance with Section 19 of the Technical Provisions.

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

**Possession and Use Agreement** has the meaning set forth in Section 7.4.1.1 of the Technical Provisions.

**PMP Elements** has the meaning set forth in Section 2 of the Technical Provisions.

**Preliminary Bridge Layouts** means the bridge layouts prepared subsequent to the Corridor Structure Type Study Report described in Section 13.2 of the Technical Provisions.

**Preliminary Project Baseline Schedule (PBS-1)** means the original Project Schedule submitted with the Proposal.

**Price** means either or both of the D&C Price and the O&M Price, as applicable.

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

**Professional Services Quality Control Manager (PSQCM)** means the Key Personnel position with the responsibility to cause the methods and procedures contained in the approved Design Quality Management Plan to be implemented and followed by Developer's design staff in the performance of the Work, as more particularly described in Section 2.2.7.4 of the Technical Provisions. These methods and procedures include, among others, procedures to ensure all design products are accurate and checked before release.

**Program Manager** means Jacobs Engineering Group, Inc. or such other Person (including the entity, as well as its personnel) designated in writing by TxDOT as its Program Manager.

**Progress Report** means the monthly report that Developer must prepare and submit to TxDOT as more particularly described in Sections 2.1.1.4 of the Technical Provisions.

**Project** has the meaning set forth in Recital B to the Agreement.

**Project Baseline Schedule (PBS)** means the schedule consistent with the Completion Deadlines, submitted by Developer as a condition of Notice to Proceed, setting forth the approved schedule of Work against which any subsequent schedule amendments are tracked, as more particularly described in Section 2.1.1.2 of the Technical Provisions.

**Project Baseline Schedule Updates** means the update of the Project Baseline Schedule to reflect the current status of the Project, as more particularly described in Section 2.1.1.3 of the Technical Provisions.

**Project Limits** means the physical boundaries, within or outside the Project ROW, that are required to manage and execute the Work as required by the Contract Documents.

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

**Project Office** means any facility/location at which the Developer and TxDOT are to co-locate for the Term of the Agreement meeting the requirements set forth in Section 2.14 of the Technical Provisions including any Core Office or Field Office as described therein.

**Project ROW or Project Right of Way** means the Draft Schematic ROW and the Additional Properties, but excluding therefrom any portion of the Draft Schematic ROW eliminated from the Project by a Change Order.

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

**Project Schedule Deadlines** means the Substantial Completion Deadline and the Final Acceptance Deadline.

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

**Project Utility Adjustment Agreement (PUAA)** means an agreement between Developer and a Utility Owner which sets forth terms and conditions for one or more Utility Adjustments, as the same may be amended or supplemented from time to time and as more particularly described in Section 6.1.3.1 of the Technical Provisions. A document is a “Master Utility Adjustment Agreement” if it meets the foregoing definition, without regard to the title of the document.

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

**Proposal** means Developer’s original Proposal submitted in response to the RFP, including any clarifications.

**Proposal Due Date** means April 14, 2014, the deadline for submission of the Price Proposal to TxDOT under the RFQ.

**Proposal Financial Model** means, if Developer elected to utilize the market interest rate adjustment, the financial model meeting the requirements of Section 3 of Exhibit C to the ITP.

**Proposer** means each entity that was shortlisted based on TxDOT’s evaluation of submissions in response to the Request for Qualifications for the Project issued on February 20, 2013, as amended.

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



**Protection in Place** means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. 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)** means the plan setting forth procedures by which Developer works with TxDOT to inform, coordinate with, educate and engage Customer Groups, as more particularly described in Section 3.2.1 of the Technical Provisions.

**Public Information Coordinator** means the Key Personnel with responsibility for managing Developer's public involvement activities on a day-to-day basis throughout the Term. The Public Information Coordinator responsibilities are more particularly described in Section 3.2.2 of the Technical Provisions.

**Public Information Office** has the meaning set forth in Section 3.2.3 of the Technical Provisions.

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

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

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

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

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

**Recovery Schedule** means the schedule Developer is required to provide under Section 3.9 of the Agreement.

**Reference Information Documents (RID)** means those documents listed in Exhibit 19 to the Agreement. Except as expressly provided in the Contract Documents, the Reference Information

Documents are not considered Contract Documents and were provided to Developer for informational purposes only and without representation or warranty by TxDOT.

**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.

**Registered Professional Land Surveyor (RPLS)** 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.

**Reimbursable Hazardous Materials Costs** means Developer's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 12.8.4 of the Agreement, provided that the 25% and 145% mark-ups allowed under Section 12.7.1 of the Agreement shall be reduced to 12.5% and 130%, and the 15% mark-up allowed under Section 12.7.2 of the Agreement shall be reduced to 7.5%.

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

**Release of Hazardous Materials** means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

**Released for Construction Documents** means Developer's Design Documents issued for the purpose of construction which have been reviewed and accepted by TxDOT, as applicable, authorizing construction.

**Relocation Plan** means a documented relocation plan for owner-occupants or tenants that fulfills the requirements set forth in TxDOT Right of Way Manual, Volume 3, Chapter 8 (Relocation Program Planning and Construction).

**Renewal-Other Work Payment Schedule** means the schedule set forth in Exhibit 23-2.1.

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

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

**Replacement Utility Property Interest** means any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term

specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

**Request for Change Order** means a written notice issued by Developer to TxDOT under Section 12.3.2 of the Agreement, advising TxDOT that Developer seeks a Change Order.

**Request for Change Proposal** means a written notice issued by TxDOT to Developer under Section 12.2.1 of the Agreement, advising Developer that TxDOT may issue a TxDOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant to Section 12.2.1 of the Agreement.

**Request for Information (RFI)** means a written request prepared by Developer after Design Documents have been released for construction to initiate the process for potential design changes or clarifications.

**Request for Partnering** has the meaning set forth in Section 12.3.2.2 of the Agreement.

**Request for Proposals (RFP)** has the meaning as set forth in Recital E of the Agreement.

**Reserved Rights** means all of the following:

- (a) TxDOT's right to use, possess, develop and enjoy any real and personal property over, on, under or adjacent to the Project ROW for other transportation or related facilities, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways; and
- (b) all right to use, and use of:
  - (i) all electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing over, on, under or adjacent to any Project ROW installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, to the extent not necessary and required for traffic management for the Project or for other project purposes;
  - (ii) any area or space over, on, under or adjacent to the Project ROW for development and operation of any office, commercial, industrial, residential, retail or mixed use real estate project, including revenue-generating service or rest areas;
  - (iii) any equipment, facilities or capabilities for ITS studies or applications installed by or on behalf of TxDOT and the right to install any such equipment, facilities or capabilities; and

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

**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 on the Element which is normally included as an annually recurring cost in highway (and associated equipment) maintenance and repair budgets, and as a result thereof the Element complies throughout its originally calculated Useful Life with each applicable performance requirement set forth in Section 19 of the Technical Provisions. 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.

**RFQ** has the meaning as set forth in Recital C of the Agreement.

**RFP Documents** means all of the information and materials supplied to Developer in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the Contract Documents, and the Reference Information Documents and any addenda issued in connection therewith.

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

**Right of Way** or **ROW** means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines delineating the outside boundaries of the Project set forth in the ROW Maps contained in the Reference Information Documents, as such boundaries may be adjusted from time to time in accordance with the Contract Documents. The term specifically includes all air space, surface rights and subsurface rights within the boundaries of the Right of Way.

**Right of Way (or ROW) Acquisition Manager** means the Key Personnel position responsible for the preparation and quality review of all documents required for the acquisition of the Project ROW.

**Routine Maintenance** means routine maintenance activities as defined in Section 19.9.1(a) of the Technical Provisions.

**Routine O&M Payment Schedule** means the schedule set forth in Exhibit 23-1.1.

**ROW Acquisition Plan** or **Right of Way Acquisition Plan** means the Developer's plan, approved by TxDOT in accordance with Section 7 of the Technical Provisions, for acquisition of real property for the Project.

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

**ROW Maps** means and consists of right of way maps prepared for the Project and contained in the Reference Information Documents, depicting within the boundary lines shown therein the land or property which TxDOT has made or will make available for the Project.

**Risk Management Plan** means the plan, including its components, described in Section 2.13 of the Technical Provisions.

**Rules** means Sections 27.1-27.9 of Title 43, Texas Administrative Code.

**Safety Compliance** means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition or risk of the Project that TxDOT has reasonably determined to exist by investigation or analysis.

**Safety Compliance Order** means an order or directive from TxDOT to Developer to implement Safety Compliance.

**Safety and Health Plan** has the meaning as set forth in Section 2.3 of the Technical Provisions.

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

**Schedule Activity** means the smallest division of the Work at each level to be tracked in the Project baseline schedule.

**Schedule of Values** means the schedule of values described in Section 2.1.1.3.10 of the Technical Provisions.

**Scheduled Substantial Completion Date** means May 3, 2018.

**Section 401 Water Quality Certification(s)** means the certification review, conducted by the Texas Commission on Environmental Quality and required under the Clean Water Act, to determine compliance with state water quality standards when a Section 404 Permit is required.

**Section 404 Permit(s)** means the permit(s) for each segment of the Project issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (33 U.S.C. §1344) for the placement of dredged and fill material into waters of the United States, based upon the Draft Schematic and the Draft Schematic ROW.

**Security Document** means any mortgage, deed of trust, pledge, lien, indenture, trust agreement, hypothecation, assignment, collateral assignment, financing statement under the Uniform

Commercial Code of any jurisdiction, notice to perfect interests in accounts, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Lender or D&C Surety as security for Developer Debt or Borrower's obligations pertaining to Developer Debt and encumbering the Borrower's interest in the Deferred D&C Payment Certificates.

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

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

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

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

**Specialist Inspection(s)** means an inspection requiring specialist qualifications or equipment as specified in Section 19.3.4 of the Technical Provisions.

**State** means the State of Texas.

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

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

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

**Subcontractor Dispute** has the meaning set forth in Section 19.4 of the Agreement.

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

**Substantial Completion** means the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 3.10.1 of the Agreement, as and when confirmed by TxDOT's issuance of a Certificate of Substantial Completion.

**Substantial Completion Date** means the date on which Substantial Completion occurs.

**Substantial Completion Deadline** means the deadline as determined pursuant to Section 3.6.1 of the Agreement, as such deadline may be adjusted by Change Order pursuant to the Agreement.

**Superintendent** means the Key Personnel position responsible for ensuring that the Project is constructed in accordance with the Technical Provisions. The Superintendent shall be assigned to the Project full time and co-located/on-site until Substantial Completion.

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

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

**Surety** means each properly licensed surety company, insurance company or other Person approved by TxDOT, which has issued any payment bond, performance bond, retainage bond or other bond required to be issued under the Agreement, including the D&C Payment Bond, D&C Performance Bond, D&C Retainage Bond and the O&M Security.

**Systems Integrator (SI) or Integrator** means the contractor, under separate contract to TxDOT that shall design, construct, supply, install, test and commission the ETCS for the Project, including scanners, readers, loops, enforcement mechanisms and other equipment necessary for the toll systems.

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

**Technical Provisions (TP)** means the project-specific technical provisions entitled "Design-Build Technical Provisions for Development Agreement."

**Term** has the meaning set forth in Section 2.2 of the Agreement.

**Termination Date** means the date on which the Agreement expires or is earlier terminated in accordance with the Agreement.

**Termination for Convenience** means a termination of the Agreement made pursuant to Section 15.1 of the Agreement.

**Texas Accessibility Standards** means the standards for accessibility and regulations issued by the Texas Department of Licensing and Regulation.

**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.

**Third Party Release(s) of Hazardous Material** means any and all spills of Hazardous Material by a third party who is not acting in a capacity of a Developer-Related Entity.

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

**TIFIA** means the Transportation Infrastructure Finance and Innovation Act of 1998, § 1501 *et seq.* of Public Law 105-178 (as amended by Public Law 105-206, Public Law 109-59 and Public Law 112-141) (the "Act"), as codified as 23 U.S.C. § 601, *et seq.*

**TIFIA Baseline** has the meaning set forth in Section 1.10.2(b) of the Agreement.

**TIFIA Environmental Laws** has the meaning set forth in Exhibit 30 to the Agreement.

**TIFIA Lender** has the meaning set forth in Exhibit 30 to the Agreement.

**TIFIA Loan Agreement** has the meaning set forth in Exhibit 30 to the Agreement.

**TIFIA MAE** has the meaning set forth in Exhibit 30 to the Agreement.

**TIFIA Parties** has the meaning set forth in Section 1.10.2(b) of the Agreement.

**Time and Materials Change Order** means a Change Order issued in accordance with Section 12.7 of the Agreement.

**Time Impact Analysis** means a delay analysis performed in accordance with the requirements of Section 2.1.1.6 of the Technical Provisions.

**Tolling Equipment** has the meaning set forth in Section 21 of the Technical Provisions.



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

- (a) Gross user fees and tolling toll revenues;
- (b) Administrative fees;
- (c) violation charges;
- (d) Proceeds of business interruption or other insurance against loss of revenues from operation of the Project;
- (e) Payments from any Governmental Entity in replacement of or substitution for toll revenues;
- (f) Amounts received pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues;
- (g) Amounts received as liquidated or other damages under contracts to which TxDOT is a party with respect to any of the foregoing revenues; and
- (h) Interest earned on any of the foregoing amounts.

Toll Revenues exclude insurance proceeds, judgments and awards, to the extent they do not replace, reimburse, compensate or substitute for any of the foregoing revenues.

**Toll Zone** means the zone within which a toll transaction takes place for one direction of traffic at a single geographic location, in connection with which Developer shall provide coordination services with the Systems Integrator and TxDOT.

**Toll Zone Work** means the Developer's Work through each Toll Zone, as described in Attachment 21-1 to the Technical Provisions.

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

**Traffic Management Committee** means committee described in Section 18.2.1 of the Technical Provisions.

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

**TREC** means the Texas Real Estate Commission, and any entity succeeding to the powers, authorities and responsibilities of the TREC.

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

**TxDOT Administrative Settlement Committee** means the committee established within TxDOT under the direction of the Right of Way Administrator.

**TxDOT Additional Properties** means any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures located outside of the Draft Schematic ROW and outside of the Developer-Designated ROW that must be acquired due to a TxDOT-Directed Change, a Necessary Basic Configuration Change or a Force Majeure Event, subject to TxDOT's reasonable determination that the property is necessary, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs Developer to acquire for the Project. The term specifically excludes: (i) Replacement Utility Property Interests and (ii) any temporary easements or other real property interests that Developer may deem necessary or advisable to acquire, at its own cost and expense, for work space, contractor lay-down areas, material storage areas, borrow sites, or other convenience of Developer. For purposes of clarity, "Additional Properties" excludes Replacement Utility Property Interests.

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

- (a) TxDOT-Directed Changes;
- (b) failure or inability of TxDOT to make available within the time period set forth in Section 3.13.7(c) of the Agreement, and subject to the risk allocation contained therein, Draft Schematic ROW or any additional real property outside of the Draft Schematic ROW that must be acquired due to a TxDOT-Directed Change or Necessary Basic Configuration Change, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs Developer to acquire for the Project;
- (c) failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters for which response is required under the Contract Documents as an express prerequisite to Developer's right to proceed or act (which, for the avoidance of doubt, does not include Submittals and matters governed by Section 4.1.5 of the Agreement), within the time periods (if any) indicated in the Contract 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 Contract Documents;

- (d) uncovering, removing and restoring Work pursuant to Section 6.6.3 of the Agreement, if such Work exposed or examined is in conformance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT;
- (e) failure of the Systems Integrator to complete its work on the Project after proper notice is delivered by Developer pursuant to Section 3.10.1(b) of the Agreement; provided that such failure is not directly or indirectly attributable to failure by a Developer-Related Entity to comply with its requirements under the Contract Documents;
- (f) TxDOT's failure to perform or observe any of its material covenants or obligations under the Contract Documents where such failure remains uncured for 60 days from the date TxDOT received notice thereof, excluding any such failure that is separately treated as a TxDOT-Directed Change, a TxDOT-Caused Delay or a Force Majeure Event under the Agreement; *provided*, that if TxDOT has commenced meaningful steps to cure any such failure within 60 days of receiving notice thereof, such failure shall not be a TxDOT-Caused Delay so long as TxDOT is diligently pursuing such cure and such cure is completed within 180 days of receiving notice of such failure; and
- (g) violation of Law by TxDOT that materially and adversely impacts the Developer or the Work where such violation remains uncured for 60 days from the date TxDOT received notice thereof; provided, that if TxDOT has commenced meaningful steps to cure any such failure within 60 days of receiving notice thereof, such failure shall not be a TxDOT-Caused Delay so long as TxDOT is diligently pursuing such cure and such cure is completed within 180 days of receiving notice of such failure.

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

**TxDOT Consultant(s)** means any firm or persons under contract to TxDOT to perform services for or on the behalf of TxDOT.

**TxDOT-Developer Communications Plan** has the meaning set forth in Section 2.4 of the Technical Provisions.

**TxDOT-Directed Changes** means any changes in the scope of the Work or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work),

including Discriminatory O&M Changes, that increase Developer's costs by more than \$10,000, which TxDOT has directed Developer to perform as described in Section 12.2 of the Agreement, including Suspensions of the Work by TxDOT for more than the permitted period of time in accordance with Section 14.1 of the Agreement. Non-Discriminatory O&M Changes shall not be considered a TxDOT-Directed Change.

**TxDOT-Initiated VE** has the meaning as set forth in Section 21.1 of the Agreement.

**TxDOT Dallas District Standards or Standard Specifications** means the set of standard drawings, specifications and/or details prepared by the TxDOT Dallas District for use on projects within the district.

**TxDOT-Provided Approvals** means the documents listed in Exhibit 4 to the Agreement.

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

**TxDOT's Recoverable Costs** means:

- (a) The costs of any assistance, action, activity or Work undertaken by TxDOT which Developer is liable for or is to reimburse under the terms of the Contract Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of TxDOT staff and employees performing such action, activity or Work; plus
- (b) Third-party costs TxDOT incurs to publicly procure any such third party contractors; plus
- (c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of TxDOT's Office of General Counsel or the Texas Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third party contractors; plus
- (d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the Contract Documents and continuing until paid.

**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 including all revisions thereto applicable on the Effective Date.

**TxDOT Engineering Standard or TxDOT Standard Sheets** means the TxDOT District or TxDOT Statewide drawings and CAD standards provided on TxDOT's webpage. Where there is a conflict between the requirements of the District and Statewide drawings and/or standards, the District drawings and/or standards shall take precedence.

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

**TxTAG** means one of three interoperable ETCSs in Texas and which is operated by TxDOT.

**Ultimate Area** means an area within Project ROW in which Elements of the Work shall be constructed in their Ultimate Configuration with respect to the Ultimate Project.

**Ultimate Configuration** means the final configuration with respect to the Ultimate Project.

**Ultimate Project** means the project as defined in the approved EAs listed in Section 1.5 of the Technical Provisions.

**Unbound Base** has the meaning set forth in Section 8.3.1 of the Technical Provisions.

**Uncured Noncompliance Points** means Noncompliance Points assessed on account of breaches or failures that remain uncured. Uncured Noncompliance Points also includes Noncompliance Points assessed for breaches or failures that have no applicable cure period as identified in Exhibit 24 to the Agreement.

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

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

**Update of an Appraisal** has the meaning set forth in Section 7.3.5.1 of the Technical Provisions.

**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 the registered owner of a vehicle traveling on the Project or any portion thereof.

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

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

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

**Utility Adjustment Agreement Amendment (UAAA)** means an agreement between Developer and the Utility Owner that amends a Master Utility Adjustment Agreement, as more particularly described in Section 6.3.4.5 of the Technical Provisions.

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

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

**Utility Adjustment Plans** means the set of plans, specifications, and cost estimates prepared by Developer and approved by the corresponding Utility Owner in connection with the design work for any Utility Adjustment, as more particularly described in Section 6.3.4 of the Technical Provisions.

**Utility Adjustment Submittals** means Submittals, submitted in accordance herewith and with any Master Utility Adjustment Agreement, in each case arising out of or relating to the relevant Utility Adjustments.

**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 3.14 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 PUA 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 Master Utility Adjustment Agreement and any applicable Amendments), as more particularly described in Section 6.3.4.5 of the Technical Provisions. Depending on the context, the term also refers to Supplemental Utility Assemblies and Abbreviated Utility Assemblies.

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

**Utility Assembly Number** or **Assembly Tracking Number** means the unique number given by the Developer to each Utility Assembly using the form “YYY-U-XXXX.” The “YYY” shall refer to the assigned number of the highway and “XXXX” shall refer to the 4-digit number assigned to each Utility Assembly (beginning with 0001 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding Utility Agreement.

**Utility Coordinator or Developer Utility Coordinator (DUC)** means the utility staff personnel designated by the Developer to coordinate the utility adjustments, the adjustment agreements, the adjustment costs, the Utility Assemblies, and coordinate all meetings held with the Utility Owner and/or TxDOT and its consultants.

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

**Utility Enhancement** means a Betterment or a Utility Owner Project, as referenced in Section 3.14.2 of the Agreement,

**Utility Information** means the information regarding Utilities included in the Reference Information Documents, together with any other information TxDOT provided to Developer 30

days prior to the Proposal Date with regard to identification of Utilities. The Utility Information includes survey information regarding existing utilities; utility maps included as an overlay on the survey; maps depicting existing Utilities potentially impacted by the Project, and other as-built maps for existing Utilities. In the event of any conflict within the various components of the Utility Information, the more accurate information will prevail.

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

**Utility Manager (UM)** means the Key Personnel position filling the senior-staff utility administrator role for Developer and responsible for coordination and oversight of Utility operations during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions. The Utility Manager shall perform all of Developer's obligations with respect to Utility Adjustments and shall be authorized by Developer to approve all financial and technical modifications associated with Utility Adjustments, and modifications to Utility Agreements.

**Utility Owner(s)** 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 Delay** has the meaning set forth in Section 3.14.5 of the Agreement.

**Utility Owner Project** means the design and construction by or at the direction of a Utility Owner (or by Developer pursuant to Section 3.14.2 of the Agreement) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Owner Projects. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

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

**Utility Tracking Report** means the report prepared by Developer and which lists all Utilities located within the Project ROW or otherwise potentially affecting the Project as more particularly described in of the Technical Provisions.

**Value Engineering (VEs)** has the meaning set forth in Section 21.1 of the Agreement.

**Warranty** shall mean the D&C Warranty and/or the O&M Warranty, as applicable.

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

**Work** means all of the work required under the Contract Documents, including all administrative, design, engineering, real property acquisition and occupant relocation, support services, Utility Adjustment Work to be furnished or provided by Developer, reimbursement of Utility Owners for Utility Adjustment Work furnished or provided by such Utility Owners or



their contractors and consultants, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, operations, maintenance, documentation and other duties and services to be furnished and provided by Developer as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance and to satisfy the Handback Requirements, except for those efforts which such Contract Documents expressly specify will be performed by Persons other than the Developer-Related Entities. For the avoidance of doubt, Work includes all D&C Work, O&M Work and Renewal Work applicable to the Base Scope, and any Additional Scope Work that is the subject of a notice to proceed issued by TxDOT under Section 3.5.6 of the Agreement.

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

**[END OF DEFINITIONS]**