CAPITAL MAINTENANCE AGREEMENT

FOR THE

HORSESHOE PROJECT

By and Between

The Texas Department of Transportation

and

Pegasus Link Constructors, LLC

Dated as of: February 20, 2013

CAPITAL MAINTENANCE AGREEMENT

HORSESHOE PROJECT

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3	Maintenance Contractor's Proposal Commitments
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5	Job Training and Small Business Opportunity Plan
6	Form of Maintenance Performance Bond
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CAPITAL MAINTENANCE AGREEMENT

HORSESHOE PROJECT

This Capital Maintenance Agreement ("Capital Maintenance Agreement") is entered into by and between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and Pegasus Link Constructors, LLC, a Delaware limited liability company ("Maintenance Contractor"), effective as of February 20, 2013.

RECITALS

A. The State of Texas desires to facilitate private sector participation in the development of the State's transportation system via design-build agreements, and to accomplish this purpose the Texas Legislature has enacted Transportation Code, Chapter 223, Subchapter F (the "Code"), and TxDOT has adopted new Subchapter I in Capter 9 of Title 43, Texas Administrative Code relating to design-build contracts (the "Rules"), to accomplish this purpose.

B. TxDOT wishes to enter into agreements with a private sector contractor to design, construct, and, at TxDOT's sole option, maintain improvements along IH 30 from Sylvan Avenue to west of IH 45 and IH 35E from north of Eighth Street to north of IH 30 in Dallas County (the "Project").

C. Pursuant to the Code and the Rules, TxDOT issued a Request for Qualification (as amended, the "RFQ") on December 9, 2011.

D. TxDOT received seven qualification statements for the Design-Build Agreement (the "DBA") and Capital Maintenance Agreement on February 22, 2012 and subsequently shortlisted three proposers for the design-build delivery model.

E. On July 3, 2012, TxDOT issued to the shortlisted proposers a Request for Proposals (as subsequently amended by addenda, the "RFP") to design, construct and, at TxDOT's sole option, maintain the Project.

F. On October 8, 2012, TxDOT received responses to the RFP, including the response of DB Contractor (the "Proposal").

G. An RFP evaluation committee comprised of TxDOT determined that DB Contractor was the proposer which best met the selection criteria contained in the RFP and that the Proposal was the one which provided the best value to the State of Texas.

H. On November 15, 2012, the Texas Transportation Commission accepted the recommendation of the Executive Director and the RFP evaluation committee and authorized TxDOT staff to negotiate a DBA and this Capital Maintenance Agreement.

I. Concurrently herewith TxDOT and DB Contractor are entering into a DBA providing for the design and construction of the Project. Together, the DBA and Capital

Maintenance Agreement constitute a comprehensive design-build contract under the Code.

J. The DBA provides, among other things, that DB Contractor (hereinafter referred to, for the purposes of this Capital Maintenance Agreement as "Maintenance Contractor") shall, upon the election by TxDOT, in its sole discretion, provide to TxDOT certain maintenance, repair, upkeep and renovation services in connection with the Project.

K. The Executive Director of TxDOT has been authorized to enter into this Capital Maintenance Agreement pursuant to the Code, the Rules and Texas Transportation Commission Minute Order 113348, dated November 15, 2012.

NOW, THEREFORE, in consideration of the sums to be paid to Maintenance Contractor by TxDOT, the Maintenance Services to be performed by Maintenance Contractor, the foregoing premises and the covenants and agreements set forth herein, TxDOT and Maintenance Contractor agree as follows:

SECTION 1. DEFINITIONS; CMA DOCUMENTS; INTERPRETATION OF CMA DOCUMENTS

1.1 Definitions

Exhibit 1 attached hereto contains the meaning of various terms used in the CMA Documents. Initially capitalized terms not otherwise defined in Exhibit 1 attached hereto shall have the meanings set forth in the DBA.

1.2 CMA Documents; Order of Precedence

1.2.1 The term "CMA Documents" shall mean the documents listed in Section 1.2.2. Each of the CMA Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The CMA Documents are intended to be complementary and to describe and provide for a complete contract.

1.2.2 Subject to Sections 1.2.3 through 1.2.5, in the event of any conflict among the CMA Documents, the order of precedence shall be as set forth below:

(a) Change Orders and amendments to this Capital Maintenance Agreement (except for amendments to the Maintenance Specification which amendments shall have the order of priority as set forth in clause (c) below);

(b) this Capital Maintenance Agreement (including all exhibits, except Exhibits 2 and 3, subject to Section 1.2.4);

(c) Exhibit 2 (Maintenance Specification) and all attachments thereto; and

(d) Maintenance Contractor's Proposal Commitments as set forth in Exhibit 3.

1.2.3 Notwithstanding the order of precedence among CMA Documents set forth in Section 1.2.2, in the event and to the extent that Exhibit 3 expressly specifies that it is intended to supersede specific provisions of the CMA Documents, Exhibit 3 shall have precedence over the specified provisions. Moreover, if the Proposal includes statements, offers and terms that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the CMA Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains statements, offers and terms which TxDOT considers to be more advantageous than the requirements of the other CMA Documents, Maintenance Contractor's obligations hereunder shall include compliance with all such statements, offers and terms, which shall have priority over the requirements of the other CMA Documents.

1.2.4 Notwithstanding the order of precedence among CMA Documents set forth in Section 1.2.2, if a CMA Document contains differing provisions on the same subject matter than another CMA Document, the provisions that establish the higher quality, manner or method of performing the Maintenance Services or use more stringent standards will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project or Maintenance Services established by reference to a described manual or publication within a CMA Document or set of CMA Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless TxDOT in its sole discretion, approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly notify the other Party of the conflict. TxDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

1.2.5 Portions of the DBA and Technical Provisions are referenced in the CMA Documents for the purpose of defining requirements of the CMA Documents applicable to design and construction. The DBA and Technical Provisions shall be deemed incorporated in the CMA Documents to the extent that they are so referenced, with the same order of priority as the CMA Document in which the reference occurs.

1.3 Interpretation of CMA Documents

In the CMA Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to this Capital Maintenance Agreement; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined that have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the CMA Documents defining the Project or the Maintenance Services shall not be deemed all-inclusive. Maintenance Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the CMA Documents and to bring to the attention of TxDOT any conflicts or ambiguities contained therein. Maintenance Contractor further acknowledges and agrees that it has independently reviewed the CMA Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the CMA Documents. Accordingly, if an ambiguity in, or there is a dispute regarding, the interpretation of the CMA Documents, they shall not be interpreted or construed against the Person which prepared them, and, instead, other rules of interpretation and construction shall be

used. TxDOT's interim or final answers to the questions posed during the Proposal process for this Capital Maintenance Agreement shall in no event be deemed part of the CMA Documents and shall not be relevant in interpreting the CMA Documents except to the extent they may clarify provisions otherwise considered ambiguous. On plans, as-built drawings, working drawings, and standard plans, calculated or stated dimensions shall take precedence over scaled dimensions.

1.4 Referenced Standards and Specifications

1.4.1 Except as otherwise specified in the CMA Documents or otherwise directed by TxDOT, material and workmanship specified by the number, symbol or title of any standard established by reference to a described publication affecting any portion of the Project or Maintenance Services shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Proposal Due Date.

1.4.2 In interpreting referenced standards, the following apply:

(a) References to the project owner shall mean TxDOT.

(b) Cross-references to measurement and payment provisions contained in the referenced standard shall be deemed to refer to the measurement and payment provisions contained in the CMA Documents.

1.5 Reference Information Documents

1.5.1 TxDOT has provided and disclosed the Reference Information Documents to Maintenance Contractor. The Reference Information Documents are not mandatory or binding on Maintenance Contractor. Maintenance Contractor is not entitled to rely on the Reference Information Documents as presenting a design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the CMA Documents, Governmental Approvals or Law.

1.5.2 TxDOT shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any Maintenance Contractor-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents or Capital Maintenance Agreement.

1.5.3 TxDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the CMA Documents, Governmental Approvals or Laws. Maintenance Contractor shall have no right to additional compensation based on any incompleteness or inaccuracy in the Reference Information Documents.

1.6 Explanations; Omissions and Misdescriptions

Maintenance Contractor shall not take advantage of or benefit from any apparent Error in the CMA Documents. Should it appear that the Maintenance Services to be

performed or any matter relative thereto is not sufficiently detailed or explained in the CMA Documents, Maintenance Contractor shall request in writing such further written explanations from TxDOT as may be necessary and shall comply with the explanation provided. Maintenance Contractor shall promptly notify TxDOT in writing of all Errors which it may discover in the CMA Documents, and shall obtain specific instructions in writing from TxDOT regarding any such Error before proceeding with the Maintenance Services affected thereby. The fact that the CMA Documents omit or misdescribe any details of any Maintenance Services that are necessary to carry out the intent of the CMA Documents, or that are customarily performed, shall not relieve Maintenance Contractor from performing such omitted Maintenance Services (no matter how extensive) or misdescribed details of the Maintenance Services, and they shall be performed as if fully and correctly set forth and described in the CMA Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 10.

1.7 Computation of Periods

If the date to perform any act or give any notice specified in the CMA Documents (including the last date for performance or provision of notice "within" a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding day that is a Business Day. Notwithstanding the foregoing, requirements contained in the CMA Documents relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

1.8 Standard for Approvals

In all cases where approvals or consents are required to be provided by TxDOT or Maintenance Contractor hereunder, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified the decision shall not be subject to dispute resolution hereunder.

1.9 Professional Services Licensing Requirements

TxDOT does not intend to contract for, pay for, or receive any professional services which are in violation of any professional licensing or registration Laws, and by execution of this Capital Maintenance Agreement, Maintenance Contractor acknowledges that TxDOT has no such intent. It is the intent of the Parties that Maintenance Contractor is fully responsible for furnishing the professional services of the Project as provided in this Capital Maintenance Agreement through itself and/or subcontracts as or with licensed and/or registered professional service firm(s). Any references in the CMA Documents to Maintenance Contractor's responsibilities or obligations to "perform" the professional services portions of the Maintenance Services shall be deemed to mean that Maintenance Contractor shall "furnish" the professional services for the Project. The terms and provisions of this Section 1.9 shall control and supersede every other provision of all CMA Documents.

1.10 TxDOT Monetary Obligations

All TxDOT monetary obligations under the CMA Documents are subject to appropriation by the Texas Legislature. This Section 1.10 applies to all monetary obligations of TxDOT set forth in the CMA Documents, notwithstanding any contrary provisions of the CMA Documents. The CMA Documents do not create a State debt under the Texas Constitution.

SECTION 2. TXDOT'S OPTION RIGHTS; COMMENCEMENT OF CAPITAL MAINTENANCE AGREEMENT

2.1 TxDOT Option Rights

2.1.1 This Capital Maintenance Agreement gives TxDOT the right to exercise, in its sole and absolute discretion, up to three consecutive option periods described in Section 4, requiring Maintenance Contractor to provide Maintenance Services for the Project in accordance with the terms and conditions of the CMA Documents. TxDOT, in its sole and absolute discretion, may choose to exercise the option to maintain the Margaret McDermott Bike/Pedestrian Bridges as a component of the Maintained Elements in accordance with the terms and conditions of the CMA Documents (the "Margaret McDermott Bike/Pedestrian Bridges Option") for each option period.

2.1.2 TxDOT shall have no liability to Maintenance Contractor in the event that TXDOT elects, in its sole and absolute discretion, not to exercise any of the options under this Capital Maintenance Agreement.

2.2 Commencement of Capital Maintenance Agreement

2.2.1 No later than 180 days prior to the Initial Maintenance Term Commencement Date, TxDOT shall either: (a) issue Maintenance NTP1 to Maintenance Contractor; or (b) terminate this Capital Maintenance Agreement. Failure by TxDOT to issue Maintenance NTP1 by such date shall be deemed a termination under this Section 2.2.1.

2.2.2 TxDOT shall notify the Maintenance Contractor if it elects to exercise the Margaret McDermott Bike/Pedestrian Bridges Option for the Initial Maintenance Term within 180 days of Final Acceptance of Segment B to be constructed in accordance with the Design-Build Agreement.

2.2.3 If TxDOT elects (or is deemed to elect) to terminate this Capital Maintenance Agreement by failing to issue Maintenance NTP1, neither Party shall have any further rights or obligations hereunder, except for those obligations that expressly survive the expiration or termination hereof.

SECTION 3. SCOPE OF MAINTENANCE SERVICES

3.1 General Obligations

3.1.1 Maintenance Contractor shall furnish all Maintenance Services throughout the term of this Capital Maintenance Agreement, as further described herein. All costs associated with providing the Maintenance Services are included in the Maintenance Price set forth in Exhibit 4, as such may be adjusted in accordance with Section 10. Except for damage caused by a Maintenance Contractor-Related Entity, and subject to Section 10.1.1.2 below, Maintenance Contractor shall not be responsible for repair of damage to the Project caused by collision (motor vehicle, aircraft or railroad train), vandalism, or other destructive acts of third parties.

3.1.2 Maintenance Contractor shall provide all personnel, labor, materials, supplies, parts, equipment, public and employee safety devices, components, tools, utilities and other items and services required to undertake and complete the Maintenance Services, regardless of whether the Maintenance Services are considered to constitute ordinary, preventive or replacement maintenance. Maintenance Contractor shall bear the risk of loss, damage, theft and vandalism of such materials, supplies, parts, equipment, devices, components, tools, utilities and other items.

3.1.3 Maintenance Contractor shall furnish all plans and submittals required by the CMA Documents in a timely manner and in the form and with the content required thereby.

3.1.4 Maintenance Contractor shall perform the Maintenance Services in accordance with the CMA Documents, the Governmental Approvals, applicable Laws and Good Industry Practice, and shall cooperate and coordinate the Maintenance Services with TxDOT, Governmental Entities, Utility Owners and other third parties during performance of any Maintenance Services that will or may affect any of their respective facilities or rights.

3.1.5 Maintenance Contractor acknowledges and agrees that, although certain provisions in the CMA Documents include Performance Requirements, such Performance Requirements shall not otherwise limit Maintenance Contractor's obligation to perform the Maintenance Services in a safe, reasonable, and prudent manner, and, in doing so, Maintenance Contractor shall employ Good Industry Practice, and shall conduct its commercial affairs in a manner consistent with good faith and fair dealing.

3.1.6 Maintenance Contractor shall be responsible for obtaining any required permits and required consents from any other Persons in connection with the performance of Maintenance Services required under this Capital Maintenance Agreement.

3.1.7 Maintenance Contractor shall, at all times, schedule and direct its activities to provide an orderly progression of the Maintenance Services to achieve completion

within the specified time for completion, including furnishing such employees, materials, facilities and equipment and working such hours, including extra shifts, overtime operations, Sundays and holidays as may be necessary to achieve such goal, all at Maintenance Contractor's sole cost, except as otherwise specifically provided in Section 10.

3.1.8 Whenever Maintenance Contractor becomes aware of any Defect in a Maintained Element or of any maintenance activity that Maintenance Contractor considers should be performed but with regards to which Maintenance Contractor believes falls outside of its scope of responsibility for Maintenance Services, Maintenance Contractor shall immediately notify TxDOT of such Defect or maintenance activity.

3.2 Capital Asset Replacement Work

3.2.1 General Requirements

3.2.1.1 Maintenance Contractor shall perform Maintenance Services: (a) when required by Maintenance Contractor's approved Maintenance Management Plan and updates thereto as described in the CMA Documents; and (b) when a Performance Requirement is not met and the required level of performance cannot be achieved by means of routine or preventative maintenance.

3.2.1.2 Not later than 60 days after each anniversary of the Initial Maintenance Term Commencement Date, Maintenance Contractor shall deliver to TxDOT a written report of the Capital Asset Replacement Work performed in the immediately preceding year. The report shall describe: (a) by location, the Maintained Element, as listed in the Capital Asset Replacement Work Submittal, and any other Project component for which Capital Asset Replacement Work was performed; (b) the type of Capital Asset Replacement Work performed; (c) each specific item replaced; (d) any warranty information associated with any replacement item; (e) the dates of commencement and completion of such Capital Asset Replacement Work; and (f) such other information as is reasonably requested by TxDOT.

3.2.2 Capital Asset Replacement Work Submittal

3.2.2.1 As part of the Maintenance Management Plan required under Section 1900 of Exhibit 2, Maintenance Contractor shall prepare and submit, for TxDOT's review and approval, a Capital Asset Replacement Work Submittal. The Capital Asset Replacement Work Submittal shall meet the requirements set forth in Section 1900 of Exhibit 2.

3.2.2.2 Not later than 120 days before each anniversary of the Initial Maintenance Term Commencement Date thereafter, Maintenance Contractor shall prepare and submit, for TxDOT's review and approval, either: (a) a revised Capital Asset Replacement Work Submittal for the upcoming year or (b) the then-existing Capital Asset Replacement Work Submittal, accompanied by a written statement that Maintenance Contractor intends to continue in effect the then-existing Capital Asset

Replacement Work Submittal without revision for the upcoming year (in either case, referred to as the "updated Capital Assert Replacement Work Submittal"). Maintenance Contractor shall make revisions as reasonably indicated by experience and then-existing conditions respecting the Project, changes in technology, changes in Maintenance Contractor's planned means and methods of performing the Capital Asset Replacement Work, and other relevant factors. The updated Capital Asset Replacement Work Submittal shall show the revisions, if any, to the prior Capital Asset Replacement Work Submittal and include an explanation of reasons for revisions. If no revisions are proposed, Maintenance Contractor shall include an explanation for the lack of revisions.

3.2.2.3 TxDOT shall review the annual Capital Asset Replacement Work Submittal and meet with Maintenance Contractor within 30 Days after its submittal to discuss revisions and clarifications or to resolve any disagreements. Within 15 Days after such meeting, Maintenance Contractor shall resubmit the updated Capital Asset Replacement Work Submittal to TxDOT. TxDOT will either approve or disapprove the Capital Asset Replacement Work Submittal within 15 Days, with comments, objections, recommendations or disapprovals noted in writing. If TxDOT disapproves the Capital Asset Replacement Work Submittal, within ten days after receiving written notice of comments, objections, recommendations or disapprovals from TxDOT, Maintenance Contractor shall submit to TxDOT a revised initial or updated Capital Asset Replacement Work Submittal rectifying such matters and, for matters with which the Maintenance Contractor disagrees, a written notice setting forth those comments, objections, recommendations and disapprovals that Maintenance Contractor disputes, which notice shall give details of Maintenance Contractor's grounds for dispute. If Maintenance Contractor fails to give such notice within such time period, it shall be deemed to have accepted the comments, objections and recommendations and the initial or updated Capital Asset Replacement Work Submittal, as applicable, shall thereupon be deemed revised to incorporate the comments and recommendations and to rectify the objections or disapprovals. After timely delivery of any dispute notice by Maintenance Contractor, Maintenance Contractor and TxDOT shall endeavor in good faith to reach agreement as to the matters listed in the notice. If no agreement is reached as to any such matter within 30 days after Maintenance Contractor delivers its notice, either Party may refer the Dispute to the disputes resolution procedures applicable to this Capital Maintenance Agreement.

3.2.2.4 All portions of the initial or updated Capital Asset Replacement Work Submittal that have been agreed to by the Parties shall govern. Until resolution of any portion of the initial or updated Capital Asset Replacement Work Submittal that is in Dispute, the treatment of that portion in the immediately preceding approved Capital Asset Replacement Work Submittal shall remain in effect and govern.

3.3 Traffic Control and Operations

Maintenance Contractor shall perform the Maintenance Services in a manner that recognizes that the safety of the public, convenience of the traveling public and providing a safe work environment for all maintenance workers are of prime importance.

Maintenance Contractor shall perform its traffic control and operations in accordance with the CMA Documents, including this Section 3.3.

3.3.1 Traffic Management and Control Plans

3.3.1.1 Maintenance Contractor shall be responsible for the safety of traffic and the public associated with the performance of the Maintenance Services, and shall perform all Maintenance Services that affect traffic operations in accordance with Section 1800 of Exhibit 2.

3.3.1.2 Within 60 days after issuance by TxDOT of Maintenance NTP1 and periodically thereafter as required under the CMA Documents, Maintenance Contractor shall prepare and submit, for TxDOT's review and approval, a Traffic Management Plan. The Traffic Management Plan shall be prepared in accordance with and contain the information required under Section 1802 of Exhibit 2.

3.3.1.3 Within 30 days after TxDOT's approval of the Traffic Management Plan, Maintenance Contractor shall prepare and submit, for TxDOT's review, traffic control plans as described in Section 1803 of Exhibit 2.

3.3.2 Traffic Operation Restrictions

3.3.2.1 Maintenance Contractor shall keep the number of Lane Closures to an absolute minimum and shall keep each Lane Closure to the shortest time necessary for safe and efficient operations. The requirements for and restrictions on Lane Closures are set forth in Section 1800 of Exhibit 2 and Attachment 6 to Exhibit 2. If Maintenance Contractor violates such requirements and restrictions, Maintenance Contractor shall be subject to liquidated damages in accordance with Section 12.4 of this Capital Maintenance Agreement.

3.3.2.2 Should Emergencies occur during the Maintenance Contractor's performance of traffic management, including vehicle accidents and structural failures, Maintenance Contractor shall take all actions necessary to open the roadway as soon as possible and shall repair any damage to the Maintained Elements; provided, however, that Maintenance Contractor shall not be required to repair any damage caused by vehicle accidents to the Maintained Elements unless TxDOT issues a Change Order or Directive Letter therefor in accordance with Section 10. TxDOT has the authority to deny a Lane Closure in the case of an emergency, evacuation, a special event or any other public activities.

3.4 Requirements Applicable to Design and Construction Work

3.4.1 To the extent that Maintenance Contractor performs any design or construction work for Capital Asset Replacement Work, Unplanned Capital Maintenance, or Change Orders, Maintenance Contractor shall comply with the requirements and specifications for design and construction set forth in the Technical Provisions and in the applicable sections of the DBA, except as otherwise approved in advance in writing by TxDOT.

3.4.2 In connection with the performance by Maintenance Contractor of any Unplanned Capital Maintenance or Change Orders, Maintenance Contractor shall procure and maintain (a) the insurance deemed appropriate by TxDOT in its sole discretion (subject to Section 7.3.11) and (b) payment and performance bonds each in the full amount of the Unplanned Capital Maintenance or Change Order as determined by TxDOT in its sole discretion; provided, however, that subject to applicable Law, TxDOT may, in its sole discretion, lower the level of bonding required. In the event the insurance and payment and performance bonds are procured for such design and construction work, Maintenance Contractor shall be entitled to reimbursement (without profit or mark-up) in accordance with Section 7.8 for any actual payments made by Maintenance Contractor for the premiums, except to the extent that: (a) the design and construction work arises from the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract, or Governmental Approval by any Maintenance Contactor-Related Entity; or (b) the design and construction work arises from a failure to meet the Performance Requirements of this Capital Maintenance Agreement; or (c) the premiums result from the claim or performance history of any Maintenance Contractor-Related Entity.

3.5 Coordination

3.5.1 Coordination with TxDOT Maintenance Crews

3.5.1.1 Maintenance Contractor shall coordinate its activities and maintenance with the activities and maintenance undertaken by TxDOT's maintenance personnel and contractors that will be performing maintenance activities not within the scope of the Maintenance Services.

3.5.1.2 Except as otherwise provided in Section 10, Maintenance Contractor shall not be entitled to a Change Order arising out of the activities and maintenance undertaken by TxDOT's maintenance personnel and contractors.

3.5.2 Coordination with Third Parties

3.5.2.1 Maintenance Contractor shall fully cooperate with third parties, including TxDOT's separate contractors, performing work or activities at or adjacent to the Project, and shall schedule the Maintenance Services as reasonably necessary to accommodate the work or activities of such third parties.

3.5.2.2 Except as provided in Section 10, if Maintenance Contractor asserts that any third parties have hindered or interfered with the progress or performance of the Maintenance Services, Maintenance Contractor's sole remedy shall be to seek recourse against such third parties.

3.6 Transition Requirements

At the expiration of the Maintenance Term or any earlier termination of this Capital Maintenance Agreement, Maintenance Contractor shall ensure and certify that the Maintenance Elements meet the Asset Condition Score requirements. The

Maintenance Contractor shall develop a Maintenance Transition Plan as set forth in Section 3.6.1.

3.6.1 Maintenance Transition Plan

3.6.1.1 Submission and Approval

Maintenance Contractor, within 90 Days after issuance by TxDOT of Maintenance NTP1, shall submit to TxDOT, for TxDOT's review and approval, a Maintenance Transition Plan as described in Section 0208 of Exhibit 2.

3.6.1.2 Capital Asset Replacement Work under Audit Inspections

Maintenance Contractor shall diligently perform and complete all Capital Asset Replacement Work required to be performed and completed based on the required adjustments and changes to the Capital Asset Replacement Work Submittal resulting from the Audit Inspections. Maintenance Contractor shall complete all such Capital Asset Replacement Work:

(a) Prior to the expiration of the Maintenance Term, as extended by the issuance of Maintenance NTP2 or Maintenance NTP3, as applicable; or

(b) If the Capital Maintenance Agreement is terminated for any reason prior to the expiration of the Maintenance Term, within 90 days after the effective date of termination. If Maintenance Contractor, despite diligent efforts, is unable to complete such Capital Asset Replacement Work prior to such period or TxDOT elects, at its sole discretion, to perform such Capital Assert Replacement Work, then in lieu of Maintenance Contractor's completion of such Capital Asset Replacement Work, Maintenance Contractor shall reimburse TxDOT, within ten days of delivery of an invoice therefor, for TxDOT's Recoverable Costs of completing such Capital Asset Replacement Work. In lieu of reimbursement, TxDOT may elect, in its sole discretion, to deduct such amounts from any amounts payable to Maintenance Contractor under this Capital Maintenance Agreement.

3.7 Waste Disposal and Hazardous Materials

3.7.1 General Requirements

3.7.1.1 Maintenance Contractor shall manage, store, contain, transport, and dispose of, or cause the disposal of, all waste, residue, construction debris, materials, Hazardous Materials, Recognized Environmental Conditions, and supplies that are produced, used or generated as a result of the activities of any Maintenance Contractor-Related Entity in accordance with all applicable Laws and Governmental Approvals. The foregoing obligations also apply to Hazardous Materials

and Releases of Hazardous Materials arising out of, related to, or associated with the actions, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any Maintenance Contractor-Related Entity. Maintenance Contractor's personnel handling Hazardous Materials shall be appropriately trained in Hazardous Materials handling and disposal. Maintenance Contractor shall provide evidence of such personnel's training to TxDOT.

3.7.1.2 For any Hazardous Materials which are Maintenance Contractor's responsibility under this Capital Maintenance Agreement, Maintenance Contractor shall be solely responsible for all costs of Hazardous Materials Management and for restoring the real property affected thereby to its condition prior to the Release of Hazardous Materials, including, to the extent required, any grading and reinforcement necessary to restore the weight-bearing and functional capacity of the Project. If, within a reasonable time (as determined by TxDOT) after a Release of Hazardous Materials for which Maintenance Contractor is responsible, Maintenance Contractor has not taken action under Section 3.7.1.1, TxDOT may undertake such action itself. In such event, Maintenance Contractor shall reimburse TxDOT for TxDOT's Recoverable Costs it incurs as a result of Maintenance Contractor's failure, and shall do so within ten Business Days of receipt of an invoice therefor. In lieu of reimbursement, TxDOT may elect, in its sole discretion, to deduct such amounts from any amounts payable to Maintenance Contractor under this Capital Maintenance Agreement.

3.7.2 Procedures for Hazardous Materials Management

If during the course of the Maintenance Services, Maintenance Contractor encounters Hazardous Materials or Recognized Environmental Conditions, Maintenance Contractor shall: (a) promptly notify TxDOT in writing and advise TxDOT of any obligation to notify Governmental Entities under applicable Law; and (b) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable, Maintenance Contractor shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by TxDOT. Maintenance Contractor's plan for Hazardous Materials Management shall be subject to the prior written approval of TxDOT. Wherever feasible and consistent with the CMA Documents, applicable Law and Good Industry Practice, contaminated soil and groundwater shall not be disposed off-site.

3.7.2.1 Except where Maintenance Contractor is required to take immediate action under the CMA Documents or applicable Law, Maintenance Contractor shall afford TxDOT the opportunity to inspect sites containing Hazardous Materials or Recognized Environmental Conditions before any action is taken which would inhibit TxDOT's ability to ascertain the nature and extent of the contamination.

3.7.2.2 Subject to the limitations and exceptions set forth in this Section 3.7 and Section 10 Maintenance Contractor shall be entitled to a Change Order

as set forth in Section 10.8.2 with respect to costs and/or delays directly attributable to the discovery of Hazardous Materials within the Project ROW.

3.7.3 Hazardous Material Generator

3.7.3.1 As between Maintenance Contractor and TxDOT, TxDOT shall be considered the generator of and assume generator responsibility for Hazardous Materials other than Maintenance Contractor Releases of Hazardous Materials; provided, however, that the foregoing shall not preclude or limit any rights or remedies that TxDOT may have against third parties, including prior owners, lessees, licensees and occupants of the Project ROW.

3.7.3.2 As between Maintenance Contractor and TxDOT, Maintenance Contractor shall be considered the generator of and assume generator responsibility only for Maintenance Contractor Releases of Hazardous Materials.

3.7.4 Hazardous Material Generator Liability of Maintenance Contractor

Hazardous Materials Management costs, including assessment, containment, and remediation expenses, on, arising from or related to Hazardous Materials for which Maintenance Contractor is deemed the generator under Section 3.7.3.2 shall not be compensable to Maintenance Contractor or entitle Maintenance Contractor to schedule relief.

3.7.5 Hazardous Materials Brought to Project ROW by Maintenance Contractor

Maintenance Contractor shall be solely responsible for: (a) compliance with all Laws and Governmental Approvals applicable to Hazardous Materials brought onto the Site by any Maintenance Contractor-Related Entity; (b) use, containment, storage, management, transport and disposal of such Hazardous Materials in accordance with the CMA Documents; and (c) payment of all Losses associated with, arising out of or related to such Hazardous Materials.

3.7.6 Governmental Approvals Relating to Hazardous Materials Management

Maintenance Contractor shall be solely responsible for obtaining all Governmental Approvals relating to Hazardous Materials Management including federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials. Maintenance Contractor shall be solely responsible for compliance with such Governmental Approvals and applicable Laws, including those governing the preparation of waste profiles, waste manifests and bills of lading.

3.8 Governmental Approvals

3.8.1 Maintenance Contractor shall identify and obtain all Governmental Approvals required in connection with the Maintenance Services, at its sole cost and expense. Except to the extent arising from a Force Majeure Event or TxDOT-Directed Change, Maintenance Contractor shall be responsible for any and all costs, including

any liability, penalties, expenses, damages or delays resulting from any suspension, termination, interruption, denial or non-renewal of, or failure to obtain any Governmental Approval.

3.8.2 If any Governmental Approvals required to be obtained by Maintenance Contractor must formally be issued in the name of TxDOT, TxDOT shall cooperate with Maintenance Contractor to obtain such Governmental Approvals as may be reasonably requested by Maintenance Contractor. Maintenance Contractor shall be responsible for preparing all documentation necessary for any application for a Governmental Approval.

3.9 Software Compatibility

Unless otherwise specifically stated in the CMA Documents, Maintenance Contractor is responsible for assuring that all software it uses for any aspect of the Project is compatible with software used by TxDOT. Prior to using any software or version of software not then in use by TxDOT, Maintenance Contractor must obtain written approval from TxDOT. In addition, Maintenance Contractor shall provide to TxDOT staff, at Maintenance Contractor's cost, working electronic copies of the software, any necessary licenses for TxDOT's use of the software, and any training reasonably necessary to assure that TxDOT is able to implement compatible usage of all software utilized by Maintenance Contractor.

SECTION 4. MAINTENANCE TERM

The term of this Capital Maintenance Agreement includes an initial optional term and two additional options to extend the initial term. The maximum term of this Capital Maintenance Agreement, including both extensions thereof, is 15 years.

4.1 Initial Maintenance Term

The Initial Maintenance Term shall commence one year after Final Acceptance of Segment A to be constructed in accordance with the DBA (the "Initial Maintenance Term Commencement Date"), and shall continue for a period of five years unless terminated earlier in accordance with the terms of this Capital Maintenance Agreement.

4.2 Second Maintenance Term

4.2.1 TxDOT, in its sole and absolute discretion, shall have the option to extend the term of this Capital Maintenance Agreement for an additional five years (the "Second Maintenance Term") and may also choose to exercise the Margaret McDermott Bike/Pedestrian Bridges Option for this additional five years. The Second Maintenance Term shall commence as of the expiration of the Initial Maintenance Term and shall continue for a period of five years, unless terminated earlier in accordance with the terms hereof.

4.2.2 If TxDOT elects to exercise its option rights for a Second Maintenance Term, TxDOT shall issue Maintenance NTP2 on or before 90 Days prior to the scheduled expiration of the Initial Maintenance Term. Upon issuance of Maintenance NTP2, TxDOT shall notify the Maintenance Contractor if it elects to exercise the Margaret McDermott Bike/Pedestrian Bridges Option to include the maintenance of the Margaret McDermott Bike/Pedestrian Bridges in the Maintained Elements for the Second Maintenance Term. TxDOT shall not be entitled to exercise the Margaret McDermott Bike/Pedestrian Bridges Option for the Second Maintenance Term if it did not exercise the Margaret McDermott Bike/Pedestrian Bridges Option with respect to the Initial Maintenance Term. TxDOT shall have no liability to Maintenance Contractor for a failure to issue Maintenance NTP2.

4.3 Third Maintenance Term

4.3.1 If TxDOT issues Maintenance NTP2, TxDOT, in its sole and absolute discretion, shall have the option to extend the term of this Capital Maintenance Agreement for an additional term (the "Third Maintenance Term") and may also choose to exercise the Margaret McDermott Bike/Pedestrian Bridges Option for this additional term. The Third Maintenance Term shall commence as of the expiration of the Second Maintenance Term and shall continue for a period of five years, unless terminated earlier in accordance with the terms hereof.

4.3.2 If TxDOT elects to exercise its option right for a Third Maintenance Term, TxDOT shall issue Maintenance NTP3 on or before 90 Days prior to the expiration of

the Second Maintenance Term. Upon issuance of Maintenance NTP3, TxDOT shall notify the Maintenance Contractor if it elects to exercise the Margaret McDermott Bike/Pedestrian Bridges Option to include the maintenance of the Margaret McDermott Bike/Pedestrian Bridges in the Maintained Elements for the Third Maintenance Term. TxDOT shall not be entitled to exercise the extension option for the Third Maintenance Term if it did not issue Maintenance NTP2, nor shall TxDOT be entitled to exercise the Margaret McDermott Bike/Pedestrian Bridges Option for the Third Maintenance Term if it did not exercise the Margaret McDermott Bike/Pedestrian Bridges Option with respect to the Second Maintenance Term. TxDOT shall have no liability to Maintenance Contractor for a failure to issue Maintenance NTP3.

SECTION 5. MANAGEMENT AND ADMINISTRATION

5.1 TxDOT Responsibility for Policy Decisions

All policy decisions regarding use, operation and maintenance of the Project shall rest solely with TxDOT.

5.2 Use of the Project

Maintenance Contractor shall not use the Project, the Project ROW or any of the premises provided by TxDOT for any purpose other than the performance of Maintenance Services. At the discretion of TxDOT, Maintenance Contractor may use the ROW for the temporary state/store of equipment for a reasonable period while maintenance activity is being conducted. Maintenance Contractor shall not be entitled to, and shall not purport to, grant the use of the Project or the Project ROW to anyone without the written approval of TxDOT. Maintenance Contractor shall be responsible for paying all tolls for its personnel, Subcontractors and Suppliers, unless directed otherwise in writing by TxDOT. Maintenance Contractor shall have no interest, right or title in or to: (a) any toll or other revenues arising out of the use of the Project; (b) the Project; or (c) the Project ROW.

5.3 Document Management Requirements

Maintenance Contractor shall establish and use a document and electronic communications management system in accordance with Section 0203 of Exhibit 2.

5.4 Key Maintenance Personnel; Qualifications of Employees

5.4.1 On or before 60 Days after TxDOT issues Maintenance NTP1, Maintenance NTP2 and Maintenance NTP3, as applicable, Maintenance Contractor shall update and obtain TxDOT's written approval of any changes to Key Maintenance Personnel as presented in the Proposal.

5.4.2 During the Maintenance Term, Maintenance Contractor shall promptly notify TxDOT in writing of any proposed changes in any Key Maintenance Personnel. Maintenance Contractor shall not change, or permit any change in, any Key Maintenance Personnel without the prior written consent of TxDOT. Before Maintenance Contractor replaces any Key Maintenance Personnel, TxDOT shall be given the opportunity to interview and approve the replacement candidate(s). Maintenance Contractor's request to replace any Key Maintenance Personnel shall include a proposed replacement, with equivalent or better qualifications, who shall be available within 30 Days after TxDOT's approval.

5.4.3 All individuals performing Maintenance Services shall have the skill and experience and any licenses or certifications required to perform the Maintenance Services assigned to them. If TxDOT determines, in its sole discretion, that any Person employed by Maintenance Contractor or any Subcontractor is not performing the

Maintenance Services in a proper and skillful manner or is detrimental to the progress of the Maintenance Services and/or the Project, then, at the written request of TxDOT, Maintenance Contractor shall remove such Person from the Project and such Person shall not be reemployed on the Project without the prior written approval of TxDOT.

5.4.4 Maintenance Contractor shall designate in writing a field representative who shall have onsite field and office authority to represent and act for Maintenance Contractor. That representative shall be present at the job site at all times while Maintenance Services are actually in progress. Maintenance Contractor shall provide phone, e-mail addresses and pager numbers for all Key Maintenance Personnel. TxDOT requires the ability to contact the Key Maintenance Personnel 24 hours per Day, seven Days per week.

5.4.5 Maintenance Contractor acknowledges and agrees that the award of this Capital Maintenance Agreement by TxDOT to Maintenance Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and Maintenance Contractor's commitment that such individuals would be available to undertake and perform the Maintenance Services. Maintenance Contractor represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Maintenance Services. Unless otherwise agreed to by TxDOT in writing, individuals filling Key Maintenance Personnel roles shall be available for the Maintenance Services and shall maintain active involvement in the prosecution and performance of the Maintenance Services in accordance with the approved Maintenance Management Plan.

5.4.6 If any of the approved individuals filling the Key Maintenance Personnel roles are not available for the Maintenance Services and do not undertake or perform the Maintenance Services because such individual(s) has/have been replaced after approval thereof pursuant to Section 5.4.1, as appropriate, Maintenance Contractor acknowledges that TxDOT, the Maintenance Services and the Project will suffer significant and substantial Losses and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT in such event. Therefore, if such individuals filling the Key Maintenance Personnel roles are not available or not actively involved in the prosecution and performance of the Maintenance Services, as determined by TxDOT in its sole discretion, regardless of whether such individual has been replaced by an individual approved by TxDOT, Maintenance Contractor agrees to pay TxDOT a liquidated amount as follows as deemed compensation to TxDOT for such Losses:

KEY MAINTENANCE PERSONNEL	**LIQUIDATED AMOUNT**
Maintenance Manager	$40,000
Maintenance QC Manager	$40,000

5.4.7 In addition, if an individual filling one or more Key Maintenance Personnel roles is not available for the Maintenance Services and does not maintain active

involvement in the prosecution and performance of the Maintenance Services and such individual has not been replaced by an individual approved by TxDOT, Maintenance Contractor acknowledges that TxDOT, the Maintenance Services and the Project will suffer significant and substantial additional Losses due to the unavailability of an approved individual to fill a Key Maintenance Personnel role and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT in such event. Therefore, for each day that a Key Maintenance Personnel role is not filled by an approved individual, Maintenance Contractor agrees to pay TxDOT a liquidated amount as follows, for each position not filled, as deemed compensation to TxDOT for such Losses:

KEY MAINTENANCE PERSONNEL	**LIQUIDATED AMOUNT PER DAY**
Maintenance Manager	$4,000
Maintenance QC Manager	$4,000

5.4.8 Maintenance Contractor understands and agrees that any damages payable in accordance with Sections 5.4.6 and 5.4.7 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. Maintenance Contactor shall pay to TxDOT within ten (10) Business Days after Maintenance Contractor's receipt of an invoice therefor from TxDOT. In lieu of reimbursement, TxDOT, in its sole discretion, shall have the right to deduct such liquidated damages from any amounts owed by TxDOT to Maintenance Contractor or to collect such liquidated damages from any bond or Guaranty furnished under this Capital Maintenance Agreement. Notwithstanding the foregoing, Maintenance Contractor shall not be liable for liquidated damages under Sections 5.4.6 and 5.4.7 if: (a) Maintenance Contractor removes or replaces such personnel at the direction of TxDOT; (b) such individual is unavailable due to death, retirement, injury or no longer being employed by the applicable Maintenance Contractor-Related Entity (provided that moving to an affiliated company shall not be considered grounds for avoiding liquidated damages); or (c) Maintenance Contractor identifies the replacement for any Key Maintenance Personnel within 60 Days after issuance of Maintenance NTP1, Maintenance NTP2 or Maintenance NTP3, as applicable; provided, however, in each such case, Maintenance Contractor shall promptly propose to TxDOT a replacement for such personnel, approval of which individual shall be subject to TxDOT's written consent. Following any TxDOT-approved substitution or replacement of a Key Maintenance Personnel pursuant to the terms hereof, the new individual shall be considered a Key Maintenance Personnel for all purposes under this Capital Maintenance Agreement, including the provisions of Section 5.4.6 relative to liquidated damages.

5.4.9 Maintenance Contractor acknowledges and agrees that the Key Maintenance Personnel positions are of critical importance to TxDOT and the Project. In addition to the approval rights of TxDOT set forth in this Section 5.4 and the liquidated damages set forth in Sections 5.4.6 and 5.4.7, if an individual in a Key

Maintenance Personnel position leaves that position for a reason other than as set forth in clauses (a)-(c) of Section 5.4.8, TxDOT shall have the right to terminate this Capital Maintenance Agreement for default under Section 12, unless Maintenance Contractor provides TxDOT a replacement acceptable to TxDOT within 30 Days after the earlier of: (a) the date on which such individual has left his/her position; or (b) Maintenance Contractor or TxDOT becomes aware that such individual intends to leave his/her position.

5.5 Maintenance Management Plan

5.5.1 On or before 60 days after the date of issuance of Maintenance NTP1, Maintenance Contractor shall prepare and submit, for TxDOT's review and approval, a Maintenance Management Plan. The Maintenance Management Plan shall meet the requirements set forth in Section 1903 of Exhibit 2, and comply with the Capital Maintenance Agreement Documents, applicable Government Approvals, and applicable Law. Following the delivery of the initial Maintenance Management Plan, Maintenance Contractor shall submit to TxDOT, for TxDOT's review and approval, a Maintenance Management Plan update meeting the requirements of Section 1903 of Exhibit 2 by each anniversary of the Initial Maintenance Term Commencement Date.

5.5.2 The Maintenance Management Plan and each update shall show the timing of and methodology for performing the various Maintenance Services. The duration and number of working days of any Maintenance Services set forth in the Maintenance Management Plan that require Lane Closures shall be subject to the written approval of TxDOT.

5.5.3 TxDOT shall review the Maintenance Management Plan and each update and shall meet with Maintenance Contractor within 30 Days after its submittal to discuss revisions and clarifications or to resolve any disagreements. Within 15 Days after such meeting, Maintenance Contractor shall resubmit the Maintenance Management Plan to TxDOT. TxDOT will either approve or disapprove the Maintenance Management Plan within 15 Days, with comments, objections, recommendations or disapprovals noted in writing. If TxDOT disapproves the Maintenance Management Plan, within ten days after receiving written notice of comments, objections, recommendations or disapprovals from TxDOT, Maintenance Contractor shall submit to TxDOT a revised initial or updated Maintenance Management Plan rectifying such matters and, for matters Maintenance Contractor disagrees with, a written notice setting forth those comments, objections, recommendations and disapprovals that Maintenance Contractor disputes, which notice shall give details of Maintenance Contractor's grounds for dispute. If Maintenance Contractor fails to give such notice within such time period, it shall be deemed to have accepted the comments, objections and recommendations and the initial or updated Maintenance Management Plan, as applicable, shall thereupon be deemed revised to incorporate the comments and recommendations and to rectify the objections or disapprovals. After timely delivery of any such notice, Maintenance Contractor and TxDOT shall endeavor in good faith to reach agreement as to the matters listed in the notice. If no agreement is reached as to any such matter within 30 days after

Maintenance Contractor delivers its notice, either Party may refer the Dispute to the disputes resolution procedures applicable to this Capital Maintenance Agreement.

5.5.4 All portions of the initial or updated Maintenance Management Plan that have been agreed to by the Parties shall govern. Until resolution of any portion of the initial or updated Maintenance Management Plan that is in Dispute, the treatment of that portion in the immediately preceding approved Maintenance Management Plan shall remain in effect and govern.

5.6 Maintenance Services Quality Control Plan

5.6.1 On or before 60 Days after issuance of Maintenance NTP1 by TxDOT, Maintenance Contractor shall prepare and submit a Maintenance Services quality control plan ("Maintenance Services QCP") meeting the requirements of this Section 5.6. The Maintenance Services QCP is intended to: (a) place the responsibility for the quality of all design, construction, maintenance and repair associated with the Maintenance Services on Maintenance Contractor; and (b) allow TxDOT to oversee the Maintenance Services.

5.6.2 Subject to revision to address the Maintenance Services and the specific design and construction work that will be undertaken in connection therewith, the Maintenance Services QCP must be consistent with the design and construction quality control/quality assurance requirements set forth in Section 0204 of Exhibit 2 and apply Good Industry Practice.

5.6.3 TxDOT shall review the Maintenance Services QCP and meet with Maintenance Contractor within 30 Days after its submittal to discuss revisions and clarifications or to attempt to resolve any disagreements. Within 15 Days after such meeting, Maintenance Contractor shall resubmit the final Maintenance Services QCP to TxDOT. TxDOT will either approve or disapprove the Maintenance Services QCP within 15 Days, with objections or corrections noted in writing. If TxDOT disapproves the Maintenance Services QCP, Maintenance Contractor shall resubmit the Maintenance Services QCP within ten Days to the satisfaction of TxDOT in order to resolve TxDOT's issues and concerns. The foregoing process shall continue until TxDOT has approved the Maintenance Services QCP.

5.6.4 The Maintenance Contractor shall have a quality control manager ("Maintenance QC Manager") who is responsible for independently overseeing and performing quality control for the Maintenance Services in accordance with the Maintenance Services QCP. The Maintenance Services QCP shall demonstrate the Maintenance QC Manager's functional independence from the Maintenance Contractor work forces. The Maintenance QC Manager is considered Key Maintenance Personnel.

5.6.5 The Maintenance QC Manager shall submit an annual report to TxDOT by each anniversary of the Initial Maintenance Term Commencement Date. This annual report shall include the following elements:

(a) An assessment of the actual Maintenance Services achievements versus the planned goals established in the Maintenance Management Plan, as well as corrective actions and measures to be taken in the ensuing year to ensure that any shortcomings are corrected; and

(b) An assessment of compliance with the various traffic control requirements and limitations contained in Section 3.3, above, and the traffic control plans developed in accordance with Section 1803 of Exhibit 2, as well as any corrective measures taken to correct any breach or violation of such requirements and limitations and any corrective measures necessary to prevent any future breach or violation of such requirements and limitations.

5.7 Inspection and Testing

5.7.1 Maintenance Contractor Inspection and Testing

Maintenance Contractor shall perform the inspection, sampling, testing, quality control and quality assurance necessary for Maintenance Contractor to comply with its obligations under the CMA Documents.

5.7.2 Oversight, Inspection and Owner Verification Testing by TxDOT and Others

All materials and each part or detail of the Maintenance Services shall also be subject to oversight, inspection and owner verification testing by TxDOT and other Persons designated by TxDOT. At all points in performance of the Maintenance Services at which specific inspections and/or approvals by TxDOT are required by the CMA Documents, Maintenance Contractor shall not proceed beyond that point until TxDOT has made such inspection or approval or waived its right in writing to inspect or approve. Maintenance Contractor hereby consents to such oversight, inspection and owner verification testing. Upon request from TxDOT, Maintenance Contractor shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Project and all parts of the Maintenance Services.

5.7.3 Obligation to Uncover Finished Construction Work

Maintenance Contractor shall inform TxDOT in writing of any construction work to be performed under this Capital Maintenance Agreement that is to be covered, to allow adequate opportunity to TxDOT to inspect and test such work. Maintenance Contractor shall remove or uncover such portions of the finished work as directed by TxDOT. After examination by TxDOT and any other Persons designated by TxDOT, Maintenance Contractor shall restore the work to the standard required by the CMA Documents. If the work exposed or examined is not in conformance with the requirements of the CMA Documents, then uncovering, removing and restoring of such work and any delay to occasioned thereby shall be at Maintenance Contractor's cost. Furthermore, any construction work done or materials used without adequate notice to and opportunity for

prior inspection by TxDOT or without inspection in accordance with CMA Documents may be ordered uncovered, removed or restored at Maintenance Contractor's cost, even if such work proves acceptable and conforming after uncovering. Except with respect to the construction work done or materials used without providing TxDOT adequate notice as described in the foregoing sentence, if the work exposed or examined under this Section 5.7.3 is in conformance with the requirements of the CMA Documents, Maintenance Contractor shall be entitled to recover the reasonable and documented cost of such efforts.

5.8 Effect of Oversight, Spot Checks, Audits, Tests, Acceptance and Approvals

5.8.1 Oversight and Acceptance

The oversight, spot checks, inspections, verifications, audits, tests, reviews, acceptances and approvals conducted by TxDOT and other Persons do not constitute acceptance of Nonconforming Work (except in limited circumstances as expressly provided in Section 5.9.2) or waiver of any warranty or legal or equitable right with respect thereto. TxDOT may request remedies for Nonconforming Work and/or identify additional Maintenance Services, which must be done to bring the Maintenance Services into compliance with the requirements of the CMA Documents at any time, whether or not previous oversight, spot checks, inspections, verifications, audits, tests, reviews, acceptances or approvals were conducted or waived by TxDOT or any such Persons.

5.8.2 No Estoppel

Maintenance Contractor shall not be relieved of its obligations to perform the Maintenance Services in accordance with the CMA Documents, or any of its Warranty or indemnity obligations, as the result of oversight, spot checks, audits, reviews, tests or inspections performed by any Persons, approvals or acceptances made by any Persons, or any failure of any Person to take such action. TxDOT shall not be precluded or estopped, by any measurement, estimate or certificate made at any time, or by making any payment, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the Maintenance Services performed and materials furnished by Maintenance Contractor, or from showing that the Maintenance Services do not conform in fact to the requirements of the CMA Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, TxDOT shall not be precluded or estopped from recovering from Maintenance Contractor and its Guarantor(s) or Surety(ies) such damages as TxDOT may sustain by reason of Maintenance Contractor's failure to comply with the terms of the CMA Documents.

5.9 Nonconforming Work

5.9.1 Correction of Nonconforming Work

Subject to Section 5.9.2, Nonconforming Work shall be corrected so as to conform to the requirements of the CMA Documents, at Maintenance Contractor's cost.

The fact that TxDOT may not have discovered the Nonconforming Work shall not relieve the Maintenance Contractor of its responsibilities to correct such Nonconforming Work. If Maintenance Contractor fails to correct any Nonconforming Work within the period set forth in Attachment 1 to Exhibit 2, then TxDOT may cause the Nonconforming Work to be corrected. Maintenance Contractor shall reimburse TxDOT, within ten days of delivery of an invoice, for TxDOT's Recoverable Costs of remedying or removing and replacing such Nonconforming Work.

5.9.2 Agreement to allow Nonconforming Work to remain uncorrected

If TxDOT agrees to allow any Nonconforming Work to remain uncorrected, TxDOT shall be entitled to reimbursement of a portion of the Maintenance Price in an amount equal to the greatest of: (a) the amount deemed appropriate by TxDOT to provide compensation for known impacts to all affected Persons (including TxDOT) such as future maintenance and/or other costs relating to the Nonconforming Work, (b) the amount of the Maintenance Price allocated to such Maintenance Services, (c) 100% of Maintenance Contractor's cost savings associated with its failure to perform the Maintenance Services in accordance with the requirements of the CMA Documents or (d) a percentage, to be determined in TxDOT's sole discretion of the cost to correct such Nonconforming Work. Such reimbursement shall be payable to TxDOT within ten Days after Maintenance Contractor's receipt of an invoice therefor. Alternatively, TxDOT, in its sole discretion, may deduct the amount of such costs and expenses from any sums owed by TxDOT to Maintenance Contractor pursuant to this Capital Maintenance Agreement. Maintenance Contractor acknowledges and agrees that TxDOT shall have sole discretion regarding the correction or non-correction of Nonconforming Work and shall have sole discretion with regard to the amount payable in connection therewith. Payment, reimbursement or deduction of the amounts owing to TxDOT under this Section 5.9.2 shall be a condition precedent to allow applicable Nonconforming Work to remain uncorrected. Where such Nonconforming Work is allowed to remain uncorrected in accordance with this Section 5.9.2 and such Nonconforming Work requires that a Performance Requirement different to that set forth in Attachment 1 to Exhibit 2 is necessary, TxDOT shall establish such different Performance Requirement for such Nonconforming Work.

SECTION 6. CONTRACTING AND LABOR PRACTICES

6.1 DBE Requirements

6.1.1 Maintenance Contractor shall comply with the TxDOT Disadvantaged Business Enterprise (DBE) program in effect as of the date on which Maintenance NTP1 is issued by TxDOT, including undertaking good faith efforts to encourage DBE participation in the Maintenance Services and maintaining and submitting documentation as required by the TxDOT DBE program. Maintenance Contractor shall submit the documentation required under TxDOT's DBE program within 90 days following issuance of the Maintenance NTP1. The purpose of the DBE Program is to ensure that DBEs and HUBs have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal or State funds. In the event of any conflict between 49 CFR Part 26 and TxDOT DBE Rules, the former shall prevail.

6.1.2 In the event of any change in the DBE program after the date of issuance of Maintenance NTP1 that would materially impact Maintenance Contractor's cost of compliance, as demonstrated by Maintenance Contractor to TxDOT's reasonable satisfaction, TxDOT shall either: (a) adjust the Maintenance Price to reflect the cost increase demonstrated by the Maintenance Contractor as a result of the change in the DBE program; or (b) require compliance with the TxDOT DBE program requirements in effect as of the Proposal Due Date instead of the DBE program in effect on the date of issuance of the Maintenance NTP1.

6.2 Non-Discrimination; Equal Employment Opportunity

6.2.1 Maintenance Contractor shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Maintenance Services under the CMA Documents. Maintenance Contractor shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Maintenance Contractor to carry out these requirements is a material breach of this Capital Maintenance Agreement, which may result in the termination of this Capital Maintenance Agreement or such other remedy as TxDOT deems appropriate.

6.2.2 Maintenance Contractor shall include the terms and conditions of Section 6.2.1 in every Subcontract, and shall require that such terms and conditions be included in all Subcontracts at all lower tiers, so that such provisions will be binding upon each Subcontractor.

6.2.3 Maintenance Contractor confirms for itself and all Subcontractors that Maintenance Contractor and each Subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that Maintenance Contractor and each Subcontractor maintains no employee facilities segregated on the basis of race, color, religion or national origin. Maintenance Contractor shall comply with all applicable Laws

relating to equal employment opportunity and nondiscrimination, and shall require its Subcontractors to comply with such Laws.

6.3 Subcontracts

6.3.1 Each instrument evidencing any agreement of Maintenance Contractor with any Subcontractor shall provide that, pursuant to terms in form and substance satisfactory to TxDOT: (a) the rights of Maintenance Contractor under such instrument are assigned to TxDOT contingent only upon written notice from TxDOT or its successor or assign following default by Maintenance Contractor or termination or expiration of this Capital Maintenance Agreement, and (b) all warranties (express and implied) of such Subcontractor shall inure to the benefit of TxDOT.

6.3.2 All Subcontractors must be approved by TxDOT in writing. Maintenance Contractor shall provide TxDOT with a list of all Subcontractors from time to time upon request, shall allow TxDOT access to all Subcontracts and records regarding Subcontracts and shall deliver to TxDOT, within 10 Days after execution, copies of all Major Subcontracts and, within 10 Days after receipt of a request from TxDOT, copies of all other Subcontracts as may be requested.

6.3.3 The appointment of Subcontractors by Maintenance Contractor will not relieve Maintenance Contractor of its responsibility hereunder or for the quality of the Maintenance Services or materials provided by it. Maintenance Contractor will at all times be held fully responsible to TxDOT for the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by its Subcontractors and persons employed by them and no Subcontract entered into by Maintenance Contractor will impose any obligation or liability upon TxDOT to any such Subcontractor or any of its employees. Nothing in this Capital Maintenance Agreement will create any contractual relationship between the TxDOT and any Subcontractor of Maintenance Contractor.

6.3.4 Each Subcontract shall:

(a) Set forth a standard of professional responsibility or a standard for commercial practice equal to prudent industry standards for work of similar scope and scale and shall set forth effective procedures for claims and change orders.

(b) Require the Subcontractor to carry out its scope of work in accordance with this Capital Maintenance Agreement, the Governmental Approvals and applicable Law, including the applicable requirements of the TxDOT DBE program.

(c) Set forth warranties, guaranties and liability provisions of the contracting party in accordance with good commercial practice for work of similar scope and scale.

(d) Be fully assignable without cost or modification to TxDOT, such assignability to include the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility and include express requirements that: (i) it will maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) permit audit thereof by Maintenance Contractor, and provide progress reports to Maintenance Contractor appropriate for the type of work it is performing sufficient to enable Maintenance Contractor to provide the reports it is required to furnish TxDOT under this Capital Maintenance Agreement; and (iii) allow TxDOT to assume the benefit of Maintenance Contractor's rights with liability only for those remaining obligations of Maintenance Contractor accruing after the date of assumption by TxDOT.

(e) Not be assignable by the Subcontractor without Maintenance Contractor's prior written consent.

(f) With respect to any Subcontract which, when aggregated with all Subcontracts between Maintenance Contractor and such Subcontractor for the same year, is in excess of $100,000: (i) be terminable by the Subcontractor only for cause; and (ii) include an indemnity from the Subcontractor in favor of Maintenance Contractor and the Indemnified Parties against any and all Losses arising out of, related to or associated with, the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by the Subcontractor or any of its officers, employees, agents or representatives.

(g) Expressly require the Subcontractor to participate in meetings between Maintenance Contractor and TxDOT, upon TxDOT's request, concerning matters pertaining to such Subcontract or its work, provided that all direction to such Subcontractor shall be provided by Maintenance Contractor, and provided further that nothing in this clause (g) shall limit the authority of TxDOT to give such direction or take such action which, in its opinion, is necessary to remove an immediate and present threat to the safety of life or property.

(h) Expressly provide that all Liens, claims and charges of the Subcontractor and its subcontractors, suppliers or other vendors at any time shall not attach to any interest of TxDOT in the Project or the Site.

(i) Be consistent in all other respects with the terms and conditions of this Capital Maintenance Agreement to the extent such terms and conditions are applicable to the scope of work of such

Subcontractors, including Section 14.7.1, and include all provisions required by this Capital Maintenance Agreement.

6.3.5 Maintenance Contractor shall not amend any Subcontract with respect to any of the foregoing matters without the prior written consent of TxDOT.

6.3.6 Maintenance Contractor shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

6.3.7 Maintenance Contractor shall include a provision in each Subcontract requiring the Subcontractor to maintain all licenses required by applicable Laws.

6.3.8 All Subcontracts with Affiliates shall be arm's-length, and on terms no less favorable to Maintenance Contractor than those offered to non-affiliates of the Subcontractor.

6.4 Job Training and Small Business Opportunity Plan

Maintenance Contractor's "Job Training and Small Business Opportunity Plan" applicable to the Maintenance Services is set forth in Exhibit 5. The purpose of the Job Training and Small Business Opportunity Plan is to ensure that inexperienced and untrained workers have a reasonable opportunity to participate in the performance of the Maintenance Services through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Maintenance Contractor shall perform and comply with all requirements set forth in of the Job Training and Small Business Opportunity Plan.

Maintenance Contractor shall include provisions to effectuate the Job Training and Small Business Opportunity Plan in every Subcontract to which it is a party (including purchase orders and task orders for Maintenance Services), and shall require that they be included in all Subcontracts at lower tiers (including purchase orders and task orders for Maintenance Services), so that such provisions will be binding upon each Subcontractor.

6.5 State Use Program

Maintenance Contractor shall comply with the provisions of Chapter 122 of the Texas Human Resources Code that are applicable to the State or TxDOT. The use of Community Rehabilitation Programs (CRP's) is outlined in Chapter 122 and 40 Texas Administrative Code §189 and is strongly encouraged by TxDOT. Specifically, Section 122.008 (Procurement at Determined Prices) states: "A suitable product or service that meets applicable specifications established by the state or its political subdivisions and that is available within the time specified must be procured from a CRP at the price determined by the council to be the fair market price."

Maintenance Contractor will make a good faith effort to negotiate with CRP's and the Texas Industries for the Blind and Handicapped (TIBH) for subcontracts at a fair market

price. TxDOT reserves the right to facilitate disputes involving subcontracts or potential subcontracts with CRP's and TIBH.

6.6 Prevailing Wages

Maintenance Contractor shall pay or cause to be paid to all applicable workers employed by it or its Subcontractors to perform the Maintenance Services not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 3 to the Design-Build Agreement; provided, however, that the minimum prevailing wages that Maintenance Contractor shall be required to pay to all applicable workers for the Maintenance Services shall be the lesser of: (i) the prevailing wages in effect on the commencement date of the Maintenance Term then in effect and (ii) the prevailing wages set forth in Exhibit 3 to the Design-Build Agreement as escalated based on changes in the Engineering News Record Consctruction Cost Index (ENR CCI) in accordance with the methodology set forth in Section 8.1.3. Maintenance Contractor shall comply and cause its Subcontractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Subcontracts at any tier with TxDOT or Governmental Entities.

It is Maintenance Contractor's sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Agreement is in effect, Maintenance Contractor shall bear the cost of such changes and shall have no Claim against TxDOT on account of such changes. Without limiting the foregoing, no Claim will be allowed which is based upon Maintenance Contractor's lack of knowledge or misunderstanding of any such requirements or Maintenance Contractor's failure to include in the Price adequate increases in such wages over the duration of this Agreement.

Any issue between Maintenance Contractor or a Subcontractor and any affected worker relating to any alleged violation of Section 2258.052 of the Texas Government Code that is not resolved before the 15th day after the date TxDOT makes its initial determination under Section 2258.052 of the Texas Government Code (as to whether good cause exists to believe that a violation occurred) shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171 of the Civil Practice and Remedies Code.

Maintenance Contractor shall comply and cause its Subcontractors to comply with all Laws regarding notice and posting of intent to pay prevailing wages, of prevailing wages requirements and of prevailing wage rates.

SECTION 7. BONDS, PERFORMANCE GUARANTEES AND INSURANCE

7.1 Maintenance Payment and Performance Bonds and Retainage Bonds

7.1.1 On or before 60 Days after issuance by TxDOT of Maintenance NTP1, Maintenance Contractor shall provide to TxDOT, and shall maintain at all times, (i) a Maintenance Performance Bond and a Maintenance Payment Bond, in the forms attached as Exhibit 6 and Exhibit 7 respectively that shall guarantee the performance of the Maintenance Services and shall also guarantee payment to Persons performing certain work for Maintenance Contractor under this Capital Maintenance Agreement; and (ii) a Retainage Bond in the form attached as Exhibit 8. The Retainage Bond shall be in the amount of 4% of the Maintenance Price, and is to be used as a guaranty for the protection of any claimants and TxDOT for overpayments, Liquidated Damages, and other deductions or damages owed by the Maintenance Contractor in connection with this Capital Maintenance Agreement.

7.1.2 Each bond required hereunder shall be issued by a Surety authorized to do business in the State with a rating of at least A minus (A-) or better and Class VIII or better by A.M. Best Company or rated in the top two categories by two nationally recognized rating agencies, or as otherwise approved by TxDOT in its sole discretion. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the requirements hereof, Maintenance Contractor shall provide a replacement bond in the same form issued by a surety meeting the foregoing requirements, or other assurance satisfactory to TxDOT, in its sole discretion. If the Maintenance Price is increased in connection with a Change Order, TxDOT may, in its sole discretion, require a corresponding proportionate increase in the amount of each bond or alternative security.

7.1.3 The Maintenance Performance Bond and the Maintenance Payment Bond shall each have a term equal or greater to the then-current Maintenance Term. During each such period, the amount of each bond shall be equal to 75% of the aggregate sum of the remaining annual Maintenance Price for all years of the applicable Maintenance Term, using the current annual Maintenance Price as the annual Maintenance Price for each year remaining in the Maintenance Term; provided however, the amount of each bond shall not be less than 100% of the then current annual Maintenance Price. Separate Maintenance Performance Bonds and Maintenance Payment Bonds shall be provided by Maintenance Contractor in the amount of any outstanding Unplanned Capital Maintenance as determined under Section 3.4.2.

7.1.4 On or before 60 days after issuance by TxDOT of Maintenance NTP2 and Maintenance NTP3 pursuant to Sections 4.2 and 4.3 respectively, as applicable, Maintenance Contractor shall either (1) provide a Maintenance Performance Bond, a Maintenance Payment Bond and a Retainage Bond in connection with the Second Maintenance Term (or a Third Maintenance Term following a Second Maintenance Term) or (2) provide evidence of renewal, and, if applicable, adjusting the amount, of the existing bonds.

7.1.5 TxDOT will release the Maintenance Performance Bond upon expiration of the Warranty Period, provided that no outstanding claims are then pending against Maintenance Contractor hereunder.

7.1.6 TxDOT will release the Maintenance Payment Bond upon the latest to occur of: (a) receipt of (i) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the Maintenance Payment Bond have been fully paid and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the Maintenance Payment Bond, or (b) expiration of the statutory period for Subcontractors to file a claim against the Maintenance Payment Bond if no claims have been filed.

7.1.7 Performance by a Surety or a Guarantor of any of the obligations of Maintenance Contractor shall not relieve Maintenance Contractor of any of its obligations hereunder.

7.1.8 In the event any of the bonds required herein for the Second Maintenance Term or Third Maintenance Term become commercially unavailable, Maintenance Contractor may substitute a letter of credit or other form of security for the Maintenance Services acceptable to TxDOT, in its sole discretion.

7.2 Guaranty

7.2.1 Fluor Corporation and Balfour Beatty LLC are the Guarantors of Maintenance Contractor's obligations under the CMA Documents. Such guaranty, in the form attached as Exhibit 9, shall assure performance of Maintenance Contractor's obligations hereunder and shall be maintained in full force and effect throughout the duration of this Capital Maintenance Agreement.

7.2.2 Maintenance Contractor shall report to TxDOT, on a yearly basis upon each anniversary of the Initial Maintenance Term Commencement Date, the Tangible Net Worth of Maintenance Contractor, its equity members, and any Guarantors.

7.2.3 If at any time during the course of this Capital Maintenance Agreement the total combined Tangible Net Worth of Maintenance Contractor, its equity members and any Guarantors, is less than $250,000,000, Maintenance Contractor shall provide one or more guarantees so that the combined Tangible Net Worth of the Maintenance Contractor, its equity members and any Guarantors is at least $250,000,000. Each such guaranty shall be in the form attached as Exhibit 9, together with appropriate evidence of authorization, execution, delivery and validity thereof, and shall guarantee the Guaranteed Obligations. Each guaranty must be provided by: (a) a parent corporation, affiliate, or a shareholder of Maintenance Contractor, or (b) a parent corporation, affiliate, or a shareholder of an equity member of Maintenance Contractor. The minimum Tangible Net Worth amount described above shall be adjusted annually based on changes in the Engineering News Record Construction Cost Index (ENR CCI), commencing on the first anniversary of the Initial Maintenance Term Commencement Date and continuing annually thereafter during the term of this Capital Maintenance Agreement.

7.3 General Insurance Requirements

Maintenance Contractor shall procure and keep in effect, or cause to be procured and kept in effect, the insurance policies in accordance with the requirements in this Section 7.3 and Exhibit 10.

7.3.1 Qualified Insurers

Each of the insurance policies required hereunder shall be procured from an insurance carrier or company that, at the time coverage under the applicable policy commences is:

(a) Authorized to do business in the State and has a current policyholder's management and financial size category rating of not less that "A – VII" according to A.M. Best's Insurance Reports Key Rating Guide; or

(b) Otherwise approved in writing by TxDOT.

7.3.2 Premiums, Deductibles and Self-Insured Retentions.

Maintenance Contractor shall timely pay the premiums for all policies of insurance required under this Capital Maintenance Agreement. Subject to Exhibit 10, TxDOT shall have no liability for any deductibles, self-insured retentions and amounts in excess of the coverage provided. In the event that any required coverage is provided under a self-insured retention, the entity responsible for the self-insured retention shall have an authorized representative issue a letter to TxDOT, at the same time the insurance policy is to be procured, stating that it shall protect and defend TxDOT to the same extent as if a commercial insurer provided coverage for TxDOT.

7.3.3 Primary Coverage

Each insurance policy shall provide that the coverage is primary and noncontributory coverage with respect to all named or additional insureds, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this Capital Maintenance Agreement that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

7.3.4 Verification of Coverage

7.3.4.1 Within 10 days of TxDOT issuing Maintenance NTP1, Maintenance Contractor shall deliver to TxDOT a certificate of insurance and written evidence of insurance for each required policy of insurance. The certificate and evidence must be consistent in all respects. The evidence of insurance shall be on the most recent ACORD form, without disclaimer. Each required certificate must be meet the requirements of Texas Insurance Code Chapter 1811 and, to the extent permitted under applicable Laws, state the identity of all carriers, named insureds and additional

insureds, state the type and limits of coverage, deductibles and termination provisions of the policy, include as attachments all additional insured endorsements, and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker. Each required evidence of insurance must be personally and manually signed by a representative or agent of the insurance company shown on the evidence of insurance with proof that the signer is an authorized representative or agent of such insurance company and is authorized to bind it to the coverage, limits and termination provisions shown on the evidence. The evidence of insurance must be original, state the signer's company affiliation, title and phone number, state the identity of all carriers, named insureds and additional insureds, state the type and limits of coverage, list deductibles, include the required subrogation waiver, contain conforming termination provisions of the policy and other essential policy terms, list and describe all endorsements, include as attachments all additional insured endorsements, and otherwise be in form reasonably satisfactory to TxDOT.

7.3.4.2 Maintenance Contractor shall promptly deliver to TxDOT a certificate of insurance and copies of all endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of the insurance coverages required under this Capital Maintenance Agreement. Such certificate shall be delivered prior to the expiration date of any policy and shall bear a notation evidencing payment of the premium therefor.

7.3.4.3 Upon TxDOT's request, Maintenance Contractor shall deliver to TxDOT: (a) a complete certified copy of each insurance policy or modification, or renewal or replacement insurance policy and all endorsements thereto and (b) satisfactory evidence of payment of the premium therefor.

7.3.5 Subcontractor Insurance Requirements

Maintenance Contractor's obligations regarding Subcontractor's insurance are set forth in Exhibit 10. Maintenance Contractor shall cause each Subcontractor to provide such insurance in the manner and in the form consistent with the requirements contained in this Capital Maintenance Agreement.

7.3.6 Policies with Insureds in Addition to Maintenance Contractor

All insurance policies that are required to insure Persons (whether as named or additional insureds) in addition to Maintenance Contractor shall comply or be endorsed to comply with the following provisions.

7.3.6.1 The insurance policy shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the insurance policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and project consultants).

7.3.6.2 The insurance shall apply separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

7.3.6.3 All endorsements adding additional insureds to required insurance policies, shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the insurance policy generally, and shall state that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage. To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, Maintenance Contractor (if applicable) and TxDOT shall be included as additional insureds under the commercial general liability policy providing equivalent coverage, including products-completed operations. The commercial general liability/builder's third-party liability insurance shall include completed operations liability coverage.

7.3.7 Additional Terms and Conditions

7.3.7.1 Each insurance policy shall be endorsed to state that coverage cannot be canceled, not renewed, voided, suspended, materially changed, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 days' prior written notice (or ten days in the case of cancellation or non-renewal for non-payment of premium) by registered or certified mail, return receipt requested, has been given to TxDOT and each other insured or additional insured party; provided that Maintenance Contractor may obtain as comparable an endorsement as possible if it establishes unavailability of this endorsement as set forth in Section 7.3.4.1. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

7.3.7.2 The commercial general liability insurance policy and any builder's third party liability insurance policy (if furnished by Maintenance Contractor in lieu of commercial general liability insurance) shall cover liability arising out of the acts or omissions of Maintenance Contractor's employees engaged in the Maintenance Services and employees of Subcontractors.

7.3.7.3 If Maintenance Contractor's or any Subcontractor's activities involve transportation of Hazardous Materials, the automobile liability insurance policy for Maintenance Contractor or such Subcontractor shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement-Hazardous Materials Clean up (MCS-90).

7.3.7.4 Each insurance policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of any professional liability and pollution liability insurance policies).

7.3.8 Waivers of Subrogation

TxDOT waives all rights against the Maintenance Contractor-Related Entities, and Maintenance Contractor waives all rights against the Indemnified Parties, for any claims to the extent covered by insurance obtained pursuant to this Section 7.3, except such rights as they may have to the proceeds of such insurance. If Maintenance Contractor is deemed to self-insure a claim or loss under Section 7.4.3, then Maintenance Contractor's waiver shall apply as if it carried the required insurance. Maintenance Contractor shall require all Subcontractors to provide similar waivers in writing each in favor of all other Persons enumerated above. Subject to Section 7.3.4.1, each policy, including workers' compensation if permitted under the applicable workers' compensation insurance Laws, shall include a waiver of any right of subrogation against the Indemnified Parties or the insurers consent to the insured's waiver of recovery in advance of loss. However, no waiver of subrogation rights under any policy providing professional liability coverage to the insureds shall be required of any Party.

7.3.9 No Recourse

There shall be no recourse against TxDOT for payment of premiums or other amounts with respect to the insurance required to be provided by Maintenance Contractor or any of its Subcontractors hereunder, except to the extent such costs are recoverable under Section 10.

7.3.10 Support of Indemnifications

The insurance coverage provided hereunder by Maintenance Contractor is not intended to limit Maintenance Contractor's indemnification obligations under the CMA Documents.

7.3.11 Inadequacy or Unavailability of Required Coverages

If, in the future, through no fault of Maintenance Contractor, any of the coverages required in this Section 7.3 (or any of the required terms of such coverages, including policy limits) become unavailable as determined under a commercial reasonableness standard, TxDOT will work with Maintenance Contractor to find commercially reasonable alternatives to the required coverages that are acceptable to TxDOT.

7.3.12 Defense Costs

No defense costs shall be included within or erode the limits of coverage of any of the insurance policies, except that litigation and mediation defense costs may be included within the limits of coverage of professional and pollution liability policies.

7.3.13 Contesting Denial of Coverage

If any insurance carrier under an insurance policy denies coverage with respect to any claims reported to such carrier, upon Maintenance Contractor's request, TxDOT and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith

to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then Maintenance Contractor shall bear all costs of contesting the denial of coverage.

7.3.14 Umbrella and Excess Policies

Maintenance Contractor shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in this Capital Maintenance Agreement for the applicable type of coverage.

7.4 Prosecution of Insurance Claims

7.4.1 Unless otherwise directed by TxDOT in writing with respect to TxDOT's insurance claims, Maintenance Contractor shall be responsible for reporting and processing all potential claims by TxDOT or Maintenance Contractor against the insurance policies required hereunder. Maintenance Contractor agrees to report timely to the insurer(s) under such insurance policies any and all matters which may give rise to an insurance claim by Maintenance Contractor or TxDOT or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such insurance policies, whether for defense or indemnity or both. Maintenance Contractor shall enforce all legal rights against the insurer under the applicable insurance policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Maintenance Contractor shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

7.4.2 TxDOT agrees to promptly notify Maintenance Contractor of TxDOT's incidents, potential claims against TxDOT, and matters which may give rise to an insurance claim against TxDOT, to tender to the insurer TxDOT's defense of the claim under such insurance policies, and to cooperate with Maintenance Contractor as necessary for Maintenance Contractor to fulfill its duties hereunder.

7.4.3 If in any instance Maintenance Contractor has not performed its obligations respecting insurance set forth in this Capital Maintenance Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies or to prosecute claims diligently, then for purposes of determining Maintenance Contractor's liability and the limits thereon or determining reductions in compensation due from TxDOT to Maintenance Contractor on account of available insurance, Maintenance Contractor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Maintenance Contractor performed such obligations and not committed such failure. Nothing in the CMA Documents shall be construed to treat Maintenance Contractor as electing to self-insure where Maintenance Contractor is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the insurance policy is written meets the rating qualifications set forth in Section 7.4.1.

7.4.4 If in any instance Maintenance Contractor has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by TxDOT or another Indemnified Party, then TxDOT or the other Indemnified Party may, but is not obligated to: (a) notify Maintenance Contractor in writing of TxDOT's intent to report the claim directly with the insurer and thereafter process the claim; and (b) proceed with reporting and processing the claim if TxDOT or the other Indemnified Party does not receive from Maintenance Contractor, within ten days after so notifying Maintenance Contractor, written proof that Maintenance Contractor has reported the claim directly to the insurer. TxDOT or the other Indemnified Party may dispense with such notice to Maintenance Contractor if TxDOT or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

7.4.5 Unless otherwise directed by TxDOT in writing, Maintenance Contractor shall be responsible for reporting and processing all potential claims by TxDOT or Maintenance Contractor against the insurance required to be provided under Section 7.3. Maintenance Contractor agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of TxDOT, whether for defense or indemnity or both. TxDOT agrees to promptly notify Maintenance Contractor of TxDOT's incidents, potential claims, and matters which may give rise to an insurance claim by TxDOT, to tender its defense or the claim to Maintenance Contractor, and to cooperate with Maintenance Contractor as necessary for Maintenance Contractor to fulfill its duties hereunder.

7.5 Insurance and Commencement of Maintenance Services

Maintenance Contractor shall not commence the Maintenance Services under this Capital Maintenance Agreement until it has obtained the insurance required under Section 7.3, has furnished original certificates of insurance evidencing the required coverage as required under Section 7.3.4 and such insurance has been approved in writing by TxDOT, and Maintenance Contractor shall not allow any Subcontractor (nor shall such Subcontractor be entitled) to commence work under its Subcontract until the insurance required of the Subcontractor pursuant to this Section 7 has been obtained and approved by Maintenance Contractor. A delay in securing such certificates of insurance or approvals shall not provide Maintenance Contractor any relief or entitlement to a Change Order.

7.6 TxDOT's Right to Remedy Breach by Maintenance Contractor Regarding Insurance

If Maintenance Contractor or any Subcontractor fails to provide insurance as required herein, TxDOT shall have the right, but not the obligation, to purchase such insurance or to suspend Maintenance Contractor's right to proceed until proper evidence of insurance is provided. TxDOT's Recoverable Costs shall, at TxDOT's sole option, be deducted from amounts payable to Maintenance Contractor or reimbursed by Maintenance Contractor upon demand. Nothing herein shall preclude TxDOT from exercising its rights and remedies under Section 12 as a result of the failure of Maintenance Contractor or any Subcontractor to satisfy its insurance obligations herein.

7.7 Disclaimer Regarding Insurance

Maintenance Contractor and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein.

7.8 Premiums

Except for premiums that are Maintenance Contractor's responsibility under Section 3.4.2, Maintenance Contractor shall be entitled to reimbursement for the costs of bonds, letters of credit and insurance premiums, as follows:

7.8.1 Premiums may be included in invoices hereunder only after payment thereof by Maintenance Contractor. Said premiums shall be passed through without any profit or overhead or compensation for any costs incurred by Maintenance Contractor in obtaining bonds, letters of credit and insurance in excess of the actual premiums paid therefor.

7.8.2 TxDOT shall be entitled to any return or retrospective premiums with respect to said bonds, letters of credit and insurance. Maintenance Contractor shall deliver any such funds to TxDOT within ten days following Maintenance Contractor's receipt thereof.

7.8.3 Maintenance Contractor shall use best efforts to obtain the bonds, letters of credit and insurance required hereunder, and renewals thereof, at cost-effective rates. Promptly following a request by TxDOT, or promptly following issuance of the notice to proceed for the applicable Maintenance Term (if not earlier requested), Maintenance Contractor shall obtain quotes for said bonds, letters of credit and insurance policies, shall notify TxDOT of the same, and shall accommodate any changes in providers, coverage or payment terms desired by TxDOT.

7.8.4 Maintenance Contractor shall promptly notify TxDOT if it becomes apparent at any time during the Maintenance Term that required bonds, letters of credit or insurance are no longer available or if the premiums for renewals materially increase from the prior rates. In such event, Maintenance Contractor shall work with TxDOT to find commercially reasonable alternatives to the required coverages that are acceptable to TxDOT; provided, however that if letters of credit are no longer available, Maintenance Contractor shall provide cash collateral in the amount of the letter of credit unless TxDOT accepts an alternative security and collateral approach.

SECTION 8. COMPENSATION

8.1 Payment for Maintenance Services

8.1.1 During the term of this Capital Maintenance Agreement, in full consideration for the performance by the Maintenance Contractor of its duties and obligations under the CMA Documents, TxDOT shall pay the amounts determined as set forth in Section 8.1.2, as adjusted in accordance with Section 8.1.3 ("Maintenance Price") subject only to such additions to and deductions from the compensation as may be provided for pursuant to Section 10. The term "Maintenance Price" as used herein shall initially mean the pro-rated "yearly maintenance cost" for "year 1" set forth in Exhibit 4. The Maintenance Price shall be paid in accordance with this Section 8.1. The Maintenance Price (and the individual components thereof) shall be increased or decreased only by a Change Order issued in accordance with Section 10 or by an amendment to this Capital Maintenance Agreement. No portion of the Maintenance Price shall be payable on account of services provided: (a) prior to issuance of Maintenance NTP1, or (b) after the termination, expiration or non-renewal of the term of this Capital Maintenance Agreement.

8.1.2 Maintenance Contractor shall be paid for Maintenance Services provided under this Capital Maintenance Agreement, a monthly payment equivalent to one-twelfth (1/12) of the "yearly maintenance cost" for the applicable Maintenance Term year as set forth in Exhibit 4, plus one-twelfth (1/12) of the "yearly maintenance cost" for the Margaret McDermott Bike/Pedestrian Bridges for the applicable Maintenance Term year as set forth in Exhibit 4 if TxDOT exercised the Margaret McDermott Bridges Option with respect to such Maintenance Term. Such amount shall be payable in arrears pursuant to Draw Requests submitted on the first day of each month of such Maintenance Term year.

8.1.3 The annual Maintenance Price (MP) will be escalated or reduced based on changes in the Engineering News Record Construction Cost Index (ENR CCI), commencing on the Initial Maintenance Term Commencement Date and continuing annually thereafter during the term of this Capital Maintenance Agreement. The procedure for determining the escalation or reduction shall be as follows:

(a) The ENR CCI for the month three months prior to the month in which this Capital Maintenance Agreement is executed will establish the Base Index (BI); and

(b) The annual Maintenance Price for the ensuing Maintenance Term year shall be escalated or reduced by multiplying the annual Maintenance Price for such year, by the ENR CCI for the month three months prior to the month in which the Maintenance Term year commences and dividing such amount by the Base Index.

(c) The formula that reflects the foregoing is: Adjusted MP = (annual MP) x ENR CCI/(BI).

8.2 Invoicing and Payment

8.2.1 On or about the fifth Business Day of each month, Maintenance Contractor shall submit to TxDOT five copies of a Draw Request in the form of Exhibit 11 for Maintenance Services performed for the preceding month and meeting all requirements specified herein. Each Draw Request shall be executed by Maintenance Contractor's Authorized Representative and Maintenance QC Manager. Maintenance Contractor acknowledges that TxDOT may obtain funding for portions of the Maintenance Services from the federal government, local agencies and other third parties, and Maintenance Contractor agrees to segregate Draw Requests for all such Maintenance Services in a format reasonably requested by TxDOT and with detail and information as reasonably requested by TxDOT. Each Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process.

8.2.2 Within ten Business Days after TxDOT's receipt of a complete Draw Request, TxDOT will review the Draw Request and all attachments and certificates thereto, and shall notify Maintenance Contractor of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Draw Request. Maintenance Contractor may include such disapproved amounts in the next month's Draw Request after correction of the deficiencies noted by TxDOT and satisfaction of the requirements of the CMA Documents related thereto. Within ten Business Days after the approval by TxDOT of a Draw Request, TxDOT shall pay Maintenance Contractor the amount of the Draw Request approved for payment less any amounts that TxDOT is otherwise entitled to withhold or deduct. No payment by TxDOT shall, at any time, preclude TxDOT from showing that such payment was incorrect, or from recovering any money paid in excess of those amounts due hereunder.

8.2.3 TxDOT may deduct from each payment and the Final Payment the following:

(a) Any TxDOT or third party Losses for which Maintenance Contractor is responsible hereunder or any Liquidated Damages that have accrued as of the date of the application for payment;

(b) If a notice to stop payment, claim or Lien is filed with TxDOT, due to Maintenance Contractor's failure to pay for labor or materials used in the Maintenance Services, money due for such labor or materials will be withheld from payment to the Maintenance Contractor;

(c) Any sums, including TxDOT's Recoverable Costs, expended by TxDOT in performing any of Maintenance Contractor's obligations under the CMA Documents that Maintenance Contractor has failed to perform; and

(d) Any other sums which TxDOT is entitled to recover from Maintenance Contractor under the terms of this Capital Maintenance Agreement;

The failure by TxDOT to deduct any of these sums from a payment shall not constitute a waiver of TxDOT's right to such sums.

8.3 Payment to Subcontractors

8.3.1 No later than ten Days after receipt of payment from TxDOT, Maintenance Contractor shall promptly pay each Subcontractor, out of the amount paid to Maintenance Contractor on account of such Subcontractor's portion of the Maintenance Services, the amount to which such Subcontractor is entitled, less any retainage provided for in the Subcontract, and any other offsets and deductions provided in the Subcontract or by Law. No later than ten days after satisfactory completion of all Maintenance Services to be performed by a Subcontractor, including provision of appropriate releases, certificates and other evidence of the Subcontractor's compliance with its Subcontract and all applicable requirements of the CMA Documents, Maintenance Contractor shall pay to the Subcontractor moneys withheld in retention from the Subcontractor. Such payment shall be made promptly following satisfaction of the foregoing requirements, even if the Maintenance Services to be performed by Maintenance Contractor or other Subcontractors is not completed.

8.3.2 For the purpose of Section 8.3, satisfactory completion shall have been accomplished when:

(a) the Subcontractor has fulfilled the Subcontract requirements and the requirements under the CMA Documents for the subcontracted Maintenance Services, including the submission of all submittals required by the Subcontract and the CMA Documents; and

(b) the Maintenance Services performed by the Subcontractor have been inspected and approved in accordance with the CMA Documents and the final quantities of the Subcontractor's work have been determined and agreed upon.

8.3.3 The inspection and approval of a Subcontractor's work does not eliminate or impair Maintenance Contractor's responsibility for the Maintenance Services. Any delay or postponement of payments to Subcontractors from the above-referenced time frames may occur only for good cause following written approval by TxDOT. TxDOT shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by Law. Interest on late payments to Subcontractors shall be Maintenance Contractor's responsibility, and shall not be a part of the Maintenance Price.

8.4 Disputes

Failure by TxDOT to pay any amount in dispute shall not alleviate, diminish or modify in any respect Maintenance Contractor's obligation to perform under the CMA Documents, and Maintenance Contractor shall not cease or slow down its performance under the CMA Documents on account of any such amount or dispute. Any Claim or Dispute regarding such payment shall be resolved pursuant to Section 16 of this Capital Maintenance Agreement. Upon resolution of such Claim or Dispute, each Party shall promptly pay to the other any amount owing.

8.5 Claims Against Third Parties

Maintenance Contractor shall not have the authority or responsibility to assert and pursue any claims against any third party for damage to the Project. However, Maintenance Contractor shall provide reasonable assistance to, and shall reasonably cooperate with, TxDOT regarding such claims.

SECTION 9. WARRANTIES FOR MAINTENANCE SERVICES

9.1 Warranties for Maintenance Services

Maintenance Contractor warrants that:

(a) all Maintenance Services furnished pursuant to the CMA Documents shall conform to Good Industry Practice;

(b) the Maintenance Services shall be free of Defects, including design Errors, except to the extent such Defects are inherent in prescriptive specifications included in the Maintenance Documents;

(c) materials and equipment installed or incorporated under the CMA Documents shall be of good quality and new;

(d) all design and construction work shall be fit for use for the intended function; and

(e) such Maintenance Services shall meet all of the requirements of the CMA Documents.

The warranties set forth in clauses (a)-(e) above shall individually be referred to herein as a "Warranty" and, collectively, as the "Warranties."

9.2 Warranty Period

9.2.1 The Warranty Period for Maintenance Services shall commence at the conclusion of the Maintenance Term during which such Maintenance Services were provided. Subject to extension under Section 9.2.2, all Warranties shall remain in effect until one year after the conclusion of the Maintenance Terms ("Warranty Period"). If TxDOT determines that such Maintenance Services have not met the standards set forth in Section 9.1 at any time during the Warranty Period, then Maintenance Contractor shall correct such Maintenance Services as specified in this Section 9, even if performance of such corrective Maintenance Services extend beyond the applicable Warranty Period.

9.2.2 The Warranties shall apply to all Maintenance Services re-done, repaired, corrected or replaced pursuant to the terms of the CMA Documents. The Warranty Period for each repaired, corrected or replaced element of the Maintenance Services shall extend beyond the original Warranty Period in order that each element of the Project will have at least a one-year warranty period (but not to exceed two years after the expiration or termination of this Capital Maintenance Agreement).

9.3 Implementation of Warranty

9.3.1 Within seven Days of receipt by Maintenance Contractor of notice from TxDOT specifying: (a) a failure of the Maintenance Services to satisfy the Warranties,

(b) the failure of any Subcontractor warranty, guarantee or obligation which Maintenance Contractor is responsible to enforce, or (c) a misrepresentation by a Subcontractor regarding an obligation which Maintenance Contractor is responsible to enforce, Maintenance Contractor and TxDOT shall mutually agree when and how Maintenance Contractor shall remedy such failure or misrepresentation; provided, however, that in case of an emergency requiring immediate curative action or a situation which poses a significant safety risk, Maintenance Contractor shall implement such action as it deems necessary and shall immediately notify TxDOT in writing of the emergency and the urgency of the decision. Maintenance Contractor and TxDOT shall promptly meet in order to agree on a remedy. If Maintenance Contractor does not use its best efforts to effectuate such remedy within the agreed time, or if Maintenance Contractor and TxDOT fail to reach such an agreement within such seven-Day period (or immediately, in the case of emergency conditions), TxDOT shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Maintenance Contractor. Reimbursement for TxDOT's Recoverable Costs associated with such work shall be payable to TxDOT within ten Days after Maintenance Contractor's receipt of an invoice therefor. Alternatively, TxDOT, in its sole discretion, may deduct the amount of such costs and expenses from any sums owed by TxDOT to Maintenance Contractor pursuant to this Capital Maintenance Agreement. TxDOT may agree to accept Nonconforming Work in accordance with Section 5.9.2.

9.3.2 Maintenance Contractor shall be responsible for obtaining any required encroachment permits and required consents from any other Persons in connection with the performance of Maintenance Services required under this Section 9. Maintenance Contractor shall bear all costs of such Maintenance Services, including additional testing and inspections, and Maintenance Contractor shall reimburse TxDOT or pay TxDOT's expenses made necessary thereby, including any costs incurred by TxDOT for independent quality assurance and/or quality control with respect to such Maintenance Services within ten days after Maintenance Contractor's receipt of invoices therefor (including, subject to the limitations in Section 12.6, any lost revenue arising from or relating to such Maintenance Services). Alternatively, TxDOT, in its sole discretion, may deduct the amount of such costs and expenses from any sums owed by TxDOT to Maintenance Contractor pursuant to this Capital Maintenance Agreement.

9.4 Subcontractor and Extended Warranties

9.4.1 Without in any way derogating the Warranties and Maintenance Contractor's own representations and warranties and other obligations with respect to the Maintenance Services, Maintenance Contractor shall obtain from all Subcontractors and cause to be extended to TxDOT, for periods at least coterminous with the Warranties, appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors to effectuate the provisions in this Section 9. All representations, warranties, guarantees and other obligations of Subcontractors: (a) shall be written so as to survive all TxDOT inspections, tests and approvals; and (b) shall run directly to and be enforceable by Maintenance Contractor and TxDOT and their respective

successors and assigns. Maintenance Contractor assigns to TxDOT all of Maintenance Contractor's rights and interest in and to all extended warranties for periods exceeding the applicable Warranty Period which are received by Maintenance Contractor from any of its Subcontractors. To the extent that any Subcontractor warranty or guaranty would be voided by reason of Maintenance Contractor's negligence or failure to comply with the CMA Documents in incorporating material or equipment into the work, Maintenance Contractor shall be responsible for correcting such Defect.

9.4.2 Upon receipt from TxDOT of notice of a failure of any Subcontractor warranty, guaranty or obligation, or a misrepresentation by a Subcontractor, Maintenance Contractor shall enforce or perform any such Subcontractor warranty, guaranty or obligation, or remedy such misrepresentation, in addition to Maintenance Contractor's other obligations hereunder. TxDOT's rights under this Section 9.4 shall commence at the time such representation, warranty, guaranty, or obligation is furnished and shall continue until the expiration of Maintenance Contractor's relevant Warranty Period (including extensions thereof under Section 9.2.2). Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Maintenance Contractor if such cost is covered by such a representation, warranty, guaranty, or obligation and Maintenance Contractor shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors.

9.4.3 The foregoing provisions concerning Subcontractor warranties are intended to provide TxDOT with an additional Person and source in which to seek recourse if Maintenance Services fail to meet the requirements of the CMA Documents. In no event shall the foregoing provisions be interpreted to modify, limit, discharge, release, negate or waive the Warranties or Maintenance Contractor's obligations with respect to the Maintenance Services, and Maintenance Contractor shall not be entitled to use the existence of Subcontractor warranties as a defense to Maintenance Contractor's obligations under this Capital Maintenance Agreement and the other CMA Documents.

9.5 Effect of TxDOT Activities on Warranties

Maintenance Contractor acknowledges and agrees that TxDOT and its respective agents may perform certain maintenance work during the period in which the Warranties are in effect, and Maintenance Contractor agrees that the Warranties shall apply notwithstanding such work; provided that Maintenance Contractor's obligations under this Section 9 shall only apply to the extent the repair, replacement or correction of Maintenance Services is required as a result of the Maintenance Services failing to satisfy the Warranties set forth in Section 9.1.

9.6 No Limitation on Liability

Subject to Section 12.6, the foregoing Warranties and Subcontractor warranties are in addition to all rights and remedies available under the CMA Documents or applicable Law or in equity, and shall not limit Maintenance Contractor's liability or responsibility imposed by the CMA Documents or applicable Law or in equity with respect to the

Maintenance Services, including liability for design Defects, latent construction Defects, strict liability, actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Maintenance Contractor-Related Entity; provided, however, that upon expiration of the Warranties, Maintenance Contractor shall have no further liability hereunder for patent construction Defects.

9.7 Damages for Breach of Warranty

Subject to Section 12.6 and in addition to TxDOT's other rights and remedies hereunder, at law or in equity, Maintenance Contractor shall be liable for actual damages resulting from any breach of an express or implied warranty or any Defect in the Maintenance Services.

SECTION 10. CHANGES IN THE MAINTENANCE SERVICES

This Section 10 sets forth the requirements for obtaining all Change Orders under this Capital Maintenance Agreement. Maintenance Contractor hereby acknowledges and agrees that the Maintenance Price constitutes full compensation for performance of all of the Maintenance Services, subject only to those exceptions specified in this Section 10, and that TxDOT is subject to constraints limiting its ability to increase the Maintenance Price. Maintenance Contractor unconditionally and irrevocably waives the right to any Claim for any monetary compensation in addition to the Maintenance Price and other compensation specified in this Capital Maintenance Agreement, except in accordance with this Section 10. To the extent that any other provision of this Capital Maintenance Agreement expressly provides for a Change Order to be issued, such provision is incorporated into and subject to this Section 10.

10.1 Circumstances Under Which Change Orders May Be Issued

10.1.1 Definition of and Requirements Relating to Change Orders

10.1.1.1 Definition of Change Order

The term "Change Order" shall mean a written amendment to the terms and conditions of the CMA Documents issued in accordance with this Section 10. TxDOT may issue unilateral Change Orders as specified in Section 10.2.2. Change Orders may be requested by Maintenance Contractor only pursuant to Section 10.3. A Change Order shall not be effective for any purpose unless executed by TxDOT. Change Orders may be issued for the following purposes (or combination thereof):

(a) to modify the scope of the Maintenance Services;

(b) to revise the Maintenance Price; and

(c) to revise other terms and conditions of the CMA Documents.

Upon TxDOT's approval of the matters set forth in the Change Order form (whether it is initiated by TxDOT or requested by Maintenance Contractor), TxDOT shall sign such Change Order form indicating approval thereof. A Change Order may, at the sole discretion of TxDOT, direct Maintenance Contractor to proceed with the Maintenance Services with the amount of any adjust to the Maintenance Price to be determined in the future. All additions, deductions or changes to the Maintenance Services as directed by Change Orders shall be executed under the conditions of the original CMA Documents.

10.1.1.2 Issuance of Directive Letter

TxDOT may at any time issue a Directive Letter to Maintenance Contractor in the event of any desired change in the Maintenance Services, including, but not limited to, the repair of damage to the Project caused by collision (motor vehicle,

aircraft or railroad train), vandalism, or other destructive acts of third parties, or in the event of any Claim or Dispute regarding the scope of the Maintenance Services. The Directive Letter will state that it is issued under this Section 10.1.1.2, will describe the Maintenance Services in question and will state the basis for determining compensation, if any. Maintenance Contractor shall proceed immediately as directed in the Directive Letter, pending the execution of a formal Change Order (or, if the Directive Letter states that the Maintenance Services are within Maintenance Contractor's original scope of Maintenance Services, Maintenance Contractor shall proceed with the Maintenance Services as directed but shall have the right pursuant to Section 10.3 to request that TxDOT issue a Change Order with respect thereto).

10.1.1.3 Directive Letter as Condition Precedent to Claim that TxDOT-Directed Change Has Occurred

10.1.1.3.1 Maintenance Contractor shall not be entitled to additional compensation for any such work performed prior to receipt of a Directive Letter or Change Order, except to the extent that Section 10.3.2.2 preserves Maintenance Contractor's right to compensation for work performed following delivery of a Request for Partnering. Maintenance Contractor acknowledges that it will be at risk if it elects to proceed with any such work, since TxDOT may later decide not to provide direction with regard to such work. In addition to provision of a PCO Notice and subsequent Change Order request pursuant to Section 10.3.2, receipt of a Directive Letter from TxDOT shall be a condition precedent to Maintenance Contractor's right to make a Claim that a TxDOT-Directed Change has occurred.

10.1.1.3.2 The fact that a Directive Letter was issued by TxDOT shall not be considered evidence that in fact a TxDOT-Directed Change occurred. The determination whether a TxDOT-Directed Change in fact occurred shall be based on an analysis of the original requirements of the CMA Documents and a determination whether the Directive Letter in fact constituted a change in those requirements. The requirements of Section 10.1.1.3.1 shall not imply that a Directive Letter would be required in order for Maintenance Contractor to have the right to receive compensation for Maintenance Services within its original scope for which additional compensation is specifically allowed under this Section 10.

10.1.2 Right of TxDOT to Issue Change Orders

TxDOT may, at any time, without notice to any Surety, authorize and/or require changes in the Maintenance Services within the general scope of this Capital Maintenance Agreement pursuant to a Change Order. For the purpose of this Section 10.1.2, any direction to perform work shall be deemed to be within the general scope of this Capital Maintenance Agreement if it is related to the Project; any direction to delete or modify Maintenance Services shall be considered to be within the general scope unless as a result this Capital Maintenance Agreement would no longer be considered a maintenance contract for the Project of the nature initially contemplated by the Parties. Maintenance Contractor shall have no obligation to perform any work outside the general scope of this Capital Maintenance Agreement, except on terms mutually acceptable to TxDOT and Maintenance Contractor.

10.2 TxDOT-Initiated Change Orders

This Section 10.2 concerns: (a) Change Orders issued by TxDOT following a Request for Change Proposal and (b) Change Orders unilaterally issued by TxDOT.

10.2.1 Request for Change Proposal

10.2.1.1 If TxDOT desires to issue a TxDOT-Directed Change or to evaluate whether to initiate such a change, then TxDOT may, at its discretion, issue a Request for Change Proposal. A Directive Letter may also constitute a Request for Change Proposal.

10.2.1.2 Within ten Business Days after Maintenance Contractor's receipt of a Request for Change Proposal, or such longer period as may be mutually agreed to by TxDOT and Maintenance Contractor, TxDOT and Maintenance Contractor shall consult to define the proposed scope of the change. Within five Business Days after the initial consultation, or such longer period as may be mutually agreed to by TxDOT and Maintenance Contractor, TxDOT and Maintenance Contractor shall consult concerning the estimated cost impacts.

10.2.1.3 Within ten Business Days after the second consultation and provision of any data described in Section 10.2.1.2, TxDOT shall notify Maintenance Contractor whether TxDOT: (a) wishes to issue a Change Order, (b) wishes to request Maintenance Contractor to provide a Cost and Schedule Proposal, (c) wishes to request Maintenance Contractor to prepare a modified work plan for the change and a Cost and Schedule Proposal based on the modified plan, or (d) no longer wishes to issue a Change Order.

10.2.1.4 If so requested, Maintenance Contractor shall, within ten Business Days after receipt of the notification described in Section 10.2.1.3, or such longer period as may be mutually agreed to by TxDOT and Maintenance Contractor, prepare and submit to TxDOT for review and approval by TxDOT a Cost and Schedule Proposal (in the format provided by TxDOT) for the requested change, complying with all applicable requirements of Section 10.4, and incorporating and fully reflecting all requests made by TxDOT. Maintenance Contractor shall bear the cost of developing the Cost and Schedule Proposal, including any modifications thereto requested by TxDOT, except that costs of design and engineering work required for preparation of plans or exhibits necessary to the Cost and Schedule Proposal, as pre-authorized by TxDOT, may be included in the Change Order as reimbursable items. If the Change Order is approved, such design and engineering costs will be included within the Change Order, otherwise, they shall be separately reimbursed through a separate Change Order.

10.2.1.5 If Maintenance Contractor and TxDOT agree that a change in the requirements relating to the Maintenance Services has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Maintenance Price, TxDOT may, in its sole discretion, order Maintenance Contractor to proceed with the performance of the

Maintenance Services in question notwithstanding such disagreement. Such order may, at TxDOT's option, be in the form of: (a) a Time and Materials Change Order as provided in Section 10.7 or (b) a Directive Letter under Section 10.1.1.2.

10.2.1.6 If it is not practicable, due to the nature and/or timing of the event giving rise to a proposed Change Order, for Maintenance Contractor to provide a complete Cost and Schedule Proposal meeting all of the requirements of Section 10.4, Maintenance Contractor shall provide an incomplete proposal that includes all information capable of being ascertained. Said incomplete proposal shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to TxDOT stating why such requirements cannot be met, and (b) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable. Maintenance Contractor shall provide monthly updates to any incomplete Cost and Schedule Proposals in the same manner as updates to incomplete Requests for Change Order under Section 10.3.2.6.2.

10.2.2 Unilateral Change Orders

TxDOT may issue a unilateral Time and Materials Change Order at any time, regardless of whether it has issued a Request for Change Proposal. Maintenance Contractor shall be entitled to compensation in accordance with Section 10.7 for additional Maintenance Services that are required to be performed as the result of any such unilateral Change Order. For deductive unilateral Change Orders, the Change Order may contain a Maintenance Price deduction deemed appropriate by TxDOT, and Maintenance Contractor shall have the right to submit the amount of such Maintenance Price deduction to dispute resolution in accordance with Section 16.

10.3 Maintenance Contractor-Requested Change Orders

10.3.1 Eligible Changes

10.3.1.1 Maintenance Contractor may request a Change Order to increase the Maintenance Price only for increased costs of performance of the Maintenance Services as follows:

(a) additional costs directly attributable to additional Maintenance Services resulting from TxDOT-Directed Changes for which TxDOT has not submitted a Change Order or a Request for Change Proposal;

(b) additional costs relating to Hazardous Materials, and Force Majeure Events, to the extent provided in Section 10.8.1; and

(c) additional costs directly attributable to uncovering, removing and restoring the work, to the extent provided in Section 5.7.3.

10.3.1.2 Maintenance Contractor's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 10 and elsewhere in the CMA Documents, and furthermore is subject to Maintenance Contractor's compliance with all notification and other requirements identified herein. Maintenance Contractor shall initiate the Change Order process by delivery of a PCO Notice as described in Section 10.3.2, followed by submittal of a Request for Change Order and supporting documentation to TxDOT.

10.3.2 Procedures

The requirements set forth in this Section 10.3.2 constitute conditions precedent to Maintenance Contractor's entitlement to request and receive a Change Order except those involving a Request for Change Proposal. Maintenance Contractor understands that it shall be forever barred from recovering against TxDOT under this Section 10 if it fails to give notice of any act, or omission, by TxDOT or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, or fails to comply with the remaining requirements of this Section 10.3.

10.3.2.1 Delivery of Requests for Partnering and PCO Notices

Maintenance Contractor acknowledges the importance of providing prompt notification to TxDOT upon occurrence of any event or thing entitling Maintenance Contractor to a Change Order under Section 10.3.1. Among other things, such notification serves the purpose of allowing TxDOT to take action to mitigate adverse impacts. Such notification must be delivered as promptly as possible after the occurrence of such event or situation, through either: (a) a PCO Notice as described in Section 10.3.2.3 or (b) if permitted by Section 10.3.2.2, a Request for Partnering followed by a PCO Notice if appropriate.

10.3.2.2 Requests for Partnering

The term "Request for Partnering" shall mean a notice delivered by Maintenance Contractor requesting that TxDOT enter into partnering discussions with Maintenance Contractor with regard to an event or situation that has occurred within the scope of Section 10.3.1.1. The Request for Partnering shall reference this Section 10.3.2.2 and shall describe the event or situation as well as action which Maintenance Contractor would like to take with respect thereto. The Parties shall promptly meet and confer for the purpose of determining what action should be taken and also to determine whether the Parties are in agreement as to entitlement to a Change Order. Either Party may at any time terminate partnering discussions by delivery of written notice to the other, and partnering discussions shall automatically terminate 60 days after delivery of the Request for Partnering unless both Parties agree in writing to an extension. Within five Business Days after termination of partnering discussions, if TxDOT has not issued either a Directive Letter or Change Order, Maintenance Contractor must submit a PCO Notice in order to preserve its right to pursue a Change Order.

10.3.2.3 PCO Notices

The term "PCO Notice" shall mean a notice delivered by Maintenance Contractor, meeting the requirements set forth below, stating that an event or situation has occurred within the scope of Section 10.3.1.1 and stating which subsection thereof is applicable. The first notice shall be labeled "PCO Notice No. 1" and subsequent notices shall be numbered sequentially.

10.3.2.3.1 The PCO Notice shall: (a) state in detail the facts underlying the anticipated Request for Change Order, the reasons why Maintenance Contractor believes additional compensation will or may be due and the date of occurrence, (b) state the name, title, and activity of each Maintenance Contractor representative and TxDOT representative knowledgeable of the facts underlying the anticipated Request for Change Order, (c) identify any documents and the substance of any oral communication involved in the facts underlying the anticipated Request for Change Order, (d) state in detail the basis that the work is not required by this Capital Maintenance Agreement, if applicable, (e) identify particular elements of performance for which additional compensation may be sought under this Section 10.3.2, and (f) provide an estimate of the time within which a response to the notice is required to minimize cost, delay or disruption of performance.

10.3.2.3.2 If the Request for Change Order relates to a decision which this Capital Maintenance Agreement leaves to the discretion of a Person or as to which this Capital Maintenance Agreement provides that such Person's decision is final, the PCO Notice shall set out in detail all facts supporting Maintenance Contractor's objection to the decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence.

10.3.2.3.3 Any adjustments made to this Capital Maintenance Agreement shall not include increased costs resulting from Maintenance Contractor's failure to timely provide requested additional information under this Section 10.3.2.3.

10.3.2.4 Waiver

10.3.2.4.1 Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than ten days after Maintenance Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Maintenance Contractor shall be deemed to have waived the right to collect any costs incurred prior to the date of delivery of the Request for Partnering (if applicable) or PCO Notice (if no Request for Partnering was submitted or if the PCO Notice was not timely submitted following termination of partnering discussions). Furthermore, if any PCO Notice concerns any condition or material described in Section 10.8.2.1, Maintenance Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that TxDOT is not afforded the opportunity to inspect such material or condition before it is disturbed.

10.3.2.4.2 In addition to the limitations set forth in Section 10.3.2.4.1, Maintenance Contractor's failure to provide a PCO Notice within 60 days after Maintenance Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Maintenance Contractor from any relief, unless Maintenance Contractor can show, based on a preponderance of the evidence, that: (a) TxDOT was not materially prejudiced by the lack of notice, or (b) TxDOT's Authorized Representative specified in accordance with Section 18.5.1 had actual knowledge, prior to the expiration of the 60-day period, of the event or situation and that Maintenance Contractor believed it was entitled to a Change Order with respect thereto. For situations involving Requests for Partnering, the 60-day period shall be extended until two Business Days following termination of the partnering period. In other words, if the requirements of clause (a) or clause (b) above are satisfied, Maintenance Contractor shall retain the right to receive a Change Order, but shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice or Request for Partnering, as applicable that accrued prior to the date of delivery of the PCO Notice.

10.3.2.5 Delivery of Request for Change Order

Maintenance Contractor shall deliver a Request for Change Order under this Section 10.3.2.5 to TxDOT within 30 days after delivery of the PCO Notice, or such longer period of time as may be allowed in writing by TxDOT. TxDOT may require design and construction costs to be covered by separate Requests for Change Order. If Maintenance Contractor fails to deliver a complete Request for Change Order or incomplete Request for Change Order meeting all of the requirements of Section 10.3.2.6 within the appropriate time period, Maintenance Contractor shall be required to provide a new PCO Notice before it may submit a Request for Change Order.

10.3.2.6 Incomplete Requests for Change Order

10.3.2.6.1 Each Request for Change Order provided under Section 10.3.2.5 shall meet all requirements set forth in Section 10.4; provided that if any such requirements cannot be met due to the nature and/or timing of the occurrence, Maintenance Contractor shall provide an incomplete Request for Change Order which fills in all information capable of being ascertained. Said incomplete Request shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to TxDOT stating why such requirements cannot be met, and (b) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

10.3.2.6.2 Maintenance Contractor shall furnish, when requested by TxDOT or its designee, such further information and details as may be required to determine the facts or contentions involved. Maintenance Contractor agrees that it shall give TxDOT or its designee access to any and all of Maintenance Contractor's books, records and other materials relating to the Maintenance Services, and shall cause its Subcontractors to do the same, so that TxDOT or its designee can

investigate the basis for such proposed Change Order. Maintenance Contractor shall provide TxDOT with a monthly update to all outstanding Requests for Change Order describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to TxDOT and expenditures to date. TxDOT may reject the Request for Change Order at any point in the process. TxDOT's failure to respond to a complete Request for Change Order within 15 Business Days of delivery of the request shall not be deemed an acceptance of such request, and the Maintenance Contractor shall have the burden of following up with TxDOT on the status of any such Request for Change Order.

10.3.2.7 Importance of Timely Response

Maintenance Contractor acknowledges and agrees that, due to limitations on funding for the Project, timely delivery of PCO Notices and Requests for Change Orders and updates thereto are of vital importance to TxDOT. TxDOT is relying on Maintenance Contractor to evaluate promptly upon the occurrence of any event or situation whether the event or situation will affect the Maintenance Price and, if so, whether Maintenance Contractor believes a Maintenance Price increase is required hereunder. If an event or situation occurs which may affect the Maintenance Price, TxDOT will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within TxDOT's funding and time restraints. The following matters (among others) shall be considered in determining whether TxDOT has been prejudiced by Maintenance Contractor's failure to provide timely notice: (a) the effect of the delay on alternatives available to TxDOT (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within ten days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence); and (b) the impact of the delay on TxDOT's ability to obtain and review objective information contemporaneously with the event.

10.3.2.8 Review of Subcontractor Request for Price Increase

Prior to submission by Maintenance Contractor of any Request for Change Order that is based in whole or in part on a request by a Subcontractor to Maintenance Contractor for a price increase under its Subcontract, Maintenance Contractor shall have reviewed all invoices by the Subcontractor which constitute the basis for the Request for Change Order and determined in good faith that each such request is justified hereunder and that Maintenance Contractor is acting reasonably in requesting an increase in the Maintenance Price in the amounts specified in the Request for Change Order. Each Request for Change Order involving Subcontractor-performed Maintenance Services, and each update to an incomplete Change Order request involving such Maintenance Services shall include a summary of Maintenance Contractor's analysis of all Subcontractor invoice components and shall include a certification signed by the Maintenance Manager stating that Maintenance Contractor has investigated the basis for the Subcontractor's request and has determined that all such request is justified as to entitlement and amount of money requested, has reviewed and verified the adequacy of all back-up documentation to be placed in

escrow pursuant to Section 17.2, and has no reason to believe and does not believe that the factual basis for the Subcontractor's request is falsely represented. Any Request for Change Order involving Subcontractor-performed Maintenance Services which is not accompanied by such analysis and certification shall be considered incomplete.

10.3.3 Performance of Disputed Maintenance Services

If TxDOT refuses to issue a Change Order based on Maintenance Contractor's request, Maintenance Contractor shall nevertheless perform all work as specified by Directive Letter, and shall have the right to submit the issue to dispute resolution pursuant to Section 16. Maintenance Contractor shall maintain and deliver to TxDOT, upon request, contemporaneous records, meeting the requirements of Section 10.9, for all work performed that Maintenance Contractor believes constitutes extra work (including non-construction work), until all Claims and Disputes regarding entitlement or cost of such work are resolved.

10.4 Contents of Change Orders

10.4.1 Form of Change Order

Each Cost and Schedule Proposal and Request for Change Order shall (i) be prepared in a form acceptable to TxDOT, (ii) meet all applicable requirements of this Section 10; and (iii) be substantially in the form of Exhibit 12.

10.4.2 Scope of Work, Cost Estimate, and Other Supporting Documentation

Maintenance Contractor shall prepare a scope of work and cost estimate, and such other information as required by this Section 10.4.2 for each Cost and Schedule Proposal and Request for Change Order.

10.4.2.1 Scope of Work

The scope of work shall describe in detail satisfactory to TxDOT all activities associated with the proposed Change Order, including a description of additions, deletions and modifications to the existing requirements of the Capital Maintenance Agreement Documents.

10.4.2.2 Cost Estimate

The cost estimate shall set out the estimated costs for the proposed Change Order in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment and markups for overhead and profit, unless TxDOT agrees otherwise. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Maintenance Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment and markups for overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for Maintenance Contractor's estimate. No markup shall be

allowed in excess of the amounts allowed under Section 10.6. Maintenance Contractor shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

10.4.2.3 Other Supporting Documentation

Maintenance Contractor shall provide such other supporting documentation as may be required by TxDOT.

10.4.3 Justification

All Requests for Change Orders shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provision(s) of Section 10 which permit a Change Order to be issued, and describing the data and documents (including all data and reports required under Section 10.9) which establish the necessity and amount of such proposed change.

10.4.4 Maintenance Contractor Representation

Each proposed Change Order shall be accompanied by a certification under penalty of perjury, in a form acceptable to TxDOT, executed by Maintenance Contractor and stating that: (a) the amount of compensation requested is justified as to entitlement and amount, (b) the amount of compensation requested includes all known and anticipated impacts or amounts that may be incurred as a result of the event or matter giving rise to such proposed change, and (c) the cost and pricing data forming the basis for the proposed Change Order is complete, accurate and current. Each proposed Change Order involving Maintenance Services by a Subcontractor for which pricing data is required to be provided under Section 17.2 shall include a statement that the Subcontractor pricing data has been provided and shall include a copy of the certification required to be provided by the Subcontractor under Section 17.2.

10.4.5 Effect of Change Order Under DBA

Maintenance Contractor acknowledges that it has reviewed the DBA and provisions affecting Change Orders requested by Maintenance Contractor under this Capital Maintenance Agreement. Maintenance Contractor expressly agrees to comply with and be bound by Section 13.4.5 of the DBA.

10.5 Certain Limitations

10.5.1 Limitation on Maintenance Price Increases

Any increase in the Maintenance Price allowed hereunder shall exclude: (a) costs incurred by Maintenance Contractor arising out of or relating to the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract, or Governmental Approval by any Maintenance Contactor-Related Entity; (b) costs to the

extent that they are unnecessary or could reasonably be avoided by Maintenance Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Maintenance Services or to other activities unrelated to the Maintenance Services; and (c) costs for remediation of any Nonconforming Work. Costs incurred for the purpose of mitigating further costs as described in clause (b) above, and not otherwise disallowed hereunder, would be reimbursable.

10.5.2 Maintenance Services Performed Without Direction

To the extent that Maintenance Contractor undertakes any efforts outside of the scope of the Maintenance Services, unless Maintenance Contractor has received a Directive Letter or Change Order signed by TxDOT to undertake such efforts, Maintenance Contractor shall be deemed to have undertaken the extra work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, TxDOT may require Maintenance Contractor to remove or otherwise undo any such work, at Maintenance Contractor's sole cost.

10.6 Change Order Pricing

The price of a Change Order under this Section 10.6 shall be a negotiated lump sum price or unit prices as provided below. Lump sum price or unit prices shall be based on the original allocations of the Maintenance Price to comparable activities, whenever possible. If reference to price allocations is not possible and if requested by TxDOT, negotiation for lump sum or unit price Change Orders shall be on an Open Book Basis and may be based on the pricing contained in the EPDs as well as Subcontractors' bid prices.

10.6.1 Detailed Cost Proposal

Maintenance Contractor may be required to submit a detailed cost proposal identifying all categories of costs in accordance with the requirements of Section 10.7: (a) showing all impacts on the CMA Documents from Maintenance Services additions, deletions and modifications shown in the proposed Change Order being priced; and (b) setting out the proposed costs in such a way that a fair evaluation can be made. When the Change Order adds Maintenance Services to Maintenance Contractor's scope, the increase in the Maintenance Price shall be negotiated based on estimates or actual costs of labor, material and equipment. When the Change Order deletes Maintenance Services from Maintenance Contractor's scope, the amount of the reduction in the Maintenance Price shall be based upon an estimate including a bill of material, a breakdown of labor and equipment costs. Markup for profit and overhead consistent with Section 10.7 shall apply to Maintenance Services added and deleted by Change Orders.

10.6.2 Identification of Conditions

Maintenance Contractor shall identify all conditions with respect to prices or other aspects of the cost proposal, such as pricing contingent on firm orders being made by a certain date or the occurrence or nonoccurrence of an event.

10.6.3 Contents

A negotiated Change Order shall specify costs, scheduling requirements, and all costs of any nature arising out of the Maintenance Services covered by the Change Order. Notwithstanding the foregoing, the Parties may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated construction cost and which provides for a modified Change Order to be issued after a certain design level has been reached, thus allowing a refinement and further definition of the estimated construction cost.

10.6.4 Added Maintenance Services

When the Change Order adds Maintenance Services to Maintenance Contractor's scope, the increase in the Maintenance Price shall be negotiated based on estimated costs of labor, material and equipment, or shall be based on actual costs in accordance with Section 10.7. For negotiated Change Orders, markups for profit and overhead shall be consistent with Section 10.7.7. Risk associated with the Maintenance Services described in the Change Order shall be addressed through the assumptions contained therein regarding the scope of such Maintenance Services.

10.6.5 Deleted Maintenance Services

When the Change Order deletes Maintenance Services from Maintenance Contractor's scope, the amount of the reduction in the Maintenance Price shall be based upon Maintenance Contractor's estimated price for such work included in the Proposal, including a bill of material and a breakdown of labor and equipment costs, plus variable overhead and profit associated with the deleted Maintenance Services. Estimated costs that the Maintenance Contractor applied to develop the original Maintenance Price, as well as markup for profit and variable overhead at the rates the Maintenance Contractor applied to develop the Maintenance Price, as reflected in the EPDs, shall apply for determining the amount of the Maintenance Price reduction for deleted Maintenance Services Change Orders. The amount of risk associated with such Maintenance Services as of the Effective Date by Maintenance Contractor shall be an additional factor in determining the amount of the Maintenance Price reduction for deleted Maintenance Services Change Orders. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the Maintenance Price deduction. Reimbursement will be made for actual work done and all costs incurred, including mobilization of materials, prior to the date of the Directive Letter or other notification by TxDOT eliminating the work.

10.6.6 Change Order Both Adding and Deleting Maintenance Services

When the Change Order includes both added and deleted Maintenance Services, Maintenance Contractor shall prepare a statement of the cost of labor, material and equipment for both added and deleted Maintenance Services. If the cost of labor, material and equipment for the Maintenance Services added and deleted results in a:

(a) Net increase in cost, the change shall be treated as Maintenance Services added and the provisions of Section 10.6.4 shall be used to determine markups for overhead and profit. Markups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the Maintenance Price.

(b) Net decrease in cost, the change shall be treated as Maintenance Services deleted and the provisions of Section 10.6.5 shall be used on the net decrease in cost in order to establish the amount deduct from the Maintenance Price.

(c) Net change of zero, there will be no change in the Maintenance Price.

10.6.7 Unit Priced Change Orders

Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Maintenance Price based on estimated quantities. Upon final determination of the quantities, TxDOT will issue a modified Change Order setting forth the final adjustment to the Maintenance Price.

10.6.8 All-Inclusive Change Orders

All proposed Change Orders submitted by Maintenance Contractor shall be all-inclusive, comprehensive and complete and shall not include any conditions with respect to pricing or schedule.

10.7 Time and Materials Change Orders

TxDOT may at its discretion issue a Time and Materials Change Order whenever TxDOT determines that a Time and Materials Change Order is advisable. The Time and Materials Change Order shall instruct Maintenance Contractor to perform the identified additional (or modified) Maintenance Services, indicating expressly the intention to treat the items as changes in the Maintenance Services, and setting forth the kind, character, and limits of the Maintenance Services as far as they can be ascertained, the terms under which changes to the Maintenance Price will be determined and the estimated total change in the Maintenance Price anticipated thereunder. Upon final determination of the allowable costs, TxDOT shall issue a modified Change Order setting forth the final adjustment to the Maintenance Price.

10.7.1 Labor Costs

The cost of labor for workers used in the actual and direct performance of the Change Order work, whether provided by Maintenance Contractor or a Subcontractor, will equal the sum of the following:

(a) For construction-related labor, (1) the actual cost for direct labor; plus (2) the actual cost of workers' compensation and liability insurance required under this Capital Maintenance Agreement, health, welfare and pension benefits and Social Security deductions or 55% of the actual direct labor cost, whichever is less; plus (3) 25% of the total of the amounts set forth in clauses (1) and (2) for profit and overhead.

(b) For non-construction-related labor (professional services), (1) the actual wages (i.e., the base wage paid to the employee exclusive of any fringe benefits); plus (2) a labor surcharge in the amount of 145%, which shall constitute full compensation for all profit, overhead and all State and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages.

10.7.2 Material Costs

Material costs for Change Order work shall be the actual cost of all materials to be used in the performance of construction work including normal wastage allowance as per industry standards, less salvage value, plus 15% for profit and overhead. The material prices shall be supported by valid quotes and invoices from Suppliers. The cost shall include applicable sales taxes, freight and delivery charges and any allowable discounts.

10.7.3 Equipment

10.7.3.1 Costs for Maintenance Contractor-owned machinery, trucks, power tools or other similar equipment that are required for Change Order work will be allowed based on the following methodology:

(a) The direct cost of fuel, lubricants, repairs, parts, and depreciation will be considered without any additional compensation percentage for overhead and profit being added; and

(b) The equipment rental rates shall be those tabulated in the most recent version of the *Rental Rate Blue Book*. The rental rates to be used shall be the published monthly rate divided by 175 to yield an hourly rate, which hourly rate shall be further adjusted by multiplying it by the *Rental Rate Blue Book* adjustment rate for the year the equipment was manufactured and by the regional factor contained in the *Rental Rate Blue Book* estimated hourly operating cost rate.

Maintenance Contractor shall be considered to own such items if an ownership interest therein is held by: (i) Maintenance Contractor, (ii) any equity participant in Maintenance Contractor, (iii) any Subcontractor performing construction work, or (iv) any Affiliate of Maintenance Contractor, any equity participant in

Maintenance Contractor or any such Subcontractor. If the publication of the *Rental Rate Blue Book* should be discontinued for any reason, TxDOT may select a different publication from which to make the described calculations.

10.7.3.2 Costs for machinery, trucks, power tools or other similar equipment that are required for Change Order work rented from any commercial enterprises routinely offering equipment and tools for rent or lease to the public will be allowed in an amount equal to the direct rental rate for the equipment plus a 5% markup for overhead and profit.

10.7.3.3 The time to be paid for use of equipment on the Site shall be the time the equipment is in operation on the Change Order work being performed. The time shall include the reasonable time required to move the equipment to the location of the Change Order work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is also used at the Site other than for Change Order work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. Payment for loading and transporting will be made only if the equipment is used for Change Order work and cannot be used to perform other Maintenance Services. Time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

10.7.4 Subcontracted Maintenance Services

To the extent that any Change Order is intended to compensate Maintenance Contractor for the cost of work performed by Subcontractors, the Change Order shall provide for compensation equal to: (a) the actual cost to Maintenance Contractor of such work (which shall be charged by the Subcontractor on a time and materials basis in accordance with this Section 10.7, unless otherwise approved in writing by TxDOT), plus (b) 5% of such cost. The 5% markup for subcontracted work shall not apply to: (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

10.7.5 Other Direct Costs

For any justified direct cost incurred for Change Order work not covered by the categories of costs contained in Sections 10.7.1 through 10.7.4, Maintenance Contractor shall accept as full payment therefor an amount equal to the actual cost to Maintenance Contractor for such direct cost item without additional mark-up. Back-up documentation supporting each cost item for this category shall be provided by Maintenance Contractor and approved by TxDOT in writing prior to any payment authorization being granted.

10.7.6 Overhead Items

The mark-ups specified herein constitute full and complete compensation for all overhead, tools or equipment having an individual replacement value of $1,000 or less, consumables (items which are consumed in the performance of the Maintenance

Services which are not a part of the finished product) and other indirect costs of the added or changed Maintenance Services, as well as for profit thereon, including any and all costs and expenses incurred due to any delay in connection with the added or changed Maintenance Services. Maintenance Contractor's mark-up percentages shall be considered to include:

(a) Supervisory expenses of all types, including salary and expenses of executive officers, supervising officers or supervising employees, excluding only direct supervision of force account work;

(b) Clerical or stenographic employees;

(c) Any and all field, jobsite and general home office overhead and operating expenses whatsoever;

(d) Subsistence and travel expenses for all personnel, other incidental job burdens, and bonuses not otherwise covered;

(e) Quality assurance and quality control; and

(f) Bond and insurance premiums.

With respect to non-construction related labor costs, overhead is covered by the labor surcharge, and includes accessories such as computer assisted drafting and design (CADD) systems, software and computers, facsimile machines, scanners, plotters, etc.

10.7.7 Change Order Data

10.7.7.1 Maintenance Contractor shall contemporaneously collect, record in writing, segregate and preserve: (a) all data necessary to determine the costs described in this Section 10.7 with respect to all Maintenance Services which are the subject of a Time and Materials Change Order or a requested Change Order (excluding negotiated Change Orders previously executed and delivered), specifically including costs associated with design work, and (b) all data necessary to show the actual impact (if any) on the applicable deadlines with respect to all Maintenance Services which are the subject of a Change Order or a proposed Change Order. Such data shall be provided to TxDOT and any authorized representative of TxDOT reviewing any Claim or Dispute regarding compensation for such Maintenance Services. Maintenance Contractor hereby waives the right to obtain compensation for any Maintenance Services for which cost data is required to be provided hereunder, if Maintenance Contractor fails to maintain and timely provide to TxDOT cost data meeting the requirements of this Capital Maintenance Agreement.

10.7.7.2 In addition to obligations under Section 17.3, Maintenance Contractor shall maintain its records in such a manner as to provide a clear distinction between: (a) the direct cost of Maintenance Services for which it is entitled (or for which it believes it is entitled) to an increase in the Maintenance Price and (b) the costs of

other operations. Maintenance Contractor shall furnish daily, on forms approved by TxDOT, reports of all costs described in the foregoing clause (a). The reports shall itemize all costs for labor, materials, and equipment rental and give total of costs through the date of the report. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate and actual working hours of operation. All such records and reports shall be made immediately available to TxDOT upon its request. The cost of furnishing such reports are deemed to be included in Maintenance Contractor's overhead and fee percentages.

10.7.7.3 All reports shall be signed by Maintenance Contractor. TxDOT will compare its records with Maintenance Contractor's reports, make the necessary adjustments and compile the costs of Maintenance Services completed under a Time and Materials Change Order. When such reports are agreed upon and signed by both Parties, they will become the basis of payment.

10.8 Change Orders for Force Majeure Events and Hazardous Materials

10.8.1 Force Majeure Events

Subject to the limitations contained in, and upon Maintenance Contractor's fulfillment of all applicable requirements of, this Section 10, TxDOT shall issue Change Orders to compensate Maintenance Contractor for additional costs incurred arising directly from Force Majeure Events. Maintenance Contractor's rights to recover additional costs incurred arising directly from Force Majeure Events shall not include delay and disruption damages.

10.8.2 Hazardous Materials Management

If compensation is payable to Maintenance Contractor pursuant to Section 3.7 with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties, or 100% of the Reimbursable Hazardous Materials Costs for the work in question, subject to the limitations set forth in this Section 10.8.2. Maintenance Contractor shall not be entitled to a Change Order for additional compensation with respect to the Hazardous Materials Management responsibilities set forth in Sections 3.7.1 and 3.7.2.

Entitlement to compensation shall be limited to work performed pursuant to Maintenance Contractor's Hazardous Materials Management Plan and any site investigation report or workplan for such Hazardous Materials as approved by TxDOT, in writing. No compensation shall be allowed with respect to: (a) immaterial quantities of Hazardous Materials, (b) any use of Hazardous Materials that could have been avoided by reasonable design modifications, maintenance procedures or construction techniques, or (c) any costs that could have been avoided.

10.8.2.1 Determination of Reimbursable Amount

10.8.2.1.1 Maintenance Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection with any Hazardous Materials Management and any right to obtain a time extension if TxDOT is not provided written notice of the discovery of Hazardous Materials and afforded the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit TxDOT's ability to ascertain, based on a site inspection, the nature and extent of the materials. In the event of an emergency involving Hazardous Materials, Maintenance Contractor may take such limited actions as are required by Law without advance notice to TxDOT, but shall provide such notice immediately thereafter (which in no event shall be more than 2 hours after the incident by phone and 24 hours after the incident by written notice).

10.8.2.1.2 In cases involving reimbursement for Hazardous Materials Management under this Section 10.8.2, allowable costs shall be limited to the incremental costs actually incurred in performing Hazardous Materials Management after completion of the testing process to determine whether Hazardous Materials are present (deducting any avoided costs such as the cost of disposal that would have been incurred had Hazardous Materials not been present). Investigating and characterizing are included in the Maintenance Price and Maintenance Contractor shall not be entitled to additional compensation therefor. Maintenance Contractor shall take all reasonable steps to minimize acts or omissions that cause Maintenance Contractor to incur any such incremental costs. Compensation shall be allowed only to the extent that Maintenance Contractor demonstrates to TxDOT's satisfaction that: (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications, maintenance procedures or construction techniques and (b) Maintenance Contractor’s plan for the Hazardous Materials Management represents the approach which is most beneficial to the Project and the public. Maintenance Contractor shall provide TxDOT with such information, analyses and certificates as may be requested by TxDOT in order to enable a determination regarding eligibility for payment.

10.8.2.2 Limitations on Change Orders

Maintenance Contractor shall have no right to receive any compensation for any Hazardous Materials Management resulting from a situation described in Section 15.1(G).

10.8.2.3 Insurance Proceeds

If the cost of any Hazardous Materials Management is covered by the insurance described in Section 7, Maintenance Contractor shall be entitled to reimbursement of its costs from proceeds of insurance and self-insurance, up to the limits of the applicable policy, less any deductibles which shall be Maintenance Contractor’s responsibility. To the extent that such proceeds are available, Maintenance Contractor shall not be entitled to payment hereunder on any other basis for such Hazardous Materials Management.

10.9 Change Order Records

Maintenance Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Maintenance Services for which it is entitled (or for which it believes it is entitled) to an increase in the Maintenance Price and the costs of other operations. Maintenance Contractor shall contemporaneously collect, record in writing, segregate and preserve all data necessary to determine the costs of all Maintenance Services which are the subject of a Change Order or a requested Change Order, specifically including costs associated with design work. Such data shall be provided to any dispute resolvers, TxDOT and its authorized representatives as directed by TxDOT, on forms approved by TxDOT. The cost of furnishing such reports is included in Maintenance Contractor's predetermined overhead and profit markups.

10.9.1 Daily Work Reports and Data Collection

Maintenance Contractor shall furnish TxDOT completed daily work reports for each day's Maintenance Services that is to be paid for on a time and material basis. The daily time and material work reports shall be detailed as follows:

(a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom reimbursement is requested.

(b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(c) Quantities of materials, prices, and extensions.

(d) Transportation of materials.

The reports shall also state the total costs to date for the Time and Materials Change Order work.

10.9.2 Supplier's Invoices

Materials charges shall be substantiated by valid copies of Supplier's invoices. Such invoices shall be submitted with the daily time and material work reports, or if not available, with subsequent daily time and material work reports. Should said Supplier's invoices not be submitted within 60 days after the date of delivery of the materials, TxDOT shall have the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available, in the quantities concerned, delivered to the location of Maintenance Services, less any discounts available, rather than at the invoiced amount.

10.9.3 Execution of Reports

All Time and Materials Change Order reports shall be signed by the Maintenance Manager.

10.9.4 Adjustment

TxDOT will compare its records with the completed daily time and material Maintenance Services reports furnished by Maintenance Contractor and make any necessary adjustments. When these daily time and material work reports are agreed upon and signed by both Parties, said reports shall become the basis of payment for the Maintenance Services performed, but shall not preclude subsequent adjustment based on a later audit. Maintenance Contractor's cost records pertaining to Maintenance Services paid for on a time and material basis shall be open, during all regular business hours, to inspection or audit by representatives of TxDOT during the life of this Capital Maintenance Agreement and for a period of not less than five years after the termination of the Capital Maintenance Agreement, and Maintenance Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to any Person other than Maintenance Contractor, Maintenance Contractor shall make every reasonable effort to insure that the cost records of each such other Person will be open to inspection and audit by representatives of TxDOT on the same terms and conditions as the cost records of Maintenance Contractor. Payment for such costs may be deleted if the records of such third parties are not made available to TxDOT's representatives. If an audit is to be commenced more than 60 days after the termination of contract, Maintenance Contractor will be given a reasonable notice of the time when such audit is to begin.

10.10 Matters Not Eligible for Maintenance Price Increase

Maintenance Contractor acknowledges and agrees that no increase in the Maintenance Price is available except in circumstances expressly provided for herein, that such Maintenance Price increase shall be available only as provided in this Section 10 and that Maintenance Contractor shall bear full responsibility for the consequences of all other events and circumstances. Matters which are Maintenance Contractor's exclusive responsibility include the following:

(a) delay from TxDOT or other parties' maintenance activities;

(b) maintenance, replacement or repair of any component (whether or not it is a Maintained Element), necessitated by any act, omission, negligence, intentional misconduct, or breach of applicable Law, contract, or Governmental Approval by any Maintenance Contractor-Related Entity or DB Contractor-Related Entity;

(c) changes arising out of design or construction of the Project or the materials and supplies used with the construction;

(d) acts, omissions, negligence, intentional misconduct or breach of contract, Law, or any Governmental Approval by any Maintenance Contractor-Related Entity or DB Contractor-Related Entity;

(e) costs to the extent they could be avoided through mitigation by the Maintenance Contractor or by re-sequencing, re-allocating or redeploying workforces;

(f) materials replacing, re-seeding and re-vegetation for erosion;

(g) design or construction Errors, excluding design Errors in the Margaret McDermott Bridges Design to the extent the DB Contractor does not have responsibility for such Errors under the Design-Build Agreement;

(h) any costs covered by insurance proceeds received by (or on behalf of) Maintenance Contractor;

(i) action or inaction of adjoining property owners or TxDOT's other contractors (unless arising from causes which otherwise give rise to a right to a Change Order);

(j) groundwater levels or subsurface moisture content;

(k) correction of Nonconforming Work and review and acceptance thereof by TxDOT (including rejected design submittals);

(l) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in issuance of a Governmental Approval that is required to be obtained by Maintenance Contractor, any failure to obtain such Governmental Approval, and compliance with the terms and conditions of all Governmental Approvals;

(m) any situations (other than Force Majeure Events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in this Capital Maintenance Agreement or arise out of the nature of the Maintenance Services; and

(n) all other events beyond the control of TxDOT for which TxDOT has not expressly agreed to assume liability hereunder.

Maintenance Contractor hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by Maintenance Contractor of responsibility for such risks, and the consequences and costs and delays resulting therefrom, is reasonable under the circumstances of this Capital Maintenance Agreement and that contingencies included in the Maintenance Price in Maintenance Contractor's sole judgment, constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

MAINTENANCE CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE MAINTENANCE SERVICES, DELAY, DISRUPTION, SUSPENSION OR ACCELERATION (INCLUDING

ANY CONSTRUCTIVE CHANGE, DELAY, DISRUPTION, SUSPENSION OR ACCELERATION) FOR WHICH MAINTENANCE CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION, DAMAGES OR TIME EXTENSION WHATSOEVER IN CONNECTION WITH THE MAINTENANCE SERVICES EXCEPT TO THE EXTENT THAT THE CMA DOCUMENTS EXPRESSLY SPECIFY THAT MAINTENANCE CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION, DAMAGES OR TIME EXTENSION.

10.11 Disputes

If TxDOT and Maintenance Contractor agree that a request to increase the Maintenance Price by Maintenance Contractor has merit, but are unable to agree as to the amount of such Maintenance Price increase, TxDOT agrees to mark up the Request for Change Order or Cost and Schedule Proposal, as applicable, provided by Maintenance Contractor to reduce the amount of the Maintenance Price increase as deemed appropriate by TxDOT. In such event, TxDOT will execute and deliver the marked-up Change Order to Maintenance Contractor within a reasonable period after receipt of a request by Maintenance Contractor to do so, and thereafter will make payment based on such marked-up Change Order. The failure of TxDOT and Maintenance Contractor to agree to any Change Order under this Section 10 (including agreement as to the amount of compensation allowed under a Time and Materials Change Order and the disputed amount of the increase in the Maintenance Price in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to Section 16. Except as otherwise specified in the Change Order, execution of a Change Order by both Parties shall be deemed accord and satisfaction of all Claims by Maintenance Contractor of any nature arising from or relating to the Maintenance Services covered by the Change Order. Maintenance Contractor's Claim and any award by the Dispute resolver shall be limited to the incremental costs incurred by Maintenance Contractor with respect to the Dispute (crediting TxDOT for any corresponding reduction in Maintenance Contractor's other costs) and shall in no event exceed the amounts allowed by Section 10.7 with respect thereto.

10.12 Changes Not Requiring Change Order

Changes in the Maintenance Services or requirements in the CMA Documents that have no net cost effect on the Maintenance Price may be approved in writing by TxDOT as a Deviation, and in such event shall not require a Change Order. Any other change in the requirements of the CMA Documents shall require either a Directive Letter or a Change Order. For purposes of this Section 10.12, the provisions regarding "Deviations" set forth at Section 2.1.2.4 of the DBA are incorporated herein by reference, *mutatis mutandis*.

10.13 No Release or Waiver

10.13.1 No Change Order granted hereunder shall release Maintenance Contractor's Surety or Sureties from any of each of its respective obligations.

Maintenance Services shall continue and be carried out in accordance with all the provisions of the CMA Documents and this Capital Maintenance Agreement shall be and shall remain in full force and effect, unless formally suspended or terminated by TxDOT in accordance with the terms hereof. Extending time or permitting Maintenance Contractor to finish the Maintenance Services or any part thereof after the applicable deadline, or the making of payments to Maintenance Contractor after such date, shall not constitute a waiver on the part of TxDOT of any rights under this Capital Maintenance Agreement.

10.13.2 The performance and acceptance of any part of the Maintenance Services or materials specified by this Capital Maintenance Agreement after the date fixed for such performance, shall not be deemed to be a waiver by TxDOT of its right to terminate this Capital Maintenance Agreement for abandonment or failure to complete within the time specified or to impose and deduct damages as may be provided.

10.13.3 No course of conduct or dealings between the Parties nor express or implied acceptance of alterations or additions to the Maintenance Services, and no claim that TxDOT has been unjustly enriched shall be the basis for any claim, request for additional compensation or time extension. Further, Maintenance Contractor shall undertake, at its risk, work included in any request, order or other authorization issued by a Person in excess of that Person's authority as provided herein, or included in any oral request. Maintenance Contractor shall be deemed to have performed such work as a volunteer and at its sole risk and cost. In addition, TxDOT may require Maintenance Contractor to remove or otherwise undo any such work, at Maintenance Contractor's sole risk and cost.

SECTION 11. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

11.1 Acknowledgments by Maintenance Contractor

Maintenance Contractor acknowledges and agrees that:

11.1.1 To the extent of the Maintenance Services, Maintenance Contractor has full responsibility for the maintenance, repair and upkeep of the Project.

11.1.2 Maintenance Contractor assumes, with respect to the Elements that are within the scope of the Maintenance Services as described in Exhibit 2, the risk of the design and construction of the Project; design defects, omissions, errors or inaccuracies; construction defects and flaws; the materials and supplies used in connection with the construction of the Project; the Work under the Design-Build Agreement; and the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor-Related Entities and the DB Contractor-Related Entities and acknowledges and agrees that it has incorporated into the Maintenance Price all costs associated with such risks.

11.1.3 Maintenance Contractor shall not be entitled to: (a) assert or use the design and construction of the Project; design defects, omissions, errors or inaccuracies; construction defects and flaws; the materials and supplies used in connection with the construction of the Project; the Maintenance Services; and/or the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor-Related Entities and the DB Contractor-Related Entities as defenses to the full and complete performance of the Maintenance Services and any other obligation under the CMA Documents; and (b) any Change Order resulting from, related to or arising out of the design and construction of the Project; design defects, omissions, errors or inaccuracies; construction defects and flaws; the materials and supplies used in connection with the construction of the Project; the Maintenance Services; and/or the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor-Related Entities and the DB Contractor-Related Entities.

11.1.4 Except to the limited extent provided by Section 1.2.4, Maintenance Contractor shall not be entitled to rely on any documents or information provided by TxDOT relating to the design or construction of the Project, including the Reference Information Documents.

11.1.5 TxDOT shall not be responsible or liable in any respect for any Losses suffered by any of the Maintenance Contractor-Related Entities by reason of the design and construction of the Project; design defects, omissions, errors or inaccuracies; construction defects or flaws; the materials and supplies used in connection with the construction of the Project; the Maintenance Services; or the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor-Related Entities or the DB Contractor-Related Entities.

11.2 Disclaimers By TxDOT

11.2.1 TxDOT does not make any representation regarding or warrant the design and construction of the Project; the existence or non-existence of any design defects, omissions, errors, or inaccuracies; the existence of any construction defects or flaws; the traffic volume projections or revenue projections; the materials and supplies used in connection with the construction of the Project; the Maintenance Services; the compliance by any member of the DB Contractor-Related Entities with the terms of the DBA; or, the utility, suitability, or fitness of the Project for its intended use.

11.2.2 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TXDOT EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION OR QUALITY OF THE PROJECT, THE PROJECT ROW OR THE PROSPECTS (FINANCIAL AND OTHERWISE), RISKS AND OTHER INCIDENTS OF THE PROJECT ROW, THE WORK, THE MAINTENANCE SERVICES AND THE PROJECT AND TXDOT SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PROJECT, THE PROJECT ROW, THE WORK AND THE MAINTENANCE SERVICES, OR ANY PART THEREOF, OR COMPLIANCE WITH APPLICABLE LAWS OR GOVERNMENTAL APPROVALS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TXDOT EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE CONDITION OF THE PROJECT, THE WORK, THE PROJECT ROW, OR THE SUITABILITY THEREOF IN CONNECTION WITH THE MAINTENANCE SERVICES AND NO SCHEDULE OR EXHIBIT TO THE CMA DOCUMENTS, NOR ANY OTHER MATERIAL OR INFORMATION PROVIDED BY OR COMMUNICATIONS MADE BY TXDOT, SHALL CAUSE OR CREATE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OR QUALITY OF THE PROJECT, THE WORK OR THE PROJECT ROW.

11.3 TxDOT Representations and Warranties

TxDOT represents and warrants to Maintenance Contractor as follows:

11.3.1 TxDOT has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of the CMA Documents to which it is a Party.

11.3.2 Each Person executing the CMA Documents on behalf of TxDOT to which TxDOT is a Party has been or at the time of execution will be duly authorized to execute each such document on behalf of TxDOT.

11.3.3 There is no action, suit, proceeding, investigation or litigation pending and served on TxDOT which challenges TxDOT's authority to execute, deliver or perform, or the validity or enforceability of, the CMA Documents to which TxDOT is a Party, or which challenges the authority of the officials executing the CMA Documents.

11.4 Maintenance Contractor Representations and Warranties

Maintenance Contractor represents, warrants and covenants to TxDOT as follows:

11.4.1 Maintenance Contractor and its Subcontractors have maintained, and throughout the term of this Capital Maintenance Agreement shall maintain, all required authority, license status, professional ability, skills and capacity to perform Maintenance Contractor's obligations hereunder and shall perform them in accordance with the requirements contained in the CMA Documents.

11.4.2 Maintenance Contractor has evaluated the feasibility of performing the Maintenance Services within the deadlines specified herein and for the Maintenance Price and has reasonable grounds for believing and does believe that such performance is feasible and practicable.

11.4.3 Maintenance Contractor has, prior to executing this Capital Maintenance Agreement, in accordance with Good Industry Practice, reviewed and taken appropriate steps to verify the information included in the Reference Information Documents, inspected and, to the extent access was made available by TxDOT or was otherwise available to it, examined the Site and surrounding locations, performed appropriate field studies, and undertaken other activities sufficient to familiarize itself with existing Utilities, surface conditions and subsurface conditions affecting the Project to the extent Maintenance Contractor deems necessary or advisable for performing its obligations under the CMA Documents, and as a result of such review, inspection, examination and other activities Maintenance Contractor is familiar with and accepts the physical requirements of the Maintenance Services. Maintenance Contractor acknowledges and agrees that it has been afforded the opportunity to review information and documents and, to the extent access was made available by TxDOT or was otherwise available to it, to conduct inspections and tests of the Site and surrounding locations as described above. Before commencing any work on a particular portion or aspect of the Project, Maintenance Contractor shall verify all governing dimensions of the Site and shall examine all adjoining work (including Adjacent Work) that may have an impact on such work. Maintenance Contractor shall ensure that any Design Documents and Construction Documents furnished as part of the Maintenance Services accurately depict all governing and adjoining dimensions.

11.4.4 Maintenance Contractor acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this Capital Maintenance Agreement. Maintenance Contractor shall comply with the foregoing at its sole cost and expense and without any increase in the Maintenance Price on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the CMA Documents. Maintenance Contractor has no reason to believe that any Governmental Approval required to be obtained by Maintenance Contractor will not be granted in due course and, thereafter, remain in effect in order to enable the Maintenance Services to proceed in accordance with the CMA Documents. If any Governmental Approvals required to be obtained by Maintenance Contractor must

formally be issued in the name of TxDOT, Maintenance Contractor shall undertake all efforts to obtain such approvals subject to TxDOT's reasonable cooperation with Maintenance Contractor, including execution and delivery of appropriate applications and other documentation prepared by Maintenance Contractor in form approved by TxDOT. Maintenance Contractor shall assist TxDOT in obtaining any Government Approvals which TxDOT may be obligated to obtain, including providing information requested by TxDOT, preparing necessary supporting materials and participating in meetings regarding such approvals.

11.4.5 All Maintenance Services furnished by Maintenance Contractor shall be performed by or under the supervision of Persons who hold all necessary and valid licenses to perform the Maintenance Services in the State, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Maintenance Services in accordance with the CMA Documents and who shall assume professional responsibility for the accuracy and completeness of all Design Documents and Construction Documents prepared or checked by them.

11.4.6 At all times, including during the course of, and notwithstanding the existence of, any Dispute, Maintenance Contractor shall perform as directed by TxDOT, in a diligent manner and without delay, shall abide by TxDOT's decision or order, and shall comply with all applicable provisions of the CMA Documents.

11.4.7 As of the Effective Date, Maintenance Contractor is a limited liability company, duly organized and validly existing under the Laws of the State of Delaware with all requisite power and all required licenses to carry on its present and proposed obligations under the CMA Documents. Fluor Enterprises, Inc., a California corporation, and Balfour Beatty Infrastructure, Inc., a Delaware corporation, are the sole members of Maintenance Contractor. Maintenance Contractor and each member of Maintenance Contractor is duly qualified to do business, and is in good standing, in the State of Texas as of the Effective Date, and will remain in good standing throughout the Maintenance Term and for as long thereafter as any obligations remain outstanding under the CMA Documents. Guarantor Fluor Corporation is a corporation, duly organized and validly existing under the Laws of the State of Delaware, with all requisite power and all required licenses to carry on their present and proposed obligations under the CMA Documents. Guarantor Balfour Beatty LLC is a limited liability company, duly organized and validly existing under the Laws of the State of Delaware, with all requisite power and all required licenses to carry on their present and proposed obligations under the CMA Documents. Each Guarantor is duly qualified to do business, and is in good standing, in the State of Delaware as of the Effective Date, and will remain in good standing throughout the Maintenance Term and for as long thereafter as any obligations remain outstanding under the CMA Documents.

11.4.8 The execution, delivery and performance of this Capital Maintenance Agreement have been duly authorized by all necessary corporate action of Maintenance Contractor, and this Capital Maintenance Agreement has been duly executed and delivered by Maintenance Contractor.

11.4.9 All required approvals have been obtained with respect to the execution, delivery and performance of this Capital Maintenance Agreement, and performance of this Capital Maintenance Agreement will not result in a breach of or a default under Maintenance Contractor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Maintenance Contractor is a party or by which its properties and assets may be bound or affected. All required approvals have been obtained with respect to the execution, delivery and performance of the Guaranty, and performance of the Guaranty will not result in a breach of or a default under Guarantor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Guarantor is a party or by which its properties and assets may be bound or affected.

11.4.10 This Capital Maintenance Agreement constitutes the legal, valid and binding obligation of Maintenance Contractor, enforceable against Maintenance Contractor and, if applicable, each member of Maintenance Contractor, in accordance with its terms. Each Guaranty has been duly authorized by all necessary corporate action, has been duly executed and delivered by Guarantor, and constitutes the legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms.

11.4.11 There is no action, suit, proceeding, investigation or litigation pending and served on Maintenance Contractor which challenges Maintenance Contractor's authority to execute, deliver or perform, or the validity or enforceability of, the CMA Documents or which challenges the authority of Maintenance Contractor official executing the CMA Documents.

SECTION 12. DEFAULT AND REMEDIES; LIQUIDATED DAMAGES

12.1 Maintenance Contractor Defaults

Maintenance Contractor shall be in default under this Capital Maintenance Agreement upon the occurrence of any one or more of the following events or conditions (each a "Maintenance Contractor Default"):

(a) A DB Contractor Event of Default under the DBA.

(b) Maintenance Contractor fails to timely observe or perform or cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by Maintenance Contractor under the CMA Documents, including failure to perform the Maintenance Services in accordance with the CMA Documents.

(c) Maintenance Contractor fails to resume performance of Maintenance Services which have been suspended or stopped, within the time specified in the originating notification after receipt of notice from TxDOT to do so or (if applicable) after cessation of the event preventing performance.

(d) Maintenance Contractor suspends, ceases, stops or abandons the Maintenance Services or fails to continuously and diligently prosecute the Maintenance Services (exclusive of work stoppage: (i) due to termination by TxDOT, or (ii) due to and during the continuance of a Force Majeure Event or suspension by TxDOT).

(e) Maintenance Contractor fails to maintain the insurance, bonds, letters of credit and guarantees required hereunder; provided, however, that TxDOT shall not seek recourse against the then-current Maintenance Performance Bond in the event of Maintenance Contractor's failure to provide a Maintenance Payment Bond or a Maintenance Performance Bond for any subsequent Maintenance Term.

(f) Maintenance Contractor attempts or purports to assign or transfer the CMA Documents or any right or interest herein, except as expressly permitted under this Capital Maintenance Agreement.

(g) Maintenance Contractor fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors or Suppliers and in accordance with applicable Laws, or shall have failed to comply with any Law or failed reasonably to comply with the instructions of TxDOT consistent with the CMA Documents, or fails to make payment to TxDOT when due of any amounts owing to TxDOT under this Capital Maintenance Agreement.

(h) Maintenance Contractor breaches any other agreement, representation, covenant or warranty contained in the CMA Documents.

(i) Maintenance Contractor fails to discharge or obtain a stay within ten Days of any final judgment(s) or order for the payment of money against it in excess of $100,000 in the aggregate arising out of the prosecution of the Maintenance Services (provided that, for purposes hereof, posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay).

(j) Any Guarantor revokes or attempts to revoke its obligations under its guarantee or otherwise takes the position that such instrument is no longer in full force and effect.

(k) Any final judgment is issued holding Maintenance Contractor or any Guarantor liable for an amount in excess of $100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal false claims act.

(l) Any representation or warranty made by Maintenance Contractor or any Guarantor in the CMA Documents or any certificate, invoice, schedule, instrument or other document delivered by Maintenance Contractor pursuant to the CMA Documents was false or materially misleading when made.

(m) Maintenance Contractor commences a voluntary case seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar Law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official to protect a substantial part of Maintenance Contractor's assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any of Maintenance Contractor’s partners, members or joint venturers, or any Surety or Guarantor.

(n) An involuntary case shall be commenced against Maintenance Contractor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Maintenance Contractor or Maintenance Contractor's debts under any bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Maintenance Contractor or any substantial part of Maintenance Contractor's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Maintenance Contractor in good faith or shall remain undismissed and unstayed for a period of 60

Days; or any of the foregoing acts or events shall occur with respect to any of Maintenance Contractor's partners, members or joint venturers, or any Surety or Guarantor.

12.2 Notice and Opportunity to Cure

12.2.1 For the purpose of TxDOT's exercise of remedies and subject to remedies that this Section 12 expressly states may be exercised before lapse of a cure period, Maintenance Contractor shall have the following cure periods with respect to the following Maintenance Contractor Defaults:

(a) Respecting a Maintenance Contractor Default under clauses (b) through (d), and clauses (g) through (i) of Section 12.1, a period of 10 days after TxDOT delivers to Maintenance Contractor written notice of the default, provided that no such notice and opportunity to cure is required for any Maintenance Contractor Default which by its nature cannot be cured (which shall include the items described in clauses (e) through (f) and clauses (j) through (n) of Section 12.1).

(b) If a Maintenance Contractor Default is capable of cure but, by its nature, cannot be cured within 10 days, as determined by TxDOT, such additional period of time shall be allowed as may be reasonably necessary to cure the default so long as Maintenance Contractor commences such cure within such 10-day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event shall such cure period exceed 60 days in total.

12.2.2 Failure to provide notice to the Surety shall not preclude TxDOT from exercising its remedies against Maintenance Contractor. Notwithstanding the provisions in this Section 12, TxDOT may, without notice and without awaiting lapse of the period to cure any default, in the event of existence of a condition on or affecting the Project which TxDOT believes poses an immediate and imminent danger to public health or safety, rectify the dangerous condition at Maintenance Contractor's cost, and so long as TxDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose TxDOT to any liability to Maintenance Contractor and shall not entitle Maintenance Contractor to any other remedy, it being acknowledged that TxDOT has a paramount public interest in providing and maintaining safe public use of and access to the Project. TxDOT's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

12.3 TxDOT Remedies

12.3.1 If any Maintenance Contractor Default described in Section 12.1 is not subject to cure or is not cured within the period (if any) specified in Section 12.2, TxDOT may declare that an "Event of Default" has occurred and notify Maintenance Contractor

to discontinue the Maintenance Services. The declaration of an Event of Default shall be in writing and given to Maintenance Contractor, with a copy to Surety. In addition to all other rights and remedies provided by Law or equity and such rights and remedies as are otherwise available under the CMA Documents, including the Maintenance Performance Bond, any letter of credit and Guaranty, if an Event of Default shall occur, TxDOT shall have the following rights without further notice and without waiving or releasing Maintenance Contractor from any obligations and Maintenance Contractor shall have the following obligations (as applicable):

(a) TxDOT may terminate this Capital Maintenance Agreement or a portion thereof, including Maintenance Contractor's rights of entry upon, possession and control of the Project, in which case, the provisions of Sections 14.3(b) and 14.3(c) shall apply.

(b) If and as directed by TxDOT, Maintenance Contractor shall withdraw from the Site and shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any Maintenance Contractor-Related Entity on the Site or otherwise in the performance of the Maintenance Services.

(c) Maintenance Contractor shall deliver to TxDOT possession of any or all Design Documents or Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings and other documents and facilities related to the Project that TxDOT deems necessary in connection with Maintenance Services.

(d) Maintenance Contractor shall assign to TxDOT the Subcontracts requested by TxDOT and Maintenance Contractor shall terminate, at its sole cost, all other Subcontracts.

(e) TxDOT, in its sole discretion, may deduct from any amounts payable by TxDOT to Maintenance Contractor such amounts (including interest thereon as permitted under this Capital Maintenance Agreement) payable by Maintenance Contractor to TxDOT, including reimbursements owing, Liquidated Damages and amounts TxDOT deems advisable to cover any existing or threatened claims, Liens and stop notices of Subcontractors, laborers or other Persons, amounts of any Losses that have accrued, the cost to complete or remediate uncompleted Maintenance Services or Nonconforming Work or other damages or amounts that TxDOT has determined are or may be payable to TxDOT under the CMA Documents.

(f) TxDOT shall have the right, but not the obligation, to pay any amount and/or perform any act as may then be required from

Maintenance Contractor under the CMA Documents or Subcontracts.

(g) TxDOT may appropriate any or all materials, supplies and equipment on the Site as may be suitable and acceptable and may direct the Surety to complete this Capital Maintenance Agreement or may enter into an agreement for the completion of this Capital Maintenance Agreement according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Maintenance Services and the requirements of the CMA Documents, including completion of the Maintenance Services by TxDOT.

(h) If TxDOT exercises any right to perform any obligations of Maintenance Contractor, in the exercise of such right TxDOT may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such Maintenance Services; (ii) spend such sums as TxDOT deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required for the purpose of completing such Maintenance Services; (iii) execute all applications, certificates and other documents as may be required for completing the Maintenance Services; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole discretion consider necessary to complete the Maintenance Services; and (vi) prosecute and defend any action or proceeding incident to the Maintenance Services.

12.3.2 If an Event of Default occurs, Maintenance Contractor and each Guarantor shall be jointly and severally liable to TxDOT for all costs incurred by TxDOT or any Person acting on TxDOT's behalf in completing the Maintenance Services. Upon the occurrence of an Event of Default, TxDOT shall be entitled to withhold all or any portion of further payments to Maintenance Contractor until such time as TxDOT is able to determine how much, if any, remains payable to Maintenance Contractor and the amount payable by Maintenance Contractor to TxDOT in connection with TxDOT's damages and claims against Maintenance Contractor-Related Entities or as otherwise required by the CMA Documents. Promptly upon such determination, TxDOT shall notify Maintenance Contractor in writing of the amount, if any, that Maintenance Contractor shall pay TxDOT, or TxDOT shall pay Maintenance Contractor the applicable amount. All costs and charges incurred by TxDOT, including attorneys', consultants', accountants' and expert witness fees and costs, together with the cost of completing the Maintenance Services under the CMA Documents, will be deducted from any moneys due or which may become due Maintenance Contractor or its Surety. If such expense exceeds the sum which would have been payable to Maintenance Contractor under this Capital Maintenance Agreement, then Maintenance Contractor and each Guarantor shall be liable and shall pay to TxDOT the amount of such excess. If the Maintenance

Contractor or Guarantor fails to pay such amount immediately upon TxDOT's demand, then TxDOT shall be entitled to collect interest from the Maintenance Contractor or Guarantor on the amounts TxDOT is required to pay in excess of the remaining balance of the Maintenance Price for the applicable Maintenance Term. The interest rate which the Maintenance Contractor, Surety and each Guarantor shall pay shall be the lesser of: (a) 12% per annum; and (b) the maximum rate allowable under applicable Law. The interest rate shall accrue on all amounts TxDOT has had to pay in excess of the remaining balance of the Maintenance Price for the applicable Maintenance Term from the date of TxDOT payment.

12.3.3 Maintenance Contractor acknowledges that if a Maintenance Contractor Default under Section 12.1.1(m) or (n) occurs, such default could impair or frustrate Maintenance Contractor's performance of the Maintenance Services. Accordingly, Maintenance Contractor agrees that upon the occurrence of any such default, TxDOT shall be entitled to request of Maintenance Contractor, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten days of delivery of the request shall entitle TxDOT to terminate this Capital Maintenance Agreement and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, TxDOT shall be entitled to proceed with the Maintenance Services with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from TxDOT's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the CMA Documents, including the Maintenance Performance Bond any letter of credit and Guaranty.

12.3.4 In lieu of the provisions of this Section 12.3 for terminating this Capital Maintenance Agreement for default and completing the Maintenance Services, TxDOT may, in its sole discretion, pay Maintenance Contractor for the parts already done according to the provisions of the CMA Documents and may treat the parts remaining undone as if they had never been included or contemplated by this Capital Maintenance Agreement. No Claim under this Section 12.3.4 will be allowed for prospective profits on, or any other compensation relating to, Maintenance Services uncompleted by Maintenance Contractor.

12.3.5 If this Capital Maintenance Agreement is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 14.

12.3.6 The exercise or beginning of the exercise by TxDOT of any one or more rights or remedies under this Section 12.3 shall not preclude the simultaneous or later exercise by TxDOT of any or all other such rights or remedies, each of which shall be cumulative.

12.3.7 If TxDOT suffers damages as a result of any Maintenance Contractor-Related Entity's breach, omission or failure to perform an obligation under the CMA Documents, then, subject to the limitation on liability contained in Section 12.6, TxDOT

shall be entitled to recovery of such damages from Maintenance Contractor regardless of whether the breach, omission or failure that gives rise to the damages is declared an Event of Default.

12.3.8 Maintenance Contractor and each Surety and Guarantor shall not be relieved of liability for continuing Liquidated Damages on account of a breach or default by Maintenance Contractor hereunder or by TxDOT's declaration of an Event of Default, or by actions taken by TxDOT under this Section 12.3.

12.3.9 TxDOT's remedies with respect to Nonconforming Work shall include the right to allow such work to remain uncorrected and receive payment as provided in Section 5.9.2 in lieu of the remedies specified in this Section 12.

12.3.10 TxDOT Step-in Rights

Upon the occurrence of a Maintenance Contractor Default and expiration, without full and complete cure, of the cure period, if any, available to Maintenance Contractor, and without waiving or releasing Maintenance Contractor from any obligations, TxDOT shall have the right, but not the obligation, for so long as such Maintenance Contractor Default remains uncured by TxDOT or Maintenance Contractor, to pay any obligees of Maintenance Contractor and perform all or any portion of Maintenance Contractor's obligations and the Maintenance Services that are the subject of such Maintenance Contractor Defaults, as well as any other then-existing breaches or failures to perform for which Maintenance Contractor received prior written notice from TxDOT but has not commenced diligent efforts to cure.

12.3.10.1 In connection with such action, TxDOT may, to the extent and only to the extent reasonably required for or incident to curing the Maintenance Contractor Default or such other breaches or failures to perform for which Maintenance Contractor received prior written notice from TxDOT but has not commenced and continued diligent efforts to cure:

(a) Employ security guards and other safeguards to protect the Project;

(b) Spend such sums as are reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required, without obligation or liability to Maintenance Contractor, Subcontractors or any other Persons for loss of opportunity to perform the same Maintenance Services or supply the same materials and equipment;

(c) Draw on and use proceeds from letters of credit, or make a claim against payment and performance bonds, guarantees and other performance security and use the proceeds to the extent available under the terms thereof to pay such sums;

(d) Execute all applications, certificates and other documents as may be required;

(e) Make decisions respecting, assume control over and continue the Maintenance Services as may be reasonably required;

(f) Meet with, coordinate with, direct and instruct Subcontractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay Subcontractors and Suppliers, and resolve claims of Subcontractors and Suppliers, and for this purpose Maintenance Contractor irrevocably appoints TxDOT as its attorney-in-fact will full power and authority to act for and bind Maintenance Contractor in its place and stead;

(g) Take any and all other actions as may be reasonably required or incident to curing; and

(h) Prosecute and defend any action or proceeding incident to the Maintenance Services undertaken.

12.3.10.2 Maintenance Contractor shall reimburse TxDOT, within ten days of receiving an invoice, for TxDOT's Recoverable Costs in connection with the performance of any act or Maintenance Services authorized by this Section 12.3.10. In lieu of reimbursement, TxDOT may elect, in its sole discretion, to deduct such amounts from any amounts payable to Maintenance Contractor under this Capital Maintenance Agreement.

12.3.10.3 Neither TxDOT nor any of its Authorized Representatives, contractors, subcontractors, vendor and employees shall be liable to Maintenance Contractor in any manner for any inconvenience or disturbance arising out of its entry onto the Project or the Project ROW in order to perform under this Section 12.3.10, unless caused by the gross negligence, recklessness, intentional misconduct or bad faith of such Person. If any Person exercises any right to pay or perform under this Section 12.3.10, it nevertheless shall have no liability to Maintenance Contractor for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of design, construction, operation or maintenance, unless caused by the gross negligence, recklessness, intentional misconduct or bad faith of such Person.

12.3.10.4 TxDOT's rights under this Section 12.3.10 are subject to the right of any Surety under payment and performance bonds to assume performance and completion of all bonded work.

12.3.10.5 In the event TxDOT takes action described in this Section 12.3.10 and it is later finally determined that TxDOT lacked the right to do so because there did not occur a Maintenance Contractor Default and expiration, without full and complete cure, of the cure period, if any, available to Maintenance Contractor, then TxDOT's action shall be treated as a Directive Letter for a TxDOT-Directed Change.

12.4 Liquidated Damages

12.4.1 Liquidated Damages for Lane Closures.

12.4.2 Maintenance Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the Texas highway system, and the fact that inconvenience to the traveling public will be one of the significant impacts of any failure by Maintenance Contractor to perform the Maintenance Services in an efficient and timely manner, it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT and the public in such event. Consequently, Maintenance Contractor agrees to pay TxDOT the following sums of money ("Liquidated Damages for Lane Closures") as deemed compensation to TxDOT resulting from Maintenance Contractor's failure to meet the Lane Closure restrictions set forth in Attachment 6 to Exhibit 2. Maintenance Contractor further acknowledges and agrees that such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date.

12.4.3 Maintenance Contractor shall pay to TxDOT a liquidated amount as set forth in Exhibit 15 for any Lane Closure that occurs in connection with the performance of Maintenance Services, if the Lane Closure violates the requirements in an approved Traffic Management Plan applicable to such Maintenance Services.

12.4.4 Liquidated Damages for Asset Condition Score

12.4.5 Maintenance Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the Texas highway system, and the fact that inconvenience to the traveling public will be one of the significant impacts of any failure by Maintenance Contractor to perform the Maintenance Services in an efficient and timely manner and properly maintain the facility, it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT and the public in the event of such failure. Consequently, Maintenance Contractor agrees to pay TxDOT the following sums of money as deemed compensation to TxDOT resulting from Maintenance Contractor's failure to meet the performance requirements herein as evidenced by the Asset Condition Score. Maintenance Contractor further acknowledges and agrees that such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date.

12.4.6 Maintenance Contractor shall pay to TxDOT a liquidated amount of:

(a) $42,170 for each Element Category identified in Attachment 1 to Exhibit 2 that achieves a quarterly Asset Condition Score of less than 3.5 and more than 2.0.

(b) $50,960 for each Element Category identified in Attachment 1 to Exhibit 2 that achieves a quarterly Asset Condition Score that is less than or equal to 2.0 and greater than 1.0.

(c) $72,900 for each Element Category identified in Attachment 1 to Exhibit 2 that achieves a quarterly Asset Condition Score of less than 1.0.

12.4.7 Maintenance Contractor shall pay to TxDOT a liquidated amount of:

(a) $30,360 for each Element identified in Attachment 1 to Exhibit 2 that achieves a quarterly Asset Condition Score of 2.

(b) $50,960 for each Element identified in Attachment 1 to Exhibit 2 that achieves a quarterly Asset Condition Score of 1.

12.4.8 Liquidated Damages for Failure to Meet Schedule Commitments

12.4.9 Maintenance Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the Texas highway system, and the fact that inconvenience to the traveling public will be one of the significant impacts of any failure by Maintenance Contractor to perform the Maintenance Services in an efficient and timely manner, it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT and the public in the event the Maintenance Contractor fails to meet its schedule commitments. Consequently, Maintenance Contractor agrees to pay TxDOT the following sums of money as deemed compensation to TxDOT resulting from Maintenance Contractor's failure to meet the Schedule Activity requirements herein. Maintenance Contractor further acknowledges and agrees that such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date.

12.4.9.1 Maintenance Contractor shall pay to TxDOT a liquidated amount of $14,800 for each day that Maintenance Contractor fails to complete a Schedule Activity.

12.4.10 Liquidated Damages shall be payable by Maintenance Contractor to TxDOT within ten Business Days after Maintenance Contractor's receipt of an invoice therefore from TxDOT. In lieu of reimbursement, TxDOT may elect, in its sole discretion, to deduct such amounts from any amounts payable to Maintenance Contractor under this Capital Maintenance Agreement.

12.5 Right to Stop Performance for Failure by TxDOT to Make Undisputed Payment

Maintenance Contractor shall have the right to stop performance under this Capital Maintenance Agreement if TxDOT fails to make an undisputed payment due hereunder within 15 Business Days after TxDOT's receipt of written notice of nonpayment from Maintenance Contractor. Maintenance Contractor shall not have the right to terminate this Capital Maintenance Agreement for default as the result of any failure by TxDOT to make an undisputed payment due hereunder. However, if such nonpayment continues for more than 180 days, upon written notice from Maintenance Contractor to TxDOT,

such nonpayment may be deemed a Termination for Convenience pursuant to Section 14. Upon such termination, the Parties' rights and obligations shall be as set forth in Section 14.

12.6 Limitation of Liability For Consequential Damages

12.6.1 Notwithstanding any other provision of the Contract Documents, and except as set forth in this Section 12.6.1 and in Section 12.6.2, to the extent permitted by applicable Law, neither party shall be liable to the other for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this Capital Maintenance Agreement, in tort (including negligence) or any other theory of liability, and each party hereby releases the other party from any such liability.

12.6.2 The foregoing limitation on Maintenance Contractor's liability for punitive, indirect, incidental or consequential damages shall not apply to or limit any right of recovery TxDOT may have respecting the following:

(a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 7, and (ii) covered by the proceeds of insurance actually carried by or insuring any Maintenance Contractor-Related Entity under policies solely with respect to the Project and the Maintenance Services, regardless of whether required to be carried pursuant to Section 7, or (iii) Maintenance Contractor is deemed to have self-insured the Loss pursuant to Section 7.4.3;

(b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Event of Default), recklessness, bad faith or gross negligence on the part of any Maintenance Contractor-Related Entity;

(c) Maintenance Contractor's indemnities set forth in Section 15.1 or elsewhere in the CMA Documents;

(d) Maintenance Contractor's obligation to pay Liquidated Damages in accordance with Section 5.4, Section 12.4 or any other provision of the CMA Documents; and

(e) Losses arising out of Maintenance Contractor Releases of Hazardous Materials.

(f) Any other consequential damages arising from a breach of this Capital Maintenance Agreement by Maintenance Contractor that occurs prior to the end of the term of the Capital Maintenance Agreement, subject to a cap in the amount of $1,000,000.

SECTION 13. SUSPENSION

13.1 Suspensions for Convenience

TxDOT may, at any time and for any reason, by written notice, order Maintenance Contractor to suspend all or any part of the Maintenance Services required under the CMA Documents for the period of time that TxDOT deems appropriate for the convenience of TxDOT. Maintenance Contractor shall promptly comply with any such written suspension order. Maintenance Contractor shall promptly recommence the Capital Maintenance Agreement upon receipt of written notice from TxDOT directing Maintenance Contractor to resume work. Any such suspension for convenience shall be considered a TxDOT-Directed Change; provided that TxDOT shall have the right to direct suspensions for convenience not exceeding 24 hours each up to a total of 96 hours, which shall not be considered a TxDOT-Directed Change. Adjustments of the Maintenance Price and any time extension shall be available for any such TxDOT-Directed Change, subject to Maintenance Contractor's compliance with the terms and conditions set forth in Section 10.

13.2 Suspensions for Cause

TxDOT has the authority to suspend, wholly or in part, the Maintenance Services for cause by written order for Maintenance Contractor's failure to:

(a) Correct conditions unsafe for the Project personnel or the general public;

(b) Comply with any Governmental Approval, Law, including Environmental Laws, or otherwise carry out the requirements of the CMA Documents;

(c) Carry out orders of TxDOT; or

(d) Comply with requirements for developing and implementing the Maintenance Services QCP.

Maintenance Contractor shall promptly comply with any such written suspension order. Maintenance Contractor shall promptly recommence the Maintenance Services upon receipt of written notice from TxDOT directing Maintenance Contractor to resume work. TxDOT shall have no liability to Maintenance Contractor in connection with any such suspension.

13.3 Responsibilities of Maintenance Contractor During Suspension Periods

During periods that any Maintenance Services are suspended, Maintenance Contractor shall continue to be responsible for the Maintenance Services that are not suspended and shall prevent damage or injury to the Project, provide for drainage and shall erect necessary temporary structures, signs or other facilities required to maintain the Project. Additionally, Maintenance Contractor shall continue other Maintenance Services that

have been or can be performed at the Site or offsite during the period that the Maintenance Services are suspended.

SECTION 14. TERMINATION FOR CONVENIENCE

14.1 Termination for Convenience

TxDOT may, at any time, terminate this Capital Maintenance Agreement and performance of the Maintenance Services, in whole or in part, if TxDOT determines, at its sole and absolute discretion, that a termination is in TxDOT's best interest ("Termination for Convenience"). TxDOT shall terminate this Capital Management Agreement, in whole or in part, by delivering to Maintenance Contractor a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of this Capital Maintenance Agreement under this Section 14 shall not relieve Maintenance Contractor, any Surety or any Guarantor of its obligation for any claims arising out of Maintenance Services performed.

14.2 Termination Closing

In addition to the performance by Maintenance Contractor of the requirements set forth in the Maintenance Transition Plan, on the effective date of the termination of this Capital Maintenance Agreement or upon expiration of a Maintenance Term without extension thereof by TxDOT, Maintenance Contractor shall deliver to TxDOT:

(a) Any reports then required to be delivered pursuant to the Maintenance Transition Plan or otherwise required by the CMA Documents;

(b) Subcontracts and other agreements which TxDOT agrees in writing to assume in accordance with Section 14.4; and

(c) Possession and control of the Project in the condition Maintenance Contractor is required to maintain at that time under this Capital Maintenance Agreement.

14.3 Maintenance Contractor's Responsibilities After Receipt of a Notice of Termination

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed in writing by TxDOT, Maintenance Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 14:

(a) Stop the Maintenance Services as specified in the notice;

(b) Notify all affected Subcontractors and Suppliers that this Capital Maintenance Agreement is being terminated and that their respective Subcontracts (including orders for materials, services or facilities) are not to be further performed unless otherwise authorized in writing by TxDOT;

(c) Enter into no further Subcontracts (including orders for materials, services or facilities), except as necessary to complete the continued portion of the Maintenance Services, if any, or for mitigation of damages;

(d) Unless instructed otherwise by TxDOT, terminate all Subcontracts to the extent they relate to the Maintenance Services terminated;

(e) Assign to TxDOT, in the manner, at the times, and to the extent directed by TxDOT, all of Maintenance Contractor's right, title, and interest in the Subcontracts so terminated, in which case TxDOT will have the right, in its sole discretion, to accept performance, settle or pay any termination settlement proposal arising out of the termination of such Subcontracts;

(f) Subject to the prior written approval of TxDOT, settle all outstanding liabilities and all termination settlement proposals arising from termination of Subcontracts that are required to be terminated hereunder;

(g) No later than 90 days from the effective date of termination, unless extended in writing by TxDOT upon written request of Maintenance Contractor within this 90-day period, provide TxDOT with an inventory list of all materials, supplies and equipment previously produced, purchased or ordered from Suppliers for use in performing the Maintenance Services and not yet used, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to TxDOT, and such other information as TxDOT may request; and transfer title and deliver to TxDOT through bills of sale or other documents of title, as directed by TxDOT: (i) work in process, completed work, supplies, equipment and other material produced or acquired for the Maintenance Services terminated, and (ii) all Design Documents and Construction Documents related to the Project and/or the Maintenance Services and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to TxDOT if the Maintenance Services had been completed;

(h) Complete performance in accordance with the CMA Documents of all Maintenance Services not terminated;

(i) Take all action that may be necessary, or that TxDOT may direct, for the protection and preservation of: (i) the public, including public and private vehicular movement, (ii) the Maintenance Services, and (iii) the equipment, machinery, materials and property related to the

Project that is in the possession of Maintenance Contractor and in which TxDOT has or may acquire an interest;

(j) As authorized by TxDOT in writing, use its best efforts to sell, at reasonable prices, any property of the types referred to in subsection (i) of clause (g); provided, however, that Maintenance Contractor: (i) is not required to extend credit to any purchaser, and (ii) may acquire the property under the conditions prescribed and at prices approved by TxDOT. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by TxDOT under the CMA Documents or paid in any other manner directed by TxDOT; and

(k) Take other actions directed by TxDOT.

14.4 Disposition of Subcontracts

14.4.1 Not later than 60 Days prior to the effective date of termination under Section 14.1, Maintenance Contractor shall assemble at its offices in the State and make available for TxDOT's review at such offices, at any time or times during normal business hours, all Subcontracts which are in effect and pertain in any way to the performance of the Maintenance Services.

14.4.2 Maintenance Contractor shall terminate, or cause to be terminated, effective on the same date as the effective date of termination of this Capital Maintenance Agreement, any such Subcontracts which TxDOT elects, in its sole and absolute discretion, not to assume.

14.4.3 On the effective date of termination: (a) Maintenance Contractor and TxDOT shall execute and deliver a written assignment and assumption agreement with respect to any such Subcontracts that TxDOT elects, in its sole and absolute discretion, to assume; and (b) Maintenance Contractor shall deliver to TxDOT true and complete copies of all such assigned and assumed Subcontracts.

14.4.4 TxDOT's assumption of any such Subcontracts shall pertain only to obligations arising from and after the effective date of termination.

14.4.5 Provisions shall be included in each Subcontract (at all tiers) regarding terminations for convenience, allowing such termination rights and obligations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Section 14.

14.5 Settlement Proposal

After receipt of a Notice of Termination or Notice of Partial Termination for Convenience, Maintenance Contractor shall submit a final termination settlement proposal to TxDOT in the form and with the certification prescribed by TxDOT.

Maintenance Contractor shall submit the proposal promptly, but no later than 90 Days from the effective date of termination unless Maintenance Contractor has requested a time extension in writing within such 90-Day period and TxDOT has agreed in writing to such extension. Maintenance Contractor's termination settlement proposal shall then be reviewed by TxDOT and acted upon, returned with comments, or rejected. If Maintenance Contractor fails to submit the proposal within the time allowed, TxDOT may conclusively determine, on the basis of information available to it, the amount, if any, due Maintenance Contractor because of the termination and shall pay Maintenance Contractor the amount so determined.

14.6 Amount of Negotiated Termination Settlement Amount

14.6.1 Subject to the provisions of Section 14.5, Maintenance Contractor and TxDOT may agree upon the amount to be paid to Maintenance Contractor by reason of the total or partial termination of Maintenance Services pursuant to this Section 14. Such agreed amount, exclusive of settlement costs, shall not exceed the Maintenance Price for the applicable Maintenance Term, less the amount of payments previously made to Maintenance Contractor during such Maintenance Term and less the portions of the Maintenance Price related to Maintenance Services not terminated. Upon determination of the settlement amount, this Capital Maintenance Agreement will be amended accordingly, and Maintenance Contractor will be paid the agreed amount. TxDOT's execution and delivery of any settlement agreement shall not affect any of its rights under the CMA Documents with respect to completed Maintenance Services, relieve Maintenance Contractor from its obligations with respect thereto, including Warranties, or affect TxDOT's rights under the Maintenance Performance Bond, the Maintenance Payment Bond, any Guaranty, letter(s) of credit or other security issued in addition to, or in lieu of, any security provided pursuant to this Capital Maintenance Agreement.

14.7 No Agreement as to Amount of Termination Settlement

If Maintenance Contractor and TxDOT fail to agree upon either all or some portion of the amount to be paid Maintenance Contractor by reason of a Termination for Convenience pursuant to this Section 14 the amount payable shall be determined by TxDOT in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Section 14.6:

14.7.1 To the extent not previously paid, TxDOT will pay Maintenance Contractor the sum of the following amounts for Maintenance Services performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience:

(a) Maintenance Contractor's actual reasonable out-of-pocket cost, without profit, and including equipment costs only to the extent permitted under the CMA Documents for all Maintenance Services performed but not yet paid by TxDOT as of the effective date of the termination for convenience, including mobilization, demobilization, work in progress and work done to secure the applicable portion of

the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to TxDOT's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials, supplies and equipment to be retained, at TxDOT's sole option, by Maintenance Contractor, amounts realized by the sale of such items, and for other appropriate credits against the cost of the Maintenance Services, including those deductions that would be permitted in connection with Final Payment under this Capital Maintenance Agreement. When, in the opinion of TxDOT's Authorized Representative, the cost of a contract item of Maintenance Services is excessively high due to costs incurred to remedy or replace Nonconforming Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Maintenance Service in compliance with the requirements of the CMA Documents and the excessive actual cost shall be disallowed.

(b) The cost of settling and paying reasonable claims arising out of the termination of Maintenance Services under Subcontracts as provided in Section 14.3(f), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience, which amounts shall be included in the cost on account of which payment is made under clause (a) above.

(c) The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 14.3(i) and any other reasonable out-of-pocket cost (including overhead) incidental to termination of the Maintenance Services under this Capital Maintenance Agreement, including the reasonable cost to Maintenance Contractor of handling material returned to the Supplier, delivered to TxDOT or otherwise disposed of as directed by TxDOT, and including a reasonable allowance for Maintenance Contractor's administrative costs in determining the amount payable due to termination of this Capital Maintenance Agreement.

14.7.2 Maintenance Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Maintenance Services performed (determined as provided in Section 14.7.1) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of this Capital Maintenance Agreement. The total amount to be paid to Maintenance Contractor, exclusive of costs described in Sections 14.7.1(b) and (c), may not exceed the total Maintenance Price for the

applicable Maintenance Term, less the amount of payments previously made. Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, deposits or other items which were previously passed through to TxDOT by Maintenance Contractor, such refund shall be paid directly to TxDOT or otherwise credited to TxDOT. Except for normal spoilage, and except to the extent that TxDOT will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to Maintenance Contractor under Section 14.7.1, the fair value, as determined by TxDOT, of equipment, machinery, materials, supplies and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to TxDOT, or sold pursuant to Section 14.3(j). Information contained in the EPDs may be a factor in determining the value of the Maintenance Services terminated. Upon determination of the amount of the termination payment, this Capital Maintenance Agreement shall be amended to reflect the agreed termination payment, Maintenance Contractor shall be paid the agreed amount, and the Maintenance Price shall be reduced to reflect the reduced scope of Maintenance Services.

14.7.3 If a termination hereunder is partial, Maintenance Contractor may file a proposal with TxDOT for an equitable adjustment of the Maintenance Price for the continued portion of this Capital Maintenance Agreement. Any proposal by Maintenance Contractor for an equitable adjustment under this Section 14.7.3 shall be requested within 90 days from the effective date of termination unless extended in writing by the TxDOT. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to this Capital Maintenance Agreement.

14.8 Reduction in Amount of Claim

The amount otherwise due Maintenance Contractor under this Section 14 shall be reduced by: (a) the amount of any claim which TxDOT may have against any Maintenance Contractor-Related Entity in connection with this Capital Maintenance Agreement, (b) the agreed price for, or the proceeds of sale, of property, materials, supplies, equipment or other things acquired by Maintenance Contractor or sold, pursuant to the provisions of this Section 14, and not otherwise recovered by or credited to TxDOT, (c) all unliquidated advance or other payments made to or on behalf of Maintenance Contractor applicable to the terminated portion of the Maintenance Services or Capital Maintenance Agreement, (d) amounts that TxDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, (e) the cost of repairing any Nonconforming Work (or, in TxDOT's sole discretion, the amount of the credit to which TxDOT is entitled under Section 5.9.2); and (f) any amounts due or payable by Maintenance Contractor to TxDOT.

14.9 Payment

TxDOT may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments for costs incurred by Maintenance Contractor in connection with the terminated portion of this Capital Maintenance Agreement, whenever in the opinion of TxDOT the aggregate of such payments shall be within the amount to which Maintenance Contractor will be entitled hereunder. If the

total of such payments is in excess of the amount finally agreed or determined to be due under this Section 14, such excess shall be payable by Maintenance Contractor to TxDOT upon demand.

14.10 No Consequential Damages

Under no circumstances shall Maintenance Contractor be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 14. The payment to Maintenance Contractor determined in accordance with this Section 14 constitutes Maintenance Contractor's exclusive remedy for a termination hereunder.

14.11 No Waiver

Notwithstanding anything contained in this Capital Maintenance Agreement to the contrary, a termination under this Section 14 shall not waive any right or claim to damages which TxDOT may have and TxDOT may pursue any cause of action which it may have at Law, in equity or under the CMA Documents.

14.12 Dispute Resolution

The failure of the Parties to agree on amounts due under this Section 14 shall be a Dispute to be resolved in accordance with Section 16.

14.13 Allowability of Costs

All costs claimed by Maintenance Contractor under this Section 14 must be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

SECTION 15. INDEMNIFICATION; RELEASES

15.1 Indemnification by Maintenance Contractor

SUBJECT TO Section 15.2, MAINTENANCE CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS EACH OF THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, DEMANDS AND LOSSES, IN EACH CASE IF ASSERTED OR INCURRED BY OR AWARDED TO ANY THIRD PARTY, ARISING OUT OF, RELATING TO OR RESULTING FROM:

(A) THE BREACH OR ALLEGED BREACH OF ANY OF THE CMA DOCUMENTS BY ANY MAINTENANCE CONTRACTOR-RELATED ENTITY.

(B) THE FAILURE OR ALLEGED FAILURE BY ANY MAINTENANCE CONTRACTOR-RELATED ENTITY TO COMPLY WITH ANY APPLICABLE LAWS OR GOVERNMENTAL APPROVALS.

(C) ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR OTHER ALLEGEDLY IMPROPER APPROPRIATION OR USE OF TRADE SECRETS, PATENTS, PROPRIETARY INFORMATION, KNOW-HOW, COPYRIGHT RIGHTS OR INVENTIONS IN PERFORMANCE OF THE MAINTENANCE SERVICES, OR ARISING OUT OF ANY USE IN CONNECTION WITH THE PROJECT OR ANY DEVELOPMENT OF METHODS, PROCESSES, DESIGNS, INFORMATION, OR OTHER ITEMS FURNISHED OR COMMUNICATED TO TXDOT OR ANOTHER INDEMNIFIED PARTY PURSUANT TO THIS CAPITAL MAINTENANCE AGREEMENT; PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT RESULTING FROM TXDOT'S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO TXDOT BY MAINTENANCE CONTRACTOR.

(D) THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR OMISSION, NEGLIGENCE, BREACH OR MISCONDUCT BY ANY MAINTENANCE CONTRACTOR-RELATED ENTITY IN OR ASSOCIATED WITH THE PERFORMANCE OF THE MAINTENANCE SERVICES.

(E) ANY AND ALL CLAIMS BY ANY GOVERNMENTAL ENTITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR SALES, THE USE OF ANY PROPERTY OR INCOME OF ANY MAINTENANCE CONTRACTOR-RELATED ENTITY WITH RESPECT TO ANY PAYMENT FOR THE MAINTENANCE SERVICES MADE TO OR EARNED BY ANY MAINTENANCE CONTRACTOR-RELATED ENTITY.

(F) ANY AND ALL STOP NOTICES AND/OR LIENS FILED IN CONNECTION WITH THE MAINTENANCE SERVICES, PROVIDED THAT TXDOT HAS PAID ALL UNDISPUTED AMOUNTS DUE AND OWING TO MAINTENANCE CONTRACTOR WITH RESPECT TO SUCH MAINTENANCE SERVICES.

(G) ANY RELEASE(S) OF HAZARDOUS MATERIALS ATTRIBUTABLE TO THE ACTIONS, OMISSIONS, NEGLIGENCE, INTENTIONAL MISCONDUCT, OR BREACH OF APPLICABLE LAW OR CONTRACT BY ANY MAINTENANCE CONTRACTOR-RELATED ENTITY; OR THE RELEASE OF ANY HAZARDOUS MATERIALS CAUSED TO BE PRESENT ON THE PROJECT ROW OR ELSEWHERE BY ANY MAINTENANCE CONTRACTOR-RELATED ENTITY REGARDLESS OF WHETHER THOSE ARE THE PERSONS WHO ACTUALLY CAUSED THE RELEASE AND REGARDLESS OF THE CAUSE FOR THE RELEASE.

(H) THE CLAIM OR ASSERTION BY ANY OTHER CONTRACTOR THAT ANY MAINTENANCE CONTRACTOR-RELATED ENTITY INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR, OR FAILED TO COOPERATE REASONABLY WITH SUCH OTHER CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY OR LOSS, EXCEPT WHERE A MAINTENANCE CONTRACTOR-RELATED ENTITY WAS NOT IN ANY MANNER ENGAGED IN PERFORMANCE OF THE MAINTENANCE SERVICES.

(I) ERRORS, OMISSIONS, INCONSISTENCIES OR OTHER DEFECTS IN THE PROJECT DESIGN OR CONSTRUCTION, REGARDLESS OF WHETHER SUCH ERRORS, OMISSIONS, INCONSISTENCIES OR DEFECTS WERE ALSO INCLUDED IN THE SCHEMATIC DESIGN OR REFERENCE INFORMATION DOCUMENTS.

(J) (i) ANY MAINTENANCE CONTRACTOR-RELATED ENTITY'S BREACH OF OR FAILURE TO PERFORM AN OBLIGATION THAT TXDOT OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER LAW OR UNDER ANY AGREEMENT BETWEEN TXDOT AND A THIRD PERSON, WHERE TXDOT HAS DELEGATED PERFORMANCE OF THE OBLIGATION TO MAINTENANCE CONTRACTOR OR (ii) THE ACTS OR OMISSIONS OF ANY MAINTENANCE CONTRACTOR-RELATED ENTITY WHICH RENDER TXDOT UNABLE TO PERFORM OR ABIDE BY AN OBLIGATION THAT TXDOT OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER ANY AGREEMENT BETWEEN TXDOT AND A THIRD PERSON, WHERE THE AGREEMENT IS PREVIOUSLY DISCLOSED OR KNOWN TO MAINTENANCE CONTRACTOR.

(K) INVERSE CONDEMNATION, TRESPASS, NUISANCE OR SIMILAR TAKING OF OR HARM TO REAL PROPERTY BY REASON OF: (i) THE FAILURE OF ANY MAINTENANCE CONTRACTOR-RELATED ENTITY TO COMPLY WITH GOOD INDUSTRY PRACTICES, REQUIREMENTS OF THE CMA DOCUMENTS, MAINTENANCE MANAGEMENT PLAN OR GOVERNMENTAL APPROVALS RESPECTING CONTROL AND MITIGATION OF CONSTRUCTION ACTIVITIES AND CONSTRUCTION IMPACTS, (ii) THE INTENTIONAL MISCONDUCT OR NEGLIGENCE OF ANY MAINTENANCE CONTRACTOR-RELATED ENTITY, OR (iii) THE ACTUAL PHYSICAL ENTRY ONTO OR ENCROACHMENT UPON ANOTHER'S PROPERTY BY ANY MAINTENANCE CONTRACTOR-RELATED ENTITY.

15.2 Restrictions

Subject to the releases and disclaimers herein, Maintenance Contractor's indemnity obligations under Section 15.1 shall not extend to any Losses incurred by an Indemnified Party to the extent caused by:

(a) the negligence, reckless or intentional misconduct, bad faith or fraud of such Indemnified Party;

(b) TxDOT's material breach of any of its material obligations under the CMA Documents; or

(c) An Indemnified Party's violation of any Laws or Governmental Approvals.

15.3 Employee Claims

With respect to claims by an employee of any Maintenance Contractor-Related Entity, a Subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 15.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Maintenance Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits Laws.

15.4 Right to Rely

Maintenance Contractor hereby acknowledges and agrees that it is Maintenance Contractor's obligation to perform the Maintenance Services in accordance with the CMA Documents and that the Indemnified Parties are fully entitled to rely on Maintenance Contractor's performance of such obligation. Maintenance Contractor further agrees that any certificate, review and/or approval by TxDOT and/or others hereunder shall not relieve Maintenance Contractor of any of its obligations under the CMA Documents or in any way diminish its liability for performance of such obligations or its obligations under this Section 15.

15.5 CERCLA Agreement

The indemnities set forth in Section 15.1.1(G) are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), and Health and Safety Code section 25364, to insure, protect, hold harmless and indemnify the Indemnified Parties.

15.6 No Effect on Other Rights

The obligations under this Section 15 shall not be construed to negate, abridge, or reduce other rights or obligations which would otherwise exist in favor of an Indemnified Party hereunder.

15.7 No Relief from Responsibility

No rights of TxDOT described in this Section 15, no exercise or failure to exercise such rights, no failure of TxDOT to meet any particular standard of care in the exercise of such rights and no certificates or statements by TxDOT regarding completion or acceptance shall:

(a) relieve Maintenance Contractor of its responsibility for the selection and the competent performance of all Maintenance Contractor-Related Entities;

(b) relieve Maintenance Contractor of any of its obligations or liabilities under the CMA Documents;

(c) be deemed or construed to waive any of TxDOT's rights and remedies under the CMA Documents; or

(d) be deemed or construed as any kind of representation or warranty, express or implied, by TxDOT.

15.8 Third Parties Definition

15.8.1 For purposes of this Section 15, "third party" means any person or entity other than an Indemnified Party and Maintenance Contractor, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim against an Indemnified Party which is within the scope of the indemnities and which is not covered by the Indemnified Party's workers' compensation program.

15.9 Defense and Indemnification Procedures

15.9.1 If any of the Indemnified Parties receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 18.1, or otherwise herein where Maintenance Contractor is obligated to defend any of the Indemnified Parties, then TxDOT, on behalf of itself or any of the other Indemnified Parties, shall by writing as soon as practicable after receipt of the

claim: (a) inform Maintenance Contractor of the claim, (b) send to Maintenance Contractor a copy of all written materials TXDOT has received asserting such claim and (c) notify Maintenance Contractor that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless Maintenance Contractor accepts the tender of the claim in accordance with Section 15.9.3. As soon as practicable after Maintenance Contractor receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable insurance policies. TxDOT and other Indemnified Parties also shall have the right to tender such claims to such insurers.

15.9.2 If the insurer under any applicable insurance policy accepts the tender of defense, TXDOT and Maintenance Contractor shall cooperate in the defense as required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 15.9.3 shall apply.

15.9.3 If the defense is tendered to Maintenance Contractor, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that Maintenance Contractor:

(a) Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

(b) Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

(c) Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Capital Maintenance Agreement.

15.9.4 If Maintenance Contractor accepts the tender of defense under Section 15.9.3(a), Maintenance Contractor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Maintenance Contractor shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

(a) Maintenance Contractor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

(b) The Indemnified Party shall fully cooperate in said defense, provide to Maintenance Contractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and, except as may be required pursuant to the Public Information Act, maintain the confidentiality of all

communications between it and Maintenance Contractor concerning such defense.

15.9.5 If Maintenance Contractor responds to the tender of defense as specified in Section 15.9.3(b) or 15.9.3(c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

15.9.6 The Indemnified Party may assume its own defense by delivering to Maintenance Contractor written notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

(a) A conflict exists between it and Maintenance Contractor which prevents or potentially prevents Maintenance Contractor from presenting a full and effective defense;

(b) Maintenance Contractor is otherwise not providing an effective defense in connection with the claim; or

(c) Maintenance Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

15.9.7 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Maintenance Contractor shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending. In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

(a) In the case of a defense conducted under Section 15.9.3(a), it shall have the right to settle or compromise the claim with Maintenance Contractor's prior written consent, which shall not be unreasonably withheld or delayed;

(b) In the case of a defense conducted under Section 15.9.3(b), it shall have the right to settle or compromise the claim with Maintenance Contractor's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or other dispute resolver following reasonable notice to Maintenance Contractor and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Maintenance Contractor; and

(c) In the case of a defense conducted under Section 15.9.3(c), it shall have the right to settle or compromise the claim without Maintenance Contractor's prior written consent and without prejudice to its rights to be indemnified by Maintenance Contractor.

15.9.8 The Parties acknowledge that while Section 15.1, or otherwise pursuant to this Capital Maintenance Agreement, contemplates that Maintenance Contractor will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the Parties with respect to such claims and liabilities. In such case, where either Party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of Section 15.9, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the third party claim.

15.9.9 In determining responsibilities and obligations for defending suits pursuant to this Section 15.9, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the claim.

SECTION 16. PARTNERING AND DISPUTE RESOLUTION

16.1 General Dispute Resolution Provisions

Partnering will be encouraged in preference to formal dispute resolution mechanisms. Partnering in this context is intended to be a voluntary, non-binding procedure available for use by the Parties to resolve any issues that may arise during performance of the Maintenance Services.

16.2 Partnering

16.2.1 Schedule; Participation

As soon as possible after issuance of Maintenance NTP1, TxDOT and Maintenance Contractor shall jointly select a third-party facilitator to conduct the partnering meetings. The cost of the facilitator shall be shared equally by TxDOT and Maintenance Contractor. Partnering meetings shall be conducted at the office of TxDOT or at such location as otherwise agreed upon by the Parties. Persons who should attend the partnering meetings include Key Maintenance Personnel and executives of the Parties.

16.2.2 Confidentiality

Subject to the requirements of the Public Information Act, any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall not be admissible or discoverable in any judicial or other dispute resolution proceeding, unless such statements or materials are admissible or discoverable under applicable Law.

16.3 Disputes Resolution Procedures

16.3.1 Disputes Governed by These Procedures

(a) The Parties agree, in accordance with 43 Tex. Admin. Code Section 9.6, to be bound by and subject to the procedures established in this Section 16.3 as an agreement regarding dispute resolution procedures that shall survive expiration or earlier termination of the Term and thereafter for so long as either Party has any obligation originating under the CMA documents.

(b) The provisions of this Section 16.3 are intended to accord with Section 201.112 of the Code and the DRP Rules promulgated thereunder.

(c) As used in this Section 16.3, the phrase “the procedures established in this Section 16.3” includes the procedures established in this Section 16.3, the Disputes Board Agreement, the DRP Rules, the Code, and the Texas Government Code.

(d) All Disputes arising under the CMA documents shall be resolved pursuant to the Informal Resolution Procedures and, if not resolved thereby, the Dispute

Resolution Procedures, except the following: (i) Any equitable relief sought in Travis County, Texas District Court that TxDOT is permitted to bring against Maintenance Contractor under Section 16.3.2; and (ii) Ineligible Matters.

(e) Any disagreement between the Parties as to whether the Informal Resolution Procedures and/or the Dispute Resolution Procedures apply to a particular Dispute shall be treated as a Dispute for resolution in accordance with this Section 16.3.

(f) With respect to any Dispute for resolution in accordance with the procedures established in this Section 16.3, the Parties agree that (i) such Dispute must be asserted in writing to the other Party prior to the running of the applicable statute of limitations and (ii) provided that this is done, the applicable statute of limitations shall be tolled until the 30th day after conclusion of the last such procedure applicable to such Dispute.

16.3.2 Jurisdiction of Travis County, Texas District Courts

TxDOT may invoke the jurisdiction of the district courts of Travis County, Texas to petition for equitable relief against Maintenance Contractor, including temporary restraining orders, injunctions, other interim or final declaratory relief or the appointment of a receiver, to the extent allowed by Law.

16.3.2.1 Matters Ineligible for Dispute Resolution Procedures

The Dispute Resolution Procedures shall not apply to the following (collectively, "Ineligible Matters"):

(a) Any matters that the CMA Documents expressly state are final, binding or not subject to dispute resolution;

(b) Any claim or dispute that does not arise under the CMA Documents;

(c) Any claim that is not actionable against TxDOT by Maintenance Contractor on its own behalf or on behalf of its Subcontractors in accordance with Section 16.4;

(d) Any claim for indemnity under Section 15;

(e) Any claim for injunctive relief;

(f) Any claim against an insurance company, including any Subcontractor Dispute that is covered by insurance;

(g) Any claim arising solely in tort or that is covered by the Texas Tort Claims Act;

(h) Any claim arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the

applicable Utility Agreement provides for resolution of claims as set forth in this Section 16);

(i) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in this Section 16.3 do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in this Section 16.3 applicable;

(j) Any claim for, or dispute based on, remedies expressly created by statute; and

(k) Any Dispute that is actionable only against a Surety.

16.3.3 Informal Resolution As Condition Precedent

As a condition precedent to the right to have any Dispute resolved pursuant to the Dispute Resolution Procedures or by a district court, the claiming Party must first attempt to resolve the Dispute directly with the responding Party through the informal resolution procedures described in Section 16.3.4 other than Section 16.3.4.3 (collectively, the "Informal Resolution Procedures"). Time limitations set forth for the Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to the particular Dispute only and shall not affect the time limitations for the Informal Resolution Procedures applicable to any subsequently arising Disputes.

16.3.4 Informal Resolution Procedures

16.3.4.1 Notice of Dispute to Designated Agent

(a) A Party desiring to pursue a Dispute against the other Party shall initiate the Informal Resolution Procedures by serving a written notice on the responding Party's designated agent. Unless otherwise indicated by written notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The notice shall contain a concise statement describing:

(i) If the Parties have mutually agreed that the Dispute is a Fast-Track Dispute;

(ii) The date of the act, inaction or omission giving rise to the Dispute;

(iii) An explanation of the Dispute, including a description of its nature, circumstances and cause;

(iv) A reference to any pertinent provision(s) from the CMA Documents;

(v) If applicable and then known, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected);

(vi) If applicable, an analysis of the Project Schedules and any deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted deadlines);

(vii) If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed;

(viii) The claiming Party's desired resolution of the Dispute; and

(ix) Any other information the claiming Party considers relevant.

(b) The notice shall be signed by the designated agent of the Party asserting the Dispute, and shall constitute a certification by the Party asserting the Dispute that:

(i) The notice of Dispute is served in good faith;

(ii) To the then current knowledge of such Party, except as to matters stated in the notice of Dispute as being unknown or subject to discovery, (1) all supporting information is reasonably believed by the Party asserting the Dispute to be accurate and complete and (2) the Dispute accurately reflects the amount of money or other right, remedy or relief to which the Party asserting the Dispute reasonably believes it is entitled; and

(iii) The designated representative is duly authorized to execute and deliver the notice and such certification on behalf of the claiming Party.

(c) If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a written response. The notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation. Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing as appropriate, including execution of Change Orders or other documentation as needed, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute.

(d) The Party asserting the Dispute shall not be prejudiced by its initial statement of the Dispute and shall have the ability at any time during the Informal Resolution Procedures and Dispute Resolution Procedures to modify its statement of the Dispute and/or the amount of money or other right, remedy or relief sought.

16.3.4.2 Fast-Track Disputes

With respect to any Dispute that the Parties mutually designate as a Fast-Track Dispute, the Informal Resolution Procedures shall be abbreviated in that the procedure contemplated in Section 16.3.4.3 shall not be required.

16.3.4.3 CEO / Executive Director Meetings

Unless earlier resolved pursuant to Section 16.3.4.1(c); commencing within 10 Business Days after the notice of Dispute is served and concluding 10 Business Days thereafter, the Chief Executive Officer of Maintenance Contractor and the Executive Director or the assistant Executive Director, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's notice of Dispute. If they succeed in resolving the Dispute, Maintenance Contractor and TxDOT shall memorialize the resolution in writing, including execution of Change Orders or other documentation as appropriate, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute.

16.3.4.4 Failure to Resolve Dispute With Informal Resolution Procedures

If a Dispute is not timely resolved under the Informal Resolution Procedures, then within 15 days (seven days for Fast-Track Disputes) after the conclusion of the time periods for Informal Resolution Procedures, if such Dispute was not resolved to the Parties' satisfaction:

(i) The Parties may mutually agree to initiate mediation or other alternative dispute resolution process in accordance with Section 16.3.8; or

(ii) Either Party may refer the Dispute to the Disputes Board for resolution pursuant to Section 16.3.5.2.

16.3.5 Disputes Board; Finality of Disputes Board Decision

16.3.5.1 Disputes Board Agreement

(a) The Parties executed the Disputes Board Agreement on even date herewith. The Disputes Board Agreement governs all aspects of the Disputes Board, as well as all rights and responsibilities of the Parties with respect to the Disputes Board, that are not otherwise addressed in this Section 16.3, the DRP Rules and the Code.

(b) If the composition of either Party’s Disputes Board Member Candidates' List has not been finalized prior to the Effective Date, that Party shall promptly appoint the members in accordance with the requirements and procedures of the Disputes Board Agreement.

(c) The Disputes Board shall conduct proceedings and, upon completion of its proceedings, issue written findings of fact, written conclusions of law, and a written decision to TxDOT and Maintenance Contractor.

(d) The Disputes Board shall have the authority to resolve any Dispute other than Ineligible Matters and any actions for equitable relief in district court that TxDOT is permitted to bring against Maintenance Contractor under Section 16.3.2.

(e) The Disputes Board shall not have the authority to order that one Party compensate the other Party for attorneys' fees and expenses.

(f) If a Disputes Board Decision awards an amount payable by one Party to the other, such amount became or shall become due and payable on the date required for payment in accordance with the applicable DRP governed agreement. If the date of payment is not specified in a DRP governed agreement, the payment shall be due ten days after the date the Final Order Implementing Decision for such decision becomes final under Section 16.3.7 (or, if the tenth day is not a Business Day, the next Business Day).

(g) Except for those matters subject to Section 16.8, interest at LIBOR on an amount payable by one Party to the other shall accrue beginning on the date such amount was due and continuing until the date such amount is paid.

(h) If the notice of Dispute fails to meet the certification requirements under Section 16.3.4.1(b), on motion of the responding Party the Disputes Board shall suspend proceedings on the Dispute until a correct and complete written certification is delivered, and shall have the discretionary authority to dismiss the Dispute for lack of a correct certification if it is not delivered within a reasonable time as set by the Disputes Board. Prior to the entry by the Disputes Board of a final decision on a Dispute, the Disputes Board shall require a defective certification to be corrected.

16.3.5.2 Submission of Dispute to Disputes Board

(a) Within 15 days (seven days for Fast-Track Disputes) after the end of the last time period under the Informal Resolution Proceedings, either Party may refer a Dispute to the Disputes Board for resolution by serving written notice on the other Party. The notice shall include the same information as a notice of Dispute issued under Section 16.3.4.1(a). Within 15 days (seven days for Fast-Track Disputes) after a Party refers a Dispute to the Disputes Board, the responding Party shall serve a written response upon the claiming Party’s designated agent. The response shall include the same information as the notice of Dispute issued under Section 16.3.4.1(a), to the extent applicable; shall be signed by the designated representative of the responding Party; and shall constitute a certification by the responding Party that:

(i) The response to the claiming Party's notice of Dispute is served in good faith;

(ii) All supporting information is reasonably believed by the responding Party to be accurate and, except as otherwise reasonably explained in the response, complete; and

(iii) The responding Party disputes the amount of money or other right, remedy or relief to which the claiming Party believes it is entitled.

(b) Neither Party may attempt to seek resolution of a Dispute by the Disputes Board or litigate the merits of any Dispute in court if such Dispute is not timely referred to the Disputes Board within the 15 day time period under Section 16.3.5.2(a) above, except for Ineligible Matters and Disputes for which TxDOT is entitled to seek relief in court.

(c) The responding Party shall also assert in its response any challenge it may then have to the Dispute Board's authority to resolve the Dispute if the responding Party then believes in good faith that the Dispute is an Ineligible Matter.

16.3.5.3 Finality of Disputes Board Decision

Upon completion of the remainder of the procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

16.3.6 SOAH Administrative Hearings and Final Orders

16.3.6.1 Appeal of Disputes Board Decision

(a) If, within 20 days after the Disputes Board's issuance of the Disputes Board Decision to TxDOT and Maintenance Contractor (the “Appeal Period”), either Party is dissatisfied with the Disputes Board Decision due to a good faith belief that Disputes Board Error occurred, (i) Maintenance Contractor may request the Executive Director to seek and/or (ii) TxDOT may seek a formal administrative hearing before SOAH pursuant to Texas Government Code, Chapter 2001, and Section 201.112 of the Code, solely on the grounds that Disputes Board Error occurred. Upon receipt of Maintenance Contractor's request for a formal administrative hearing before SOAH, the Executive Director shall, as a purely ministerial act, refer the matter to SOAH within ten Business Days after receipt of Maintenance Contractor's request.

(b) If Maintenance Contractor does not request, and TxDOT does not seek for itself, a formal administrative hearing before SOAH under Section 16.3.6.1(a) within the Appeal Period, then within ten Business Days after the expiration of the Appeal Period, the Executive Director shall issue the Final Order Implementing Decision as a purely ministerial act. If the Executive Director fails to issue the Final Order Implementing Decision within this ten Business Day time period, the Disputes Board Decision shall become effective as the Final Order Implementing Decision for all purposes on the next Business Day.

(c) Neither Party may attempt to:

(i) Seek an administrative hearing before SOAH on any Dispute after the Appeal Period has expired without either Party seeking an administrative hearing before SOAH;

(ii) Seek rehearing in any forum of a Dispute that is the subject of a Disputes Board Decision after the Appeal Period has expired without either Party seeking an administrative hearing before SOAH; or

(iii) Resubmit to the Disputes Board or litigate in court any Dispute that was the subject of and resolved by a prior final Disputes Board Decision.

16.3.6.2 Appeal of Disputes Board Error to SOAH

"Disputes Board Error" means one or more of the following:

(a) The Disputes Board failed, in any material respect, to properly follow or apply the procedures for handling, hearing and deciding on the Dispute established under this Section 16.3 and such failure prejudiced the rights of a Party; or

(b) The Disputes Board Decision was procured by, or there was evident partiality among the Disputes Board Members due to, a Conflict of Interest, Misconduct, corruption or fraud.

16.3.6.3 SOAH Proceeding and ALJ Proposal For Decision

(a) Upon referral to SOAH of the question of whether Disputes Board Error occurred, the ALJ shall conduct a hearing solely on the question of whether Disputes Board Error occurred. The Disputes Board's written findings of fact, conclusions of law and Disputes Board Decision; any written dissenting findings, recommendations or opinions of a minority Disputes Board Member; and all submissions to the Disputes Board by the Parties shall be admissible in the SOAH proceeding, along with all other evidence the ALJ determines to be relevant. After timely closing of the record of the SOAH proceeding, the ALJ shall timely issue to the Executive Director and Maintenance Contractor the ALJ's written proposal for decision as to whether Disputes Board Error occurred.

(b) Each Party may file exceptions to the proposal for decision with the ALJ no later than seven days after issuance of the ALJ's proposal for decision and, in response to a Party's exceptions, the other Party may file a reply to the excepting Party's exceptions with the ALJ no later than 14 days after issuance of the proposal for decision. The ALJ shall review all exceptions and replies and notify TxDOT and Maintenance Contractor no later than 21 days after issuance of the proposal for decision whether the ALJ recommends any changes to the proposal for decision, amends the proposal for decision in response to exceptions and replies to exceptions, and/or corrects any clerical errors in the proposal for decision. The ALJ shall reissue its written proposal for decision to the Executive Director and TxDOT, together with written

findings of fact and conclusions of law, if revised from those previously furnished to the Parties.

(c) Unless a Party in good faith challenges the Disputes Board's authority to resolve the Dispute because the Dispute is an Ineligible Matter (1) in the proceedings before the Disputes Board, (2) as a Disputes Board Error during the Appeal Period, (3) in the SOAH proceeding or (4) in exceptions to the ALJ's proposal for decision timely filed under Section 16.3.6.3(b) above, any objection to the Disputes Board's authority to resolve the applicable Dispute shall be deemed waived by such Party.

16.3.6.4 Final Orders of Executive Director

(a) Within 28 days after receipt of the ALJ's proposal for decision:

(i) If, upon review of the ALJ's proposal for decision, the Executive Director concludes that Disputes Board Error occurred, the Executive Director shall issue a Final Order Vacating Decision. A "Final Order Vacating Decision" means an order of the Executive Director either adopting or rejecting the ALJ's proposal for decision, as applicable (and if the Executive Director rejects the ALJ's proposal for decision, accompanied by the written explanatory statement required under Section 201.112(c) of the Code); ruling that the Disputes Board Decision is invalid, void and of no force and effect; and remanding the Dispute to the Disputes Board for reconsideration. If the nature of the Disputes Board Error was a Conflict of Interest, Misconduct fraud or corruption of a Disputes Board Member, the remanded Dispute will be reconsidered by a reconstituted Disputes Board after removal of such Disputes Board Member; or

(ii) If, upon review of the ALJ's proposal for decision, the Executive Director concludes that no Disputes Board Error occurred, the Executive Director shall issue a Final Order Implementing Decision. A "Final Order Implementing Decision" means an order of the Executive Director either adopting or rejecting the ALJ's proposal for decision, as applicable (and if the Executive Director rejects the ALJ's proposal for decision, accompanied by the written explanatory statement required under Section 201.112(c) of the Code), and approving and fully implementing the Disputes Board Decision.

(b) The Parties agree and acknowledge that the Executive Director's issuance of either type of Final Order is a purely ministerial function of the Executive Director. If the Executive Director fails to issue one or the other type of Final Order within the foregoing 28 Day time period, then on the next Business Day:

(i) If the ALJ determined that Disputes Board Error occurred, a Final Order Vacating Decision shall be deemed to have been issued for all purposes by the Executive Director which (1) adopted the ALJ's proposal for decision; (2) ruled that the Disputes Board Decision is invalid, void and of no force and effect; and (3) remanded the Dispute to the Disputes Board for reconsideration (or, if the nature of the Disputes Board Error was a Conflict of Interest or Misconduct of a Disputes Board

Member, a reconstituted Disputes Board after removal of such Disputes Board Member) without Disputes Board Error; or

(ii) If the ALJ determined that no Disputes Board Error occurred, a Final Order Implementing Decision shall be deemed to have been issued for all purposes by the Executive Director which adopted the ALJ's proposal for decision and fully implemented the Disputes Board Decision.

16.3.7 Judicial Appeal of Final Orders Under Substantial Evidence Rule

Each issued or deemed issue Final Order Implementing Decision and Final Order Vacating Decision shall be considered a final order for purposes of Maintenance Contractor's ability to seek judicial appeal thereof under Section 201.112(d) of the Code under the substantial evidence rule. TxDOT and Maintenance Contractor hereby agree that (a) pursuant to Section 2001.144(a)(4) of the Texas Government Code, each Final Order Implementing Decision and Final Order Vacating Decision shall be final (and therefore eligible for appeal under Section 201.112(d) of the Code) on the date such final order is issued or deemed issued by the Executed Director and (b) pursuant to Section 2001.145 of the Texas Government Code, TxDOT and Maintenance Contractor hereby agree that the filing of a motion for rehearing shall not be a prerequisite for appeal of such final orders under Section 201.112(d) of the Code.

16.3.8 Mediation or Other Alternative Dispute Resolution

Maintenance Contractor and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation or other alternative dispute resolution process for resolution. The Parties shall use diligent efforts to convene and conclude any such proceedings within 30 days after they agree to refer the Dispute to mediation or other alternative dispute resolution process. Maintenance Contractor and TxDOT shall share equally the expenses of the mediation or other alternative dispute resolution process. If any Dispute has been referred to mediation or other alternative dispute resolution process for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30 day period, then either Party can, on or after the 31st day, cease participating in such mediation or other alternative dispute resolution process. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Section 16.3 for processing a Dispute are tolled, day for day, during mediation or other alternative dispute resolution.

16.3.9 Confidential Information

16.3.9.1 All discussions, negotiations, and Informal Resolution Procedures between the Parties to resolve a Dispute, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, or Informal Resolution Procedures, shall be considered confidential and not subject to disclosure by either Party.

16.3.9.2 With respect to all discussions, negotiations, testimony and evidence between the Parties and/or in a proceeding before the Disputes Board, an administrative hearing before an ALJ or a judicial proceeding in court:

(a) All information that has been deposited into escrow pursuant to Section 5.12.4 of the ITP shall be treated as confidential by the Parties and the Disputes Board, the ALJ and the court, as applicable, and, further, shall be subject to a protective order issued by the Disputes Board, the ALJ or the court, as applicable, to protect such information from disclosure to third Persons.

(b) Either or both Parties may also request a protective order in any Disputes Board proceeding, SOAH administrative hearing or judicial proceeding to prohibit disclosure to third Persons of any other information that such Party or Parties believe(s) is confidential. Whether such a protective order will be issued by the Disputes Board, the ALJ or the court, as applicable, shall be determined under the standards set forth in the Texas Rules of Evidence, the Texas Rules of Civil Procedure, Section 223.204 of the Code and the Public Information Act.

16.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes

For purposes of this Section 16, a "Subcontractor Dispute" shall mean any dispute by a Subcontractor, including also any pass-through claims by a lower tier Subcontractor, against Maintenance Contractor that is actionable by Maintenance Contractor against TxDOT and arises from the Maintenance Services, materials or other services provided or to be provided under the CMA Documents. If Maintenance Contractor determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:

(a) Maintenance Contractor shall identify clearly in all submissions pursuant to this Section 16, that portion of the Dispute that involves a Subcontractor Dispute.

(b) Failure of Maintenance Contractor to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related demand by Maintenance Contractor, as provided hereunder, shall constitute a release and discharge of TxDOT by Maintenance Contractor on account of, and with respect to, such Subcontractor Dispute.

(c) Maintenance Contractor shall require in all Subcontracts that all Subcontractors of any tier: (a) agree to submit Subcontractor Disputes to Maintenance Contractor in a proper form and in sufficient time to allow processing by Maintenance Contractor in accordance with this Section 16; (b) agree to be bound by the terms of this Section 16 to the extent applicable to Subcontractor Disputes; (c) agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Section 16 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against Maintenance Contractor; (d) agree that any

Subcontractor Dispute brought against a Surety, that also is actionable against TxDOT through Maintenance Contractor, shall be stayed until completion of all steps required under this subsection; and (e) agree that the existence of a dispute resolution process for Disputes involving Subcontractor Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against TxDOT. Subcontractors shall, at all times, have rights and remedies only against Maintenance Contractor.

16.5 Subsequent Proceedings

16.5.1 Exclusive Jurisdiction and Venue

Maintenance Contractor agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to the CMA Documents or the Project shall be the Travis County District Court. Maintenance Contractor waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such court's jurisdiction, regardless of Maintenance Contractor's residence or domicile, for any such action or proceeding.

16.5.2 Admissibility of Disputes Resolution Proceedings

The admissibility, in any administrative or judicial proceeding subsequent to this dispute resolution process, of the Parties' submittals and any TxDOT determinations shall be in the discretion of the appropriate administrative officer or the court in accordance with applicable Law.

16.6 Continuation of Maintenance Work

At all times during this dispute resolution process or any subsequent administrative, arbitration or court proceeding, Maintenance Contractor and all Subcontractors shall proceed with the Maintenance Services, without delay, in accordance with this Capital Maintenance Agreement, and as directed by TxDOT. Maintenance Contractor acknowledges that it shall be solely responsible for any Project delay that results from its actions or inactions during the dispute resolution process, even if Maintenance Contractor's position in connection with the Dispute ultimately prevails. In addition, all Parties shall continue to comply with all provisions of the CMA Documents, the Governmental Approvals and applicable Law.

16.7 Records Related to Claims and Disputes

Throughout the course of any Maintenance Services that are the subject of any Claim or Dispute, Maintenance Contractor shall keep separate and complete records as required by Section 17. These records shall be retained for a period of not less than five years from the date of resolution of the Claim or Dispute.

16.8 Interest

This Section 16.8 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

In the event Maintenance Contractor elects to pursue a formal Dispute with TxDOT under this Section 16, TxDOT shall notify Maintenance Contractor whether it will dispute the claim not later than the 21st day after the date TxDOT receives the claim. Except as provided in this paragraph, a payment becomes overdue and begins to accrue interest on the 31st day after the date TxDOT receives a contract claim pursuant to Texas Transportation Code, Section 201.112 and the dispute resolution procedures established thereunder. If the resolution of a disputed claim results in the award of an amount which is less than the amount requested in the original claim then the Maintenance Contractor shall submit a corrected invoice. The unpaid balance of the corrected invoice becomes overdue and begins to accrue interest on the 31st day after TxDOT receives the corrected invoice.

16.9 Attorney Fees

This Section 16.9 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

A party shall pay the attorneys' fees of the other Party for Disputes brought pursuant to this Section 16 only if such payment is required pursuant to the Texas Prompt Payment Act and the payment of attorneys' fees is ordered in a TxDOT administrative order or in a judicial order.

SECTION 17. DOCUMENTS AND RECORDS

17.1 Escrowed Proposal Documents

Prior to execution of this Capital Maintenance Agreement, Maintenance Contractor delivered into escrow one copy of all cost, unit pricing, price quote and other documentary information used in preparation of the Maintenance Price (the "EPDs"). Upon execution of this Capital Maintenance Agreement, the EPDs shall be transferred from escrow and held in locked fireproof cabinet(s) supplied by Maintenance Contractor and located in TxDOT's project office with the key held only by Maintenance Contractor. Concurrently with approval of each Change Order or amendment to any CMA Document, one copy of all documentary information used in preparation of the Change Order or amendment shall be added to the cabinet to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained until all of the following have occurred: (a) Maintenance Services Warranty Period and all required extensions have expired as required under Sections 9.2.1 and 9.2.2 of this Capital Maintenance Agreement; (b) all Claims or Disputes regarding the Maintenance Services have been settled; and (c) Final Payment has been made and accepted.

17.1.1 Availability for Review

The EPDs shall be available during business hours for joint review by Maintenance Contractor, TxDOT and any dispute resolver in accordance with Section 16, in connection with approval of the Project Schedule, negotiation of Change Orders and resolution of Claims or Disputes under the CMA Documents, and also as described in Section 17.1.6. TxDOT shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue.

17.1.2 Proprietary Information

The EPDs are, and shall always remain, the property of Maintenance Contractor and shall be considered to be in Maintenance Contractor's possession, subject to TxDOT's right to review the EPDs as provided in this Section 17.1. Maintenance Contractor will have and control the keys to the filing cabinet containing the EPDs. TxDOT acknowledges that Maintenance Contractor may consider that the EPDs constitute trade secrets or proprietary information. TxDOT shall have the right to copy the EPDs for the purposes set forth in this Section 17.1, provided that the Parties execute a mutually agreeable confidentiality agreement with respect to EPDs that constitute trade secrets or proprietary information, which shall explicitly acknowledge that such confidentiality agreement is subject to applicable Law (including the Public Information Act).

17.1.3 Representation

Maintenance Contractor represents and warrants that the EPDs constitute all documentary information used in the preparation of its Maintenance Price.

Maintenance Contractor agrees that no other price proposal preparation information will be considered in resolving Disputes or Claims. Maintenance Contractor further agrees that the EPDs are not part of the CMA Documents and that nothing in the EPDs shall change or modify any CMA Document.

17.1.4 Contents of EPDs

The EPDs shall, inter alia, clearly detail how each cost or price included in the Proposal has been determined and shall show cost or price elements in sufficient detail as is adequate to enable TxDOT to understand how Maintenance Contractor calculated the Maintenance Price. The EPDs provided in connection with quotations and Change Orders shall, inter alia, clearly detail how the total cost or price and individual components of that cost or price were determined. The EPDs shall itemize the estimated costs or price of performing the required work separated into usual and customary items and cost or price categories to present a detailed estimate of costs and price, such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, supplies, Subcontract costs, plant and equipment, indirect costs, contingencies, mark-up, overhead and profit. The EPDs shall itemize the estimated annual costs of insurance premiums for each coverage required to be provided by Maintenance Contractor under Section 7. The EPDs shall include all assumptions, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Subcontractors used by Maintenance Contractor to arrive at the Maintenance Price, and any adjustments to the Maintenance Price under this Capital Maintenance Agreement.

17.1.5 Form of EPDs

Except as otherwise provided in the RFP, Maintenance Contractor shall submit the EPDs in such format as is used by Maintenance Contractor in connection with its Proposal. Maintenance Contractor represents and warrants that the EPDs provided with the Proposal were personally examined by an authorized officer of Maintenance Contractor prior to delivery, and that the EPDs meet the requirements of Section 17.1.4. Maintenance Contractor further represents and warrants that all EPDs provided were or will be personally examined prior to delivery by an authorized officer of Maintenance Contractor.

17.1.6 Review by TxDOT

TxDOT may at any time conduct a review of the EPDs to determine whether they are complete. If TxDOT determines that any data is missing from an EPD, Maintenance Contractor shall provide such data within three Business Days after delivery of TxDOT's request for such data. At that time of its submission to TxDOT, such data will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. Maintenance Contractor shall have no right to add documents to the EPDs except upon TxDOT's request. The EPDs associated with any Change Order or Maintenance Price adjustment under this Capital Maintenance Agreement shall be reviewed, organized and indexed in the same manner described in Section 4.4 of the ITP.

17.2 Subcontract Pricing Documents

Maintenance Contractor shall require each Major Subcontractor to submit to Maintenance Contractor a copy of all documentary information used in determining its Subcontract price (including the price for Subcontract work included in any Change Order), immediately prior to executing the Subcontract and each Subcontract change order, to be held in the same manner as the EPDs and which shall be accessible by TxDOT, Maintenance Contractor and dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor, for the benefit of Maintenance Contractor and TxDOT, stating that its submission in the EPDs, constitute all the documentary information used in establishing its Subcontract price, and agreeing to provide a sworn certification in favor of Maintenance Contractor and TxDOT together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate and current. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Maintenance Contractor and/or TxDOT in connection with any claim made by such Subcontractor.

17.3 Reporting Requirements

17.3.1 Maintenance Contractor shall deliver to TxDOT financial and narrative reports, statements, certifications, budgets and information as and when required under the CMA Documents.

17.3.2 Maintenance Contractor shall furnish, or cause to be furnished, to TxDOT such information and statements as TxDOT may reasonably request from time to time for any purpose related to the Project, the Maintenance Services or the CMA Documents. In addition, Maintenance Contractor shall deliver to TxDOT the following financial statements for each Guarantor, at the times specified below:

17.3.2.1 Within 60 days after the end of each fiscal quarter, duplicate copies of the balance sheet and a consolidated statement of earnings of the Guarantor and its consolidated subsidiaries for such quarter and for the period from the beginning of the then current fiscal year to the end of such quarter, setting forth in comparative form the figures for the corresponding periods during the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief financial officer of the Guarantor;

17.3.2.2 Within 120 days after the end of each fiscal year, duplicate copies of the financial statements (which shall include a balance sheet and a consolidated statement of financial condition of the Guarantor and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Guarantor and its consolidated subsidiaries for such year, and all related notes to the financial statements, setting forth in each case in comparative form the figures for the previous fiscal year), all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Guarantor, which opinion shall state that such financial statements have

been prepared in accordance with Generally Accepted Accounting Principles consistently applied, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances. If financial statements are prepared in accordance with principles other than U.S. GAAP, a letter from the certified public accountant of the applicable entity, discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP is required; and

17.3.2.3 Upon request of TxDOT for particular fiscal quarters, copies of all other financial statements and information reported by the Guarantor to its shareholders generally and of all reports filed by the Guarantor with the U.S. Securities and Exchange Commission under Sections 13, 14 or 15(d) of the Exchange Act, to be provided to TxDOT as soon as practicable after furnishing such information to the Guarantor's shareholders or filing such reports with the U.S. Securities and Exchange Commission, as the case may be.

17.3.3 Maintenance Contractor shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as determined necessary or desirable by TxDOT in connection with any Project financing. Without limiting the generality of the foregoing, Maintenance Contractor shall provide such information deemed necessary or desirable by TxDOT for inclusion in TxDOT's securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. Maintenance Contractor shall provide customary representations and warranties to TxDOT and the capital markets as to the correctness, completeness and accuracy of any information furnished.

17.3.4 Maintenance Contractor shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by TxDOT to assist or facilitate the submission by TxDOT of any documentation, reports or analysis required by the State, FHWA and/or any other Governmental Entity with jurisdiction over the Project.

17.3.5 All reports and information delivered by Maintenance Contractor under Sections 17.3.3 and 17.3.4 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

17.4 Maintenance of, Access to and Audit of Records

17.4.1 Except for EPDs (which shall be maintained as set forth in Section 17.1), Maintenance Contractor shall maintain at a location TxDOT approves in writing in its sole discretion, a complete set of all books and records prepared or received by Maintenance Contractor in its management, scheduling, cost accounting and other activities related to the Maintenance Services and the Project in accordance with the applicable provisions of the CMA Documents. Maintenance Contractor shall grant to TxDOT such audit rights and shall allow TxDOT and its designated representatives

such access to and the right to copy such books and records as TxDOT may request in connection with the issuance of Change Orders, the resolution of Claims and Disputes, and such other matters as TxDOT reasonably deems necessary for purposes of verifying compliance with the CMA Documents and applicable Law.

17.4.2 Where the payment method for any Maintenance Services is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Maintenance Services. If an audit indicates Maintenance Contractor has been overpaid under a previous payment, the excess payment will be credited against current payments.

17.4.3 For cost and pricing data submitted in connection with pricing Change Orders, TxDOT and its representatives shall have the right to examine and copy all books, records, documents and other data of Maintenance Contractor related to the negotiation of or performance of Maintenance Services under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted; provided, however, that the foregoing shall not apply to pricing based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public or prices set by Law, in each case, as determined by TxDOT. Such right of examination shall extend to all documents deemed necessary by TxDOT and its representative to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

17.4.4 All Claims or Disputes filed against TxDOT shall be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees of TxDOT or by an auditor under contract with TxDOT. No notice is required before commencing any audit within 60 days after termination of this Capital Maintenance Agreement. Thereafter, TxDOT shall provide 20 days notice to Maintenance Contractor, any Subcontractors or their respective agents before commencing an audit. Maintenance Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to TxDOT, for the audit during normal business hours. Maintenance Contractor, Subcontractors or their agents shall cooperate with the auditors. Failure of Maintenance Contractor, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or Dispute or to permit the auditor access to the books and records of Maintenance Contractor, Subcontractors or their agents shall constitute a waiver of the Claim or Dispute and shall bar any recovery thereunder.

17.4.5 At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports;

2. Union agreements;

3. Insurance, welfare, and benefits records;

4. Payroll registers;

5. Earnings records;

6. Payroll tax forms;

7. Material invoices and requisitions;

8. Material cost distribution work sheets;

9. Equipment records (list of company equipment, rates, etc.);

10. Subcontractors' (including Suppliers') invoices;

11. Subcontractors' and agents' payment certificates;

12. Canceled checks (payroll, Subcontractors and Suppliers);

13. Job cost reports;

14. Job payroll ledger;

15. General ledger;

16. Cash disbursements journal;

17. All documents that relate to each and every Claim or Dispute, together with all documents that support the amount of damages as to each Claim or Dispute; and

18. Work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute, including labor, benefits and insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

17.4.6 Full compliance by Maintenance Contractor with the provisions of this Section 17.4 is a contractual condition precedent to Maintenance Contractor's right to seek relief under Section 16.

17.4.7 Maintenance Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 17.4, and shall cause all Subcontractors to warrant the completeness and accuracy of all information such Subcontractors or their agents provides in connection with this Section 17.4.

17.4.8 TxDOT's rights of audit include the right to observe the business operations of Maintenance Contractor and its Subcontractors to confirm the accuracy of books and records.

17.4.9 Nothing in the CMA Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State auditor, in carrying out his or her legal authority. Maintenance Contractor understands and acknowledges that: (a) the State auditor may conduct an audit or investigation of any Person receiving funds from the State directly under this Capital Maintenance Agreement or indirectly through a Subcontract, (b) acceptance of funds directly under this Capital Maintenance Agreement or indirectly through a Subcontract acts as acceptance of the authority of the State auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds, and (c) a Person that is the subject of an audit or investigation must provide the State auditor with access to any information the State Auditor considers relevant to the investigation or audit.

17.5 Retention of Records

Except for EPDs (which shall be maintained as set forth in Section 17.1), Maintenance Contractor shall maintain all records and documents relating to the Maintenance Services, including copies of all original documents delivered to TxDOT, and the Project in the "Major Projects Office" of TxDOT at Harris County, Texas until five years after termination of this Capital Maintenance Agreement. Maintenance Contractor shall notify TxDOT where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Claims or Disputes being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such Claims or Disputes have been finally resolved. Records to be retained include all books, electronic information and files and other evidence bearing on Maintenance Contractor's costs under the CMA Documents. Maintenance Contractor shall make these records and documents available for audit and inspection to TxDOT, at Maintenance Contractor's offices in Harris County, Texas, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents, at no expense to Maintenance Contractor. If approved by TxDOT, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

17.6 Public Information Act

17.6.1 Maintenance Contractor acknowledges and agrees that, except as provided by Section 223.204 of the Code, all records, documents, drawings, plans, specifications and other materials in TxDOT's possession, including materials submitted by Maintenance Contractor, are subject to the provisions of the Public Information Act. If Maintenance Contractor believes information or materials submitted to TxDOT constitute trade secrets, proprietary information or other information that is not subject to the Public Information Act pursuant to Section 223.204 of the Code or excepted from disclosure under the Public Information Act, Maintenance Contractor shall be solely responsible for specifically and conspicuously designating that information by placing

"CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Section 17.6 shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable Law, and the provisions of the Public Information Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Maintenance Contractor is advised to contact legal counsel concerning such Law and its application to Maintenance Contractor.

17.6.2 If TxDOT receives a request for public disclosure of materials marked "CONFIDENTIAL," TxDOT will use reasonable efforts to notify Maintenance Contractor of the request and give Maintenance Contractor an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Information Act or other applicable Law within the time period specified in the notice issued by TxDOT and allowed under the Public Information Act. Under no circumstances, however, will TxDOT be responsible or liable to Maintenance Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

17.6.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Maintenance Contractor to TxDOT, TxDOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Maintenance Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of TxDOT's voluntary intervention or participation in litigation, Maintenance Contractor shall pay and reimburse TxDOT within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, TxDOT incurs in connection with any litigation, proceeding or request for disclosure.

17.7 Ownership and Use of Documents

All data, sketches, charts, calculations, plans, specifications, electronic files, correspondence and other documents created or collected under the terms of the CMA Documents shall be considered "works made for hire," as defined under the U.S. Copyright Act, 17 U.S.C. §101, *et seq.,* as amended, for which TxDOT owns the copyright. Design Documents shall become TxDOT's property upon preparation; Construction Documents shall become TxDOT's property upon delivery to TxDOT; and other documents prepared or obtained by Maintenance Contractor in connection with the performance of its obligations under the CMA Documents, including studies, manuals, as-built drawings, technical and other reports and the like, shall become the property of TxDOT upon Maintenance Contractor's preparation or receipt thereof.

Copies of all Design Documents and Construction Documents shall be furnished to TxDOT upon preparation or receipt thereof by Maintenance Contractor. Maintenance Contractor shall maintain all other documents described in this Section 17.7 in accordance with the requirements of Section 17.4 and shall deliver copies to TxDOT as required by the CMA Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to TxDOT as a condition to Final Payment.

SECTION 18. MISCELLANEOUS PROVISIONS

18.1 Amendments

The CMA Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Capital Maintenance Agreement.

18.2 Waiver

18.2.1 No waiver of any term, covenant or condition of the CMA Documents shall be valid unless in writing and signed by the obligee Party.

18.2.2 The exercise by a Party of any right or remedy provided under the CMA Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under the CMA Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the CMA Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

18.2.3 Except as provided otherwise in the CMA Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the CMA Documents.

18.2.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the CMA Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the CMA Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Claims or Disputes.

18.3 Independent Contractor

18.3.1 Maintenance Contractor is an independent contractor, and nothing contained in the CMA Documents shall be construed as constituting any relationship with TxDOT other than that of independent contractor.

18.3.2 Nothing in the CMA Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between TxDOT and Maintenance Contractor; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship

exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give TxDOT control or joint control over Maintenance Contractor's financial decisions or discretionary actions concerning the Project and the Maintenance Services.

18.3.3 In no event shall the relationship between TxDOT and Maintenance Contractor be construed as creating any relationship whatsoever between TxDOT and Maintenance Contractor's employees. Neither Maintenance Contractor nor any of its employees is or shall be deemed to be an employee of TxDOT. Except as otherwise specified in the CMA Documents, Maintenance Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that Maintenance Contractor or any Subcontractor hires to perform or assist in performing the Maintenance Services.

18.4 Successors and Assigns

18.4.1 The CMA Documents shall be binding upon and inure to the benefit of TxDOT and Maintenance Contractor and each of their permitted successors, assigns and legal representatives.

18.4.2 TxDOT may transfer and assign all or any portion of its rights, title and interests in and to the Contract Documents, including rights with respect to the Payment and Performance Bond(s), Guarantees, letters of credit and other security for payment or performance: (a) without Maintenance Contractor's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT, and (b) to any other Person with the prior written approval of Maintenance Contractor and Surety.

18.4.3 In the event of TxDOT's assignment of all of its rights, title and interests in the Contract Documents as permitted hereunder, Maintenance Contractor shall have no further recourse to the Department under the Contract Documents or otherwise except as specifically provided by other contractual agreement or by statute.

18.4.4 Maintenance Contractor may not, without the prior written consent of TxDOT in its sole discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the CMA Documents. No partner, joint venturer, member or shareholder of Maintenance Contractor may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in Maintenance Contractor without the prior written consent of TxDOT, in TxDOT's sole discretion.

18.5 Designation of Representatives; Cooperation with Representatives

18.5.1 TxDOT and Maintenance Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the CMA Documents ("Authorized Representative"). Exhibit 13

hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 18.10. The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the Maintenance Services and negotiate on behalf of each of the Parties, but who do not have authority to bind TxDOT or Maintenance Contractor.

18.5.2 Maintenance Contractor shall cooperate with TxDOT and all representatives of TxDOT designated as described above.

18.6 Survival

Maintenance Contractor's representations and warranties, the dispute resolution provisions contained in Section 16, the indemnifications and releases contained in Section 15, the express rights and obligations of the Parties following termination of this Capital Maintenance Agreement under Sections1, 3.6, 10.9.4, 12, 14, 17.4.4 and 17.5 and all other provisions which by their inherent character should survive termination of this Capital Maintenance Agreement and/or Final Payment, shall survive the termination of this Capital Maintenance Agreement and Final Payment.

18.7 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the CMA Documents to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 18.7, the duties, obligations and responsibilities of the Parties to the CMA Documents with respect to third parties shall remain as imposed by Law. The CMA Documents shall not be construed to create a contractual relationship of any kind between TxDOT and a Subcontractor or any Person other than Maintenance Contractor.

18.8 Tort Liability; Personal Liability of TxDOT Employees

18.8.1 TxDOT's Authorized Representatives are acting solely as agents and representatives of TxDOT when carrying out the provisions of or exercising the power or authority granted to them under the CMA Documents. They shall not be, or deemed to be, liable to any Maintenance Contractor-Related Entity either personally or as employees of TxDOT for actions in their ordinary course of employment.

18.8.2 No agent, consultant, officer or authorized employee of TxDOT nor any member of the Texas Transportation Commission, shall be, or deemed to be, personally responsible to any Maintenance Contractor-Related Entity or any liability arising under the CMA Documents.

18.8.3 The Parties agree to provide to each other's Authorized Representatives written notice of any claim which such Party may receive from any third

party relating in any way to the matters addressed in the CMA Documents, and shall otherwise provide notice in such form and within such period as is required by Law.

18.8.4 In no event shall TxDOT be, or deemed to be, liable to any Person for injury, damage, or death sustained by reason of a defect or want of repair on or within the Site during the period Maintenance Contractor has operation and control of the Site, nor shall TxDOT be liable for any injury, damage or death caused by the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Maintenance Contractor-Related Entity. Maintenance Contractor expressly acknowledges and agrees that TxDOT's rights in this Capital Maintenance Agreement to take any action with respect to the Project, including the right to review, comment on, disapprove and/or accept designs, plans, specifications, work plans, construction, installation, traffic management details, safety plan and the like, are discretionary in nature and exist solely for the benefit and protection of TxDOT and do not create or impose upon TxDOT any standard or duty of care toward Maintenance Contractor or any other Person, all of which are hereby expressly disclaimed.

18.9 Consequential Damages

Under no circumstances shall TxDOT be liable for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this Capital Maintenance Agreement, tort (including negligence) or any other theory of liability, and Maintenance Contractor hereby releases TxDOT from any such liability.

18.10 Governing Law

The CMA Documents shall be governed by and construed in accordance with the Laws of the State of Texas.

18.11 Notices and Communications

18.11.1 Notices under the CMA Documents shall be in writing and: (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the addresses set forth in Sections 18.11.2 and 0, as applicable (or to such other address as may from time to time be specified in writing by such Person).

18.11.2 All notices, correspondence and other communications to Maintenance Contractor shall be delivered to the following address or as otherwise directed by Maintenance Contractor's Authorized Representative:

Pegasus Link Constructors, LLC
2040 North Texas Highway 360
Grand Prairie, Texas 75050
Attention: Robert Stevens
Telephone: (972) 854-0210

Facsimile: (972) 854-0201
E-mail: robert.stevens@plcjv.com

In addition, copies of all notices to proceed and suspension, termination and default notices shall be delivered to the following Persons:

Fluor Enterprises, Inc.
100 Fluor Daniel Drive
Mail Code C102B
Attention: Spencer C. Weiss
E-mail: spencer.weiss@fluor.com

18.11.3 All notices, correspondence and other communications to TxDOT shall be marked as regarding the Horseshoe Project and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
Dallas District Office
4777 East Highway 80
Mesquite, Texas 75150
Attention: Duane Milligan, P.E.
Telephone: (214) 535-6318
E-mail: duane.milligan@txdot.gov

With copies delivered to the following persons:

Texas Department of Transportation
Dallas District Office
4777 East Highway 80
Mesquite, Texas 75150
Attention: Kelly Selman, P.E.
Telephone: (214) 320-6189
E-mail: kelly.selman@txdot.gov

Texas Department of Transportation
Strategic Projects Division
7745 Chevy Chase, Bldg. 5, Ste. 300
Austin, Texas 78752
Attention: Dieter Billek, P.E.
Telephone: (512) 334-3831
E-mail: dieter.billek@txdot.gov

Texas Department of Transportation
Strategic Projects Division
4777 East Highway 80
Mesquite, Texas 75150
Attention: Randy Redmond, P.E.

Telephone: (214) 320-6112
E-mail: randy.redmond@txdot.gov

In addition, copies of all notices regarding Disputes, termination and default notices shall be delivered to the following persons:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Attention: John J. Ingram, Esq.
Telephone: (512) 463-8630
E-mail: jack.ingram@txdot.gov

All communications to TxDOT shall be clearly marked with the contract number to identify this Capital Maintenance Agreement and the Project name and location.

18.11.4 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Maintenance Services shall be conducted by Maintenance Contractor's Authorized Representative and technical representatives designated by TxDOT.

18.12 Taxes

18.12.1 Maintenance Contractor shall pay, prior to delinquency, all applicable taxes. Maintenance Contractor shall have no right to an adjustment to the Maintenance Price or any other Claim, except as provided in Section 18.12.2, due to its misinterpretation of Laws respecting taxes or incorrect assumptions regarding applicability of taxes.

18.12.2 With respect to Expendable Materials any Maintenance Contractor-Related Entity purchases, Maintenance Contractor shall submit or cause the Maintenance Contractor-Related Entity to submit a "Texas Sales and Use Tax Exemption Certification" to the seller of the Expendable Materials. In the event Maintenance Contractor is thereafter required by the State Comptroller to pay sales tax on Expendable Materials, TxDOT shall reimburse Maintenance Contractor for such sales tax. Reimbursement shall be due within 60 days after TxDOT receives from Maintenance Contractor written evidence of the State Comptroller's claim for sales tax, the amount of the sales tax paid, the date paid and the items purchased. Maintenance Contractor agrees to cooperate with TxDOT in connection with the filing and prosecution of any request for refund of any sales tax paid with respect to Expendable

Materials. If materials purchased for the Maintenance Services are not wholly used or expended on the Project, such that they do not qualify as Expendable Materials, Maintenance Contractor will be responsible to pay applicable sales taxes.

18.13 Interest on Amounts Due and Owing

Unless expressly provided otherwise in this Capital Maintenance Agreement or in the case of TxDOT's Recoverable Costs, all amounts to which a Party is entitled to assess, collect, demand or recover under this Capital Maintenance Agreement shall earn interest from the date on which such amount is due and owing at the lesser of: (i) 12% per annum or (ii) the maximum rate allowable under applicable Law.

18.14 Further Assurances

Maintenance Contractor shall promptly execute and deliver to TxDOT all such instruments and other documents and assurances as are reasonably requested by TxDOT to further evidence the obligations of Maintenance Contractor hereunder, including assurances regarding the validity of: (a) the assignments of Subcontracts contained herein and (b) any instruments securing performance hereof.

18.15 Severability

If any clause, provision, section or part of the CMA Documents is ruled invalid under Section 16 or otherwise by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Maintenance Price to account for any change in the Maintenance Services resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the CMA Documents, which shall be construed and enforced as if the CMA Documents did not contain such invalid or unenforceable clause, provision, section or part.

18.16 Headings

The captions of the sections of this Capital Maintenance Agreement are for convenience only and shall not be deemed part of this Capital Maintenance Agreement or considered in construing this Capital Maintenance Agreement.

18.17 Entire Agreement

The CMA Documents together with those sections of the DBA, the Disputes Board Agreement, the RFP and those other documents and Laws, in whole or in part, expressly incorporated herein, or therein, by reference, collectively contain the entire understanding and agreement of the Parties with respect to the subject matter hereof

and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to its subject matter.

18.18 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Capital Maintenance Agreement on the date first written above.

Maintenance Contractor: **PEGASUS LINK CONSTRUCTORS, LLC**	**TxDOT:** **TEXAS DEPARTMENT OF TRANSPORTATION**
By_____ Name: _____ Title: _____	By: _____ Phil Wilson Executive Director

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Capital Maintenance Agreement on the date first written above.

Maintenance Contractor:
PEGASUS LINK CONSTRUCTORS, LLC

By_____
Name: Terry E. Towle
Title: Authorized Representative

TxDOT:
TEXAS DEPARTMENT OF TRANSPORTATION

By:_____
Philip Wilson
Executive Director

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

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

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACORD	Association for Cooperative Operations Research and Development
ADT	Average Daily Traffic
AMRL	AASHTO Materials Reference Laboratory
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
AWS	American Welding Society
BI	Base Index
CADD	Computer Aided Drafting and Design
CCTV	Closed Circuit Television
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CFR	Code of Federal Regulations
CMA	Capital Maintenance Agreement
CRP	Community Rehabilitation Program
DBE	Disadvantaged Business Enterprise
ENR CCI	Engineering News Record 20 City Construction Cost Index
EPD	Escrowed Proposal Documents
ETCS	Electronic Toll Collection System
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
GAAP	Generally Accepted Accounting Principles
GIS	Geographical Information System
HEC	Hydraulic Engineering Circular
HUB	Historically Underutilized Business
IH	Interstate Highway
IRI	International Roughness Index
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
IVHS	Intelligent Vehicle Highway System
LRFD	Load and Resistance Factor Design

MOU	Memorandum of Understanding
MMP	Maintenance Management Plan
MP	Maintenance Price
MPH	Miles Per Hour
MS4	Municipal Separate Storm Sewer System
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NEPA	National Environmental Policy Act
NPDES	National Pollutant Discharge Elimination System
NTP	Notice to Proceed
OSR	Old San Antonio Road
PCO	Potential Change Order
PUAA	Project Utility Adjustment Agreement
QC	Quality Control
RFP	Request for Proposals
RFQ	Request for Qualifications
ROW	Right of Way
SH	State Highway
SOAH	Texas State Office of Administrative Hearings
SUE	Subsurface Utility Engineering
TCLP	Toxicity Characteristic Leaching Procedure
TIBH	Texas Industries for the Blind and Handicapped
TMP	Traffic Management Plan
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
USFWS	United States Fish and Wildlife Service
UTP	Unshielded Twisted Pair
VES	Violation Enforcement System
WBS	Work Breakdown Structure

Additional Properties shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the Schematic ROW, that will be acquired in connection with the Project, including (a) rest area sites, (b) the DB Contractor-Designated ROW, and (c) any additional real property outside of the Schematic ROW that must be acquired due to a TxDOT-Directed Change issued under the DBA, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs DB Contractor to

acquire for the Project. For purposes of clarity, "Additional Properties" excludes Replacement Utility Property Interests.

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

Affiliate(s) shall mean:

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

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

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

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

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

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

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

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

Authorized Representative(s) shall have the meaning set forth in Section 18.5.1 of the Capital Maintenance Agreement.

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

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

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

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

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

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

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

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

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

Change Order(s) shall mean a written order issued by TxDOT to Maintenance Contractor delineating changes in the Maintenance Services within the general scope of the Capital Maintenance Agreement Documents or in the terms and conditions of the

CMA Documents in accordance with Section 10 of the Capital Maintenance Agreement and establishing, if appropriate, an adjustment to the Maintenance Price or a time extension.

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

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

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

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

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

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

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

(c) Such individual has or had substantial prior involvement in any aspect of the DBA or CMA, a Subcontract or the Project of a nature which could reasonably be expected to affect his or her ability to impartially resolve Disputes;

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

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

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

Construction Documents means all shop drawings, work drawings, fabrication plans, material and hardware descriptions, specifications, as-builts, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of Maintenance Services under the terms of the CMA.

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

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

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

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

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

DB Contractor or **Design-Build Contractor** shall mean Pegasus Link Constructors, LLC, a Delaware limited liability company, together with its successors and assigns.

DB Contractor-Designated ROW shall mean any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Schematic ROW that DB Contractor determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT to be acquired at DB Contractor's cost and expense. The term specifically includes any

easements required for drainage for the Project, except that TxDOT shall be responsible for the purchase price of drainage easements approved by TxDOT. The term specifically includes any air space, surface rights and subsurface rights within the DB Contractor-Designated ROW. The term specifically excludes the Replacement Utility Property Interests, any temporary easements or other temporary real property interests that DB Contractor 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 DB Contractor.

DB Contractor Event of Default shall mean Event of Default defined under the DBA.

DB Contractor-Related Entities shall mean (a) DB Contractor, (b) DB Contractor's shareholders, partners, joint venturers and/or members, (c) Subcontractors to the DB Contractor (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom DB Contractor 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.

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

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

(b) a structural deterioration of the affected Maintained Element or any other part of the Project affected by it;

(c) damage to the property or equipment of TxDOT or a third party;

(d) damage to the environment;

(e) failure of the affected Maintained Element to meet a Performance Requirement; or

(f) failure of a Maintained Element to meet the Target for a measurement record as set forth in the columns headed "Target" and "Measurement Record" in the Performance and Measurement Table.

Design-Build Agreement or **DBA** shall have the meaning set forth in Recital D of the Capital Maintenance Agreement.

Design Documents shall mean all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the performance of design services required under the Capital Maintenance Agreement in

accordance with the CMA Documents, the Governmental Approvals and applicable Law.

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

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

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

Dispute Resolution Procedures means collectively, the procedures established under Sections 16.3.4 and 16.3.5 of the Capital Maintenance Agreement and in Section 5 of the Disputes Board Agreement and the applicable portions of Section 201.112 of the Code and the DRP Rules. None of the Informal Resolution Procedures are included in the Dispute Resolution Procedures.

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

Disputes Board Agreement means the agreement in the form attached to the Capital Maintenance Agreement as Exhibit 16.

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

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

Disputes Board Error has the meaning set forth in Section 16.3.6.2 of the Capital Maintenance Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Releases of Hazardous Materials;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xxi) The Texas Water Code;

(xxii) The Texas Parks and Wildlife Code;

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

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

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

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

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

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

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

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

Executive Director shall mean the Executive Director of TxDOT.

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

Final Acceptance shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the DBA for both Segments or for the Project as a whole, as and when confirmed by TxDOT's issuance of Certificates of Final Acceptance for both Segments or a Certificate of Final Acceptance for the Project in accordance with Section 20.3.5 of the DBA.

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

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

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

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

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

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

(a) Any earthquake, tornado, hurricane (Category 3 and higher) or other natural disaster that (i) causes direct physical damage to the Project and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway Administrator, unless such damage is caused by the DB Contractor's action or inaction or the DB Contractor'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) Any Change in Law which (1) requires Maintenance Contractor to obtain a new major State or federal environmental approval not previously required for the Project, (2) results in an increase in Maintenance Contractor's costs directly attributable to the Change in Law of at least $500,000, or (3) specifically targets the Project or Maintenance Contractor;

(e) Any spill of Hazardous Material by a third party which occurs after Maintenance NTP1 and is required to be reported to a Governmental Entity, and which renders use of the roadway or construction area unsafe absent assessment, containment, and/or remediation;

(f) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Maintenance Services, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any member of the Maintenance Contractor-Related Entities;

(g) Total failure of a bridge such that it requires replacement, except to the extent arising out of, related to or caused by, the act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any Maintenance Contractor Related-Entity or DB Contractor-Related Entity;

(h) Malicious or other acts by a third party intended to cause loss or damage or other similar occurrence, including vandalism or theft; and

(i) A collision (motor vehicle, aircraft or railroad train) by a third party that causes damage to the Project, except to the extent arising out of, related to or caused by, the act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any Maintenance Contractor Related-Entity or DB Contractor-Related Entity.

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

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

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

(c) the suspension, termination, interruption, denial or failure to obtain, nonrenewal or change in any Governmental Approval, except for any such matter falling within the scope of clause (c) or clause (e) above;

(d) any delay or cost risk for which coverage is to be provided through insurance required under the Capital Maintenance Agreement or by Law; and

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

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

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

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

Governmental Approval shall mean any permit, license, consent, concession, grant, franchise, authorization, valid waiver, valid exemption, variance or other approval,

guidance, protocol, mitigation agreement or order, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Maintenance Services or the Project, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner.

Governmental Entity/Entities shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than TxDOT, in each case having jurisdiction over the party, the Project or the Maintenance Services.

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

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

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

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

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

(b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or

other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

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

(d) Any flammable substances or explosives;

(e) Any radioactive materials;

(f) Any asbestos or asbestos-containing materials;

(g) Any lead and lead-based paint;

(h) Any radon or radon gas;

(i) Any methane gas or similar gaseous materials;

(j) Any urea formaldehyde foam insulation;

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

(l) Pesticides;

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

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

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

Hazardous Materials Management Plan shall mean the plan prepared by Maintenance Contractor for Hazardous Materials Management both within and outside the Project ROW, as more particularly described in Section 2200 of Exhibit 2.

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

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

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

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

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

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

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

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

1. Maintenance Manager

2. Maintenance QC Manager

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

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

LIBOR shall mean the offered rate per annum (rounded up to the next highest one one-thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Telerate Page 3750 at approximately 11:00 A.M., London

time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next succeeding day on which such dealings were transacted in such market. All interest based on LIBOR shall be calculated on the basis of a 360-day year for the actual days elapsed.

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

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

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

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

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

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

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

Maintenance Contractor shall mean Pegasus Link Constructors, LLC, a Delaware limited liability company, together with its successors and assigns.

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

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

managers, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

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

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

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

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

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

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

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

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

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

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

Maintenance Period means the period starting at the CMA Commencement Date and ending at the end of the Maintenance Term

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

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

Maintenance Services QCP shall have the meaning set forth in Section 5.6 of the Capital Maintenance Agreement.

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

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

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

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

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

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

Maintenance Specification shall mean Exhibit 2 of the Capital Maintenance Agreement

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

Maintenance Transition shall mean the terms, conditions, requirements and procedures governing the conditions in which Maintenance Contractor is to deliver the

Project upon expiration or termination of the Capital Maintenance Agreement, as set forth in Section 0208 of Exhibit 2.

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

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

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

Margaret McDermott Bike/Pedestrian Bridges Option shall have the meaning set forth in Section 2.1.1 of the Capital Maintenance Agreement.

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

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

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

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

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

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

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

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

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

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

Open Book Basis shall mean providing TxDOT all underlying assumptions and data associated with pricing or compensation (whether of Maintenance Contractor or TxDOT) or adjustments thereto, including assumptions as to costs of the Maintenance Services, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by TxDOT to satisfy itself as to the reasonableness of the amount.

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

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

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

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

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

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

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

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

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

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

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

Proposal shall mean DB Contractor's response to the RFP.

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

Proposal Due Date shall mean October 8, 2012, the deadline for submission of the Financial Proposal to TxDOT.

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

Public Information Act shall mean Tex. Gov't Code Ann. ch. 555, as amended.

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

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

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

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

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

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

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

Request for Change Order shall mean shall mean a written notice issued by DB Contractor to TxDOT under Section 10.3.2.5 of the Capital Maintenance Agreement, advising TxDOT that DB Contractor seeks a Change Order.

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

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

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

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

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

Rules shall mean Title 43, Part 1, Chapter 9, Subchapter I of the Texas Administrative Code.

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

Scheduling and Procedure Order shall have the meaning set forth in Section L-2 of Attachment 2 to Exhibit 16.

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

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

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

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

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

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

State shall mean the State of Texas.

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

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

Subcontractor Dispute shall have the meaning set forth in Section 16.4 of the Capital Maintenance Agreement.

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

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

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

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

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

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

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

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

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

Time and Materials Change Order shall mean a Change Order issued in accordance with Section 10.7 of the Capital Maintenance Agreement.

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

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

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

TxDOT's Recoverable Costs means:

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

(b) Third-party costs TxDOT incurs to publicly procure any such third party contractors; plus

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

(d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the CMA Documents and continuing until paid.

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

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

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

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

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

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

Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

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

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

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

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

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

EXHIBIT 2

MAINTENANCE SPECIFICATION

(Attached)

EXHIBIT 3

MAINTENANCE CONTRACTOR'S PROPOSAL COMMITMENTS

KEY PERSONNEL

The Maintenance Contractor commits to provide the following individuals to serve as the following Key Personnel:

Name of Key Personnel	Key Personnel Position
Andrea Warfield	Maintenance Manager
John Roberts, P.E.	Maintenance QC Manager

EXHIBIT 4

MAINTENANCE PRICE

- Appendix 1: Base Maintenance Price
- Appendix 1: Margaret McDermott Bike/Pedestrian Bridges Option Price

APPENDIX 1 TO EXHIBIT 4

BASE MAINTENANCE PRICE

(From Proposal Form N-1)

Item	Expenditure per Year			Total cost (5×A)+(5×B)+(5×C)
	Years 1-5 (A)	Years 6-10 (B)	Years 11-15 (C)	
Roadway	$ 640,449	$ 596,250	$ 682,037	$ 9,593,680
Drainage Facilities	$ 76,770	$ 79,439	$ 84,782	$ 1,204,955
Structures (except Margaret McDermott Bridges)	$ 916,493	$ 794,486	$1,030,805	$13,708,920
Administrative, bonds, insurance and other costs not listed above	$ 654,560	$ 636,867	$ 641,200	$ 9,663,135
Earthworks, Embankments and Cuttings	$ 39,946	$ 45,928	$ 49,807	$ 678,405
Total Annual Cost	$2,328,218	$2,152,970	$ 2,488,631	$34,849,095

Notes:

(1) Annual expenditures represent the annual maintenance price provided that the Margaret McDermott Bike/Pedestrian Bridges Option is not exercised in the relevant term.

(2) Annual expenditures are presented as of the Proposal Due Date.

(3) Years in the table refers to the number of years after Final Acceptance of Segment A.

APPENDIX 2 TO EXHIBIT 4

MARGARET MCDERMOTT BIKE/PEDESTRIAN BRIDGES OPTION PRICE

(From Proposal Form N-2)

Item	Expenditure per Year			Total cost (5×A)+(5×B)+(5×C)
	Years 1-5 (A)	Years 6-10 (B)	Years 11-15 (C)	
Margaret McDermott Bike/Pedestrian Bridges	$160,226	$211,356	$232,364	$3,019,730
Total Annual Cost	$160,226	$211,356	$232,364	$3,019,730

Notes:
(1) Annual expenditures represent the incremental difference in the annual maintenance price set forth in Form N-1 due to the exercise of the Margaret McDermott Bike/Pedestrian Bridges Option.
(2) Annual expenditures are presented as of the Proposal Due Date.
(3) Years in the table refers to the number of years after Final Acceptance of Segment A.

EXHIBIT 5

JOB TRAINING AND SMALL BUSINESS OPPORTUNITY PLAN

(Attached)

EXHIBIT 6

FORM OF MAINTENANCE PERFORMANCE BOND

Horseshoe Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to Pegasus Link Constructors, LLC, a Delaware limited liability company ("Principal"), a Capital Maintenance Agreement for the Horseshoe Project, duly executed and delivered as of _____, 2013 (the "CMA"), on the terms and conditions set forth therein; and

WHEREAS, on or before 60 days after issuance by Obligee of Maintenance NTP1, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations under the CMA Documents.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $[_____] *[amount calculated as set forth in CMA Section 7.1.3]* (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the CMA Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 7.1 of the CMA.

The following terms and conditions shall apply with respect to this Bond:

1. The CMA Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the CMA.

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the CMA Documents, as they may be amended and supplemented, including but not limited to, its liability for payment in full of all Liquidated Damages as specified in the CMA Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive the expiration or termination of the Maintenance Term with respect to those obligations of Principal under the CMA Documents which survive such expiration or termination.

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the CMA Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the CMA; or

b. complete the Project in accordance with the terms and conditions of the CMA Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Maintenance Services, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the CMA, and pay to the Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Maintenance Price for the applicable Maintenance Term incurred by the Obligee resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.

6. After the Obligee has terminated the Principal's right to complete the CMA, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the CMA, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the CMA. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Maintenance Price for the applicable Maintenance Term to mitigation costs and damages on the CMA, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective Maintenance Services and completion of the Maintenance Services;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and

c. all Liquidated Damages under the CMA.

7. No alteration, modification or supplement to the CMA Documents or the nature of the Maintenance Services to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

8. In no event shall the term of this bond be beyond the fifth anniversary of the execution dates without the express written consent of the Surety. Surety will have no obligation to extend or replace this bond for additional periods of time. Failure of the surety to extend this bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

9. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

_____
_____
_____

10. No right of action shall accrue on this Bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201[__]

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

EXHIBIT 7

FORM OF MAINTENANCE PAYMENT BOND

Horseshoe Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to Pegasus Link Constructors, LLC, a Delaware limited liability company ("Principal"), a Capital Maintenance Agreement for the Horseshoe Project, duly executed and delivered as of _____, 2013 (the "CMA"), on the terms and conditions set forth therein; and

WHEREAS, on or before 60 days after issuance by Obligee of Maintenance NTP1, Principal is required to furnish a bond (this "Bond") guaranteeing payment in full to all Subcontractors and Suppliers.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $[_____] *[amount calculated as set forth in CMA Section 7.1.3]* (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Maintenance Services, then Surety shall pay for the same in an amount in the aggregate of all Subcontracts not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 7.1 of the CMA.

The following terms and conditions shall apply with respect to this Bond:

1. The CMA Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the CMA.

2. No alteration, modification or supplement to the CMA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

_____
_____
_____

4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the Maintenance Services so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

5. In no event shall the term of this bond be beyond the fifth anniversary of the execution date without the express written consent of the Surety. Surety will have no obligation to extend or replace this bond for additional periods of time. Failure of the Surety to extend this bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201[__].

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

By:_____
Name
Title:
Address:

EXHIBIT 8

FORM OF RETAINAGE BOND

CONTRACT NO. _____
COUNTY _____
BOND NO. _____

RETAINAGE BOND

KNOW ALL PERSONS BY THESE PRESENTS that CONTRACTOR, as Principal, and the undersigned surety, are held and firmly bound unto the State of Texas as Obligee, in the amount of FOUR PERCENT (4%) of the total amount paid the Principal under the contract, including any increases due to change orders, quantities of work, new items of work, or other additions as the Obligee may pay under the CMA, lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

Whereas, the Principal has entered into the above-referenced contract with the State of Texas, attached hereto, and

Whereas, under the contract, the Principal is required before commencing the work provided for in the contract to execute a bond in the above amount.

Now therefore, the condition of this obligation is such that if the Principal and its heirs, successors, executors, and administrators shall fully indemnify and save harmless the State of Texas from all costs and damages from valid claims filed within 90 days of notification of final acceptance of the work under the contract by any person or entity against the contract funds, and shall fully reimburse the State of Texas for amounts owed by the Principal to the State of Texas with regard to the contract after notification of final acceptance of the work, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that the said surety(s) for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the CMA, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligation on this bond. The surety(s) does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the CMA or to the work or to the Specifications, unless otherwise specified in the contract.

WITNESS our hand this, _____day of_____, 20____.

CONTRACTOR

_____	By: _____
SURETY (Print Firm Name and Seal)	(Title)
*By:_____	By: _____
(Title)	(Title)
_____	_____
SURETY (Print Firm Name and Seal)	**SURETY** (Print Firm Name and Seal)
*By:_____	*By: _____
(Title)	(Title)

*NOTE: A Power of Attorney, showing that the surety officer or Attorney-In-Fact has authority to sign such obligation, must be impressed with the corporate seal and attached behind the Payment Bond in each contract.

This form has been approved by the ATTORNEY GENERAL OF TEXAS & TEXAS DEPARTMENT OF INSURANCE.

EXHIBIT 9

FORM OF GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 2013 by _____, a Delaware _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

R E C I T A L S

Pegasus Link Constructors, LLC, as maintenance contractor ("Maintenance Contractor"), and TxDOT are parties to that certain Capital Maintenance Agreement of even date herewith ("Capital Maintenance Agreement") pursuant to which the Maintenance Contractor has agreed to perform, among other things, the Maintenance Services in respect of the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Capital Maintenance Agreement.

To induce TxDOT to (i) enter into the Capital Maintenance Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

Maintenance Contractor is a Delaware limited liability company. The Guarantor is _____. The execution of the Capital Maintenance Agreement by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the Capital Maintenance Agreement with Maintenance Contractor. Therefore, in consideration of TxDOT's execution of the Capital Maintenance Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to executed this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. Guarantor guarantees to TxDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the Maintenance Contractor arising out of, in connection with, under or related to: (a) the Capital Maintenance Agreement (and the exhibits, amendments, schedules and other addenda thereto, and the documents executed or to be executed in connection therewith), and (b) each and every other document and agreement executed by the Maintenance Contractor in connection with the consummation of the transactions contemplated by the Capital Maintenance Agreement (the documents described in

clauses (a)-(b), inclusive, shall collectively be referred to herein as the "CMA Documents"). The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against the Maintenance Contractor. If any payment made by the Maintenance Contractor or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the CMA Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting the Maintenance Contractor, Guarantor or their respective assets, and (b) the existence of any claim or set-off which the Maintenance Contractor has or Guarantor may have against TxDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. Independent Obligations. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the Maintenance Contractor and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not the Maintenance Contractor is joined therein. TxDOT may maintain successive actions for other defaults of Guarantor. TxDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that TxDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against the Maintenance Contractor. Guarantor hereby waives any right to require TxDOT to proceed against the

Maintenance Contractor, to exercise any right or remedy under any of the CMA Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between the Maintenance Contractor and TxDOT or their respective successors and assigns, with respect to any of the CMA Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the CMA Documents or any modification thereof; (iii) any release of the Maintenance Contractor from any liability with respect to any of the CMA Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by the Maintenance Contractor of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the CMA Documents or the pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the CMA Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of the Maintenance Contractor under the CMA. Accordingly, in the event that the Maintenance Contractor's obligations have been changed by any modification, agreement or stipulation between Maintenance Contractor and TxDOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. <u>Liability of Guarantor.</u>

a. TxDOT may enforce this Guaranty upon the occurrence of a breach by the Maintenance Contractor of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between TxDOT and the Maintenance Contractor with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of the Maintenance Contractor, if and as permitted by the Maintenance Contract, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees

of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the CMA Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the CMA Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the CMA Documents or any agreement or instrument executed pursuant thereto; (iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or existence of the Maintenance Contractor; (iv) any defenses, set-offs or counterclaims that the Maintenance Contractor may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against the Maintenance Contractor or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the CMA Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, the Maintenance Contractor or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against the Maintenance Contractor by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation,

renewal, extension, modification, accrual of any of the obligations of the Maintenance Contractor under any of the CMA Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 12.3 of the Capital Maintenance Agreement, but without diminishing TxDOT's exercise of its rights pursuant to Section 12.2.2 of the Capital Maintenance Agreement; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of the Maintenance Contractor, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all guaranty and suretyship defenses under applicable law.

6. Waiver of Subrogation and Rights of Reimbursement. Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against the Maintenance Contractor that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of TxDOT against the Maintenance Contractor, or any other security or collateral that TxDOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Maintenance Contractor or any shareholders, partners, members, joint venturers of Maintenance Contractor to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Maintenance Contractor shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Maintenance Contractor or any shareholders, partners, members, joint venturers of Maintenance Contractor to Guarantor without the prior written consent of TxDOT. Any payment by Maintenance Contractor or any shareholders, partners, members, joint venturers of Maintenance Contractor to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for TxDOT.

7. Waivers by Guarantor if Real Property Security. If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. TxDOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by the Maintenance Contractor.

b. If TxDOT forecloses on any real property collateral pledged by the Maintenance Contractor:

(1) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) TxDOT may collect from Guarantor even if TxDOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from the Maintenance Contractor.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations secured by real property

8. <u>Cumulative Rights</u>. All rights, powers and remedies of TxDOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to TxDOT, whether at law, in equity or otherwise.

9. <u>Representations and Warranties.</u> Guarantor represents and warrants that:

a. it is a ***[corporation][limited liability company]*** duly organized, validly existing, and in good standing under the laws of the State of Delaware and is duly qualified to do business under the laws of said jurisdiction and in each jurisdiction in which the nature of its business activities requires qualification;

b. it has all requisite ***[corporate][limited liability company]*** power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor, and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) ***[the certificate of incorporation or by-laws][certificate of formation or limited liability company agreement]*** of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the CMA Documents or referred to therein, the financial status of the Maintenance Contractor and the ability of the Maintenance Contractor to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the CMA Documents and is fully informed of the remedies TxDOT may pursue, with or without notice to the Maintenance Contractor or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of the Maintenance Contractor and will keep itself fully informed as to all aspects of the financial condition of the Maintenance Contractor, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of TxDOT to disclose any matter, fact or thing relating to the business, operations or conditions of the Maintenance Contractor now known or hereafter known by TxDOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which challenges the validity or enforceability of this Guaranty.

10. Governing Law; Venue. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Texas with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Travis County, Texas.

11. Entire Document. This Guaranty, together with the CMA Documents, contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by TxDOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not

deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

13. Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone to the addresses set forth below (or to such other address as may from time to time be specified in writing by such Person.

If to TxDOT:

Texas Department of Transportation
Dallas District Office
4777 East Highway 80
Mesquite, Texas 75150
Attention: Duane Milligan, P.E.
Telephone: (214) 535-6318
E-mail: duane.milligan@txdot.gov

With copies to:

Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Attention: John J. Ingram, Esq.
Telephone: (512) 463-8630
E-mail: jack.ingram@txdot.gov

Texas Department of Transportation
Dallas District Office
4777 East Highway 80
Mesquite, Texas 75150
Attention: Kelly Selman, P.E.
Telephone: (214) 320-6189
E-mail: kelly.selman@txdot.gov

Texas Department of Transportation
Strategic Projects Division
7745 Chevy Chase, Bldg. 5, Suite 300
Austin, Texas 78752
Attention: Dieter Billek, P.E.
Telephone: (512) 334-3831
E-mail: dieter.billek@txdot.gov

Texas Department of Transportation
Strategic Projects Division
4777 East Highway 80
Mesquite, Texas 75150

Attention: Randy Redmond, P.E.
Telephone: (214) 320-6112
E-mail: randy.redmond@txdot.gov

If to Guarantor: _____
_____
Attention: _____
Telephone: _____
E-mail: _____

Either Guarantor or TxDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and TxDOT, but is not assignable by Guarantor without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. Construction of Agreement. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. No Waiver. Any forbearance or failure to exercise, and any delay by TxDOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

(a) The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Maintenance Contractor or by any defense which the Maintenance Contractor may have by reason of the order, decree or

decision of any court or administrative body resulting from any such proceeding. TxDOT is not obligated to file any claim relating to the Guaranteed Obligations if the Maintenance Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of TxDOT so to file will not affect Guarantor's obligations under this Guaranty.

(b) Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and TxDOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve the Maintenance Contractor of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay TxDOT, or allow the claim of TxDOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. Attorneys' Fees. Guarantor agrees to pay to TxDOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by TxDOT in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. Joint and Several Liability. If the Guarantor is comprised of more than one individuals and/or entities, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to the Maintenance Contractor and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. Defenses. Guarantor shall be entitled to the benefit of all defenses available to the Maintenance Contractor under the Capital Maintenance Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of the Contractor and any other defense to formation of the Contract, and (c) defenses available to the Maintenance Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 12.3 of the Capital Maintenance Agreement, without diminishing any rights TxDOT may exercise pursuant to Section 12.2.2 of the Capital Maintenance Agreement.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

_____
a _____

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 10

INSURANCE REQUIREMENTS

1. Builder's Risk Insurance During Construction

At all times during the Maintenance Term, Maintenance Contractor shall procure and keep in force a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, excluding terrorism but including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, and tornado and subsidence; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, (ii) unless covered by other property insurance maintained by Maintenance Contractor, all existing property and improvements that are within the construction work zone, with a sublimit not less than $2,500,000, and (iii) valuable papers and restoration of data, plans and drawings.

(c) The policy shall provide coverage per occurrence with a coverage limit not less than $10,000,000, including a sublimit acceptable to TxDOT for demolition and debris removal, without risk of co-insurance; provided, however, that the policy may also include the following sublimits: (i) for earth movement and flood, not less than $5,000,000 per occurrence and $10,000,000 aggregate; (ii) for building ordinance compliance, not less than $5,000,000; (iii) for "soft cost expense," not less than $5,000,000; and (iv) for professional fees, a sublimit acceptable to TxDOT but not less than $1,000,000; and provided further that if the total value of the construction work exceeds $10,000,000, Maintenance Contractor shall procure and keep in force a builder's risk insurance policy providing coverage per occurrence with a coverage limit equal to the total value of such construction work.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds on the policy. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the additional insureds.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but

excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, and (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence.

2. Commercial General Liability Insurance

At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below. During any period in which Maintenance Contractor, at its election, maintains in effect builder's third party liability insurance pursuant to Section 3 of this Exhibit 10, the commercial general liability insurance policy need not duplicate the builder's third party liability insurance coverage.

(a) The policy shall be in a form reasonably acceptable to TxDOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall insure against the legal liability of the insureds named in Section 2(d), relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and completed operations (with acknowledgement that the Project constitutes the premises and not a product), with coverage to remain in place post-completion for 10 years or through the applicable statute of limitations or repose period;

(v) Broad form property damage, providing the same coverage as ISO form CG 00 01 10 93 provides;

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) Except with regard to indemnifying a professional advisor, consultant, sub-consultant, Supplier or manufacturer engaged by Maintenance Contractor, no application of any limitation or exclusion for bodily injury or property damage arising out of professional services, including engineering, architecture and surveying, in any manner to (A) coverage respecting Maintenance Contractor's supervision, coordination, management, scheduling or other similar services or (B) the products and completed operations coverage;

(xi) Broad named insured endorsement; and

(xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 4 of this Exhibit 10.

(c) The policy shall have limits of not less than $25,000,000 per occurrence and in the aggregate per policy period. Such limits may be satisfied by umbrella insurance and shall be shared by all insured and additional insured parties and shall reinstate annually and may be included in an umbrella insurance combined with such other insurance that this schedule stipulates may be similarly added.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds, using ISO Forms CG 20 33 07 04 and CG 20 37 07 04 or their equivalents. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other additional insureds.

(e) The policy shall provide for a deductible or self-insured retention not exceeding $50,000 per occurrence.

3. Builder's Third Party Liability Insurance

During any period in which construction work is performed under the Capital Maintenance Agreement, Maintenance Contractor, at its election, may procure and keep in effect builder's third party liability insurance, as specified below, in lieu of commercial general liability insurance coverage for construction activities (but Maintenance Contractor shall maintain commercial general liability insurance coverage for all non-construction-related activities).

(a) The policy shall insure against liability to third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, arising out of the construction work or other work of construction or the improvements under construction. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) Maintenance Contractor shall continue the policy in effect for not less than the applicable warranty period under the Capital Maintenance Agreement.

(c) The policy shall otherwise include the same provisions as described for the commercial general liability insurance under Sections 2(b) through (e) of this Exhibit 10.

4. Automobile Liability Insurance

At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall procure and keep in force comprehensive, business, or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Maintenance Services, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) Maintenance Contractor shall be the named insured under its automobile liability policy.

(c) Maintenance Contractor's policy shall have a combined single limit per policy period of not less than $25,000,000 combined single limit and may be included in an umbrella insurance combined with such other insurance that this schedule stipulates may be similarly included.

(d) Each policy shall provide a deductible or self-insured retention not exceeding $50,000 per occurrence.

5. Pollution Liability Insurance

At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, pollution liability insurance as specified below.

(a) The policy shall cover sums that the insured becomes liable to pay to a third party or that are incurred by the order of a regulatory body consequent upon a pollution incident, subject to the policy terms and conditions. Such policy shall cover claims related to pollution conditions to the extent such are caused by, arise out of or are otherwise related to the performance of the Maintenance Services or by other activities that occur on the Project.

(b) Maintenance Contractor and the Indemnified Parties shall be the additional named insureds under such policy. The policy shall be written so that no acts or omissions of an additional named insured shall vitiate coverage of the other

additional named insureds. The insured vs. insured exclusion shall be deleted, so that the policy will insure Maintenance Contractor against, and respond to, pollution liability claims and actions of TxDOT against Maintenance Contractor.

(c) The policy shall have a limit of not less than $10,000,000 per occurrence and in the aggregate per policy period, unless applicable regulatory standards impose more stringent coverage requirements.

(d) The policy shall provide a deductible or self-insured retention not exceeding $100,000 per occurrence.

6. Professional Liability Insurance

Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, professional liability insurance, as specified in subparagraphs (a), (b) and (c) below, at all times during the performance of the Maintenance Services and during the Maintenance Term, that professional services are rendered respecting design and construction until five years after the professional services have concluded for the Project; provided, however, that the total term of such professional liability coverage need not extend beyond ten (10) years. Maintenance Contractor may satisfy such insurance via a project policy covering all the foregoing providers of professional services.

(a) Each policy shall be Project-specific and provide coverage of liability of the party performing the professional services arising out of any negligent act, error or omission in the performance of professional services or activities for the Project, including coverage for bodily injury or property damage.

(b) Each policy shall have a limit of not less than $10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

(c) Each policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence.

In addition, Maintenance Contractor shall cause each other Subcontractor that provides professional services for the Project to procure and keep in force professional liability insurance, covering its professional services practice, of not less than $2,000,000 per claim and in the aggregate per annual policy period. Such policy need not be Project-specific or include a tail period for making claims, and shall include a commercially reasonable deductible.

7. Workers' Compensation Insurance

At all times when work is being performed by any employee of Maintenance Contractor under the Capital Maintenance Agreement, Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Maintenance Contractor shall be the named insured on these policies. Such policy

need not be Project-specific The workers' compensation insurance policy shall contain the following endorsements:

(a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act;

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement; and

(d) An endorsement extending coverage to all states operations on an "if any" basis.

8. Employer's Liability Insurance

At all times during the Maintenance Term, Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

(a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Maintenance Contractor working on or about any Site or otherwise engaged in the work.

(b) Maintenance Contractor shall be the named insured.

(c) The policy shall have a limit of not less than $25,000,000 per accident and in the aggregate during the period of insurance and may be included in an umbrella insurance combined with such other insurance that this schedule stipulates may be similarly included.

(d) Such policy need not be Project-specific.

9. Railroad Protective Liability Insurance

Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance as may be required by any railroad in connection with any work performed under the Capital Maintenance Agreement across, under or adjacent to the railroad's tracks or railroad right-of-way. All insurance policies shall be in a form acceptable to the operating railroad and shall name the railroad as named insured. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by Maintenance Contractor upon operating railroad property. In the event any agreement between TxDOT and a railroad includes railroad protective insurance requirements applicable to the work, Maintenance Contractor shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements.

10. Subcontractors' Insurance

(a) At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall cause each Subcontractor that performs work on the Site to provide commercial general liability insurance that complies with Section 7.4 of the Capital Maintenance Agreement, with commercially reasonable limits and deductibles or self-insured retentions, in circumstances where the Subcontractor is not covered by Maintenance Contractor-provided liability insurance. Maintenance Contractor shall cause each such Subcontractor that provides such insurance to include each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies. Such insurance need not be Project-specific. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

(b) At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall cause each Subcontractor that has vehicles on the Site or uses vehicles in connection with the work to procure and keep in force, comprehensive, business, or commercial automobile liability insurance meeting the requirements as specified below.

(i) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the work. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(ii) Each such Subcontractor shall be the named insured under its respective automobile liability policy.

(iii) Each policy shall include each of the Indemnified Parties as additional insureds.

(c) At all times when Maintenance Services are being performed by any employee of a Subcontractor, Maintenance Contractor shall cause Subcontractor to procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

(i) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act;

(ii) A voluntary compensation endorsement;

(iii) An alternative employer endorsement; and

(iv) An endorsement extending coverage to all states operations on an "if any" basis.

(d) At all times during the performance of the Maintenance Services, Maintenance Contractor shall cause each Subcontractor to procure and keep in force employer's liability insurance as specified below.

(i) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Subcontractor working on or about any Site or otherwise engaged in the work.

(ii) Subcontractor shall be the named insured.

(iii) The policy shall have a limit of not less than $5,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 10 stipulates may be similarly included.

EXHIBIT 11

MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE

(Attached)

EXHIBIT 12

FORM OF CHANGE ORDER

CHANGE ORDER REQUEST NO. _____ CONTRACT NO. _____

SECTION I

Originator:_____ Date: _____

- **Title: _____**

Contract No: _____

- **Company Name: _____**

DESCRIPTION:

_____
_____
_____
_____
_____

SCOPE:

_____
_____
_____
_____
_____

REASON FOR REQUEST FOR CHANGE ORDER:

_____
_____
_____
_____
_____

_____
Maintenance Manager Date

SECTION II

The total amount of this Change Order is $ _____. Documentation supporting the Change Order is attached as Exhibits _____ through _____.

This Change Order Request is for (check the applicable categories below):

- _____ A lump sum, negotiated price Change Order (provide information in Section IIA below)
- _____ A unit price/quantities Change Order (provide information in Section IIB below)
- _____ A Time and Materials Change Order (provide information in Section IIC below)

Section IIA

Lump sum price is $_____

Section IIB

UNIT PRICE ITEM	UNIT PRICE	QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table: $_____

Section IIC

Summary of Change Order Request by Categories: [Additives/(Credits)]

A. Maintenance Contractor Labor (construction)
   1. Wages[1] $ _____
   2. Labor benefits[2] (55% of A.1) $ _____

B. Maintenance Contractor and Subcontractor Labor (professional services)
   1. Wages (Raw) $ _____
   2. Labor benefits[1] (145% of B.1, which includes overhead and profit) $ _____
   3. Off-duty peace officers and patrol cruisers[1] $ _____

C. Materials (with taxes, freight and discounts) $ _____

D. Equipment[2] $ _____

E. Subcontracts (Time and Materials cost) $ _____

F. Utility Direct Costs $ _____

G. Overhead and Profit
   1. Labor (25% of A.1) $ _____
   2. Traffic Control (5% of B.3) $ _____
   3. Materials (15% of C) $ _____
   4. Subcontracts (5% of E) $ _____
   5. Utility Direct Costs (5% of F) $ _____

H. Grand Total $ _____

[1] Premiums on public liability and workers' compensation insurance, Social Security and unemployment insurance taxes.
[2] Equipment Costs (estimated or actual) based on Blue Book Equipment Rental Rates calculated in accordance with Section 10.7.3 of the Capital Maintenance Agreement.

SECTION III

Justification for Change Order with reference to the Capital Maintenance Agreement:
_____
_____
_____

Change order required under Design-Build Agreement? Yes_____/No_____
If yes, state reason:
_____
_____
_____

The above three sections represent a true and complete summary of all aspects of this Request for Change Order.

This Request for Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event, occurrence or matter giving rise to the proposed change.

If the foregoing Request for Change Order includes claims of Subcontractors or Suppliers, the undersigned have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount.

_____

Maintenance Contractor Authorized Representative

Date: _____

<u>SECTION IV (Reviewed by Maintenance Manager)</u>

_____

Maintenance Manager

Date: _____

Comments:

_____

_____

_____

SECTION V (Reviewed by TxDOT Project Director)

_____

TxDOT Project Director

Date_____

Comments:

_____

_____

_____

SECTION VI (Approval by TxDOT District Engineer and Deputy Director)

_____

TxDOT District Engineer **Date**

_____

TxDOT Deputy Director **Date**

Comments:

_____

_____

_____

EXHIBIT 13

AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representative(s)

TxDOT's Executive Director, Chief Planning and Projects Officer and their designees

Phil Wilson

Russell Zapalac

Ed Pensock

Bill Hale

Maintenance Contractor's Authorized Representative(s)

Robert Stevens
Pegasus Link Constructors, LLC
2040 North Texas Highway 360
Grand Prairie, Texas 75050
Telephone: (972) 854-0210
Facsimile: (972) 854-0201
E-mail: robert.stevens@plcjv.com

EXHIBIT 14

LIST OF REFERENCE INFORMATION DOCUMENTS (RID)

- As-Builts.zip
- As-Builts CSJ 0261-03-36.zip
- As-Builts CSJ 0261-03-36.zip
- As-Builts CSJ 1068-04-001.zip
- AT&T Records Information.pdf
- Bridge Asbestos Reports.zip
- City of Dallas – Cadiz Street Electronic Files.zip
- City of Dallas – Trinity river Corridor Design Guidelines.pdf
- City of Dallas ftp site for Able and Charlie Sump files.docx
- City of Dallas Projects (Horseshoe) – July 13, 2012.xls
- City of Dallas Projects.zip
- CROE Insurance Required for DART & TRE.pdf
- Dallas District Utility Specifications.zip
- Dallas Floodway Wetlands.pdf
- Existing TxDOT ITS Communication Hub Locations.BMP
- Groubox I – II.zip
- HORSESHOE
    - City of Dallas Future Trial Plans May 21, 2012.pdf
    - DFCD Floodway Access Package zip
    - Horseshoe Aesthetics
        - City of Dallas Illumination Standards 251D.pdf
        - Dallas Horseshoe Photometrics.pdf
        - Summary of Changes to Urban Design Technical Guidelines Revised 082912.pdf
        - Trinity Corridor Guidelines August 2012.pdf
        - Urban Design Technical Guidelines Electronic Files.pdf
        - Urban Design Technical Guidelines Revised 082912.pdf
    - Horseshoe DesignException
        - HS_DesignException_042512.pdf
    - Horseshoe Environmental
        - 0196-03-205_Draft Horseshoe EPIC_May 2012.pdf
        - 0196-03-205_Horseshoe Final EA FONSI 09-18-12.zip
        - 0196-03-205_HorseshoeEA_Final_draft_pre-PH_062812.pdf
    - Horseshoe Geotech
        - Boring_Misc_Combined_1-5_2012-04-12_All.pdf
        - BORINGS_IH35_COD.dgn
        - Historical Borings.pdf
        - I-35_Horseshoe_Borings_and_CPTs_New_and_Historical.pdf
        - I35E_CORE01-12.pdf
        - Soil_survey_pavement design_Final_6_13_2012.pdf
        - I35E_Geotechnical_Report.pdf
        - USACE Borings.pdf
        - WinCORE logs.pdf

- Horseshoe Hazmat
  - References
    - 1_HTRW Work Plan_Final_010912.pdf
    - 2_Figures_1 and 2_Final_010912.pdf
    - 3_Appendices A-N_Final_010912.pdf
    - Horseshoe VCP Files.zip
    - Pegasus PH I ESA.pdf
  - SGMP
    - Horseshoe DRAFT SGMP – 04-24-2012.pdf
    - Horseshoe DRADR SGMP – 08-07-2012.pdf
- Horseshoe IAJR
  - Horseshoe IAJR_0316_withAppDraftStamp.pdf
- Horseshoe Preliminary Design
  - BridgePDF
    - BR-Layout-Exhibit – 101.pdf
    - BR-Layout-Exhibit-102.pdf
    - BridgeKeymap
    - SHT1-BR-SCROLL.pdf
    - SHT2-BR-SCROLL.pdf
    - SHT3-BR-SCROLL.pdf
    - SHT4-BR-SCROLL.pdf
    - SHT5-BR-SCROLL.pdf
    - SHT6-BR-SCROLL.pdf
    - SHT7-BR-SCROLL.pdf
    - SHT8-BR-SCROLL.pdf
    - SHT9-BR-SCROLL.pdf
    - SHT10-BR-SCROLL.pdf
    - SHT11-BR-SCROLL.pdf
    - SHT12-BR-SCROLL.pdf
    - SHT13-BR-SCROLL.pdf
    - SHT14-BR-SCROLL.pdf
    - SHT15-BR-SCROLL.pdf
  - Dallas Horseshoe Preliminary Design Exhibit.pdf
  - Drainage&UtilitesPDF
    - HORSESHOE_DRNG.pdf
    - Horseshoe Utility Conflict Contact List
    - IH 35 E Test Hole Layout 11X17.pdf
    - SIGNED TEST HOLES.pdf
    - Summary of Changes to Utility Strip Map (1 of 2) updated 083012.pdf
    - Sump 2_Layout_Exhibit.pdf
    - Sump 3_Layout_Exhibit.pdf
    - Utility Strip Map (1 of 2) updated 083012.pdf
    - Utility Strip Map (2 of 2) updated 071912.pdf
    - Utility Strip Map base File updated 083012.dgn
    - Utility Strip Map Resourse File.rsc
  - Horseshoe Typicals DGN.zip
  - Microstation
    - 35fpkReadMe.docx

        - Preliminary Design revisions.zip
        - RoadwayPDF
            - DSR_IH35Eupdated.pdf
            - I35E TITLE01.pdf
            - I35E_COLORADO_XS_L.pdf
            - I35E_HALN.pdf
            - I35E_HDATA.pdf
            - I35E_PLAN01.pdf
            - I35E_PROF01.pdf
            - I35E_RDWY_LTRA.pdf
            - I35E_X-SECTIONS.pdf
            - IH35E_TYP01 with Proposed Pavement Structure.pdf
            - IH35E_TYP01.pdf
    - Horseshoe ROW Status
        - Horseshoe RID ROW Status 04252012.pdf
        - Horseshoe RID ROW Status 06152012.pdf
        - Horseshoe RID ROW Status 07312012.pdf
        - Horseshoe RID ROW Status 09042012.pdf
        - Horseshoe ROW.zip
    - Horseshoe Schematic
        - Horseshoe Schematic-07-17-2012 (ROW & COA limits clarified to match prelim Design and ROW Maps).zip
        - Horseshoe Schematic Vissim.zip
        - Horseshoe Schematic Vissim Additional Files.zip
        - I35E SCHEM BDR.dgn
        - I35E SCHEM BEN.dgn
        - I35E SCHEM BUS.dgn
        - I35E SCHEM CENT.dgn
        - I35E SCHEM CURVE-DATA.dgn
        - I35E SCHEM MASTER.dgn
        - I35E SCHEM PAVE.dgn
        - I35E SCHEM POLY.dgn
        - I35E SCHEM PROF.dgn
        - I35E SCHEM PROW.dgn
        - I35E SCHEM RET-WALL.dgn
        - I35E SCHEM SHADE.dgn
        - I35E SCHEM SIGNS.dgn
        - I35E SCHEM STEETS.dgn
        - I35E SCHEM TEXT30.dgn
        - I35E SCHEM TEXT35.dgn
        - I35E SCHEM TOPO.dgn
        - I35E SCHEM TRAFFIC.dgn
        - I35E SCHEM TYP.dgn
        - Jobhor.gpk
        - SCHEM01.dgn
        - SCHEM01 042012.pdf
        - SCHEM02.dgn
        - SCHEM02 042012.pdf
        - SCHEM03.dgn
        - SCHEM03 042012.pdf

        - SCHEM04.dgn
        - SCHEM04 042012.pdf
        - SCHEM05.dgn
        - SCHEM05 042012.pdf
        - SCHEM06.dgn
        - SCHEM06 042012.pdf
    - Horseshoe Traffic Data
        - Dallas Horseshoe – Approved Traffic Data.pdf
    - Horseshoe USACE
        - DFLeveesSPFvsDesigngrade.pdf
        - DrChecks ATR 20120822-closed.pdf
        - DrChecks DQC 20120628.pdf
        - DrCgecks DQC 20120712.pdf
        - Drilling and Testing Quality control Plan I-35 Project Revised.pdf
        - Horseshoe Initial 408 submittal to USACE 06.04.12.zip
        - Horseshoe Initial 408 submittal to USACE Revised (incorporates FONSI and includes Minor determination by USACE) 09.18.12.zip
        - Horseshoe Initial 408 submittal to USACE Revised (revisions incorporate comments from District, ATR, & SAR Review) 08.30.12.zip
        - HS 408 SAR Responses.pdf
        - HS FOEP CN Revised 053012.pdf
        - Review Plan for IH30-IH35E Dallas Horseshoe (16 Apr 12).pdf
    - Horseshoe Utilities
        - ATT INFO.zip
        - DWU Horseshoe.zip
        - DWU Labor Estimate.xls
        - DWU Relocations Criteria.pdf
        - HS TH1-48.pdf
        - Oncor Transmission Line Relocation folder
        - Utilities Record Drawings and Test Holes.zip
        - Utilities Exhibit Final 1.zip
- Horseshoe Org.pptx
- Horseshoe ROW – POTENTIAL Building Removal.pdf
- Horseshoe ROW – Potential Building Removal with CAT 1 Definitions.pdf
- Houston Street Rail Detail.pdf
- IH 30 Managed Lanes Project – ITS Termination reference.zip
- IH 30-35% Design – from Sylvan to IH 35E.zip
- Managed Lane & HOV Lane Automated Gate Refereces.zip
- Margaret McDermott – 50% Submittal.zip
- Margaret McDermott 90%
    - IH 30 Ped Bridges_90 %_Arch Steel Quantities_06-29-2012.pdf
    - IH 30 Ped Bridges_90 %_Drawings_06-29-2012.pdf
    - IH 30 Ped Bridges_90 %_Project Specs_06-029-2012.pdf
    - IH 30 Ped Bridges_90 %_Super Steel Quantities_06-29-2012.pdf
    - IH 30 Ped Bridges_Final Geotechnical Report_06-29-2012.pdf
    - MMD Foundation Design Input.zip
    - Revised Geotechnical Report folder
- Margaret McDermott 100%

    - 3D Dallas Bridge White.dwf
    - 100% Submittal Plan Revision Summary 08-15-2012.pdf
    - 100% Submittal Spec Revision Summary 08-15-2012.pdf
    - 100%Submittal Status Summary 08-15-2012.pdf
    - BLWTL-SS21-2012 Final Report.pdf
    - HZ Arch Steel Quantities 08-15-2012.pdf
    - HZ Superstructure Steel Qualities 08-15-2012.pdf
    - IH30 PED Bridges construction Drawings 08-15-2012.pdf
    - Use this for Sheet #8 in construction drawings.pdf
- Margaret McDermott DRAFT_RFP.zip
- Margaret McDermott FAA Coordination
    - DNE MMD 11.1.12.pdf
- Margaret McDermott Revision 1
    - 100% Rev No. 1 Plan Revision Summary 08-31-2012.pdf
    - 100% Submittal Spec Revision Summary 09-05-2012.pdf
    - Concrete 3D Rebar.dwg
    - IH 30 Ped Bridges Project Specs 09-05-2012.pdf
    - MMD Bike Ped Revision 1.pdf
    - Reinforcement 3D File Guide and Notes.pdf
    - Sheet 148.pdf
- Margaret McDermott Revision 2
    - 100% Rev No. 2 Plan Revision Summary 09-05-2012.pdf
    - IH 30 Ped Bridges Construction Drawings (rev 2) 09-04-2012.pdf
    - IH 30 Ped Bridges Sheets 7C and 7D.pdf
- Original Pegasus ROW Maps.zip
- Project Pegasus.zip
- Survey Control Points.zip
- TxDOT QAP Design-Build Implementation Guide 2011.pdf
- TxDOT QAP_for _Design-Build_07-25-11.pdf
- Margaret McDermott Final Contractual Documents
    - Margaret McDermott Final Contractual Plans.pdf
    - Margaret McDermott Final Contractual Specifications.pdf

EXHIBIT 15

LIQUIDATED DAMAGES FOR LANE CLOSURES

1. Liquidated Damages for Lane Closures shall be assessed for any Lane Closure during the term of the CMA during which one or more lanes (including main lanes, ramps and direct connectors) are closed or have a width that is less than the minimum requirements for permitted Lane Closures set forth in Section 18 of the Technical Provisions.

2 Liquidated Damages for Lane Closures shall be applied in accordance with Table 15-1 below to any Lane Closure that occurs in connection with the performance of Maintenance Services as described above and shall be assessed every hour or part thereof for each lane closed. Maintenance Contractor shall report to TxDOT on a daily basis any Lane Closures or reduced widths which give rise to Liquidated Damages for Lane Closures.

Table 15-1: Liquidated Damages for Lane Closures

	Main Lanes and Collector-Distributor Roadways	**Ramps, Frontage Roads, and Arterials**
Lane Closures Permitted	$0 per hour per lane	$0 per hour per lane
Lane Closures Not Permitted	$2000 per hour per lane	$1000 per hour per lane

Permitted and non-permitted closures are described in Attachment 6 to Exhibit 2 of the CMA.

EXHIBIT 16

DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT (this "**Agreement**") is made and entered into this _____ day of _____, 2013, (the "**Effective Date**") by and between the Texas Department of Transportation ("**TxDOT**"), and Pegasus Link Constructors, LLC ("**Maintenance Contractor**"). TxDOT and Maintenance Contractor are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. TxDOT and Maintenance Contractor are parties to that certain Capital Maintenance Agreement for the Horseshoe Project, dated as of the Effective Date (the "**CMA**").

B. Section 16.3 of the CMA, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the CMA Documents requiring the services of such Disputes Board, in each case, in accordance with the terms, and subject to the conditions, of Section 16 of the CMA.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the CMA Documents, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the CMA Documents.

1.2 Reference Section of CMA. Section 16.3 of the CMA, which, among other things, discusses the Disputes Board's role in resolving Disputes, is incorporated herein by reference.

1.3 Section References. Unless expressly indicated otherwise, all references in this Agreement to a "Section" mean the Section contained in this Agreement.

Section 2. Purpose and Role of the Disputes Board; Binding Disputes Board Decision.

The sole purpose of the Disputes Board is to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision (as defined in Section 5.5 below). The Disputes Board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in this Agreement and in Section 16.3 of the CMA. Notwithstanding that each Disputes Board Member will

have been engaged by a Party under a Disputes Board Member Joinder Agreement (as defined in Section 3.1.2 below), none of the Disputes Board Members shall consider themselves an appointee, representative, agent or advocate of the Party who engaged him or her. Disputes Board Members are charged with discharging their responsibilities hereunder in an impartial, objective, independent and professional manner without regard to the particular interests of either Party. Upon completion of the remainder of procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

Section 3. Selection, Replacement and Removal of Disputes Board Members and Candidates.

3.1 Selection of Disputes Board Member Candidates and Disputes Board Members.

3.1.1 At all times, each Party shall endeavor to maintain a list of five candidates who satisfy the Disputes Board Member Qualifications (as defined in Section 4 below) and have been approved or deemed approved by the other Party to serve on the Disputes Board (each such list being a **"Disputes Board Member Candidates List"**). As of the Effective Date, (a) TxDOT accepts and consents to the final Disputes Board Member Candidates List of Maintenance Contractor previously approved or deemed approved by TxDOT on or before the Effective Date and (b) Maintenance Contractor accepts and consents to the Disputes Board Member Candidates List of TxDOT previously approved or deemed approved by Maintenance Contractor on or before the Effective Date.

3.1.2 If at any time, pursuant to Section 16.3.4.2 of the CMA, a Dispute is referred by TxDOT or Maintenance Contractor to the Disputes Board for resolution, each Party shall, within 15 days after notice of such referral is given (or within 7 days after notice of a Fast-Track Dispute is given), appoint and engage one of the preapproved candidates on its Disputes Board Member Candidates List to serve on the Disputes Board. The Disputes Board empanelled to resolve each Dispute shall consist of three individuals, except as otherwise provided for resolution of Small Claims under Section 5.3.3 or as the Parties may agree pursuant to Section 3.1.4 below, which shall consist of (a) one Disputes Board Member selected by TxDOT, (b) one Disputes Board Member selected by Maintenance Contractor and (c) a third individual selected pursuant to Section 3.1.3 below. To set forth the terms and conditions of such appointment and engagement, each Party and its appointed Disputes Board Member shall enter into a Disputes Board Member Joinder Agreement in the form attached hereto as Attachment 1 (each such agreement, upon execution, being referred to herein as a "**Disputes Board Member Joinder Agreement**" and incorporated herein by reference).

3.1.3 The two Disputes Board Members appointed to the Disputes Board shall, as their first duty following appointment, within 15 days after their appointment (or within 7 days after their appointment, if the Dispute for resolution by the Disputes Board is a Fast-Track Dispute), select the third Disputes Board Member (the **"Disputes Board**

Chair") from among the remaining candidates that appear on the Parties' Disputes Board Member Candidate Lists. If the two Disputes Board Members appointed by Maintenance Contractor and TxDOT are unable to reach agreement on their selection of the Disputes Board Chair within such time period, then either Maintenance Contractor or TxDOT or both shall request that the Chief Administrative Judge of the Travis County District Courts select the Disputes Board Chair from among the remaining candidates that appear on the Parties' Disputes Board Member Candidate Lists. Both Parties waive all rights to appeal the decision of the Chief Administrative Judge, except if the individual designated by such judge to serve as the Disputes Board Chair is not among the qualified and approved candidates remaining on the Parties' Disputes Board Member Candidate Lists. Within 15 days after the selection of the Disputes Board Chair by the two appointed Disputes Board Members or the Chief Administrative Judge (or within 7 days after such selection if the Dispute is a Fast-Track Dispute), the Party on whose list the Disputes Board Chair appears and the individual selected to serve as the Disputes Board Chair on the Disputes Board shall enter into a Disputes Board Member Joinder Agreement.

3.1.4 The Parties may mutually agree at any time prior to the Dispute Board's issuance of a Disputes Board Decision that the relevant Dispute shall be resolved by the Disputes Board Chair alone rather than by the three member Disputes Board, and any such agreement shall be irrevocable upon issuance of the joint written directive next described. If the Parties so agree, they shall issue a joint written directive to the Disputes Board (or to the two appointed Disputes Board Members or the Chief Administrative Judge of the Travis County District Courts, if such Disputes Board Members or Chief Administrative Judge are or is then in the process of selecting the Disputes Board Chair pursuant to Section 3.1.3 above) stating their mutual agreement that the Disputes Board Chair alone shall resolve the relevant Dispute. If the Parties issue such a joint written directive, the Disputes Board Chair rather than the Disputes Board shall resolve the relevant Dispute in accordance with the terms and conditions of this Agreement (except insofar as this Agreement contemplates resolution of a Dispute by a three member Disputes Board) and, if the three member Disputes Board had been previously empanelled, the two Party-appointed Disputes Board Members shall be dismissed from any further service on the Disputes Board.

3.2 Replacing Candidates on a Party's Disputes Board Member Candidates List.

3.2.1 At any time, either Party may replace any of the individuals on its Disputes Board Member Candidates List that are not then serving on the Disputes Board, provided, however, that no such individual shall be added to the Disputes Board Member Candidates List of the proposing Party (the **"Nominating Party"**) until complete Disclosure Statements on such individual are furnished to the other Party (the **"Evaluating Party"**) and the Evaluating Party approves or is deemed to approve such individual for inclusion on the Nominating Party's Disputes Board Member Candidates List. **"Disclosure Statements"** shall consist of the proposed Disputes Board Member candidate's resume of experience and a discussion of the Disputes Board Member Qualifications as they apply to the proposed candidate. Within 30 days after receipt of a

proposed candidate's Disclosure Statements by the Evaluating Party (the **"Disputes Board Member Candidate Evaluation Period"**), the Evaluating Party shall evaluate the proposed candidate's Disclosure Statements and notify the Nominating Party as to whether the candidate is approved by the Evaluating Party for inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.2 During the Disputes Board Member Candidate Evaluation Period, the Evaluating Party (a) shall submit written inquiry to the Nominating Party if, in the Evaluating Party's reasonable judgment, the Disclosure Statements for the proposed candidate are incomplete such that, if they are not supplemented to the Evaluating Party's reasonable satisfaction, such incompleteness will constitute a basis for the Evaluating Party's disapproval of the proposed candidate and (b) may submit written inquiries to the Nominating Party if the Evaluating Party has questions or concerns about the proposed candidate's qualifications to serve on the Disputes Board in light of the Disputes Board Member Qualifications. Within fifteen days after the Nominating Party's receipt of any such written inquiry from the Evaluating Party, the Nominating Party shall (or shall cause the proposed candidate to) furnish a written response to the Evaluating Party's inquiry. The Evaluating Party may submit up to three such written inquiries. The Disputes Board Member Candidate Evaluation Period shall be extended a total of 30 days (including the 15 day inquiry response period) for each written inquiry made by the Evaluating Party. The submission of incomplete Disclosure Statements (following written inquiry from the Evaluating Party so that the Nominating Party has the opportunity to supplement any such incomplete Disclosure Statements) or failure by the Nominating Party or its proposed candidate to fully respond to the Evaluating Party's written inquiry shall constitute a basis for the Evaluating Party to disapprove the proposed candidate during the Disputes Board Member Candidate Evaluation Period. If the Evaluating Party notifies the Nominating Party of its approval, or does not notify the Nominating Party of its disapproval, of a proposed candidate within the Disputes Board Member Candidate Evaluation Period, such candidate shall be approved or deemed approved by the Evaluating Party.

3.2.3 During the course of the Nominating Party replacing five consecutive potential candidates on its Disputes Board Member Candidates List on a cumulative basis over time, the Evaluating Party may, upon notice to the Nominating Party, disapprove up to two proposed candidates for any or no reason. The Evaluating Party may, upon notice to the Nominating Party, only disapprove all subsequently proposed candidates of the Nominating Party based on any such candidate's failure to satisfy the Disputes Board Member Qualifications (which failure shall be described in detail in the Evaluating Party's notice of disapproval).

3.2.4 In furtherance of the Parties' objective of having in place at all times two Disputes Board Member Candidate Lists comprised of five nominated and approved candidates meeting the Disputes Board Qualifications, but subject to the provisions of Section 3.2.3, if the Evaluating Party does not approve a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List, the Nominating Party shall propose subsequent candidates in reasonably rapid succession, and the selection process shall continue until the Evaluating Party's approval is

obtained or deemed obtained as to a proposed candidate's inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.5 If the Evaluating Party disapproves a proposed candidate of the Nominating Party due to failure of such candidate to satisfy the Disputes Board Member Qualifications, but the Nominating Party disagrees that such candidate is not qualified or eligible for service, the Nominating Party may initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the Nominating Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute.

3.3 Removal of Disputes Board Member; Appointment of Replacement.

3.3.1 The appointment of a Disputes Board Member (including the Disputes Board Chair) to the Disputes Board may be terminated at any time by any of the Persons specified below in this Section 3.3.1 due to the occurrence of Misconduct or due to Conflict of Interest not previously waived under Section 4.3.1 (such termination constituting a termination "**For Cause**" hereunder), effective upon service of such Person's notice of termination on the affected Disputes Board Member and, if the terminating Person is a Party, the other Party or, if the terminating Person is not a Party, the Parties. Following termination and removal of a Disputes Board Member For Cause or the death or resignation of a Disputes Board Member, the Disputes Board shall not proceed with the resolution of the applicable Dispute until a replacement Disputes Board Member has been appointed.

(a) Any two members of the Disputes Board may terminate the third Disputes Board Member's appointment For Cause;

(b) TxDOT and Maintenance Contractor may, upon mutual agreement, terminate any Disputes Board Member's appointment For Cause or without cause; and

(c) TxDOT or Maintenance Contractor may unilaterally terminate the appointment of any Disputes Board Member For Cause.

Provided, however, that if a Disputes Board Member's appointment is terminated For Cause and a Party disagrees that such Disputes Board Member should have been terminated For Cause, such Party may, within 5 Business Days after notice of the Disputes Board Member's termination of appointment is received, initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the disagreeing Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute. A Party may not unilaterally or by mutual agreement with the other Party terminate the appointment of any Disputes Board member For Cause and then dispute the proprietary of such termination.

3.3.2 In the event that one or more Disputes Board Members needs to be replaced due to removal, death or resignation of one or more Disputes Board Members, replacement Disputes Board Members shall be appointed in the same manner as the predecessor Disputes Board Members(s) until the Disputes Board is reconstituted as a three person board. The appointment of each replacement Disputes Board Member will

begin as soon as notice of removal, death or resignation is given or received and shall be completed as soon as possible, but in no event more than 30 days thereafter.

Section 4. Qualifications and Conduct of Disputes Board Members.

"Disputes Board Member Qualifications," as they pertain to each Disputes Board Member or proposed candidate for inclusion on a Party's Disputes Board Member Candidate List, consist of the requisite experience described in Section 4.1 below and the absence of grounds for disqualification as described in Section 4.2 below.

4.1 Requisite Experience. All Disputes Board Members shall be attorneys who (a) are retired judges with at least ten years prior experience as a sitting judge or (b) are active members of the State Bar of Texas or any other state bar with at least ten years prior experience acting as mediators, arbitrators or dispute board members for commercial disputes, in either case who have not been subject to disciplinary action within the past ten years. Preference shall be given to attorneys who, in addition to meeting the foregoing qualifications, are also experienced in interpreting or adjudicating contract rights and claims involving financing, design, construction, operations and/or maintenance of public infrastructure projects.

4.2 Disqualification. No Disputes Board Member shall have a financial interest in the CMA, in any Contract or the Project or in the outcome of any Dispute decided hereunder, except for payments to that member for services on the Disputes Board.

4.3 Effect of Party's Prior Approval of Disputes Board Member.

4.3.1 An Evaluating Party's approval or deemed approval of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute an irrevocable waiver of any subsequent objection to such individual's lack of qualifications under Section 4.1 (except if such individual's lack of qualifications constitutes Misconduct, as addressed in Section 4.3.2 below).

4.3.2 No approval or deemed approval by the Evaluating Party of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute a waiver of any objection to a Conflict of Interest or Misconduct of such individual under Section 4.2, except that any matter fully disclosed in an individual's Disclosure Statements prior to inclusion of such individual on the Nominating Party's Disputes Board Member Candidates List with the approval or deemed approval of the Evaluating Party may not be subsequently asserted by the Evaluating Party as a Conflict of Interest or Misconduct constituting grounds for termination and removal of such individual from the Nominating Party's Disputes Board Member Candidates List or from service as a Disputes Board Member on the Disputes Board.

Section 5. Procedures and Scope of Work of the Disputes Board.

5.1 Procedures; Modification of Procedures. The Disputes Board shall conduct its proceedings to resolve a Dispute in accordance with the requirements specified or referenced herein; provided, however, that:

(a) The Parties may jointly modify the procedures applicable to the Disputes Board's proceedings to resolve a Dispute, effective upon the Disputes Board Chair's receipt of the Parties' written notice of the Parties' mutually agreed modification of such procedures describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the CMA or any requirements applicable to modification of the DRP Rules or the Sections of the Code under which the DRP Rules are promulgated); and

(b) Subject to the DRP Rules and the Code, the Disputes Board may modify the procedures applicable to its proceedings to resolve a Dispute so as to be more responsive to the needs of the Parties, provided that (i) the Disputes Board Chair issues written notice to the Parties describing the proposed modification in detail and (ii) both Parties give their written consent thereto, effective upon the Disputes Board Chair's receipt of the Parties' written consent thereto.

5.2 Ineligible Matters. As a preliminary matter prior to consideration of the underlying matter, the Disputes Board shall hear, consider and render a Disputes Board Decision with respect to the responding Party's assertion that a particular claim, demand, dispute, disagreement or controversy is an Ineligible Matter. Resolution of whether a claim, demand, dispute, disagreement or controversy is a Dispute that the Disputes Board has authority to resolve or an Ineligible Matter shall be resolved as a preliminary matter by the Disputes Board, and the Disputes Board Decision shall reflect that the underlying matter is a Dispute eligible for resolution by the Disputes Board unless a majority of the Disputes Board determines with positive assurance that such a determination would not be correct.

5.3 Procedures for Disputes Board's Resolution of Disputes.

5.3.1 The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including time periods in which actions by the Disputes Board shall occur. "**Commercial Rules**" means the dispute resolution proceedings set forth in Attachment 2 attached hereto. For Fast-Track Disputes, the time frames provided in the Commercial Rules for Expedited Procedures (as defined in Attachment 2) shall apply in accordance with the Commercial Rules.

5.3.2 Each Disputes Board Member, or the Disputes Board Chair on behalf of the Disputes Board, shall promptly notify the Parties if any circumstances has or is likely to arise that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A **"Small Claim"** is a Claim or related or similar Claims which arise fairly contemporaneously out of the same set of acts, events or circumstances that the Parties mutually agree to have resolved solely by the Disputes Board Chair. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is $100,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board Member shall be released from further service. Thereafter, in the context of the Disputes Board Chair's resolution of a Small Claim hereunder, all references in the dispute resolution procedures established in Section 16.3 of the CMA to the "Disputes Board" or the "Disputes Board Members" shall mean and refer to the Disputes Board Chair. At any time prior to the close of the Disputes Board hearing under R-27 of the Commercial Rules, if, due to amendment of the Dispute as to the amount in controversy, aggregation of the Dispute with other Disputes or other changes that cause a Party to no longer consent to resolution of the Dispute as a Small Claim by the Dispute Board Chair, such Party may, upon notice to the Disputes Board Chair and the other Party, withdraw its assent to resolution of the Dispute as a Small Claim by the Disputes Board Chair and require that a full three-member Disputes Board be empanelled to resolve such Dispute.

(c) The Disputes Board Chair shall have no authority to award compensation or damages in a Disputes Board Decision regarding a Small Claim aggregating more than $100,000, and TxDOT or Maintenance Contractor as the claiming Party, as the case may be, asserting a Small Claim hereby irrevocably waives any right, at law or in equity, to any damages or award arising out of such Small Claim in excess of $100,000; provided, however, that the amount of $100,000 as stated in this Section 5.3.3(c) shall be adjusted on every fifth anniversary of the Effective Date by the percentage increase (if any) in the CPI between the date the CPI was most recently published before the Effective Date and the date most recently published before the date of adjustment.

5.4 Aggregation of Disputes. Either Party shall be entitled to request the Disputes Board to aggregate the consideration of multiple Disputes for resolution by the Disputes Board where common questions of fact, Law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the aggregate consideration of all such Disputes. Upon receipt of such a request, the Disputes Board shall consider the aggregated Disputes in a single proceeding unless, as a preliminary matter, the Disputes Board determines (after considering any evidence presented by the Parties in support of, or in opposition to, the proposed aggregation of such Disputes for resolution in a single proceeding) that there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes and/or the efficiencies to be gained by conducting a single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the proposed aggregated Disputes (as specified in the Disputes Board Decision on this matter) by a separately empanelled Disputes Board in a separate proceeding. A Disputes Board Decision regarding

whether Disputes will be aggregated for resolution in a single proceeding before the Disputes Board shall be final, binding and not subject to appeal.

5.5 Issuance of Disputes Board Decision and Any Minority Report. The Disputes Board should make every effort to reach a unanimous decision among the Disputes Board Members. If this proves infeasible, the dissenting Disputes Board Member may prepare a minority report. Within 20 days after the final hearing on an Dispute (other than a Fast-Track Dispute, in which case within 5 days after the final hearing the Fast-Track Dispute), the Disputes Board Chair shall issue the Dispute Board's written decision (each, a "**Disputes Board Decision**"), together with its written findings of fact and conclusions of law in support of the Disputes Board Decision, to the Parties.

5.6 Confidential Materials; Return or Destruction Thereof. "**Confidential Materials**" are all discussions, negotiations, testimony and evidence between the Parties and/or in a proceedings before the Disputes Board that are confidential pursuant to Section 16.3.9 of the CMA. Each Disputes Board Member shall maintain the privacy of confidential information pursuant to Section 16.3.9 of the CMA. Within 30 days after issuance of the Final Order Implementing Decision, the Disputes Board Chair shall furnish written notice to each Party listing the Confidential Materials in the Disputes Board's possession and, except for those Confidential Materials that a Party directs the Disputes Board to return to such Party in writing within 15 days after receipt of such notice, the Disputes Board Chair shall destroy all copies of all Confidential Materials in the Disputes Board's possession. Until the time for the Disputes Board Chair's issuance of the foregoing written notice, the Disputes Board shall hold all Confidential Materials in confidence other than making them available for production into evidence in subsequent proceedings.

5.7 Dissolution of Disputes Board. Once the Disputes Board Decision of the Disputes Board becomes final and the Executive Director has issued a Final Order Implementing Decision, the Disputes Board shall be dissolved and the Disputes Board Members serving on such Disputes Board shall be released from further service.

Section 6. Necessity of Submission of Dispute to Disputes Board.

A Party's submission of a Dispute to the Disputes Board for resolution and the Dispute Board's issuance of the Disputes Board Decision shall be conditions precedent to any subsequent proceeding concerning such Dispute, except as otherwise provided in Section 16.3 of the CMA.

Section 7. TxDOT and Maintenance Contractor Responsibilities.

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board Member one copy of the CMA Documents. TxDOT shall also serve upon each Disputes Board Member (and concurrently upon Maintenance Contractor) any other documents which are or may become pertinent to the activities of the Disputes Board, including but

not limited to any Change Order, Directive Letter or other written direction, instruction, determination or decision of TxDOT.

7.2 Maintenance Contractor Responsibilities. Maintenance Contractor shall serve on each Disputes Board Member (and concurrently on TxDOT) one set of any documents which are or may become pertinent to the activities of the Disputes Board, except those documents furnished by TxDOT. Such documents may include, but shall not be limited to, any drawings or sketches, calculations, procedures, schedules, estimates or other documents and Submittals which are used in the performance of the Work or in justifying or substantiating Maintenance Contractor's position.

7.3 Parties' Responsibilities for Costs and Expenses; Cooperation.

7.3.1 Each Party shall be responsible and make payment for its one-half share of all facilities fees, support services costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. A Party that disputes an invoice for any such cost or expense relating to the Disputes Board's proceedings shall notify the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing under any invoice for such costs and expenses at the time require for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

7.3.2 Each Party shall diligently cooperate with the Disputes Board and the other Party and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure was egregious, the Disputes Board shall take into account such egregious failure to cooperate in its determination of the Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 16.3.4.1 of the CMA.

Section 8. Term.

Consistent with the DRP Rules, the term of this Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the CMA and thereafter for so long as either Party has any obligation originating under the CMA Documents until the applicable statute of limitations on any Dispute in regard to such obligation has expired.

Section 9. Payment of Disputes Board Members' Fees, Costs and Expenses.

9.1 Payment for Services. Payment of fees for work performed and services rendered by each Disputes Board Member and for his or her direct out-of-pocket costs and expenses shall be calculated in accordance with the payment terms set forth for

such Disputes Board Member in his or her respective Disputes Board Member Joinder Agreement. The personal services of the Disputes Board Member are a condition to receiving payments hereunder. Such payments shall be full compensation for work performed and services rendered by each respective Disputes Board Member, and for all labor, materials, supplies, equipment and incidentals necessary for such Disputes Board Member's participation in the operation of the Disputes Board.

9.2 Disputes Board Member Invoices. Each Disputes Board Member shall submit invoices on a monthly basis concurrently to TxDOT and Maintenance Contractor for payment for such Disputes Board Member's work performed and services rendered in the prior month. Such invoices shall be in a format approved by TxDOT and Maintenance Contractor, accompanied by an itemization of days and hours billed along with a description of activities performed during each day in that billing period, and an itemization of direct non-salary costs incurred supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. The amount to be paid shall be established from the applicable billing rate set forth in each Disputes Board Member's Disputes Board Member Joinder Agreement plus costs and expenses in accordance with such agreement.

9.3 Payment by Parties. Each Party shall be responsible and make payment for its one-half share of all fees, costs and expenses of the Disputes Board Members' service on the Disputes Board. Each Disputes Board Member will be paid within 30 days of the Parties' receipt and acceptance of invoices therefor. A Party that disputes a Disputes Board Member's invoice shall notify such member and the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing to any Disputes Board Member at the time required for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

9.4 Retention of Cost Records and Accounts. Disputes Board Members shall keep available for inspection by representatives of TxDOT and Maintenance Contractor, for a period of five years after the final payment, the cost records and accounts pertaining to this Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of, in connection with, or related to this Agreement is initiated before the expiration of the five year period, the cost records and accounts shall be retained until such claim involving the records is completed.

9.5 Parties to Bear Own Costs. Each Party shall bear its own costs arising out of or in connection with the Dispute Resolution Procedures.

9.6 Diligent Cooperation. The Parties shall diligently cooperate with one another and the Disputes Board, and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of Disputes submitted to the Disputes Board. If either Party refuses to diligently cooperate, and the other Party, after first

giving notice setting forth the Party's basis for its contention of non-cooperation and requesting specific action, incurs additional costs or attorneys', accountants' and expert witness fees solely as a result of such failure to diligently cooperate, then the Disputes Board may award such additional costs and, accountants' and expert witness fees to the Party giving such notice, even if such Party is not the prevailing Party in the Dispute. The Party so entitled to such award shall have the right to pursue and enforce it in any subsequent proceedings.

Section 10. Nonassignability.

Disputes Board Members shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Maintenance Contractor.

Section 11. Legal Relations.

11.1 Disputes Board Member as Independent Contractor. The Parties mutually understand and agree that any Disputes Board Member, in the performance of duties as a Disputes Board Member on the Disputes Board, is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Maintenance Contractor. No Disputes Board Member will be entitled to any employee benefits from either Party nor the benefits of any Laws afforded employees of either Party.

11.2 No Effect on Potential Liabilities Under the CMA Documents or by Law. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth herein, nothing in this Agreement alters the potential liabilities of either Party as provided under the CMA Documents and, subject to the terms and conditions of the CMA Documents, by Law.

11.3 Damages Waiver. Neither TxDOT nor Maintenance Contractor will hold any Disputes Board Member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board in respect of the Dispute for which it was convened, and the Parties expressly waive any right to the foregoing, except as a result of fraud, willful misconduct or criminal actions of the applicable Disputes Board Member.

Section 12. Applicable Law.

The Disputes for resolution by the Disputes Board shall be governed by and resolved under the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

Section 13. Amendment in Writing.

This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement

shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

Section 14. Complementary Provisions; Order of Priority.

The Parties intend for the procedures established in Section 16.3.4 of the CMA and any other relevant provisions of the CMA Documents, and the terms and conditions of this Agreement (except where this Agreement says they shall not apply), to be complementary. In the event of any conflict between this Agreement and Section 16.3 of the CMA or any other relevant provision of the CMA Documents, the CMA or other DRP governed agreement shall control.

Section 15. Notices.

Notices hereunder shall be sent as provided in Section 18.11 of the CMA. The address for each Disputes Board Member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

Section 16. Entire Agreement.

This Agreement, each executed Disputes Board Member Joinder Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

[signatures on following page]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

Maintenance Contractor:	**TxDOT:**
PEGASUS LINK CONSTRUCTORS, LLC	**TEXAS DEPARTMENT OF TRANSPORTATION**
By: _____ Name: Title:	By: _____ Philip Wilson Executive Director
By: _____ Name: Title:	

ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT (this "**Agreement**") is entered into this _____ day of _____, _____ by and between _____ [*Specify TxDOT or Maintenance Contractor*] (the "**Appointing Party**"), and _____, an individual (the "**Disputes Board Member**").

RECITALS

A. TxDOT and Maintenance Contractor are parties to that certain Capital Maintenance Agreement, for the Horseshoe Project, dated as of the Effective Date (the "**CMA**").

B. Section 16.3 of the CMA, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the CMA Documents.

C. The Appointing Party desires to appoint the Disputes Board Member to the Disputes Board to resolve such a dispute and the Disputes Board Member desires to accept such appointment, each on the terms and conditions set forth in CMA Section 16.3, the Disputes Board Agreement and this Agreement, and for that purpose, the parties hereto have agreed to enter into this Agreement pursuant to Section 3.1.2 of the Disputes Board Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Disputes Board Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the CMA Documents and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 16.3 of CMA. The Disputes Board Agreement and Section 16.3 of the CMA, which, among other things, discusses the Disputes Board's role in resolving Disputes, are incorporated herein by reference.

Section 2. Appointment.

2.1 Appointment. The Appointing Party appoints the Disputes Board Member to the Disputes Board to serve thereupon and resolve the applicable Dispute, and the Disputes Board Member accepts such appointment and agrees to perform such service, each in accordance with the terms and conditions of Section 16.3 of the CMA, the Disputes Board Agreement and this Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through resolution of the Dispute before the Disputes Board and issuance of the Final Order Implementing Decision in respect thereto, except that (a) unless he or she is the Disputes Board Chair, he or she may be earlier dismissed from service pursuant to Section 5.3.3(b) of the Disputes Board Agreement because the dispute to be resolved is a Small Claim; (b) the **Disputes Board Member** may resign for health considerations or other reasons of disability; or (c) the **Disputes Board Member** shall resign if he or she discovers facts or circumstance that would, in such member's reasonable good faith judgment, prevent such member from discharging his or her duties in the resolution of a Dispute in the impartial and objective manner required under the Disputes Board Agreement or facts or circumstances that such member reasonably and in good faith believes would result in a Party terminating such member's appointment For Cause. The **Disputes Board Member** shall endeavor to give 30 days' notice prior to the effective date of his or resignation.

Section 3. Representations, Warranties and Covenants.

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and Maintenance Contractor, under penalty of perjury, that such Disputes Board Member satisfies the Disputes Board Member Qualifications.

3.2 Covenants. The Disputes Board Member covenants to TxDOT and Maintenance Contractor that he or she:

(a) Shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with the procedures established under Section 16.3 of the CMA**;**

(b) Shall not engage in any conduct, including, but not limited to, having any communications, dealings or interactions with either Party, the Conflicts Group or any other Person in any manner, that would be or result in a Disputes Board Error; and

(c) Shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 16.3.9 of the CMA**.**

Section 4. Compensation.

4.1 Invoicing and Payment. The Disputes Board Member's hourly billing rate and costs and expenses for service on the Disputes Board or means for calculating same are attached hereto as Annex I. Invoicing and payment of fees, costs and expenses shall take place in accordance with Sections 9.1, 9.2 and 9.3 of the Disputes Board Agreement.

4.2 No Compensation After Termination. If the Disputes Board Member's appointment to the Disputes Board is terminated, whether For Cause or otherwise, the Disputes Board Member will not be entitled to receive payment for any services rendered or costs and expenses incurred after the date of termination of such appointment.

Section 5. General Provisions.

5.1 Third Party Beneficiary. Whichever of TxDOT or Maintenance Contractor that is not the Appointing Party is an express third party beneficiary of this Agreement entitled to enforce the terms and conditions hereof against the Disputes Board Member.

5.2 Nonassignability. The Disputes Board Member shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Maintenance Contractor.

5.3 Disputes Board Member as Independent Contractor. The Disputes Board Member represents that it is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Maintenance Contractor. The Disputes Board Member hereby acknowledges that it is not entitled to any employee benefits from either Party nor the benefits of any Laws afforded employees of either Party.

5.4 Consequential Damages Waiver. In no event shall TxDOT or Maintenance Contractor have any liability to the Disputes Board Member other than for payment of the Disputes Board Member's fees, costs and expenses hereunder. Neither TxDOT nor Maintenance Contractor shall be liable to the Disputes Board Member for any special, consequential, indirect, enhanced, punitive, or similar damages (including lost profits that are not direct damages), including but not limited to attorneys' fees and expenses, arising under or in connection with this Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

5.6 Entire Agreement. This Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements,

representations and negotiations between the parties hereto with respect to its subject matter.

5.7 Amendment in Writing. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

5.8 Survival. This Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of this Section 5 shall survive termination of this Agreement.

5.9 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement as of the day and year first set forth above.

Appointing Party:

[*TxDOT or Maintenance Contractor*]

By:_____

Name:_____

Title: _____

Disputes Board Member:

By:_____

Name:_____

Address:

_____

_____

_____

_____

ACKNOWLEDGED:

Evaluating Party:

[*TxDOT or Maintenance Contractor*]

By:_____

Name:_____

Title: _____

<u>Annex I</u>

to

Disputes Board Member Joinder Agreement

Fees, Costs and Expenses

[*to be attached*]

ATTACHMENT 2 TO DISPUTES BOARD AGREEMENT

COMMERCIAL RULES

R-1. Agreement of The Parties

(a) The **"Expedited Procedures"** means the rules set forth in Sections E-1 through E-6 below. Unless the Parties determine otherwise, the Expedited Procedures shall apply to Fast-Track Disputes in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(b) The **"Procedures for Large, Complex Commercial Disputes"** means the rules set forth in Sections L-1 through L-3 below. Unless the Parties agree otherwise, such procedures shall apply to all cases in which the Dispute is valued at $500,000 or more, exclusive of claimed interest, fees and costs. The Parties may also agree to use such procedures in cases involving non-monetary Disputes. Such Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(c) All other cases shall be administered in accordance with Sections R-2 through R-43 of these rules.

(d) If there is any inconsistency between these Commercial Rules and Section 16.3 of the CMA, Section 16.3 of the CMA shall control.

R-2. Disputes Board

The term "Disputes Board" in these Commercial Rules refers to the three member Disputes Board, constituted for a particular case, or to the Disputes Board Chair, as the context requires.

R-3. Assumed Objection

Unless the responding Party states otherwise in its response to the claiming Party's notice of referral of a Dispute to the Disputes Board, all aspects of the Dispute will be deemed to be denied by the other Party (other than any objection to the Disputes Board's authority to resolve the Dispute, which must be affirmatively asserted).

R-4. Changes of Claim

After notice of referral of a Dispute to the Disputes Board is given or received, if either Party desires to make any amended, new, or different claim or counterclaim, it shall be made in writing and filed with the Disputes Board. The Party asserting such an amended, new or different claim or counterclaim shall provide a copy to the other Party, who shall have 15 days from the date of such transmission within which to file an answering statement with the Disputes Board.

R-5. Jurisdiction

(a) The Disputes Board shall have the power to rule on its own jurisdiction, i.e., to determine if an alleged Dispute is an Ineligible Matter.

(b) The Disputes Board shall rule on jurisdictional objections as a preliminary matter prior to proceeding with proceedings to resolve the underlying Dispute.

R-6. Administrative Conference

At the request of either Party or upon the Disputes Board's own initiative, the Disputes Board may conduct an administrative conference, in person or by telephone, with the Parties and/or their representatives. The conference may address such issues as the replacement of one or more Disputes Board Members, potential mediation of the Dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

R-7. Appointment

Because the Disputes Board Agreement between the Parties specifies a method of appointing a Disputes Board, that designation or method shall be followed.

R-8. Disclosure

(a) Any person appointed or to be appointed as a Disputes Board Member shall disclose to the Parties any circumstance likely to give rise to justifiable doubt as to such Disputes Board Member's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the Parties or their representatives. Such obligation shall remain in effect throughout the period of such member's service on the Disputes Board.

(b) In order to encourage disclosure by Disputes Board Members and candidates, disclosure of information pursuant to this R-8 is not to be construed as an indication that the disclosing individual considers that the disclosed circumstance is likely to affect impartiality or independence.

R-9. Disqualification of Disputes Board Member

Each Disputes Board Member shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(a) inability or refusal to perform his or her duties with diligence and in good faith, and

(b) any grounds for disqualification provided by applicable law, the Disputes Board Agreement or the CMA Documents.

R-10. No Ex Parte Communication with Disputes Board Members

(a) During the period that any Disputes Board Member is then serving on a Disputes Board, (i) neither Party, including its counsel or designated representatives, shall communicate ex parte with such Disputes Board Member and (ii) no Disputes Board Member shall communicate ex parte with any Person (other than other Disputes Board Members), including but not limited to, either Party, its counsel or designated representatives, regarding any aspect of the applicable Dispute.

(b) Each Party may communicate with individuals listed on its respective Disputes Board Member Candidates' List for the purposes of (i) ascertaining their availability to serve on a particular Disputes Board and/or (ii) reconfirming such individuals' qualifications under the Disputes Board Member Qualifications and the absence of Conflicts of Interest and Misconduct, provided that the communicating Party simultaneously furnishes copies of all such written correspondence with such individuals to the other Party and gives the other Party advance notice and opportunity to participate in all verbal communication with such individuals. Ex parte communication regarding the substance of any Dispute between a Party and individuals listed on its respective Disputes Board Member Candidates' List is prohibited.

R-11. Hearings After Filling of Vacancies

In the event of the appointment of a substitute Disputes Board Member, the panel of Disputes Board Members shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-12. Preliminary Hearing

(a) At the request of either Party or at the discretion of the Disputes Board, the Disputes Board may schedule as soon as practicable a preliminary hearing with the Parties and/or their representatives. The preliminary hearing may be conducted by telephone at the Disputes Board's discretion.

(b) During the preliminary hearing, the Parties and the Disputes Board should discuss the future conduct of the case, including clarification of the nature of the Dispute, a schedule for the hearings and any other preliminary matters.

R-13. Exchange of Information; Discovery

(a) At least five Business Days prior to the hearing, the Parties shall exchange (i) copies of all exhibits they intend to submit at the hearing and (ii) lists of witnesses anticipated to be called at the hearing, in each case except for witnesses or exhibits to be offered for the purpose of impeachment or rebuttal.

(b) The Disputes Board Chair is authorized to resolve any disputes concerning the exchange of information or the Parties' discovery.

R-14. Date, Time, and Place of Hearing

The Disputes Board Chair shall set the date, time, and place for each hearing at a neutral and reasonably cost-efficient location in Travis County, Texas that is reasonably convenient for the Parties. The Parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The Disputes Board shall send a notice of hearing to the Parties at least 5 Business Days in advance of the hearing date, unless otherwise agreed by the Parties.

R-15. Attendance of Witnesses

Except for each Party's counsel and other authorized representative, upon the request of either Party or its own initiative, the Disputes Board shall have the power to require the exclusion of any witness or potential witness during the testimony of any other witness.

R-16. Representation

Each Party may be represented by counsel or other authorized representative. A Party intending to be so represented shall notify the other Party and the Disputes Board of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates or responds for a Party in the course of the Dispute Resolution Procedures, notice is deemed to have been given by the Party represented by such representative.

R-17. Dispute Board Members' Certifications; Witness Oaths

Before proceeding with the first hearing, each Disputes Board Member shall have entered into a Disputes Board Member Joinder Agreement with a Party in which he or she certifies, under penalty of perjury as to his or her meeting the Disputes Board Member Qualification and the absence of Conflicts of Interest and Misconduct (and a covenant to not engage in Misconduct). The Disputes Board shall require witnesses to testify under oath.

R-18. Stenographic Record

Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party of these arrangements at least three days in advance of the hearing. The requesting Party shall pay the cost of the record. If the transcript is agreed by the Parties, or determined by the Disputes Board to be the official record of the proceeding, it must be provided to the Disputes Board and made available to the other Party for inspection, at a date, time, and place determined by the Disputes Board.

R-19. Interpreters

Any Party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-20. Postponements

The Disputes Board may postpone any hearing upon agreement of the Parties, upon request of a Party for good cause shown, or upon the Disputes Board's own initiative for good cause shown.

R-21. Proceedings in the Absence of a Party or Representative

The Dispute Board's proceedings may proceed in the absence of either Party or representative who, after due notice, fails to be present or fails to obtain a postponement. An Disputes Board Decision shall not be made solely on the default of a Party. The Disputes Board shall require the Party who is present to submit such evidence as the Disputes Board may require for the making of a Disputes Board Decision.

R-22. Conduct of Proceedings

(a) The claimant Party shall present evidence to support its claim. The respondent Party shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the Disputes Board and the adverse Party. The Disputes Board has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The Disputes Board, exercising is discretion, shall conduct the proceedings with a view to expediting the resolution of the Dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The Parties may agree to waive oral hearings in any case.

R-23. Evidence

(a) The Parties may offer such evidence as is relevant and material to the Dispute and shall produce such evidence as they or the Disputes Board deems relevant and necessary to an understanding and determination of the Dispute. Conformity to the Texas Rules of Evidence shall be required, except where these Commercial Rules contain a contrary rule. All evidence shall be taken in the presence of all of the Disputes Board Members and both of the Parties, except where a Party fails to attend the hearing or has waived the right to be present.

(b) Subject to the Texas Rules of Evidence, the Disputes Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Disputes Board to be cumulative or irrelevant.

(c) The Disputes Board shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) Special discovery and evidentiary rules:

(i) The Disputes Board Chair shall, at the request of either Party, issue subpoenas for the attendance of witnesses or the production of books, records, documents or other evidence, whether for deposition or for hearing, in the manner provided by law for issuance of a subpoena in a civil action pending in a state district court. All provisions of the Texas Rules of Civil Procedure for service and response to subpoenas in a civil action pending in state district court shall apply to subpoenas issued pursuant hereto.

(ii) Each Party shall be entitled to take depositions of witnesses and to propound written discovery in the manner, and to the extent, provided by Law for discovery in a civil action pending in a state district court, consistent with Rule 190.3 of the Texas Rules of Civil Procedure. The Disputes Board Chair shall, at the request of either Party, or may, on his or her own initiative, adopt a discovery control plan as contemplated by Rule 190.4 of the Texas Rules of Civil Procedure.

(iii) The disclosure of expert witness information and the depositions of designated expert witnesses shall be conducted as provided by the Texas Rules of Civil Procedure for cases in state district court.

(iv) At the hearing, each Party shall have the right to be heard, to present evidence, including expert witness testimony, and to cross-examine witnesses.

R-24. No Evidence by Affidavit; Post-hearing Filing of Documents or Other Evidence

(a) The Disputes Board may not receive and consider the evidence of witnesses by declaration or affidavit.

(b) If the Parties agree or the Disputes Board directs that documents or other evidence be submitted to the Disputes Board after the hearing, the documents or other evidence shall be transmitted to each Disputes Board Member. Both Parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-25. Inspection or Investigation

The Disputes Board may find it necessary to make an inspection or investigation in connection with its proceedings and, if so, shall so advise the Parties. The Disputes Board shall set the date and time of such inspection or investigation and notify the

Parties thereof. Any Party who so desires may be present at such an inspection or investigation. In the event that one or both The Parties are not present at the inspection or investigation, the Disputes Board shall make an oral or written report to the Parties on the result or findings from such inspection or investigation and afford them an opportunity to comment.

R-26. Interim Measures

(a) The Disputes Board may take whatever interim measures it deems necessary, including measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim Disputes Board Decision.

(c) A request for interim measures addressed by a Party to a Travis County, Texas district court shall not be deemed incompatible with the agreement to have the underlying Dispute resolved by the Disputes Board or a waiver of the right to have the underlying Dispute resolved by the Disputes Board.

R-27. Closing of Hearing

The Disputes Board shall specifically inquire of both Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Disputes Board shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of briefs. If documents are to be filed as provided in R-24 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the Disputes Board is required to make the Disputes Board Decision shall commence, in the absence of other agreements by the Parties, upon the closing of the hearing.

R-28. Reopening of Hearing

The hearing may be reopened only upon application of a Party for good cause shown, as determined in the discretion of the Disputes Board, at any time before the Disputes Board Decision is issued The Disputes Board may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to issue the Disputes Board Decision.

R-29. Waiver of Rules

Any Party who proceeds with the Disputes Board proceedings after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing to the other Party and the Disputes Board shall be deemed to have waived the right to object.

R-30. Extensions of Time

The Parties may modify any period of time in these rules by mutual agreement. The Disputes Board may for good cause extend any period of time established by these rules, except the time for issuance of the Disputes Board Decision. The Disputes Board shall notify the Parties of any extension.

R-31. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of Disputes Board proceedings under these rules, for any court action in connection therewith, or for the entry of judgment on any Disputes Board Decision made under these rules shall be given in accordance with Section 16.11 of the CMA.

(b) Unless otherwise instructed by the Disputes Board, any documents submitted by either Party to the Disputes Board shall simultaneously be provided to the other Party.

R-32. Majority Decision

When the panel consists of more than one Disputes Board, a majority of the Disputes Board Members must make all decisions.

R-33. Time of Issuance of the Disputes Board Decision

The Disputes Board Decision shall be issued promptly by the Disputes Board and no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

R-34. Form of Disputes Board Decision

(a) Any Disputes Board Decision shall be in writing and signed by a majority of the Disputes Board Members.

(b) The Disputes Board shall also issue written findings of fact and conclusions of law to accompany the Disputes Board Decision.

R-35. Scope of Disputes Board Decision

(a) The Disputes Board may determine the occurrence of any event that is a prerequisite to a Party's claim for any remedy or relief in the Dispute, and grant any remedy or relief to resolve the Dispute, that the Disputes Board deems just and equitable and within the scope of the agreement of the Parties under Section 16.3 of the CMA, including, but not limited to, specific performance of any obligation under the CMA Documents.

(b) In addition to a final Disputes Board Decision, the Disputes Board may make other decisions, including interim, interlocutory, or partial rulings, orders, and decisions. In any interim, interlocutory, or partial Disputes Board Decision, the Disputes Board may assess and apportion the fees, expenses, and compensation related to such Disputes Board Decision as the Disputes Board determines is appropriate, subject, however, to the limitations of the Disputes Board's authority in Section 16.3.4.1(e) of the CMA.

(c) In the final Disputes Board Decision, the Disputes Board shall assess compensation amounts. The Disputes Board may apportion fees and expenses between the Parties in such amounts as the Disputes Board determines is appropriate in its discretion, subject, however, to the limitations of the Disputes Board's authority under Section 16.3.4.1(e).

R-36. Disputes Board Decision upon Settlement

If the Parties settle the Dispute during the course of the Disputes Board proceedings and if the Parties so request, the Disputes Board may set forth the terms of the settlement in a “consent Disputes Board Decision.”

R-37. Acceptance of Delivery of Disputes Board Decision

The Parties shall accept as notice and delivery of the written Disputes Board Decision, together with the written findings of fact and conclusions of law, addressed and provided to them in the manner provided under Section 18.11 of the CMA.

R-38. Correction of Errors in Disputes Board Decision

Within 5 Business Days after the transmittal of a Disputes Board Decision, either Party, upon notice to the other Party, may request the Disputes Board, through the Disputes Board Chair, to correct any clerical, typographical, or computational errors in the Disputes Board Decision. The Disputes Board is not empowered under this R-38 to redetermine the merits of any Dispute already decided. The other Party shall be given 5 Business Days to object to the request on the ground that there is no clerical, typographical, or computational error in the decision. The Disputes Board shall perform the request correction of errors within 10 Business Days after transmittal by the Disputes Board Chair of the request for correction of errors unless the other Party objects. Any unresolved disagreement between the Parties as to the existence of a

clerical, typographical, or computational error in the Disputes Board Decision can be subsequently pursued, if at all, under R-28.

R-39. Release of Documents for Subsequent Proceedings

The Disputes Board shall, upon the written request of a Party, furnish to the Party, at the Party's expense, certified copies of any papers in the Disputes Board's possession that may be required in further administrative or judicial proceedings relating to resolution of the Dispute.

R-40. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a Party relating to a Dispute shall be deemed a waiver of the Party's right to have the Dispute resolved by Dispute Board proceedings.

(b) Neither any Disputes Board Member nor the Disputes Board in a proceeding under these rules is a necessary or proper Party in judicial proceedings relating to a Dispute.

R-41. Expenses

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the Dispute Board's proceedings, including required travel and other expenses of the Disputes Board, Disputes Board representatives, and any witness and the cost of any proof produced at the direct request of the Disputes Board, shall be borne equally by the Parties, unless they agree otherwise or unless the Disputes Board in the Disputes Board Decision assesses such expenses or any part thereof against any specified Party or The Parties (in the latter case subject, however, to the limitations of the Disputes Board's authority under Section 16.3.4.1(e)).

R-42. Interpretation and Application of Rules

The Disputes Board shall interpret and apply these rules insofar as they relate to the Disputes Board's powers and duties to resolve the particular Dispute for which such Disputes Board was empanelled to resolve.

R-43. No Suspension for Nonpayment

If a Disputes Board Member's compensation or administrative charges have not been paid in full, such Disputes Board Member may so inform the Parties in order that one of them may advance the required payment. If such payments are not made, and the non-paying Party does not within 30 days after its receipt of the unpaid Disputes Board Member's invoice provide notice to such member and the other Party as to such Party's dispute of such member's invoice, the Disputes Board may order the suspension or termination of the proceedings. If a Party disputes a Disputes Board Member's invoice and provides such notice, no suspension or termination of the proceedings shall occur. Ex parte conversations to resolve a fee dispute between the Dispute Board

Member whose invoice is disputed and the disputed Party are prohibited during the Dispute Board's resolution of the Dispute, and any such conversations shall be deferred until the Disputes Board Decision is final.

EXPEDITED PROCEDURES FOR FAST-TRACK DISPUTES

E-1. Serving of Notices

In addition to notice provided pursuant to Section 18.11 of the CMA, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree, a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-2. Exchange of Exhibits

At least two Business Days prior to the hearing, the Parties shall exchange copies of all exhibits they intend to submit at the hearing. The Disputes Board shall resolve disputes concerning the exchange of exhibits.

E-3. Proceedings on Documents

Where no Party's claim exceeds $10,000, exclusive of interest and dispute resolution costs, and other cases in which the Parties agree, the Dispute shall be resolved by submission of documents, unless either Party requests an oral hearing, or the Disputes Board determines that an oral hearing is necessary. The Disputes Board shall establish a fair and equitable procedure for the submission of documents.

E-4. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the Disputes Board shall set the date, time, and place of the hearing, to be scheduled to take place within 10 days after appointment of the Disputes Board Chair. The Disputes Board will notify the Parties in advance of the hearing date.

E-5. The Hearing

(a) Each Party shall have equal opportunity to submit its proofs and complete its case.

(b) The Disputes Board shall determine the order of the hearing and schedule and control its duration consistent with the objective of expedited resolution of the Fast-Track Dispute, and may require further submission of documents within two days after the hearing. For good cause shown, the Disputes Board may schedule additional hearings within seven Business Days after the initial hearing.

(c) Any Party desiring a stenographic record may arrange for one pursuant to the provisions of R-18.

E-6. Time of Award

Unless otherwise agreed by the Parties, the Disputes Board Decision shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES

L-1. Administrative Conference

Prior to the commencing proceedings to resolve a Dispute, the Disputes Board shall, unless the Parties agree otherwise, conduct an administrative conference with the Parties and/or their attorneys or other representatives by conference call within 7 days after the Disputes Board Chair is appointed. In the event the Parties are unable to agree on a mutually acceptable time for the administrative conference, the Dispute Board shall, upon three Business Days' advance notice, schedule the administrative conference for 9 a.m. (CST) on the fourth Business Day and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the following purpose of obtaining additional information about the nature and magnitude of the Dispute and the anticipated length of hearing and scheduling and for such additional purposes as the Parties or the Disputes Board may deem appropriate.

L-2. Preliminary Hearing

As promptly as practicable after the appointment of the Disputes Board, a preliminary hearing shall be held among the Parties and/or their attorneys or other representatives and the Disputes Board. If the Parties agree, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) service of a detailed statement of the Dispute, including damages and defenses, a statement of the issues asserted by each Party and positions with respect thereto, and any legal authorities the Parties may wish to bring to the attention of the Disputes Board;

(b) stipulations to uncontested facts;

(c) the extent to which discovery shall be conducted, in light of the special discovery and evidentiary rules set forth above in R-23(d);

(d) exchange and premarking of those documents which each Party believes may be offered at the hearing;

(e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;

(f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;

(g) the extent to which hearings will proceed on consecutive days;

(h) whether a stenographic or other official record of the proceedings shall be maintained;

(i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and

(j) the procedure for the issuance of subpoenas.

By agreement of the Parties and/or order of the Disputes Board Chair, the pre-hearing activities and the hearing procedures that will govern the Disputes Board's proceedings will be memorialized in a scheduling and procedure order (each, a **"Scheduling and Procedure Order"**). Nothing in any Schedule and Procedure Order shall conflict with the procedures established under Section 16.3 of the CMA.

L-3. Management of Proceedings

(a) The Disputes Board shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases, provided, however, that no action by the Disputes Board under this L-3 shall conflict with the procedures established under Section 16.3 of the CMA.

(b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control if the Disputes Board(s) consider such production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a Large, Complex Commercial Case.

(c) The Parties may conduct discovery, subject to any limitations deemed appropriate and set forth in the discovery control plan and/or the Scheduling and Procedure Order. If the Parties cannot agree on production of documents and other information, the Disputes Board, consistent with the expedited nature of arbitration, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing 10 Business Days prior to the hearing unless the Disputes Board Chair determines otherwise.

(e) The exchange of information pursuant to this rule, as agreed by the Parties and/or directed by the Disputes Board Chair, shall be included within the Scheduling and Procedure Order.

(f) The Disputes Board is authorized to resolve any disputes concerning the exchange of information.

(g) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

0100 GENERAL

0101 General requirements

A. Maintenance Contractor shall be responsible for and shall carry out Maintenance Services for the Maintained Elements set forth in Attachment 2 attached hereto throughout the Maintenance Term such that each Maintained Element shall comply with the Performance Requirements set forth in Attachment 1 attached hereto.

B. In carrying out the Maintenance Services, Maintenance Contractor shall take into account and comply with the requirements of this Maintenance Specification.

C. The limits for Maintenance Services are set forth in Attachment 3 attached hereto.

0200 PROJECT MANAGEMENT

0201 General Requirements

A. Maintenance Contractor shall establish and maintain an organization that effectively manages all the Maintenance Services. This Project management effort will be defined and guided by the Maintenance Management Plan. The Maintenance Management Plan is an umbrella document that describes the Maintenance Contractor's managerial approach, strategy, and quality procedures to maintain the Project and achieve all requirements of the CMA Documents. Unless otherwise agreed by the Texas Department of Transportation (TxDOT), the Maintenance Management Plan shall be consistent with the capital maintenance plan submitted with the Proposal.

B. TxDOT will audit and monitor the activities described in the Maintenance Management Plan to assess Maintenance Contractor performance. All statements contained in the Maintenance Management Plan shall be of an auditable nature.

0202 Project Schedule

A. The Parties recognize the importance of the Project Schedule for defining the time-frame for the maintenance of the Project and the achievement of the milestones. The Parties also recognize the importance of the Project Schedule in monitoring the progress of Maintenance Services of the Project and denoting changes that occur.

B. Every submitted schedule shall be in the form of a single hard copy in full-size color plot sheets, along with a backup disk of the schedule in electronic format.

C. The scheduling software employed by the Maintenance Contractor shall be compatible with the scheduling software employed by TxDOT. Maintenance Contractor shall implement any new operating practices or software required as a result of TxDOT's amendments to any such systems, standards and procedures. TxDOT's current software in use is Primavera 6.0 (P6). "compatible", as used in this Section 0202C, shall mean that the Maintenance Contractor-provided electronic file version of the Project Schedule may be loaded or imported by TxDOT using its scheduling software with no modifications, preparation or adjustments. Maintenance Contractor shall be responsible for updating scheduling software to maintain compatibility with current TxDOT supported scheduling software.

D. Maintenance Contractor shall prepare a Maintenance Service Deliverables Schedule and shall submit it to TxDOT for review and approval. Approval of the Maintenance Services Deliverables Schedule shall be a condition precedent to commencing Maintenance Services.

E. The Maintenance Services Deliverables Schedule shall refer to the activities within the Maintenance Management Plan which will provide a narrative describing, in general fashion, the Maintenance Contractor's proposed methods of operation for Maintenance Services. The

Maintenance Management Plan shall address the general sequence of Maintenance Services and all Schedule Deadlines.

F. The Maintenance Services Deliverables Schedule shall include all major activities of Maintenance Services required under the CMA Documents, in sufficient detail to monitor and evaluate progress, during the Maintenance Period(s).

G. The Maintenance Services Deliverables Schedule shall include activities for maintenance and interfaces with other projects, localities, municipalities and other Governmental Entities.

H. For each activity, Maintenance Contractor shall indicate the duration (in Days) required to perform the activity and the anticipated beginning and completion date of each activity. In addition, the Maintenance Services Deliverables Schedule shall indicate the sequence of performing each activity and the logical dependencies and inter-relationships among the activities.

I. The Maintenance Services Deliverables Schedule shall include a listing of all submittals as called out in the CMA Documents. Submittal activity durations shall include specific durations for TXDOT review and/or approval of the Maintenance Contractor's submittals as called out elsewhere in the CMA Documents.

J. With the exception of activities relating to Environmental Approvals by Governmental Entities, each activity depicting the Maintenance Contractor's operations shall have duration of not more than 20 Days and not less than one Day, except as otherwise approved by TxDOT.

K. Maintenance Contractor shall update or provide a notification of no change to the current schedule, on at least a monthly basis, the approved Maintenance Services Deliverables Schedule to reflect the current status of the Project, including approved Change Orders.

L. Each Maintenance Services Deliverables Schedule update shall accurately reflect all activities as of the effective date of the updated schedule.

M. The Maintenance Services Deliverables Schedule update shall include a schedule narrative report which describes the status of the Maintenance Services in detail.

N. On or before 60 days after the issuance of Maintenance NTP1, Maintenance Contractor shall submit the first Capital Asset Replacement Work Submittal (forming part of the Maintenance Management Plan) for TxDOT for review as further described in Section 1903.

O. This section O is not applicable for the Maintenance Services Deliverables Schedule but shall be utilized for the Capital Asset Replacement Work Schedule. Float shall not be considered as time for the exclusive use of or benefit of either TxDOT or the Maintenance Contractor but shall be considered as a jointly owned, expiring resource available to the Project and shall not be used to the financial detriment of either Party. Any method utilized to sequester Float

calculations will be prohibited without prior approval of TxDOT. Any schedule, including the Capital Asset Replacement Work and all updates thereto, showing an early completion date shall show the time between the scheduled completion date and the applicable deadline as "Project Float".

0203 Maintenance Document Management Plan

A. Maintenance Contractor shall establish and maintain an electronic document control system (the "Maintenance Document Management Plan") to store, catalog, and retrieve all Project-related documents in a format compatible with Texas Reference Marker System used by TxDOT. Unless otherwise directed by TxDOT, record retention shall comply with the requirements of the Texas State Records Retention Schedule.

B. All records and the then-current electronic document control system shall be provided to TxDOT at the time of the expiration or earlier termination of the CMA.

0204 Maintenance Services Quality Control Plan

A. Maintenance Contractor shall submit a comprehensive quality control plan ("Maintenance Services Quality Control Plan") to TxDOT for approval that is consistent with and expands upon the preliminary Maintenance Services Quality Control Plan submitted with the Proposal.

B. The Maintenance Services Quality Control Plan shall be consistent with current versions of ISO standards relating to quality and audit as updated by the International Standards Organization. Maintenance Contractor may elect to obtain formal ISO quality certification, but will not be required to do so.

C. The Maintenance Services Quality Control Plan shall describe the system, policies, and procedures that address the Maintenance Services and provide documented evidence that the Maintenance Services were performed in accordance with the CMA Documents.

D. The Maintenance Services Quality Control Plan shall incorporate the following features:
   - Maintenance Contractor shall make all quality records immediately available to TxDOT for review. Maintenance Contractor shall provide TxDOT with a copy of any and/or all quality records when requested.
   - The Maintenance Services Quality Control Plan shall capture all work performed by the Maintenance Contractor and all Subcontractors.
   - Maintenance Contractor shall submit to TxDOT the results of all internal audits within seven Days of their completion,
   - Maintenance Contractor shall submit to TxDOT non-conformance reports within seven Days their issuance and resolution. Maintenance Contractor shall notify TxDOT of a Nonconforming Work within two Days of discovering the Nonconforming Work.

- TxDOT will issue a non-conformance report if TxDOT discovers any Nonconforming Work.

E. The Maintenance Services Quality Control Plan shall contain detailed procedures for all activities performed by the Maintenance Contractor. Maintenance Contractor's quality process shall incorporate planned and systematic activities. Maintenance Contractor shall conduct all activities in accordance with the Maintenance Services Quality Control Plan and the requirements of the CMA Documents.

F. Inspections, reviews, and testing shall only be performed by personnel with appropriate training and qualifications, using appropriate equipment that is accurately calibrated and maintained in good operating condition at an AMRL (AASHTO R18, "Establishing and Implementing a Quality System for Construction Materials Testing Laboratories") accredited facility, or at a facility with comparable certification (e.g. ISO 17025, "General requirements for the competence of testing and Calibration laboratories".)

G. Quality terminology, unless defined or modified elsewhere in the CMA Documents, shall have the meaning defined in BS ISO 9001. Terms used in BS ISO 9001 shall have the meanings defined below:
   - Organization: the Maintenance Contractor's organization, including any Affiliates and Subcontractors.
   - Customers: the Users of the roadways, TxDOT, Customer Groups, and key stakeholders that have an adjacent property interest or connecting roadway.
   - Suppliers: Contractors.
   - Product: the Maintenance Services.
   - Quality control: the part of quality management focused on fulfilling quality requirements.
   - Quality Management Plan: the Maintenance Services Quality Control Plan described in this Section 0204.

H. Maintenance Contractor shall maintain the Maintenance Services Quality Control Plan to contain current versions of the following information:
   - The organizational chart that identifies all quality management personnel, their roles, authorities and line reporting relationships.
   - Description of the roles and responsibilities of all quality management personnel and those who have the authority to stop activities.
   - Identification of testing agencies, including information on each agency's capability to provide the specific services required for the activities; certifications held; equipment; and location of laboratories.
   - Resumes for all quality management personnel.

I. The Maintenance Services Quality Control Plan shall contain a complete description of the quality policies and objectives that the Maintenance Contractor will implement throughout its organization. The policies shall demonstrate the Maintenance Contractor senior

management's commitment to implement and continually improve the maintenance quality management system.

J. The Maintenance Services Quality Control Plan shall contain detailed systems and procedures the Maintenance Contractor will implement, including the following:
   - Control of quality records;
   - Management reviews;
   - Resource allocation;
   - Measurement of customer satisfaction;
   - Control of nonconforming products and services;
   - Internal audits;
   - A process to seek continual improvement of the Maintenance Services Quality Control Plan.

K. The Maintenance Services Quality Control Plan shall contain detailed descriptions of the inspection and test plans, including the timing and frequency of testing, that the Maintenance Contractor will use to meet quality control requirements of the Maintenance Services.

L. Maintenance Contractor shall revise its Maintenance Services Quality Control Plan when its own quality management organization detects a repeating or fundamental non-conformance in the work performed or in the manner the Maintenance Services inspected or tested, or when TxDOT advises the Maintenance Contractor of such a problem.

M. Maintenance Contractor's Maintenance QC Manager's staff shall have no responsibilities in the provision of Maintenance Services. Quality control staff shall only have responsibilities on the provision of Maintenance Services.

N. Maintenance Contractor's Maintenance QC Manager shall report directly to the Maintenance Contractor's principals.

O. The Maintenance QC Manager shall prepare a monthly report of the quality inspections and tests performed, results of such inspections and tests, and occurrences and resolution of nonconformance discoveries. Maintenance Contractor shall submit the monthly reports to TxDOT for review.

P. Maintenance Contractor's Maintenance QC Manager shall have the authority to stop work for quality-related issues.

Q. Not later than two Business Days after the Maintenance Contractor completes design of any particular Released for Construction Documents, and the Maintenance Contractor has reviewed and checked the design in accordance with the Maintenance Services Quality Control Plan, and the Maintenance Contractor's Registered Professional Engineer has signed and sealed the document, the Maintenance Contractor shall submit the signed and sealed document to TxDOT. Maintenance Contractor's Released for Construction Documents shall

comply with the CMA Documents, and shall be detailed, complete, constructible, and shall allow verification of the design criteria and compliance with CMA Documents.

R. Maintenance Contractor shall perform Maintenance Services in accordance with the Released for Construction Documents, following a reasonable timeframe for TxDOT review and comment, together with the relevant requirements and specifications of the CMA Documents.

S. On or about the effective date of termination of the Maintenance Services, the Maintenance Contractor shall submit to TxDOT a complete set of Record Drawings . The Record Drawings and Documentation shall be an organized, complete record of drawings and supporting calculations and details that accurately represent what the Maintenance Contractor constructed.

T. Maintenance Contractor shall ensure that the Record Drawings reflect the actual condition of the Maintenance Services construction.

U. The Maintenance Services Quality Control Plan shall contain detailed procedures for the Maintenance Contractor's quality control activities. Maintenance Contractor's construction or maintenance operations must incorporate quality processes as part of its Quality Management Plan, including planned and systematic activities undertaken by a party independent of the construction or maintenance process. Maintenance Contractor is to undertake all quality control in accordance with the Quality Management Plan and the requirements set out in the CMA Documents.

0205 Maintenance Safety Plan

A. Maintenance Contractor shall be responsible for the safety of its personnel and of the general public affected by the Project.

B. Maintenance Contractor shall submit to TxDOT for approval a comprehensive safety plan ("Maintenance Safety Plan") that is consistent with and expands upon the preliminary safety plan submitted with the Proposal. The Maintenance Safety Plan shall fully describe the Maintenance Contractor's policies, plans, training programs, work site controls, and Incident Management Plans to ensure the health and safety of personnel involved in the Project and the general public affected by the Project during the Maintenance Term.

C. Maintenance Contractor's Maintenance Safety Plan shall address procedures for immediately notifying TxDOT of all Incidents arising out of or in connection with the performance of the Maintenance Services, whether on or adjacent to the Project.

0206 Management of Communications between Maintenance Contractor and TxDOT

A. Maintenance Contractor shall submit a comprehensive communications plan ("Maintenance Communications Plan") to TxDOT for approval that is consistent with and expands upon the

preliminary communications plan submitted with the Proposal. Maintenance Contractor shall maintain and update the Maintenance Communications Plan as the Maintenance Term progresses.

B. The Maintenance Communications Plan shall describe the processes and procedures for communication of Project information between the Maintenance Contractor's organization and TxDOT.

C. The Maintenance Communications Plan shall describe how the Maintenance Contractor's organization will respond to unexpected requests for information, communicate changes or revisions to necessary Maintenance Contractor personnel, and notify TxDOT before and after changes are made to the CMA Documents.

0207 Design

A. In carrying out the Maintenance Services, where there is a requirement for design, the Maintenance Contractor shall ensure that the Project is restored either to the original design used for the construction of the Project, or to a different design that shall be in accordance with the requirements for design set forth in the DBA Documents.

B. TxDOT shall retain its approval of certain documents as described in Section 3 of the DBA.

0208 Maintenance Transition

A. Maintenance Contractor shall submit the Maintenance Transition Plan within the time period specified in Section 3.6.1 of the CMA. As a minimum, the Maintenance Transition Plan shall address the following items:

- Prepare and submit to TxDOT for TxDOT approval a right-of-entry permit for access to the Project for performance of corrective action regarding the condition of the Project immediately prior to transfer.
- Prepare and submit maintenance transition punch list, list and status of equipment warranties, vendors' test reports, Maintenance Contractor's test reports, all as-built drawings for Capital Asset Replacement Work, Maintenance Records (including NBIS records), copies of warranty and service contracts, and spare parts purchased as part of the Maintenance Services.
- Coordinate the identification of maintenance transition punch list items required to be completed by Maintenance Contractor prior to maintenance transfer. Maintenance transition punch list shall include (a) estimated completion dates, (b) responsible party(s), and (c) items that must be completed prior to maintenance transfer.
- Prepare (in conjunction with TxDOT), administer and complete all items on the maintenance transfer punch list to the satisfaction of TxDOT. Maintenance Contractor shall complete all items on the maintenance transition punch list to the satisfaction of TxDOT prior to the transfer of maintenance responsibilities to TxDOT.

- Certify to TxDOT in writing that the Project can be safely used for its intended purpose and that the Maintenance Services have been performed in accordance with the terms of the CMA Documents, Governmental Approvals, and applicable Law.
- Certify to TxDOT in writing that there are no Hazardous Materials located within, on, in or under the Project ROW due to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by the Maintenance Contractor or any Major Subcontractors.
- Certify to TxDOT in writing that there is no litigation pending regarding the Maintenance Services or the Project by the Maintenance Contractor or any Major Subcontractors.

0300 PUBLIC INFORMATION AND COMMUNICATIONS

0301 General Requirements

A. It is vital to the success of the Project that TxDOT and the Maintenance Contractor gain and maintain public support. The public will better support TxDOT and the Maintenance Contractor if they are kept abreast of Project information in a timely manner, are notified in advance of potential impacts, have an opportunity to identify issues and recommend solutions, receive timely and appropriate feedback from the Maintenance Contractor, and perceive a high quality, well executed communications plan for keeping them informed, engaged, and educated.

B. Maintenance Contractor shall provide information within 24 hours of a request by TxDOT, such that TxDOT may communicate such information to interested parties.

0302 Public Information and Communications Plan

Not used.

0303 Public Information Coordinator

Not used.

0304 Public Information Office

Not used.

0305 Customer Groups

Not used.

0306 Public Meetings

Not used.

0307 Meeting Minutes

Not used.

0308 Emergency Event Communications

Not used.

0309 Disseminating Public Information

Not used.

0400 ENVIRONMENTAL

It is not envisioned that there will be any requirement for environmental permitting, mitigation, or Hazardous Material remediation requiring Maintenance Services. Environmental permitting, mitigation, and Hazardous Material remediation required due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents.

0500 THIRD-PARTY AGREEMENTS

It is not envisioned that there will be any impact on third-party agreements by Maintenance Services. If there is any such impact, for example due to extension or reconstruction works, these shall be dealt with in accordance with appropriate sections of the DBA Documents.

0600 UTILITY ADJUSTMENTS

It is not envisioned that there will be any requirement for Utility Adjustments caused by Maintenance Services. Utility Adjustments required due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents.

0700 RIGHT-OF-WAY (ROW)

It is not envisioned that there will be any ROW requirements for Maintenance Services. ROW requirements due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents.

0800 GEOTECHNICAL

It is not envisioned that there will be any geotechnical requirements for Maintenance Services. Geotechnical requirements due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents.

0900 LAND SURVEYING

It is not envisioned that there will be any land surveying requirements for Maintenance Services. Land surveying requirements due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents.

1000 GRADING

Grading requirements shall be in accordance with the Performance and Measurement Baselines set forth at Attachment 1. Grading requirements due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents.

1100 ROADWAYS

Roadway shall be maintained in accordance with Attachment 1. Roadway requirements due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents.

1200 DRAINAGE

1201 General requirements

A. Efficient performance of the drainage system is an integral part of the performance of the Project. In that context, all sources of runoff, both within and outside the Project ROW, must be accounted for in the maintenance of the drainage facilities.

1202 Data collection

A. To maintain a hydraulic system that complies with requirements and accommodates the hydrologic flows in the Project limits.

B. If documentation is not available for Elements of the drainage system within the Project limits, Maintenance Contractor shall videotape or photograph the drainage system to determine condition, size, material, location, and other pertinent information.

C. The data collected shall be taken into account in the maintenance of the drainage facilities for compliance with performance specifications in Attachment 1.

1203 Coordination with other agencies

Not used.

1204 Other Requirements

Drainage requirements shall be in accordance with Attachment 1. Drainage requirements due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents.

1300 STRUCTURES

General: Maintenance of all structures shall be in accordance with Attachment 1. Structures requirements required due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents.

1400 RAIL

1401 Project work affecting railroad operations

A. Should the Project cross a railroad right-of-way owned by an operating railroad, Maintenance Contractor shall coordinate the Maintenance Services with the operating railroad.

B. Maintenance Contractor shall be responsible for obtaining the required approvals, permits, and agreements as required for the Maintenance Services, including any railroad-related Maintenance Services.

C. Whenever an agreement for construction, maintenance, and use of railroad right-of-way between the operating railroad and TxDOT is required, Maintenance Contractor shall prepare all documentation required to obtain the agreement, including preparation of the agreement application on behalf of TxDOT, the drawings and specifications, making necessary modifications as required, and preparation of the agreement. Maintenance Contractor shall submit the draft agreement to TxDOT for transmittal to the operating railroad. After all comments have been incorporated or satisfactorily resolved by Maintenance Contractor, railroad, or TxDOT, Maintenance Contractor shall submit a complete and final agreement to TxDOT for execution.

D. Maintenance Contractor shall arrange with the operating railroad for railroad flagging as required. Maintenance Contractor shall comply with the operating railroad's requirements for contractor safety training prior to performing Maintenance Services or other activities on the operating railroad's property.

E. Maintenance Contractor shall cooperate and coordinate with all operating railroads for access by the operating railroad and/or their agents to the rail right-of-way as necessary for rail maintenance and operations activities.

F. Maintenance Contractor shall procure and maintain, prior to working adjacent to and entry upon operating railroad property, insurance policies naming TxDOT, TxDOT's Consultants, and railroad as named insured. Maintenance Contractor shall obtain the insurance described in Exhibit 10 to the CMA.

G. All insurance policies shall be in a form acceptable to the operating railroad. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by the Maintenance Contractor upon operating railroad property.

1402 Construction Requirements

A. Maintenance Contractor shall comply with all construction requirements and specifications set forth by the operating railroad.

B. Maintenance Contractor shall be responsible for scheduling the work to be completed by operating railroad as well as the work to be completed by its own forces. Maintenance Contractor shall be responsible for all costs associated with the railroad/transit force account work.

1500 AESTHETICS AND LANDSCAPING

1501 Project work affecting aesthetics and landscaping

A. Maintenance Contractor shall repair all structural or natural failures of the embankment and cut slopes of the Project throughout the term of the CMA. Such work shall include all work required to maintain the slopes in general conformance to the original graded cross-sections, the replacement of landscaping materials, reseeding and re-vegetation for erosion control purposes, and removal and disposal of all eroded materials from the roadway and shoulders. TxDOT and Maintenance Contractor acknowledge that plant establishment requirements and obligations are not included within the Maintenance Services, but are part of the Design-Build Contractor's obligations under the DBA for a period of three (3) years after the date of Final Acceptance. However, if a structural or natural failure of the embankment or cut slope occurs in a landscaped area after the 3-year time period expires, the Maintenance Contractor shall be responsible to perform plant establishment activities for 90 calendar days in accordance with Item 192 (Landscape Planting) and Item 193 (Landscape Establishment) of the 2004 TxDOT *Standard Specifications for Construction of Highways, Streets, and Bridges*.

1600 SIGNING, DELINEATION, PAVEMENT MARKING, SIGNALIZATION, AND LIGHTING

1601 Administrative Requirements

Not used.

1602 Third-Party Signs

Not used.

1603 Construction requirements

A. Maintenance Contractor shall leave all applicable advance guide signs and/or exit direction signs in place at all times and shall not obstruct the view of the signs to the Users. Maintenance Contractor shall replace any other removed signs before the end of the work day.

1604 Other requirements

A. Signing, delineation, pavement marking, signalization, and lighting requirements due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents

1700 INTELLIGENT TRANSPORTATION SYSTEMS (ITS)

It is not envisioned that there will be any need for ITS maintenance as part of Maintenance Services. ITS requirements due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of the DBA Documents.

1800 TRAFFIC MANAGEMENT

1801 General Requirements

A. Throughout the Maintenance Term, Maintenance Contractor shall conform with the requirements set forth in this Series 1800, and shall provide for the safe and efficient movement of people, goods, and services, through and around the Project, while minimizing negative impacts to Users, residents, and businesses.

B. While planning and carrying out Maintenance Services, Maintenance Contractor shall take into account the restrictions (if any) set forth in Attachment 6 to this Maintenance Specification.

1802 Administrative Requirements

A. As a component of the Maintenance Management Plan, Maintenance Contractor shall develop, implement, and maintain a Traffic Management Plan (TMP) to be used during the Maintenance Term. At a minimum, the TMP shall include the following:

(i) Descriptions of the qualifications and duties of the traffic engineering manager, traffic control coordinator, and other personnel with traffic control responsibilities

(ii) Procedures to identify and incorporate the needs of transit operators, Utility Owners, Governmental Entities, local governmental agencies, Emergency Service providers, school districts, business owners, and other related Users, Customer Groups, or entities in the Project corridor and surrounding affected areas

(iii) Procedures for obtaining acceptance of detours, road and Lane Closures, and other traffic pattern modifications from applicable Governmental Entities, stakeholders, operators of the managed lane facilities, and adjacent sections of roads and adjacent landowners, and for implementing, maintaining, and removing those modifications

(iv) Procedures for installation, maintenance, and removal of interim signing and the corresponding handling of permanent signing during maintenance operations

(v) Procedures for installation, maintenance, replacement, and removal of traffic control devices, including pavement markings and traffic barriers, if used

(vi) Procedures and process for the safe ingress and egress of construction vehicles in the work zone

(vii) Provisions to provide continuous access to established truck routes and Hazardous Material (HazMat) routes, and to provide suitable detour routes, including obtaining any approvals required by the appropriate Governmental Entities for these uses

(viii) Procedures to modify plans as needed to adapt to changing Project circumstances

(ix) Procedures to communicate TMP information to Maintenance Contractor's public information personnel and notify the public of maintenance of traffic issues

(x) Descriptions of contact methods, personnel available, and response times for any Emergency conditions requiring TxDOT attention during off-hours.

1803 Design Requirements

A. Maintenance Contractor shall use the procedures in the TMP and the standards of the TMUTCD to develop detailed traffic control plans that provide for all Maintenance Services, as well as all required switching procedures. The traffic control plans shall include details for all detours, traffic control devices, striping, and signage applicable to each Maintenance Activity event. Information included in the traffic control plans shall be of sufficient detail to allow verification of design criteria and safety requirements, including typical sections, alignment, striping layout, drop off conditions, and temporary drainage. The traffic control plans shall clearly designate all temporary reductions in speed limits. Changes to posted speed limits will not be allowed unless specific prior approval is granted by TxDOT.

B. Maintenance Contractor shall ensure that opposing traffic on a normally divided roadway shall be separated with appropriate traffic control devices.

C. Maintenance Contractor shall maintain signing continuity on all active roadways within or intersecting the Project at all times.

D. Maintenance Contractor shall ensure all streets and intersections remain open to traffic to the greatest extent possible. Maintenance Contractor shall maintain access to all adjacent streets and shall provide for ingress and egress to public and private properties at all times.

1804 Construction Requirements

A. Construction shall be in accordance with Maintenance Contractor's TMP, the manufacturer's directions or recommendations where applicable, and the applicable provisions of the TMUTCD

B. If at any time TxDOT determines Maintenance Contractor's traffic control operations do not meet the intent of the TMP or any specific traffic control plan, Maintenance Contractor shall immediately revise or discontinue such operations to correct the deficient conditions

C. Maintenance Contractor shall provide TxDOT the names of the traffic control coordinator and support personnel, and the phone number(s) where they can be reached 24 hours per day, seven days per week.

D. Maintenance Contractor shall maintain existing bicycle and pedestrian access and mobility with the frontage roads and across all cross streets. Maintenance Contractor shall maintain Access to existing transit stop locations during construction or reasonable alternative locations shall be provided.

E. Maintenance Contractor shall maintain all detours in a safe and traversable condition. Maintenance Contractor shall provide a pavement transition at all detour interfaces, suitable for the posted speed of the section.

1805 Deliverables

A. The TMP must be approved by TxDOT prior to the start of Maintenance Services. Maintenance Contractor shall provide TxDOT sufficient time for review of, and comment on, the TMP. TxDOT retains the right to require revision and re-submittal of the TMP within a reasonable amount of time.

B. Each traffic control plan shall be submitted to TxDOT for review a minimum of ten (10) Days prior to implementation.

1900 MAINTENANCE

1901 General Maintenance Requirements

A. Maintenance Contractor shall remedy and repair the Maintained Elements including renewal or rehabilitation work not scheduled in the Maintenance Contractor's annually recurring highway maintenance and repair program.

B. Maintenance Contractor shall perform Capital Asset Replacement Work:

   (i) when required by Maintenance Contractor's approved Maintenance Management Plan and updates thereto; or

   (ii) when a Performance Requirement is not met and the required level of performance cannot be achieved by means of routine or preventive maintenance.

C. TxDOT retains maintenance responsibilities for Non-maintained Elements and TxDOT will perform Maintenance Services and other work associated with the Project for Non-Maintained Elements. Third parties, such as Utilities, may require access to the Project to perform maintenance or other work. In addition to the requirements for traffic management set forth in Series 1800, Maintenance Contractor shall coordinate its Traffic Management Plan with the traffic management to be performed by others, to minimize disruption to users of the Project.

D. Whenever an activity by Maintenance Contractor disturbs, alters, removes, or changes any Non-maintained Element, Maintenance Contractor shall restore the affected Non-maintained Element to a condition no less favorable than its original condition before it was disturbed, altered, removed, or changed.

E. Whenever Maintenance Contractor becomes aware of any Defect in any Maintained Element that Maintenance Contractor considers that it is not required to repair, or any maintenance activity that Maintenance Contractor considers should be performed, but which Maintenance Contractor considers that it is not required to perform as part of the Maintenance Services, Maintenance Contractor shall immediately notify TxDOT of the nature of the Defect or maintenance activity and relevant details that will facilitate repair or action by TxDOT.

1902 General Maintenance Obligations

A. Maintenance Contractor shall take all necessary actions to achieve the following:

   (i) Maintain the Maintained Elements in a manner appropriate for a facility of the character of the Project.

   (ii) Minimize delay and inconvenience to Users and, to the extent Maintenance Contractor is able to control, users of adjacent and connecting roadways.

(iii) Minimize the risk of damage, disturbance, or destruction of third-party property during the performance of Maintenance Services.

(iv) Coordinate with and enable TxDOT and others with statutory duties or functions in relation to the Project to perform such duties and functions.

(v) Perform systematic Project inspections, periodic maintenance, and routine maintenance in accordance with the provisions of Maintenance Contractor's Maintenance Management Plan and Maintenance Contractor's Maintenance Safety Plan and the CMA Documents.

B. Maintenance Contractor is responsible for providing all resources necessary for the performance of all Maintenance Services in the Maintenance Management Plan and as required by the CMA Documents.

C. Maintenance Contractor shall comply with the requirements of Series 1800 – Traffic Management

D. All Lanes shall be maintained in accordance with the same standard of maintenance.

E. For Category 1 Defects, the Maintenance Contractor shall take necessary action such that the hazard to Users is mitigated within the period given in the column entitled "Category 1 Hazard Mitigation" in Attachment 1 and shall permanently remedy the Category 1 Defect within the period given in the column entitled "Category 1 Permanent Remedy" in Attachment 1.

F. For Category 2 Defects, the Maintenance Contractor shall undertake the permanent repair within the period specified in the column entitled "Category 2 Permanent Repair" in Attachment 1 to this Maintenance Specification.

G. The Maintenance Contractor shall coordinate with TxDOT to achieve a smooth transition of Maintenance Services from and to TxDOT.

1903 Maintenance Management Plan (MMP)

A. Maintenance Contractor shall prepare a Maintenance Management Plan (MMP) that is consistent with the general maintenance obligations described in Section 1902 (General Maintenance Obligations) and defines the process and procedures for the maintenance of the Project throughout the Maintenance Term. The MMP shall include Performance Requirements, measurement procedures, threshold values at which maintenance is required, inspection procedures and frequencies, and subsequent maintenance to address noted deficiencies, for each Maintained Element of the Project in accordance with Attachment 1 to this Maintenance Specification, including impacts to adjacent and connecting roadways. The MMP shall identify response times to mitigate hazards, permanently remedy, and permanently repair Defects. Response times shall be in accordance with Attachment 1 . Maintenance Contractor shall update this plan as required, or at least annually.

B. The MMP shall include procedures for managing records of inspection and Maintenance Services, including appropriate measures for providing protected duplication of the records.

Inspection and Maintenance Records shall be kept for the Maintenance Term and shall be provided to TxDOT at the time the Project is delivered to TxDOT, at either the expiration of the Maintenance Term or earlier termination of the Agreement. All records obtained during the Warranty Periods shall be kept and provided to TxDOT at the end of the last Warranty Period.

C. Maintenance Contractor shall submit the MMP to TxDOT for review and approval no later than 60 Days following the issuance of Maintenance NTP1. Approval by TxDOT of the MMP shall be a condition precedent to the performance of Maintenance Services.

D. To the extent that Maintenance Contractor proposes any enhancements to the Performance Requirements set forth in Attachment 1 Maintenance Contractor's MMP shall include Performance Requirements, measurement procedures, and threshold values at which maintenance is required for each Maintained Element of the Project in accordance with Section 1908 including impacts to Adjacent Work or facilities. Inspection procedures and frequencies, and subsequent maintenance to address noted deficiencies of the Maintained Elements shall also be included, in accordance with the requirements of Section 1909 of this Maintenance Specification. The MMP shall identify response times to mitigate hazards, permanently remedy, and permanently repair Defects, which shall, at a minimum, be in accordance with Attachment 1 to this Maintenance Specification. Maintenance Contractor shall update this plan as required, or at least annually.

E. The MMP shall include Maintenance Contractor's proposals for Capital Asset Replacement Work, as set forth in Section 3.2 of the Agreement and as further described below. The Capital Asset Replacement Work submittal (which is to be a component of the MMP) shall include the timing, scope, and nature of work that Maintenance Contractor proposes during each year for which the Maintenance Services are to apply. Maintenance Contractor shall set forth, by Maintained Element:

   (i) the estimated Useful Life;

   (ii) a description of the type of Capital Asset Replacement Work anticipated to be performed at the end of the Maintained Element's Useful Life;

   (iii) a brief description of any Capital Asset Replacement Work anticipated to be performed before the end of the Maintained Element's Useful Life, including reasons why this work should be performed at the proposed time; and

   (iv) a Capital Asset Replacement Work Schedule as described in Section 0202.

F. Maintenance Contractor shall prepare updates to the Capital Asset Replacement Work requirements of the MMP as set forth in Section 3.2 of the Agreement.

1904 Maintenance During Work

See applicable area of DBA Documents.

1905 Highway Location and Data Requirements

A. Maintenance Contractor shall implement the Texas Reference Marker System.

1906 Auditable Sections

A. Maintenance Contractor shall establish Auditable Sections referenced to the Texas Reference Marker System used by TxDOT. Maintenance Contractor shall prepare drawings identifying the Auditable Sections and shall submit to TxDOT for approval as a condition precedent to commencing Maintenance Services. The drawings shall identify the boundaries of each Auditable Section and shall cross reference to an inventory describing each Maintained Element of the Facility contained within each Auditable Section.

1907 Maintenance Management Information System

A. Maintenance Contractor shall implement a computer-based Maintenance Management Information System (MMIS), in accordance with TxDOT MMIS User Manual, to record inventory, failures, repairs, maintenance activities, and inspections performed.

B. The MMIS shall include relevant Maintained Element information including but not limited to: location to the nearest tenth mile, using the posted reference marker number, Geographic Information System (GIS) data, and control number for bridge class structures; asset description, date of installation, type of failure, date-time of failure, date-time of response to the site and date-time returned to service, preventive maintenance work, scheduled work, work repair code, time of failure, and time to repair. The MMIS shall be configured to report work by TxDOT "function code", Maintained Element, reference marker, and unit of measurement, as the same described in the aforementioned MMIS User Manual, to categorize the Maintenance Services performed by the Maintenance Contractor.

C. The MMIS system shall be able to record all complaints/service requests. The Maintenance Contractor shall be able to report weekly to TxDOT, in a format approved by TxDOT, information pertaining to any complaints or service requests received by the Maintenance Contractor. This information will include the following:

   (i) The date and time of the complaint;

   (ii) The location and nature of the problem;

   (iii) Injuries and police involvement, including agency, name, and badge number;

   (iv) Who made the complaint; and

   (v) Date and action taken to address the complaint.

D. The MMIS system shall be able to record all accidents/Incidents. Maintenance Contractor shall be able to report in writing to TxDOT, no later than the 15th of each calendar month in a format approved by TxDOT, information from the previous month regarding any accident

or Incident related to Maintenance Services being performed by Maintenance Contractor or within a work zone, including:

(i) accidents involving Maintenance Contractor or any Subcontractor personnel, equipment, barricades, or tools;
(ii) traffic accidents within the limits or in the vicinity of any Maintenance Services being performed by Maintenance Contractor or any Subcontractors;
(iii) Releases of Hazardous Materials;
(iv) any accident involving Maintenance Contractor or the traveling public that causes damage to any Project appurtenance, structure, improvement or fixture.
(v) with respect to any accident/incident, the information provided shall include as a minimum:
    a. The date and time of the accident/Incident;
    b. The location of the problem;
    c. The nature of the problem;
    d. All parties involved in the Incident, including names, addresses, telephone numbers, and their involvement (including witnesses);
    e. Responsible party and insurance information;
    f. Action taken to address the Incident; and
    g. Documentation of traffic control in place at location.

E. When a Maintained Element is constructed, installed, maintained, inspected, modified, replaced, or removed, the MMIS shall be updated within three (3) days of completion of such work. Defects shall be recorded in the MMIS within three (3) days of their coming to the attention of Maintenance Contractor. All other recording requirements shall be recorded in the MMIS within 15 days of completion or occurrence of the relevant activity.

F. The MMIS shall be fully populated and operational prior to the commencement of Maintenance Services and kept updated and operational for the duration of the Maintenance Term. Maintenance Contractor shall provide equipment, facilities, and training necessary to permit remote, real-time, dedicated high-speed access to the MMIS, via one terminal each, for TxDOT. Maintenance Contractor shall handover the MMIS and everything required for its operation to TxDOT, or other entity as directed by TxDOT, upon expiration or earlier termination of Maintenance Term.

G. In the event that TxDOT does not require Maintenance Contractor to provide a computer-based Maintenance Management Information System, Maintenance Contractor shall provide TxDOT with all relevant Maintained Element information including, but not limited to: location to the nearest tenth mile, using the posted reference marker number, GIS data and control number for Bridge Class Structures; asset description, date of installation, type of failure, date-time of failure, date-time of response to the site and date-time returned to service, preventive maintenance work, scheduled work, work repair code, time of failure, and time to repair. A report shall be available to summarize work by TxDOT "function code", Maintained Element, reference marker, and unit of measurement, as the same described in the aforementioned MMIS User Manual, to categorize the Maintenance Services performed by the Maintenance Contractor. When a Maintained Element is constructed, installed,

maintained, inspected, modified, replaced, or removed, the Maintenance Contractor shall provide TxDOT with all relevant information within three (3) days of completion of such work. Maintenance Contractor shall provide all relevant information concerning Defects within three (3) days of their coming to the attention of Maintenance Contractor. All other information requirements shall be provided to TxDOT within 15 days of completion or occurrence of the relevant activity.

1908 Performance Requirements

A. In the Maintenance Management Plan (MMP), Maintenance Contractor shall set forth annually, for TxDOT approval, a revised version of Attachment 1 that shall, except where indicated below, be consistent with Attachment 1 to this Maintenance Specification.

B. The first such submittal of the revised version of Attachment 1 shall be submitted for TxDOT approval as a condition precedent to the commencement of Maintenance Services The revised Attachment 1 to this Maintenance Specification shall set forth the following information:

Table 1908-1 – Attachment 1 Information Matrix

Heading in Attachment 1 to this Maintenance Specification	**Contents of Maintenance Contractor's submitted revised Attachment 1 to this Maintenance Specification**
Element	As Attachment 1
Element Category	As Attachment 1
Performance Requirements	As Attachment 1
Response to Defects	As Attachment 1
Inspection and measurement method	Subject to proposed amendment by Maintenance Contractor as part of annual submittal of MMP
Measurement record	Subject to proposed amendment by Maintenance Contractor as part of annual submittal of MMP
Target	As Attachment 1 to this Maintenance Specification

C. In its annual submittals of the revised Attachment 1 to this Maintenance Specification, Maintenance Contractor shall propose for TxDOT's approval such amendments to the inspection and measurement methods and measurement records as are necessary to cause these to comply with this Maintenance Specification.

D. Within this Maintenance Specification, reference to the revised Attachment 1 to this Maintenance Specification means the latest approved version of the revised Attachment 1 to this Maintenance Specification as included within Maintenance Contractor's MMP.

E. Failure to meet a Performance Requirement, whether through failure to meet the Target for any relevant measurement record, or for any other reason, shall be deemed to be a Defect. Whenever a Defect is identified, either by Maintenance Contractor's inspections, by TxDOT,

or any third party, Maintenance Contractor shall act to remedy, repair, and record the Defect as described in paragraphs F, G, and H of this Section 1908.

F. The remedy or repair of any Maintained Element shall meet or exceed the standard identified in the column entitled "Target" in Attachment 1 to this Maintenance Specification and a Maintenance Record shall be created by Maintenance Contractor to verify that this requirement has been met.

G. The period for "Response to Defects" set forth in Attachment 1 to this Maintenance Specification shall be deemed to commence upon the Maintenance Contractor becoming aware of the Defect.

H. Where action is taken to remedy or repair any Defect in any Maintained Element of the Project in accordance with this Section 1908, Maintenance Contractor shall create a Maintenance Record that identifies the nature of the remedy or repair. Maintenance Contractor shall include within the relevant Maintenance Record a measurement record compliant with the requirements set forth in the column entitled "Measurement Record" in Attachment 1 to this Maintenance Specification.

1909 Inspections

A. Maintenance Contractor shall establish inspection procedures and plan and implement a program of inspections of the Project to be included within the Project Schedule that:

(i) verifies the continuing safety of the Project for Users;

(ii) prioritizes Category 1 Defects;

(iii) ensures that all Category 1 Defects are identified and repaired such that the hazard to Users is mitigated within the period given in the column entitled "Category 1 Hazard Mitigation" in Attachment 1 to this Maintenance Specification;

(iv) ensures that all Category 1 Defects are identified and permanently remedied within the period given in the column entitled "Category 1 Permanent Remedy" in Attachment 1 to this Maintenance Specification;

(v) identifies Category 2 Defects to be included for repair either within Maintenance Contractor's annually recurring highway maintenance and repair program or as Capital Asset Replacement Work;

(vi) ensures that all Category 2 Defects are identified and permanently repaired within the period given in the column entitled "Category 2 Permanent Repair" in Attachment 1 to this Maintenance Specification;

(vii) is responsive to reports or complaints received from Customer Groups;

(viii) takes account of Incidents and Emergencies affecting the Project;

(ix) monitors the effects of extreme weather conditions; and

(x) collates data to monitor performance of the Project and to establish priorities for future maintenance operations and Capital Asset Replacement Work.

B. Maintenance Contractor shall ensure that personnel performing inspections of road pavements and structures are certified as inspectors and/or raters in accordance with TxDOT's PMIS program.

C. The periods stated in Attachment 1 to this Maintenance Specification under the headings of Category 1 Defects and Category 2 Defects shall be deemed to start upon the date Maintenance Contractor first obtained knowledge of, or first reasonably should have known of, the defect. For this purpose, Maintenance Contractor shall be deemed to first obtain knowledge of the failure not later than the date of delivery of the initial notice to Maintenance Contractor. Maintenance Contractor shall investigate reports and complaints on the condition of the Project received from all sources. Maintenance Contractor shall record such reports and complaints as Maintenance Records together with details of all relevant inspections and actions taken in respect of Defects, including temporary protective measures and repairs.

D. In performing inspections to identify Category 1 and Category 2 Defects, Maintenance Contractor shall, for any Maintained Element, conform at a minimum to the inspection standards set forth for that Maintained Element in the column entitled "Inspection and Measurement Method" on Attachment 1 to this Maintenance Specification.

E. Maintenance Contractor shall perform General Inspections in accordance with the MMP so that: the repairs of all Defects are included in planned programs of work; and in any case in accordance with paragraph G of this Section 1909.

F. Maintenance Contractor shall record details of the manner of inspection (e.g. center Lane Closure or shoulder), the weather conditions and any other unusual features of the inspection, on O&M Records in respect of General Inspections.

G. Maintenance Contractor shall perform General Inspections such that Category 2 Defects are identified and repaired within the period shown in Attachment 1 to this Maintenance Specification or, if the Defect is not specified in Attachment 1 to this Maintenance Specification, within six (6) months of the Defect occurring; provided that Defects which require special equipment to identify or are listed under the heading of Specialist Inspections in Table 1909-1 may have different identification periods.

H. Maintenance Contractor shall undertake Specialist Inspections for Maintained Elements listed in Table 1909-1 and shall include the inspection results as Maintenance Records.

Table 1909-1 – Specialist Inspections

Maintained Element	Specialist Inspection
All Maintained Elements in Element Category 'Roadway' in Attachment 1 to this Maintenance Specification	Annual survey of pavement condition for the entire Project, including main lanes, ramps, and frontage roads, undertaken using automated condition survey equipment to measure all necessary criteria including: ruts, skid resistance, and ride quality according to the inspection and measurement methods set forth in Attachment 1 to this Maintenance Specification
All Maintained Elements in Element Category 'Structures' in Attachment 1 to this Maintenance Specification	Inspections and load rating calculations at the frequency specified in the CMA Documents. In addition, NBIS inspections as per FHWA regulations and at the frequency specified in FHWA regulations.

1910 Maintenance Contractor Audit Inspections

A. Maintenance Contractor shall undertake Audit Inspections of TxDOT's randomly selected Auditable Sections for audit purposes at least once quarterly. The Audit Inspections shall be designed such that over a period of one year the sample sections are statistically valid for 100% of the assets. Maintenance Contractor shall assess the condition of each Maintained Element using the inspection and measurement method set forth in the column entitled "Inspection and Measurement Method" in Attachment 1 to this Maintenance Specification.

B. Maintenance Contractor shall create a new Maintenance Record for each Maintained Element physically inspected in accordance with the column entitled "Measurement Record" on Attachment 1 to this Maintenance Specification. Audit Inspections shall be undertaken to a schedule agreed with TxDOT on Auditable Sections randomly selected by TxDOT. TxDOT shall be given the opportunity by seven (7) days' notice, to accompany Maintenance Contractor when it undertakes the physical inspections associated with the Audit Inspections.

1911 Asset Condition Score by Maintenance Contractor

A. Within ten (10) days of the quarterly Audit Inspections, Maintenance Contractor shall assess its achievement of the Performance Requirements by self scoring against the Targets set forth on Attachment 1 to this Maintenance Specification.

B. Maintenance Contractor shall report quarterly to TxDOT an Asset Condition Score to include, for each Element Category, all of the Auditable Sections inspected in the most recent Audit Inspection. Maintenance Contractor shall assess the Asset Condition Score according to the measurement criteria set forth in Table 1911-1.

Table 1911-1 – Asset Condition Score Criteria for Element Categories
(Reported quarterly for each Element Category for all inspected Auditable Sections)

Score	Criteria
5	• Targets for individual Elements are almost entirely met (95% to 100% compliance with the relevant Targets for each Element within each Auditable Section), and • Is fully functional and in nearly new condition, meeting or exceeding Performance Requirement.
4	• Targets for individual Elements are substantially met (less than 95% compliance and 90% or greater compliance with the relevant Targets for each Element within each Auditable Section), and • Is functional and in good condition, meeting Performance Requirement.
3	• Targets for individual Elements are mostly met (less than 90% compliance and 75% or greater compliance with the relevant Targets for each Element within each Auditable Section), and • Is in fair condition, but suggesting need for early replacement, renewal or repair of individual Element and/or maintenance or operation improvement action to meet Performance Requirement.
2	• Targets for individual Elements are barely met (less than 75% compliance and 50% or greater compliance with the relevant Targets for each Element within each Auditable Section), or • In poor condition demonstrating need for immediate replacement, renewal or repair of individual Element and/or immediate change to MMP.
1	• Targets for individual Elements are not met (less than 50% compliance with the relevant Targets for each Element within each Auditable Section), or • In very poor condition demonstrating need for immediate replacement, renewal or repair of individual Element and/or immediate change to MMP.

Notes to Table 1911-1:

1. The Asset Condition Score for any Element Category shall be determined by the lowest Asset Condition Score for any Element within the Element Category. The calculation of Asset Condition Score is demonstrated by the following example:

Assume there are 52 Auditable Sections, of these 25%, or 13 are audited each quarter. If there are five Targets to be assessed for Element "pavement markings", there are therefore 5 x 13 = 65 measurement records for pavement markings. If 62 of these measurement records meet the Target, there would be 95.38% compliance and an Asset Condition Score of five assigned for that Element. However, if one of the remaining Elements in the Element Category achieves an Asset Condition Score of four the Asset Condition Score for the Element Category shall be four.

2. The mean of the Asset Condition Scores across Elements in any Element Category is calculated to 1 decimal point and also recorded.

3. Where a measurement record relates to a service measured over time or an Element that is not represented in more than 25% of Auditable Sections then the Asset Condition Score will be based on the total service and not a 5% random sample. This applies to the performance measurement of Element Categories: structures, traffic signals, Incident response, customer service, snow and ice control, and facility buildings or other Element Categories meeting the above criteria identified following establishment of the Auditable Sections.

4. Pavement Condition Score is a component of Asset Condition Score for Element Category "Pavement", but Pavement Condition Score shall also be reported annually for the entire Project.

5. Maintenance Contractor acknowledges that Asset Condition Score is a mechanism to benchmark the performance of the Project against the performance of other similar facilities and that TxDOT may, during the Term, alter the Asset Condition Score criteria to reflect Good Industry Practice.

6. "Mean" in this context shall be the arithmetic mean.

C. Where specific Measurement criteria are not provided in Attachment 1 to this Maintenance Specification, Maintenance Contractor shall use Good Industry Practice to assess the Asset Condition Score against the general criteria stated in Table 1911-1.

2000 BICYCLE AND PEDESTRIAN FACILITIES

It is not envisioned that there will be any significant requirements for maintenance services to bicycle and pedestrian facilities as part of Maintenance Services, with the exception of the Margaret McDermott Bridges. Bicycle and pedestrian facility requirements due to reconstruction, etc., shall be dealt with in accordance with appropriate sections of DBA Documents.

2100 TOLLING

Not used.

2200 OPERATIONS

Not used.

ATTACHMENT 1 TO THE MAINTENANCE SPECIFICATION
Performance and Measurement Table Baseline

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
1) ROADWAY									
							Unless stated otherwise, measurements shall be conducted using procedures, techniques, and measuring equipment consistent with TxDOT's *Pavement Management Information System Rater's Manual.* Unless otherwise stated, pavement performance measurement records relate to 0.5-mile sections as described in the *Pavement Management Information System Rater's Manual*.		
	1.1	Obstructions and debris	Roadway and clear zone free from obstructions and debris	2 hrs	N/A	N/A	Visual Inspection	Number of obstructions and debris	Nil
	1.2	Pavement	All roadways have a smooth surface course (including bridge decks, covers, gratings, frames and boxes) with adequate skid resistance and free from Defects.	24 hrs	28 days	6 months	**a) Pavement Condition Score** Measurements and inspections necessary to derive Pavement Condition Score	Pavement Condition Score for 80% of Auditable Sections exceeding: • Mainlanes, collector-distributor roads, and ramps – 90 • Frontage roads – 80	 100% 100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	1.2 cont			24 hrs	28 days	6 months		Pavement Condition Score for each Auditable Section exceeding:	
								• Mainlanes, collector-distributor roads, and ramps – 80	100%
								• Frontage roads – 70	100%
							b) Ruts – Mainlanes, shoulders & ramps Depth as measured using an automated device in compliance with TxDOT Standards.	Percentage of wheel path length with ruts greater than ¼" in depth in each Auditable Section	
								• Mainlanes, collector-distributor roads, shoulders, and ramps – 3%	Nil
								• Frontage roads – 10%	Nil
							10ft straight edge used to measure rut depth for localized areas.	Depth of rut at any location greater than 0.5”	Nil
							c) Ride quality Measurement of International Roughness Index (IRI)	For 80% of all Auditable Sections measured, IRI throughout 98% of each	

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	1.2 cont			24 hrs	28 days	6 months	according to TxDOT standard Tex-1001-S, Operating Inertial Profilers and Evaluating Pavement Profiles	Auditable Section is less than or equal to: • Mainlanes, collector-distributor roads, ramps – 95" per mile** • Frontage roads – 120" per mile**	100% 100%
							** To allow for measurement bias, an adjustment of -10 (minus ten) is made to IRI measurements for concrete pavements before assessing threshold compliance.	IRI measured throughout 98% of Auditable Section of less than or equal to: • Mainlanes, collector-distributor roads, ramps 120" per mile** • Frontage roads – 150" per mile**	100% 100%
							(Capital Asset Replacement Work and new construction subject to construction quality standards)	Mainlanes, collector-distributor roads, ramps, 0.1 mile average – 150" per mile** Frontage roads, 0.1 mile average – 180" per mile**	100% 100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	1.2 cont						3-ft straightedge used to measure discontinuities	IRI measured throughout 98% of each lane containing a bridge deck in any Auditable Section , 0.1 mile average – 200" per mile** Individual discontinuities greater than 0.75"	100% Nil
							d) Failures Instances of failures exceeding the failure criteria set forth in the TxDOT PMIS Rater's Manual, including potholes, base failures, punchouts and jointed concrete pavement failures	Occurrence of any failure	Nil
				24 hrs	28 days	6 months	**e) Edge drop-offs** Physical measurement of edge drop-off level compared to adjacent surface	Instances of edge drop-off greater than 2" (Number)	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
	1.2 cont						**f) Skid resistance** ASTM E 274/E274M-1 Standard Test Method for Skid Resistance Testing of Paved Surfaces at 50 MPH using a full scale smooth tire meeting the requirements of ASTM E 524-08 .	• Mainlanes, collector-distributor roads, shoulders and ramps – Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5-mile section of mainlanes, shoulders and ramps are in excess of 30.	100%
								• Frontage roads –Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5-mile section of frontage roads is in excess of 30.	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	1.2 cont							When the Skid Number is below 25 and/or when required by the Wet Weather Accident Reduction Program, areas categorized as high risk, Contractor shall perform a site investigation and perform required corrective action.	100%
			Road users warned of potential skidding hazards	24hrs	7days	N/A	**Skid resistance** (as above)	Instances where road users warned of potential skidding hazard where remedial action is identified.	100%
	1.3	Crossovers and other paved areas	Crossovers and other paved areas are free of Defects	24 hrs	28 days	6 months	**a) Potholes** **b) Base failures**	Potholes of low severity or higher (Number) Base failures of low severity or higher (Number)	Nil Nil
	1.4	Joints in concrete	Joints in concrete paving are sealed and watertight	24 hrs	28 days	6 months	Visual inspection of joints	Length unsealed joints greater than ¼"	Nil
	1.4 cont		Longitudinal joint separation	24 hrs	28 days	6 months	Measurement of joint width and level difference of two sides of joints	Joint width more than 1" or faulting more than ¼”	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	1.5	Curbs	Curbs are free of defects	24 hrs	28 days	6 months	Visual inspection	Length out of alignment	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
2) DRAINAGE									
	2.1	Pipes and Channels	Each element of the drainage system is maintained in its proper function by cleaning, clearing and/or emptying as appropriate from the point at which water drains from the travel way to the outfall or drainage way.	24 hrs	28 days	6 months	Visual inspection supplemented by CCTV where required to inspect buried pipe work	Length with less than 90% of cross section clear (feet)	Nil
	2.2	Drainage treatment devices	Drainage treatment and balancing systems, flow and spillage control devices function correctly and their location and means of operation is recorded adequately to permit their correct operation in Emergency.	24 hrs	28 days	6 months	Visual inspection	Devices functioning correctly with means of operation displayed (Number)	100%
	2.3	Travel Way	The travel way is free from water to the extent that such water would represent a hazard by virtue of its position and depth.	24 hrs	28 days	6 months	Visual inspection of water on surface	Instances of hazardous water build-up	Nil
	2.4	Discharge systems	Surface water discharge systems perform their proper function and discharge to groundwater and waterways complies with the relevant legislation and permits.	24 hrs	28 days	6 months	Visual inspection and records	Non-compliances with legislation	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	2.5	Protected Species	Named species and habitats are protected.	24 hrs	28 days	6 months	Visual inspection	Compliance with the requirement	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
3) STRUCTURES									
	3.1	Structures having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or springlines of arches or extreme ends of openings or multiple boxes (except Margaret McDermott Bike/Pedestrian Bridges)	Substructures and superstructures are free of: • blocked drains, weep pipes manholes and chambers • blocked drainage holes in structural components • defects in joint sealants • defects in pedestrian protection measure • scour damage • corrosion of rebar • paint system failures • impact damage by any Maintenance Contractor-Related Entity	24 hrs	28 days	6 months	Inspection and assessment in accordance with the requirements of the TxDOT Bridge inspection Manual.	Records as required in the TxDOT Bridge Inspection Manual Occurrences of condition rating below seven for any deck, superstructure or substructure All condition states to be one for all structure components	100% Nil 100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	3.2	Structure components (except Margaret McDermott Bike/Pedestrian Bridges)	i) Expansion joints are free of: • dirt debris and vegetation • defects in drainage systems • loose nuts and bolts • defects in gaskets ii) The deck drainage system is free of all and operates as intended. iii) Parapets are free of: • loose nuts or bolts • blockages of hollow section drain holes • impact damage by any Maintenance Contractor-Related Entity iv) Bearings and bearing shelves are clean.	24 hrs	28 days	6 months	Inspection and assessment in accordance with the requirements of the TxDOT Bridge inspection Manual.	Records as required in the TxDOT Bridge Inspection Manual Occurrences of condition rating below seven for any deck, superstructure or substructure All condition states to be one for all structure components	100% Nil 100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
	3.2 cont.		v) Sliding and roller surfaces are clean and greased to ensure satisfactory performance. Additional advice contained in bearing manufacturers' instructions in the Structure Maintenance Manual is followed. Special finishes are clean and perform to the appropriate standards. vi) All non-structural items such as hoists and electrical fixings, operate correctly, are clean and lubricated as appropriate, in accordance with the manufacturer's recommendations, and certification of lifting devices is maintained.	24 hrs	28 days	6 months			

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	3.3	Margaret McDermott Bike/Pedestrian Bridges	i) Substructures and superstructures are free of: • blocked drains, weep pipes • blocked drainage holes in structural components • defects in arch and suspension elements • defects in joint sealants • defects in pedestrian protection measure • scour damage • corrosion of rebar • paint system failures • impact damage by any Maintenance Contractor-Related Entity ii) Expansion joints are free of: • dirt debris and vegetation • defects in drainage systems • loose nuts and bolts • defects in gaskets iii) The deck drainage system is free of all and operates as intended. iv) Parapets are free of: • loose nuts or bolts • blockages of hollow section drain holes • impact damage by any Maintenance Contractor-Related Entity	24 hrs	28 days	6 months	Inspection and assessment in accordance with the following: Routine Bridge Inspection performed in conjunction with the adjacent vehicular frontage road bridge inspections per Section 3.2 Structure Components. Fracture Critical Member Inspection performed on a five (5) year cycle. In conjunction with the fracture critical member inspection, the concrete deck elevations shall be field surveyed at each grid line along the face of each pedestrian rail and the inside face of curb (3 points per grid line). The concrete deck elevations shall be provided using the same datum as the original construction.	Records as required in the TxDOT Bridge Inspection Manual and supplemented by the Margaret McDermott Owners Manual Occurrences of condition rating below seven for any deck, superstructure or substructure All condition states to be one for all structure components	100% Nil 100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
			v) Access hatches and access doors are operable vi) Bearings and bearing shelves are clean. vii) Sliding and roller surfaces are clean and greased to ensure satisfactory performance. Additional advice contained in bearing manufacturers' instructions in the Structure Maintenance Manual is followed. Special finishes are clean and perform to the appropriate standards. viii) All non-structural items such as hoists and electrical fixings, operate correctly, are clean and lubricated as appropriate, in accordance with the manufacturer's recommendations, and certification of lifting devices is maintained. ix) All guardrails, safety barriers, concrete barriers, etc., are maintained free of Defects. They are appropriately placed and correctly installed at the						

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
			correct height and distance from roadway or obstacles. Installation and repairs shall be carried out in accordance with the requirements of NCHRP 350 standards. x) All lighting is free from defects and provides acceptable uniform lighting quality xi) Lanterns are clean and correctly positioned xii) Lighting units are free from accidental damage or vandalism xiii) Electricity supply, feeder pillars, cabinets, switches and fittings are electrically, mechanically and structurally sound and functioning xiv) All access panels in place at all times.						
	3.4	Non-bridge class culverts	Non-bridge-class culverts are free of: • vegetation and debris and silt • defects in sealant to movement joints • scour damage	24 hrs	28 days	6 months	Visual inspection	Number with vegetation, debris and silt Number with defects in sealant and movement joints	Nil Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
								Number with scour damage	Nil
	3.5	Gantries and high masts	Sign signal gantries, high masts are structurally sound and free of: • loose nuts and bolts • defects in surface protection systems	24 hrs	28 days	6 months	Visual inspection	Number with loose assemblies Number with defects in surface protection Number with graffiti	Nil Nil Nil
	3.6	Load ratings	All structures maintain the design load capacity.	24 hrs	28 days	6 months	Load rating calculations in accordance with the Manual for Bridge Evaluation and the TxDOT Bridge Inspection Manual. Load restriction requirements as per the TxDOT Bridge Inspection Manual	Number of load restrictions for Texas legal loads (including legally permitted vehicles)	Nil
	3.7	Access points	All hatches and points of access have fully operational and lockable entryways.	24 hrs	28 days	6 months	Visual Inspection	Number with defects in locks or entryways	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
	3.8	Mechanically Stabilized Earth and Retaining Walls	Mechanically Stabilized Earth and Retaining Walls free of: • blocked weep holes • undesirable vegetation • defects in joint sealants • defects in pedestrian protection • scour damage • corrosion of reinforcing bars • paint system failure • concrete spalling • impact damage by any Maintenance Contractor-Related Entity Parapets free of: • loose nuts and bolts • blockage of drain holes • undesirable vegetation • impact damage by any Maintenance Contractor-Related Entity • concrete spalling	24 hrs	28 days	6 months	Inspection and assessment in accordance with the requirements of federal Nations Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways - Part 650, the TxDOT Bridge Inspection Manual and the Federal Highway Administration's Bridge Inspector's Reference Manual.	Records as required in the TxDOT Bridge Inspection Manual	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS									
	4.1	Pavement markings	Pavement markings are: • clean and visible during the day and at night • whole and complete and of the correct color, type, width and length • placed to meet the TMUTCD and TxDOT's Pavement Marking Standard Sheets	24 hrs	28 days	6 months	a) Markings - General Portable retroreflectometer, which uses 30 meter geometry meeting the requirements described in ASTM E 1710 Physical measurement	Length meeting the minimum retroreflectivity 175 mcd/sqm/lx for white Length meeting the minimum retroreflectivity 125 mcd/sqm/lx for yellow Length with more than 5% loss of area of material at any point Length with spread more than 10% of specified dimensions.	100% 100% Nil Nil
							b) Profile Markings Visual inspection	Length performing its intended function and compliant with relevant regulations	

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
	4.2	Raised reflective markers	Raised reflective pavement markers, object markers and delineators are: • clean and clearly visible • of the correct color and type • reflective or retroreflective as TxDOT standard • correctly located, aligned and at the correct level • are firmly fixed • are in a condition that will ensure that they remain at the correct level.	24 hrs	28 days				100%
	4.3	Delineators & Markers	Object markers, mail box markers and delineators are: • clean and visible • of the correct color and type • legible and reflective • Straight and Vertical	24 hrs	28 days	6 months	Visual inspection	Number of markers associated with road markings that are ineffective in any 10 consecutive markers. (Ineffective includes missing, damaged, settled or sunk) [A minimum of four markers should be visible at 80' spacing when viewed under low beam headlights] Uniformity (replacement	Nil 100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
								rpms having equivalent physical and performance characteristics to adjacent markers).	
						6 months	Visual inspection	Number of object markers or delineators defective or missing	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
5) GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS									
	5.1	Guard rails and safety barriers	All guardrails, safety barriers, concrete barriers, etc., are maintained free of Defects. They are appropriately placed and correctly installed at the correct height and distance from roadway or obstacles. Installation and repairs shall be carried out in accordance with the requirements of NCHRP 350 standards.	24 hrs	28 days				
	5.2	Impact attenuators	All impact attenuators are appropriately placed and correctly installed	24 hrs	7 days	6 months	Visual inspection	Length of road restraint systems correctly installed Length free from defects Length at correct height Length at correct distance from roadway and obstacle	100% 100% 100% 100%
	5.2 cont					6 months	Visual inspection	Number correctly placed and installed	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
6) TRAFFIC SIGNS									
	6.1	General – All Signs	i) Signs are clean, correctly located, clearly visible, legible, reflective, at the correct height and free from structural and electrical defects	24 hrs	28 days				
			ii) Identification markers are provided, correctly located, visible, clean and legible			6 months	**a) Retroreflectivity** Coefficient of retro reflectivity	Number of signs with reflectivity below the requirements of TxDOT's TMUTCD	Nil
			iii) Sign mounting posts are vertical, structurally sound and rust free				**b) Face damage** Visual inspection	Number of signs with face damage greater than 5% of area	Nil
			iv) All break-away sign mounts are clear of silt or other debris that could impede break-away features and shall have correct stub heights				**c) Placement** Visual inspection	Signs are placed in accordance with TxDOT's Sign Crew Field Book including not twisted or leaning	100%
	6.1 cont.		v) Obsolete and redundant signs are removed or replaced as appropriate vi) Visibility distances meet the stated requirements vii) Sign information is of the				**d) Obsolete signs** Visual inspection	Number of obsolete signs	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
			correct size, location, type and wording to meet its intended purpose and any statutory requirements viii) All structures and elements of the signing system are kept clean and free from debris and have clear access provided. ix) All replacement and repair materials and equipment are in accordance with the requirements of the TMUTCD x) Dynamic message signs are in an operational condition						
	6.2	General - Safety critical signs	Requirements as 6.1, Plus: "Stop," "Yield," "Do Not Enter," "One Way" and "Wrong Way" signs are clean legible and undamaged.	2hrs	1 week		**e) Sign Information** Visual inspection **f) Dynamic Message Signs** Visual inspection	Sign information is of the correct size, location, type and wording to meet its intended purpose Dynamic message signs are fully functioning	100% 100%
	6.2 cont					6 months	Visual inspection	Number of damaged Safety critical signs	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
7) TRAFFIC SIGNALS									
	7.1	General	i) Traffic Signals and their associated equipment are: • clean and visible • correctly aligned and operational • free from damage caused by accident or vandalism • correctly aligned and operational ii) Signal timing and operation is correct iii) Contingency plans are in place to rectify Category 1 defects not immediately repairable to assure alternative traffic control is provided during a period of failure	2 hrs	24 hrs				
	7.2	Soundness	Traffic Signals are structurally and electrically sound	24 hrs	28 days	6 months	**a) General condition** Visual inspection **b) Damage** Visual inspection **c) Signal timing** Timed measurements **d) Contingency plans**	Signals are clean and visible Signals are undamaged Installations have correct signal timings	100% 100% 100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
							Records Review	Full contingency plans are in place	100%
						6 months	**a) Structural soundness** Visual inspection		
	7.3	Identification marking	Signals have identification markers and the telephone number for reporting faults are correctly located, clearly visible, clean and legible	N/A	28 days		**b) Electrical soundness** Testing to meet NEC regulations	Inspection records showing safe installation and maintenance	100%
	7.4	Pedestrian Elements and Vehicle Detectors	All pedestrian elements and vehicle detectors are correctly positioned and fully functional at all times	24 hrs	28 days	6 months	Visual inspection	Inspection records showing identification markers and other information are easily readable	100%
						6 months	Visual Inspection	Inspection records showing compliance	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
8) LIGHTING									
	8.1	Roadway Lighting – General	i) All lighting is free from defects and provides acceptable uniform lighting quality ii) Lanterns are clean and correctly positioned iii) Lighting units are free from accidental damage or vandalism iv) Columns are upright, correctly founded, visually acceptable and structurally sound	24 hrs	28 days				
	8.2	Sign Lighting	Sign lighting is fully operational	24 hrs	28 days	6 months	**a) Mainlane lights operable** Night time inspection or automated logs **b) Mainlane lights out of action** Night time inspection or automated logs	Number of sections with less than 90% of lights functioning correctly at all times Instances of more than two consecutive lights out of action	Nil Nil
	8.3	Electrical Supply	Electricity supply, feeder pillars, cabinets, switches and	24 Hrs	7 Days	6 months	Night time inspection or automated logs	Instances of more than one bulb per sign not working	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
			fittings are electrically, mechanically and structurally sound and functioning						
	8.4	Access Panels	All access panels in place at all times.	24 Hrs	7 Days	1 Month	Testing to meet NEC regulations, visual inspection	Inspection records showing safe installation and maintenance	100%
	8.5	High Mast Lighting	i) All high mast luminaries functioning on each pole ii) All obstruction lights are present and working (if required) iii) Compartment door is secure with all bolts in place iv) All winch and safety equipment is correctly functioning and maintained without rusting or corrosion (for structural requirements refer to Element Category 3)	24 hrs	48 hrs	1 Month	Visual Inspection	Instances of missing access panels	Nil
						1 Month	Yearly inspection and night time inspections or automated logs	Instances of two or more lamps not working per high mast pole Identification of other defects	Nil Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
9) FENCES, WALLS AND SOUND ABATEMENT									
	9.1	Design and Location	Fences and walls act as designed and serve the purpose for which they were intended	24 hrs	28 days				
	9.2	Construction	Integrity and structural condition of the fence is maintained	24 hrs	28 days	6 months	Visual Inspection	Inspection records showing compliance	100%
						6 months	Structural assessment if visual inspection warrants	Inspection records showing compliance	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
10) ROADSIDE MANAGEMENT									
	10.1	Vegetated Areas – Except landscaped areas – General	Vegetation is maintained so that: i) Height of grass and weeds is kept within the limits described for urban and rural areas. Mowing begins before vegetation reaches the maximum height.	24 hrs	7 days				
			ii) Spot mowing at intersections, ramps or other areas maintains visibility of appurtenances and sight distance.			28 days	**a) Urban areas** Physical measurement of height of grass and weeds	Individual measurement areas to have 95% of height of grass and weeds between 5 in. and 18 in	100%
	10.1 cont.		iii) Grass or vegetation does not encroach into or on paved shoulders, main lanes, sidewalks, islands, riprap, traffic barrier or curbs.	24 hrs	7 days		**b) Rural areas** Physical measurement of height of grass and weeds	Individual measurement areas to have 95% of height of grass and weeds between 5 in. and 30 in	100%
			iv) An herbicide program is undertaken in accordance with the TxDOT Herbicide Manual to control noxious weeds and to eliminate grass in pavement or concrete.				**c) Encroachment** Visual inspection of instances of encroachment of vegetation	Occurrences of vegetation encroachment in each auditable section	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
			v) A full width mowing cycle is completed after the first frost.			28 days	**d) Wildflowers** Visual Inspection with audit of process.	Adherence to vegetation management manuals	100%
			vi) Wildflowers are preserved utilizing the guidelines in the mowing specifications and TXDOT *Roadside Vegetation Manual*.				**e) Sight lines** Visual inspection	Instances of impairment of sight lines or sight distance to signs	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
	10.2	Landscaped Areas	i) All landscaped areas are maintained to their originally constructed condition. Landscaped areas are as designated in the plans. ii) Mowing, litter pickup, irrigation system maintenance and operation, plant maintenance, pruning, insect, disease and pest control, fertilization, mulching, bed maintenance, watering is undertaken as per FMP. iii) The height of grass and weeds is kept between 2” and 8”. Mowing begins before vegetation reaches 8 in iv) Damaged or dead vegetation is replaced.	24 hrs	7 days				
	10.3	Fire Hazards	Fire hazards are controlled	24 hrs	7 days	28 days	Visual inspection	Inspection records showing compliance	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	10.4	Trees, brush and ornamentals	i) Trees, brush and ornamentals on the right of way, except in established no mow areas, are trimmed in accordance with TxDOT standards. ii) Trees, brush and ornamentals are trimmed to insure they do not interfere with vehicles or sight distance, or inhibit the visibility of signs. iii) Dead trees, brush, ornamentals and branches are removed. Potentially dangerous trees or limbs are removed. iv) All undesirable trees and vegetation are removed. Diseased trees or limbs are treated or removed by licensed contractors.	24 hrs	7 days	28 days	Visual inspection	Instances of dry brush or vegetation forming fire hazard	Nil
	10.5	Wetlands	Wetlands are managed in accordance with the permit requirements	24 hrs	7 days	28 days	Visual inspection	Inspection records showing compliance	100%
						28 days	Visual inspection, assessment of permit issuers	Instances of permit requirements not met	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
11) REST AREAS AND PICNIC AREAS									
	11.1	Rest areas and picnic areas	i) Picnic areas are clean and neat in appearance.	24 hrs	28 days				
			ii) Trash barrels are painted and attached to their supports to prevent stealing.			6 months	Inspection records showing compliance	Instances where 90% of measured area shall have grass and weeds height between 2 in. and 8 in.	100%
			iii) Site free of any visible litter, all litter properly disposed. Litter removed from the picnic area grounds and barrels before being allowed to accumulate outside of the barrels.	24 hrs	28 days			Mowing shall begin before vegetation reaches 8 in.	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
	11.1 cont		iv) All vehicles used in transporting litter are equipped to prevent the accumulated litt er from being strewn along the roadway.			6 months		Number of bare ground areas larger than 5 square feet	Nil
			v) Vegetation damaged due to improper or careless mowing and trimming operations or any other reason is replaced.					Number of prohibited, invasive or noxious weeds present.	Nil
			vi) Weeds, grass and other undesirable growth are removed from beds of plants and shrubs as needed. Trees and shrubs are trimmed neatly. All curbs and sidewalks are edged and repaired.					Occurrences of encroachment of vegetation or debris for more than two (2) inches onto any curb or sidewalk located throughout each rest area.	Nil
			vii) All picnic tables are clean, free of stains and free of any defect.					Occurrences of deviation of soil or mulch above or below the top of the curb.	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	11.1 cont		viii) All directional, informational, safety and any other type of signage is properly installed, contains accurate information and is visible from a reasonable distance.					Paved surfaces maintained clean and safe with minimal obstruction.	100%
			ix) All striping is intact and all parking and travel areas are clearly marked.					Occurrences of undermining greater than 2”	Nil
			x) All curbs are in place and intact.					Number of unsealed cracks > ½ inch.	Nil
								Number of lights fully functional.	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
12) EARTHWORKS, EMBANKMENTS AND CUTTINGS									
	12.1	Slope Failure	All structural or natural failures of the embankment and cut slopes of the Facility are repaired	24 hrs	28 days				
	12.2	Slopes - General	Slopes are maintained in general conformance to the original graded cross-sections, the replacement of landscaping materials, reseeding and re-vegetation for erosion control purposes and removal and disposal of all eroded materials from the roadway and shoulders	24 hrs	28 days	6 months	Visual inspection by geotechnical specialist and further tests as recommended by the specialist	Recorded instances of slope failure	Nil
						6 months		Inspection records showing compliance	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
13) ITS EQUIPMENT									
	13.1	ITS Equipment – Maintenance	All ITS equipment is fully functional and housing is functioning and free of defects. i) All equipment and cabinet identification numbers are visible, sites are well drained and access is clear. ii) Steps, handrails and accesses are kept in a good condition. iii) Access to all communication hubs, ground boxes, cabinets and sites is clear. iv) All drainage is operational and all external fixtures and fitting s are in a satisfactory condition. v) All communications cable markers, cable joint markers and duct markers are visible and missing markers are replaced. vi) Backup power supply system is available at all times	24 hrs		14 days			

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	13.2	VES Equipment - Maintenance	All VES equipment is kept clean, the identification numbers are visible.	24 hrs	14 days	1 month	Visual Inspection	Inspection records showing compliance	100%
	13.3	Dynamic Message Sign Equipment	Dynamic Message Signs are free from faults such as: i) Any signal displaying an message which is deemed to be a safety hazard ii) Failure of system to clear sign settings when appropriate. iii) 2 or more contiguous sign failures that prevent control office setting strategic diversions iv) Signs displaying an incorrect message.	2 hrs	24 hrs	1 month	Visual Inspection	Inspection records showing compliance	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
	13.4	CCTV Equipment	CCTV Systems are free from faults that limit the availability of the operators to monitor the area network, such as: i) Failure of CCTV Systems to provide control offices with access and control of CCTV images ii) Failure of a CCTV camera or its video transmission system. iii) Failure of a Pan / Tilt unit or its control system. iv) Moisture ingress onto CCTV camera lens v) Faults that result in significant degradation of CCTV images	2 hrs	24 hrs	14 days	Defect measurement dependent on equipment	Inspection records showing compliance	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
	13.5	Vehicle Detection Equipment	All equipment free of defects and operational problems such as: i) Inoperable loops. ii) Malfunctioning camera controllers.	2 hrs	24 hrs	14 days	Defect measurement dependent on equipment	Inspection records showing compliance	100%
						1 month	Defect measurement dependent on equipment Traffic Detector Loops: Loop circuit's inductance to be > 50 and < 1,000 micro henries. Insulation resistance to be > 50 meg ohms.	Inspection records showing compliance Instances of loops out of compliance	100% Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitiga-tion	Cat 1 Perma-nent Remedy	Cat 2 Perma-nent Repair			
14) TOLLING Facilities and Buildings (Not Used)									

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
15) AMENITY									
	15.1	Graffiti	Graffiti is removed in a manner and using materials that restore the surface to a like appearance similar to adjoining surfaces	24 hrs	28 days	6 months	All graffiti is considered a Category 1 defect	Inspection records showing compliance	100%
	15.2	Animals	All dead or injured animals are removed from the ROW	2 hrs	N/A	N/A	Visual inspection	No dead or injured animals are present on ROW	
	15.3	Abandoned vehicles and equipment	All abandoned vehicles and equipment are removed from the ROW	1 hr	24 hrs	N/A	Visual inspection	No abandoned vehicles or equipment present	
						6 months	All graffiti is considered a Category 1 defect	Inspection records showing compliance	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
16) SNOW AND ICE CONTROL									
	16.1	Travel lanes	Maintain travel way free from snow and ice	2hrs	N/A				
	16.2	Weather Forecasting	weather forecast information is obtained and assessed and appropriate precautionary treatment is carried out to prevent ice forming on the travel way	2hrs	N/A	N/A	Maximum 1hr response time to complete manning and loading of spreading vehicles Maximum 2hrs from departure from loading point to complete treatment and return to loading point Maximum 1hr response time for snow and ice clearance vehicles to depart from base	Inspection records showing compliance	100%
	16.3	Operational Plans	Operate snow and ice clearance plans to maintain traffic flows during and after snowfall and restore the travel way to a clear condition as soon as possible.	2hrs	N/A	N/A	Operations plan details the process and procedures in place and followed	Inspection records showing compliance	100%
						N/A	Operations plan details the process and procedures in place and followed	Inspection records showing compliance	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
17) INCIDENT RESPONSE									
	17.1	General	Respond to Incidents in accordance with the MMP.	1 hr	N/A		Response times met for 98% of incidents measured on a 1 year rolling basis. No complaints from Emergency Services.	Inspection records showing compliance	
	17.2	Hazardous Materials	For any hazardous materials spills, comply with the requirements of the MMP.	1 hr	N/A	N/A	MMP details the process and procedures in place and followed.	Inspection records showing compliance	100%
	17.3	Structural assessment	Evaluate structural damage to structures and liaise with emergency services to ensure safe working in clearing the incident	1 hr	N/A	N/A	FMP details the process and procedures in place and followed.	Inspection records showing compliance	100%
	17.4	Temporary and permanent remedy	Propose and implement temporary measures or permanent repairs to Defects arising from the Incident. Ensure the structural safety of any structures affected by the incident	24 hrs	28 days	N/A	Inspections and surveys as required by incident	Incident reports showing compliance	100%
						N/A	Review and inspection of the incident site	Auditable inspection records showing compliance	100%

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
18) CUSTOMER RESPONSE									
	18.1	Response to inquiries	Timely and effective response to customer inquiries and complaints.	48 hrs	28 days				
				48 hrs	28 days	N/A	Contact the customer within 48 hours following initial customer inquiry.	Number of responses within specified times	100%
	18.2	Customer contact line	Telephone line manned during business hours and 24 hour availability of messaging system. Faults to telephone line or message system rectified	24 hrs	28 days	N/A	Instances of line out of action or unmanned	Operations records showing non availability including complaints from public.	Nil

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 **Hazard Mitiga-tion**	**Cat 1** **Perma-nent Remedy**	**Cat 2** **Perma-nent Repair**			
19) SWEEPING AND CLEANING									
	19.1	Sweeping	i) Keep all channels, hard shoulders, gore areas, ramps, intersections, islands and frontage roads swept clean. ii) Clear and remove debris from traffic lanes, hard shoulders, verges and central reservations, footways and cycle ways. iii) Remove all sweepings without stockpiling in the right-of-way and dispose of at approved tip.	24 hrs	28 days	6 months	Buildup of dirt, ice rock, debris, etc. on roadways and bridges not to accumulate greater than 24" wide or 1/2" deep	Inspection records showing compliance	100%
	19.2	Litter	i) Keep the right of way in a neat condition, remove litter regularly ii) Pick up large litter items before mowing operations. iii) Dispose of all litter and debris collected at an approved solid waste site.	24 hrs	28 days	6 months	No more than 20 pieces of litter per roadside mile shall be visible when traveling at highway speed.	Inspection records showing compliance	100%

ATTACHMENT 2 TO THE MAINTENANCE SPECIFICATION : ELEMENTS FOR WHICH MAINTENANCE SERVICES ARE TO BE PROVIDED.

Maintenance Contractor shall maintain the Elements marked 'R' in column "Required" in the table below to achieve the Performance Requirements set forth in Attachment 1 of the Maintenance Specification. Maintenance Contractor shall maintain the Elements marked 'O' in column "Required" in the table below to achieve the Performance Requirements set forth in Attachment 1 of the Maintenance Specification if TxDOT elects to exercise the option to maintain the Margaret McDermott Bike/Pedestrian Bridges. For purposes of this Attachment 2, Column A shall be applicable for the Initial Maintenance Term, Column B shall be applicable to the Second Maintenance Term, and Column C shall be applicable to the Third Maintenance Term.

ELEMENT CATEGORY	REF	ELEMENT	REQUIRED		
			A	B	C
1) ROADWAY					
	1.1	Obstructions and debris			
	1.2	Pavement	R	R	R
	1.3	Crossovers and other paved areas	R	R	R
	1.4	Joints in concrete	R	R	R
	1.5	Curbs	R	R	R
2) DRAINAGE					
	2.1	Pipes and Channels	R	R	R
	2.2	Drainage treatment devices	R	R	R
	2.3	Travel Way	R	R	R
	2.4	Discharge systems	R	R	R
	2.5	Protected species			
3) STRUCTURES					
	3.1	Structures having an opening measured along the centre of the roadway of more than 20 feet between undercopings of abutments or springlines of arches or extreme ends of openings or multiple boxes (except the Margaret McDermott Bike/Pedestrian Bridges)	R	R	R
	3.2	Structure components (except the Margaret McDermott Bike/Pedestrian Bridges)	R	R	R
	3.3	Margaret McDermott Bike/Pedestrian Bridges	O	O	O
	3.4	Non-bridge class culverts	R	R	R

ELEMENT CATEGORY	REF	ELEMENT	REQUIRED		
			A	B	C
	3.5	Gantries and high masts	R	R	R
	3.6	Load ratings	R	R	R
	3.7	Access points			
	3.8	Mechanically Stabilized Earth and Retaining Walls	R	R	R
4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS					
	4.1	Pavement markings			
	4.2	Raised reflective markers			
	4.3	Delineators & Markers			
5) GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS					
	5.1	Guard rails and safety barriers			
	5.2	Impact attenuators			
6) TRAFFIC SIGNS					
	6.1	General – All Signs			
	6.2	General - Safety critical signs			
7) TRAFFIC SIGNALS					
	7.1	General			
	7.2	Soundness			
	7.3	Identification marking			
	7.4	Pedestrian Elements and Vehicle Detectors			
8) LIGHTING					
	8.1	Roadway Lighting – General			
	8.2	Sign Lighting			
	8.3	Electrical Supply			
	8.4	Access Panels			
	8.5	High Mast Lighting			
9) FENCES, SOUND WALLS AND ABATEMENT					
	9.1	Design and Location			
	9.2	Construction			
10) ROADSIDE MANAGEMENT					
	10.1	Vegetated Areas – Except landscaped areas – General			
	10.2	Landscaped Areas			
	10.3	Fire Hazards			
	10.4	Trees, brush and ornamentals			

ELEMENT CATEGORY	REF	ELEMENT	REQUIRED		
			A	B	C
	10.5	Wetlands			
11) REST AREAS AND PICNIC AREAS					
	11.1	Rest areas and picnic areas			
12) EARTHWORKS, EMBANKMENTS AND CUTTINGS					
	12.1	Slope Failure	R	R	R
	12.2	Slopes - General	R	R	R
13) ITS and ETCS EQUIPMENT					
	13.1	ETCS Equipment – Maintenance			
	13.2	VES Equipment - Maintenance			
	13.3	Dynamic Message Sign Equipment			
	13.4	CCTV Equipment			
	13.5	Vehicle Detection Equipment			
14) TOLLING Facilities and Buildings (Not Used)					
15) AMENITY					
	15.1	Graffiti			
	15.2	Animals			
	15.3	Abandoned vehicles and equipment			
16) SNOW AND ICE CONTROL					
	16.1	Travel lanes			
	16.2	Weather Forecasting			
	16.3	Operational Plans			
17) INCIDENT RESPONSE					
	17.1	General			
	17.2	Hazardous Materials			
	17.3	Structural assessment			
	17.4	Temporary and permanent remedy			
18) CUSTOMER RESPONSE					
	18.1	Response to inquiries			
	18.2	Customer contact line			
19) SWEEPING AND CLEANING					
	19.1	Sweeping			
	19.2	Litter			

ATTACHMENT 3 TO THE MAINTENANCE SPECIFICATION: LIMITS FOR MAINTENANCE SERVICES

The limits for Maintenance Services are defined by the physical limits of all Work under the Design-Build Agreement associated with the Project as defined in the DBA Documents.

ATTACHMENT 4 -

Not used.

ATTACHMENT 5: PUBLIC INFORMATION OFFICE OPENING HOURS

Not used.

ATTACHMENT 6: RESTRICTIONS ON TRAFFIC MANAGEMENT

Lane Closure restrictions for maintenance work will be as follows:

For this project, unless otherwise noted in the plans and/or as directed by TxDOT, daily Lane Closures shall be limited according to the following restrictions:

A. General Restrictions for Project mainlanes, collector-distributor roads, ramps, frontage roads, and arterials:

I. No closures will be permitted between Christmas Eve and January 2nd.
II. No closures will be permitted the Friday, Saturday, or Sunday after Thanksgiving.
III. No closures will be permitted the Saturday and Sunday before Memorial Day and Labor Day.
IV. No closures will be permitted on Saturday when July 4th falls on a Friday or Monday.
V. No lane closures will be permitted between 5:30 A.M. and 8:00 P.M. Monday through Thursday and between 5:30 A.M. Friday and 3:00 A.M. Saturday.
VI. At least two through mainlanes in each direction must be open between 8:00 P.M. and 10:00 P.M. Monday through Thursday, and between 3:00 A.M. Saturday through 10:00 P.M. Sunday.
VII. At least one through mainlane in each direction must be open between 10:00 P.M. and 5:30 A.M. Sunday through Friday.
VIII. Complete closure of the mainlanes will not be allowed, unless approved by the TxDOT.

B. Frontage Roads and Arterial Crossings:

I. No lane closures will be permitted between 5:30 A.M. and 9:00 P.M. Monday through Thursday and between 5:30 A.M. Friday and 3:00 A.M. Saturday.
II. At least one lane in each direction shall remain open from 9:00 P.M. and 5:30 A.M. Monday through Thursday nights and between 3:00 Saturday and 5:30 A.M. Monday.
III. Provide and maintain access to properties and businesses adjacent to the right-of-way at all times unless otherwise directed by the TXDOT.
IV. No mainlane and frontage road closures may occur at the same time, unless approved by the TXDOT.

C. Ramps:

I. No two adjacent ramp closures may occur at the same time.

MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE

Horseshoe Capital Maintenance Agreement
Texas Department of Transportation

Draw Request # 1

Date: _____

month/day/year

Texas Department of Transportation
[Address]

Shaded Cells Require Entry, if applicable

Draw Request for Capital Maintenance Work performed in the month of [Month _____, (year)

A	Month #		Maintenance Year #		Escalated Monthly Maintenance Fee (from Page 4)	
		(1-12)		(1-15)		
B	Amount Earned this Month					$0.00
C	Total Change Order Amount Due (from Page 5)					$0.00
D	Total Liquidated Damages Amount (from Page 6)					
E	Current Amount Due (B + C-D)					

MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE

Horseshoe Capital Maintenance Agreement
Texas Department of Transportation

Draw Request # 1

Date: _____
month/day/year

Request for Payment:

_____
Maintenance Contractor Authorized Representative **Date**

_____

Review and Final Approval by TxDOT

Draw Request Approved for Payment: ❑ **Yes** ❑ **No**

_____
TxDOT Authorized Representative **Date**

MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE

Horseshoe Capital Maintenance Agreement
Texas Department of Transportation

MAINTENANCE DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

☐ Certification by the Maintenance QC Manager

☐ Draw Request data sheet(s) and documents that support and substantiate the amount requested.

NOTE - following for information only

With the Draw Request, Maintenance Contractor shall submit a certificate in a form approved by TxDOT and signed and sealed by the Maintenance QC Manager, certifying that:

- Except as specifically noted in the certification, all Capital Maintenance Work, including that of designers, Subcontractors and Suppliers, which is the subject of the Draw Request has been checked and/or inspected by the Maintenance QC Manager;

- Except as specifically noted in the certification, all Capital Maintenance Work which is the subject of the Draw Request conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Law;

- The Maintenance Services QCP procedures provided therein are functioning properly and are being followed.

MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE

Horseshoe Capital Maintenance Agreement
Texas Department of Transportation

Draw Request # 1

Date: _____
month/day/year

Texas Department of Transportation
[Address]

Enter Shaded Cells only if Applicable

Monthly Maintenance Fee and Escalation Calculations

Note: This forms needs to be completed for the 1st month of each maintenance year.

Date of Final Acceptance:

_____
month/day/year

Year X Maintenance Fee (from Proposal) = $01

(B)

Year X Maintenance Fee (Escalated) (C) = [1]

[1] As per CMA Section 8.1.3 (B) times the ENR CCI three months prior to month in which Maintenance Term year commenced (D), divided by the ENR CCI three months prior to the execution of the CMA (E).

(X) = 0 (Maintenance Year)

(D) = 100 (E) = 100

$0.00 (C) = (B x (D)/(E)

Year X Monthly Maintenance Fee (Escalated) (F) = Year X Maintenance Fee (Escalated) (C) divided by 12.

$0.00 (F) = (C)/12

Year 1 Maintenance Fee (from Proposal) = $01

(G)

Year 1 Maintenance Fee (Escalated) (H) = [2]

[2] As per CMA Section 8.1.3 (G) times the ENR CCI three months prior to month in which Maintenance Term year commenced (I), divided by the ENR CCI three months prior to the execution of the CMA (E).

(I) = 100 (E) =

100

$0.00 (H) = (G) x (I)/(E)

Year 1 Monthly Maintenance Fee (Escalated) (J) = Year 1 Maintenance Fee (Escalated) (H) divided by 12.

$0.00 (J) = (H)/12

Year 1, Month 1, Maintenance Fee (Escalated) (K) [3] = Year 1 Monthly Maintenance Fee (Escalated) (J) times the number of days remaining in the 1st month, after the Date of Final Acceptance, (A) divided by the days in the month (L).

[3] Assuming that Final Acceptance does not occur on the last day of the month

(L) = 30

$0.00 (K) = (J) x (A)/(L)

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Horseshoe Capital Maintenance Agreement
Texas Department of Transportation

Draw Request # 1

Date: _____
month/day/year

Texas Department of Transportation
[Address]

Enter Shaded Cells only if applicable

Draw Request for Capital Maintenance Work performed in the month of Change Order _____

	Change Order Number	1						
	Change Order Amount	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
	Date Change Order Work Began							
	example format (4/20/20__)							
	Date Change Order Work Completed							
	example format (4/20/20__)							
1.	Previous C.O. Amount Earned	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
2.	C.O. Earned This Month	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
3.	C.O. Earned to Date (A +B)	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
4.	Current C.O. Amount Due(B)	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
	Total All Changed Orders To Date							