EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

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

AASHTO	American Association of State Highway and Transportation Officials
ACORD	Association for Cooperative Operations Research and Development
AMRL	AASHTO Materials Reference Laboratory
ASTM	American Society of Testing and Materials
BI	Base Index
CADD	Computer Aided Drafting and Design
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CFR	Code of Federal Regulations
COMA	Comprehensive Maintenance Agreement
CRP	Community Rehabilitation Programs
CRRMA	Camino Real Regional Mobility Authority
DB	Design Build
DBE	Disadvantaged Business Enterprise
DRP	Dispute Resolution Procedure
ECMP	Environmental Compliance and Mitigation Plan
ENR CCI	Engineering News Record 20 City Construction Cost Index
EPD	Escrowed Proposal Documents
FHWA	Federal Highway Administration
GAAP	Generally Accepted Accounting Principles
GIS	Geographical Information System
HMMP	Hazardous Materials Management Plan
HUB	Historically Underutilized Business
IMP	Incident Management Plan
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
IVHS	Intelligent Vehicle Highway System
MMP	Maintenance Management Plan
MP	Maintenance Price
MMS	Maintenance Management System
MSDS	Material Safety Data Sheets
NBIS	National Bridge Inspection Standards
NTP	Notice to Proceed
OSHA	Occupational Safety & Health Administration
PMIS	Pavement Management Information System

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

Additional Properties shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the Schematic ROW, that will be acquired in connection with the Project, including (a) rest area sites, (b) the Developer-Designated ROW, and (c) any additional real property outside of the Schematic ROW that must be acquired due to a TxDOT-Directed Change or a Necessary Basic Configuration Change issued under the Development Agreement, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs Developer to acquire for the Project. For purposes of clarity, "Additional Properties" excludes Replacement Utility Property Interests.

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

Affiliate(s) shall mean:

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

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

(c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Maintenance Contractor, (ii) any of the shareholders, members, partners or joint venture members of

Maintenance Contractor; or (iii) any Affiliate of Maintenance Contractor under clause (b) of this definition.

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

Appeal Period has the meaning set forth in Section 16.3.6(a) of the Comprehensive 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 0250 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 0240 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 Comprehensive Maintenance Agreement.

Base Index shall have the meaning set forth in Section 8.1.3(a) of the Comprehensive 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 3.3 of the Comprehensive Maintenance Agreement.

Capital Asset Replacement Work Submittal shall mean the submittal described in Section 3.3.2 of the Comprehensive Maintenance Agreement.

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

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

Change in Law 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 Comprehensive Maintenance Agreement Documents or in the terms and conditions of the COMA Documents in accordance with Section 10 of the Comprehensive 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 COMA 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.

Comprehensive Maintenance Agreement or **COMA** shall mean that certain Comprehensive 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.

COMA Documents or **Comprehensive Maintenance Agreement Documents** shall have the meaning set forth in Section 1.2.1 of the Comprehensive Maintenance 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 COMA Documents or any Subcontract (except that such individual's interest in receiving, and receipt of, payment for service on the

Disputes Board shall not be considered a financial interest for purposes of this definition), in either case except for a remote interest. An ownership interest is remote only if it is less than 0.5% of the issued and outstanding shares or other legal or beneficial ownership interest, or less than 0.5% of the issued and outstanding indebtedness, of a member of the Conflicts Group. Mere use of the Project shall not constitute a pecuniary, ownership or financial interest for purposes of this definition;

(c) Such individual has or had substantial prior involvement in any aspect of the Development Agreement or COMA, 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 Subcontract.

Construction Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of Maintenance Services under the terms of the COMA.

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

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

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 Comprehensive Maintenance Agreement.

CPI means "Consumer Price Index U.S. City Averages for all Urban Consumers, All Items" (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics.

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 3.2.5 of the Technical Provisions.

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

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

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

(ii) a structural deterioration of the affected Maintained Element or any other part of the Project affected by it;

(iii) damage to the property or equipment of TxDOT or a third party;

(iv) damage to the environment;

(v) failure of the affected Maintained Element to meet a Performance Requirement; or

(vi) failure of a Maintained Element to meet the Target for a measurement record as set forth in the columns headed "Target" and "Measurement Record" in the Performance and Measurement Table.

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

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 Comprehensive Maintenance Agreement in accordance with the COMA Documents, the Governmental Approvals and applicable Law.

Developer shall mean Abrams-Kiewit, JV, a Texas joint venture comprised of J.D. Abrams, L.P. and Kiewit Infrastructure South Co., together with its successors and assigns.

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

Developer Event of Default shall mean Event of Default defined under the Development Agreement.

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

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

Deviation(s) shall mean: a no-cost change in the Maintenance Services or other requirements of the COMA Documents issued in writing by TxDOT's Authorized Representative or his/her designee under Section 10.12 of the Comprehensive 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 Comprehensive Maintenance Agreement.

Dispute means any Claim, dispute, disagreement or controversy between TxDOT and Maintenance Contractor concerning their respective rights and obligations under the COMA 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 Comprehensive 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 Comprehensive Maintenance Agreement as Exhibit 15.

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

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

Disputes Board Error has the meaning set forth in Section 16.3.6.2 of the Comprehensive Maintenance Agreement.

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

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

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

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

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

Draw Request(s) shall mean a Draw Request and Certificate in the form of Exhibit 11 to the Comprehensive Maintenance Agreement.

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

Effective Date shall mean the date of the Comprehensive 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 Comprehensive 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 Comprehensive Maintenance Agreement.

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

Executive Director shall mean the Executive Director of TxDOT.

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

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

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

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

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

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

Float means the amount of time that any given activity or logically connected sequence of activities shown on the Maintenance Services Deliverables 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 Maintenance Services Deliverables Schedule.

Force Majeure Event shall mean any of the events listed in clauses (a) through (i) below, subject to the exclusions listed in clauses (i) through (vi) below, which materially and adversely affects Maintenance Contractor's obligations, provided such events are beyond the control of the Maintenance Contractor-Related Entities and are not due to an act, omission, negligence, recklessness, willful misconduct, breach of contract or Law of any Maintenance Contractor-Related Entity, and further that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Maintenance Contractor:

(a) Any earthquake, tornado, hurricane (Category 3 and higher) or other natural disaster that (i) causes direct physical damage to the Project and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway Administrator, unless such damage is caused by the Developer's action or inaction or the Developer's means and methods of construction;

(b) Any epidemic in the El Paso 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 Release of Hazardous Materials, other than a Maintenance Contractor Release of Hazardous Materials, which occurs after Maintenance NTP1 and is required to be reported to a Governmental Entity, and which renders use of the roadway or construction area unsafe absent assessment, containment, and/or remediation;

(f) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Maintenance Services, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any member of the Maintenance Contractor-Related Entities;

(g) Total failure of a bridge such that it requires replacement, except to the extent arising out of, related to or caused by, the act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any Maintenance Contractor Related-Entity or Developer-Related Entity;

(h) Malicious or other acts by a third party intended to cause loss or damage or other similar occurrence, including vandalism (excluding graffiti) or theft that causes direct physical damage to the Project, except to the extent such event is covered by proceeds of insurance carried by Maintenance Contractor hereunder or any available third party insurance responsible for the loss/damage; and

(i) A collision (motor vehicle, aircraft or railroad train) by a third party that causes direct physical damage to the Project, except to the extent such event (i) arises out of, is related to or caused by, the act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any Maintenance Contractor Related-Entity or Developer-Related Entity or (ii) is covered by proceeds of insurance carried by Maintenance Contractor hereunder or any available third party insurance responsible for the loss/damage.

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

(i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;

(ii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;

(iii) the suspension, termination, interruption, denial or failure to obtain, nonrenewal or change in any Governmental Approval, except for any such matter falling within the scope of clause (d) or clause (f) above;

(iv) any delay or cost risk for which coverage is to be provided through insurance required under the Comprehensive Maintenance Agreement or by Law; and

(v) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (g) above.

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

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

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

Governmental Approval shall mean any permit, license, consent, concession, grant, franchise, authorization, valid waiver, valid exemption, variance or other approval, guidance, protocol, mitigation agreement or order, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, or provided by TxDOT in its capacity as a regulatory agency for issuing state regulatory permits, 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 Comprehensive Maintenance Agreement.

Guaranty shall mean each guarantee executed by a Guarantor guaranteeing some or all of the obligations of Maintenance Contractor under the Comprehensive 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 0260 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 0140 of Exhibit 2.

Indemnified Party(ies) shall mean TXDOT, the State, the Texas Transportation Commission, CRRMA, 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 Comprehensive Maintenance Agreement.

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

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

Initial Maintenance Term Commencement Date shall have the meaning set forth in Section 4.1 of the Comprehensive 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 COMA 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 Comprehensive Maintenance Agreement, and (iv) the liquidated damages specified in Section 12.4.3 of the Comprehensive Maintenance Agreement.

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

Liquidated Damages for Lane Closures shall have the meaning set forth in Section 12.4.1 of the Comprehensive 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 Comprehensive 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 0190 of the Maintenance Specification.

Maintenance Contractor shall mean Abrams-Kiewit, JV, a Texas joint venture composed of J.D. Abrams, L.P. and Kiewit Infrastructure South Co. together with its successors and assigns.

Maintenance Contractor Default shall have the meaning set forth in Section 12.1 of the Comprehensive 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 COMA Documents or any applicable Law or Governmental Approval.

Maintenance Document Management Plan shall have the meaning set forth in Section 0210 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 Comprehensive Maintenance Agreement.

Maintenance Manager means the Maintenance Contractor's manager who is responsible for overseeing and performing the Maintenance Services in accordance with the COMA, as described more fully in Exhibit 2.

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 Comprehensive Maintenance Agreement as Exhibit 7-A.

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

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

Maintenance Price or **MP** shall have the meaning set forth in Section 8.1.1 of the Comprehensive 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, as described more fully in Exhibit 2.

Maintenance Record(s) shall mean all data in connection with maintenance of the Project including (a) all inspection and inventory records, whether generated by Maintenance 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 Maintenance Contractor to use or operate.

Maintenance Safety Plan shall have the meaning set forth in Section 0180 of the Maintenance Specification.

Maintenance Services shall mean all of the services and obligations required to be performed by Maintenance Contractor under the COMA Documents, including all required maintenance, repairs, rehabilitation and replacements of the Maintained Elements, including Capital Asset Replacement Work and Incident management, provided, however, that during the first year of the Initial Maintenance Term, Maintenance Contractor's services and obligations are limited to those services and obligations specifically identified as the Elements in Attachment 2 to Exhibit 2 listed as Routine, Emergency and Operational Items.

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 Comprehensive Maintenance Agreement Documents or in the terms and conditions of the COMA Documents in accordance with Section 10 of the Comprehensive 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 0220 of Exhibit 2.

Maintenance Services Quality Control Plan or Maintenance Services QCP shall have the meaning set forth in Section 0170 of Exhibit 2.

Maintenance Specification shall mean Exhibit 2 of the Comprehensive 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 Comprehensive Maintenance Agreement, as set forth in Section 0200 of Exhibit 2.

Maintenance Transition Plan shall have the meaning set forth in Section 3.7 of the Comprehensive 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.

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.

Necessary Basic Configuration Change has the meaning set forth in the Development Agreement.

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 COMA Documents, the Governmental Approvals or applicable Law.

Non-Maintained Element(s) shall mean elements of the Project owned by or maintained by third parties pursuant to an agreement with, or on behalf of, TxDOT, including railroads, Utilities, and the ETCS.

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

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

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

Open Book Basis shall mean providing TxDOT all underlying assumptions and data associated with pricing or compensation (whether of Maintenance Contractor or TxDOT) or adjustments thereto, including assumptions as to costs of the Maintenance Services, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by TxDOT to satisfy itself as to the reasonableness of the amount.

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

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

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

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

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

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

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

Project Float shall have the meaning set forth in Section 0220 of Exhibit 2.

Project ROW shall mean the Schematic ROW and the Additional Properties, but excluding therefrom any portion of the Schematic ROW eliminated from the Project by a Change Order under the Development Agreement.

Proposal shall mean the response by Developer and Maintenance Contractor to the RFP.

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

Proposal Due Date shall mean April 7, 2014, the deadline for submission of the Price Proposal to TxDOT.

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 Comprehensive Maintenance Agreement. Except as expressly provided in the COMA Documents, the Reference Information Documents are not considered COMA 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 Comprehensive Maintenance Agreement, provided that the 25% and 145% mark-ups allowed under Section 10.7.1 shall be reduced to 12.5% and 130%**,** and the 15% mark-up allowed under Section 10.7.2 shall be reduced to 7.5%.

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

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

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

Request for Change Order shall mean shall mean a written notice issued by Maintenance Contractor to TxDOT under Section 10.3.2.5 of the Comprehensive Maintenance Agreement, advising TxDOT that Maintenance 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 Comprehensive 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 Comprehensive Maintenance Agreement.

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

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

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

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

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

Schematic Design shall mean the roadway schematic attached as Appendix 3 to Development Agreement Exhibit 2.

Schematic ROW shall mean any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the proposed Schematic ROW lines established by TxDOT to delineate the outside limits of the Schematic Design, as such limits may be adjusted from time to time in accordance with the COMA 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 Comprehensive 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 Developer may acquire at its own cost and expense in connection with the Project.

Specialist Inspection(s) means an inspection requiring specialist qualifications or equipment as specified in Section 0230 of the Maintenance Specification.

State shall mean the State of Texas.

Subcontract(s) shall mean any agreement by Maintenance Contractor with any other Person, Subcontractor or Supplier to perform any part of the Maintenance Services or provide any materials, equipment or supplies for any part of the Maintenance Services, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at all tiers.

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

Substantial Completion shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.1.1 of the Development Agreement, as and when confirmed by TxDOT's issuance of a certificate in accordance with Section 20.1.1 of the Development Agreement.

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

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

Tangible Net Worth shall mean the difference between (the sum of paid-in capital stock plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority interest plus

intangible assets e.g., goodwill, patents, licenses), all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.

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

Technical Provisions means the project-specific technical provisions entitled "Technical Provisions for Loop 375 - Border Highway West Extension Development Agreement" included in the Contract Documents, as such document may be revised or amended pursuant to the Development Agreement.

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

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

Traffic Management Plan shall mean the plan prepared by Maintenance Contractor for the management of traffic as described in Section 1120 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 COMA Documents.

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

Unit-priced Change Order shall mean a Change Order issued in accordance with Section 10.6.7 of the Comprehensive 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 COMA.

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

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

Utility Agreement shall mean a PUAA 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 Comprehensive Maintenance Agreement.

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

EXHIBIT 2

MAINTENANCE SPECIFICATION

(Attached)

EXHIBIT 3
Appendix 1

MAINTENANCE CONTRACTOR'S PROPOSAL COMMITMENTS

I. KEY PERSONNEL

Maintenance Contractor commits to providing the following individuals to serve as Key Personnel:

Name	Key Personnel Position
Charles Henningsgaard	Maintenance Manager
Gordon Peterson, PE	Maintenance QC Manager

II. PROPOSAL COMMITMENTS

The following Proposal Commitments are in addition to the requirements set forth elsewhere in the COMA Documents and are therefore express requirements of the Comprehensive Maintenance Agreement

No.	Proposal Location	Proposal Commitment
1	Vol 1, Section 3.1, Para 4, Page 5	The key strategy Maintenance Contractor will implement is "Proactive COMA". Unplanned COMA events disrupt the daily fluidity of the Project and increase Project costs resulting from the additional resources needed to respond to the unexpected event. The proactive concept focuses on defining key objectives within each requirement of the Project and developing technical solutions that will allow Maintenance Contractor to anticipate the needs and requirements of the network to limit unplanned events and ensure the performance of the network and network assets. The concept will ensure Category 1 Defects are avoided and will eliminate unplanned maintenance activities.
2	Vol 1, Section 3.1, Para 6, Page 8	During the design, construction and maintenance of the Project, Maintenance Contractor will continue to include additional firms to exceed the Project requirements, and will use a "two step" subcontracting and purchasing plan to proactively promote Subcontractor and supplier participation for this Project. The first step: advertisements are placed in various local and community-based papers along with direct-mail letters inviting Subcontractors (including DBE firms) to bid on elements of the Project. The second step: Maintenance Contractor will follow up the first step using telephone inquiries and by providing bidding documents. Maintenance Contractor will also help DBE/HUB firms determine quantities and develop a scope of work during the bidding process. Subcontractors and material suppliers will be selected based on a review by Maintenance Contractor's management staff. The selection process will specifically address the firms' qualifications, their knowledge of the Project, their commitment to working with other contractors and other DBE firms, their quoted price, their staff and available resources to perform the work, and the current status of their DBE certification.
3	Vol 3, Section 4.1.2(b), Para 1, Page 34	Maintenance Contractor will implement the Jorgensen Asset Maintenance Management System (JAMMS) software program.
4	Vol 3, Section 4.1.2(c), Para 2, Page 34	Maintenance Contractor will provide TxDOT with training of the current COMA practices and procedures performed on the Project to ensure a seamless transition. This training will include JAMMS, condition assessments and scheduling.
5	Vol 3, Exhibit 21, Page 34	The specialized equipment described in Attachment 1 to this Appendix 1 to Comprehensive Maintenance Agreement Exhibit 3 will be transferred by Maintenance Contractor to TxDOT, at TxDOT's discretion, at the end of the Maintenance Term.
6	Vol 3, Section 4.1.2(d), Para 1, Page 35	Maintenance Contractor will implement an aggressive MOT in-classroom and on the job training program to ensure staff are knowledgeable of part 6 of Texas's Manual of Uniform Traffic Control Devices "TMUTCD".
7	Vol 3, Exhibit 22, Page 35	Maintenance Contractor staff will be certified in accordance with the requirements described in Attachment 2 to this Appendix 1 to Comprehensive Maintenance Agreement Exhibit 3.

No.	Proposal Location	Proposal Commitment
8	Vol 3, Section 4.1.2(d), Para 2, Page 35	Maintenance Contractor will provide certified law enforcement at all lane closures to enhance the safety and visibility of the lane closures and enhance the safety of crews working and the motorists navigating the closure.
9	Vol 3, Section 4.1.2(d), Para 2, Page 35	Maintenance Contractor will report to TxDOT two weeks prior to occurrence all planned shoulder and lane closure requirements for maintenance. No lane closures shall be scheduled during events occurring in and around El Paso such as the Sun Bowl.
10	Vol 3, Section 4.1.2(j), Para 3, Page 40	Maintenance Contractor will provide TxDOT with real time access to its asset management systems.
11	Vol 3, Section 4.1.2(j), Para 4, Page 40	Between Development Agreement NTP1 and NTP2, a kick-off meeting will be held with the appropriate agencies and other stakeholders to introduce Project personnel and provide a briefing on the Project.

Attachment 1 to Appendix 1

Equipment	Key Use
Skid Steer	Misc. maintenance work
Herbicide application truck	Vegetation / aesthetics crew
Mechanical sweeper	Vegetation / aesthetics crew
Box spreaders	Snow and ice crew
1800 gallon brine spray systems	Snow and ice crew
Snow plows	Snow and ice crew
2 CY chemical spreader	Snow and ice crew
Pavement crack sealer trailer	Pavement crew
Infrared pavement repair unit	Pavement crew
Guardrail post pounder	Traffic services crew

Attachment 2 to Appendix 1

Certification / Training	Key Project Personnel	Project Managers	Field Supervisors	Project Engineer	Field Crew Leads	Field Technicians
Advanced MOT	As needed	✓	✓	✓	✓	As needed
Intermediate MOT	As needed	✓	✓	✓	✓	✓
Mobilization incident response & National Incident management	As needed	✓				
OSHA courses	✓	✓	✓	✓	✓	As needed

EXHIBIT 4

MAINTENANCE PRICE

Maintenance Term	Year	Routine Maintenance	Major Maintenance	Emergency Maintenance (Incident Response, Snow and Ice Control)	Other Costs	TOTAL
		(A)	(B)	(C)	(D)	(E) = (A)+(B)+(C)+(D)
Initial Maintenance Term	1	$ 235,550.00	$ -	$ 803,340.00	$ 605,810.00	$1,644,700.00
	2	$ 256,840.00	$ -	$ 803,750.00	$ 610,160.00	$1,670,750.00
	3	$ 302,930.00	$ -	$ 804,230.00	$ 610,510.00	$1,717,670.00
	4	$ 325,820.00	$ 112,260.00	$ 805,220.00	$ 610,860.00	$1,854,160.00
	5	$ 504,140.00	$ 191,850.00	$ 805,890.00	$ 610,840.00	$2,112,720.00
Second Maintenance Term	6	$ 850,500.00	$ 205,700.00	$ 804,060.00	$ 875,340.00	$2,735,600.00
	7	$ 902,250.00	$ 350,450.00	$ 854,050.00	$ 862,700.00	$2,969,450.00
	8	$ 1,076,000.00	$ 1,125,200.00	$ 874,620.00	$ 848,160.00	$3,923,980.00
	9	$ 899,750.00	$ 3,307,930.00	$ 885,760.00	$ 831,720.00	$5,925,160.00
	10	$ 814,750.00	$ 3,897,660.00	$ 884,880.00	$ 848,520.00	$6,445,810.00
Third Maintenance Term	11	$ 719,640.00	$ 818,090.00	$ 861,020.00	$ 655,990.00	$3,054,740.00
	12	$ 865,320.00	$ 350,350.00	$ 913,380.00	$ 703,160.00	$2,832,210.00
	13	$ 766,870.00	$ 350,100.00	$ 916,460.00	$ 704,900.00	$2,738,330.00
	14	$ 579,180.00	$ 350,340.00	$ 904,470.00	$ 748,680.00	$2,582,670.00
	15	$ 697,060.00	$ 350,190.00	$ 944,370.00	$ 800,430.00	$2,792,050.00

Total Maintenance Cost for entire Maintenance Term	$45,000,000.00

Notes:
(1) Annual expenditures are presented as of Proposal Due Date.
(2) Years in the table refers to the years during each of the three possible Maintenance Terms.

EXHIBIT 5

JOB TRAINING PLAN AND SMALL BUSINESS OPPORTUNITY PLAN

(Attached)

Abrams-Kiewit Joint Venture On-the-Job Training Program

Policy Statement

Abrams-Kiewit Joint Venture (A-KJV) will institute an on-the-job training program on the Loop 375 Border Highway West (Loop 375-BHW) Extension Project, in accordance with the regulations of the U.S. Department of Transportation at 23 CFR Part 230, Subpart A, Equal Employment Opportunity on Federal and Federal-aid Construction Contracts, and TxDOT Special Provisions *On-the-Job Training Program for Design - Build and Comprehensive Development Agreement Projects 11-13* (attached), and 000-1676 (attached as Attachment 9 to Exhibit 3 to the Development Agreement) of the 2004 Specifications. Abrams-Kiewit will utilize the *Associated General Contractors of Texas On-the-Job Training Program (Revised March 2014)* as a guiding resource for developing and implementing the Abrams-Kiewit On-the-Job training program. The program is designed to increase participation of minority groups, disadvantaged persons and women in all phases of the highway construction industry.

Nondiscrimination

It is the policy of Abrams-Kiewit JV to ensure that all applicants are considered and that employees are treated fairly during their employment, without regard to race, color, religion, age, physical or mental disability, gender, marital status, ancestry, national origin, veteran's status, citizenship, pregnancy, gender orientation, other protected activities, or any other characteristic protected by federal, state, or local law. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; wages or other forms of compensation; selection for training, including apprenticeship, pre-apprenticeship, and/or on the job training; and ensuring and maintaining a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which employees are assigned to work.

Abrams-Kiewit JV Annual Goal Commitment

Abrams-Kiewit JV will train at a minimum, the number of trainees required by TxDOT's Annual Estimate of Trainees Based upon Contract Amount, using the estimated amount of actual field work (not including design or close out work), for the current year on the Loop 375-BHW Project. Abrams-Kiewit JV will submit the planned number of trainees to TxDOT for review and approval prior to January 31st of each year by submitting the ***Contractor On-the-Job Training Plan***. Training will begin in 2015.

Dissemination of On-the-Job Training (OJT) Program

Abrams-Kiewit JV will advise employees and applicants for employment of available training programs and prerequisites for each program. Upon entering the program,

each trainee will receive a copy of their completed ***Form AGC of Texas Federal On-the-Job Training Program Enrollment Form.***

Good Faith Efforts

Abrams-Kiewit JV will begin their annual training efforts within 60 days of receiving approval on their annual training goal. In the event Abrams-Kiewit JV does not have any individuals enrolled and undergoing training by that time, Abrams-Kiewit JV will provide to TxDOT the Contractor Training Plan (Attached).

Reporting Requirements

Abrams-Kiewit JV will notify TxDOT within seven (7) days of intent to assign trainee to the project using the ***AGC of Texas Federal On-the-Job Training Program Enrollment Form****.*

Abrams-Kiewit JV will electronically submit the ***AGC of Texas Federal On-the-Job Training Program Enrollment Monthly Reporting Form***, by 3rd working day of each month, to the appropriate TxDOT office, to document training activity, hours trained, termination, or graduation during the training period indicated.

Abrams-Kiewit JV will notify TxDOT within seven (7) days of intent to graduate a trainee from the On-the-Job Training program, provided the trainee has demonstrated to Abrams-Kiewit JV his/her ability to perform at a journeyman level. Abrams-Kiewit JV reserves the right to graduate a qualified trainee at any time should they be deemed qualified.

When a trainee is terminated for any reason, Abrams-Kiewit JV will make a good faith effort to replace the trainee within 30 days of the termination. The replacement trainee need not be in the same classification code as the terminated trainee.

Abrams-Kiewit JV will utilize ***AGC of Texas Federal On-the-Job Training Program Enrollment Form*** to notify TxDOT of the replacement trainee's enrollment.

When a trainee is transferred, Abrams-Kiewit JV will notify TxDOT's Area Engineer for the previous project and the Area Engineer for the project to which the trainee is being transferred, using ***AGC of Texas Federal On-the-Job Training Program Enrollment Monthly Reporting Form.***

Abrams-Kiewit JV will retain original training records for a period not less than three years.

Trainee Requirements

No employee will be enrolled in the On-the-Job Training program in any classification in which he/she has previously completed a training course leading to journeyman status, or in which he/she has been employed as a journeyman.

Trainee Wage Rates

Trainees will be paid at a minimum the established percentages of the project specific journeyman starting wage rates as set forth by Abrams-Kiewit JV (AKJSW). Under no circumstance will the trainee receive less than the minimum wage. Trainees' compensation will be not less than 60% of AKJSW specified in the contract for the first half of the training period, 75% for the third quarter of the training period and 90% for the last quarter of the training period.

Small Business Mentoring/Training Program

Abrams-Kiewit Joint Venture (A-KJV) has created a Mentoring Plan to provide training and assistance to DBE, HUB and other small businesses to participate in the areas of goods and services; design and construction. As part of this plan, a Mentor Program will be established. Eligible firms will receive assistance from Abrams-Kiewit JV DBE Coordinator and other Abrams-Kiewit JV personnel to help them in bidding and performing work on the Loop 375-BHW Project.

Definition of Terms

Disadvantaged Business Enterprises (DBEs) - Any business so certified in Accordance with 49 CFR Part 26.

Historically Underutilized Businesses (HUBs) - Any business so certified by the Texas Buildings and Procurement Commission (TB&PC) (formerly the General Services Commission).

Small Business Enterprises (SBEs) - Any business certified as DBE and/or HUB or otherwise so certified by TxDOT.

Abrams-Kiewit JV Mentor (Mentor) - Employees from Abram –Kiewit Joint Venture.

Abrams-Kiewit Joint Venture (A-K JV) Protégé (Mentor Protégé) - DBEs/ HUBs/ SBEs that sign an agreement with A-K JV to participate in the A-K JV- Small Business Mentor Protégé Program..

Session - series of meetings for the A-K JV-Small Business Mentor Protégés.

Program Goals

The program goal is to empower Disadvantaged Business firms by providing them the training and assistance that will help them succeed and in turn contribute to the success of the Loop 375-BHW Project. Types of assistance include:

- Guidance in the interpretation of plans, specifications, bid documents, estimating and pricing.
- Assistance in establishing business relationships with material suppliers, equipment rental and other vendors.
- Assistance in obtaining bonding, insurance and meeting other business needs.
- Familiarizing and assisting with safety regulations and other applicable laws, rules and regulations.
- Familiarization and guidance with environmental issues specific to the project.
- Guidance in billing and invoice preparation and general money management.

Program Components

A. Educational Workshops

As part of the Mentoring Plan, Abrams-Kiewit JV will conduct a series of educational workshops for subcontractors who are interested in additional training. Topics for these workshops include contracts, contract negotiation, bonding, design-build method, construction law, Safety and OSHA requirements, taxes and payroll requirements and bonding and insurance requirements. The primary audience for these workshops will be small emerging businesses and established firms needing assistance to improve and grow their operations and local businesses desiring involvement in the Loop 375-BHW Project.

Workshops will generally be scheduled quarterly, however, if necessary additional workshops will be scheduled when a need is identified, particularly at the beginning of the project. Bonding and Insurance requirements are one of those needs that will be addressed very early in the procurement process. Workshops addressing these requirements will allow potential subcontractors an opportunity to make the appropriate arrangements needed to be able to bid on the work.

B. Mentor Program

Abrams –Kiewit Joint Venture's (A-K JV) Small Business Mentor Protégé Program provides an opportunity to selected Small Businesses to learn about A-K JV's business opportunities and its business practices. Small businesses will receive information to assist them in bidding and performing on A-K JV's contracts by working directly with A-K JV and appropriate subcontractors gaining valuable on-the-job training during a one (1) year mentoring period.

Eligibility Criteria

A. Educational Workshops

To be eligible for the program, the small business must be certified by the State of Texas as a DBE, HUB, or SBE and must perform a category of work or supply a type of material that adds value to the project (e.g., design services, rebar placement, pavement markings, etc.).

B. Mentor Program

To be eligible for the program, the small business must have been certified by the State of Texas as a DBE, HUB, or SBE for at least one consecutive year and must perform a category of work or supply a type of material that adds value to the project (e.g., design services, concrete supplier, and rebar tier). Firms interested in the program must submit a Small Business Mentor Protégé application to Abrams-Kiewit JV. A-K JV will

offer participation in the program to each DBE, HUB, or SBE that has an active role in the project, and will endeavor to maintain, on average, five (5) active participants during the design and construction phase of the project. A total of two (2) active participants will be mentored during the COMA period. The actual number of Protégés participating in the program will depend on the total number of candidate firms working on the project that express interest in the program.

Once selected by A-KJV, the Mentor Protégé must commit the necessary time and efforts needed for the successful training. This is a voluntary program and either party may withdraw at any time by providing notice outlining the reason for withdrawal from the program (a courtesy copy will be provided to TxDOT). Upon completion of the one year (1) program, A-K JV will provide each Mentor Protégé with a Certificate of Completion.

Program Approach and Topics

Abrams-Kiewit JV Small Business Mentor Protégé program aims to provide effective mentoring to DBEs/HUBs/SBEs that have already been selected as subcontractors for the project. Abrams-Kiewit JV will make best efforts to mentor the Protégé while the Protégé are working on the project, attending project meetings, and participating in project discussions, allowing Protégé to gain an understanding of the conduct of the project operations and receive one-on-one training opportunities. The intent of this approach is to provide actual project experience.

Each Mentor Protégé will be invited to participate in project meetings through which the Mentor Protégé will gain practical experience related to project operations. Meeting topics may include planning strategies, schedule reviews, budgeting and cost tracking, subcontractor interface coordination, insurance, bonding, safety (including safety task assessments), celebratory events, and quality reviews. The various meetings are held either at the project office or at the particular field site, as applicable.

A-K JV will introduce the Trainees to key A-K JV staff and to TxDOT's project staff and provide networking opportunities with individuals. A-K JV mentors, in collaboration with A-K JV's staff, subcontractors, bonding agents, and other applicable parties, will meet with the Trainee during regularly scheduled meetings and will work individually with the Trainees as needed to achieve program goals. A-K JV will publish bulletins that identify the firms participating in the Mentor/Training program in order to improve awareness of the program and to achieve program goals.

This approach will provide the Mentor Protégé with practical, hands-on project operations experience, which has been shown to provide the most successful method of training - actual, real-time experience.

The Small Business Mentor /Training Program will offer participants the opportunity to enhance their business skills by focusing on fundamental construction business tenets:

1. **Schedule and scheduling**
   a) Short-term and long-term scheduling.
   b) How to schedule.
   c) Progressing a schedule.
   d) Keeping on schedule.
   e) Identifying and applying appropriate resources.
   f) Schedule recovery.

2. **Creating a cost budget and measuring costs**
   13. Establishing a budget with appropriate cost codes.
   14. Monitoring the budget by conducting weekly review of cost reports.
   15. Anticipating necessary changes to the budget.
   16. Adjusting the budget.
   17. Identifying changed conditions.

3. **Measuring Cash flow and profitability**

- Cash in vs. Cash out.
- Relationship of cash flow to profitability.

4. **Understanding the role of bonds and insurance**

5. **Clarifications to the contract documents, when requested by the Trainee**

6. **Human resources**

7. **Project Safety**

Participant Responsibilities and Reporting

A. Mentor Protégé:

The Mentor Protégé is responsible for complying with the following guidelines:

- Attend and be on-time for all meetings related to the program.
- Perform assignments given by the Mentor.
- Hold Abrams-Kiewit JV, including its employees, or agents harmless from any claim, suit, suit action, or demand of Mentor Protégé or Mentor Protégés creditors, or any other person arising out of the Mentor Protégé Agreement.

B. Mentor:

Abrams-Kiewit JV mentor is assigned to each Mentor Protégé and will perform the mentoring activities described in this Program plan. The Mentor is responsible to ensure the Mentor Protégé receives and understands the information presented during the meetings. The Mentor will have regular contact with each Mentor Protégé to respond to any questions that the Mentor Protégé may have regarding the Program.

The Mentor will complete a quarterly report for each Protégé that outlines topics covered, progress towards completion, and recommended future training. The Mentor will submit each quarterly report to Abrams-Kiewit JV's DBE Liaison Manager and TxDOT by the 10th working day of the following quarter.

Evaluating Effectiveness

The criteria used to evaluate the effectiveness of the program will include the following Loop 375-BHW project goals:

- Additional DBE participation is achieved.
- The ability of mentored subcontractors to bid, win and perform work.
- The ability of mentored subcontractors to complete work on time and under budget is improved.
- Mentored subcontractors achieve safety.
- The ability of mentored subcontractors to increase their experience and improve their capabilities enabling them to compete for work outside of the Loop 375 project.

EXHIBIT 6

6-A	Form of Maintenance Performance Bond
6-B	Form of Dual Obligee Rider for Maintenance Performance Bond

EXHIBIT 6-A

FORM OF MAINTENANCE PERFORMANCE BOND

Loop 375 – Border Highway West Extension Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Comprehensive Maintenance Agreement for the Loop 375 – Border Highway West Extension Project, duly executed and delivered as of _____, 20__ (the "COMA"), 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 COMA 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 COMA 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 COMA 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 COMA.

The following terms and conditions shall apply with respect to this Bond:

1. The COMA Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the COMA.

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the COMA 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 COMA 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 COMA Documents which survive such expiration or termination.

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the COMA Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the COMA; or

b. complete the Project in accordance with the terms and conditions of the COMA 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 COMA, 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 COMA, 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 COMA, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the COMA. 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 COMA, 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 COMA.

7. No alteration, modification or supplement to the COMA 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 6-B

FORM OF DUAL OBLIGEE RIDER

(Maintenance Performance Bond)

DUAL OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No. _____.

WHEREAS, the Texas Department of Transportation ("TxDOT" or "Primary Obligee") has awarded to _____, a _____ ("Principal"), a Comprehensive Maintenance Agreement for the Loop 375 Border Highway West Extension Project, duly executed and delivered as of _____, 20__, (hereinafter called the "COMA"), on the terms and conditions set forth therein; and

WHEREAS, on or before 60 Days after issuance by TxDOT of Maintenance NTP1, Principal is required to furnish a performance bond whereby the Camino Real Regional Mobility Authority ("CRRMA") is named as an additional obligee under such bond; and

WHEREAS, Principal and _____ (the "Surety") have agreed to execute and deliver this Rider concurrently with the execution of Performance Bond No._____ (hereinafter referred to as "Performance Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

CRRMA is hereby added to the Performance Bond as named obligee (hereinafter referred to as "Additional Obligee").

The Surety shall not be liable under the Bond to the Primary Obligee, the Additional Obligee, or either of them, unless the Primary Obligee, the Additional Obligee, or either of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) substantially in accordance with the terms of said Contract as to payments ; and the Surety shall not be liable under the Performance Bond to the Primary Obligee, Additional Obligee, or either of them, unless the Primary Obligee, the Additional Obligee, or either of them, shall perform all other obligations to be performed under the COMA in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee, Additional Obligee, or either of them, shall have occurred, been declared by the Principal, and be continuing under the COMA.

The aggregate liability of the Surety under this Performance Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Performance Bond. The Additional Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Additional Obligee has received notice and 30 days' prior opportunity to cure breach or default by the Primary Obligee under the COMA.

The Surety may, at its option, make any payments under the Performance Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

Signed, sealed and dated this _____ day of _____, 20__.

_____

(Principal)
(Seal)

By: _____

(Title)

_____

(Surety)
(Seal)

By: _____

, Attorney-in-Fact

EXHIBIT 7

7-A	Form of Maintenance Payment Bond
7-B	Form of Dual Obligee Rider for Maintenance Payment Bond

EXHIBIT 7-A

FORM OF MAINTENANCE PAYMENT BOND

Loop 375 – Border Highway West Extension Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Comprehensive Maintenance Agreement for the Loop 375 – Border Highway West Extension Project, duly executed and delivered as of _____, 20__ (the "COMA"), 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 COMA 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 COMA.

The following terms and conditions shall apply with respect to this Bond:

1. The COMA Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the COMA.

2. No alteration, modification or supplement to the COMA 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 7-B

FORM OF DUAL OBLIGEE RIDER

(Maintenance Payment Bond)

DUAL OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Payment Bond No. _____.

WHEREAS, the Texas Department of Transportation ("TxDOT" or "Primary Obligee") has awarded to _____, a _____ ("Principal"), a Comprehensive Maintenance Agreement for the Loop 375 Border Highway West Extension Project, duly executed and delivered as of _____, 20__, (hereinafter called the "COMA"), 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 payment bond whereby the Camino Real Regional Mobility Authority ("CRRMA") is named as an additional obligee under such bond; and

WHEREAS, Principal and _____ (the "Surety") have agreed to execute and deliver this Rider concurrently with the execution of Payment Bond No. _____ (hereinafter referred to as "Payment Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

CRRMA is hereby added to the Payment Bond as named obligees (hereinafter referred to as "Additional Obligee").

The Surety shall not be liable under the Bond to the Primary Obligee, the Additional Obligee, or either of them, unless the Primary Obligee, the Additional Obligee, or either of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) substantially in accordance with the terms of said Contract as to payments; and the Surety shall not be liable under the Payment Bond to the Primary Obligee, Additional Obligee, or either of them, unless the Primary Obligee, the Additional Obligee, or either of them, shall perform all other obligations to be performed under the COMA in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee, Additional Obligee, or either of them, shall have occurred, been declared by the Principal, and be continuing under the COMA.

The aggregate liability of the Surety under this Payment Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Payment Bond. The Additional Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee and/or the claimants under the Payment Bond, provided that the Additional Obligee has received notice and 30 days' prior opportunity to cure breach or default by the Primary Obligee under the COMA.

The Surety may, at its option, make any payments under the Payment Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Payment Bond and this Rider, this Rider shall govern and control. All references to the Payment Bond, either in the Payment Bond or in this Rider, shall include and refer to the Payment Bond as supplemented and amended by this Rider. Except as herein modified, the Payment Bond shall be and remains in full force and effect.

Signed, sealed and dated this ____ day of _____, 20__.

_____

(Principal)
(Seal)

By: _____

(Title)

_____

(Surety)
(Seal)

By: _____

, Attorney-in-Fact

EXHIBIT 8

8-A	Form of Retainage Bond
8-B	Form of Dual Obligee Rider for Retainage Bond

EXHIBIT 8-A

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 COMA, 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 COMA, 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 COMA 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 8-B

FORM OF DUAL OBLIGEE RIDER

(Retainage Bond)

DUAL OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Retainage Bond No. _____.

WHEREAS, the Texas Department of Transportation ("TxDOT" or "Primary Obligee") has awarded to _____, a _____ ("Principal"), a Comprehensive Maintenance Agreement for the Loop 375 Border Highway West Extension Project, duly executed and delivered as of _____, 20__, (hereinafter called the "COMA"), on the terms and conditions set forth therein; and

WHEREAS, on or 60 Days after issuance by TxDOT of Maintenance NTP1, Principal is required to furnish a retainage bond whereby the Camino Real Regional Mobility Authority ("CRRMA") is named as an additional obligee under such bond; and

WHEREAS, Principal and _____ (the "Surety") have agreed to execute and deliver this Rider concurrently with the execution of Retainage Bond No. _____ (hereinafter referred to as "Retainage Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

CRRMA is hereby added to the Retainage Bond as named obligee (hereinafter referred to as "Additional Obligee").

The Surety shall not be liable under the Bond to the Primary Obligee, the Additional Obligee, or either of them, unless the Primary Obligee, the Additional Obligee, or either of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) substantially in accordance with the terms of said Contract as to payments; and the Surety shall not be liable under the Retainage Bond to the Primary Obligee, Additional Obligee, or either of them, unless the Primary Obligee, the Additional Obligee, or either of them, shall perform all other obligations to be performed under the COMA in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee, Additional Obligee, or either of them, shall have occurred, been declared by the Principal, and be continuing under the COMA.

The aggregate liability of the Surety under this Retainage Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Retainage Bond. The Additional Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee and/or the claimants under the Retainage Bond, provided that the Additional Obligee has received notice and 30 days' prior opportunity to cure breach or default by the Primary Obligee under the COMA.

The Surety may, at its option, make any payments under the Retainage Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Retainage Bond and this Rider, this Rider shall govern and control. All references to the Retainage Bond, either in the Retainage Bond or in this Rider, shall include and refer to the Retainage Bond as supplemented and amended by this Rider. Except as herein modified, the Retainage Bond shall be and remains in full force and effect.

Signed, sealed and dated this ____ day of _____, 20__.

_____

(Principal)
(Seal)

By: _____

(Title)

_____

(Surety)
(Seal)

By: _____

, Attorney-in-Fact

EXHIBIT 9

FORM OF GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("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

A. _____, as maintenance contractor ("Maintenance Contractor"), and TxDOT are parties to that certain Comprehensive Maintenance Agreement of even date herewith ("Comprehensive 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 Comprehensive Maintenance Agreement.

B. To induce TxDOT to (i) enter into the Comprehensive Maintenance Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Maintenance Contractor is a _____. The Guarantor is _____ The execution of the Comprehensive 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 Comprehensive Maintenance Agreement with Maintenance Contractor. Therefore, in consideration of TxDOT's execution of the Comprehensive 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 Comprehensive 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 Comprehensive Maintenance Agreement (the documents described in clauses (a)-(b), inclusive, shall collectively be referred to herein as the "COMA 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 COMA 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 COMA 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 COMA 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 COMA Documents or any modification thereof; (iii) any release of the Maintenance Contractor from any liability with respect to any of the COMA 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 COMA 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 COMA 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 COMA. 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 COMA 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 COMA 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 COMA 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 COMA 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 COMA 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 Comprehensive Maintenance Agreement, but without diminishing TxDOT's exercise of its rights pursuant to Section 12.2.2 of the Comprehensive 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. <u>Waivers by Guarantor if Real Property Security.</u> 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 _____ duly ***[***organized***][formed]***, validly existing, and in good standing under the laws of the State of _____ and qualified to do business and is in good standing under the laws of the State of Texas;

b. it has all requisite ***[corporate][partnership][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 limited partnership or partnership agreement][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 COMA 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 COMA 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. <u>Governing Law; Venue.</u> 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. <u>Entire Document.</u> This Guaranty, together with the COMA 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. <u>Severability.</u> 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
7600 Chevy Chase Drive, Bldg. 2, Suite 400
Austin, Texas 78752
Attention: Mr. Frank Holzmann, P.E.
Telephone: (713) 866-7036
Facsimile: (713) 802-5889

With copies to: Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Austin, TX 78701
Attention: John J. Ingram, Esq.
Telephone: (512) 463-8630
Facsimile: (512) 475-3070

If to Guarantor: _____
_____ _____
Attention: _____
Telephone: _____
Telecopy: _____

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 Comprehensive 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 Comprehensive Maintenance Agreement, without diminishing any rights TxDOT may exercise pursuant to Section 12.2.2 of the Comprehensive 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 any period in which construction work is in progress 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) all existing property and improvements that are within the construction work zone or are or will be affected by the construction work, and (iii) valuable papers and restoration of data, plans and drawings.

(c) The policy shall provide coverage per occurrence up to the maximum probable loss amount of $100,000,000, without risk of co-insurance; provided, however, that the policy may also include the following sublimits (i) for earth movement and flood an amount of not less than $5,000,000 per occurrence and $10,000,000 aggregate, (ii) for existing property and improvements an amount of not less than $1,000,000, (iii) for building ordinance compliance an amount of not less than $5,000,000, (iv) for "soft cost expense" an amount acceptable to TxDOT, not less than $5,000,000, (v) for demolition, not less than $5,000,000, (vi) for debris removal, not less than $25,000,000, (vii) for professional fees, not less than $2,000,000, and (viii) for valuable papers and restoration of data, plans and drawings, not less than $500,000.

(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);

(v) Broad form property damage, providing the same coverage as ISO form CG 00 01 12 07 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 $5,000,000 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 insured's, using ISO form CG 20 10 07 04, 20 33 07 04, 20 37 07 04, 20 26 07 04 or equivalent. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the 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 Comprehensive 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 Comprehensive 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 $5,000,000 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 shall be named insured 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 a named insured shall vitiate coverage of the other additional 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 Comprehensive 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, to the extent required under such 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 $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 schedule stipulates may be similarly included.

(d) Such policy need not be Project-specific.

9. Railroad Insurance

Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance, commercial general liability insurance and contractor's protective liability insurance as may be required by any railroad in connection with any work performed under the Comprehensive Maintenance Agreement across, under or adjacent to the railroad's tracks or railroad right-of-way. All insurance policies (except the Railroad Protective Liability Insurance Policy, which will name the railroad only) shall be in a form acceptable to the operating railroad and shall name TxDOT, TxDOT's Consultants, and railroad as named insureds. 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 Comprehensive 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) (a) For Subcontractors that are Major Subcontractors, the policy shall have a limit of not less than $5,000,000 per accident and in the aggregate during the period of insurance, (b) for all other Subcontractors, the policy shall have a limit of not less than $2,000,000 per accident and in the aggregate during this period of insurance. Such coverage 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

Page 1 of 2

Loop 375 – Border Highway West Extension Comprehensive 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 Comprehensive 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

Page 2 of 2

Loop 375 – Border Highway West Extension Comprehensive 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

Page 1 of 1

Loop 375 – Border Highway West Extension Comprehensive 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

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 Maintenance Services, including that of designers, Subcontractors and Suppliers, which are 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 Maintenance Services, which are the subject of the Draw Request conforms to the requirements of the COMA 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

Page 1 of 1

Loop 375 – Border Highway West Extension Comprehensive Maintenance Agreement
Texas Department of Transportation

Draw Request # 1 Date: _____
month/day/year

Department of Transportation

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:

Days to End of Month (A) = _____

_____
month/day/year

Year X Maintenance Fee (from Proposal) = $01 (B)

Year X Maintenance Fee (Escalated) (C) = [1]

[1] As per COMA 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 COMA (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 COMA 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 COMA (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)

MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE

Loop 375 – Border Highway West Extension Comprehensive 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 Maintenance Services 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 (2/4/200__)							
	Date Change Order Work Completed example format (4/20/4/200__)							
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							

MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE

Page 1 of 1

Loop 375 – Border Highway West Extension Comprehensive Maintenance Agreement
Texas Department of Transportation

Draw Request # 1

Date: _____
month/day/year

Texas Department of Transportation
[Add Address]

Liquidated Damages for Lane Closures

	Hours of Lane Closure (A)	Directional Traffic Volume (Hourly) (B)	Liquidated Damage per hour for a partial lane closure (201X$) (C)	Liquidated Damages Fee (A x C)
	[_____]	< 1,800	$ 0	
		1,800 to 1,899	$39,714	
		1,900 to 1,999	$41,862	
		2,000 to 2,099	$44,009	
		2,100 to 2,199	$46,156	
		2,200 to 2,299	$48,304	
		2,300 to 2,399	$50,451	
		2,400 to 2,499	$52,598	
		2,500 to 2,599	$54,745	
		2,600 to 2,699	$56,893	
		2,700 to 2,799	$59,040	
		2,800 to 2,899	$61,187	
		2,900 to 2,999	$63,335	
		3,000 to 3,099	$65,482	
		3,100 to 3,199	$67,629	
		3,200 to 3,299	$69,777	
		3,300 to 3,399	$71,924	
		3,400 to 3,499	$74,071	
		3,500 to 3,599	$76,218	
		3,600 to 3,699	$78,366	
		3,700 to 3,799	$80,513	
		3,800 to 3,899	$82,660	
		3,900 or more	$83,745	
Total Hours	[_____]		Total Liquidated Damages	$[_____]

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 $ _____
   2. Labor benefits[1] (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 Comprehensive Maintenance Agreement.

SECTION III

Justification for Change Order with reference to the Comprehensive Maintenance Agreement:
_____
_____
_____

Change order required under Development 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: _____

SECTION IV (Reviewed by Maintenance Manager)

_____

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 REPRESENTATIVE

TxDOT Authorized Representative(s):

TxDOT's Executive Director, Chief Planning and Projects Officer and their designees

LtGen J.F. Weber, USMC (Ret)

Russell Zapalac

Ed Pensock

Robert Bielek

Maintenance Contractor's Authorized Representative(s):

Abrams-Kiewit Joint Venture
111 Congress Avenue, Suite 2400
Austin, TX 78701
Attn. Amadeo Saenz, Jr.
Telephone: (512) 322-4000
Facsimile: (512) 322-4018
E-mail: ASaenz@jdabrams.com

EXHIBIT 14

LIST OF REFERENCE INFORMATION DOCUMENTS (RID)

(Attached)

TABLE OF CONTENTS – SUMMARY
RFP Reference Information Documents (RID)
May 30, 2014

RFP RID

- 1. Right-of-Way
- 2. Aerial LiDAR
- 3. Photogrammetry
- 4. Survey
- 5. Third Party Agreements
- 6. Drainage
- 7. Railroad
- 8. Geotechnical
- 9. Structural
- 10. HazMat
- 11. Utilities
- 12. Schematic CADD
- 13. Schematic PDF
- 14. I-10 C-D Project Plans
- 15. Right-of-Entry
- 16. Traffic
- 17. As-Builts
- 18. Post-100% Procurement Schematics CADD
- 19. Post-100% Procurement Schematics PDF
- 20. ITS

- 21. Traffic Signals
- 22. Customs & Border Patrol
- 23. Environmental
- 24. Design Standards
- 25. Bicycle/Pedestrian Planning
- 26. Pavement
- 27. ASARCO

Acronyms:

BHW	Border Highway West
CBP	Customs and Border Patrol
IBWC	US International Boundary & Water Commission
SHPO	Texas State Historic Preservation Officer

Loop 375-Border Highway West Extension
Project Documents

RFP TABLE OF CONTENTS - DETAIL

- 1. Right-of-Way
  - 1.a Preliminary ROW, July 25, 2013
  - 1.b DRAFT ROW Mapping Plans - PDF – east end, December 10, 2013
  - 1.c Parcel Status Summary, January 31, 2014
  - 1.d Parcel Status Summary, February 27, 2014
  - 1.e ROW Map Sheets, Revised January 27, 2014
  - 1.f DRAFT Parcel Descriptions for Parcels 2-7, 9-14 & 16-19
  - 1.g Parcel Status Summary, March 12, 2014
  - 1.h Parcel Status Summary, April 30, 2014

- 2. Aerial LiDAR
  - 2.a LP375, Preliminary Catenaries
  - 2.b LP375, Preliminary DTM
  - 2.c LP375, Preliminary DTM 3D, August 6, 2013
  - 2.d LP375, Preliminary DTM 3D, September 5, 2013
  - 2.e LP375, Preliminary TIN, August 6, 2013
  - 2.f LP375, Preliminary Planimetric 2D, August 6, 2013

- 3. Photogrammetry
  - 3.a A_01
  - 3.b A_01
  - 3.c A_02
  - 3.d A_02
  - 3.e B_02
  - 3.f B_02
  - 3.g B_03
  - 3.h B_03
  - 3.i C_02
  - 3.j C_02
  - 3.k C_03
  - 3.l C_03
  - 3.m C_04
  - 3.n C_04
  - 3.o D_03
  - 3.p D_03
  - 3.q D_04
  - 3.r D_04
  - 3.s D_05

- 3.t D_05
- 3.u E_05
- 3.v E_05
- 3.w E_06
- 3.x E_06
- 3.y F_05
- 3.z F_05
- 3.aa F_6
- 3.bb F_06
- 3.cc G_05
- 3.dd G_05
- 3.ee G_06
- 3.ff G_06
- 3.gg H_06
- 3.hh H_06
- 3.ii I_06
- 3.jj I_06
- 3.kk I_07
- 3.ll I_07
- 3.mm J_07
- 3.nn J_07
- 3.oo K_07
- 3.pp K_07
- 3.qq K_08
- 3.rr K_08
- 3.ss L_08
- 3.tt L_08
- 3.uu L_09
- 3.vv L_09
- 3.ww L_15
- 3.xx L_15
- 3.yy L_16
- 3.zz L_16
- 3.aaa L_17
- 3.bbb L_17
- 3.ccc M_08
- 3.ddd M_08
- 3.eee M_09
- 3.fff M_09
- 3.ggg M_10
- 3.hhh M_10
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- 3.jjj M_13
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- 3.qqq N_09
- 3.rrr N_09
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- 3.www N_12
- 3.xxx N_12
- 3.yyy N_15
- 3.zzz N_15
- 3.aaaa O_10
- 3.bbbb O_10
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- 3.dddd O_11
- 3.eeee O_12
- 3.ffff O_12
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- 3.iiii O_14
- 3.jjjj O_14
- 3.kkkk O_15
- 3.llll O_15
- 3.mmmm Ortho Index .dgn
- 3.nnnn Ortho Index .dxf

❖ 4. Survey
- 4.a Survey Compliance review form

❖ 5. Third Party Agreements
- 5.a Municipal Separate Storm Sewer System (MS4) Phase I, March 2011
- 5.b Resolution between City of El Paso Police Department and TxDOT, September 25, 2012
- 5.c Title Sht Agreements
- 5.d CRRMA-TxDOT MOU
- 5.e USIBWC Approval May 20,

- 6. Drainage
  - 6.a Catch Basin Drainage Areas
  - 6.b Hydraulic (Catch Basin) Computations
  - 6.c Hydraulic (Ponding Width) Computations
  - 6.d Hydraulic Computations
  - 6.e Hydrologic Computations
  - 6.f Drainage Plan, Figure 1
  - 6.g Drainage Plan, Figure 2
  - 6.h Drainage Plan, Figure 3
  - 6.i Drainage Plan, Figure 4
  - 6.j Drainage Plan, Figure 5
  - 6.k Drainage Plan, Figure 6
  - 6.l Off-site Drainage Area Map, Segments A & B
  - 6.m On-site Drainage Drainage Area Map, 22 Sheets
  - 6.n Ponding Area Layouts, 13 Sheets
  - 6.o Storm Sewer Profiles, 30 Sheets
  - 6.p LP 375 BWH Drainage Pond Comparison
  - 6.q IBWC DRAFT Outfall License Package.zip
  - 6.r IBWC NEMEXAS Levee (90 percent), Feb 2013
  - 6.s IBWC NEMEXAS Levee (90 percent), Feb 2013 – GIS
  - 6.t IBWC NEMEXAS Levee (90 percent), Feb 2013 – GIS Imagery 1 of 2
  - 6.u IBWC NEMEXAS Levee (90 percent), Feb 2013 – GIS Imagery 2 of 2
  - 6.v IBWC – URS NEMEXAS Levee Drainage Design and CADD, April 2013
  - 6.w IBWC Working Models for Riverside Column Analysis (added 12/17/2013)
  - 6.x IBWC Hydraulic Analysis Report with Comment Responses – Appendices A-B
  - 6.y IBWC Hydraulic Analysis Report with Comment Responses – Appendix C1-C14
  - 6.z IBWC Hydraulic Analysis Report with Comment Responses – Appendix C15 (1 of 2)
  - 6.aa IBWC Hydraulic Analysis Report with Comment Responses – Appendix C15 (2 of 2) and C17
  - 6.bb Geopak Drainage
  - 6.cc TxDOT Letter and Revised Technical Memorandum re: PA-A1, PA-A2, PA-A3, February 19, 2014

- 7. Railroad
  - 7.a BNSF Subsurface Utility Engineering Plans, Racetrack to Piedras, October 28, 2013
  - 7.b UPRR Subsurface Utility Engineering Plans, Racetrack to Piedras, October 28, 2013
  - 7.c Railroad-approved design plans, December 18, 2013
  - 7.d Railroad-approved design plans – 60% Modified, March 14, 2014
  - 7.e UPRR-ML4-BNSF Crossover Strip Map - 60% Modified, March 14, 2014

- 7.f BNSF Gate Traffic Counts, Intermodal Facility, Oct 2013 – Feb 2014

- 8. Geotechnical
  - 8.a BHW Preliminary Report, October 30, 2013
  - 8.b BHW Preliminary Report Appendix A1-1: Bridge WinCore Bore Log Data
  - 8.c BHW Preliminary Report Appendix A1-2; A1-3; A2-1: Retaining Wall Wincore Bore Log Data; Pond WinCore Bore Log Data; Bridge Bore Log Data
  - 8.d BHW Preliminary Report Appendix A2-1(cont.)
  - 8.e BHW Preliminary Report Appendix A2-2; A2-3: Retaining Wall Bore Log Data; Pond Bore Log Data
  - 8.f BHW Preliminary Report Appendix B1: WinCore Capacity Curves
  - 8.g BHW Preliminary Report Appendix B1(cont.); WinCore Capacity Curves
  - 8.h BHW Preliminary Report Appendix B1 (cont.); WinCore Capacity Curves
  - 8.i BHW Preliminary Report Appendix B2; Appendix C: Foundation Capacity Tables; University of Texas, Bureau of Economic Geology Map and Map of Borehole Locations
  - 8.j BHW Preliminary Report Appendix D: Particle-Size Analysis Results
  - 8.k WinCore clg files.zip, December 11, 2013
  - 8.l Boring Locations & Right-of-Entry Status Map, December 4, 2013
  - 8.m B39 Field Log, January 9, 2014
  - 8.n B37 & B38 Field Logs, January 10-11, 2014
  - 8.o B35 Field Log
  - 8.p Bridge Bore Logs (2) .clg file
  - 8.q B42 & B43 Field Logs, December 3, 2013
  - 8.r B42, B43, R27, R28, R49, R58 Field Logs, September 9 – December 7, 2013
  - 8.s B31 Field Log, January 15, 2014
  - 8.t B33, B39, CV-1 Field Log, January 9-22, 2014
  - 8.u R48, R51, R52 Field Logs, December 6-7, 2013
  - 8.v Logged Borings, February 3, 2014
  - 8.w B23, R30 Field Logs, February 17-18, 2014
  - 8.x R7, R9, R15 Field Logs, February 19-20, 2014
  - 8.y R9 Update, R12, R23 Field Logs February 19-21, 2014
  - 8.z Bridge Bore Logs (2) .clg file
  - 8.aa Retaining Wall Bore Logs (3) .clg file
  - 8.bb Updated Appendix “D” – Particle Size Analysis Results, October 28, 2013
  - 8.cc Supplemental to Appendices: R7, R35, R36, P1, P14, P16, P17, P18, P19 Field Logs, October 23-30, 2014
  - 8.dd B27-P11 Field Log, February 22, 2014
  - 8.ee Boring Locations & Right-of-Entry Status Map, February 14, 2014
  - 8.ff B22, B25/R1, R4, R13, R24 Field Logs, February 15 – March 1, 2014
  - 8.gg Bridge Bore Logs (2) .clg file
  - 8.hh Retaining Wall Bore Logs (3) . clg file
  - 8.ii B30/R10, R14, R22, R33 Field Logs February 19 – March 4, 2014

- 8.jj B3, B26, B44/CV4, R38, RW, RW5, RW11, RW17, RW19, RW21 Drilling Logs March 5-9, 2014

- 9. Structural
  - 9.a Preliminary Bridge Layouts & Typical Sections, October 30, 2013
  - 9.b Preliminary Coles-Paisano Direct Connector Bridge Layout & Typical Sections, October 30, 2013
  - 9.c Preliminary Coles-Paisano EB Ramp Bridge Layout & Typical Sections, October 30, 2013
  - 9.d Preliminary Coles-Paisano WB Ramp Bridge Layout & Typical Sections, October 30, 2013
  - 9.e Preliminary Exhibit "A," October 21, 2013
  - 9.f BRINSAP Reports (Cotton Street, El Paso Street, US 85, LP 375)

- 10. HazMat
  - 10.a Draft Phase I Environmental Site Assessment, ASARCO Parcel, October 2010
  - 10.b Draft Phase I Environmental Site Assessment, CEMEX Parcel, July 22, 2010
  - 10.c Accutest Lab Results T78279, ASARCO Parcel, June 23, 2011
  - 10.d Accutest Lab Results T78280, ASARCO Parcel, June 23, 2011
  - 10.e Final Limited Phase II Environmental Site Assessment, ASARCO Parcel, September 2011
  - 10.f Banks Regulatory Database Report, NW Section, January 15, 2013
  - 10.g Banks Regulatory Database Report, SE Section, January 15, 2013
  - 10.h GeoSearch Chain-of-Title Review, CEMEX Parcel, July 2010
  - 10.i Figure 4-2, Industrial Waste Disposal Area, CEMEX Parcel, July 2010
  - 10.j Industrial Solid Waste Disposal Site Deed Recordation, CEMEX Parcel, June 2, 1986

- 11. Utilities
  - SUE October 28, 2013
    - 11.a Subsurface Utility Engineering (Level B) Plans, Racetrack to Piedras, October 28, 2013
    - 11.b BHW SUE .dgn
    - 11.c suex .rsc
    - 11.d SUE (Level B) Plans, Title Sheet, October 28, 2013
    - 11.e SUE (Level B) Plans, Sheet 1 of 32, October 28, 2013
    - 11.f SUE (Level B) Plans, Sheet 2 of 32, October 28, 2013
    - 11.g SUE (Level B) Plans, Sheet 3 of 32, October 28, 2013
    - 11.h SUE (Level B) Plans, Sheet 4 of 32, October 28, 2013
    - 11.i SUE (Level B) Plans, Sheet 5 of 32, October 28, 2013
    - 11.j SUE (Level B) Plans, Sheet 6 of 32, October 28, 2013
    - 11.k SUE (Level B) Plans, Sheet 7 of 32, October 28, 2013

- 11.l SUE (Level B) Plans, Sheet 8 of 32, October 28, 2013
- 11.m SUE (Level B) Plans, Sheet 8A of 32, October 28, 2013
- 11.n SUE (Level B) Plans, Sheet 9 of 32, October 28, 2013
- 11.o SUE (Level B) Plans, Sheet 9A of 32, October 28, 2013
- 11.p SUE (Level B) Plans, Sheet 10 of 32, October 28, 2013
- 11.q SUE (Level B) Plans, Sheet 11 of 32, October 28, 2013
- 11.r SUE (Level B) Plans, Sheet 12 of 32, October 28, 2013
- 11.s SUE (Level B) Plans, Sheet 13 of 32, October 28, 2013
- 11.t SUE (Level B) Plans, Sheet 14 of 32, October 28, 2013
- 11.u SUE (Level B) Plans, Sheet 15 of 32, October 28, 2013
- 11.v SUE (Level B) Plans, Sheet 16 of 32, October 28, 2013
- 11.w SUE (Level B) Plans, Sheet 16A of 32, October 28, 2013
- 11.x SUE (Level B) Plans, Sheet 17 of 32, October 28, 2013
- 11.y SUE (Level B) Plans, Sheet 18 of 32, October 28, 2013
- 11.z SUE (Level B) Plans, Sheet 19 of 32, October 28, 2013
- 11.aa SUE (Level B) Plans, Sheet 19A of 32, October 28, 2013
- 11.bb SUE (Level B) Plans, Sheet 20 of 32, October 28, 2013
- 11.cc SUE (Level B) Plans, Sheet 21 of 32, October 28, 2013
- 11.dd SUE (Level B) Plans, Sheet 22 of 32, October 28, 2013
- 11.ee SUE (Level B) Plans, Sheet 23 of 32, October 28, 2013
- 11.ff SUE (Level B) Plans, Sheet 24 of 32, October 28, 2013
- 11.gg SUE (Level B) Plans, Sheet 25 of 32, October 28, 2013
- 11.gg SUE (Level B) Plans, Sheet 26 of 32, October 28, 2013
- 11.ii SUE (Level B) Plans, Sheet 27 of 32, October 28, 2013
- 11.jj SUE (Level B) Plans, Sheet 28 of 32, October 28, 2013
- 11.kk SUE (Level B) Plans, Sheet 29 of 32, October 28, 2013
- 11.ll SUE (Level B) Plans, Sheet 30 of 32, October 28, 2013
- 11.mm SUE (Level B) Plans, Sheet 31 of 32, October 28, 2013
- 11.nn SUE (Level B) Plans, Sheet 32 of 32, October 28, 2013

- SUE December 6, 2013
  - 11.oo SUE (Level A) Test Hole Data, October 8, 2013
  - 11.pp SUE (Level B) Plans, Title Sheet, November 14, 2013
  - 11.qq SUE (Level B) Plans, Sheet 1 of 32, November 14, 2013
  - 11.rr SUE (Level B) Plans, Sheet 2 of 32, November 14, 2013
  - 11.ss SUE (Level B) Plans, Sheet 3 of 32, November 14, 2013
  - 11.tt SUE (Level B) Plans, Sheet 4 of 32, November 14, 2013
  - 11.uu SUE (Level B) Plans, Sheet 5 of 32, November 14, 2013
  - 11.vv SUE (Level B) Plans, Sheet 6 of 32, November 14, 2013
  - 11.ww SUE (Level B) Plans, Sheet 7 of 32, November 14, 2013
  - 11.xx SUE (Level B) Plans, Sheet 8 of 32, November 14, 2013
  - 11.yy SUE (Level B) Plans, Sheet 8A of 32, November 14, 2013
  - 11.zz SUE (Level B) Plans, Sheet 9 of 32, November 14, 2013
  - 11.aaa SUE (Level B) Plans, Sheet 9A of 32, November 14, 2013

        - 11.bbb SUE (Level B) Plans, Sheet 10 of 32, November 14, 2013
        - 11.ccc SUE (Level B) Plans, Sheet 11 of 32, November 14, 2013
        - 11.ddd SUE (Level B) Plans, Sheet 12 of 32, November 14, 2013
        - 11.eee SUE (Level B) Plans, Sheet 13 of 32, November 14, 2013
        - 11.fff SUE (Level B) Plans, Sheet 14 of 32, November 14, 2013
        - 11.ggg SUE (Level B) Plans, Sheet 15 of 32, November 14, 2013
        - 11.hhh SUE (Level B) Plans, Sheet 16 of 32, November 14, 2013
        - 11.iii SUE (Level B) Plans, Sheet 16A of 32, November 14, 2013
        - 11.jjj SUE (Level B) Plans, Sheet 17 of 32, November 14, 2013
        - 11.kkk SUE (Level B) Plans, Sheet 18 of 32, November 14, 2013
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        - 11.nnn SUE (Level B) Plans, Sheet 20 of 32, November 14, 2013
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        - 11.ppp SUE (Level B) Plans, Sheet 22 of 32, November 14, 2013
        - 11.qqq SUE (Level B) Plans, Sheet 23 of 32, November 14, 2013
        - 11.rrr SUE (Level B) Plans, Sheet 24 of 32, November 14, 2013
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        - 11.uuu SUE (Level B) Plans, Sheet 27 of 32, November 14, 2013
        - 11.vvv SUE (Level B) Plans, Sheet 28 of 32, November 14, 2013
        - 11.www SUE (Level B) Plans, Sheet 29 of 32, November 14, 2013
        - 11.xxx SUE (Level B) Plans, Sheet 30 of 32, November 14, 2013
        - 11.yyy SUE (Level B) Plans, Sheet 31 of 32, November 14, 2013
        - 11.zzz SUE (Level B) Plans, Sheet 32 of 32, November 14, 2013
    - 11.aaaa Utility Strip Maps – Base files.zip
    - 11.bbbb Utility Strip Maps – Sheet files.zip
    - 11.cccc Utility Strip Maps – PDF & DGN.zip, sealed December 13, 2013
    - 11.dddd Sign-in sheet; Utility Meeting, January 14, 2014
    - 11.eeee Presentation-LP 375 BHW Utility Kickoff Meeting, January 14, 2014
    - 11.ffff Transtelco Utility Paths.zip (Doniphan Park-I10-Mesa Hills) & (I-10 Crossings)
    - 11.gggg Time-Warner Cable Utility Paths.zip (dwf & pdf files)
    - 11.hhhh El Paso Electric Company Transmission Line Relocation.zip (dgn, pdf & dwg files)
    - 11.iiii SUE mark-up for Verizon and MCI assets
    - 11.jjjj Updated SUE 2D, March 24, 2014

- 12. Schematic CADD
    - 12.a CADD.zip, October 30, 2013

- 13. Schematic PDF
    - 13.a Sign Schematic (Layout) 1 of 4, September 11, 2013
    - 13.b Sign Schematic (Layout) 2 of 4, September 11, 2013

- 13.c Sign Schematic (Typical Sections) 3 of 4, September 11, 2013
- 13.d Sign Schematic (Profiles) 4 of 4, September 11, 2013
- 13.e Sign Schematic (Simple Layout), October 3, 2013
- 13.f SUE Schematic, October 2, 2013
- 13.g Cross Sections 1 of 4, September 6, 2013
- 13.h Cross Sections 2 of 4, September 6, 2013
- 13.i Cross Sections 3 of 4, September 6, 2013
- 13.j Cross Sections 4 of 4, September 6, 2013

❖ 14. I-10 C-D Project Plans
- 14.a I-10 C-D Project Plans – PDF.zip
- 14.b I-10 C-D Project Plans – CADD.zip

❖ 15. Right-of-Entry Documents
- 15.a Right-of-Entry Documents (Signed).zip
- 15.b Right-of-Entry Documents (Unsigned).zip
- 15.c Right-of-Entry Letters, Signed and sent out by TxDOT, June 18, 2013

❖ 16. Traffic
- 16.a Executive Center SPUI Synchro files, December 16, 2013

❖ 17. As-Builts
- 17.a As-built files (US 80A, US 85, LP 375).zip (added 12/19/2013)
- 17.b As-built files (Spur 1966).zip
- 17.c As-built files (Cotton Street, Spur 1, LP 375).zip
- 17.d Cesar Chavez Managed Lanes Bid Plans & Major Change Orders .zip
- 17.e Cesar Chavez Toll Integration Plans, August 5, 2013
- 17.f 2013-04-05 (URS – NEXEXAS Levee Drainage Design).zip
- 17.g 2013-04-09 (URS – NEXEXAS Levee Design CADD).zip
- 17.h American Canal As-Builts.zip
- 17.i American Canal Rechannelization.zip
- 17.j1 IBWC RGACE as builts (Franklin Canal).zip

❖ 18. Post-100% Procurement Schematics - CADD
- 18.a Post-100% Procurement Schematics-CADD.zip, December 18, 2013
- 18.b REVISED Post-100% Procurement Schematics-CADD.zip, January 30, 2014

❖ 19. Post-100% Procurement Schematics – PDF
- 19.a Post-100% Procurement Schematics-PDF.zip, December 18, 2013
- 19.b REVISED Post-100% Procurement Schematics-PDF.zip, January 30, 2014

❖ 20. ITS
- 20.a ITS Specifications
- 20.b ITS Specifications, Redlines, February 28, 2014

- 20.c ITS Specifications, Revised for 02/28/14 redlines, March 4, 2014

- 21. Traffic Signals
  - 21.a VIVDS Specifications

- 22. Customs and Border Protection
  - 22.a CBP Tower Lights & Cameras Exhibit
  - 22.b CBP Tower relocation GPS coordinates (added 02/14/2014)
  - 22.c CBP Tower relocation GPS coordinates (revised) (added 03/12/2014)
  - 22.d CBP Rules of Engagement (added 03/12/2014)

- 23. Environmental
  - 23.a Hazardous Materials Technical Report, April 2013
  - 23.b Wetland Delineation Technical Report, April 2013
  - 23.c Traffic Noise Technical Report, April 2013
  - 23.d Historic Resources Survey Report, August 2012
  - 23.e DRAFT Interim Report for Intensive Archaeological Survey, December 2012
  - 23.f Appendices A-C to Final Environmental Impact Statement
  - 23.g Memorandum Of Agreement (TxDOT/IBWC/SHPO) - Chihuahita District, January 17, 2014
  - 23.h BHW Sun Metro Reevaluation Consultation Checklist
  - 23.i Final Complete BHW Sun Metro Re-evaluation Consultation Checklist
  - 23.j Rescue Mission Documents
  - 23.k Fully Executed – Memorandum of Agreement (TxDOT/IBWC/SHPO) – Chihuahita District, March 31, 2014

- 24. Design Standards
  - 24.a City of El Paso Design Standards for Construction, June 3, 2008
  - 24.b TxDOT El Paso District Drainage Details.zip (added 02/13/2014)
  - 24.c TxDOT El Paso District Roadway Details.zip (added 02/13/2014)
  - 24.d TxDOT El Paso District Traffic and ITS Details.zip
  - 24.e TxDOT El Paso District Traffic and ITS Details – CPM(1)-14 Draft

- 25. Bicycle/Pedestrian Planning
  - 25.a City of El Paso Bikeways Map, March 1999
  - 25.b Metropolitan Planning Organization Regional Bikeways Plan Study, July 17, 1997

- 26. Pavement
  - 26.a BHW – LP 375 & US 85 PMIS, February 25, 2014

- 27. ASARCO
  - 27.a ASARCO Information, March 18, 2014
  - 27.b LP 375 Contractor Access & Laydown figure

- 27.c Soil Sampling Information, March 26, 2014

EXHIBIT 15

DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT (this "**Agreement**") is made and entered into this 22nd day of August, 2014, (the "**Effective Date**") by and between the Texas Department of Transportation ("**TxDOT**"), and Abrams-Kiewit, a Texas joint venture composed of J.D. Abrams, L.P. and Kiewit Infrastructure South Co., ("**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 Comprehensive Maintenance Agreement for the Loop 375 – Border Highway West Extension Project, dated as of the Effective Date (the "**COMA**").

B. Section 16.3 of the COMA, 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 COMA 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 COMA.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the COMA 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 COMA Documents.

1.2 Reference Section of COMA. Section 16.3 of the COMA, 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 COMA. 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 COMA, 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 Candidates 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 Candidates 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 Candidates 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 Candidates 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 Candidates 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 COMA Documents, any Subcontract 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 COMA 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 COMA 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 COMA. Each Disputes Board Member shall maintain the privacy of Confidential Information pursuant to Section 16.3.9 of the COMA. 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 COMA.

Section 7. TxDOT and Maintenance Contractor Responsibilities.

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board Member one copy of the COMA 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 COMA.

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 COMA and thereafter for so long as either Party has any obligation originating under the COMA 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 COMA 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 COMA Documents and, subject to the terms and conditions of the COMA 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 COMA and any other relevant provisions of the COMA 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 COMA or any other relevant provision of the COMA Documents, the COMA or other DRP governed agreement shall control.

Section 15. Notices.

Notices hereunder shall be sent as provided in Section 18.11 of the COMA. 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:

ABRAMS-KIEWIT, JV

By: J.D. Abrams, L.P.

By: _____
Name: Jon F. Abrams
Title: President

By: Kiewit Infrastructure South Co.

By: _____
Name: Shane T. Petersen
Title: Senior Vice President

TxDOT:

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
LtGen J.F. Weber, USMC (Ret)
Executive Director

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 Comprehensive Maintenance Agreement, for the Loop 375 – Border Highway West Extension Project, dated as of the Effective Date (the "**COMA**").

B. Section 16.3 of the COMA, 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 COMA 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 COMA 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 COMA Documents and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 16.3 of COMA. The Disputes Board Agreement and Section 16.3 of the COMA, 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 COMA, 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 COMA**;**

(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 COMA**.**

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 WHERE, the parties hereto, intending to be legally bound, have executed this Agreement as of the day and year first set forth above.

Appointing Party:	**Disputes Board Member:**
[*TxDOT or Maintenance Contractor*]	
By:_____	By: _____

Name: _____

Title: _____

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 COMA, Section 16.3 of the COMA 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 COMA 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 18.11 of the COMA.

(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 COMA, including, but not limited to, specific performance of any obligation under the COMA 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 16.3.5(e) of the COMA.

(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 16.3.5(e) of the COMA.

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 COMA.

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 16.3.5(e) of the COMA).

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 COMA, 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 COMA.

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 COMA.

(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.

EXHIBIT 16

LIQUIDATED DAMAGES FOR LANE CLOSURES

1. Liquidated damages ("Liquidated Damages for Lane Closures") shall be assessed for certain Lane Closures during the Maintenance Term in accordance with this Exhibit 16.

2. Liquidated Damages for Lane Closures shall be assessed for any period during which one or more lanes in the main lanes, on ramps, cross streets, and on direct connectors are closed or do not meet the minimum requirements for permitted Lane Closures set forth in Attachment 6 to Exhibit 2.

3 Liquidated Damages for Lane Closures shall apply to any Lane Closures (on main lanes, ramps, cross streets, and direct connectors only) that occur in connection with the performance of Maintenance Services 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.

4. Maintenance Contractor shall not be assessed Liquidated Damages for Lane Closures for rolling lane closures for the purpose of construction and/or maintenance activities above closed lane(s) if the rolling lane closure is less than 15 minutes in duration during the Off-Peak Period and provided that the queued traffic can be dispersed within 10 minutes and returned to the same Level of Service (LOS) as existed prior to the commencement of the Maintenance Services. If the traffic queue resulting from the Maintenance Services cannot be dispersed within 10 minutes, then liquidated damages shall be assessed in accordance with Table 16-1. Liquidated damages for rolling lane closures shall also be assessed in accordance with Table 16-1 if any rolling lane closure, including moving lane closures, is greater than 15 minutes in duration, is for any purposes other than overhead work, or if the traffic queue resulting from a lane closure cannot be disbursed within 10 minutes.

5. Except as provided in Section 5 hereof, Liquidated Damages for Lane Closures, as defined in this Exhibit 16, shall be calculated for any period during the Maintenance Term in accordance with Table 16-1. The directional average hourly volume available from electronic toll transactions for the corresponding time and day(s) of the week (excluding holidays) from the previous full month will be used to determine the amount of Liquidated Damage for Lane Closures. Each of the amounts of liquidated damages set forth in Table 16-1 shall be increased annually on January 1 of each year after the Effective Date by a percentage equal to the percentage increase in the CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year. In no event shall the amount be less than the amount in effect during the immediately preceding year. If there is a decrease or no increase in the CPI index then there shall be no increase in the amounts of liquidated damages.

6. The amount of the Liquidated Damages for Lane Closures during any period in which all lanes in one direction (including main lanes, ramps, cross streets, and direct connectors) are closed shall be based on loss of gross toll revenues using the directional average hourly volume available from electronic toll transactions for the corresponding time and

day(s) of the week (excluding holidays) from the previous full month and applying the current toll rate for the location.

Table 16-1: Liquidated Damages for partial lane closures by volume per hour

Directional Traffic Volume (Hourly)	Liquidated Damage per hour for a partial lane closure (201X$)
< 1,800	$ 0
1,800 to 1,899	$ 39,714
1,900 to 1,999	$ 41,862
2,000 to 2,099	$ 44,009
2,100 to 2,199	$ 46,156
2,200 to 2,299	$ 48,304
2,300 to 2,399	$ 50,451
2,400 to 2,499	$ 52,598
2,500 to 2,599	$ 54,745
2,600 to 2,699	$ 56,893
2,700 to 2,799	$ 59,040
2,800 to 2,899	$ 61,187
2,900 to 2,999	$ 63,335
3,000 to 3,099	$ 65,482
3,100 to 3,199	$ 67,629
3,200 to 3,299	$ 69,777
3,300 to 3,399	$ 71,924
3,400 to 3,499	$ 74,071
3,500 to 3,599	$ 76,218
3,600 to 3,699	$ 78,366
3,700 to 3,799	$ 80,513
3,800 to 3,899	$ 82,660
3,900 or more	$ 83,745

Note: Calculations are based on the midpoint of each traffic volume band.