COMPREHENSIVE MAINTENANCE AGREEMENT

FOR THE

SH 99 GRAND PARKWAY SEGMENTS H, I-1 AND I-2

By and Between

The Texas Department of Transportation

and

[MAINTENANCE CONTRACTOR]

Dated as of: [_____], 2016

COMPREHENSIVE MAINTENANCE AGREEMENT

SH 99 GRAND PARKWAY
SEGMENTS H, I-1 AND I-2

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5	Job Training and Small Business Opportunity Plan
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13	Authorized Representative
14	List of Reference Information Documents
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COMPREHENSIVE MAINTENANCE AGREEMENT

SH 99 GRAND PARKWAY SEGMENTS H, I-1 AND I-2

This **COMPREHENSIVE MAINTENANCE AGREEMENT** ("Comprehensive Maintenance Agreement") is made and entered into as of [_____, 20__] by and between the **TEXAS DEPARTMENT OF TRANSPORTATION** ("TxDOT") and [_____], a [_____] ("Maintenance Contractor").

RECITALS

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

B. TxDOT wishes to enter into agreements with a private sector entity to design, construct and maintain tolled lanes, general purpose lanes and associated facilities along an approximately 52.3-mile segment of State Highway ("SH") 99 from U.S. Route ("US") 59 to SH 146, in Harris, Montgomery, Chambers and Liberty Counties (the "Project").

C. Pursuant to the Code and the Rules, TxDOT issued a Request for Qualifications (as amended, the "RFQ") on July 31, 2014.

D. TxDOT received four qualification statements for the Design-Build Agreement and Comprehensive Maintenance Agreement on September 30, 2014 and subsequently shortlisted three proposers.

E. On April 30, 2015, TxDOT issued to the shortlisted proposers a Request for Proposals (as subsequently amended by addenda, the "RFP") to design, construct and maintain the Project.

F. On [_____], 2015, TxDOT received [____] responses to the RFP, including the response of Maintenance Contractor (the "Proposal").

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

H. On [_____], 2015, the Texas Transportation Commission accepted the recommendation of the Executive Director and the RFP evaluation committee and authorized TxDOT staff to negotiate a Design-Build Agreement and this Comprehensive Maintenance Agreement.

I. Concurrently herewith TxDOT and Maintenance Contractor, as "Maintenance Contractor" are entering into a Design-Build Agreement providing for the development, design and construction of the Project (the "Design-Build Agreement").

J. This Comprehensive Maintenance Agreement, the Design-Build Agreement and the other COMA Documents collectively constitute a design-build agreement, as contemplated under the Code and the Rules, and are entered into in accordance with the provisions of the RFP.

K. The Executive Director of TxDOT has been authorized to enter into this Comprehensive Maintenance Agreement pursuant to the Code, the Rules and the Texas Transportation Commission Minute Order [_____], dated [_____].

L. It is anticipated that the DBA and COMA will, shortly after the Effective Date and to facilitate the financing for the Project, be assigned by TxDOT to the Grand Parkway Surface Transportation Corporation ("Corporation"), a public transportation corporation created under the Texas Transportation Corporation Act at Transportation Code, Chapter 431.

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

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

1.1 Definitions

Exhibit 1 hereto contains the meaning of various terms used in the COMA Documents. Initially capitalized terms not otherwise defined in Exhibit 1 attached hereto shall have the meanings set forth in the Design-Build Agreement.

1.2 COMA Documents; Order of Precedence

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

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

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

(b) this Comprehensive Maintenance Agreement (including all exhibits, except Exhibits 2 and 3);

(c) Amendments to Exhibit 2 (Maintenance Specification) or to any attachments thereto;

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

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

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

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

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

1.3 Interpretation of COMA Documents

1.3.1 In the COMA Documents, where appropriate:

(a) The singular includes the plural and vice versa;

(b) References to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to;

(c) The words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation";

(d) Unless otherwise indicated references to sections, appendices or schedules are to this Comprehensive Maintenance Agreement;

(e) The word "discretion" with respect to any Person means the sole and absolute discretion of such Person except as otherwise stated herein;

(f) the word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances;

(g) Words such as “herein,” “hereof” and “hereunder” shall refer to the entire document in which they are contained and not to any particular provision or section;

(h) Words not otherwise defined that have well-known technical or construction industry meanings, are used in accordance with such recognized meanings;

(i) References to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities; and

(j) Words of any gender used herein shall include each other gender where appropriate.

1.3.2 Unless otherwise specified, lists contained in the COMA Documents defining the Project or the Maintenance Services shall not be deemed all-inclusive.

1.3.3 Maintenance Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the COMA Documents and to bring to the attention of TxDOT any conflicts or ambiguities contained therein. Maintenance Contractor further acknowledges and agrees that it has independently reviewed the COMA Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the COMA Documents. Accordingly, if an ambiguity in, or there is a dispute regarding, the interpretation of the COMA Documents, they shall not be interpreted or construed against the Person which prepared them, and, instead, other rules of interpretation and construction shall be used.

1.3.4 TxDOT’s interim or final answers to the questions posed during the Proposal process for this Comprehensive Maintenance Agreement shall in no event be deemed part of the COMA Documents and shall not be relevant in interpreting the COMA Documents except to the extent they may clarify provisions otherwise considered ambiguous.

1.3.5 On plans, as-built drawings, working drawings, and standard plans, calculated or stated dimensions shall take precedence over scaled dimensions.

1.3.6 Unless specified otherwise, a reference to a Law is considered to be a reference to (a) such Law as it may be amended, modified or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws and (d) all future Laws pertaining to the same or similar subject matter.

1.3.7 Unless specified otherwise, all statements of or references to dollar amounts or money in this Comprehensive Maintenance Agreement are to the lawful currency of the United States of America.

1.4 Referenced Standards and Specifications

1.4.1 Except as otherwise specified in the COMA Documents or otherwise directed by TxDOT, material and workmanship specified by the number, symbol or title of any

standard established by reference to a described publication affecting any portion of the Project or Maintenance Services shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Proposal Due Date.

1.4.2 In interpreting referenced standards, the following apply:

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

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

1.5 Reference Information Documents

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

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

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

1.6 Explanations; Omissions and Mis-descriptions

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

1.7 Computation of Periods

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

1.8 Standard for Approvals

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

1.9 Professional Services Licensing Requirements

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

1.10 TxDOT Monetary Obligations

All TxDOT monetary obligations under the COMA Documents (or in the event the Comprehensive Maintenance Agreement is assigned to the Corporation, all monetary obligations of the Corporation under the COMA Documents other than those payable from revenue bond proceeds) are subject to appropriation by the Texas Legislature. This Section 1.10 applies to all monetary obligations of TxDOT and the Corporation, as applicable, set forth in the COMA Documents, notwithstanding any contrary provisions of the COMA Documents. The COMA Documents do not create a debt under the Texas Constitution.

SECTION 2. COMMENCEMENT OF COMPREHENSIVE MAINTENANCE AGREEMENT

2.1 Commencement of Comprehensive Maintenance Agreement

No later than 180 days prior to Substantial Completion of the Project to be constructed under the Design-Build Agreement, TxDOT shall either: (a) issue Maintenance NTP to Maintenance Contractor; or (b) be deemed to terminate this Comprehensive Maintenance Agreement, as more particularly provided in Section 14.9.

2.2 Failure to Issue Maintenance NTP

TxDOT shall have no liability to Maintenance Contractor in the event that TXDOT elects, in its sole and absolute discretion, not to issue Maintenance NTP under this Comprehensive Maintenance Agreement.

SECTION 3. SCOPE OF MAINTENANCE SERVICES

3.1 General

3.1.1 General Obligations

3.1.1.1. Maintenance Contractor shall furnish all Maintenance Services throughout the term of this COMA within the maintenance limits as shown in Attachment 3 to Exhibit 2 to this Comprehensive Maintenance Agreement, as modified by the Released for Construction Documents as defined in Exhibit 1 to the Design-Build Agreement, and as further described herein in accordance with the COMA Documents, including Exhibit 2. In addition, Maintenance Contractor shall be responsible for complying with the Handback Requirements for the Project. All costs associated with providing the Maintenance Services are included in the Maintenance Price set forth in Exhibit 4 to this Comprehensive Maintenance Agreement, as such may be adjusted in accordance with Section 10.

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

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

3.1.1.4. At all times during the Maintenance Term, Maintenance Contractor shall carry out the Maintenance Services in accordance with (i) Good Industry Practice, as it evolves from time to time, (ii) the requirements, terms and conditions set forth in the COMA Documents, as the same may change from time to time, (iii) all Laws, (iv) the requirements, terms and conditions set forth in all Governmental Approvals, (v) the approved Maintenance Management Plan, and all approved updates and amendments thereof, (vi) Best Management Practices, (vii) safety compliance and Safety Standards, (viii) the approved Project Management Plan and all component parts, plans and documentation prepared or to be prepared thereunder, and all approved updates and amendments thereof, (ix) the approved Quality Management Plan, and all approved updates and amendments thereof and (x) all other applicable safety, environmental and other requirements, taking into account the Project ROW limits and other constraints affecting the Project. If Maintenance Contractor encounters a contradiction between subsections (i) through (x), Maintenance Contractor shall advise TxDOT of the contradiction and TxDOT shall instruct Maintenance Contractor as to which subsection shall control in that instance. No such instruction shall be construed as a TxDOT-Directed Change. Maintenance Contractor is responsible for keeping itself informed of and applying current Good Industry Practice.

3.1.1.5. Maintenance Contractor acknowledges and agrees that, although certain provisions in the COMA Documents include Performance Requirements, such Performance Requirements shall not otherwise limit Maintenance Contractor's obligation to perform the Maintenance Services in a safe, reasonable, and prudent manner, and, in doing so,

Maintenance Contractor shall employ Good Industry Practice as it evolves from time to time, and shall conduct its commercial affairs in a manner consistent with good faith and fair dealing.

3.1.1.6. Maintenance Contractor shall, at all times, schedule and direct its activities to provide an orderly progression of the Maintenance Services to achieve completion within the specified time for completion, including furnishing such employees, materials, facilities and equipment and working such hours, including extra shifts, overtime operations, Sundays and holidays as may be necessary to achieve such goal, all at Maintenance Contractor's sole cost, except as otherwise specifically provided in Section 10.

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

3.1.1.8. Maintenance Contractor shall remedy and repair the Project other than the Non-Maintained Elements, including renewal or rehabilitation work not scheduled in the Maintenance Contractor's annually recurring highway maintenance and repair program, as necessary to meet the requirements of Exhibit 2 and the COMA Documents.

3.1.1.9. Whenever an activity by Maintenance Contractor disturbs, alters, removes, or changes any Non-Maintained Element, Maintenance Contractor shall restore the affected Non-Maintained Element to a condition no less favorable than its condition existing immediately before it was disturbed, altered, removed or changed.

3.1.1.10. At all times during the Maintenance Term, Maintenance Contractor shall provide a Maintenance Manager approved by TxDOT who: (i) will have full responsibility for the prosecution of the Maintenance Services, (ii) will act as agent and be a single point of contact in all matters on behalf of Maintenance Contractor, and (iii) will be available to respond to TxDOT or TxDOT's Authorized Representatives.

3.1.1.11. Maintenance Contractor, at its sole cost and expense unless expressly provided otherwise in this Comprehensive Maintenance Agreement, shall comply with all provisions of the Maintenance Specification, including Safety Standards, during the Maintenance Term. Maintenance Contractor's failure to comply with such requirements shall entitle TxDOT to the rights and remedies set forth in the COMA Documents, including assessment of liquidated damages, deductions from payments otherwise owed to Maintenance Contractor, and termination for uncured Maintenance Contractor Default.

3.1.2 Changes in Performance, Operation and Maintenance Standards

3.1.2.1. TxDOT shall have the right to adopt at any time, and Maintenance Contractor acknowledges it must comply with, all Discriminatory O&M Changes and Non-Discriminatory O&M Changes. Refer to Section 10 for Maintenance Contractor's rights to compensation regarding Non-Discriminatory O&M Changes. TxDOT shall provide Maintenance Contractor with prompt notice of Discriminatory O&M Changes and Non-Discriminatory O&M Changes. Without limiting the foregoing, the Parties anticipate that from time to time after the Proposal Due Date, TxDOT will adopt Non-Discriminatory O&M Changes. TxDOT shall have the right in its discretion to add such Discriminatory O&M Changes and Non-Discriminatory O&M Changes to the Maintenance Specification and Technical Provisions by notice to Maintenance Contractor, whereupon they shall constitute amendments, and become

part, of the Maintenance Specification and Technical Provisions, as applicable, and replace and supersede inconsistent provisions of the Maintenance Specification and Technical Provisions. TxDOT will identify the superseded provisions in its notice to Maintenance Contractor. All Discriminatory O&M Changes shall be implemented in accordance with Section 3.1.2.4. Non-Discriminatory O&M Changes shall not require a Change Order or Directive Letter and Maintenance Contractor shall not be entitled to any increase in the Maintenance Price or schedule relief for any Non-Discriminatory O&M Change except as set forth in Section 10.

3.1.2.2. If compliance with a Non-Discriminatory O&M Change requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Maintenance Element, Maintenance Contractor shall perform the major repair, reconstruction, rehabilitation, restoration, renewal or replacement not later than the first to occur of (i) the date when Maintenance Contractor next performs Renewal Work on such Maintenance Element, (ii) the date when Maintenance Contractor is first obligated to perform Renewal Work on such Maintenance Element, or (iii) provided TxDOT gives no less than 30 days' prior notice to Maintenance Contractor, the date on which TxDOT commences actions to implement the Non-Discriminatory O&M Change on any Comparable Limited Access Highways that TxDOT manages or operates, as determined by Section 3.1.2.7. If, however, TxDOT adopts the Non-Discriminatory O&M Change prior to the Final Acceptance Date, TxDOT shall issue a notice informing Maintenance Contractor when to implement such Non-Discriminatory O&M Change. Following commencement of any Maintenance Services pursuant to this Section 3.1.2.2, Maintenance Contractor shall diligently prosecute such Maintenance Services until completion, and in any event by any deadline for completion reasonably required by TxDOT for such Non-Discriminatory O&M Change. Should Maintenance Contractor dispute the timing for commencement or completion of Maintenance Services as described in this Section 3.1.2.2, Maintenance Contractor may submit the Dispute for resolution according to the dispute resolution procedures under Section 16; pending such resolution Maintenance Contractor shall prosecute the Maintenance Services in accordance with TxDOT's notice delivered pursuant to Section 3.1.2.1.

3.1.2.3. If compliance with a Non-Discriminatory O&M Change requires construction or installation of new improvements at, for or on the Project (and not major repair, reconstruction, etc. of existing improvements, governed by Section 3.1.2.2), Maintenance Contractor shall complete construction and installation of the new improvements according to the implementation period reasonably required by TxDOT for such Non-Discriminatory O&M Change. Should Maintenance Contractor dispute the timing for commencement or completion of such new improvements, Maintenance Contractor may submit the issue for resolution according to the Dispute Resolution Procedures; pending such resolution Maintenance Contractor shall diligently prosecute the Maintenance Services in accordance with TxDOT's direction.

3.1.2.4. Maintenance Contractor shall implement a Discriminatory O&M Change only after TxDOT issues a Change Order or Directive Letter therefor pursuant to Section 10. If a Discriminatory O&M Change requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Maintenance Element during the Maintenance Term, or requires construction or installation of new improvements, Maintenance Contractor shall perform the major repair, reconstruction, rehabilitation, restoration, renewal or replacement or the new improvement work according to the schedule therefor adopted in the Change Order for such work. If a Discriminatory O&M Change requires implementation not entailing such work, Maintenance Contractor shall implement it from and after the date TxDOT issues the Change Order.

3.1.2.5. In the case of any other Discriminatory O&M Change or Non-Discriminatory O&M Change, Maintenance Contractor shall comply from and after the date it becomes effective and Maintenance Contractor is notified or otherwise obtains knowledge of it. For the avoidance of doubt, if Maintenance Contractor has notice or knows of the Discriminatory O&M Change or Non-Discriminatory O&M Change on or prior to the date Maintenance Contractor commences maintenance, routine repair or routine replacement of damaged, worn or obsolete components or materials of the Project, then Maintenance Contractor shall comply with such changes, additions or replacements in carrying out such maintenance, routine repair or replacement.

3.1.2.6. Maintenance Contractor may apply for TxDOT approval of Deviations from applicable Maintenance Specification regarding Maintenance Services. All applications shall be in writing. Where Maintenance Contractor requests a Deviation as part of the submittal of a component plan of the Maintenance Management Plan, Maintenance Contractor shall specifically identify and label the Deviation. TxDOT shall consider in its discretion, but have no obligation to approve, any such application, and Maintenance Contractor shall bear the burden of persuading TxDOT that the Deviation sought constitutes sound and safe practices consistent with Good Industry Practice and achieves or substantially achieves TxDOT's applicable Safety Standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in a writing signed by TxDOT's Authorized Representative. TxDOT's affirmative written approval of a component plan of the Maintenance Management Plan shall constitute (i) approval of the Deviations expressly identified and labeled as Deviations therein, unless TxDOT takes exception to any such Deviation and (ii) disapproval of any Deviations not expressly identified and labeled as Deviations therein. TxDOT's lack of issuance of a written Deviation within 14 days after Maintenance Contractor applies therefor in writing shall be deemed a disapproval of such application. TxDOT's denial or disapproval of a requested Deviation shall be final and not subject to the dispute resolution procedures under Section 16. TxDOT may elect to process the application as a Change Request under Section 10 rather than as an application for a Deviation.

3.1.2.7. For purposes of Section 3.1.2.2(iii), a change, addition or replacement shall be deemed to have been first applied by TxDOT if and when TxDOT commences implementing actions on other Comparable Limited Access Highways that TxDOT manages or operates. Maintenance Contractor shall not be entitled to delay commencement or completion of its work on grounds that TxDOT is delayed in commencing or completing implementing actions on Comparable Limited Access Highways where:

(i) TxDOT is delayed due to the extensive system of Comparable Limited Access Highways for which TxDOT is responsible; or

(ii) The change, addition or replacement to the Maintenance Specification, Technical Provisions or Safety Standard applies only upon the occurrence of a condition or circumstance that has not yet occurred in respect of a Comparable Limited Access Highway that TxDOT manages or operates.

3.1.3 Utility Accommodation

3.1.3.1. It is anticipated that from time to time during the course of the Maintenance Term, Utility Owners will apply for additional utility permits to install new Utilities that would cross or longitudinally occupy the Project ROW, or to modify, repair, upgrade, relocate or expand existing Utilities within the Project ROW. In such circumstances, the provisions of Section 6.8.8 of the DB Agreement shall apply.

3.1.3.2. Throughout the Maintenance Term, Maintenance Contractor shall monitor Utilities and Utility Owners within the limits of the Project for compliance with applicable utility permits, Utility Joint Use Acknowledgments, Utility Joint Use Agreement, Utility Agreements, easements, the Utility Accommodation Rules and other applicable Laws, and shall use diligent efforts to obtain the cooperation of each Utility Owner having Utilities within the Project ROW. If (i) Maintenance Contractor reasonably believes that any Utility Owner is not complying with the terms of a utility permit, Utility Joint Use Acknowledgment, Utility Joint Use Agreements, Utility Agreements, easements, the Utility Accommodation Rules or other applicable Law affecting a Utility within the Project ROW, or (ii) any other dispute arises between Maintenance Contractor and a Utility Owner with respect to a Utility within the Project ROW, despite Maintenance Contractor having exercised its diligent efforts to obtain the Utility Owner's cooperation, Maintenance Contractor shall promptly provide Notice to TxDOT, and TxDOT and Maintenance Contractor shall work together in the manner described in Section 6.8.4 of the DB Agreement; provided, however, that the "conditions to assistance" are that Maintenance Contractor shall provide evidence reasonably satisfactory to TxDOT that (x) Maintenance Contractor's position in the dispute is reasonable, (y) Maintenance Contractor has made diligent efforts to obtain the Utility Owner's cooperation, and (z) the Utility Owner is not cooperating. With respect to the Parties' rights and obligations described in Section 6.8.4 of the DB Agreement, for purposes of this Section 3.1.3.2 the conditions to assistance described in clauses (x), (y) and (z) of the preceding sentence shall be treated in the same manner as those described in Sections 6.8.4(a) through (c) of the DB Agreement.

3.1.3.3. At Maintenance Contractor's request, TxDOT and Maintenance Contractor shall work jointly to establish a scope of work and budget for TxDOT's Recoverable Costs in connection with providing such assistance to Maintenance Contractor. Subject to any agreed scope of work and budget, Maintenance Contractor shall reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing such assistance to Maintenance Contractor (including all reasonable costs of litigation if TxDOT agrees to pursue litigation against a Utility Owner).

3.1.4 Accommodation of Third-Party Signage and Lighting

3.1.4.1. In addition to the warning, regulatory, and guide signs within the Project ROW, Maintenance Contractor shall accommodate within the Project ROW third-party signs, including logo type signs. Maintenance Contractor shall coordinate and cooperate with any third party performing such work. Maintenance Contractor shall review with TxDOT all third-party requests for new signs in the Project ROW. Such requests are subject to TxDOT's approval. TxDOT may solicit input from Maintenance Contractor in reviewing applications for new third-party signs, but will retain sole authority for approving installation of these signs. All costs associated with fabricating and installing third-party signs shall be borne by the sign applicant. TxDOT may require Maintenance Contractor to fabricate and/or install any of these signs as a TxDOT-Directed Change.

3.1.4.2. All third-party requests for lighting within the Site shall be subject to TxDOT approval, and TxDOT retains sole authority for approving installation of such lighting.

3.1.5 Updates of Record Drawings

Within 30 days after undertaking any Maintenance Services that results in a change to the Project design or construction, Maintenance Contractor shall update the Record Drawings to reflect such change.

3.1.6 Frontage Roads

TxDOT shall be solely responsible, at its expense, for handling requests and permitting for adjacent property access to frontage roads of the Project. Nothing in the COMA Documents shall restrict TxDOT from granting access permits or determining the terms and conditions of such permits. TxDOT will keep Maintenance Contractor regularly informed of access permit applications and will deliver to Maintenance Contractor a copy of each issued access permit within five days after it is issued. Maintenance Contractor shall have no claim for any increase in the Maintenance Price or other compensation by reason of TxDOT's grant of access permits, the terms and conditions thereof, or the actions of permit holders or their employees, agents, representatives and invitees. Maintenance Contractor at its expense shall cooperate and coordinate with permit holders to enable them to safely construct, repair and maintain access improvements allowed under their access permits.

3.2 Policing, Security and Incident and Emergency Response

3.2.1 Police Services

3.2.1.1. Maintenance Contractor acknowledges that the Texas Department of Public Safety is empowered to enforce all applicable Laws and to enter the Project at any and all times to carry out its law enforcement duties. No provision of this COMA is intended to surrender, waive or limit any police powers of the Texas Department of Public Safety or any other Governmental Entity, and all such police powers are hereby expressly reserved.

3.2.1.2. TxDOT shall not have any liability or obligation to Maintenance Contractor resulting from, arising out of or relating to the failure of the Texas Department of Public Safety or any other public law enforcement agency to provide services, or its negligence or misconduct in providing services.

3.2.1.3. TxDOT and third parties with responsibility for traffic regulation and enforcement shall have the right to install, operate, maintain and replace cameras or other equipment on the Project that relate to traffic regulation or enforcement. Maintenance Contractor shall coordinate and cooperate, and require its Subcontractors to coordinate and cooperate, with any such installation, maintenance and replacement activities.

3.2.2 Security and Incident and Emergency Response

3.2.2.1. Maintenance Contractor is responsible for the safety and security of the Project, Maintenance Contractor personnel and the general public during all maintenance activities under the control of any Maintenance Contractor-Related Entity.

3.2.2.2. Maintenance Contractor shall comply with all applicable Laws, as well as all rules, directives and guidance of the U.S. Department of Homeland Security or comparable State agency. Maintenance Contractor shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services.

3.2.2.3. Maintenance Contractor shall perform and comply with the provisions of the Maintenance Specification concerning Incident and Emergency response, safety and security.

3.2.2.4. Maintenance Contractor shall implement all Incident and Emergency response, safety and security procedures, protocols and requirements set forth in the Incident and Emergency Management Plan described in Section 1.5 of Exhibit 2 to this Comprehensive Maintenance Agreement (a component of the Maintenance Management Plan).

3.3 Renewal Work

3.3.1 General Requirements

3.3.1.1. Maintenance Contractor shall diligently perform and complete Renewal Work when required by the Renewal Work Submittal and updates thereto approved by TxDOT, including adjustments and changes thereto resulting from Audit Inspections. In addition, Maintenance Contractor shall diligently perform and complete Renewal Work when a Performance Requirement is not met and the required level of performance cannot be achieved by means of routine or preventive maintenance.

Maintenance Contractor shall complete all Renewal Work required under this Section 3.3.1 according to the schedule in the approved Renewal Work Submittal and approved updates thereto, or at any earlier time needed to comply with the Performance Requirements, and in any event:

(a) Prior to the expiration of the Maintenance Term; or

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

3.4 Traffic Control and Operations

Maintenance Contractor shall perform the Maintenance Services in a manner that recognizes that the safety of the public, convenience of the traveling public and providing a safe work environment for all maintenance workers are of prime importance. Maintenance Contractor shall perform its traffic control and operations in accordance with the COMA Documents, including this Section 3.4.

3.4.1 Traffic Management and Control Plans

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

3.4.2 Traffic Operation Restrictions

3.4.2.1. Maintenance Contractor shall keep the number of Lane Closures to an absolute minimum and shall keep each Lane Closure to the shortest time necessary for safe and efficient operations. The requirements for and restrictions on Lane Closures are set forth in Section 2.3 of Exhibit 2 and Attachment 6 to Exhibit 2 to this Comprehensive Maintenance Agreement. If Maintenance Contractor violates such requirements and restrictions, Maintenance Contractor shall be subject to the assessment of Lane Rental Charges in accordance with Section 12.5 of this Comprehensive Maintenance Agreement.

3.4.2.2. Should Emergencies occur during the Maintenance Contractor's performance of traffic management, including vehicle accidents and structural failures, Maintenance Contractor shall take all actions necessary to open the roadway as soon as possible and shall repair any damage to the Maintenance Elements.

3.4.2.3. TxDOT has the authority to deny a Lane Closure in the case of an emergency, evacuation, a special event or any other public activities.

3.4.2.4. TxDOT shall have at all times, without obligation or liability to Maintenance Contractor, the right to (a) issue Directive Letters to Maintenance Contractor regarding traffic management and control (with which Maintenance Contractor shall comply), or directly assume traffic management and control, of the Project during any period that the Executive Director determines such action will be in the public interest as a result of an emergency or natural disaster; and (b) provide on the Project, via message signs or other means consistent with Good Industry Practice, traveler and driver information, and other public information (e.g., amber alerts).

3.5 Requirements Applicable to Design and Construction Work

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

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

3.6 Coordination with Other Parties

3.6.1 Maintenance Contractor shall fully cooperate with, and shall be solely responsible for coordinating its activities and maintenance with the activities and maintenance undertaken by, the personnel and contractors of TxDOT, other Governmental Entities, Utility Owners and other third parties that will be performing work or activities at or adjacent to or in the vicinity of the Project, including their maintenance activities for Non-Maintained Elements. TxDOT will provide reasonable notice to Maintenance Contractor of permits issued by TxDOT that allow Governmental Entities, Utility Owners and other third parties to access the Project for the purpose of performing such work or activities.

3.6.2 Maintenance Contractor shall schedule the Maintenance Services as reasonably necessary to accommodate the work or activities of such third parties, and shall not hinder or interfere with such work or activities.

3.6.3 Except as otherwise provided in Section 10, Maintenance Contractor shall not be entitled to a Change Order arising out of the activities and maintenance undertaken by the personnel and contractors of TxDOT, other Governmental Entities, Utility Owners and other third parties.

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

3.6.5 Maintenance Contractor shall not enter into any agreement with any Governmental Entity, Utility Owner, railroad, property owner or other third party having regulatory jurisdiction over any aspect of the Project or the Maintenance Services or having any property interest affected by the Project or the Maintenance Services that in any way purports to obligate TxDOT, or states or implies that TxDOT has an obligation, to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the expiration or termination of this Comprehensive Maintenance Agreement, unless TxDOT otherwise approves in its sole discretion. Maintenance Contractor has no power or authority to enter into any such agreement with a third party in the name or on behalf of TxDOT.

3.7 Transition Requirements

At the expiration of the Maintenance Term or any earlier termination of this Comprehensive Maintenance Agreement, Maintenance Contractor shall ensure and certify in writing that (a) the Maintenance Elements meet the Asset Condition Score requirements (b) the Project can be safely used for its intended purpose and that the Maintenance Services have been performed in accordance with the terms of the COMA Documents, Governmental Approvals and applicable Law, (c) there are no Maintenance Contractor Releases of Hazardous Materials within, on, in or under the Project ROW, and (d) except as previously disclosed in writing to TxDOT, there is no litigation pending regarding the Maintenance Services or the Project by any Maintenance Contractor-Related Entity.

3.8 Waste Disposal and Hazardous Materials

3.8.1 General Requirements

3.8.1.1. Maintenance Contractor shall manage, store, contain, transport (where applicable), and dispose of, or cause the disposal of, all waste, residue,

construction debris, materials, Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in, on under or present at the Site, in accordance with all applicable Laws, Governmental Approvals, the Hazardous Material Management Plan and all applicable provisions of the COMA Documents. The foregoing obligations also apply to Maintenance Contractor Releases of Hazardous Materials. Maintenance Contractor's personnel handling Hazardous Materials shall be appropriately trained in Hazardous Materials handling and disposal. Maintenance Contractor shall provide evidence of such personnel's training to TxDOT.

3.8.1.2. For any Maintenance Contractor Release of Hazardous Materials, Maintenance Contractor shall be solely responsible for all costs of Hazardous Materials Management, and Maintenance Contractor shall be solely responsible for restoring the real property affected by any Release of Hazardous Materials to its condition prior to the Release of Hazardous Materials, including, to the extent required, any grading and reinforcement necessary to restore the weight-bearing and functional capacity of the Project. If, within a reasonable time (as determined by TxDOT) after a Release of Hazardous Materials, Maintenance Contractor has not taken action under Section 3.8.2, TxDOT may undertake such action itself. In such event, Maintenance Contractor shall reimburse TxDOT for TxDOT's Recoverable Costs it incurs as a result of Maintenance Contractor's failure, and shall do so within ten Business Days of receipt of an invoice therefor. In lieu of reimbursement, TxDOT may elect, in its sole discretion, to deduct such amounts from any amounts payable to Maintenance Contractor under this Comprehensive Maintenance Agreement.

3.8.2 Procedures for Hazardous Materials Management

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

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

3.8.2.3. Maintenance Contractor's rights to a Change Order with respect to costs and/or delays directly attributable to performance of Hazardous Materials Management are set forth in Section 10.8.2.

3.8.3 Hazardous Material Generator

3.8.3.1. As between Maintenance Contractor and TxDOT, TxDOT shall be considered the generator of and assume generator responsibility for Hazardous

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

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

3.8.3.3. TxDOT has exclusive decision-making authority regarding selection of the destination facility to which Hazardous Materials other than Maintenance Contractor Release(s) of Hazardous Materials will be transported.

3.8.4 Hazardous Material Generator Liability of Maintenance Contractor

Maintenance Contractor's liability as the generator of Maintenance Contractor Releases of Hazardous Materials shall not be compensable to Maintenance Contractor or entitle Maintenance Contractor to schedule relief.

3.8.5 Hazardous Materials Brought to Project ROW by Maintenance Contractor

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

3.8.6 Governmental Approvals Relating to Hazardous Materials Management

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

3.9 Governmental Approvals

3.9.1 Maintenance Contractor shall identify and obtain all Governmental Approvals and consents from any other Person required in connection with the Maintenance Services, at its sole cost and expense. Except to the extent arising from a Force Majeure Event or TxDOT-Directed Change, Maintenance Contractor shall be responsible for any and all costs, including any liability, penalties, expenses, damages or delays resulting from any suspension, termination, interruption, denial or non-renewal of, or failure to obtain any Governmental Approval.

3.9.2 If any Governmental Approvals required to be obtained by Maintenance Contractor must formally be issued in the name of TxDOT, TxDOT shall cooperate

with Maintenance Contractor, at Maintenance Contractor's expense, to obtain such Governmental Approvals as may be reasonably requested by Maintenance Contractor. Maintenance Contractor shall be responsible for preparing all documentation necessary for any application for a Governmental Approval. Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof) that must be formally issued in the name of TxDOT, Maintenance Contractor shall submit such application, together with any supporting environmental studies and analyses, to TxDOT for approval.

3.9.3 Maintenance Contractor shall comply with all conditions imposed by and undertake all actions required by or necessary to maintain in full force and effect all Governmental Approvals, including performance of all environmental mitigation measures required by the COMA Documents or Governmental Approvals, except to the extent (if any) that responsibility for performance of such measures is expressly assigned to TxDOT in the COMA Documents.

3.10 Handback Requirements

3.10.1 Handback Condition

Upon the termination or expiration of the Maintenance Period, Maintenance Contractor shall cause the Project, at no charge to TxDOT, to be in the condition and meet all of the requirements of the Maintenance Elements detailed in Attachment 5 of Exhibit 2 for the Residual Life at Handback specified in Section 4 of Exhibit 2.

3.10.2 Handback Inspections

The Parties shall conduct inspections of the Project at the times and according to the terms and procedures specified in Section 4 of Exhibit 2, for the purposes of:

3.10.2.1. Determining and verifying the condition of all Maintenance Elements and their Residual Lives;

3.10.2.2. Adjusting, to the extent necessary based on inspection and analysis, Useful Lives, Ages, Residual Lives, estimated costs of Renewal Work and timing of Renewal Work;

3.10.2.3. Revising and updating the Renewal Work Schedule to incorporate such adjustments;

3.10.2.4. Determining the Renewal Work required to be performed and completed prior to the expiration of the Comprehensive Maintenance Agreement, based on the requirements for Residual Life at Handback specified in the Handback Requirements, the foregoing adjustments and the foregoing changes to the Renewal Work Schedule; and

3.10.2.5. Verifying that such Renewal Work has been properly performed and completed in accordance with the Handback Requirements.

3.10.3 Renewal Work under Handback Requirements

3.10.3.1. Maintenance Contractor shall diligently perform and complete all Renewal Work required to be performed and completed prior to the expiration of the Comprehensive Maintenance Agreement, based on the required adjustments and changes to the Renewal Work Schedule to meet the Handback Requirements.

3.10.3.2. In the event of an early termination of this Comprehensive Maintenance Agreement, this Section 3.10 shall apply to the extent of any Renewal Work in the Renewal Work Schedule as of the early termination date.

3.10.4 Handback Plan

Maintenance Contractor shall prepare a Handback Plan in accordance with Section 4 of Exhibit 2.

3.11 Software Compatibility

Unless otherwise specifically stated in the COMA Documents, Maintenance Contractor is responsible for assuring that all software it uses for any aspect of the Project is compatible with software used by TxDOT. "Compatible" for use in this Section 3.10 shall mean that Maintenance Contractor-provided electronic files may be loaded or imported by TxDOT, using its current software or future upgraded software with no modifications, preparation or adjustments. Prior to using any software or version of software not then in use by TxDOT, Maintenance Contractor must obtain written approval from TxDOT, as applicable. In addition, Maintenance Contractor shall provide to TxDOT staff, at Maintenance Contractor's cost, working electronic copies of the software, any necessary licenses for TxDOT's use of the software, and any training reasonably necessary to assure that TxDOT is able to implement compatible usage of all software utilized by Maintenance Contractor.

SECTION 4. MAINTENANCE TERM

4.1 Maintenance Term

The Maintenance Term of this Comprehensive Maintenance Agreement is 25 years unless terminated earlier in accordance with the terms of this Comprehensive Maintenance Agreement.

4.2 Maintenance Term Commencement Date

In the event TxDOT issues Maintenance NTP in accordance with Section 2.1, the Maintenance Term shall commence on the date of Substantial Completion of the Project in accordance with the DB Agreement (the "Maintenance Term Commencement Date"), and shall continue for a period of twenty-five years, unless terminated earlier in accordance with the terms of this Comprehensive Maintenance Agreement.

SECTION 5. MANAGEMENT AND ADMINISTRATION

5.1 TxDOT Responsibility for Policy Decisions

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

5.2 Use of the Project

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

5.3 Document Management Requirements

Maintenance Contractor shall establish and maintain an electronic document control system in accordance with Section 1.13 of Exhibit 2.

5.4 Maintenance Manager; Qualifications of Employees

5.4.1 At all times during the Maintenance Term, Maintenance Contractor shall provide (1) a Maintenance Manager approved by TxDOT who: (a) will have full responsibility for the prosecution of the Maintenance Services, (b) will act as agent and be a single point of contact in all matters on behalf of Maintenance Contractor, and (c) will be available to respond to TxDOT or TxDOT's Authorized Representatives and (2) a Maintenance Safety Manager who will be responsible for all safety aspects of the Project during the term of the COMA.

5.4.2 On or before 60 Days after TxDOT issues Maintenance NTP, Maintenance Contractor shall update and obtain TxDOT's written approval of any changes to the person serving as the Maintenance Manager and the Maintenance Safety Manager as presented in the Proposal.

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

5.4.4 All individuals performing Maintenance Services shall have the skill and experience and any licenses or certifications required to perform the Maintenance Services assigned to them. If TxDOT determines, in its sole discretion, that any Person employed by Maintenance Contractor or any Subcontractor is not performing the Maintenance Services in a proper and skillful manner or is detrimental to the progress of the Maintenance Services and/or the Project, then, at the written request of TxDOT, Maintenance Contractor shall remove such Person from the Project and such Person shall not be reemployed on the Project without the prior written approval of TxDOT.

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

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

5.4.7 If the approved individual filling the Maintenance Manager role or the Maintenance Safety Manager role is not available for the Maintenance Services and does not maintain active involvement in the prosecution and performance of the Maintenance Services because such individual has been replaced for a reason other than as set forth in clauses (a)-(c) of Section 5.4.9, Maintenance Contractor acknowledges that TxDOT, the Maintenance Services and the Project will suffer significant and substantial Losses and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT in such event. Therefore, if such individual filling the Maintenance Manager role or the Maintenance Safety Manager is not available or not actively involved in the prosecution and performance of the Maintenance Services, as determined by TxDOT in its sole discretion, then, subject to Section 5.4.9, regardless of whether such individual has been replaced by an individual approved by TxDOT, Maintenance Contractor agrees to pay TxDOT a liquidated amount as follows as deemed compensation to TxDOT for such Losses:

POSITION	**LIQUIDATED AMOUNT**
Maintenance Manager	$76,000
Maintenance Safety Manager	$76,000

5.4.8 In addition, if the individual filling the role of Maintenance Manager or Maintenance Safety Manager is not available for the Maintenance Services or does not maintain active involvement in the prosecution and performance of the Maintenance Services and such individual has not been replaced by an individual approved by TxDOT, Maintenance Contractor acknowledges that TxDOT, the Maintenance Services and the Project will suffer significant and substantial additional Losses due to the unavailability of an approved individual to fill the Maintenance Manager role and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT in such event. Therefore, for each day (x) beginning on (i) to the extent Maintenance Contractor shall not have submitted a proposed replacement to TxDOT, (A) the date immediately following the 30-day period after the Maintenance Manager or Maintenance Safety Manager role is vacated due to death, retirement, injury or no longer being employed by the applicable Maintenance Contractor-Related Entity (except where such employee is moved to an affiliated company) or (B) the date immediately following the fifteen-day period after the Maintenance Manager or Maintenance Safety Manager role is vacated for any other reason, as applicable, or (ii) to the extent Maintenance Contractor shall have submitted a proposed replacement to TxDOT, the date on which TxDOT rejects the proposed replacement for the vacated Maintenance Manager or Maintenance Safety Manager role, as applicable, and (y) ending on (and excluding) the date on which such role has been filled by an individual approved by TxDOT, Maintenance Contractor agrees to pay TxDOT a liquidated amount as follows as deemed compensation to TxDOT for such Losses:

POSITION	**LIQUIDATED AMOUNT**
Maintenance Manager	$7,000 per day
Maintenance Safety Manager	$7,000 per day

5.4.9 Maintenance Contractor understands and agrees that any damages payable in accordance with Sections 5.4.7 and 5.4.8 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. Maintenance Contactor shall pay to TxDOT within ten Business Days after Maintenance Contractor's receipt of an invoice therefor from TxDOT. In lieu of reimbursement, TxDOT, in its sole discretion, shall have the right to deduct such damages from any amounts owed by TxDOT to Maintenance Contractor or to collect such damages from any bond or Guaranty furnished under this Comprehensive Maintenance Agreement. Notwithstanding the foregoing, Maintenance Contractor shall not be liable for damages under Sections 5.4.7 and 5.4.8 if: (a) Maintenance Contractor removes or replaces such person at the direction of TxDOT; (b) such individual is unavailable due to death, retirement, injury or no longer being employed by the applicable Maintenance Contractor-Related Entity (provided that moving to an affiliated company shall not be considered grounds for avoiding such damages); or (c) Maintenance Contractor identifies the replacement for the Maintenance Manager or Maintenance Safety Manager, as applicable within 60 Days after issuance of Maintenance NTP, provided, however, in each such case, Maintenance Contractor shall promptly propose to TxDOT a replacement for such personnel, which individual shall be subject to TxDOT's prior written approval. Following any TxDOT-approved substitution or replacement of the Maintenance Manager or Maintenance Safety Manager, as applicable pursuant to the terms hereof, the new individual shall be considered the Maintenance Manager or Maintenance Safety Manager, as applicable for all purposes under this Comprehensive Maintenance Agreement, including the provisions of this Section 5.4.9.

5.4.10 Maintenance Contractor acknowledges and agrees that the Maintenance Manager and Maintenance Safety Manager positions are of critical importance to TxDOT and the Project. In addition to the approval rights of TxDOT set forth in this Section 5.4 and the damages set forth in Sections 5.4.7 and 5.4.8, if the individual in the Maintenance Manager or Maintenance Safety Manager position leaves that position for a reason other than as set forth in clauses (a)-(c) of Section 5.4.9, TxDOT shall have the right to terminate this Comprehensive Maintenance Agreement for default under Section 12, unless Maintenance Contractor provides TxDOT a replacement acceptable to TxDOT within 30 Days after the earlier of: (a) the date on which such individual has left his/her position; or (b) Maintenance Contractor or TxDOT becomes aware that such individual intends to leave his/her position.

5.5 Maintenance Management Plan

5.5.1 The MMP is an umbrella document that describes the Maintenance Contractor's managerial approach, strategy, and quality procedures to maintain the Project and achieve all requirements of the COMA Documents. The MMP shall define the process for maintenance of the Project throughout the Maintenance Term. Unless otherwise agreed by TxDOT, the MMP shall be consistent with the maintenance approach and MMP submitted with the Proposal. Attachment 4 lists the main content of Maintenance Management Plan and other Plans required.

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

5.6 Maintenance Services Quality Management Plan

5.6.1 Maintenance Contractor shall submit a Maintenance Services Quality Management Plan (MSQMP) in accordance with Section 1.9 of Exhibit 2.

5.6.2 The MSQMP is intended to: (a) place the responsibility for the quality of all design, construction, maintenance and repair associated with the Maintenance Services on Maintenance Contractor; and (b) allow TxDOT to oversee the Maintenance Services. Maintenance Contractor shall undertake all quality control in accordance with the MSQMP and the requirements set forth in the COMA Documents.

5.6.3 The MSQMP must be consistent with the quality control/quality assurance requirements set forth in Section 1.9 of Exhibit 2 to this Comprehensive Maintenance Agreement and apply Good Industry Practice.

5.6.4 The Maintenance Contractor shall have a quality manager (Maintenance Quality Manager) who is responsible for independently overseeing and performing all quality responsibilities for the Maintenance Services in accordance with the MSQMP and who shall have the authority to stop Maintenance Services for quality-related issues. The MSQMP shall demonstrate the Maintenance Quality Manager's functional independence from the Maintenance Contractor work forces and the Maintenance Manager, and shall report directly to the Maintenance Contractor's principals.

5.6.5 The Maintenance Contractor shall submit an annual report to TxDOT by each anniversary of the Maintenance Term Commencement Date. This annual report shall

comply with the requirements of Section 1.1 of Exhibit 2 to this Comprehensive Maintenance Agreement.

5.7 Inspection and Testing

5.7.1 Maintenance Contractor Inspection and Testing

5.7.1.1. Maintenance Contractor shall perform the inspection, sampling, testing, quality control and quality assurance necessary for Maintenance Contractor to comply with its obligations under the COMA Documents in accordance with Section 1.15 of Exhibit 2.

5.7.1.2. Maintenance Contractor shall carry out General Inspections, Specialist Inspections and Audit Inspections in accordance with the Maintenance Specification and the Maintenance Management Plan. Maintenance Contractor shall use the results of General Inspections, Specialist Inspections and Audit Inspections to develop and update the schedule for Routine Maintenance Services, to update the Renewal Work Submittal, 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 and other members of the public.

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

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

5.7.3 Obligation to Uncover Finished Construction Work

Maintenance Contractor shall inform TxDOT in writing of any construction work to be performed under this Comprehensive Maintenance Agreement that is to be covered, to allow adequate opportunity to TxDOT to inspect and test such work. Maintenance Contractor shall remove or uncover such portions of the finished work as directed by TxDOT. After examination by TxDOT and any other Persons designated by TxDOT, Maintenance Contractor shall restore the work to the standard required by the COMA Documents. If the work exposed or examined is not in conformance with the requirements of the COMA Documents, then uncovering, removing and restoring of such work and any delay to occasioned thereby shall be at Maintenance Contractor's cost. Furthermore, any construction work done or materials used without adequate notice to and opportunity for prior inspection by TxDOT or without inspection in accordance with COMA Documents may be ordered uncovered, removed or restored at Maintenance Contractor's cost, even if such work proves acceptable and conforming after uncovering. Except with respect to the construction work done or materials used without providing TxDOT adequate notice as described in the foregoing sentence, if the work exposed or examined under this Section 5.7.3 is in conformance with the requirements of the COMA

Documents, Maintenance Contractor shall be entitled to recover the reasonable and documented cost of such efforts.

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

5.8.1 Oversight and Acceptance

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

5.8.2 No Estoppel

5.8.2.1. Maintenance Contractor shall not be relieved of its obligations to perform the Maintenance Services in accordance with the COMA Documents, or any of its Warranty or indemnity obligations, as the result of oversight, spot checks, audits, reviews, tests or inspections performed by any Persons, approvals or acceptances made by any Persons, or any failure of any Person to take such action. Maintenance Contractor at all times shall have an independent duty and obligation to fulfill the requirements of the COMA Documents. Maintenance Contractor agrees and acknowledges that any such activity or failure to conduct any such activity by TxDOT

(a) Is solely for the benefit and protection of TxDOT;

(b) Does not relieve Maintenance Contractor of its responsibility for the selection and the competent performance of all Maintenance Contractor-Related Entities;

(c) Does not create or impose upon TxDOT any duty or obligation toward Maintenance Contractor to cause it to fulfill the requirements of the COMA Documents;

(d) Shall not be deemed or construed as any kind of warranty, express or implied, by TxDOT;

(e) May not be relied upon by Maintenance Contractor or used as evidence in determining whether Maintenance Contractor has fulfilled the requirements of the COMA Documents; and

(f) May not be asserted by Maintenance Contractor against TxDOT as a defense, legal or equitable, to, or as a waiver of or relief from, Maintenance Contractor's obligation to fulfill the requirements of the COMA Documents.

5.8.2.2. TxDOT shall not be precluded or estopped, by any measurement, estimate or certificate made at any time, or by making any payment, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the Maintenance Services performed and materials furnished by Maintenance Contractor, or from showing that the Maintenance Services do not conform in fact to the requirements of the COMA Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, TxDOT shall not be precluded or estopped from recovering from Maintenance Contractor and its Guarantor(s) or Surety(ies) such damages as TxDOT may sustain by reason of Maintenance Contractor's failure to comply with the terms of the COMA Documents.

5.8.3 Release

To the maximum extent permitted by law, Maintenance Contractor hereby releases and discharges TxDOT from any and all duty and obligation to cause Maintenance Contractor's services and work to satisfy the standards and requirements of the COMA Documents.

5.9 Nonconforming Work

5.9.1 Correction of Nonconforming Work

5.9.1.1. Subject to Section 5.9.2, Maintenance Contractor shall correct Nonconforming Work so as to conform to the requirements of the COMA Documents, at Maintenance Contractor's cost. The fact that TxDOT may not have discovered the Nonconforming Work shall not relieve the Maintenance Contractor of its responsibilities to correct such Nonconforming Work.

5.9.1.2. If Maintenance Contractor fails to correct any Nonconforming Work within the Cure Period set forth in Exhibit 8 to this Comprehensive Maintenance Agreement (or, if no such Cure Period applies to the Nonconforming Work, then within 30 days after Maintenance Contractor obtains knowledge or receives notice thereof), then TxDOT may cause the Nonconforming Work to be corrected. Maintenance Contractor shall reimburse TxDOT, within ten days after delivery of an invoice to Maintenance Contractor, for TxDOT's Recoverable Costs of remedying or removing and replacing such Nonconforming Work. Alternatively, TxDOT, in its sole discretion, may deduct TxDOT's Recoverable Costs from any sums TxDOT owes to Maintenance Contractor pursuant to this Comprehensive Maintenance Agreement. TxDOT's right to correct Nonconforming Work at Maintenance Contractor's expense is in addition to any Noncompliance Charges that Maintenance Contractor may owe on account of Maintenance Contractor's failure to correct.

5.9.2 Agreement to Allow Nonconforming Work to Remain Uncorrected

5.9.2.1. If TxDOT agrees to allow any Nonconforming Work to remain uncorrected, TxDOT shall be entitled to reimbursement of a portion of the Maintenance Price in an amount equal to the greatest of: (a) the amount deemed appropriate by TxDOT to provide compensation for known impacts to all affected Persons (including TxDOT) such as future maintenance and/or other costs relating to the Nonconforming Work, (b) the amount of the Maintenance Price allocated to such Maintenance Services, (c) 100% of Maintenance Contractor's cost savings associated with its failure to perform the Maintenance Services in accordance with the requirements of the COMA Documents or (d) all or a percentage, to be determined in TxDOT's sole discretion, of the cost to correct such Nonconforming Work. Such

reimbursement shall be payable to TxDOT within ten Days after delivery of an invoice therefor to Maintenance Contractor's. Alternatively, TxDOT, in its sole discretion, may deduct the amount of such costs and expenses from any sums TxDOT owes to Maintenance Contractor pursuant to this Comprehensive Maintenance Agreement.

5.9.2.2. Maintenance Contractor acknowledges and agrees that TxDOT shall have sole discretion regarding the correction or non-correction of Nonconforming Work and shall have sole discretion with regard to the amount payable in connection therewith. Payment, reimbursement or deduction of the amounts owing to TxDOT under this Section 5.9.2 shall be a condition precedent to allow applicable Nonconforming Work to remain uncorrected.

5.9.2.3. Where such Nonconforming Work is allowed to remain uncorrected in accordance with this Section 5.9.2 and such Nonconforming Work requires that a Performance Requirement different to that set forth in Attachment 1 to Exhibit 2 to this Comprehensive Maintenance Agreement is necessary, TxDOT shall establish such different Performance Requirement for such Nonconforming Work.

SECTION 6. CONTRACTING AND LABOR PRACTICES

6.1 DBE Requirements

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

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

6.2 Non-Discrimination; Equal Employment Opportunity

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

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

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

6.3 Subcontracts

6.3.1 Each instrument evidencing any agreement of Maintenance Contractor with any Subcontractor shall provide that, pursuant to terms in form and substance satisfactory to TxDOT: (a) the rights of Maintenance Contractor under such instrument are

assigned to TxDOT contingent only upon written notice from TxDOT or its successor or assign following default by Maintenance Contractor or termination or expiration of this Comprehensive Maintenance Agreement, and (b) all warranties (express and implied) of such Subcontractor shall inure to the benefit of TxDOT.

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

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

6.3.4 The following additional requirements shall apply to Key Subcontractors:

6.3.4.1. Maintenance Contractor shall not terminate any Subcontract with a Key Subcontractor, or permit or suffer any substitution or replacement of a Key Subcontractor, unless the Key Subcontractor:

(a) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with Maintenance Contractor;

(b) voluntarily removes itself from the Maintenance Contractor's team; or

(c) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the Proposal stage.

6.3.4.2. If Maintenance Contractor makes changes to a Key Subcontractor in violation of Section 6.3.4.1, Maintenance Contractor shall pay to TxDOT 100% of any cost savings resulting from the change.

6.3.5 Each Subcontract shall:

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

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

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

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

(e) Expressly include a covenant to recognize and attorn to TxDOT upon receipt of notice from TxDOT that it has exercised its rights under this Comprehensive Maintenance Agreement, without necessity for consent or approval from Maintenance Contractor or to determine whether TxDOT validly exercised its rights, and Maintenance Contractor's covenant to waive and release any claim or cause of action against the Subcontractor arising out of or relating to its recognition and attornment in reliance on any such notice.

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

(g) Expressly include requirements that the Subcontractor will: (i) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged; (ii) permit audit thereof with respect to the Project or Maintenance Services by each of Maintenance Contractor and TxDOT pursuant to Section 17.4 and; (iii) provide progress reports to Maintenance Contractor appropriate for the type of work it is performing sufficient to enable Maintenance Contractor to provide the reports it is required to furnish TxDOT under this Comprehensive Maintenance Agreement.

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

(i) Include the right of Maintenance Contractor to terminate the Subcontract in whole or in part upon any Termination for Convenience of this Comprehensive Maintenance Agreement without liability of Maintenance Contractor or TxDOT for the Subcontractor's lost profits or business opportunity.

(j) Expressly require the Subcontractor to participate in meetings between Maintenance Contractor and TxDOT, upon TxDOT's request, concerning matters

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

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

(l) Be consistent in all other respects with the terms and conditions of this Comprehensive Maintenance Agreement to the extent such terms and conditions are applicable to the scope of work of such Subcontractors, including Section 14.7.1, and include all provisions required by this Comprehensive Maintenance Agreement.

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

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

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

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

6.4 Job Training and Small Business Opportunity Plan

6.4.1 Maintenance Contractor's "Job Training and Small Business Opportunity Plan" applicable to the Maintenance Services is set forth in Exhibit 5. The purpose of the Job Training and Small Business Opportunity Plan is to ensure that inexperienced and untrained workers have a reasonable opportunity to participate in the performance of the Maintenance Services through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Maintenance Contractor shall perform and comply with all requirements set forth in of the Small Business Opportunity Plan. Maintenance Contractor may elect to provide on the job training. If Maintenance Contractor makes the election, it shall provide a written notice to the Contract Compliance Section of the Office of Civil Rights of the Texas Department of Transportation at 125 East 11th St., Austin, Texas 78701-2483, with a copy to TxDOT as provided in Section 24.11.3, and Maintenance Contractor shall perform and comply with all requirements set forth in the Job Training Plan.

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

6.5 State Use Program

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

6.5.2 Maintenance Contractor will make a good faith effort to negotiate with CRP's and the Texas Industries for the Blind and Handicapped (TIBH) for subcontracts at a fair market price. TxDOT reserves the right to facilitate disputes involving subcontracts or potential subcontracts with CRP's and TIBH.

6.6 Prevailing Wages

6.6.1 Maintenance Contractor shall pay or cause to be paid to all applicable workers employed by it or its Subcontractors to perform the Maintenance Services not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 3 to the Design-Build Agreement; provided, however, that the minimum prevailing wages that Maintenance Contractor shall be required to pay to all applicable workers for the Maintenance Services shall be the lesser of: (i) the prevailing wages in effect on the commencement date of the Maintenance Term then and (ii) the prevailing wages set forth in Exhibit 3 to the Design-Build Agreement as escalated based on changes in CPI in accordance with the methodology set forth in Section 8.1.3.1. Maintenance Contractor shall comply and cause its Subcontractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Subcontracts at any tier with TxDOT or Governmental Entities.

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

6.6.3 Any issue between Maintenance Contractor or a Subcontractor, and any affected worker relating to any alleged violation of Section 2258.023 of the Texas Government Code that is not resolved before the 15th day after the date TxDOT makes its initial determination under Section 2258.052 of the Texas Government Code (as to whether good cause exists to believe that a violation occurred) shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171 of the Civil Practice and Remedies Code.

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

6.7 E-Verify

Pursuant to Executive Order PR-80, Maintenance Contractor certifies and ensures that for all contracts for services, Maintenance Contractor shall, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the term of this Comprehensive Maintenance Agreement to determine the eligibility of:

(a) All persons employed by Maintenance Contractor during the term of this Comprehensive Maintenance Agreement to perform duties within the State of Texas; and

(b) All persons, including subcontractors, assigned by Maintenance Contractor to perform work pursuant to this Comprehensive Maintenance Agreement.

Violation of this provision constitutes a material breach of this Comprehensive Maintenance Agreement.

SECTION 7. O&M SECURITY; INSURANCE

7.1 O&M Security

Maintenance Contractor (or the Lead Maintenance Firm on behalf of Maintenance Contractor) shall provide to TxDOT, and shall maintain at all times during the Maintenance Term, adequate security securing Maintenance Contractor's obligations hereunder in the form of either (i) the P&P Letter of Credit in accordance with Sections 7.2 and 7.3 or (ii) the Maintenance Performance Bond and Maintenance Payment Bond in accordance with Section 7.4 (the "O&M Security"). The Maintenance Contractor may cause the Lead Maintenance Firm to provide the O&M Security on Maintenance Contractor's behalf so long as such O&M Security complies with all requirements of this Section 7. If Maintenance Contractor (i) elects to provide a Letter of Credit as O&M Security and the initial Letter of Credit provided at Substantial Completion is less than the Maximum P&P LC Amount or (ii) is a limited liability entity and elects to provide the Maintenance Performance Bond and Maintenance Payment Bond as O&M Security, Maintenance Contractor shall also provide a Guaranty satisfying the requirements of Section 7.6 on or before the date on which such O&M Security is provided to TxDOT.

7.2 P&P Letter of Credit

As O&M Security, Maintenance Contractor may elect to provide and maintain a letter of credit in the amount and pursuant to the requirements set forth in this Section 7.2 (the **"P&P Letter of Credit"**).

7.2.1 Maintenance Contractor shall obtain and deliver to TxDOT a P&P Letter of Credit in an amount not less than $100,000,000 (as such amount shall be adjusted in accordance with Section 7.2.2.2, the "**Maximum P&P LC Amount**") identifying Maintenance Contractor as the obligor under the P&P Letter of Credit (the "**P&P LC Obligor**"), securing all of Maintenance Contractor's obligations during the Maintenance Term and to ensure that payments owing to claimants are made with respect to the Maintenance Services. Notwithstanding the foregoing, Maintenance Contractor may deliver to TxDOT the P&P Letter of Credit in an amount less than the Maximum P&P LC Amount so long as (i) the amount of the P&P Letter of Credit is not less than $40,000,000 (as such amount shall be adjusted in accordance with Section 7.2.2.2) and (ii) Maintenance Contractor delivers to TxDOT a Guaranty satisfying the requirements of Section 7.6 at the same time the P&P Letter of Credit is provided to TxDOT.

7.2.1.1. The P&P Letter of Credit shall name TxDOT as beneficiary.

7.2.1.2. The P&P Letter of Credit shall comply with the provisions and requirements of Section 7.3 except as permitted or required otherwise under this Section 7.2. The P&P Letter of Credit shall be maintained (through extensions or replacements as provided in Section 7.3.1.2), in full force and effect at all times from the date of delivery until at least one year and 90 days after the end of the Maintenance Term.

7.2.1.3. TxDOT has determined, as permitted by Section 223.205 of the Code, that the P&P Letter of Credit identified in this Section 7.2 constitutes security sufficient to ensure the proper performance of Maintenance Contractor's obligations for maintaining the O&M Limits as required under this COMA and to protect TxDOT and claimants with respect thereto.

7.2.2 Increase in P&P Letter of Credit Amount

7.2.2.1. If TxDOT does not receive any certificate that amounts payable to any designers, consultants, Subcontractors and Suppliers for the completed Maintenance Services have been paid (including evidence of wages paid) as required by Exhibit 11, it may require Maintenance Contractor to immediately increase the amount of the P&P Letter of Credit to such amount as TxDOT determines is appropriate to protect its interests and the Project, provided that the amount of any such increase shall not exceed the value of work for which TxDOT did not receive any such certificate.

7.2.2.2. The amounts described in Section 7.2.1 shall be adjusted annually based on changes in the CCI commencing on the Effective Date and continuing annually thereafter during the Term and the P&P Letter of Credit shall be increased by Maintenance Contractor in accordance with such adjustments.

7.2.2.3. Payment Claims Against P&P Letter of Credit

7.2.2.4. Payment claims against the P&P Letter of Credit shall be governed by this Section 7.2.3. To ensure that all potential claimants receive notice of the procedures set forth in this Section 7.2.3, Maintenance Contractor shall require that Sections 7.2.3.1 through 7.2.3.6 be restated, with the blanks filled in, in each Subcontract that includes Maintenance Services during the Maintenance Term and in all Subcontracts thereunder (including contracts with Suppliers) that include Maintenance Services during the Maintenance Term. In addition, each such Subcontract shall include a provision requiring the Subcontractor to provide formal notice regarding the claims procedures under this Section 7.2.3 to each employee performing public work labor (as such term is defined in Texas Government Code Section 2253.001) under the Subcontract, in the same manner in which equal opportunity notices are required to be given to employees.

7.2.2.5. This contract concerns a public works project (the "Project") for which a letter of credit has been posted to secure obligations that would otherwise be secured by a payment bond provided by [_____] (the "Prime Contractor") pursuant to Section 223.205 of the Code. Each person or entity that would have the right under said statute to make a claim against a payment bond provided thereunder (a "Claimant") will instead have the right to make a claim under said letter of credit, as described below. Such alternative security is authorized by and provided in accordance with Section 223.205 of the Code, and no Claimant will have any right to make a claim against TxDOT for failure to obtain a payment bond under Section 223.205 of the Code.

7.2.2.6. All claims made pursuant to this Section 7.2.3 must:

(a) Be in writing, signed, and sworn by the Claimant or the Claimant's agent;

(b) Provide a general description of the labor, services, equipment or material furnished or agreed to be furnished, including the approximate dates and place of delivery or performance, in a manner that reasonably identifies the labor, services, equipment or material;

(c) State the Claimant's name and address;

(d) State the name of the person or entity to or for which the work or items were done or furnished, including the name and address of the party with which the Claimant contracted;

(e) State the total amount claimed, and that such amount is just and correct;

(f) State the value of the work already performed or items furnished, and that all known just and lawful offsets, payments, and credits have been allowed; and

(g) State the amount of any retainage that has not yet become due. A claim for retainage must include the amount of the contract, any amount paid, and the outstanding balance. However, to the extent that any prior claim made under this Section 7.2.3 included retainage, a separate subsequent claim for retainage need not be made.

7.2.2.7. The notices of claim must be delivered by certified or registered mail to the Prime Contractor at the following address: [_____], with a copy to Maintenance Contractor if Maintenance Contractor is separate from the Prime Contractor, at the following address: [_____], and a copy to the Texas Department of Transportation at the following address: [_____]. In addition, if the Claimant does not have a direct contract with the Prime Contractor, a copy must be delivered to [_____] [*insert name of the party with which the Claimant has entered into a contract*] at the following address: [_____].

7.2.2.8. A Subcontractor that has a direct contractual relationship with the Prime Contractor shall make its claim, except for claims for payment of retainage, no later than the 15th day of the third month after each month in which any of the claimed labor was performed or any of the claimed material was delivered. A Subcontractor that does not have a direct contractual relationship with the Prime Contractor shall make its claim, except for claims for payment of retainage, no later than the 15th day of the second month after each month in which any of the claimed labor was performed or any of the claimed material was delivered. Claims for payment of retainage shall be made no later than the 90th day after the date of final completion of the Project.

7.2.2.9. Any lawsuit filed by a Claimant to enforce its claim must be filed no earlier than the 61st day after the date the notice was mailed to all recipients identified above and no later than one year after such mailing date.

7.2.2.10. To the maximum extent permitted by law, any claim not made within the specified deadline is forever waived and extinguished, and any lawsuit not filed within the specified deadline is forever barred.

7.2.3 Draws on the P&P Letter of Credit

7.2.3.1. The P&P Letter of Credit shall be subject to draw by TxDOT prior to expiration in accordance with Section 7.3.1.2.

7.2.3.2. The P&P Letter of Credit shall be subject to draw by TxDOT for the purpose of disbursement of funds owing to a Claimant under any one of the following circumstances:

(a) TxDOT has received a copy of a claim that complies on its face with Section 7.2.3.2, together with a proof of delivery thereof to the Prime Contractor, TxDOT has not received from the Prime Contractor, within 30 days after service of the notice of claim, a sworn notice stating (i) that the Prime Contractor contests the claim, (ii) whether the claim is contested in whole or in part, and if in part, the portion of the claim amount being contested, (iii) the grounds for contesting the claim and (iv) that the Prime Contractor is acting in good faith in contesting the claim;

(b) Upon TxDOT's receipt of a settlement agreement signed by all parties with competing interests to the funds that specifically provides that settlement funds are to be paid from the P&P Letter of Credit, in which case, such funds shall be disbursed according to the express terms of the settlement agreement;

(c) Upon TxDOT's receipt of an entered court order providing for payment of a claim from draw on the P&P Letter of Credit, in which case funds drawn shall be disbursed according to the terms of such court order; or

(d) A claim has been made and notice thereof given in accordance with Section 7.2.3, and at that time, or at any other time during the pendency of the claim, the P&P LC Obligor is or becomes, voluntarily or involuntarily, a debtor in any bankruptcy proceeding under applicable Law.

No beneficiary of an P&P Letter of Credit shall have any obligation to investigate, verify or ascertain the eligibility of the person making a claim as a Claimant, the validity of any claim, notice of contest of claim, settlement agreement or court order or whether the Claimant has timely provided notice of claim. Rather, for the purpose of determining whether the P&P Letter of Credit is subject to draw, the beneficiary may, without liability, conclusively assume eligibility of the person making a claim as a Claimant and timely notice of a claim, and may conclusively assume the truthfulness and validity of, and may rely on, the claim, notice of contest of claim, settlement agreement, court order or any other information submitted under this Section 7.2.

7.2.3.3. The P&P Letter of Credit shall be subject to draw by TxDOT due to the failure of Maintenance Contractor to perform its obligations under the Contract Documents during the Maintenance Term. Any draw by TxDOT is subject to Section 12.3.

7.2.3.4. The P&P Letter of Credit shall also constitute security in favor of TxDOT for payment and performance of Maintenance Contractor's obligation to defend and indemnify TxDOT under Section 15, and accordingly will be subject to draw by TxDOT as provided in Section 12.3.

7.3 Letters of Credit

7.3.1 General Provisions

Wherever in the Contract Documents Maintenance Contractor has the option or obligation to deliver to TxDOT a letter of credit, the following provisions shall apply except to the extent expressly provided otherwise in the Contract Documents:

7.3.1.1. The letter of credit shall:

(a) Be a standby letter of credit;

(b) Be issued by a financial institution with a credit rating of "A-" or better according to Standard & Poors Rating Services, a division of The McGraw-Hill Companies, Inc. and with an office in Austin, Dallas, Houston, or San Antonio at which the letter of credit can be presented for payment;

(c) Be in form approved by TxDOT in its good faith discretion;

(d) Be payable immediately, conditioned only on written presentment from TxDOT to the issuer of a sight draft drawn on the letter of credit and a certificate stating that TxDOT has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to TxDOT, without requirement to present the original letter of credit;

(e) Provide an expiration date not earlier than one year from date of issue;

(f) Allow for multiple draws; and

(g) Name TxDOT as beneficiary.

7.3.1.2. TxDOT shall have the right to draw on the letter of credit as and when provided in Section 12 for draws under clause (i) below (subject to Section 7.2.3.2 with respect to claimants) and without prior notice to Maintenance Contractor for draws under clause (ii) below, unless otherwise expressly provided in the Contract Documents with respect to the letter of credit, if (i) Maintenance Contractor has failed to pay or perform when due the duty, obligation or liability under the Contract Documents for which the letter of credit is held or (ii) Maintenance Contractor for any reason fails to deliver to TxDOT a new or replacement letter of credit, on the same terms, or at least a one year extension of the expiration date of the existing letter of credit or, with respect to the P&P Letter of Credit, has not replaced the P&P Letter of Credit with P&P Bonds satisfying the requirements of Section 7.4 and the required Guaranty satisfying the requirements of Section 7.6, in either case by not later than 45 days before such expiration date, unless the applicable terms of the Contract Documents expressly require no further letter of credit or other O&M Security with respect to the duty, obligation or liability in question. For all draws conditioned on prior written notice from TxDOT to Maintenance Contractor, no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. Draw on the letter of credit shall not be conditioned on prior resort to any other security of Maintenance Contractor unless otherwise stated in the Contract Documents. If TxDOT draws on the letter of credit under clause (i) above, TxDOT shall use and apply the proceeds as provided in the Contract Documents for such letter of credit. If TxDOT draws on the letter of credit under clause (ii) above, TxDOT shall be entitled to draw on the full face amount of the letter of credit and shall retain such amount as cash security to secure the obligations under the letter of credit without payment of interest to Maintenance Contractor.

7.3.1.3. TxDOT shall use and apply draws on letters of credit toward satisfying the relevant obligation of Maintenance Contractor (or, if applicable, any other Person for which the letter of credit is performance security). If TxDOT receives proceeds of a draw in excess of the relevant obligation, TxDOT shall promptly refund the excess to Maintenance Contractor (or such other Person) after all relevant obligations are satisfied in full.

7.3.1.4. Maintenance Contractor's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from TxDOT a refund of the proceeds that are misapplied, interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of improper draw until repaid, and subject to Section 12.8, reimbursement of the reasonable costs Maintenance Contractor incurs as a result of such misapplication; provided that at the time of such refund Maintenance Contractor increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Maintenance Contractor acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Maintenance Contractor injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Maintenance Contractor covenants (i) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (ii) not to commence or pursue any legal proceeding seeking, and Maintenance Contractor irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

7.3.1.5. Maintenance Contractor shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with TxDOT's presentment of sight drafts and drawing against letters of credit or replacements thereof, subject to reimbursement under the circumstances described in Section 7.3.1.4.

7.3.1.6. In the event TxDOT makes a permitted assignment of its rights and interests under this Agreement, Maintenance Contractor shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Maintenance Contractor.

7.3.1.7. TxDOT acknowledges that if the letter of credit is performance security for a Person other than Maintenance Contractor (e.g., a Key Subcontractor), TxDOT's draw may only be based on the underlying obligations of such Person.

7.3.2 Special Letter of Credit Provisions

Any terms and conditions applicable to a particular letter of credit that Maintenance Contractor is required to or may provide under this Agreement are set forth in the provisions of this Agreement describing such letter of credit.

7.4 Maintenance Payment and Performance Bonds

7.4.1 On or before 60 Days after issuance by TxDOT of Maintenance NTP, Maintenance Contractor shall provide to TxDOT, and shall maintain at all times, a Maintenance Performance Bond and a Maintenance Payment Bond, in the forms attached as Exhibit 6 and Exhibit 7 respectively that shall guarantee the performance of the Maintenance Services and shall also guarantee payment to Persons performing certain work for Maintenance Contractor under this Comprehensive Maintenance Agreement.

7.4.2 Maintenance Contractor shall deliver by the time set forth in Section 7.4.1 and shall maintain in place a performance bond in the form attached hereto as Exhibit 6 (the "Maintenance Performance Bond") in compliance with the provisions set forth herein until the date that is one year after the Term. The initial amount of the Maintenance Performance Bond shall be required as of the Substantial Completion Deadline and an adjusted

amount required as of each five-year anniversary of the Substantial Completion Deadline based on the higher of the following calculations: (1) 0.75 times the highest amount as determined by calculating the sum of the five consecutive years of escalated Maintenance Price payments for each year in the five-year period (as illustrated in the table below) and (2) 100% of the highest escalated Maintenance Price payment in the applicable five-year period. For the purpose of determining the escalated Maintenance Price payments in the preceding sentence, the annual Maintenance Price payment amounts described in Section 8.1 and set forth in Exhibit 4 shall be escalated, to the date that is sixty days prior to the date the O&M Security amount is required, using CPI or CCI in the same manner applied to the Maintenance Price in Section 8.1.3 and then at an annual rate of 3% for each succeeding year.

Date for Setting Security Amount:	Initial Security as of Substantial Completion	First 5-Year Anniversary	Second 5-Year Anniversary	Third 5-Year Anniversary	Fourth 5-Year Anniversary	Fifth 5-Year Anniversary
0.75 x the Maximum of Sum of Years:	1 thru 5 2 thru 6 3 thru 7 4 thru 8 5 thru 9	6 thru 10 7 thru 11 8 thru 12 9 thru 13 10 thru 14	11 thru 15 12 thru 16 13 thru 17 14 thru 18 15 thru 19	16 thru 20 17 thru 21 18 thru 22 19 thru 23 20 thru 24	21 thru 25	21 thru 25

7.4.3 TxDOT shall provide a release of the Maintenance Performance Bond on the date that is one year after the end of the Term and upon such date thereafter that all of the following have occurred: (a) Maintenance Contractor is not in default under this Agreement, (b) no event has occurred that with the giving of notice or passage of time would constitute a default by Maintenance Contractor hereunder or under the COMA Documents; (c) no outstanding Claims are then pending against Maintenance Contractor hereunder.

7.4.4 Maintenance Contractor shall deliver to TxDOT a payment bond in the same amount and at the same times as is required for the Maintenance Performance Bond pursuant to Section 7.4.2 in the form attached hereto as Exhibit 7 (the "Maintenance Payment Bond" and together with the Maintenance Performance Bond, the "P&P Bonds"). TxDOT will release the Maintenance Payment Bond upon: (a) receipt of (i) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the Maintenance Payment Bond have been fully paid and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed a preliminary notice of a claim against the Maintenance Payment Bond (or evidence satisfactory to TxDOT that any such Liens and stop notices have been separately bonded around), or (b) expiration of the statutory period for Subcontractors to file a claim against the Maintenance Payment Bond if no claims have been filed.

7.4.5 Each bond required hereunder shall have a term of at least one year and be issued by a Surety authorized to do business in the State with a rating of at least A minus (A-) or better and Class VIII or better by A.M. Best Company or rated in the top two categories by two nationally recognized rating agencies, or as otherwise approved by TxDOT in its discretion. If the Maintenance Price is increased in connection with a Change Order, TxDOT may, in its discretion, require a corresponding proportionate increase in the amount of each bond or alternative security.

7.4.6 Maintenance Contractor shall deliver a replacement bond meeting the requirements set forth in this Section 7.4 or a P&P Letter of Credit meeting the requirements set forth in Section 7.3 (a) no later than 30 days prior to (i) the expiration of the then outstanding bond or (ii) the date on which an adjustment to the amount of such bond is required pursuant to Section 7.4.2 and (b) no later than 10 days after (i) any bond previously provided becomes ineffective or (ii) the Surety that provided such bond no longer meets the requirements hereof. If Maintenance Contractor fails to provide a replacement Maintenance Performance Bond or Maintenance Payment Bond meeting the requirements of this Section 7.4 or the P&P Letter of Credit and Guaranty (if required) meeting the requirements set forth in Section 7.4 and 7.6, TxDOT shall have the right to draw down the lesser of twenty percent of the amount of the Maintenance Performance Bond or $20,000,000 (escalated in accordance with the methodology set forth in this Section 7.4.6) as cash collateral to secure the performance of Maintenance Contractor under the COMA Documents as a result of Maintenance Contractor's failure to satisfy the O&M Security obligations under the COMA to which Maintenance Contractor agreed upon in executing the COMA. The $20,000,000 described in the preceding sentence shall be escalated, commencing on the Effective Date to the date that is sixty days prior to the date the initial bond or each replacement bond, as applicable, is issued, based on changes in the CCI. Maintenance Contractor agrees and acknowledges that such cash collateral is necessary to secure the performance of Maintenance Contractor under the COMA Documents as a result of Maintenance Contractor's failure to satisfy the O&M Security obligations under this COMA and may be used by TxDOT to compensate TxDOT for the damages incurred in connection therewith, including TxDOT's costs to procure a substitute Maintenance Contractor and any amounts paid to such substitute Maintenance Contractor in excess of the unpaid balance of the DBA. Any cash collateral not otherwise utilized by TxDOT with respect to Maintenance Contractor's obligations under the Contract Documents shall be returned to Maintenance Contractor upon the earlier of (i) delivery by Maintenance Contractor of replacement P&P Bonds meeting the requirements of this Section 7.4 or the P&P Letter of Credit and Guaranty (if required) in accordance with Sections 7.2, 7.3 and 7.6 and (ii) the date on which the P&P Bonds would otherwise be released in accordance with this Section 7.4.

7.5 No Relief of Liability

Performance by a Surety or a Guarantor of any of the obligations of Maintenance Contractor that meets the requirements of the COMA Documents shall not relieve Maintenance Contractor of any of its obligations hereunder, including the payment of liquidated damages.

7.6 Guaranty

7.6.1 [To be inserted if a Guaranty is provided in Proposal.] [_____] are the Guarantors guaranteeing Maintenance Contractor's obligations under the Contract Documents as set forth in Section 7.6.2 as of the Effective Date and have provided a guaranty in accordance with the form attached as Exhibit 9.

7.6.2 Maintenance Contractor shall be required to provide a Guaranty guaranteeing Maintenance Contractor's obligations under the Contract Documents during the Term in the form set forth in Exhibit 9 (the "**Guaranty**") from a Guarantor approved by TxDOT as of and as a condition to Substantial Completion if (i) Maintenance Contractor elects to provide a Letter of Credit as O&M Security and the initial Letter of Credit provided at Substantial Completion is less than the Maximum P&P LC Amount or (ii) Maintenance Contractor is a limited liability entity and elects to provide the Bonds as O&M Security. Additionally, Maintenance Contractor shall be required to provide a Guaranty satisfying the requirements of this Section 7.6 from a Guarantor approved by TxDOT if at any time during the Term, the Letter

of Credit is less than the Maximum LC Amount and the Letter of Credit is not increased to an amount equal to the Maximum LC Amount or Maintenance Contractor replaces the Letter of Credit with the Bonds and a Guaranty is not then in effect that satisfies the requirements of this Section 7.6. If a Guaranty was provided as of the Effective Date and such Guaranty satisfies the requirements of this Section 7.6 and is in effect on the Substantial Completion Deadline, then Maintenance Contractor shall not be required to provide an additional Guaranty at the Substantial Completion Deadline.

7.6.3 Maintenance Contractor shall report to TxDOT, on a on a quarterly basis during the Maintenance Term, the Tangible Net Worth of Maintenance Contractor, its equity members, and any Guarantors. The report shall state the Tangible Net Worth and be certified by the chief financial officer of the entity reporting. The entity may mark the report "confidential."

7.6.4 If at any time during the course of this Comprehensive Maintenance Agreement the total combined Tangible Net Worth of Maintenance Contractor, its equity members and any Guarantors, is less than $200,000,000, Maintenance Contractor shall provide one or more guarantees so that the combined Tangible Net Worth of the Maintenance Contractor, its equity members and any Guarantors is at least $200,000,000. Each such guaranty shall be in the form attached as Exhibit 9, together with appropriate evidence of authorization, execution, delivery and validity thereof, and shall guarantee the Guaranteed Obligations. Each guaranty must be provided by: (a) a parent corporation, affiliate, or a shareholder of Maintenance Contractor, or (b) a parent corporation, affiliate, or a shareholder of an equity member of Maintenance Contractor. The minimum Tangible Net Worth amount described above shall be adjusted annually based on changes in the CCI, commencing on the first anniversary of the Maintenance Services Commencement Date and continuing annually thereafter during the term of this Comprehensive Maintenance Agreement.

7.6.5 Maintenance Contractor may replace an existing Guaranty with a new Guaranty upon prior approval by TxDOT. Any new Guaranty shall be provided in the applicable form attached as Exhibit 9 together with appropriate evidence of authorization, execution, delivery and validity thereof, and shall guarantee the Guaranteed Obligations. The Guaranty being replaced shall remain in effect until the approved replacement Guaranty becomes effective.

7.7 General Insurance Requirements

Maintenance Contractor shall procure and keep in effect, or cause to be procured and kept in effect, with the Maintenance Contractor as a named insured, the insurance policies in accordance with the requirements in this Section 7.7 and Exhibit 10.

7.7.1 Qualified Insurers

Each of the insurance policies required hereunder shall be procured from an insurance carrier or company that, at the time coverage under the applicable policy commences is: (a) authorized to do business in the State and has a current policyholder's management and financial size category rating of not less that "A –, VII" according to A.M. Best's Insurance Reports Key Rating Guide; or (b) otherwise approved in writing by TxDOT.

7.7.2 Premiums, Deductibles and Self-Insured Retentions

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

7.7.3 Primary Coverage

Each insurance policy shall provide that the coverage is primary and noncontributory coverage with respect to any other insurance available to TxDOT and the other Indemnified Parties, except for coverage that by its nature cannot be written as primary. For each property policy, such policy shall provide that the coverage thereof is primary and noncontributory with respect to all insureds as their interest may appear. Any insurance or self-insurance beyond that specified in this Comprehensive Maintenance Agreement that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

7.7.4 Verification of Coverage

7.7.4.1. Within 10 days of TxDOT issuing Maintenance NTP and thereafter not later than 10 days prior to the expiration date of each insurance policy, Maintenance Contractor shall deliver to TxDOT a certificate of insurance evidencing that each required policy of insurance is in place. The certificate shall be on the most recent ACORD form, without disclaimer. Each required certificate must meet the requirements of Texas Insurance Code Chapter 1811 and, to the extent permitted under applicable Laws, state the identity of all carriers, named insureds and additional insureds, state the type and limits of coverage, deductibles and termination provisions of the policy, include as attachments all additional insured, waiver of subrogation, and notice of termination endorsements, and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker. Each such certificate of insurance shall be accompanied by a letter signed by the Maintenance Contractor confirming that the insurances represented in the certificate of insurance fully comply with all provisions of this Section 7.7 and Exhibit 10.

7.7.4.2. Maintenance Contractor shall promptly deliver to TxDOT a certificate of insurance and copies of all endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of insurance coverages required under this Comprehensive Maintenance Agreement. Such certificate shall be delivered prior to the expiration of any policy.

7.7.4.3. Within 30 days from delivery of the certificate of insurance as provided in Section 7.7.4.1, Maintenance Contractor shall deliver to TxDOT: (i) a complete certified copy of each such insurance policy or modification, or renewal or replacement insurance policy and all endorsements thereto and (ii) satisfactory evidence of payment of the premium therefor.

7.7.4.4. If Maintenance Contractor has not provided TxDOT with the foregoing proof of coverage and payment within five days after TxDOT delivers to Maintenance Contractor notice of an Event of Default under Section 12.3.1 and demand for the foregoing proof of coverage, TxDOT may, in addition to any other available remedy, without

obligation or liability and without further inquiry as to whether such insurance is actually in force: (i) obtain such an insurance policy; and Maintenance Contractor shall reimburse TxDOT for the cost thereof upon demand, and (ii) suspend all or any portion of Maintenance Services for cause and close the Project until TxDOT receives from Maintenance Contractor such proofs of coverage in compliance with this Section 7.7.4 (or until TxDOT obtains an insurance policy, if it elects to do so).

7.7.5 Subcontractor Insurance Requirements

7.7.5.1. Maintenance Contractor's obligations regarding Subcontractor's insurance are set forth in Exhibit 10. Maintenance Contractor shall cause each Subcontractor to provide such insurance in the manner and in the form consistent with the requirements contained in this Comprehensive Maintenance Agreement, and also including requirements to comply with the primary and non-contributory, waiver of subrogation, and notice of cancellation provisions of this Section 7.7.

7.7.5.2. If any Subcontractor fails to procure and keep in effect the insurance required of it under Exhibit 10 and TxDOT asserts the same as an Event of Default hereunder, Maintenance Contractor may, within the applicable cure period, cure such Event of Default by: (i) causing such Subcontractor to obtain the requisite insurance and providing to TxDOT proof of insurance; (ii) procuring the requisite insurance for such Subcontractor and providing to TxDOT proof of insurance; or (iii) terminating the Subcontractor and removing its personnel from the Site.

7.7.6 Policies with Insureds in Addition to Maintenance Contractor

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

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

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

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

completed operations. The commercial general liability insurance shall include completed operations liability coverage.

7.7.7 Additional Terms and Conditions

7.7.7.1. Each insurance policy shall be endorsed to state that coverage cannot be canceled, not renewed, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 days' prior written notice (or 10 days in the case of cancellation or non-renewal for non-payment of premium) by registered or certified mail, return receipt requested, has been given to TxDOT and each other insured or additional insured party. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

7.7.7.2. The commercial general liability insurance policy shall cover liability arising out of the acts or omissions of Maintenance Contractor's employees engaged in the Maintenance Services as well as employees of Subcontractors if Subcontractors are covered by a Maintenance Contractor-controlled insurance program. If any Subcontractor is not covered by such Maintenance Contractor-controlled insurance program, then Subcontractor shall provide commercial general liability insurance and other insurances described in Exhibit 10 to cover liability arising out of the activities of Subcontractor's employees engaged in the Maintenance Services.

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

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

7.7.8 Waivers of Subrogation

TxDOT waives all rights against the Maintenance Contractor-Related Entities, and Maintenance Contractor waives all rights against the Indemnified Parties, for any claims to the extent covered by insurance obtained pursuant to this Section 7, except such rights as they may have to the proceeds of such insurance. If Maintenance Contractor is deemed to self-insure a claim or loss under Section 7.8.6, then Maintenance Contractor's waiver shall apply as if it carried the required insurance. Maintenance Contractor shall require all Subcontractors to provide similar waivers in writing each in favor of all other Persons enumerated above. Subject to Section 7.7.11, each policy, including workers' compensation if permitted under the applicable worker's compensation insurance laws, shall include a waiver of any right of subrogation against the Indemnified Parties or the insurers consent to the insured's waiver of recovery in advance of loss.

7.7.9 No Recourse

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

7.7.10 Support of Indemnifications

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

7.7.11 Inadequacy or Unavailability of Required Coverages

7.7.11.1. TxDOT makes no representation that the limits of liability specified for any insurance policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect Maintenance Contractor against its undertakings under the COMA Documents, to TxDOT, or any other Person. No such limits of liability or approved variances therefrom shall preclude TxDOT from taking any actions as are available to it under the COMA Documents or otherwise at Law.

7.7.11.2. If Maintenance Contractor demonstrates to TxDOT's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to maintain the insurance coverages it is required to provide hereunder, and if, despite such diligent efforts and through no fault of Maintenance Contractor, any of such coverages (or any of the required terms of such coverages, including insurance policy limits) become unavailable during the Term at commercially reasonable rates, TxDOT will consider in good faith granting Maintenance Contractor an interim written variance from such requirements under which Maintenance Contractor shall obtain and maintain or cause to be obtained and maintained alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this Section 7 as is commercially reasonable under then-existing insurance market conditions.

7.7.11.3. Maintenance Contractor shall not be excused from satisfying the insurance requirements of this Section 7.7 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of coverages, including insurance policy limits) are not commercially reasonable, Maintenance Contractor shall bear the burden of proving either that: (i) the same is not available at all in the global insurance and reinsurance markets; or (ii) the premiums for the same have so materially increased over those previously paid for the same coverage that no reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such increased premiums are justified by the risk protection afforded. For purpose of clause (ii), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for highway facilities, and Maintenance Contractor shall bear the burden of proving that premium increases are the result of such changes in general market conditions. For purposes of this Section 7.7.11, commercially reasonable rates are rates equal to or less than 200% of the benchmark for the insurance policy at issue as described in Section 7.7.12. If the required insurance coverage is available in the market, TxDOT's decision to approve or disapprove a variance from the requirements of this Section 7 shall be final and not subject to the Dispute Resolution Procedures. For the avoidance of doubt, no increase in insurance premiums attributable to claims or loss experience on the Project, unless such claims or loss experience is a result of damage caused by third parties or a Force Majeure Event and not attributable to a Maintenance Contractor-Related Entity, or of any Maintenance Contractor-Related Entity or Affiliate, whether under an insurance policy required by this Section 7 or Exhibit 10 or in connection with any unrelated work or activity of Maintenance Contractor-Related Entities or Affiliate, shall be considered in determining whether required insurance is commercially unavailable.

7.7.11.4. Maintenance Contractor shall not be entitled to any increase in the Maintenance Price for increased costs or any time extension to the Completion Deadlines resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. TxDOT shall be entitled to a reduction in the Maintenance Price if it agrees to accept alternative policies providing less than equivalent coverage and Maintenance Contractor is not required to self-insure for such risks, with the amount to be determined by extrapolation using the insurance quotes included in the EPDs (or based on other evidence of insurance premiums as of the Proposal Due Date if the EPDs do not provide adequate information). If, in the future, through no fault of Maintenance Contractor, any of the coverages required in this Section 7.7 (or any of the required terms of such coverages, including policy limits) become unavailable as determined under a commercial reasonableness standard, TxDOT will work with Maintenance Contractor to find commercially reasonable alternatives to the required coverages that are acceptable to TxDOT.

7.7.12 Insurance Premium Benchmarking

7.7.12.1. Except as otherwise provided in Section 7.7.11 and this Section 7.7.12, Maintenance Contractor shall bear the full risk of any insurance premium increases from the Effective Date until the end of the Term, and shall not be entitled to any Claim for relief for such increases. Solely with respect to insurance policies required to be maintained at any time during the Term under this Section 7 and Exhibit 10, TxDOT will allocate the risk of significant increases in insurance premiums through an insurance benchmarking process as set forth in this Section 7.7.12. In no event shall TxDOT participate in any insurance premium risk associated with either deductibles less than the maximum deductibles set forth in, or additional or extended coverages beyond those required under, this Section 7 or Exhibit 10, or changes in premiums that are not the result of market-based factors.

7.7.12.2. The benchmarking process will occur at each insurance renewal period, but no less than triennially, through the following:

(a) Not later than 60 days after the Substantial Completion Deadline and 45 days prior to each insurance renewal period (but no less than triennially), Maintenance Contractor shall submit a report ("Insurance Review Report") to TxDOT that includes the following elements:

i. Firm quotes from three established and recognized insurance providers for the Insurance Policies required, without any variation, in Exhibit 10 to be maintained during the Term ("Required Minimum Insurance Policies"). The quotes shall represent the current and fair market cost of providing the Required Minimum Insurance Policies.

ii. The written binders of insurance in the form and content required under this Section 7 and Exhibit 10 with the premium invoices for the actual insurance policies required hereunder and thereunder for the subject annual insurance period as obtained by Maintenance Contractor ("Actual Insurance Policies").

iii. Except with respect to the initial Insurance Review Report, a comprehensive written explanation of any effect that Maintenance Contractor's loss experience has had on the premiums for the Required Minimum Insurance Policies and the Actual Insurance

Policies. The explanation shall include: (i) an assessment by Maintenance Contractor's independent insurance broker addressing industry trends in premiums for the Required Minimum Insurance Policies and analysis (if applicable) of any Project-specific reasons for the increase in premiums; and (ii) detailed analysis of any claims (paid or reserved) since the last review period, with claim date(s), description of incident(s), claims amount(s), and the level of deductibles provided.

(b) TxDOT, at its discretion, may independently assess the accuracy of the information in the Insurance Review Report and retains the right to perform its own independent insurance review, which may include retaining advisors, obtaining independent quotes for the Required Minimum Insurance Policies or performing its own assessment as to the impact of claims history on renewal costs.

7.7.12.3. The Starting O&M Insurance Benchmarking Premiums shall be calculated based on the greater of:

(a) premium information obtained from the initial Insurance Review Report; or

(b) if TxDOT deems appropriate in its reasonable discretion, from information obtained pursuant to Section 7.7.12.2(b).

7.7.12.4. The Starting O&M Insurance Benchmarking Premiums shall be used in the benchmarking process for the remainder of the Term in accordance with the following procedures:

(a) Sixty days prior to each renewal date (but no less than triennially), Maintenance Contractor shall provide an updated Insurance Review Report, with the information specified in Section 7.7.12.2(a). TxDOT shall determine the change in premium costs on a coverage-by-coverage basis for the Required Minimum Insurance Policies calculated based on the information obtained from the initial Insurance Review Report or, if TxDOT deems appropriate in its reasonable discretion, from information obtained pursuant to Section 7.7.12.2(b).

(b) TxDOT will use the Starting O&M Insurance Benchmarking Premiums to measure changes in premium costs at each renewal period (but no less than triennially) for each of the Required Minimum Insurance Policies. The Starting O&M Insurance Benchmarking Premiums shall be escalated by applying a fixed 5.0% annual increase ("Escalated Benchmark O&M Insurance Premiums"). Broker's fees and agent's commissions will not be considered as part of the benchmarking exercise described in this Section 7.7.12, and are the exclusive responsibility of Maintenance Contractor.

(c) The subsequent Insurance Review Reports shall be used to establish the renewal premiums for the Required Minimum Insurance Policies for purposes of the benchmarking process described in this Section 7.7.12. In no event shall premium increases that are caused by Project-specific losses (other than damage to the Project caused by third parties or a Force Majeure Event and not attributable to a Maintenance Contractor-Related Entity), changes in deductibles or matters within the control of Maintenance Contractor or any Maintenance Contractor-Related Entity be subject to the benchmarking exercise or risk sharing described in this Section 7.7.12. Maintenance Contractor may voluntarily choose to

procure an insurance package that varies from the Required Minimum Insurance Policies (with for example different deductibles, different coverage amounts, different exclusions, etc.), in which case both Parties recognize that: (i) the actual variations in Maintenance Contractor's insurance premiums may not necessarily reflect the variations in the minimum insurance requirements and (ii) TxDOT will disregard the actual insurance package and will rely upon the analysis from the Insurance Review Report and its own independent analysis of the effect on the minimum insurance requirements. Any insurance beyond the Required Minimum Insurance Policies shall not be subject to the insurance benchmarking process and O&M Payment adjustment described in Section 7.7.12.4.

(d) If TxDOT, in its discretion, elects to retain its own insurance advisor to analyze the extent of eligible premium increases, Maintenance Contractor shall cooperate in good faith with any reasonable requests for additional information from TxDOT's insurance advisor. No later than 30 days after Maintenance Contractor's submission of the Insurance Review Report, TxDOT shall make its determination of the eligible premium increases subject to the risk-allocation described in Section 7.7.12.5 below. In the event of a dispute, TxDOT's determination shall be subject to the Dispute Resolution Procedures.

7.7.12.5. If the annual insurance premiums for the Actual Insurance Policies, as such premiums may be adjusted pursuant to Section 7.7.12.4(c), are in excess of 130% of the applicable Escalated Benchmark O&M Insurance Premiums, TxDOT shall increase the Maintenance Price for the applicable year an amount equal to 85% of such premiums that are in excess of 130% of the applicable Escalated Benchmark O&M Insurance Premiums until the next benchmarking period. If the annual insurance premiums for the Actual Insurance Policy, as such premiums may be adjusted pursuant Section 7.7.12.4(c), are below 70% of the applicable Escalated Benchmark O&M Insurance Premiums, TxDOT shall reduce the Maintenance Price for the applicable year in an amount equal to 85% of the difference between such premiums and 70% of the applicable Escalated Benchmark Insurance Premiums until the next benchmarking period.

7.7.13 Defense Costs

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

7.7.14 Contesting Denial of Coverage

If any insurance carrier under an insurance policy denies coverage with respect to any claims reported to such carrier, upon Maintenance Contractor's request, TxDOT and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then Maintenance Contractor shall bear all costs of contesting the denial of coverage.

7.7.15 Umbrella and Excess Policies

Maintenance Contractor shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall follow form of underlying policies and

shall comply with all insurance requirements, terms and provisions set forth in this COMA for the applicable type of coverage.

7.7.16 Adjustments in Coverage Amounts

(a) At least once every three years during the Maintenance Term (commencing initially three years after the Effective Date), TxDOT and Maintenance Contractor shall review and increase, as appropriate, the per occurrence and aggregate limits or combined single limits for the insurance policies required under this Agreement that have stated dollar amounts set forth in Exhibit 10. At the same frequency TxDOT and Maintenance Contractor shall review and adjust, as appropriate, the deductibles for such policies.

(b) Maintenance Contractor shall retain a qualified and reputable insurance broker or independent, unaffiliated advisor not involved in the Project, experienced in insurance brokerage and underwriting practices for major bridge, highway or other relevant transportation facility projects, to analyze and recommend adjustments, if any, to such limits and adjustments to deductibles. Maintenance Contractor shall deliver to TxDOT, not later than 90 days before each three-year adjustment date, a written report including such analysis and recommendations for TxDOT's approval. TxDOT shall have 45 days after receiving such report to approve or disapprove the proposed adjustments to limits and adjustments to deductibles or self-insured retentions.

(c) In determining adjustments to limits and adjustments to deductibles, Maintenance Contractor and TxDOT shall take into account (i) claims and loss experience for the Project, provided that premium increases due to adverse claims experience shall not be a basis for justifying increased deductibles, (ii) the condition of the Project, including records of Asset Condition Scores, (iii) the Renewal Work record for the Project, (iv) the Noncompliance Points record for the Project, and (v) then-prevailing Good Industry Practice for insuring comparable transportation projects.

(d) Any Dispute regarding adjustments to limits or adjustments to deductibles or self-insured retentions shall be resolved according to the Dispute Resolution Procedures.

7.8 Prosecution of Insurance Claims

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

7.8.2 Maintenance Contractor shall immediately notify TxDOT, and thereafter keep TxDOT fully informed, of any incident, potential claim, claim or other matter of which Maintenance Contractor becomes aware that involves or could conceivably involve an Indemnified Party.

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

7.8.4 For claims and suits which Maintenance Contractor's insurer reasonably estimates to be within the limits of its available coverage, Maintenance Contractor or its insurer shall communicate and coordinate the defense strategy with TxDOT and the Texas Office of the Attorney General and shall ensure that the insurer does not agree to any settlement without first obtaining the concurrence of the Texas Office of the Attorney General. TxDOT and the Texas Office of the Attorney General shall not unreasonably withhold consent to the strategy and plan communicated by the Maintenance Contractor or its insurer to TxDOT and the Texas Office of the Attorney General. Nor shall TxDOT and the Texas Office of the Attorney General unreasonably withhold consent to settlements and compromises proposed by Maintenance Contractor or its insurers which fall within the limits of insurance provided by such insurers.

7.8.5 For claims and suits which Maintenance Contractor's insurer reasonably estimates to be in excess of the available insurance provided by Maintenance Contractor's insurers, and implicating the potential for damages which are the financial liability or responsibility of TxDOT or the State of Texas, Maintenance Contractor shall ensure that the defense of the claim is coordinated by the insurer with TxDOT and the Texas Office of the Attorney General and shall ensure that the Maintenance Contractor's insurer does not agree to any settlement in excess of Maintenance Contractor's insurer's limits of liability without first obtaining the concurrence of the Texas Office of the Attorney General.

7.8.6 If in any instance Maintenance Contractor has not performed its obligations respecting insurance set forth in this Comprehensive Maintenance Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies or to prosecute claims diligently, then for purposes of determining Maintenance Contractor's liability and the limits thereon or determining reductions in compensation due from TxDOT to Maintenance Contractor on account of available insurance, Maintenance Contractor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage that would have been available had Maintenance Contractor performed such obligations and not committed such failure. Nothing in the COMA Documents shall be construed to treat Maintenance Contractor as electing to self-insure where Maintenance Contractor is unable to collect due to the bankruptcy or insolvency of any insurer that at the time the insurance policy is written meets the rating qualifications set forth in this Section 7.

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

7.8.8 Unless otherwise directed by TxDOT in writing, Maintenance Contractor shall be responsible for reporting and processing all potential claims by TxDOT or Maintenance Contractor against the insurance required to be provided under Section 7.7. Maintenance Contractor agrees to report to the insurer(s) in a timely manner any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of TxDOT, whether for defense or indemnity or both.

7.8.9 All insurance proceeds received by Maintenance Contractor for any insured loss under the builder's risk and/or property insurance policies required by this Comprehensive Maintenance Agreement shall be paid into a separate insurance proceeds account and shall be held in trust for the purposes of, and to be applied in accordance with, this Comprehensive Maintenance Agreement.

7.9 Insurance and Commencement of Maintenance Services

Maintenance Contractor shall not commence the Maintenance Services under this Comprehensive Maintenance Agreement until it has obtained the insurance required under Section 7.7, has furnished original certificates of insurance evidencing the required coverage as required under Section 7.7.4 and such insurance has been approved in writing by TxDOT, and Maintenance Contractor shall not allow any Subcontractor (nor shall such Subcontractor be entitled) to commence work under its Subcontract until the insurance required of the Subcontractor pursuant to this Section 7 has been obtained and approved by Maintenance Contractor. A delay in securing such certificates of insurance or approvals shall not provide Maintenance Contractor any relief or entitlement to a Change Order.

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

If Maintenance Contractor or any Subcontractor fails to provide insurance or proof of insurance as and when required herein, TxDOT shall have the right, but not the obligation, without further notice or demand, to purchase such insurance or to suspend Maintenance Contractor's right to proceed until proper evidence of insurance is provided. TxDOT's Recoverable Costs, at TxDOT's option, shall be deducted from amounts payable to Maintenance Contractor or reimbursed by Maintenance Contractor upon demand from TxDOT. Nothing herein shall preclude TxDOT from exercising its rights and remedies under Section 16 as a result of the failure of Maintenance Contractor or any Subcontractor to satisfy its insurance obligations herein.

7.11 Disclaimer Regarding Insurance

Maintenance Contractor and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage that they deem advisable, whether or not specified herein. TxDOT makes no representation that the limits of liability specified for any insurance policy to be carried pursuant to this Comprehensive Maintenance Agreement or approved variances therefrom are adequate to protect Maintenance Contractor against liabilities and risks associated with its undertakings under the COMA Documents.

7.12 Premiums

Except for premiums that are Maintenance Contractor's responsibility under Section 3.5.2, Maintenance Contractor shall be entitled to reimbursement for the costs of bonds, letters of credit and insurance premiums, as follows:

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

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

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

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

7.13 Claims Against Third Parties

In connection with Maintenance Contractor's obligations under the Contract Documents, including repair of damage to the Project caused by collision (motor vehicle, aircraft, or railroad train), vandalism, or other destructive acts of third parties, Maintenance Contractor shall pursue claims against third parties for damage caused to the Project. In the event Maintenance Contractor receives any funds from third parties, such funds shall be used first to repair the applicable damage to the Project and next to any other purpose for which the funds were awarded or received. In the event Maintenance Contractor is required to repair any damage to the Project caused by third parties and TxDOT receives payment pursuant to a third-party claim regarding such damage, TxDOT shall pay reimburse Maintenance Contractor to the extent of the funds received on a monthly basis in accordance with Section 16 to Maintenance Contractor upon completion by as Maintenance Contractor performs of the applicable Maintenance Services.

SECTION 8. COMPENSATION

8.1 Payment for Maintenance Services

8.1.1 During the term of this Comprehensive Maintenance Agreement, in full consideration for the performance by the Maintenance Contractor of its duties and obligations under the COMA Documents, TxDOT shall pay the amounts determined as set forth in Section 8.1.2, as adjusted in accordance with Section 8.1.3 ("Maintenance Price") subject only to Section 8.1.4 and to such additions to and deductions from the compensation as may be provided for pursuant to Section 10. The Maintenance Price shall be paid in accordance with this Section 8.1. The Maintenance Price (and the individual components thereof) shall be increased or decreased only by a Change Order issued in accordance with Section 10, by an amendment to this Comprehensive Maintenance Agreement, or as provided in Section 8.1.4. No portion of the Maintenance Price shall be payable on account of services provided: (a) prior to the Maintenance Term Commencement Date, except for those tasks expressly required by the COMA Documents to be performed, and performed, by Maintenance Contractor after issuance of Maintenance NTP and prior to the Maintenance Term Commencement Date, or (b) after the termination, expiration or non-renewal of the term of this Comprehensive Maintenance Agreement.

8.1.2 Subject to Section 8.1.4, Maintenance Contractor shall be paid for Maintenance Services provided under this Comprehensive Maintenance Agreement, a monthly payment equivalent to one-twelfth (1/12) of the sum of (a) the annual payments set forth in the Routine O&M Payment Schedule in Exhibit 4, plus (b) the annual payments set forth in the Renewal Work Payment Schedule in Exhibit 4, plus (c) the annual payments set forth in the Incident Response Work Payment Schedule in Exhibit 4. Such amount shall be payable in arrears pursuant to Draw Requests submitted on the first day of each month of such Maintenance Term year.

8.1.3 The annual Maintenance Price (MP) will be escalated or reduced as follows:

8.1.3.1. For the annual payments set forth in the Routine O&M Payment Schedule shown in Exhibit 4, based on changes in CPI as follows:

(a) The CPI for the month three months prior to the month in which this Comprehensive Maintenance Agreement is executed will establish the Base Index (BI_{CPI}); and

(b) The annual payments set forth in the Routine O&M Payment Schedule shall be escalated or reduced by multiplying the annual amount payable for such year by the CPI for the month that is three months prior to the month in which the applicable year commences and dividing such amount by the BI_{CPI}.

(c) The formula that reflects the foregoing is: Adjusted Routine O&M Payment = (annual Routine O&M Payment) x CPI/(BI_{CPI}).

8.1.3.2. For the annual payments set forth in the Renewal-Other Work Payment Schedule, based on changes in the ENR CCI as follows:

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

(b) The annual payments set forth in the Renewal-Other Work Payment Schedule shall be escalated or reduced by multiplying the annual amount payable in such year by the ENR CCI for the month that is three months prior to the month in which the applicable year commences and dividing such amount by the BI_{CCI}.

(c) The formula that reflects the foregoing is: Adjusted Renewal Work Payments = (annual Renewal-Other Work Payments) x ENR CCI/(BI_{CCI}).

8.1.3.3. For the annual payments set forth in the Incident Response Work Payment Schedule, based on changes in the CPI as follows:

(a) The CPI for the month three months prior to the month in which this Comprehensive Maintenance Agreement is executed will establish the Base Index (BI_{CPI}); and

(b) The annual payments set forth in the Incident Response Work Payment Schedule shall be escalated or reduced by multiplying the annual amount payable for such year by the CPI for the month that is three months prior to the month in which the applicable year commences and dividing such amount by the BICPI.

(c) The formula that reflects the foregoing is: Adjusted Incident Response Work Payment = (annual Routine Response Work Payment) x CPI/(BI_{CPI}).

8.1.4 If Maintenance Contractor fails to fulfill any requirement or obtain any TxDOT approval or third party approval that the COMA Documents indicate is to be fulfilled or obtained prior to the Maintenance Term Commencement Date, TxDOT shall have the right, in its discretion, to prohibit Maintenance Contractor from commencing the Maintenance Services until the requirement or approval is obtained. In such case, Maintenance Contractor (a) shall have no right to compensation allocable to the period of such delay in commencing Maintenance Services beyond the Maintenance Term Commencement Date, and (b) shall pay to TxDOT, within ten days after receipt of written demand, the excess, if any, of TxDOT's Recoverable Costs of carrying out or providing for the carrying out of Maintenance Services during such period over the Maintenance Price TxDOT would have paid Maintenance Contractor for such period had it commenced Maintenance Services on the Maintenance Term Commencement Date. The foregoing is in addition to any other remedy available to TxDOT under this Comprehensive Maintenance Agreement on account of such failure.

8.2 Invoicing and Payment

8.2.1 On or about the fifth Business Day of each month, Maintenance Contractor shall submit to TxDOT five copies of a Draw Request in the form of Exhibit 11 for Maintenance Services performed for the preceding month and meeting all requirements specified herein. Each Draw Request shall be executed by Maintenance Contractor's Authorized Representative and Maintenance QC Manager. Maintenance Contractor acknowledges that

TxDOT may obtain funding for portions of the Maintenance Services from the federal government, local agencies and other third parties, and Maintenance Contractor agrees to segregate Draw Requests for all such Maintenance Services in a format reasonably requested by TxDOT and with detail and information as reasonably requested by TxDOT. Each Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process. In addition, the Draw Request for a monthly payment must be accompanied by an attached report containing information that TxDOT can use to verify the Draw Request and monthly payment and all components of the liquidated damages and Noncompliance Charges for the prior month. Such attached report shall include:

8.2.1.1. A description of any Noncompliance Events, Noncompliance Points assessed during the prior month and any Noncompliance Charges owed for assessed Noncompliance Points;

8.2.1.2. A description of any other liquidated damages (including Lane Rental Charges for Lane Closures) assessed against Maintenance Contractor during the prior month in relation to the Maintenance Services, including the date and time of occurrence and a description of the events and duration of the events for which the liquidated damages were assessed;

8.2.1.3. Any adjustments to reflect previous over-payments and/or under-payments;

8.2.1.4. A detailed calculation of any interest payable in respect of any amounts owed; and

8.2.1.5. Any other amount due and payable from Maintenance Contractor to TxDOT or from TxDOT to Maintenance Contractor under this Comprehensive Maintenance Agreement, including any retainage and any other deductions related to the Maintenance Services that TxDOT is entitled to make and any carry-over deductions or other adjustments from prior months not yet paid by Maintenance Contractor.

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

8.2.3 The annual payments payable for any partial month or payable for any partial year shall be prorated.

8.2.4 TxDOT shall not be required to make any monthly payment if Maintenance Contractor has failed to file the Quarterly Noncompliance Events Report required to be filed under Exhibit 2, unless and until the required reports are filed.

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

(a) Any TxDOT or third party Losses for which Maintenance Contractor is responsible hereunder, or any damages owing under Section 5.4.7 or 5.4.8, any Noncompliance Charges and any Lane Rental Charges for Lane Closures that have accrued as of the date of the application for payment;

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

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

(d) Any retainage under Section 8.4; and

(e) Any other sums which TxDOT is entitled to recover from Maintenance Contractor under the terms of this Comprehensive Maintenance Agreement.

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

8.3 Payment to Subcontractors

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

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

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

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

8.3.3 The foregoing payment requirements apply to all tiers of Subcontractors and shall be incorporated into all Subcontracts.

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

8.4 Retainage for Non-Renewal of P&P Bonds

In the event the P&P Bonds expire without renewal or otherwise are no longer in effect during the Maintenance Term, TxDOT shall withhold funds (the "Retainage") from each payment to be made to Maintenance Contractor for the Maintenance Services until such time as (a) replacement O&M Security is provided to TxDOT or (b) one year after the end of the Term. The Retainage shall be an amount equal to 10% of the amount owing.

8.4.1 The Retainage, subject to reduction as specified below, shall be held by TxDOT until 60 Days after the expiration of the Warranties under this Comprehensive Maintenance Agreement. At such time, and provided that Maintenance Contractor is not in breach or default hereunder, TxDOT shall release to Maintenance Contractor all Retainage withheld in connection with Maintenance Services other than amounts applied to the payment of Losses or which TxDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, the cost of any uncompleted Maintenance Services and/or the cost of repairing any Nonconforming Work. Final payment of such Retainage not applied to Losses shall be made upon Maintenance Contractor's showing, to TxDOT's satisfaction, that all such matters have been resolved, including delivery to TxDOT of a certification representing and warranting that there are no outstanding claims of Maintenance Services or any claims, Liens or stop notices of any Subcontractor or laborer with respect to the Maintenance Services.

8.4.2 TxDOT agrees to release up to 50% of the Retainage withheld in connection with payments for the Maintenance Services 60 Days after the end of the Maintenance Term, subject to the following terms and conditions. The amount to be released shall be reduced by any amounts which TxDOT deems advisable, in its sole discretion, to retain to cover, any uncompleted Maintenance Services, including Handback Requirements and correction of Nonconforming Work, any Warranty work for which notice has been provided to Maintenance Contractor, any Losses which TxDOT anticipates may be payable and any existing or threatened claims, Liens or stop notices relating to the Project. In addition, no portion of the Retainage shall be released unless and until (a) Maintenance Contractor shall have applied in writing for such release; and (b) such release shall have been approved in writing by any Guarantor.

8.5 Disputes

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

Agreement. Maintenance Contractor shall proceed as directed by TxDOT pending resolution of the Claim or Dispute. Upon resolution of such Claim or Dispute, each Party shall promptly pay to the other any amount owing.

8.6 Claims Against Third Parties

In connection with Maintenance Contractor's obligations under the COMA Documents, including repair of damage to the Project caused by collision (motor vehicle, aircraft or railroad train), vandalism, or other acts of destruction or damage by third parties, Maintenance Contractor shall have the right, in its reasonable discretion, to lawfully pursue claims against third parties for damage caused to the Project. In the event Maintenance Contractor receives any funds from third parties, such funds shall be used first to repair the applicable damage to the Project and next for the purposes for which the funds were awarded or received. In the event Maintenance Contractor is required to repair any damage to the Project caused by third parties and TxDOT receives payment pursuant to a third-party claim regarding such damage, TxDOT shall reimburse Maintenance Contractor to the extent of the funds received on a monthly basis in accordance with Section 10 to Maintenance Contractor upon completion by as Maintenance Contractor performs of the applicable Maintenance Services.

SECTION 9. WARRANTIES FOR MAINTENANCE SERVICES

9.1 Warranties for Maintenance Services

Maintenance Contractor warrants that:

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

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

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

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

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

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

9.2 Warranty Period

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

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

9.3 Implementation of Warranty

9.3.1 Within seven Days of receipt by Maintenance Contractor of notice from TxDOT specifying: (a) a failure of the Maintenance Services to satisfy the Warranties, (b) the failure of any Subcontractor warranty, guarantee or obligation which Maintenance Contractor is responsible to enforce, or (c) a misrepresentation by a Subcontractor regarding an obligation which Maintenance Contractor is responsible to enforce, Maintenance Contractor and TxDOT shall mutually agree when and how Maintenance Contractor shall remedy such failure or misrepresentation; provided, however, that in case of an Emergency requiring immediate

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

9.3.2 Maintenance Contractor shall be responsible for obtaining any required encroachment permits and required consents from any other Persons in connection with the performance of Maintenance Services required under this Section 9. Maintenance Contractor shall bear all costs of such Maintenance Services, including additional testing and inspections.

9.4 Subcontractor and Extended Warranties

9.4.1 Without in any way derogating the Warranties and Maintenance Contractor's own representations and warranties and other obligations with respect to the Maintenance Services, Maintenance Contractor shall obtain from all Subcontractors and cause to be extended to TxDOT, for periods at least coterminous with the Warranties, appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors to effectuate the provisions in this Section 9. All representations, warranties, guarantees and other obligations of Subcontractors: (a) shall be written so as to survive all TxDOT inspections, tests and approvals; and (b) shall run directly to and be enforceable by Maintenance Contractor and TxDOT and their respective successors and assigns. Maintenance Contractor assigns to TxDOT all of Maintenance Contractor's rights and interest in and to all extended warranties for periods exceeding the applicable Warranty Period which are received by Maintenance Contractor from any of its Subcontractors. To the extent that any Subcontractor warranty or guaranty would be voided by reason of Maintenance Contractor's negligence or failure to comply with the COMA Documents in incorporating material or equipment into the work, Maintenance Contractor shall be responsible for correcting such Defect.

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

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

9.5 Effect of TxDOT and/or System Integrator Activities on Warranties

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

9.6 No Limitation on Liability

Subject to Sections 12.7 and 12.8, the foregoing Warranties and Subcontractor warranties are in addition to all rights and remedies available under the COMA Documents or applicable Law or in equity, and shall not limit Maintenance Contractor's liability or responsibility imposed by the COMA Documents or applicable Law or in equity with respect to the Maintenance Services, including liability for design Defects, latent construction Defects, strict liability, actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Maintenance Contractor-Related Entity; provided, however, that upon expiration of the Warranties, Maintenance Contractor shall have no further liability hereunder for patent construction Defects.

9.7 Damages for Breach of Warranty

9.7.1 Maintenance Contractor shall pay or reimburse TxDOT for all its Losses caused by (a) a failure of the Maintenance Services to satisfy the Warranties, (b) the failure of any Subcontractor warranty, guarantee or obligation which Maintenance Contractor is obligated to obtain from the Subcontractor pursuant to Section 9.4.1, or (c) a misrepresentation by any Subcontractor regarding any matter for which Maintenance Contractor is obligated to obtain representations from the Subcontractor pursuant to Section 9.4.1. Such Losses shall include any costs incurred by TxDOT for independent quality assurance and/or quality control with respect to such Maintenance Services within ten days after Maintenance Contractor's receipt of invoices therefor, and, subject to the limitations in Sections 12.7 and 12.8, any lost revenue arising from or relating to such Maintenance Services. Alternatively, TxDOT, in its sole discretion, may deduct the amount of such Losses from any sums owed by TxDOT to Maintenance Contractor pursuant to this Comprehensive Maintenance Agreement.

9.7.2 Subject to Section 12.7 and in addition to TxDOT's other rights and remedies hereunder, at law or in equity, Maintenance Contractor shall be liable for actual damages resulting from any breach of an express or implied warranty or any Defect in the Maintenance Services, including the cost of performance of such obligations by others.

SECTION 10. CHANGES IN THE MAINTENANCE SERVICES

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

10.1 Circumstances Under Which Change Orders May Be Issued

10.1.1 Definition of and Requirements Relating to Change Orders

10.1.1.1. Definition of Change Order

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

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

(b) to revise the Maintenance Price; and

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

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

10.1.1.2. Issuance of Directive Letter

TxDOT may at any time issue a Directive Letter to Maintenance Contractor in the event of any desired change in the Maintenance Services, or in the event of any Claim or Dispute regarding the scope of the Maintenance Services. The Directive Letter will state that it is issued under this Section 10.1.1.2, will describe the Maintenance Services in question and will state the basis for determining compensation, if any. Maintenance Contractor shall proceed immediately as directed in the Directive Letter, pending the execution of a formal Change Order (or, if the Directive Letter states that the Maintenance Services are within

Maintenance Contractor's original scope of Maintenance Services, Maintenance Contractor shall proceed with the Maintenance Services as directed but shall have the right pursuant to Section 10.3 to request that TxDOT issue a Change Order with respect thereto).

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

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

10.1.1.5. The fact that a Directive Letter was issued by TxDOT shall not be considered evidence that in fact a TxDOT-Directed Change occurred. The determination whether a TxDOT-Directed Change in fact occurred shall be based on an analysis of the original requirements of the COMA Documents and a determination whether the Directive Letter in fact constituted a change in those requirements. The requirements of Section 10.1.1.4 shall not imply that a Directive Letter would be required in order for Maintenance Contractor to have the right to receive compensation for Maintenance Services within its original scope for which additional compensation is specifically allowed under this Section 10.

10.1.2 Right of TxDOT to Issue Change Orders

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

10.2 TxDOT-Initiated Change Orders

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

10.2.1 Request for Change Proposal

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

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

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

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

10.2.1.5. If Maintenance Contractor and TxDOT agree that a change in the requirements relating to the Maintenance Services has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Maintenance Price, TxDOT may, in its sole discretion, order Maintenance Contractor to proceed with the performance of the Maintenance Services in question notwithstanding such disagreement. Such order may, at TxDOT's option, be in the form of: (a) a Time and Materials Change Order as provided in Section 10.7 or (b) a Directive Letter under Section 10.1.1.2.

10.2.1.6. If it is not practicable, due to the nature and/or timing of the event giving rise to a proposed Change Order, for Maintenance Contractor to provide a complete Cost and Schedule Proposal meeting all of the requirements of Section 10.4, Maintenance Contractor shall provide an incomplete proposal that includes all information capable of being ascertained. Said incomplete proposal shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to TxDOT stating why such requirements cannot be met, and (b) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable. Maintenance Contractor shall provide monthly updates to any incomplete Cost and Schedule Proposals in the same manner as updates to incomplete Requests for Change Order under Section 10.3.2.6.

10.2.2 Unilateral Change Orders

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

10.3 Maintenance Contractor-Requested Change Orders

10.3.1 Eligible Changes

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

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

(b) Additional costs relating to Hazardous Materials, Force Majeure Events and Non-Discriminatory O&M Changes, to the extent provided in Section 10.8; and

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

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

10.3.2 Procedures

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

10.3.2.1. Delivery of Requests for Partnering and PCO Notices

Maintenance Contractor acknowledges the importance of providing prompt notification to TxDOT upon occurrence of any event or thing entitling Maintenance Contractor to a Change Order under Section 10.3.1. Among other things, such notification serves the purpose of allowing TxDOT to take action to mitigate adverse impacts. Such notification must be delivered as promptly as possible after the occurrence of such event or situation, through

either: (a) a PCO Notice as described in Section 10.3.2.3 or (b) if permitted by Section 10.3.2.2, a Request for Partnering followed by a PCO Notice if appropriate.

10.3.2.2. Requests for Partnering

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

10.3.2.3. PCO Notices

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

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

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

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

10.3.2.4. Waiver

10.3.2.4.1. Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than ten days after Maintenance Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Maintenance Contractor shall be deemed to have waived the right to collect any costs incurred or accrued prior to the date of delivery of the Request for Partnering (if applicable) or PCO Notice (if no Request for Partnering was submitted or if the PCO Notice was not timely submitted following termination of partnering discussions). Furthermore, if any PCO Notice concerns any condition or material described in Section 10.8.2.1.3, Maintenance Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that TxDOT is not afforded the opportunity to inspect such material or condition before it is disturbed.

10.3.2.4.2. In addition to the limitations set forth in Section 10.3.2.4.1, Maintenance Contractor's failure to provide a PCO Notice within 60 days after Maintenance Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Maintenance Contractor from any relief. For situations involving Requests for Partnering, the 60-day period shall be extended until two Business Days following termination of the partnering period.

10.3.2.5. Delivery of Request for Change Order

Maintenance Contractor shall deliver a Request for Change Order under this Section 10.3.2.5 to TxDOT within 30 days after delivery of the PCO Notice, or such longer period of time as may be allowed in writing by TxDOT. TxDOT may require design and construction costs to be covered by separate Requests for Change Order.

10.3.2.6. Incomplete Requests for Change Order

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

10.3.2.6.2. Maintenance Contractor shall furnish, when requested by TxDOT or its designee, such further information and details as may be required to determine the facts or contentions involved. Maintenance Contractor agrees that it shall give TxDOT or its designee access to any and all of Maintenance Contractor's books, records and other materials relating to the Maintenance Services, and shall cause its Subcontractors to do the same, so that TxDOT or its designee can investigate the basis for such proposed Change Order. Maintenance Contractor shall provide TxDOT with a monthly update to all outstanding Requests for Change Order describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to TxDOT and expenditures to date. TxDOT may reject the Request for Change Order at any point in the process. TxDOT's failure to respond to a complete Request for Change Order within 15 Business Days of delivery of the request shall not be deemed an acceptance of such request, and the Maintenance Contractor shall have the burden of following up with TxDOT on the status of any such Request for Change Order.

10.3.2.7. Importance of Timely Notice

MAINTENANCE CONTRACTOR ACKNOWLEDGES AND AGREES THAT, DUE TO LIMITATIONS ON FUNDING FOR THE PROJECT AND HARM TO TXDOT THAT WILL RESULT FROM DELAY, TIMELY DELIVERY OF PCO NOTICES AND REQUESTS FOR CHANGE ORDERS AND UPDATES THERETO ARE OF VITAL IMPORTANCE TO TXDOT. TXDOT IS RELYING ON MAINTENANCE CONTRACTOR TO EVALUATE PROMPTLY UPON THE OCCURRENCE OF ANY EVENT OR SITUATION WHETHER THE EVENT OR SITUATION WILL AFFECT THE MAINTENANCE PRICE AND, IF SO, WHETHER MAINTENANCE CONTRACTOR BELIEVES A MAINTENANCE PRICE INCREASE IS REQUIRED HEREUNDER. ACCORDINGLY, MAINTENANCE CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE MAINTENANCE SERVICES OR THEIR COST, DELAY, DISRUPTION, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE, DELAY, DISRUPTION, SUSPENSION OR ACCELERATION) FOR WHICH MAINTENANCE CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE, OR FAILED TO PROVIDE A TIMELY PCO NOTICE, TIMELY REQUEST FOR CHANGE ORDER OR TIMELY UPDATES THERETO.

10.3.2.8. Review of Subcontractor Request for Price Increase

Prior to submission by Maintenance Contractor of any Request for Change Order that is based in whole or in part on a request by a Subcontractor to Maintenance Contractor for a price increase under its Subcontract, Maintenance Contractor shall have reviewed all invoices by the Subcontractor which constitute the basis for the Request for Change Order and determined in good faith that each such request is justified hereunder and that Maintenance Contractor is acting reasonably in requesting an increase in the Maintenance Price in the amounts specified in the Request for Change Order. Each Request for Change Order involving Subcontractor-performed Maintenance Services, and each update to an incomplete Change Order request involving such Maintenance Services shall include a summary of Maintenance Contractor's analysis of all Subcontractor invoice components and shall include a certification signed by the Maintenance Manager stating that Maintenance Contractor has investigated the basis for the Subcontractor's request and has determined that all such request is justified as to entitlement and amount of money requested, has reviewed and verified the adequacy of all back-up documentation to be placed in escrow pursuant to Section 17.2, and has no reason to believe and does not believe that the factual basis for the Subcontractor's request is falsely represented. Any Request for Change Order involving Subcontractor-performed Maintenance Services which is not accompanied by such analysis and certification shall be considered incomplete.

10.3.3 Performance of Disputed Maintenance Services

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

10.4 Contents of Change Orders

10.4.1 Form of Change Order

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

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

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

10.4.2.1. Scope of Work

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

10.4.2.2. Cost Estimate

The cost estimate shall set out the estimated costs for the proposed Change Order in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment and markups for overhead and profit, unless TxDOT agrees otherwise. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Maintenance Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment and markups for overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for Maintenance Contractor's estimate. No markup shall be allowed in excess of the amounts allowed under Section 10.6. Maintenance Contractor shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

10.4.2.3. Other Supporting Documentation

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

10.4.3 Justification

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

10.4.4 Maintenance Contractor Representation

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

10.4.5 Effect of Change Order Under Design-Build Agreement

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

10.4.6 Changes in Scope of Project or Maintenance Services

If an event or situation occurs which may entitle Maintenance Contractor to a Change Order increasing the Maintenance Price, TxDOT will evaluate the situation and shall have the right, in its sole discretion, to make changes to the definition of the Project or the scope of Maintenance Services so as to bring it within TxDOT's funding and time restraints.

10.5 Certain Limitations

10.5.1 Limitation on Maintenance Price Increases

Any increase in the Maintenance Price allowed hereunder shall exclude: (a) costs incurred by Maintenance Contractor arising out of or relating to the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract, or Governmental Approval by any Maintenance Contactor-Related Entity; (b) costs to the extent that they are unnecessary or could reasonably be avoided by Maintenance Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Maintenance Services or to other activities unrelated to the Maintenance Services; and (c) costs for remediation of any Nonconforming Work. Costs incurred for the purpose of mitigating further costs as described in clause (b) above, and not otherwise disallowed hereunder, would be reimbursable.

10.5.2 Maintenance Services Performed Without Direction

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

10.6 Change Order Pricing

The price of a Change Order under this Section 10.6 shall be a negotiated lump sum price or unit prices as provided below. Lump sum price or unit prices shall be based on the

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

10.6.1 Detailed Cost Proposal

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

10.6.2 Identification of Conditions

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

10.6.3 Contents

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

10.6.4 Added Maintenance Services

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

10.6.5 Deleted Maintenance Services

When the Change Order deletes Maintenance Services from Maintenance Contractor's scope, the amount of the reduction in the Maintenance Price shall be based upon Maintenance Contractor's estimated price for such work included in the Proposal, including a bill of material and a breakdown of labor and equipment costs, plus variable overhead and profit associated with the deleted Maintenance Services. Estimated costs that the Maintenance

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

10.6.6 Change Order Both Adding and Deleting Maintenance Services

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

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

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

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

10.6.7 Unit Priced Change Orders

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

10.6.8 All-Inclusive Change Orders

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

10.7 Time and Materials Change Orders

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

to the Maintenance Price will be determined and the estimated total change in the Maintenance Price anticipated thereunder. Upon final determination of the allowable costs, TxDOT shall issue a modified Change Order setting forth the final adjustment to the Maintenance Price.

10.7.1 Labor Costs

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

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

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

10.7.2 Material Costs

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

10.7.3 Equipment

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

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

(b) The equipment rental rates shall be those tabulated in the most recent version of the *Rental Rate Blue Book*. The rental rates to be used shall be (i) the published monthly rate divided by 176 to yield an hourly rate, which hourly rate shall be further adjusted by multiplying it by the *Rental Rate Blue Book* adjustment rate for the year the equipment was manufactured and by the regional factor contained in the *Rental Rate Blue Book*, plus (ii) the estimated hourly operating cost rate shown in *Rental Rate Blue Book*.

Maintenance Contractor shall be considered to own such items if an ownership interest therein is held by: (i) Maintenance Contractor, (ii) any equity participant in

Maintenance Contractor, (iii) any Subcontractor performing construction work, or (iv) any Affiliate of Maintenance Contractor, any equity participant in Maintenance Contractor or any such Subcontractor. If the publication of the Rental Rate Blue Book should be discontinued for any reason, TxDOT may select a different publication from which to make the described calculations.

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

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

10.7.4 Subcontracted Maintenance Services

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

10.7.5 Other Direct Costs

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

10.7.6 Overhead Items

The mark-ups specified herein constitute full and complete compensation for all overhead, tools or equipment having an individual replacement value of $1,000 (as escalated commencing on the Substantial Completion Deadline and annually thereafter throughout the Term by the percentage based on CPI set forth in Section 8.1.3.1, provided that the comparison CPI shall be that published for the month three months prior to the month in which the Substantial Completion Deadline occurs and three months before each anniversary of such month thereafter) or less, consumables (items which are consumed in the performance of the Maintenance Services which are not a part of the finished product) and other indirect costs of

the added or changed Maintenance Services, as well as for profit thereon, including any and all costs and expenses incurred due to any delay in connection with the added or changed Maintenance Services. Maintenance Contractor's mark-up percentages shall be considered to include:

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

(b) Clerical or stenographic employees;

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

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

(e) Quality assurance and quality control; and

(f) Bond and insurance premiums.

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

10.7.7 Change Order Data

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

10.7.7.2. In addition to obligations under Section 17.3, Maintenance Contractor shall maintain its records in such a manner as to provide a clear distinction between: (a) the direct cost of Maintenance Services for which it is entitled (or for which it believes it is entitled) to an increase in the Maintenance Price and (b) the costs of other operations. Maintenance Contractor shall furnish daily, on forms approved by TxDOT, reports of all costs described in the foregoing clause (a). The reports shall itemize all costs for labor, materials, and equipment rental and give total of costs through the date of the report. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate and actual working hours of operation. All such records and reports shall be made immediately available to TxDOT upon its

request. The cost of furnishing such reports are deemed to be included in Maintenance Contractor's overhead and fee percentages.

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

10.8 Change Orders for Force Majeure Events; Hazardous Materials and Non-Discriminatory O&M Changes

10.8.1 Force Majeure Events

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

10.8.2 Hazardous Materials Management

10.8.2.1. Subject to the limitations contained in, and upon Maintenance Contractor's fulfillment of all applicable requirements of, this Section 10, TxDOT shall issue Change Orders to compensate Maintenance Contractor for additional costs directly attributable to Hazardous Materials Management, except Hazardous Materials Management costs arising out of or relating to Maintenance Contractor Releases of Hazardous Materials.

10.8.2.2. Limits on Compensation

10.8.2.2.1. If compensation is payable to Maintenance Contractor with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties, or 100% of the Reimbursable Hazardous Materials Costs for the work in question, subject to the limitations set forth in this Section 10.8.2. Maintenance Contractor shall not be entitled to a Change Order for additional compensation with respect to the Hazardous Materials Management responsibilities set forth in Sections 3.8.1.1 and 3.8.1.2.

10.8.2.2.2. Entitlement to compensation shall be limited to work performed pursuant to Maintenance Contractor's Hazardous Materials Management Plan, prepared and approved by TxDOT in accordance with Section 1.18 of Exhibit 2 to this Comprehensive Maintenance Agreement, and any site investigation report or workplan for such Hazardous Materials as approved by TxDOT, in writing. No compensation shall be allowed with respect to: (a) immaterial quantities of Hazardous Materials, (b) any use of Hazardous Materials that could have been avoided by reasonable design modifications, maintenance procedures or construction techniques, (c) any costs that could have been avoided or (d) delay and disruption damages.

10.8.2.2.3. Maintenance Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection with any Hazardous Materials Management and any right to obtain a time extension if TxDOT is not provided written notice of the discovery of Hazardous Materials and afforded the opportunity to inspect sites containing

Hazardous Materials before any action is taken which would inhibit TxDOT's ability to ascertain, based on a site inspection, the nature and extent of the materials. In the event of an Emergency involving Hazardous Materials, Maintenance Contractor may take such limited actions as are required by Law without advance notice to TxDOT, but shall provide such notice immediately thereafter (which in no event shall be more than 2 hours after the incident by phone and 24 hours after the incident by written notice).

10.8.2.2.4. In cases involving reimbursement for Hazardous Materials Management under this Section 10.8.2, allowable costs shall be limited to the incremental costs actually incurred in performing Hazardous Materials Management after completion of the testing process to determine whether Hazardous Materials are present (deducting any avoided costs such as the cost of disposal that would have been incurred had Hazardous Materials not been present). Investigating and characterizing are included in the Maintenance Price and Maintenance Contractor shall not be entitled to additional compensation therefor. Maintenance Contractor shall take all reasonable steps to minimize acts or omissions that cause Maintenance Contractor to incur any such incremental costs.

10.8.2.2.5. Compensation shall be allowed only to the extent that Maintenance Contractor demonstrates to TxDOT's satisfaction that: (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications, maintenance procedures or construction techniques and (b) Maintenance Contractor's plan for the Hazardous Materials Management represents the approach which is most beneficial to the Project and the public.

10.8.2.2.6. Maintenance Contractor shall provide TxDOT with such information, analyses and certificates as may be requested by TxDOT in order to enable a determination regarding eligibility for payment.

10.8.2.3. Insurance Proceeds

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

10.8.3 Non-Discriminatory O&M Changes

10.8.3.1.1. In no event shall Maintenance Contractor be entitled to compensation for increases in costs of Maintenance Services due to a Non-Discriminatory O&M Change, except for capital costs of required major new improvements or required major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any affected Maintenance Element. Maintenance Contractor shall be entitled to additional costs for extra Work only if TxDOT directs Maintenance Contractor to implement the Non-Discriminatory O&M Changes (or Maintenance Contractor is otherwise obligated by Law to implement such Non-Discriminatory O&M Changes) (i) prior to the date when Maintenance Contractor performs or is scheduled to perform the Renewal Work (if any) on the affected Maintenance Element or (ii) otherwise outside the ordinary course of performing the Maintenance Services. Maintenance Contractor shall not be entitled to any additional costs for implementing Non-Discriminatory O&M Changes if Maintenance Contractor replaces the affected Maintenance Element during the ordinary course of performing the Maintenance Services.

10.8.3.1.2. Maintenance Contractor shall only be entitled to compensation for increases in costs of Maintenance Services due to a Non-Discriminatory O&M Change in accordance with Section 10.8.3.1.1 in excess of an annual aggregate deductible of $150,000 ("Annual Non-Discriminatory O&M Change Deductible"). The Annual Non-Discriminatory O&M Change Deductible reflects the Parties' agreement that: (a) Maintenance Contractor will bear the financial risks for additional Maintenance Services costs incurred in a Fiscal Year due to Non-Discriminatory O&M Changes up to the Annual Non-Discriminatory O&M Change Deductible and (b) TxDOT will compensate Maintenance Contractor for additional Maintenance Services costs incurred in a Fiscal Year due to Non-Discriminatory O&M Changes in excess of the Annual Non-Discriminatory O&M Change Deductible; provided that no such compensation shall be made for any Non-Discriminatory O&M Change that is required solely to conform to Good Industry Practice.

10.8.3.1.3. The amount of the Annual Non-Discriminatory O&M Change Deductible shall be adjusted annually at the beginning of each Fiscal Year after the Effective Date by a percentage equal to the percentage adjustment in the CPI between the CPI most recently published for the second immediately preceding Fiscal Year and the CPI most recently published for the immediately preceding Fiscal Year.

10.9 Change Order Records

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

10.9.1 Daily Work Reports and Data Collection

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

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

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

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

(d) Transportation of materials.

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

10.9.2 Supplier's Invoices

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

10.9.3 Execution of Reports

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

10.9.4 Adjustment

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

10.10 Matters Not Eligible for Maintenance Price Increase

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

(a) Delay from the System Integrator's or other parties' maintenance activities;

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

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

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

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

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

(g) Design or construction Errors;

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

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

(j) Groundwater levels or subsurface moisture content;

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

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

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

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

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

10.10.3 MAINTENANCE CONTRACTOR HEREBY EXPRESSLY AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION, DAMAGES OR TIME EXTENSION WHATSOEVER IN CONNECTION WITH THE MAINTENANCE SERVICES EXCEPT TO THE EXTENT THAT THE COMA DOCUMENTS EXPRESSLY SPECIFY THAT MAINTENANCE CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION, DAMAGES OR TIME EXTENSION.

10.11 Disputes

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

10.12 Changes Not Requiring Change Order

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

10.13 No Release or Waiver

10.13.1 No Change Order granted hereunder shall release Maintenance Contractor's Surety or Sureties from any of each of its respective obligations. Maintenance Services shall continue and be carried out in accordance with all the provisions of the COMA Documents and this Comprehensive Maintenance Agreement shall be and shall remain in full force and effect, unless formally suspended or terminated by TxDOT in accordance with the terms hereof. Extending time or permitting Maintenance Contractor to finish the Maintenance Services or any part thereof after the applicable deadline, or the making of payments to Maintenance Contractor after such date, shall not constitute a waiver on the part of TxDOT of any rights under this Comprehensive Maintenance Agreement.

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

10.13.3 No course of conduct or dealings between the Parties nor express or implied acceptance of alterations or additions to the Maintenance Services, and no claim that TxDOT has been unjustly enriched shall be the basis for any claim, request for additional

compensation or time extension. Further, Maintenance Contractor shall undertake, at its risk, work included in any request, order or other authorization issued by a Person in excess of that Person's authority as provided herein, or included in any oral request. Maintenance Contractor shall be deemed to have performed such work as a volunteer and at its sole risk and cost. In addition, TxDOT may require Maintenance Contractor to remove or otherwise undo any such work, at Maintenance Contractor's sole risk and cost.

SECTION 11. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

11.1 Acknowledgments by Maintenance Contractor

Maintenance Contractor acknowledges and agrees that:

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

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

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

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

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

11.2 Disclaimers by TxDOT

11.2.1 TxDOT does not make any representation regarding or warrant the design and construction of the Project; the existence or non-existence of any design defects,

omissions, errors, or inaccuracies; the existence of any construction defects or flaws; the traffic volume projections or revenue projections; the materials and supplies used in connection with the construction of the Project; the Maintenance Services; the compliance by any member of the Maintenance Contractor-Related Entities with the terms of the Design-Build Agreement; or, the utility, suitability, or fitness of the Project for its intended use.

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

11.3 TxDOT Representations and Warranties

TxDOT represents and warrants to Maintenance Contractor as follows:

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

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

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

11.4 Maintenance Contractor Representations and Warranties

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

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

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

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

11.4.4 Maintenance Contractor acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this Comprehensive Maintenance Agreement. Maintenance Contractor shall comply with the foregoing at its sole cost and expense and without any increase in the Maintenance Price on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the COMA Documents. Maintenance Contractor has no reason to believe that any Governmental Approval required to be obtained by Maintenance Contractor will not be granted in due course and, thereafter, remain in effect in order to enable the Maintenance Services to proceed in accordance with the COMA Documents. If any Governmental Approvals required to be obtained by Maintenance Contractor must formally be issued in the name of TxDOT, Maintenance Contractor shall undertake all efforts to obtain such approvals subject to TxDOT's reasonable cooperation with Maintenance Contractor, including execution and delivery of appropriate applications and other documentation prepared by Maintenance Contractor in form approved by TxDOT. Maintenance Contractor shall assist TxDOT in obtaining any Government Approvals which TxDOT may be obligated to obtain, including providing information requested by TxDOT, preparing necessary supporting materials and participating in meetings regarding such approvals.

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

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

11.4.7 Maintenance Contractor is a [____] duly organized and validly existing under the Laws of Texas with all requisite power and all required licenses to carry on its present and proposed obligations under the COMA Documents. Maintenance Contractor is [____]. Each member of Maintenance Contractor is duly qualified to do business, and is in good standing, in the State, and will remain in good standing throughout the Maintenance Term and for as long thereafter as any obligations remain outstanding under the COMA Documents.

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

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

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

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

11.4.12 To the extent the Lead Maintenance Firm is not the Maintenance Contractor, Maintenance Contractor represents and warrants, as of the effective date of the Subcontract with the Lead Maintenance Firm, as follows:

(a) The Lead Maintenance Firm is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business, and is in good standing, in the State;

(b) The ownership interests of the Lead Maintenance Firm that is a single purpose entity formed for the Project (including options, warrants and other rights to

acquire ownership interests) is owned by the Persons whom Maintenance Contractor has set forth in a written certification delivered to TxDOT prior to the Effective Date;

(c) The Lead Maintenance Firm has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Maintenance Contractor;

(d) The Lead Maintenance Firm has (i) obtained and will maintain all necessary or required registrations, permits, licenses and approvals required under applicable Law and (ii) expertise, qualifications, experience, competence, skills and know-how to perform the Maintenance Service in accordance with the COMA Documents;

(e) The Lead Maintenance Firm will comply with all health, safety and environmental Laws in the performance of any work activities for, or on behalf of, Maintenance Contractor for the benefit of TxDOT; and

(f) The Lead Maintenance Firm is not in breach of any applicable Law that would have a material adverse effect on any aspect of the Maintenance Services.

SECTION 12. DEFAULT AND REMEDIES, DAMAGES, NONCOMPLIANCE CHARGES, LANE RENTAL CHARGES AND LIMITATION OF LIABILITY

12.1 Maintenance Contractor Defaults

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

(a) A DB Contractor Event of Default under the Design-Build Agreement.

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

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

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

(e) Maintenance Contractor fails to provide and maintain the insurance, bonds, letters of credit and guarantees required hereunder.

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

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

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

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

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

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

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

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

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

12.2 Notice and Opportunity to Cure

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

(a) Respecting a Maintenance Contractor Default under clauses (a) of Section 12.1,the same cure period, if any, as is available under the Design-Build Agreement;

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

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

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

12.3 TxDOT Remedies

12.3.1 If any Maintenance Contractor Default described in Section 12.1 is not subject to cure or is not cured within the period (if any) specified in Section 12.2, or if the circumstances described in Section 12.3.11.4 exist, TxDOT may declare that an "Event of Default" has occurred and notify Maintenance Contractor to discontinue the Maintenance Services. The declaration of an Event of Default shall be in writing and given to Maintenance Contractor, with a copy to Surety and any Guarantor. In addition to all other rights and remedies provided by Law or equity and such rights and remedies as are otherwise available under the COMA Documents, including the Maintenance Performance Bond, any letter of credit, and Guaranty, if an Event of Default shall occur, TxDOT shall have the following rights without further notice and without waiving or releasing Maintenance Contractor from any obligations and Maintenance Contractor shall have the following obligations (as applicable):

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

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

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

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

(e) TxDOT, in its sole discretion, may deduct from any amounts payable by TxDOT to Maintenance Contractor such amounts (including interest thereon as permitted under this Comprehensive Maintenance Agreement) payable by Maintenance Contractor to TxDOT, including reimbursements owing, damages owing under Section 5.4.7 or 5.4.8, Lane Rental Charges, Noncompliance Charges and amounts TxDOT deems advisable to cover any existing or threatened claims, Liens and stop notices of Subcontractors, laborers or other Persons, amounts of any Losses that have accrued, the cost to complete or remediate uncompleted Maintenance Services or Nonconforming Work or other damages or amounts that TxDOT has determined are or may be payable to TxDOT under the COMA Documents.

(f) TxDOT shall have the right, but not the obligation, to pay any amount and/or perform any act as may then be required from Maintenance Contractor under the COMA Documents or Subcontracts.

(g) TxDOT may appropriate any or all materials, supplies and equipment on the Site as may be suitable and acceptable and may direct the Surety (other than in the Event of Default under Section 12.1(e) to complete this Comprehensive Maintenance Agreement or may enter into an agreement for the completion of this Comprehensive Maintenance Agreement according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Maintenance Services and the requirements of the COMA Documents, including completion of the Maintenance Services by TxDOT.

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

12.3.2 If an Event of Default occurs, Maintenance Contractor and each Guarantor shall be jointly and severally liable to TxDOT for all costs incurred by TxDOT or any Person acting on TxDOT's behalf in completing the Maintenance Services. Upon the occurrence of an Event of Default, TxDOT shall be entitled to withhold all or any portion of further payments to Maintenance Contractor until such time as TxDOT is able to determine how much, if any, remains payable to Maintenance Contractor and the amount payable by Maintenance Contractor to TxDOT in connection with TxDOT's damages and claims against Maintenance Contractor-Related Entities or as otherwise required by the COMA Documents. Promptly upon such determination, TxDOT shall notify Maintenance Contractor in writing of the amount, if any, that

Maintenance Contractor shall pay TxDOT, or TxDOT shall pay Maintenance Contractor the applicable amount. All costs and charges incurred by TxDOT, including attorneys', consultants', accountants' and expert witness fees and costs, together with the cost of completing the Maintenance Services under the COMA Documents, will be deducted from any moneys due or which may become due Maintenance Contractor or its Surety. If such expense exceeds the sum which would have been payable to Maintenance Contractor under this Comprehensive Maintenance Agreement, then Maintenance Contractor and each Guarantor shall be liable and shall pay to TxDOT the amount of such excess. If the Maintenance Contractor or Guarantor fails to pay such amount immediately upon TxDOT's demand, then TxDOT shall be entitled to collect interest from the Maintenance Contractor or Guarantor at the rate set forth in Section 18.12 on the amounts TxDOT is required to pay in excess of the remaining balance of the Maintenance Price for the applicable Maintenance Term. The interest rate shall accrue on all amounts TxDOT has had to pay in excess of the remaining balance of the Maintenance Price for the applicable Maintenance Term from the date of TxDOT payment.

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

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

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

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

12.3.7 If TxDOT suffers damages as a result of any Maintenance Contractor-Related Entity's breach, omission or failure to perform an obligation under the COMA Documents, then, subject to the limitation on liability contained in Sections 12.7 and 12.8, TxDOT shall be entitled to recovery of such damages from Maintenance Contractor regardless of

whether the breach, omission or failure that gives rise to the damages is declared an Event of Default.

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

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

12.3.10 TxDOT Step-in Rights

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.3.11 Remedial Plan Delivery and Implementation upon Persistent Maintenance Contractor Default

12.3.11.1. Maintenance Contractor recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous Noncompliance Events, whether such Noncompliance Events are cured or not, will undermine the confidence and trust essential to the success of the public-private arrangement under this Agreement and will have a material, cumulative adverse impact on the value of this Comprehensive Maintenance Agreement to TxDOT. Maintenance Contractor acknowledges and agrees that measures for determining the existence of such a pattern or practice described in the definition of Persistent Maintenance Contractor Default are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

12.3.11.2. Upon the occurrence of a Persistent Maintenance Contractor Default (refer to the trigger points in Sections 19.5), Maintenance Contractor shall, within 45 days after notice of the Persistent Maintenance Contractor Default, be required to prepare and submit a remedial plan for TxDOT approval. The remedial plan shall set forth a schedule and specific actions to be taken by Maintenance Contractor to improve its

performance and reduce (a) Maintenance Contractor's cumulative number of Noncompliance Points assessed under Section 19 to the point that such Persistent Maintenance Contractor Default will not continue and (b) the cumulative number of Uncured Noncompliance Points outstanding by at least fifty percent. TxDOT may require that such actions include improving Maintenance Contractor's quality management practices, plans and procedures, revising and restating Management Plans, changing organizational and management structure, increasing monitoring and inspections, changing the Maintenance Manager and other important personnel, replacement of Subcontractors, and delivering security to TxDOT.

12.3.11.3. If (a) Maintenance Contractor complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan; (b) as a result thereof Maintenance Contractor achieves the requirements set forth in Sections 12.3.11.2(a) and (b); and (c) as of the date it achieves such requirements there exist no other uncured Maintenance Contractor Defaults for which a Notice was given, then TxDOT shall reduce the number of cured Noncompliance Points that would otherwise then be counted toward Persistent Maintenance Contractor Default by 25%. Such reduction shall be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent Maintenance Contractor Default.

12.3.11.4. Maintenance Contractor's failure to deliver to TxDOT the required remedial plan within such 45-day period shall constitute a material Maintenance Contractor Default that may result in issuance of a notice thereof by TxDOT triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material Maintenance Contractor Default that may result in issuance of a notice thereof by TxDOT triggering a 30-day cure period. If either of the events remains uncured within the period specified in this Section 12.3.11.4, TxDOT may declare that an "Event of Default" has occurred in accordance with Section 12.3.

12.4 Noncompliance Charges

12.4.1 Upon assessment of the tenth Noncompliance Point pursuant to Section 19.3, and upon assessment of each additional ten Noncompliance Point pursuant to Section 19.3, TxDOT shall be entitled to immediate and automatic Noncompliance Charges from Maintenance Contractor in an amount equal to $70,000 (such amount calculated at a rate of $7,000 per Noncompliance Point).

12.4.2 Noncompliance Charges per Noncompliance Point shall be increased commencing on the Substantial Completion Deadline and annually thereafter throughout the Term by the percentage based on CPI set forth in Section 8.1.3.1 (provided that the comparison CPI shall be that published for the month three months prior to the month in which the Substantial Completion Deadline occurs and three months before each anniversary of such month thereafter). 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 amount of Noncompliance Charges.

12.4.3 Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the Texas highway system, and the fact that inconvenience or hazard to the traveling public will be one of the significant impacts of any failure by Maintenance Contractor to perform the Maintenance Services in an efficient and timely manner and properly maintain the facility, it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT and the public in the

event of such failure. Consequently, Maintenance Contractor agrees to pay TxDOT the sums of money determined pursuant to Section 12.4.1 as deemed compensation to TxDOT resulting from Maintenance Contractor's failure to meet the performance requirements herein as evidenced by the Noncompliance Points. Maintenance Contractor further acknowledges and agrees that such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date.

12.4.4 Noncompliance Charges shall be payable by Maintenance Contractor to TxDOT within ten Business Days after Maintenance Contractor's receipt of an invoice therefor from TxDOT. If TxDOT has not received payment of the Noncompliance Charges within such ten Business Days, TxDOT may elect, in its sole discretion, to deduct such amounts from any amounts payable to Maintenance Contractor under this Comprehensive Maintenance Agreement.

12.5 Lane Rental Charges for Lane Closures

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

12.5.2 Maintenance Contractor acknowledges that the Lane Rental Charges described in this Section 12.5 are reasonable in order to compensate TxDOT for damages it will incur as a result of closures of the Project or portions thereof as set forth in this Section 12.5. Such damages include loss of potential revenue for TxDOT due to lane closures, loss of use, enjoyment and benefit of the Project and connecting TxDOT transportation facilities by the general public, injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting TxDOT transportation facilities and further loss of TxDOT's revenue, and additional costs of administering this COMA (including engineering, legal, accounting, overhead and other administrative costs). Maintenance Contractor further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it. Consequently, Maintenance Contractor agrees to pay TxDOT the Lane Rental Charges set forth in Exhibit 15 to this Comprehensive Maintenance Agreement as deemed compensation to TxDOT resulting from Maintenance Contractor's failure to meet the Lane Closure restrictions set forth in Attachment 6 to Exhibit 2 to this Comprehensive Maintenance Agreement. Maintenance Contractor further acknowledges and agrees that such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date.

12.5.3 Maintenance Contractor shall not be required to pay Lane Rental Charges if TxDOT, in its reasonable discretion, determines that the applicable Lane Closure is required in connection with an Incident or Emergency. In the case of such Incident or Emergency, Maintenance Contractor shall respond to such Incident or Emergency and assess the level of personnel and resources necessary to safely secure the area in accordance with the Section 3.2.

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

Maintenance Contractor shall have the right to stop performance under this Comprehensive Maintenance Agreement if TxDOT fails to make an undisputed payment due hereunder within 15 Business Days after TxDOT's receipt of written notice of nonpayment from Maintenance Contractor. Maintenance Contractor shall not have the right to terminate this Comprehensive Maintenance Agreement for default as the result of any failure by TxDOT to make an undisputed payment due hereunder. However, if such nonpayment continues for more than 180 days, upon written notice from Maintenance Contractor to TxDOT, such nonpayment may be deemed a Termination for Convenience pursuant to Section 14. Upon such termination, the Parties' rights and obligations shall be as set forth in Section 14.

12.7 Limitation of Maintenance Contractor's Liability

Notwithstanding any other provision of the Contract Documents, to the extent permitted by applicable Law, TxDOT will not seek indemnification and defense under Section 15 or to recover damages from Maintenance Contractor resulting from breach of this Agreement (whether arising in contract, negligence or other tort, or any other theory of law) in excess of the sum of: (a) all those costs reasonably incurred by TxDOT or any Person acting on TxDOT's behalf in completing or correcting the Maintenance Services or having the Maintenance Services completed or corrected by another Person, including the cost of the work required or arising under the Warranties; (b) an amount equal to $100,000,000 (which amount shall specifically include any liquidated damages paid pursuant to this Section 12); (c) any amounts paid by or on behalf of Maintenance Contractor which are covered by insurance proceeds; and (d) all Losses incurred by any Indemnified Party relating to or arising out of any illegal activities, fraud, criminal conduct, gross negligence or intentional misconduct on the part of any Maintenance Contractor-Related Entity.

12.8 Limitation on Consequential Damages

12.8.1 Notwithstanding any other provision of the COMA Documents, under no circumstances shall TxDOT be liable for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this Comprehensive Maintenance Agreement, tort (including negligence) or any other theory of liability, and Maintenance Contractor hereby releases TxDOT from any such liability.

12.8.2 Notwithstanding any other provision of the COMA Documents and except as set forth in this Section 12.8.2 and in Section 12.8.3, to the extent permitted by applicable Law, Maintenance Contractor shall not be liable to TxDOT for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this Comprehensive Maintenance Agreement, in tort (including negligence) or any other theory of liability, and TxDOT hereby releases Maintenance Contractor from any such liability.

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

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

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

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

(d) Maintenance Contractor's obligation to pay damages owing under Section 5.4.7 or 5.4.8, Noncompliance Charges in accordance with Section 12.3, Lane Rental Charges in accordance with Section 12.5, or damages owing under any other provision of the COMA Documents; and

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

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

SECTION 13. SUSPENSION

13.1 Suspensions for Convenience

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

13.2 Suspensions for Cause

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

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

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

(c) Carry out orders of TxDOT;

(d) Deliver or maintain O&M Security or required insurance; or

(e) Comply with requirements for developing and implementing the MSQMP.

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

13.3 Responsibilities of Maintenance Contractor during Suspension Periods

During periods that any Maintenance Services are suspended, Maintenance Contractor shall continue to be responsible for the Maintenance Services that are not suspended and shall prevent damage or injury to the Project, erect necessary temporary structures, signs or other facilities required to maintain the Project. Additionally, Maintenance Contractor shall continue other Maintenance Services that have been or can be performed at the Site or offsite during the period that the Maintenance Services are suspended.

SECTION 14. TERMINATION

14.1 Termination for Convenience

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

14.2 Termination Closing

In addition to the performance by Maintenance Contractor of the requirements set forth in the Maintenance Transition Plan, on the effective date of the termination of this Comprehensive Maintenance Agreement, Maintenance Contractor shall deliver to TxDOT:

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

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

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

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

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, or of a notice of termination due to an Event of Default, and except as otherwise directed in writing by TxDOT, Maintenance Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

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

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

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

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

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

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

(g) No later than 30 days prior to the effective date of termination, unless extended in writing by TxDOT upon written request of Maintenance Contractor within this 30-day period, provide TxDOT with an inventory list of all materials, supplies and equipment previously produced, purchased or ordered from Suppliers for use in performing the Maintenance Services and not yet used, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to TxDOT, and such other information as TxDOT may request; and transfer title and deliver to TxDOT through bills of sale or other documents of title, as directed by TxDOT: (i) work in process, completed work, supplies, equipment and other material produced or acquired for the Maintenance Services terminated, and (ii) all design and construction documents related to the Project and/or the Maintenance Services and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to TxDOT if the Maintenance Services had been completed;

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

(i) Take all action that may be necessary, or that TxDOT may direct, for the protection and preservation of: (i) the public, including public and private vehicular movement, (ii) the Maintenance Services, and (iii) the equipment, machinery, materials and property related to the Project that is in the possession of Maintenance Contractor and in which TxDOT has or may acquire an interest;

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

(k) Assist TxDOT in such manner as TxDOT may require prior to and for a reasonable period following the effective date of termination to ensure the orderly transition of the terminated Maintenance Services and its management to TxDOT, and shall, if appropriate and if requested by TxDOT, take all steps as may be necessary to

enforce the provisions of Subcontracts pertaining to the surrender of the terminated Maintenance Services; and

(l) Take other actions directed by TxDOT.

14.4 Disposition of Subcontracts

14.4.1 Not later than 60 Days prior to the effective date of termination under Section 12.3.1(a) or 14.1, Maintenance Contractor shall assemble at its offices in the State and make available for TxDOT's review at such offices, at any time or times during normal business hours, all Subcontracts which are in effect and pertain in any way to the performance of the Maintenance Services.

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

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

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

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

14.5 Settlement Proposal Upon Termination for Convenience

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, Maintenance Contractor shall submit a final termination settlement proposal to TxDOT in the form and with the certification prescribed by TxDOT, based on the measure of compensation described in Sections 14.7 and 14.8. Maintenance Contractor shall submit the proposal promptly, but no later than 90 Days from the effective date of termination unless Maintenance Contractor has requested a time extension in writing within such 90-Day period and TxDOT has agreed in writing to such extension. Maintenance Contractor's termination settlement proposal shall then be reviewed by TxDOT and acted upon, returned with comments, or rejected. If Maintenance Contractor fails to submit the proposal within the time allowed, TxDOT may conclusively determine, on the basis of information available to it regarding the measure of compensation described in Sections 14.7 and 14.8, the amount, if any, due Maintenance Contractor because of the termination and shall pay Maintenance Contractor the amount so determined.

14.6 Amount of Negotiated Termination Settlement

Subject to the provisions of Section 14.5, and based on (and no more than) the measure of compensation described in Sections 14.7 and 14.8, Maintenance Contractor and TxDOT may agree upon the amount to be paid to Maintenance Contractor by reason of the total or partial Termination for Convenience pursuant to this Section 14.1. Upon determination of the settlement amount, this Comprehensive Maintenance Agreement will be amended accordingly, and Maintenance Contractor will be paid the agreed amount. TxDOT's execution and delivery of any settlement agreement shall not affect any of its rights under the COMA Documents with respect to completed Maintenance Services, relieve Maintenance Contractor from its obligations with respect thereto, including Warranties, or affect TxDOT's rights under the Maintenance Performance Bond, the Maintenance Payment Bond, any Guaranty, letter(s) of credit or other security issued in addition to, or in lieu of, any security provided pursuant to this Comprehensive Maintenance Agreement

14.7 No Agreement as to Amount of Termination Settlement

If Maintenance Contractor and TxDOT fail to agree upon either all or some portion of the amount to be paid Maintenance Contractor by reason of a Termination for Convenience pursuant to Section 14.1, the amount payable shall be determined by TxDOT in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Section 14.6:

14.7.1 To the extent not previously paid, TxDOT will pay Maintenance Contractor the sum of the following amounts for Maintenance Services performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience, subject to the limitations and deductions under Sections 14.7.2 and 14.8:

(a) Maintenance Contractor's actual reasonable out-of-pocket cost, without profit, and including equipment costs only to the extent permitted under the COMA Documents for (i) all Maintenance Services performed but not yet paid by TxDOT as of the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and (ii) demobilization and work done to secure the applicable portion of the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to TxDOT's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials, supplies and equipment to be retained, at TxDOT's sole option, by Maintenance Contractor, amounts realized by the sale of such items, and for other appropriate credits against the cost of the Maintenance Services, including those deductions that would be permitted in connection with Final Payment under this Comprehensive Maintenance Agreement. When, in the opinion of TxDOT's Authorized Representative, the cost of a contract item of Maintenance Services is excessively high due to costs incurred to remedy or replace Nonconforming Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Maintenance Service in compliance with the requirements of the COMA Documents and the excessive actual cost shall be disallowed.

(b) The cost of settling and paying reasonable claims arising out of the termination of Maintenance Services under Subcontracts and Utility Agreements as provided in Section 14.3(f), without profit and exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience, which amounts shall

be included in the cost on account of which payment is made under clause (a) above.

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

14.7.2 Maintenance Contractor acknowledges and agrees that it shall not be entitled to any compensation or recovery for items such as lost or anticipated profits, unabsorbed overhead and opportunity costs of Maintenance Contractor or its Subcontractors upon termination of this Comprehensive Maintenance Agreement. The total amount to be paid to Maintenance Contractor, exclusive of settlement costs, shall not exceed the annual Maintenance Price for the year in which the termination occurs, less the amount of payments previously made to Maintenance Contractor during such year. In addition, any payments to Maintenance Contractor during the Maintenance Term shall be reduced by the portions of the Maintenance Price related to Maintenance Services not terminated, if any. Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, deposits or other items which were previously passed through to TxDOT by Maintenance Contractor, such refund shall be paid directly to TxDOT or otherwise credited to TxDOT. Except for normal spoilage, and except to the extent that TxDOT will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to Maintenance Contractor under Section 14.7.1, the fair value, as determined by TxDOT, of equipment, machinery, materials, supplies and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to TxDOT, or sold pursuant to Section 14.3(j). Information contained in the EPDs may be a factor in determining the value of the Maintenance Services terminated. Upon determination of the amount of the termination payment, this Comprehensive Maintenance Agreement shall be amended to reflect the agreed termination payment, Maintenance Contractor shall be paid the agreed amount, and the Maintenance Price shall be reduced to reflect the reduced scope of Maintenance Services.

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

14.8 Reduction in Amount of Claim

The amount otherwise due Maintenance Contractor by reason of a full or partial Termination for Convenience shall be reduced by: (a) the amount of any claim which TxDOT may have against any Maintenance Contractor-Related Entity in connection with this Comprehensive Maintenance Agreement; (b) the agreed price for, or the proceeds of sale, of property, materials, supplies, equipment or other things acquired by Maintenance Contractor or sold, pursuant to the provisions of this Section 14, and not otherwise recovered by or credited to TxDOT; (c) all unliquidated advance or other payments made to or on behalf of Maintenance

Contractor applicable to the terminated portion of the Maintenance Services or Comprehensive Maintenance Agreement; (d) amounts that TxDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project; including claims by Utility Owners; (e) the cost of repairing any Nonconforming Work (or, in TxDOT's sole discretion, the amount of the reimbursement to which TxDOT is entitled under Section 5.9.2); and (f) any amounts due or payable by Maintenance Contractor to TxDOT.

14.9 Termination Based on Failure to Issue Maintenance NTP

Under no circumstances shall TxDOT be liable to Maintenance Contractor-Related Entities for any amounts if this COMA terminates because TxDOT elects not to issue Maintenance NTP.

14.10 Payment

TxDOT may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments for costs incurred by Maintenance Contractor in connection with the terminated portion of this Comprehensive Maintenance Agreement upon a Termination for Convenience, whenever in the opinion of TxDOT the aggregate of such payments shall be within the amount to which Maintenance Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 14, such excess shall be payable by Maintenance Contractor to TxDOT upon demand.

14.11 No Consequential Damages

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

14.12 No Waiver

Notwithstanding anything contained in this Comprehensive Maintenance Agreement to the contrary, a Termination for Convenience shall not waive any right or claim to damages which TxDOT may have and TxDOT may pursue any cause of action which it may have at Law, in equity or under the COMA Documents.

14.13 Dispute Resolution

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

14.14 Allowability of Costs

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

SECTION 15. INDEMNIFICATION; RELEASES

15.1 Indemnification by Maintenance Contractor

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

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

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

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

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

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

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

(G) ANY MAINTENANCE CONTRACTOR RELEASE(S) OF HAZARDOUS MATERIALS.

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

(I) ERRORS, OMISSIONS, INCONSISTENCIES OR OTHER DEFECTS IN THE DESIGN, CONSTRUCTION OR MAINTENANCE PERFORMED UNDER THE COMA DOCUMENTS, REGARDLESS OF WHETHER SUCH ERRORS, OMISSIONS, INCONSISTENCIES OR DEFECTS WERE ALSO INCLUDED IN THE BASE SCOPE SCHEMATIC OR REFERENCE INFORMATION DOCUMENTS.

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

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

(L) THE FRAUD, BAD FAITH, ARBITRARY OR CAPRICIOUS ACTS, OR VIOLATION OF LAW BY ANY MAINTENANCE CONTRACTOR-RELATED ENTITY IN OR ASSOCIATED WITH PERFORMANCE OF THE MAINTENANCE SERVICES.

15.2 Restrictions

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

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

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

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

15.3 Employee Claims

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

15.4 Right to Rely

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

15.5 CERCLA Agreement

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

15.6 No Effect on Other Rights

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

15.7 No Relief from Responsibility

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

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

(b) Relieve Maintenance Contractor of any of its obligations or liabilities under the COMA Documents;

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

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

15.8 Third Parties Definition

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

15.9 Defense and Indemnification Procedures

15.9.1 If any of the Indemnified Parties receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 15.1, or otherwise herein where Maintenance Contractor is obligated to defend any of the Indemnified Parties, then TxDOT, on behalf of itself or any of the other Indemnified Parties, shall by writing as soon as practicable after receipt of the claim: (a) inform Maintenance Contractor of the claim, (b) send to Maintenance Contractor a copy of all written materials TXDOT has received asserting such claim and (c) notify Maintenance Contractor that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless Maintenance Contractor accepts the tender of the claim in accordance with Section 15.9.3. As soon as practicable after Maintenance Contractor receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable insurance policies. TxDOT and other Indemnified Parties also shall have the right to tender such claims to such insurers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.10 Waiver and Release

Maintenance Contractor hereby waives and releases any and all claims and causes of action it may now or hereafter have against TxDOT for adjustments in the Maintenance Price or for schedule relief arising out of or relating to any errors, omissions, inconsistences or Defects in the design and construction work rendered under the Design-Build Agreement, regardless of whether such errors, omissions, inconsistencies or Defects were also included in the Base Scope Schematic or Reference Information Documents.

SECTION 16. PARTNERING AND DISPUTE RESOLUTION

16.1 General Dispute Resolution Provisions

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

16.2 Partnering

16.2.1 Schedule; Participation

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

16.2.2 Confidentiality

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

16.3 Dispute Resolution Procedures

If partnering fails to resolve an issue and Maintenance Contractor elects to pursue a formal Dispute with TxDOT, the Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112 and the dispute resolution procedures established thereunder, as the same may be amended from time to time. This Section 16 shall not apply to: (a) Claims that are not actionable against TxDOT by Maintenance Contractor on its own behalf or on behalf of any of its Subcontractors in accordance with Section 16.4, (b) Claims arising solely in tort; (c) Claims for indemnity under Section 15; (d) Claims for injunctive relief; (e) Claims against insurance companies, including any Subcontractor Dispute that is covered by insurance; (f) Claims arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable agreement with the Utility Owner provides for resolution of claims as set forth in this Section 16); (g) any Dispute based on remedies expressly created by statute; or (h) any Dispute that is actionable only against a Surety.

16.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes

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

against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:

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

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

(c) Maintenance Contractor shall require in all Subcontracts that all Subcontractors of any tier: (a) agree to submit Subcontractor Disputes to Maintenance Contractor in a proper form and in sufficient time to allow processing by Maintenance Contractor in accordance with this Section 16; (b) agree to be bound by the terms of this Section 16 to the extent applicable to Subcontractor Disputes; (c) agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Section 16 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against Maintenance Contractor; (d) agree that any Subcontractor Dispute brought against a Surety, that also is actionable against TxDOT through Maintenance Contractor, shall be stayed until completion of all steps required under this subsection; and (e) agree that the existence of a dispute resolution process for Disputes involving Subcontractor Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against TxDOT. Subcontractors shall, at all times, have rights and remedies only against Maintenance Contractor.

16.5 Mediation or Other Alternative Dispute Resolution

Maintenance Contractor and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation or other alternative dispute resolution process for resolution. The Parties shall use diligent efforts to convene and conclude any such proceedings within 30 days after they agree to refer the Dispute to mediation or other alternative dispute resolution process. Maintenance Contractor and TxDOT shall share equally the expenses of the mediation or other alternative dispute resolution process. If any Dispute has been referred to mediation or other alternative dispute resolution process for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30 day period, then either Party can, on or after the 31st day, cease participating in such mediation or other alternative dispute resolution process. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Section 16.5 for processing a Dispute are tolled, day for day, during mediation or other alternative dispute resolution.

16.6 Subsequent Proceedings

16.6.1 Exclusive Jurisdiction and Venue

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

court's jurisdiction, regardless of Maintenance Contractor's residence or domicile, for any such action or proceeding.

16.6.2 Admissibility of Disputes Resolution Proceedings

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

16.7 Continuation of Maintenance Services

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

16.8 Records Related to Claims and Disputes

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

16.9 Interest

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

16.9.2 In the event Maintenance Contractor elects to pursue a formal Dispute with TxDOT under this Section 16, TxDOT shall notify Maintenance Contractor whether it will dispute the claim not later than the 21st day after the date TxDOT receives the claim. A payment becomes overdue and begins to accrue interest in accordance with the Prompt Payment Act, Government Code, Chapter 2251.

16.10 Attorney Fees

16.10.1 This Section 16.10 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

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

SECTION 17. DOCUMENTS AND RECORDS

17.1 Escrowed Proposal Documents

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

17.1.1 Availability for Review

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

17.1.2 Proprietary Information

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

17.1.3 Representation

Maintenance Contractor represents and warrants that the EPDs constitute all documentary information used in the preparation of its Maintenance Price. Maintenance Contractor agrees that no other price proposal preparation information will be considered in resolving Disputes or Claims. Maintenance Contractor further agrees that the EPDs are not part of the COMA Documents and that nothing in the EPDs shall change or modify any COMA Document.

17.1.4 Contents of EPDs

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

17.1.5 Form of EPDs

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

17.1.6 Review by TxDOT

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

17.2 Subcontract Pricing Documents

Maintenance Contractor shall require each Major Subcontractor to submit to Maintenance Contractor a copy of all documentary information used in determining its Subcontract price (including the price for Subcontract work included in any Change Order), immediately prior to executing the Subcontract and each Subcontract change order, to be held in the same manner as the EPDs and which shall be accessible by TxDOT, Maintenance Contractor and dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor, for the benefit of Maintenance Contractor and TxDOT, stating that its submission in the EPDs, constitute all the documentary information used in establishing its Subcontract price, and

agreeing to provide a sworn certification in favor of Maintenance Contractor and TxDOT together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate and current. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Maintenance Contractor and/or TxDOT in connection with any claim made by such Subcontractor.

17.3 Reporting Requirements

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

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

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

17.3.2.2. Within 120 days after the end of each fiscal year, duplicate copies of the financial statements (which shall include a balance sheet and a consolidated statement of financial condition of the Guarantor and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Guarantor and its consolidated subsidiaries for such year, and all related notes to the financial statements, setting forth in each case in comparative form the figures for the previous fiscal year), all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Guarantor, which opinion shall state that such financial statements have been prepared in accordance with Generally Accepted Accounting Principles consistently applied, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances. If financial statements are prepared in accordance with principles other than U.S. GAAP, a letter from the certified public accountant of the applicable entity, discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP is required; and

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

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

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

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

17.4 Maintenance of, Access to and Audit of Records

17.4.1 Except for EPDs (which shall be maintained as set forth in Section 17.1), Maintenance Contractor shall maintain at a location TxDOT approves in writing in its sole discretion, a complete set of all books and records prepared or received by Maintenance Contractor in its management, scheduling, cost accounting and other activities related to the Maintenance Services and the Project, including copies of all original documents delivered to TxDOT, in accordance with the applicable provisions of the COMA Documents. Maintenance Contractor shall grant to TxDOT such audit rights and shall allow TxDOT and its designated representatives such access to and the right to copy such books and records as TxDOT may request in connection with the issuance of Change Orders, the resolution of Claims and Disputes, and such other matters as TxDOT reasonably deems necessary for purposes of verifying compliance with the COMA Documents and applicable Law.

17.4.2 Where the payment method for any Maintenance Services is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Maintenance Services. If an audit indicates Maintenance Contractor has been overpaid under a previous payment, the excess payment plus interest thereon at the rate set forth in Section 18.12 will be credited against current payments.

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

adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

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

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

1. Daily time sheets and supervisor's daily reports;
2. Union agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;
6. Payroll tax forms;
7. Material invoices and requisitions;
8. Material cost distribution work sheets;
9. Equipment records (list of company equipment, rates, etc.);
10. Subcontractors' (including Suppliers') invoices;
11. Subcontractors' and agents' payment certificates;
12. Canceled checks (payroll, Subcontractors and Suppliers);
13. Job cost reports;
14. Job payroll ledger;
15. General ledger;
16. Cash disbursements journal;

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

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

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

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

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

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

17.5 Retention of Records

Except for EPDs (which shall be maintained as set forth in Section 17.1), Maintenance Contractor shall maintain all books and records prepared or received by Maintenance Contractor in its management, scheduling, cost accounting and other activities relating to the Maintenance Services or the Project, including copies of all original documents delivered to TxDOT, until five years after termination of this Comprehensive Maintenance Agreement. All books and records and the then-current electronic document control system shall be provided to TxDOT at the time of the expiration of the Maintenance Term or earlier termination of the COMA Maintenance Contractor shall notify TxDOT where such books and records are kept. Notwithstanding the foregoing, all books and records which relate to Claims or Disputes being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such Claims or Disputes have been finally resolved. Books and records to be retained include all books, documents, electronic information and files and other evidence bearing on Maintenance Contractor's activities or costs under the COMA Documents. Maintenance Contractor shall make these books and records available for audit and inspection to TxDOT, at Maintenance Contractor's offices in Tarrant County, Texas, at all reasonable

times, without charge, and shall allow such Persons to make copies of such books and records, at no expense to Maintenance Contractor. If approved by TxDOT, photographs, microphotographs or other authentic reproductions may be maintained instead of original books and records.

17.6 Public Information Act

17.6.1 Maintenance Contractor acknowledges and agrees that, except as provided by Section 223.204 of the Code, all records, documents, drawings, plans, specifications and other materials in TxDOT's possession, including materials submitted by Maintenance Contractor, are subject to the provisions of the Public Information Act. To the extent that this Comprehensive Maintenance Agreement involves the exchange or creation of "public information" as such term is defined by Texas Public Information Act, that TxDOT collects, assembles, or maintains or has a right of access to, and is not otherwise excepted from disclosure under the Public Information Act, Maintenance Contractor is required to make any such information available (in pdf format), which is accessible by the public at no additional charge to the State. If Maintenance Contractor believes information or materials submitted to TxDOT constitute trade secrets, proprietary information or other information that is not subject to the Public Information Act pursuant to Section 223.204 of the Code or excepted from disclosure under the Public Information Act, Maintenance Contractor shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Section 17.6 shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable Law, and the provisions of the Public Information Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Maintenance Contractor is advised to contact legal counsel concerning such Law and its application to Maintenance Contractor.

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

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

17.7 Ownership and Use of Documents

All data, sketches, charts, calculations, plans, specifications, electronic files, correspondence and other documents created or collected under the terms of the COMA Documents shall be considered "works made for hire," as defined under the U.S. Copyright Act, 17 U.S.C. §101, et seq., as amended, for which TxDOT owns the copyright. Design Documents shall become TxDOT's property upon preparation; Construction Documents shall become TxDOT's property upon delivery to TxDOT; and other documents prepared or obtained by Maintenance Contractor in connection with the performance of its obligations under the COMA Documents, including studies, manuals, as-built drawings, technical and other reports and the like, shall become the property of TxDOT upon Maintenance Contractor's preparation or receipt thereof. Copies of all Design Documents and Construction Documents shall be furnished to TxDOT upon preparation or receipt thereof by Maintenance Contractor. Maintenance Contractor shall maintain all other documents described in this Section 17.7 in accordance with the requirements of Section 17.4 and shall deliver copies to TxDOT as required by the COMA Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to TxDOT as a condition to Final Payment.

SECTION 18. MISCELLANEOUS PROVISIONS

18.1 Amendments

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

18.2 Waiver

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

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

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

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

18.3 Independent Contractor

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

18.3.2 Nothing in the COMA Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between TxDOT and Maintenance Contractor; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a de jure or de facto partnership, joint venture or similar relationship, to share net profits or net losses, or to give TxDOT control or joint control over Maintenance Contractor's financial decisions or discretionary actions concerning the Project and the Maintenance Services.

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

18.4 Successors and Assigns

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

18.4.2 TxDOT may transfer and assign all or any portion of its rights, title and interests in and to the COMA Documents, including rights with respect to the Payment and Performance Bond(s), Guarantees, letters of credit and other security for payment or performance:

(a) without Maintenance Contractor's consent, to the Corporation and any other public agency or public entity as permitted by Law.

(b) without Maintenance Contractor's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT.

(c) to any other Person with the prior written approval of Maintenance Contractor.

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

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

18.5 Designation of Representatives; Cooperation with Representatives

18.5.1 TxDOT and Maintenance Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the COMA Documents ("Authorized Representative"). Exhibit 13 hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 18.10. The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the Maintenance Services and negotiate on behalf of each of the Parties, but who do not have authority to bind TxDOT or Maintenance Contractor.

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

18.6 Survival

Maintenance Contractor's representations and warranties, the dispute resolution provisions contained in Section 16, the indemnifications and releases contained in Section 15, the express rights and obligations of the Parties following termination of this Comprehensive Maintenance Agreement under Sections 1, 3.6, 10.9.4, 12, 14, 17.4.4 and 17.5 and all other provisions which by their inherent character should survive termination of this Comprehensive Maintenance Agreement and/or Final Payment, shall survive the termination of this Comprehensive Maintenance Agreement and Final Payment.

18.7 Limitation on Third Party Beneficiaries

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

18.8 Tort Liability; Personal Liability of TxDOT Employees

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

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

18.8.3 The Parties agree to provide to each other's Authorized Representatives written notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in the COMA Documents, and shall otherwise provide notice in such form and within such period as is required by Law.

18.8.4 In no event shall TxDOT be, or deemed to be, liable to any Person for injury, damage, or death sustained by reason of a Defect or want of repair on or within the Site during the period Maintenance Contractor has operation and control of the Site, nor shall TxDOT be liable for any injury, damage or death caused by the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Maintenance Contractor-Related Entity. Maintenance Contractor expressly acknowledges and agrees that TxDOT's rights in this Comprehensive Maintenance Agreement to take any action with respect to the Project, including the right to review, comment on, disapprove and/or accept designs, plans, specifications, work plans, construction, installation, traffic management details, safety plan and

the like, are discretionary in nature and exist solely for the benefit and protection of TxDOT and do not create or impose upon TxDOT any standard or duty of care toward Maintenance Contractor or any other Person, all of which are hereby expressly disclaimed.

18.9 Governing Law

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

18.10 Notices and Communications

18.10.1 Notices under the COMA Documents shall be in writing and: (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the addresses set forth in Sections 18.10.2 and 18.10.3, as applicable (or to such other address as may from time to time be specified in writing by such Person).

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

[_____]
[_____]
Telephone: [_____]
Facsimile: [_____]
E-mail: [_____]

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

[_____]
[_____]
Telephone: [_____]
Facsimile: [_____]
E-mail: [_____]

and
[_____]
[_____]
Telephone: [_____]
Facsimile: [_____]
E-mail: [_____]

18.10.3 All notices, correspondence and other communications to TxDOT shall be marked as regarding the Grand Parkway Segments H, I-1 & I-2 Project and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
Strategic Projects Office
7600 Washington Ave.
Houston, TX 77007
Attn: _____.
Telephone: (713) 866-7036
E-mail: _____

With a copy to:

Texas Department of Transportation
Chief Planning & Projects Officer
125 East 11th Street
Austin, TX 78701
Attn: Mr. Russell Zapalac, P.E.
Telephone: (512) 305-9516
E-mail: russell.zapalac@txdot.gov

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

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

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

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

18.11 Taxes

18.11.1 Maintenance Contractor shall pay, prior to delinquency, all applicable taxes. Maintenance Contractor shall have no right to an adjustment to the Maintenance Price or any other Claim, except as provided in Section 18.11.2, due to its misinterpretation of Laws respecting taxes or incorrect assumptions regarding applicability of taxes.

18.11.2 With respect to Expendable Materials any Maintenance Contractor-Related Entity purchases, Maintenance Contractor shall submit or cause the Maintenance Contractor-Related Entity to submit a "Texas Sales and Use Tax Exemption Certification" to the seller of the Expendable Materials. In the event Maintenance Contractor is thereafter required by the State Comptroller to pay sales tax on Expendable Materials, TxDOT shall reimburse Maintenance Contractor for such sales tax. Reimbursement shall be due within 60 days after TxDOT receives from Maintenance Contractor written evidence of the State Comptroller's claim for sales tax, the amount of the sales tax paid, the date paid and the items purchased. Maintenance Contractor agrees to cooperate with TxDOT in connection with the filing and prosecution of any request for refund of any sales tax paid with respect to Expendable Materials. If materials purchased for the Maintenance Services are not wholly used or expended on the Project, such that they do not qualify as Expendable Materials, Maintenance Contractor will be responsible to pay applicable sales taxes.

18.12 Interest on Amounts Due and Owing

Except as expressly provided otherwise in Section 16.9 or in the case of TxDOT's Recoverable Costs, all amounts to which a Party is entitled to assess, collect, demand or recover under this Comprehensive Maintenance Agreement shall earn interest from the date on which such amount is due and owing at the lesser of: (i) 12% per annum or (ii) the maximum rate allowable under applicable Law.

18.13 Further Assurances

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

18.14 Severability

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

18.15 Headings

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

18.16 Entire Agreement

The COMA Documents together with those sections of the Design-Build Agreement, the Disputes Board Agreement, the RFP and those other documents and Laws, in whole or in part, expressly incorporated herein, or therein, by reference, collectively contain the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to its subject matter.

18.17 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.

SECTION 19. NONCOMPLIANCE EVENTS AND NONCOMPLIANCE POINTS

19.1 Noncompliance Points System

19.1.1 Certain of Maintenance Contractor's failures and breaches of its contractual obligations under the COMA Documents during the Maintenance Term in relation to the Maintenance Services constitute Noncompliance Events that may result in the assessment of Noncompliance Points. Exhibit 8 to this Comprehensive Maintenance Agreement sets forth a table identifying such Noncompliance Events and the "Cure Period" (if any) available to Maintenance Contractor for each such Noncompliance Event and the amount of Noncompliance Points that may be assessed. Noncompliance Points are a system to measure Maintenance Contractor performance levels and trigger the remedies set forth or referenced in this Section 19.

19.1.2 The persistent accumulation of Noncompliance Points may also result in a Persistent Maintenance Contractor Default calculated in accordance with Section 19.5.

19.1.3 The inclusion in Exhibit 8 to this Comprehensive Maintenance Agreement of a breach or failure to perform bears no implication as to whether the breach or failure is material.

19.1.4 For purposes of this Section 19, "Cure Period" shall be the period identified in the context of Noncompliance Events, as indicated in the tables in Exhibit 8 to this Comprehensive Maintenance Agreement.

19.2 Assessment Notification and Cure Process

19.2.1 Notification Initiated by Maintenance Contractor

19.2.1.1. As an integral part of Maintenance Contractor's self-monitoring obligations, Maintenance Contractor shall record in the Maintenance Management System each Noncompliance Event specified in Exhibit 8 to this Comprehensive Maintenance Agreement. Maintenance Contractor shall enter each Noncompliance Event into the Maintenance Management System in real time upon discovery or no later than 12:00 noon the next business day if the occurrence takes place after normal business hours. At a minimum, each Noncompliance Event record shall:

(a) Include a description of each Noncompliance Event in reasonable detail, including the number of Noncompliance Points assigned thereto as set forth in Exhibit 8 to this Comprehensive Maintenance Agreement;

(b) Identify the Project location (if applicable);

(c) Identify the date and time of occurrence;

(d) Identify the applicable response time, if any;

(e) Indicate the applicable Cure Period, if any;

(f) Indicate status; and

(g) Indicate date and time of cure (if any).

19.2.1.2. Maintenance Contractor shall ensure that TxDOT has electronic access to the Maintenance Management System at all times and ability to make entries as provided in Section 19.2.1.1. Maintenance Contractor shall retain each Noncompliance Event entry into the Maintenance Management System until at least four years after the date of cure.

19.2.1.3. Not later than 15 days after the end of each calendar quarter during the Maintenance Period, Maintenance Contractor shall deliver to TxDOT a report of all Noncompliance Events occurring during the preceding calendar quarter (the "Quarterly Noncompliance Events Report"). At its discretion, TxDOT may require more frequent reports of Noncompliance Events; provided, however, that TxDOT may not require a frequency greater than monthly; provided further, however, that TxDOT may require reports more frequently during any period of a Persistent Maintenance Contractor Default. The Quarterly Noncompliance Events Report (or more frequent report) shall include all the same information required in the Maintenance Management System and shall identify each Noncompliance Event for which cure has not yet occurred. Within a reasonable time after receiving the Quarterly Noncompliance Events Report (or more frequent report), TxDOT shall deliver to Maintenance Contractor, for each Noncompliance Event, TxDOT's determination whether the Noncompliance Event was cured during the applicable Cure Period (if any), and the Noncompliance Points to be assessed with respect thereto (a "Notice of Determination").

19.2.2 Notification Initiated by TxDOT

If TxDOT believes there has occurred any Noncompliance Event specified in Exhibit 8 to this Comprehensive Maintenance Agreement, as it may be revised from time to time, TxDOT may deliver to Maintenance Contractor a Notice of Determination. The Notice of Determination will set forth the Noncompliance Event, the applicable Cure Period (if any), TxDOT's determination whether the Noncompliance Event was cured during the applicable Cure Period (if any), and the Noncompliance Points to be assessed with respect thereto. TxDOT may deliver the Notice of Determination via the Maintenance Management System, and delivery shall be deemed given upon proper entry of the information into the Maintenance Management System.

19.2.3 Cure Periods

19.2.3.1. Maintenance Contractor shall cure each Noncompliance Event by the end of the Cure Period (if any) for each such Noncompliance Event set forth in Exhibit 8 to this Comprehensive Maintenance Agreement.

19.2.3.2. For each Noncompliance Event with a Cure Period specified in Exhibit 8 to this Comprehensive Maintenance Agreement, Maintenance Contractor's Cure Period with respect to such Noncompliance Event shall be deemed to start upon the earliest of the date and time Maintenance Contractor first obtained knowledge of, or first reasonably should have known of, the Noncompliance Event or the date and time Maintenance Contractor received notice thereof by any third party. For this purpose, if the notice of the Noncompliance Event is initiated by TxDOT, Maintenance Contractor shall be deemed to first obtain knowledge of the Noncompliance Event no later than the date and time of delivery of the initial notice to Maintenance Contractor as described in Section 19.2.2.

19.2.3.3. Each of the Cure Periods set forth in Exhibit 8 to this Comprehensive Maintenance Agreement shall be the only cure period for Maintenance Contractor applicable to the Noncompliance Events; and if such Cure Period set forth in Exhibit

8 to this Comprehensive Maintenance Agreement differs from any cure period set forth in Section 12.2.1 that might otherwise apply to the Noncompliance Event, such Cure Period set forth in Exhibit 8 to this Comprehensive Maintenance Agreement shall control for purposes of the assessment of Noncompliance Points under this Section 19.

19.2.4 Notification of Cure

19.2.4.1. When Maintenance Contractor determines that it has completed cure of any Noncompliance Event for which it is being assessed Noncompliance Points, Maintenance Contractor shall enter in the Maintenance Management System, as well as in the next Quarterly Noncompliance Events Report (or more frequent report), notice identifying the Noncompliance Event, stating that Maintenance Contractor has completed cure and briefly describing the cure, including any modifications to the Maintenance Management Plan to protect against future similar Noncompliance Events.

19.2.4.2. Thereafter, TxDOT shall have the right, but not the obligation, to inspect to verify completion of the cure. If satisfied that the Noncompliance Event is fully cured, TxDOT shall deliver to Maintenance Contractor a certification of cure either by entry into the Maintenance Management System or in a separate writing within a reasonable time from the date that TxDOT has completed its inspection to verify completion of the cure. If TxDOT does not inspect to ensure the defect was cured, then the cure time shall end at the time Maintenance Contractor has stated the defect was cured.

19.2.4.3. TxDOT may reject any Maintenance Contractor notice of cure if TxDOT determines that Maintenance Contractor has not fully cured the Noncompliance Event. Upon making this determination, TxDOT shall deliver a notice of rejection to Maintenance Contractor either by entry into the Maintenance Management System or in a separate writing. Any Dispute regarding rejection of cure shall be resolved according to the dispute resolution procedures set forth in this Agreement.

19.3 Assessment of Noncompliance Points

If the Maintenance Management System or Quarterly Noncompliance Events Report (or more frequent report) indicates or TxDOT is notified or otherwise becomes aware of a Noncompliance Event or TxDOT serves Notice of Determination under Section 19.2.2, TxDOT may assess Noncompliance Points in accordance with Exhibit 8 to this Comprehensive Maintenance Agreement, subject to the following terms and conditions.

19.3.1 The date of assessment shall be deemed to be the date of the end of the first Cure Period, and the date of the end of each subsequent Cure Period, regardless of the date of the initial Notice of Determination under Section 19.2.2.

19.3.2 A failure by Maintenance Contractor to keep record of or report to TxDOT a Noncompliance Event as and when required under Section 19.2.1.1 or 19.2.1.3, on the one hand, and the subject Noncompliance Event, on the other hand, constitute separate and distinct breaches and failures to perform for the purpose of assessing Noncompliance Points.

19.3.3 The number of points listed in Exhibit 8 to this Comprehensive Maintenance Agreement for any particular Noncompliance Event is the maximum number of Noncompliance Points that may be assessed for each event or circumstance that is a Noncompliance Event. TxDOT may, but is not obligated to, assess less than the maximum number of Noncompliance Points for any particular Noncompliance Event.

19.3.4 If a Noncompliance Event for which a Cure Period is provided in Exhibit 8 to this Comprehensive Maintenance Agreement is not fully cured within the applicable Cure Period, then continuation of such Noncompliance Event beyond such Cure Period shall be treated as a new and separate Noncompliance Event, without necessity for further notice, for the purpose of assessing Noncompliance Points. Additionally, without further notice, (a) a new Cure Period equal to the interval of recurrence set forth in Exhibit 8 to this Comprehensive Maintenance Agreement, as applicable, shall apply upon expiration of the initial Cure Period or prior interval of recurrence, as applicable, and (b) if applicable, additional Noncompliance Charges shall be assessed against Maintenance Contractor in accordance with Section 12.4 and deducted from the applicable monthly payment for the Maintenance Services in accordance with Section 8. Regardless of the continuing assessment of Noncompliance Points under this Section 19.3, TxDOT shall be entitled to exercise its step-in rights in accordance with Section 12.3.10 and, if applicable, its work suspension rights in accordance with Section 13.2, after expiration of the initial Cure Period available to Maintenance Contractor.

19.3.5 For each Noncompliance Event for which a Cure Period is identified in Exhibit 8 to this Comprehensive Maintenance Agreement, provided that the Noncompliance Event is not cured, the Noncompliance Points shall first be assessed at the end of the first Cure Period, and shall be assessed again at the end of each subsequent Cure Period (equal to the applicable interval of recurrence), as described in Section 19.3.4.

19.3.6 For each Noncompliance Event for which there is no applicable Cure Period identified in Exhibit 8 to this Comprehensive Maintenance Agreement, the Noncompliance Points will first be assessed on the date on which the breach of failure occurred. Continuation of such Noncompliance Event will not be treated as a new or separate breach or failure.

19.4 Records Regarding Assessment of Noncompliance Points

Maintenance Contractor is responsible for keeping and providing TxDOT with current records of the number of assessed Noncompliance Points for each Noncompliance Event, the date of each assessment, and the date when the Noncompliance Event is cured.

19.5 Trigger Points for Persistent Maintenance Contractor Default

19.5.1 A "Persistent Maintenance Contractor Default", entitling TxDOT to require submittal of Maintenance Contractor's remedial plan under Section 12.3.11, shall exist on any date during the Maintenance Period when: (a) 100 or more Noncompliance Points, cured or uncured, have been assessed in any consecutive 365-day period; or (b) 250 or more Noncompliance Points, cured or uncured, have been assessed in any consecutive 1,095-day period.

19.5.2 The number of cured Noncompliance Points that would otherwise then be counted under Section 19.5.1 is subject to reduction in accordance with Section 12.3.11.3.

19.6 Special Provisions for Certain Noncompliance Events

19.6.1 The provisions of this Section 19.6 apply to a Noncompliance Event that has a Cure Period identified in Exhibit 8 to this Comprehensive Maintenance Agreement and is directly attributable to a Force Majeure Event.

19.6.2 If any such Noncompliance Event occurs, then:

(a) The applicable Cure Period for any such Noncompliance Event shall be extended if such Noncompliance Event is not reasonably capable of being cured within the applicable Cure Period solely due to the occurrence of such Force Majeure Event. The extension shall be for a reasonable period of time under the circumstances, taking into account the scope of the efforts necessary to cure, the effect of the Force Majeure Event on Maintenance Contractor's ability to cure, availability of temporary remedial measures, and need for rapid action due to impact of the Noncompliance Event on safety or traffic movement;

(b) It shall not be counted toward a Persistent Maintenance Contractor Default for purposes of Section 19.5, provided the Noncompliance Event is cured within the applicable Cure Period, as it may be extended pursuant to Section 19.6.2(a);

(c) Regardless of which Party initiates notice of such Noncompliance Event, no Noncompliance Points shall be assessed if Maintenance Contractor cures such Noncompliance Event within the applicable Cure Period, as it may be extended pursuant to Section19.6.2(a); and

(d) Such Noncompliance Event shall not result in Noncompliance Charges under Sections 12.4.1 and 19.3 if the Noncompliance Event is cured within the applicable Cure Period, as it may be extended pursuant to Section19.6.2(a).

19.6.3 For the avoidance of doubt, it is understood that for any Noncompliance Event directly attributable to a Force Majeure Event where Maintenance Contractor is unable to comply with the underlying performance requirement due to an ongoing Force Majeure Event, then solely during the period that such Force Majeure Event is continuing and for the duration of the adverse effects of such Force Majeure Event, no Noncompliance Points or Noncompliance Charges will be assessed for such Noncompliance Event and Maintenance Contractor shall be excused from performance of the underlying performance requirement.

19.7 Special Provisions for TxDOT Step-in

19.7.1 If TxDOT exercises a step-in right under Section 12.3.10 with respect to any portion of the Project (the "affected Project portion"), then:

(a) During the period that TxDOT is in control of the Maintenance Services for the affected Project portion (the "step-in or suspension period"), neither the condition of the affected Project portion nor the performance of or failure to perform Maintenance Services respecting the affected Project portion shall result in a new Noncompliance Event, assessment of new Noncompliance Points or new Noncompliance Charges under Section12.4.1.

(b) All Cure Periods that are available for Noncompliance Events respecting the affected Project portion and that arose prior to and are pending as of the date the step-in or suspension period commences shall be deemed forfeited by Maintenance Contractor;

(c) No Noncompliance Points shall be assessed for intervals of recurrence that occur during the step-in or suspension period for Noncompliance Events respecting the affected Project portion; and

(d) The step-in or suspension period for the affected Project portion shall be disregarded for purposes of determining a Persistent Maintenance Contractor Default

under Section 19.6. For avoidance of doubt, this means that (i) such step-in or suspension period shall not be included in counting the consecutive time periods set forth in Section 19.5 and (ii) such consecutive time periods shall be treated as consecutive notwithstanding the intervening step-in or suspension period.

19.7.2 Refer to Section 12.3.10.2 for TxDOT's right to damages and to offset the payments to Maintenance Contractor under this Agreement if TxDOT incurs costs arising out of exercise of its step-in right under Section 12.3.10.

19.8 Increased Oversight, Testing and Inspection

19.8.1 In addition to other remedies available under this Agreement, TxDOT shall be entitled to change the type and/or increase the level of its and its representatives' monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Project or the Maintenance Services and Maintenance Contractor's compliance with its obligations under the COMA Documents, in such manner and to such level as TxDOT sees fit, if at any time:

(a) The number of Uncured Noncompliance Points assessed against Maintenance Contractor equals or exceeds 25 for any date occurring on or after the Substantial Completion Deadline;

(b) There exists a Persistent Maintenance Contractor Default; or

(c) Maintenance Contractor receives one or more notices of a Maintenance Contractor Default that may become an Event of Default as set forth in Section 12.

19.8.2 If TxDOT changes the type or increases the level of its monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Project or the Maintenance Services pursuant to Section 19.8.1, then Maintenance Contractor shall pay and reimburse TxDOT within 30 days after receipt of demand and reasonable supporting documentation all reasonable increased costs and fees TxDOT incurs in connection with such action, including TxDOT Recoverable Costs. Such obligation to pay and reimburse shall apply to all changes in the type or increases in the level of TxDOT's monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Project or the Maintenance Services occurring until Maintenance Contractor has:

(a) Reduced the number of Uncured Noncompliance Points below the threshold triggering such heightened scrutiny;

(b) Reduced by fifty percent the number of Uncured Noncompliance Points outstanding on the date TxDOT delivers the notice invoking such heightened scrutiny;

(c) Fully cured the breaches and failures that are the basis for a potential Event of Default and any other then-existing Maintenance Contractor Defaults; and

(d) Completed delivery to TxDOT and performance of an approved remedial plan required to be prepared and implemented by Maintenance Contractor pursuant to Section12.3.11.

19.8.3 The foregoing does not preclude TxDOT, at its discretion and expense, from increasing its level of monitoring, inspection, sampling, measuring, testing,

auditing and any other monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Project or the Maintenance Services at other times.

19.9 Provisions Regarding Dispute Resolution

19.9.1 Maintenance Contractor may object to the assessment of Noncompliance Points or the starting point for or duration of the Cure Period respecting any Noncompliance Event by delivering to TxDOT notice of such objection not later than five days after TxDOT delivers its Notice of Determination.

19.9.2 Maintenance Contractor may object to TxDOT's rejection of any certification of completion of a cure given pursuant to Section 19.2.4.3 by delivering to TxDOT notice of such objection not later than 15 days after TxDOT delivers its notice of rejection.

19.9.3 If for any reason Maintenance Contractor fails to deliver its notice of objection within the applicable time period, Maintenance Contractor shall be conclusively deemed to have accepted the matters set forth in the applicable notice, and shall be forever barred from challenging them.

19.9.4 If Maintenance Contractor gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within 10 days of such objection, either Party may refer the matter for resolution according to the dispute resolution procedures set forth in this Agreement.

19.9.5 In the case of any Dispute as to the number of Noncompliance Points to assign for Noncompliance Events added to Exhibit 8 to this Comprehensive Maintenance Agreement, the sole issue for decision shall be how many Noncompliance Points should be assigned in comparison with the number of Noncompliance Points set forth in Exhibit 8 to this Comprehensive Maintenance Agreement for Noncompliance Events of equivalent severity.

19.9.6 Pending the resolution of any Dispute arising under this Section 19.9, the provisions of this Section 19 shall take effect as if the matter were not in Dispute. If the final decision regarding the Dispute is that (a) the Noncompliance Points should not have been assessed, (b) the number of Noncompliance Points must be adjusted, (c) the starting point or duration of the Cure Period must be adjusted, or (d) a Noncompliance Event has been cured, then the number of Noncompliance Points assigned or assessed, the uncured Noncompliance Points balance and the related liabilities of Maintenance Contractor shall be adjusted to reflect such decision.

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

MAINTENANCE CONTRACTOR: **[_____]**

By: _____
Name: [_____]
Title: [_____]

TxDOT: **Texas Department of Transportation**

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