



**CAPITAL MAINTENANCE AGREEMENT
I-35E PHASE 2 PROJECT**

between

TEXAS DEPARTMENT OF TRANSPORTATION

and

[DB CONTRACTOR]

Dated as of: _____, 20__

DALLAS COUNTY

**CAPITAL MAINTENANCE AGREEMENT
I-35E PHASE 2 PROJECT**

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CAPITAL MAINTENANCE AGREEMENT

I-35E PHASE 2 PROJECT

This Capital Maintenance Agreement (this “**CMA**”), dated as of [●] (the “**Effective Date**”), is entered into by and between:

TxDOT: Texas Department of Transportation, a public agency of the State of Texas

and

DB Contractor: [●], a [Insert appropriate bracketed text, and delete all bracketed text that is not applicable] [corporation organized and existing under the laws of the State of [insert appropriate state]] [limited liability company] [partnership, consisting of [insert partner names and any organizational form] [joint venture, consisting of [●] and [●]] [an individual or sole proprietorship owned by [●]],

the location of whose principal office is:

[Address]
[Address].

RECITALS

A. Pursuant to Transportation Code, Chapter 223, Subchapter F (the “**Code**”), TxDOT is authorized to enter into design-build contracts to facilitate private sector participation in the development of the State’s transportation system.

B. TxDOT wishes to enter into an agreement with DB Contractor to develop, design and construct an approximately 6.3 mile section of interstate highway (“IH”) 35E from I-635 to the Denton County line (the “**Project**”). In addition, TxDOT wishes to enter into an agreement with DB Contractor to, at TxDOT’s discretion, maintain the Project for specified optional terms.

C. Pursuant to the Code and subchapter I in Chapter 9 of Title 43, Texas Administrative Code (the “**Rules**”), TxDOT issued a Request for Qualifications (as amended, the “**RFQ**”) on May 20, 2020.

D. TxDOT received four qualification statements on June 25, 2020 and subsequently shortlisted three proposers.

E. On October 20, 2020, TxDOT issued to the shortlisted proposers a Request for Proposals (as amended, the “**RFP**”) to develop, design and construct and, at TxDOT’s sole option, maintain the Project.

F. [Include appropriate option.][On or before [March 29, 2021] (the “**Proposal Due Date**”), TxDOT received [●] responses to the RFP, including the response of DB Contractor (the “**Proposal**”).] [On or before [March 29, 2021] (the “**Proposal Due Date**”), TxDOT received one response to the RFP, and that response of DB Contractor (the “**Proposal**”) was independently evaluated to confirm and validate that (1) the project procurement delivered value for the public investment; and (2) no anticompetitive practices were involved in the procurement.]

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

H. On [●] the Texas Transportation Commission accepted the recommendation of the Executive Director and the RFP evaluation committee and authorized TxDOT staff to negotiate this CMC.

I. Concurrently with the execution of this CMC, TxDOT and DB Contractor are entering into a Design-Build Contract (“**DBC**”).

J. This Capital Maintenance Agreement, the Design-Build Agreement and the other CMC Documents collectively constitute a design-build contract, 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 Capital Maintenance Agreement pursuant to the Code, the Rules and the Texas Transportation Commission Minute Order, dated [●].

L. The Parties intend for this CMC to be a fixed price agreement obligating the DB Contractor to perform all work necessary to achieve the Performance Requirements for the Project, for the Maintenance Price specified in this CMC, subject only to certain specified limited exceptions. In order to allow TxDOT to budget for and finance the Project and to reduce the risk of cost overruns, this CMC includes restrictions affecting DB Contractor’s ability to make claims for increases in the Maintenance Price. DB Contractor has agreed in the CMC to assume such responsibilities and risks and has reflected such responsibilities and risks in the Maintenance Price.

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

SECTION 1. CONTRACT

1.1 Abbreviations

The following abbreviations, when used in the CMC Documents, shall have the meanings set forth below.

- CMA** has the meaning set forth in the preamble to this CMA.
- CMC** this Capital Maintenance Agreement and the CMA General Conditions, including all exhibits and attachments attached hereto, as such may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms of the CMC.
- DBA** the Design-Build Agreement.
- DBC** has the meaning set forth in Recital I to this CMA.

Abbreviations used in the CMC Documents but not otherwise defined in this CMA shall have the meaning set forth in Section 1.1 of the CMA General Conditions. If any abbreviation set forth above is also included in Section 1.1 of the CMA General Conditions, to the extent such definitions conflict, the abbreviation in Section 1.1 of the CMA General Conditions is hereby amended by the abbreviation set forth above.

1.2 Definitions

The following terms, when used in the CMC Documents, shall have the meanings set forth below.

Capital Maintenance Agreement	means this Capital Maintenance Agreement executed by TxDOT and DB Contractor for DB Contractor to perform maintenance for the Project.
CMA General Conditions	has the meaning set forth in <u>Section 1.3.2</u> of this CMA.
CMA Specification	means the CMA Specification Item 9.
CMC Documents	means the documents identified in <u>Section 1.3</u> of this CMA.
Code	has the meaning set forth in <u>Recital A</u> to this CMA.
Contract Documents	has the meaning set forth in <u>Section 1.3</u> of the DBA.
DB Contractor or Design-Build Contractor	means _____, a _____, together with its successors and assigns.
DB General Conditions	has the meaning set forth in <u>Section 1.3.2</u> of the DBA.
Design-Build Specifications	means the Design-Build Specifications, Items 10-30 included in the RFP.
Dispute Resolution Procedures	means the formal process for resolving Disputes described in <u>Section 10.1</u> and <u>Exhibit 13</u> to this CMA.
Draw Request	means a Draw Request and Certificate in the form of <u>Exhibit 4</u> to this CMA.
DRP Rules	means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act, and effective under Rule §9.2 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding Dispute Resolution Procedures applicable to the resolution of all claims and disputes of every kind or character arising under agreements such as and including the CMC Documents.
Effective Date	has the meaning set forth in the preamble to this CMA.
Indemnified Parties	means TxDOT, the State, the Texas Transportation Commission, FHWA, TxDOT consultants and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.
Initial Maintenance Term	has the meaning set forth in <u>Section 2.2.1</u> of this CMA.
Initial Maintenance Term Commencement Date	has the meaning set forth in <u>Section 2.2.1</u> of this CMA.
Instructions to Proposers	means the Instructions to Proposers issued by TxDOT on October 20, 2020, as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.
Key Personnel	means the positions identified in <u>Exhibit 11</u> to this CMA.
Key Personnel Unavailability Liquidated Damages	means the liquidated damages assessed in accordance with <u>Section 6.3</u> of this CMA.

Lane Closure	means closure of any traffic lane, or the reduction in width of any traffic lane to less than the widths specified in Section 26.2.1.2 of the Design-Build Specifications, in any portion of the Project or a connecting highway, as applicable, and for any duration, including main lanes, ramps, direct connectors, frontage roads, access roads and cross roads.
Lane Rental Charges	means those charges assessed by TxDOT against the DB Contractor for certain Lane Closures during the Maintenance Period as set forth in <u>Exhibit 8</u> to this CMA.
Lead Maintenance Firm	means _____, a _____, together with its successors and assigns.
Liquidated Damages	means any liquidated damages specified in <u>Section 6</u> of this CMA.
Lowest Volume Periods	means the time periods defined in <u>Exhibit 8</u> to this CMA.
Maintenance NTP	means Maintenance NTP2 or Maintenance NTP3, as applicable.
Maintenance NTP2	means a written notice issued by TxDOT to DB Contractor authorizing DB Contractor to proceed with the Maintenance Services for the Second Maintenance Term.
Maintenance NTP3	means a written notice issued by TxDOT to DB Contractor authorizing DB Contractor to proceed with the Maintenance Services for the Third Maintenance Term.
Maintenance Security	has the meaning set forth in <u>Section 4.1</u> to this CMA.
Maximum Draw-Down Amount	means the amount that TxDOT shall have the right to draw down from the Maintenance Performance Bond in the event the DB Contractor fails to timely provide replacement or renewal of Maintenance Security in accordance with CMA General Conditions Section 3.2.3.6 and shall be \$20,000,000.
Off-Peak Periods	means the periods defined in accordance with <u>Exhibit 8</u> to this CMA.
Peak Periods	means the periods defined in accordance with <u>Exhibit 8</u> to this CMA.
Project	has the meaning set forth in <u>Recital B</u> to this CMA.
Proposal	has the meaning set forth in <u>Recital F</u> to this CMA.
Proposal Due Date	has the meaning set forth in <u>Recital F</u> to this CMA.
Reference Information Documents or RID	means the documents posted to the RID folders for the Project, located at https://portal.txspd.com/I35EP2/main/rfp/default.aspx , prior to the Effective Date. An index of the RIDs posted to the RID folder for the Project will be delivered by TxDOT and acknowledged by DB Contractor prior to the Effective Date. Except as otherwise expressly provided in the CMC Documents, the Reference Information Documents are not considered CMC Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.

RFP	has the meaning set forth in <u>Recital E</u> to this CMA.
RFQ	has the meaning set forth in <u>Recital C</u> to this CMA.
Rules	has the meaning set forth in <u>Recital C</u> to this CMA.

Capitalized terms used in the CMC Documents but not otherwise defined in this CMA shall have the meaning set forth in Section 1.2 of the CMA General Conditions. If any definition set forth above is also included in Section 1.2 of the CMA General Conditions, to the extent such definitions conflict, the definition in Section 1.2 of the CMA General Conditions is hereby amended by the definition abbreviation set forth above.

1.3 CMC Documents and Order of Precedence

The term “**CMC Documents**” shall mean the documents listed in this Section 1.3. The CMC Documents form this “**Capital Maintenance Contract**” for the performance of the Maintenance Services.

1.3.1 Each of the CMC 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 CMC Documents are intended to be complementary and to describe and provide for a complete agreement.

1.3.2 In the event of a conflict among the CMC Documents, the following order of precedence shall govern the interpretation of such documents:

1. Amendments and Change Orders to this CMC (except for amendments to the CMA Specification which amendments shall have the order of priority as set forth in 5 below);
2. This CMA, including all exhibits hereto, except Exhibit 2 (DB Contractor’s Proposal Commitments);
3. TxDOT’s Capital Maintenance Agreement General Conditions, Items 1-8 dated as of [●] (the “**CMA General Conditions**”);
4. Portions of the DBC included by reference in accordance with Section 1.3.4;
5. Change Orders to the CMA Specification or to any attachments thereto;
6. the CMA Specification and all attachments thereto;
7. Portions of the Design-Build Specifications included by reference in accordance with Section 1.3.4; and
8. DB Contractor’s Proposal Commitments set forth in Exhibit 2.

1.3.3 Notwithstanding the order of precedence among CMC Documents set forth in Section 1.3.2, in the event and to the extent that Exhibit 2 to this CMA (or parts thereof) expressly states that it supersedes specific provisions of the CMC Documents (including approved deviations expressly listed in Exhibit 2 to this CMA), such provisions shall control over the provisions specified as superseded. Moreover, if the Proposal includes statements, offers, terms, concepts and designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the CMC Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains statements, offers, terms, concepts or designs that TxDOT considers to be more advantageous than the requirements of the other CMC Documents, DB Contractor’s obligations hereunder shall

include compliance with all such statements, offers, terms, concepts or designs, that shall have the priority of CMA amendments, CMA Specification amendments and CMA General Conditions amendments, as applicable.

1.3.4 Portions of the DBA, the DB General Conditions and Design-Build Specifications are referenced in the CMC Documents for the purpose of defining requirements for Renewal Work. The DBA, DB General Conditions and Design-Build Specifications shall be deemed incorporated in the CMC Documents to the extent that they are so referenced, with the order of priority shown in Section 1.3.2.

1.3.5 Additional details and requirements contained in a lower priority CMC Document will control except to the extent they irreconcilably conflict with the requirements of the higher level CMC Document.

1.3.6 Notwithstanding the order of precedence among CMC Documents set forth in Section 1.3.2, if a CMC Document contains differing provisions on the same subject matter than another CMC 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 established by reference to a described manual or publication within a CMC Document or set of CMC Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless TxDOT in its 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.

1.3.7 In the event of any conflict, ambiguity or inconsistency between the Maintenance Management Plan and any of the CMC Documents, the latter shall take precedence and control.

1.3.8 DB Contractor acknowledges and agrees that it had the opportunity and obligation, prior to the Effective Date, to review the terms and conditions of the CMC Documents (including those Reference Information Documents that are referenced in the CMC Documents, and pursuant to Section 1.4.1, are considered CMC Documents) and to bring to the attention of TxDOT any conflicts or ambiguities contained therein. DB Contractor further acknowledges and agrees that it has independently reviewed the CMC 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 CMC Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the CMC Documents, they shall not be interpreted or construed against the Person that prepared them, and, instead, other rules of interpretation and construction shall be used.

1.4 Reference Information Documents

1.4.1 Portions of the Reference Information Documents are explicitly referenced in the CMC Documents for the purpose of defining requirements of the CMC Documents. The Reference Information Documents shall be deemed incorporated in the CMC Documents solely to the extent that they are so referenced, with the same order of priority as the CMC Document in which the reference occurs.

1.4.2 TxDOT has provided and disclosed the Reference Information Documents to DB Contractor. Except as provided in Section 1.4.1, (a) the Reference Information Documents are not mandatory or binding on DB Contractor and (b) DB Contractor is not entitled to rely on the Reference Information Documents as presenting design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the CMC Documents, Governmental Approvals or Law.

1.4.3 TxDOT shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any DB Contractor-Related Entity by reason of any use of information contained in, or

any action or forbearance in reliance on, the Reference Information Documents, except any relief available under the CMC Documents as set forth in Section 4.5 of the CMA General Conditions.

1.4.4 Except as provided in Section 1.4.1, 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 CMC Documents, Governmental Approvals or Laws. DB Contractor shall have no right to additional compensation or time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

SECTION 2. SCOPE OF MAINTENANCE SERVICES

2.1 Maintenance Services

DB Contractor shall perform the Maintenance Services within the Maintenance Limits (Exhibit 15) as described in the CMC Documents. The Maintenance Services include all capital maintenance services and items that are necessary or appropriate to meet the requirements set forth in:

- (a) the CMA General Conditions, setting forth general requirements, terms and conditions with respect to the scope of the Maintenance Services; and
- (b) The CMA Specification.

2.2 Initial Maintenance Term; TxDOT's Right to Terminate

2.2.1 The initial maintenance term shall commence on the date of Final Acceptance of the Project in accordance with the Design-Build Contract (the "**Initial Maintenance Term Commencement Date**"), and shall continue for a period of five years, unless terminated earlier in accordance with the terms of this CMC (the "**Initial Maintenance Term**"). TxDOT shall not be required to issue a notice to proceed with respect to the Initial Maintenance Term.

2.2.2 During the first year of the Initial Maintenance Term in which the construction warranties under the Design-Build Contract are in effect for any failures of any of the work that is the subject of the warranties under the Design-Build Contract, DB Contractor shall be required to correct such work pursuant to the Design-Build Contract and shall bear the costs associated with correcting such warranted work under the Design-Build Contract. These costs are not included in the Maintenance Price set forth in Exhibit 3 to this CMA.

2.2.3 TxDOT has the right to terminate this CMC, without financial penalty, at the conclusion of the first year of the Initial Maintenance Term, by providing the DB Contractor with six months' notice of such termination.

2.3 Failure to issue a Maintenance NTP

TxDOT shall have no additional liability to any DB Contractor-Related Entity in the event that TxDOT elects, in its discretion, not to issue any Maintenance NTP under this CMC. TxDOT's election not to issue any Maintenance NTP shall not be treated as a Termination for Convenience.

2.4 Additional Maintenance Terms

2.4.1 After the Initial Maintenance Term, this CMC gives TxDOT the right to exercise, in its discretion, up to two consecutive option periods described in Section 2.4.2, requiring DB Contractor to provide Maintenance Services for the Project in accordance with the terms and conditions of the CMC Documents.

2.4.2 TxDOT, in its discretion, shall have the sole option to extend the term of this CMC for up to two additional five-year terms, for a maximum of 15 years. Each additional five-year term shall commence as of the expiration of the prior Maintenance Term and continue for a period of five years, unless terminated earlier in accordance with the terms of this CMC.

2.4.3 If TxDOT elects to exercise its option rights for an additional Maintenance Term, TxDOT shall issue the applicable Maintenance NTP on or before 180 days prior to the scheduled expiration of the prior Maintenance Term.

2.5 Not Used

2.6 Optional Provisions within Capital Maintenance Contract

The CMC Documents are hereby amended by the provisions set forth in Exhibit 1 to this CMA.

2.7 DB Contractor's Proposal Commitments

DB Contractor's Proposal Commitments are as set forth in Exhibit 2 to this CMA.

2.8 Project Specific Third-Party Agreements

TxDOT has third party agreements with local Governmental Entities along the Project corridor that define the requirements for construction, maintenance and operation of traffic signals, illumination and roadway maintenance, and that specify the local Governmental Entities' responsibilities and TxDOT's responsibilities with respect to the requirements. DB Contractor will assume and execute TxDOT's responsibilities and duties as defined in such third party agreements to the extent set forth in Exhibit 16 to this CMA.

2.9 Traffic Control Plan Special Provisions

No Lane Closure that restricts or interferes with traffic shall be allowed from 12:00 PM (noon) on the day preceding to 12:00 AM (midnight) on the day after the regional event and holiday schedule dates set forth in Section 4.1.17.2.3 of the CMA General Conditions. The following regional events are hereby added to such schedule:

- (a) State Fair of Texas (no lane closures after 6:00am on Fridays through 9:00pm on Sundays; no full closures for any direction of any facility from opening day through the closing day except for at night during hours that the State Fair of Texas is closed)
- (b) The University of Texas vs. University of Oklahoma Football Game (no lane closures beginning four hours prior to the event and ending three hours following event completion)

SECTION 3. COMPENSATION

3.1 Maintenance Price

During the term of this CMC, in full consideration for the performance by DB Contractor of its duties and obligations under the CMC Documents, TxDOT shall pay the Maintenance Price set forth in Exhibit 3 in accordance with the terms and conditions as set forth in Section 8 of the CMA General Conditions, subject to adjustment by Change Order in accordance with the CMC.

3.2 Form of Maintenance Draw Request and Certificate Requirements

Each Draw Request under this CMC shall be in the form set forth in Exhibit 4 to this CMA.

SECTION 4. MAINTENANCE SECURITY

4.1 P&P Letter of Credit; Maintenance Payment and Performance Bonds

DB Contractor shall provide to TxDOT no later than 14 days prior to the Initial Maintenance Term Commencement Date, and shall maintain at all times during the Maintenance Period, including during the Initial Maintenance Term and all subsequent Maintenance Terms for which a Maintenance NTP has been issued, adequate security securing DB Contractor's obligations hereunder in the form of either (i) the P&P Letter of Credit in accordance with Sections 3.2.1 and 3.2.2 of the CMA General Conditions or (ii) the Maintenance Performance Bond and Maintenance Payment Bond in accordance with Section 3.2.3 of the CMA General Conditions (the "**Maintenance Security**").

Each bond and each rider required pursuant to Section 3.2 of the CMA General Conditions shall be provided in the applicable form set forth in Exhibit 5 to this CMA.

4.2 Guaranty

4.2.1 *[Include appropriate bracketed text and delete all bracketed text that is not applicable]* [As of the Effective Date, a guaranty is not required.][As of the Effective Date, a guaranty in the form attached as Exhibit 6 to this CMA shall be delivered and maintained in accordance with this Section 4.2 and the requirements of the Capital Maintenance Contract, and the following shall be the Guarantor(s): *[insert applicable Guarantor(s)].*]

4.2.2 Each guaranty assures performance of DB Contractor's obligations hereunder and shall be maintained in full force and effect throughout the duration of this CMC and for so long as any of DB Contractor's obligations under the CMC Documents remain outstanding.

4.2.3 DB Contractor shall be required to provide a Guaranty guaranteeing DB Contractor's obligations under the CMC Documents during the Maintenance Period in the form set forth in Exhibit 6 to this CMA from a Guarantor approved by TxDOT as of and as a condition to Substantial Completion if (i) DB Contractor elects to provide a P&P Letter of Credit as Maintenance Security or (ii) DB Contractor is a limited liability entity and elects to provide the P&P Bonds as Maintenance Security. If a Guaranty was provided as of the Effective Date and such Guaranty satisfies the requirements of this Section 4.2 and is in effect on the Substantial Completion Deadline, then DB Contractor shall not be required to provide an additional Guaranty at the Substantial Completion Deadline.

4.2.4 DB Contractor shall report the Tangible Net Worth of DB Contractor, its equity members, and Guarantors, if any, to TxDOT, on or before each anniversary of the Initial Maintenance Term Commencement Date by means of audited financial statements of DB Contractor, its equity members and any Guarantors, and on a quarterly basis during the Maintenance Period by means of certifications by the chief financial officers of the DB Contractor, its equity members and any Guarantors.

4.2.5 If at any time during the course of this CMC, the total combined Tangible Net Worth of DB Contractor, its equity members (as applicable) and any Guarantors, is less than \$125,000,000, DB Contractor shall provide one or more guarantees from a Guarantor acceptable To TxDOT so that the combined Tangible Net Worth of the DB Contractor, its equity members (as applicable) and any Guarantors is at least \$125,000,000. Each such guaranty shall be in the form attached as Exhibit 6 to this CMA, together with appropriate evidence of authorization, execution, delivery and validity thereof, and shall guarantee the Guaranteed Obligations. The minimum Tangible Net Worth amount described above shall be adjusted annually based on changes in the CPI in accordance with the methodology set forth in Section 8.1.4 of the CMA General Conditions, commencing on the first anniversary of the Initial Maintenance Term Commencement Date and continuing annually thereafter during the Maintenance Period.

4.2.6 DB Contractor may replace an existing Guaranty with a new Guaranty upon prior approval by TxDOT. Any new Guaranty shall be provided in the form attached as Exhibit 6 to this CMA 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.

4.3 Insurance Special Provisions

Except as specified in this Section 4.3, DB Contractor shall procure and keep in effect, or cause to be procured and kept in effect with DB Contractor as a named insured, as appropriate, insurance coverage in accordance with Section 3.3 of the CMA General Conditions, and in accordance with the insurance policies, coverage, deductibles and limits specified therein.

4.3.1 Amendment to CMA General Conditions

Sections 3.3.4.1 and 3.3.4.2 of the CMA General Conditions are hereby amended as set forth below. The underlined text is added to the sections, and the stricken text is deleted therefrom.

3.3.4.1 Within ten days of TxDOT issuing a Maintenance NTP (or, with respect to the Initial Maintenance Term, no later than ~~10470~~ days prior to the Initial Maintenance Term Commencement Date), DB Contractor shall deliver to TxDOT a certificate of insurance. 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 required under the CMC Documents, state the type and limits of coverage, deductibles, subrogation waiver, and termination provisions of the policy, include as attachments all additional insured, endorsements required under the CMC Documents, and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker and otherwise be in form satisfactory to TxDOT. Each such certificate of insurance evidencing policies required to be obtained by DB Contractor shall be accompanied by a letter signed by DB Contractor confirming that the insurances represented in the certificate of insurance fully comply with all provisions of this Section 3.3. DB Contractor certifies to TxDOT by submitting each Subcontractor certificate of insurance that the insurances represented in the certificate fully comply with the requirements of this Section 3.3 that are applicable to Subcontractor policies.

3.3.4.2 In addition, within a reasonable time after receipt of each insurance policy (but not to exceed 30 days after receipt), DB 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, which may be a letter from DB Contractor's broker stating required premium payments have been made in accordance with policy requirements.

SECTION 5. CHANGE ORDERS

5.1 Hazardous Materials

DB Contractor shall be entitled to a Maintenance Price increase due to Hazardous Material only as provided in Section 4.5.11.2 of the CMA General Conditions and subject to Section 4.5.11.2.1 of the CMA General Conditions, unless otherwise specified in this Section 5.1.

SECTION 6. LANE RENTAL CHARGES; LIQUIDATED DAMAGES

6.1 Lane Rental Charges

The performance of the Maintenance Services shall be subject to Lane Rental Charges pursuant to Exhibit 8 to this CMA. The Capital Maintenance Contract is hereby amended as set forth in Exhibit 8 to this CMA.

6.2 Not Used

6.3 Key Personnel Unavailability Liquidated Damages

As deemed compensation to TxDOT for Losses described in Section 7.3.7 of the CMA General Conditions, DB Contractor agrees to pay to TxDOT the following Key Personnel Unavailability Liquidated Damages amounts in accordance with such section, for each day that the relevant Key Personnel role is not filled by an approved individual:

POSITION	KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day)
Maintenance Manager	\$5,000

SECTION 7. KEY SUBCONTRACTORS AND KEY PERSONNEL

7.1 Key Subcontractors

Key Subcontractors for the Maintenance Services are as set forth in Exhibit 10 to this CMA.

7.2 Key Personnel

Key Personnel positions for the Project, and the approved individuals filling such Key Personnel roles as of the Effective Date, are as set forth in Exhibit 11 to this CMA. TxDOT requires the ability to contact certain Key Personnel, as specified in Exhibit 11 to this CMA, 24 hours per day, seven days per week.

SECTION 8. NOTICE AND AUTHORIZED REPRESENTATIVES

8.1 Notices and Communications

8.1.1 Notices under the CMC 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 or posted to TxDOT's SharePoint site for the Project with receipt confirmed by telephone and followed by a hard copy, to the addresses set forth in this Section 8.1, as applicable (or to such other address as may from time to time be specified in writing by such Person).

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

[DB Contractor / Firm Name]
[Address]
[Address]

Attention: [Name]
Telephone: [●]
E-mail: [●]

[Prime Contractor / Firm Name]
[Address]
[Address]
Attention: [Name]
Telephone: [●]
E-mail: [●]

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

[Firm Name]
[Address]
[Address]
Attention: [Name]
Telephone: [●]
E-mail: [●]

8.1.3 All notices, correspondence and other communications to TxDOT shall be marked as regarding the I-35E Phase 2 Project and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
Dallas District
4777 E. Highway 80
Mesquite, TX 75170-6643
Attention: Mo Bur, P.E.
Telephone: (214) 320-6100
E-mail: mo.bur@txdot.gov

With a copy to:

Texas Department of Transportation
Project Finance, Debt & Strategic Contracts Division
125 East 11th Street
Austin, Texas 78701
Attention: Mr. Benjamin Asher
Telephone: (512) 463-8611
E-mail: benjamin.asher@txdot.gov

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

Texas Department of Transportation
General Counsel Division
125 East 11th Street

Austin, Texas 78701
Attention: General Counsel Division
Telephone: (512) 463-8630
E-mail: jack.ingram@txdot.gov

8.1.4 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. All notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery. Any technical or other communications pertaining to the Maintenance Services shall be conducted by DB Contractor's Authorized Representative and technical representatives designated by TxDOT.

8.2 Designation of Representatives

8.2.1 TxDOT and DB Contractor shall each designate Authorized Representative(s) who shall be authorized to make decisions and bind the Parties on matters relating to the CMC Documents. Exhibit 12 to this CMA 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 8.1.

8.2.2 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 DB Contractor.

SECTION 9. REPRESENTATIONS, WARRANTIES, ACKNOWLEDGEMENTS AND CERTIFICATIONS

9.1 Representations and Warranties

DB Contractor represents and warrants that:

9.1.1 During all periods necessary for the performance of the Maintenance Services, DB Contractor and all Subcontractors will maintain all required authority, license status, professional ability, skills and capacity to perform the Maintenance Services in accordance with the requirements contained in the CMC Documents.

9.1.2 DB 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.

9.1.3 DB Contractor 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 CMC. Except as specifically permitted under Section 4.5 of the CMA General Conditions, DB Contractor shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment or materials not expressly provided for in the CMC Documents. As of the Effective Date, DB Contractor has no reason to believe that any Governmental Approval required to be obtained by DB Contractor will not be granted in due course and thereafter remain in effect so as to enable the Maintenance Services to proceed in accordance with the CMC Documents. If any Governmental Approvals required to be obtained by DB Contractor must formally be issued in the name of TxDOT, DB Contractor shall undertake all efforts to obtain such approvals subject to TxDOT's reasonable cooperation with DB Contractor, including execution and delivery of appropriate applications and other documentation prepared by DB Contractor in a form approved by TxDOT. DB Contractor shall assist TxDOT in obtaining any Government Approvals that TxDOT may be obligated to obtain, including providing information requested by TxDOT, preparing necessary supporting materials and participating in meetings regarding such approvals.

9.1.4 All Maintenance Services furnished by DB 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 and 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 CMC Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

9.1.5 At all times, including during the course of, and notwithstanding the existence of, any Dispute, DB 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 CMC Documents.

9.1.6 As of the Effective Date, DB Contractor is duly organized as specified in the preamble to this CMA and validly existing under the laws of the state of its organization, and has all requisite power and all required licenses to carry on its present and proposed obligations under the CMC Documents. DB Contractor and, if applicable, each of its members is duly qualified to do business, and is in good standing, in the State of Texas as of the Effective Date, and will remain in good standing throughout the Maintenance Period and for as long thereafter as any obligations remain outstanding under the CMC Documents.

9.1.7 The execution, delivery and performance of the CMC Documents to which DB Contractor is (or will be) a party have been (or will be) duly authorized by all necessary [corporate] action [of DB Contractor]; each person executing CMC Documents on behalf of DB Contractor has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of DB Contractor; and the CMC Documents to which DB Contractor is (or will be) a party have been (or will be) duly executed and delivered by DB Contractor.

9.1.8 Neither the execution and delivery by DB Contractor of the CMC Documents to which DB Contractor is (or will be) a party nor the consummation of the transactions contemplated hereby or thereby is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the organizational documents or other governing instruments of DB Contractor.

9.1.9 Each of the CMC Documents to which DB Contractor is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of DB Contractor, enforceable against DB Contractor and, if applicable, each member of DB Contractor, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

9.1.10 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on DB Contractor that challenges DB Contractor's authority to execute, deliver or perform, or the validity or enforceability of, the CMC Documents to which DB Contractor is a party, or that challenges the authority of the DB Contractor official executing the CMC Documents; and DB Contractor has disclosed to TxDOT prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which DB Contractor is aware.

9.1.11 As of the Proposal Due Date, DB Contractor disclosed to TxDOT in writing all organizational conflicts of interest of DB Contractor and its Subcontractors of which DB Contractor was actually aware; and between the Proposal Due Date and the Effective Date, DB Contractor has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to DB Contractor or its Subcontractors identified in its Proposal that have not been approved in writing by TxDOT. For this purpose, organizational conflict of interest has the meaning set forth in the Instructions to Proposers.

9.1.12 At any time a Guaranty is required to be in place pursuant to the CMC Documents, the applicable Guarantor shall be duly organized, validly existing and in good standing under the laws of the state of its

organization, is duly qualified to do business in and is in good standing in the State of Texas, and will remain in good standing for as long as any obligations guaranteed by such Guarantor remain outstanding under the CMC Documents, and each such Guarantor shall have all requisite power and authority to carry on its present and proposed obligations under the CMC Documents.

9.1.13 At any time a Guaranty is required to be in place pursuant to the CMC Documents, all required approvals shall have been obtained with respect to the execution, delivery and performance of such Guaranty, and performance of such Guaranty will not result in a breach of or a default under the applicable Guarantor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which the applicable Guarantor is a party or by which its properties and assets may be bound or affected.

9.1.14 At any time a Guaranty is required to be in place pursuant to the CMC Documents, such Guaranty shall have been duly authorized by all necessary corporate action, has been duly executed and delivered by each Guarantor, and shall constitute the legal, valid and binding obligation of such Guarantor, enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.

9.2 Lead Maintenance Firm Representations and Warranties

To the extent the Lead Maintenance Firm is not DB Contractor, DB 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) are owned by the Persons whom DB 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 DB 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 CMC 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, DB 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.

9.3 Survival of Representations and Warranties

The representations and warranties of DB Contractor contained herein shall survive the expiration or earlier termination of this Contract.

SECTION 10. MISCELLANEOUS PROVISIONS

10.1 Dispute Resolution Procedures

Disputes shall be resolved pursuant to the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act, and effective under Rule §9.2 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code and subject to (i) the procedures set forth in Section 4.7 of the CMA General Conditions and (ii) the requirements set forth in Exhibit 13 to this CMA.

The Parties' agreement regarding dispute resolution procedures as set forth in this Section 10.1 shall survive expiration or earlier termination of the Maintenance Term and thereafter for so long as either Party has any obligation originating under the CMC Documents.

10.2 Entire Agreement

The CMC Documents 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.

10.3 Severability

If any clause, provision, section or part of the CMC Documents is ruled invalid under Section 10.1 hereof and Section 4.7 of the CMA General Conditions, 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) that 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 CMC Documents, which shall be construed and enforced as if the CMC Documents did not contain such invalid or unenforceable clause, provision, section or part.

10.4 Survival

DB Contractor's representations and warranties, the dispute resolution provisions contained in Section 10.1 and Exhibit 13 to this CMA and Section 4.7 of the CMA General Conditions, the indemnifications and releases contained in Section 6.9 of the CMA General Conditions, the express rights and obligations of the Parties following termination of this CMC under Section 7.7 of the CMA General Conditions, the provisions regarding invoicing and payment under Section 8.2 of the CMA General Conditions and all other provisions which by their inherent character should survive termination of this CMC and completion of the Maintenance Services, shall survive the termination of this CMC and Final Payment. The provisions of Section 10.1 and Exhibit 13 to this CMA and Section 4.7 of the CMA General Conditions shall continue to apply after expiration or earlier termination of this CMC to all Claims and Disputes between the Parties arising out of the CMC Documents.

10.5 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.

10.6 [Joint and Several Liability]

[This Section 10.6 to be included only if DB Contractor is a joint venture.] Each of the [●], [●] and [●] agree that it is jointly and severally liable for the performance of DB Contractor's liabilities and obligations under the CMC Documents; and that such joint and several liability shall not in any way be reduced, diminished or released by any change to the constitution of DB Contractor. If any other Party or replacement Party to this CMC is or becomes a joint venture or a partnership, all members of such joint venture or partnership shall have joint and several liability for the obligations and liabilities of such Party under the CMC Documents, and such obligations and liabilities shall not in any way be reduced, diminished or released by any change in the constitution of such Party.]

10.7 Further Assurances

DB 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 DB Contractor hereunder, including assurances regarding the validity of: (a) the assignments of Subcontracts contained herein and (b) any instruments securing performance hereof.

IN WITNESS WHEREOF, this CMA has been executed as of the date first set forth above.

DB CONTRACTOR:
[DB Contractor]

TEXAS DEPARTMENT OF TRANSPORTATION:

By: _____
Name: [●]
Title: [●]

Date: _____

By: _____
Name: James M. Bass
Title: Executive Director

Date: _____

EXHIBIT 1

IMPLEMENTATION OF CERTAIN CMC PROVISIONS

Amendment to the CMA Specification

The CMA Specification is amended as follows:

1. The second bullet point set forth in Section 9.2.1 is hereby deleted in its entirety.

EXHIBIT 2

DB CONTRACTOR'S PROPOSAL COMMITMENTS

The following Proposal Commitments are in addition to the requirements set forth elsewhere in the CMC Documents and are therefore express requirements of the Agreement.

Comment No.	Proposal Location	Proposal Commitment
1		
2		

EXHIBIT 3

MAINTENANCE PRICE – GENERAL MAINTENANCE SCHEDULE

[To be inserted from Proposal.]

EXHIBIT 4

FORM OF MAINTENANCE DRAW REQUEST AND CERTIFICATE REQUIREMENTS

- Appendix 1: Form of Maintenance Draw Request and Certificate
- Appendix 2: Draw Request Contents Checklist

EXHIBIT 4 – APPENDIX 1

FORM OF MAINTENANCE DRAW REQUEST AND CERTIFICATE

Draw Request #: _____

Date: _____
month/day/year

Texas Department of Transportation
[Address]

A. Draw Request for the period: _____ to _____
month/day/year month/day/year

B. Maintenance Price:

B1. General Maintenance Payment (from Form B1 of this Appendix 1 to Exhibit 4)

\$
\$
\$
\$
\$
\$

C. Total Change Order amount for the month (from Form C of this Appendix 1 to Exhibit 4)

D. Total deductions for the month (from Form D of this Appendix 1 to Exhibit 4)

E. Disapproved amounts from previous Draw Request(s) after correction of the deficiencies noted by TxDOT and satisfaction of the requirements of the CMC Documents related thereto (CMA General Conditions Section 8.2.2)

F. **Total amount due for the month (B1 + B2 + C – D + E)**

Printed Name Signature Date
DB Contractor's Authorized Representative

Printed Name Signature Date
TxDOT's Authorized Representative

B1. GENERAL MAINTENANCE PAYMENT CALCULATION

Draw Request #: _____

Maintenance Term Year X: _____

General Maintenance Payment	This Draw Request
G. Annual General Maintenance Amount for the Maintenance Term Year X (unadjusted amount from Exhibit 4)	\$
H. CPI for the month that is three months prior to the month in which the Maintenance Term Year X commenced	
I. CPI for the month that is three months prior to the execution of the CMC (BICPI)	
J. Adjusted annual General Maintenance Payment pursuant to Section 8.1.4 of the CMA General Conditions: $G \times (H / I)$	\$
K. Adjusted monthly General Maintenance Payment: $J / 12$ (See Note below for any partial month or during the last six months of the Maintenance Period)	\$

Note:

1. The annual payments payable for any partial month or payable for any partial year shall be prorated (CMA General Condition Section 8.2.3).
2. During the last six months of the Maintenance Period, monthly General Maintenance Payments shall be calculated as shown below (CMA General Condition Section 8.1.5):
 - ✓ For months seven through eleven of the final twelve months of the Maintenance Period, the monthly General Maintenance Payment shall be equal to five percent (5%) of the General Maintenance Amount for the last year of the Maintenance Period adjusted in accordance with Section 8.1.4 of the CMA General Conditions.
 - ✓ For the final month of the Maintenance Period, the monthly General Maintenance Payment shall be equal to twenty-five percent (25%) of the General Maintenance Amount for the last year of the Maintenance Period adjusted in accordance with Section 8.1.4 of the CMA General Conditions.

C. CHANGE ORDER SUMMARY

Draw Request #: _____

Maintenance Term Year X: _____

Change Order #	Total Approved Change Order Amount	Cumulative Total Change Order Amount Invoiced Prior to This Draw Request	Change Order Amount for This Draw Request
1. Change Order #1	\$	\$	\$
2. Change Order #2	\$	\$	\$
3. Change Order #3	\$	\$	\$
4.	\$	\$	\$
5.	\$	\$	\$
6.	\$	\$	\$
7.	\$	\$	\$
Total			\$

Note:

Annual escalation of the Maintenance Price per Section 8.1.4 of the CMA General Conditions is calculated in Form B1 and Form B2 and shall be excluded from this Form C.

D. DEDUCTIONS SUMMARY

Draw Request #: _____

Maintenance Term Year X: _____

Deduction / Withholding	This Draw Request
1. Total Key Personnel Unavailability Liquidated Damages under <u>Section 6.3</u> of the CMA	\$
2. Total Lane Rental Charges under <u>Section 6.1</u> and <u>Exhibit 8</u> to the CMA	\$
3. Any other sums owed to TxDOT (see Section 8.2.4 of CMA General Conditions)	\$
4.	\$
5.	\$
6.	\$
Total	\$

DRAW REQUEST CERTIFICATION

Draw Request #: _____

Maintenance Term Year X: _____

The undersigned hereby certifies that:

- ◆ Except as specifically noted in the certification, all Maintenance Services, including that of designers, Subcontractors and Suppliers, which are the subject of the Draw Request have been checked and/or inspected in accordance with the respective Quality Management Plan;
- ◆ Except as specifically noted in the certification, all Maintenance Services, which are the subject of the Draw Request, conform to the requirements of the CMC Documents, the Governmental Approvals and applicable Law;
- ◆ The MQMP procedures provided therein are functioning properly and are being followed; and
- ◆ All quantities for which payment is requested on a unit price basis are accurate.

Exceptions:

Printed Name	Signature	Date
Maintenance Quality Manager		

EXHIBIT 4 APPENDIX 2

DRAW REQUEST CONTENTS CHECKLIST

The following items shall be included in the Draw Request package in the order listed below:

- A completed Form of Draw Request and Certificate (Appendix 1 to this Exhibit 4)
- 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 charges and fees imposed pursuant to Section 6 of the CMA for the prior month. Such attached report shall include:
 - (a) a description of any charges and fees imposed pursuant to Section 6 of the CMA assessed 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 charges and fees were assessed;
 - (b) any adjustments to reflect previous over-payments and/or under-payments;
 - (c) a detailed calculation of any interest payable in respect of any amounts owed; and
 - (d) any other amount due and payable from DB Contractor to TxDOT or from TxDOT to DB Contractor under this Capital Maintenance Contract, 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 DB Contractor.

EXHIBIT 5

FORMS OF BONDS

Appendix 1: Form of Maintenance Performance Bond

Appendix 2: Form of Maintenance Payment Bond

EXHIBIT 5 APPENDIX 1

FORM OF MAINTENANCE PERFORMANCE BOND

I-35E Phase 2 Project

Bond No. _____

WHEREAS, the Texas Department of Transportation (“**Obligee**”), has awarded to _____, a _____ (“**Principal**”), a Capital Maintenance Contract for the I-35E Phase 2 Project, duly executed and delivered as of [DATE] (the “**CMC**”), on the terms and conditions set forth therein; and

WHEREAS, [on or before 120 days prior to the Initial Maintenance Term Commencement Date][on or before 60 days after issuance by Obligee of Maintenance [NTP2][NTP3]] [**include appropriate bracketed text**], Principal is required to furnish and maintain at all times a bond (this “**Bond**”) guaranteeing the faithful performance of its obligations related to the Maintenance Services under the CMC Documents.

NOW, THEREFORE, Principal and _____, a _____ (“**Surety**”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$[_____] [**amount calculated as set forth in Section 3.2.3.2 of the CMA General Conditions**] (the “**Bonded Sum**”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the CMC Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond on the date that is one year after the end of the Maintenance Period and upon such date thereafter that all of the conditions to release set forth in Section 3.2.3 of the CMA General Conditions have occurred.

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

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

2. [**This Section 2 is required for bonds issued for the period of the Initial Maintenance Term and the Second Maintenance Term.**]During the Initial Maintenance Term and the Second Maintenance Term only, Principal and the Surety hereby agree to pay to Obligee \$_____ [**for the Initial Maintenance Term, an amount equal to the lesser of (i) twenty percent (20%) of the Bonded Sum hereinabove set forth or (ii) the Maximum Draw-Down Amount (escalated in accordance with the methodology set forth in Section 3.2.3.7 of the CMA General Conditions); for the Second Maintenance Term, an amount equal to the lesser of (i) ten percent (10%) of the Bonded Sum hereinabove set forth or (ii) 50% of the Maximum Draw-Down Amount (escalated in accordance with the methodology set forth in Section 3.2.3.7 of the CMA General Conditions)**], as cash collateral for the performance of Principal's obligations under the CMC Documents, after the occurrence of any of the following:

a. failure of Principal to provide either (i) a replacement Maintenance Performance Bond or Maintenance Payment Bond, as applicable, in the adjusted amount required under Section 3.2.3.7 of the CMA General Conditions, (ii) evidence of renewal of the then current Maintenance Performance Bond or Maintenance Payment Bond, in the adjusted amount as set forth in Section 3.2.3.7 of the CMA General Conditions or (iii) a replacement P&P Letter of Credit and Guaranty (if required) meeting the requirements of Sections 3.2.1 and 3.2.2 of the CMA General Conditions and Section 4.2 of the CMA at least 30 days prior to the commencement of the [**insert either the Second**

Maintenance Term or Third Maintenance Term, as applicable] provided a Maintenance NTP has been issued therefor;

b. failure of Principal to provide either (i) a replacement Maintenance Performance Bond or Maintenance Payment Bond, (ii) evidence of renewal of the then current Maintenance Performance Bond or Maintenance Payment Bond, in the adjusted amount as set forth in Section 3.2.3.7 of the CMA General Conditions or (iii) a replacement P&P Letter of Credit, as well as one or more Guarantees (if required) meeting the requirements of Sections 3.2.1 and 3.2.2 of the CMA General Conditions and Section 4.2 of the CMA at least 30 days prior to the expiration of the then current Maintenance Performance Bond or Maintenance Payment Bond, as applicable; or

c. failure of Principal to provide either (i) a replacement Maintenance Performance Bond or Maintenance Payment Bond (ii) evidence of renewal, and, if applicable, adjusting the amount, of the existing bonds or (iii) a replacement P&P Letter of Credit and Guaranty (if required) meeting the requirements of Sections 3.2.1 and 3.2.2 of the CMA General Conditions and Section 4.2 of the CMA within 10 days after any of the following: this Bond becomes ineffective, the Maintenance Payment Bond becomes ineffective, the Surety no longer meets the requirements set forth in Section 3.2.3.4 of the CMA General Conditions or the surety under the Maintenance Payment Bond no longer meets the requirements set forth in Section 3.2.3.4 of the CMA General Conditions (or if multiple sureties act as co-sureties under the Maintenance Payment Bond, no co-surety meets the requirements thereof).

Principal agrees and acknowledges that such cash collateral is to secure the performance of Principal under the CMC Documents as a result of Principal's failure to satisfy the Maintenance Security obligations under the CMC to which Principal agreed upon executing the CMC, and may be used to compensate TxDOT for the damages specified in Section 7 of this Bond, including TxDOT's costs to procure a substitute DB Contractor and any amounts paid to such substitute DB Contractor in excess of the unpaid balance of the CMC.

Any cash collateral not otherwise utilized by TxDOT as permitted herein shall be returned to the Principal (or in the case the Surety made payment under Section 2 of this Bond, to the Surety) upon the earlier of (i) delivery by Principal of replacement P&P Bonds meeting the requirements of Section 3.2.3 of the CMA General Conditions or the P&P Letter of Credit and Guaranty in accordance with Sections 3.2.1 and 3.2.2 of the CMA General Conditions and Section 4.2 of the CMA or (ii) the date on which the P&P Bonds would otherwise be released in accordance with Section 3.2.3 of the CMA General Conditions.

3. This Bond specifically guarantees the performance of each and every obligation of Principal related to the Maintenance Services under the CMC Documents, as they may be amended and supplemented, including but not limited to, its liability for payment in full of all liquidated damages, Key Personnel Unavailability Liquidated Damages, Lane Rental Charges as specified in the CMC Documents, but not to exceed the Bonded Sum.

4. The guarantees contained herein shall survive the expiration or termination of the Maintenance Period with respect to those obligations of Principal under the CMC Documents that survive such expiration or termination.

5. Whenever Principal shall be, and is declared by Obligees to be, in default under the CMC Documents (other than under the circumstances provided in Section 2 above), provided that Obligees is not then in material default thereunder, Surety shall promptly:

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

b. complete the Maintenance Services in accordance with the terms and conditions of the CMC Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligees for a contract for performance and completion of the Maintenance Services, through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the CMC, and pay to the Obligees the amount of damages as described in Section 7 of this Bond in excess of the unpaid balance of the Maintenance Price for the Maintenance Period incurred by the Obligees resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligees and, as soon as practicable after the amount is determined, tender payment therefor to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefor.

6. If Surety does not proceed as provided in Section 5 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from the Obligees to Surety demanding that Surety perform its obligations under this Bond, and the Obligees shall be entitled to enforce any remedy available to the Obligees. If Surety proceeds as provided in Section 5(d) of this Bond, and the Obligees refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice, the Obligees shall be entitled to enforce any remedy available to the Obligees.

7. After the Obligees has terminated the Principal's right to complete the CMC, and if Surety elects to act under Sections 5(a), 5(b), or 5(c) above, then the responsibilities of Surety to the Obligees shall not be greater than those of the Principal under the CMC, and the responsibilities of the Obligees to Surety shall not be greater than those of the Obligees under the CMC. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Maintenance Price for the Maintenance Period to mitigation costs and damages on the CMC, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective Maintenance Services and completion of the Maintenance Services;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Section 5 of this Bond; and

c. all Liquidated Damages, Key Personnel Unavailability Liquidated Damages, and Lane Rental Charges under the CMC Documents.

8. No alteration, modification or supplement to the CMC Documents or the nature of the Maintenance Services to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, supplement or extension of time.

9. In no event shall the term of this Bond be beyond the [__][***term of the bond may not be less than 5 years, except that a bond in the amount required for the last year after the Maintenance Period may be for a term not less than 1 year.***] anniversary of the execution date without the express written consent of the Surety. Surety will have no obligation to extend or replace this Bond for additional periods of time. [Failure of the Principal to file a replacement bond as required under Section 3.2.3 of the CMA General Conditions, provide evidence of renewal, and, if applicable, adjustment of the amount, of the existing bonds or provide a replacement P&P Letter of Credit and Guaranty (if required) meeting the requirements of Sections 3.2.1 and 3.2.2 of the CMA General Conditions and Section 4.2 of the CMA shall constitute an obligation of the Principal and Surety to pay to Obligees cash collateral, in accordance with Section 2 above.] [***Bracketed language required for the bond for the Initial Maintenance Term and Second***

Maintenance Term with the cash collateral amount determined in accordance with Sections 3.2.3.6 and 3.2.3.7 of the CMA General Conditions]

10. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

11. No right of action shall accrue on this Bond to or for the use of any entity other than Oblige or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of [DATE].

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

or secretary attest

SURETY

By: _____
Name
Title:
Address:

EXHIBIT 5 APPENDIX 2

FORM OF MAINTENANCE PAYMENT BOND

I-35E Phase 2 Project

Bond No. _____

WHEREAS, the Texas Department of Transportation (“**Obligee**”), has awarded to _____, a _____ (“**Principal**”), a Capital Maintenance Contract for the I-35E Phase 2 Project, duly executed and delivered as of [DATE] (the “**CMC**”), on the terms and conditions set forth therein; and

WHEREAS, [on or before 120 days prior to the Initial Maintenance Term Commencement Date][on or before 60 days after issuance by Obligee of Maintenance [NTP2][NTP3]] [**include appropriate bracketed text**], Principal is required to furnish and maintain a bond (this “**Bond**”) guaranteeing payment in full to all Subcontractors and Suppliers.

NOW, THEREFORE, Principal and _____, a _____ (“**Surety**”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$[_____] [**amount calculated as set forth in Section 3.2.3.3 of the CMA General Conditions**] (the “**Bonded Sum**”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Maintenance Services, then Surety shall pay for the same in an amount in the aggregate of all Subcontracts not to exceed the Bonded Sum; otherwise this Bond shall be null and void on the date that is one year after the expiration of the Maintenance Term and upon such date thereafter that all of the following have occurred: (a) DB Contractor is not in default under the CMC, (b) no event has occurred that with the giving of notice or passage of time would constitute a default by DB Contractor hereunder or under the CMC Documents, and (c) no outstanding Claims are then pending against DB Contractor under the CMC.

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

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

2. No alteration, modification or supplement to the CMC Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, supplement or extension of time.

3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the Maintenance Services so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

5. In no event shall the term of this Bond be beyond the [____][***term of the bond may not be less than 5 years, except that a bond in the amount required for the last year after the Maintenance Period may be for a term not less than 1 year.***] anniversary of the execution date without the express written consent of the Surety. Surety will have no obligation to extend or replace this Bond for additional periods of time. Failure of the Surety to extend this Bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of [DATE].

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

By: _____
Name
Title:
Address:

EXHIBIT 6

FORM OF GUARANTY

THIS GUARANTY (this “**Guaranty**”) is made as of [DATE] by _____, a _____ (“**Guarantor**”), in favor of the Texas Department of Transportation, an agency of the State of Texas (“**TxDOT**”).

R E C I T A L S

A. _____, as design-build contractor (“**DB Contractor**”), and TxDOT are parties to that certain Capital Maintenance Contract (the “**Agreement**”) pursuant to which DB Contractor has agreed to operate and maintain the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Agreement.

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

C. DB Contractor is a [*Insert entity type*]. The Guarantor is [*Insert entity name and entity type*]. The execution of the Agreement by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the Agreement with DB Contractor. Therefore, in consideration of TxDOT’s execution of the Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. **Guaranty.** Guarantor guarantees to TxDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of DB Contractor arising out of, in connection with, under or related to the Maintenance Services under the CMC Documents. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the “**Guaranteed Obligations**”.

2. **Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against DB Contractor. If any payment made by DB Contractor or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor’s obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the CMC Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting DB Contractor, Guarantor or their respective assets, and (b) the existence of any claim or set-off which DB Contractor has or Guarantor may have against TxDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity,

enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. Independent Obligations. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of DB Contractor and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not DB Contractor is joined therein. TxDOT may maintain successive actions for other defaults of Guarantor. TxDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that TxDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against DB Contractor. Guarantor hereby waives the right to require TxDOT to proceed against DB Contractor, to exercise any right or remedy under any of the CMC Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between DB Contractor and TxDOT or their respective successors and assigns, with respect to any of the CMC Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the CMC Documents or any modification thereof; (iii) any release of DB Contractor from any liability with respect to any of the CMC Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by DB Contractor of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the CMC Documents or the pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the CMC Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of DB Contractor under the Agreement. Accordingly, in the event that DB Contractor's obligations have been changed by any modification, agreement or stipulation between DB Contractor and TxDOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. Liability of Guarantor.

a. TxDOT may enforce this Guaranty upon the occurrence of a breach by DB Contractor of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between TxDOT and DB Contractor with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of DB Contractor, if and as permitted by the Agreement, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or

without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the CMC Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the CMC Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the CMC Documents or any agreement or instrument executed pursuant thereto; (iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or existence of DB Contractor; or (iv) any defenses, set-offs or counterclaims that DB Contractor may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. **Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against DB Contractor or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the CMC Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, DB Contractor or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against DB Contractor by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of DB Contractor under any of the CMC Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 7.6.2.1 of the CMA General Conditions; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of DB Contractor, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6. **Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against DB Contractor that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of TxDOT against DB Contractor, or any other security or collateral that TxDOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of DB Contractor or any shareholders, partners, members, joint venturers of DB Contractor to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as DB Contractor shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by DB Contractor or any shareholders, partners, members, joint venturers of DB Contractor to Guarantor without the prior written consent of TxDOT. Any payment by DB Contractor or any

shareholders, partners, members, joint venturers of DB Contractor to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for TxDOT.

7. Waivers by Guarantor if Real Property Security. If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. TxDOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by DB Contractor.

b. If TxDOT forecloses on any real property collateral pledged by DB Contractor:

(i) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(ii) TxDOT may collect from Guarantor even if TxDOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from DB Contractor.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations are secured by real property.

8. Cumulative Rights. All rights, powers and remedies of TxDOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to TxDOT, whether at law, in equity or otherwise.

9. Representations and Warranties. Guarantor represents and warrants that:

a. it is a *[insert entity type]* duly organized, validly existing, and in good standing under the laws of the State of *[insert applicable state]* and qualified to do business and is in good standing under the laws of the State of Texas;

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (i) organizational documents of Guarantor, (ii) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (iii) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the CMC Documents or referred to therein, the financial status of DB Contractor and the ability of DB Contractor to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the CMC Documents and is fully informed of the remedies TxDOT may pursue, with or without notice to DB Contractor or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of DB Contractor and will keep itself fully informed as to all aspects of the financial condition of DB Contractor, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of TxDOT to disclose any matter, fact or thing relating to the business, operations or conditions of DB Contractor now known or hereafter known by TxDOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any Governmental Entity or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Entity which challenges the validity or enforceability of this Guaranty.

10. Governing Law; Jurisdiction; Venue. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Texas with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Travis County, Texas.

11. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by TxDOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

13. Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by e-mail or facsimile (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to TxDOT: Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Attention:
Telephone:
Facsimile:

With copies to: Texas Department of Transportation
Project Finance and Debt Management Division

125 East 11th Street,
Austin, Texas 78701
Attention:
Telephone:
Email:

Texas Department of Transportation
General Counsel Division
125 East 11th Street,
Austin Texas 78701
Attention:
Telephone:
Facsimile:

If to Guarantor: [Company's Name]
[Representative's Name]
[Address, City, State, Zip Code]
Telephone:
Facsimile:
Email:

Either Guarantor or TxDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and TxDOT, but is not assignable by Guarantor without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. Construction of Agreement. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. No Waiver. Any forbearance or failure to exercise, and any delay by TxDOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy,

insolvency, receivership, reorganization, liquidation or arrangement of DB Contractor or by any defense which DB Contractor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. TxDOT is not obligated to file any claim relating to the Guaranteed Obligations if DB Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of TxDOT so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and TxDOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve DB Contractor of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay TxDOT, or allow the claim of TxDOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. Attorneys' Fees. Guarantor agrees to pay to TxDOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by TxDOT in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. Joint and Several Liability. If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to DB Contractor and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. Defenses. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to DB Contractor under the Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of DB Contractor and any other defense to formation of the Agreement, and (c) defenses available to DB Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 7.6.2.1 of the CMA General Conditions.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT 7

FORM OF REQUEST FOR CHANGE ORDER

REQUEST FOR CHANGE ORDER NO. _____ CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

Title: _____

Contract No: _____

DB Contractor Name: _____

DESCRIPTION:

SCOPE:

REASON FOR REQUEST FOR CHANGE ORDER:

Maintenance Manager

Date

SECTION II

The total amount of this Change Order is \$ _____. Documentation supporting the Change Order is attached as Exhibits _____ through _____.

This Request for Change Order is for (check the applicable categories below):

_____ A lump sum, negotiated price Change Order (provide information in Section IIA below)

_____ A unit price/quantities Change Order (provide information in Section IIB below)

_____ A Time and Materials Change Order (provide information in Section IIC below)

Section IIA

Lump sum price is \$ _____

Section IIB

UNIT PRICE ITEM	UNIT PRICE	QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table: \$ _____

Section IIC

Summary of Request for Change Order by Categories: [Additives/(Credits)]

- A. DB Contractor Labor (construction)
 - 1. Wages \$ _____
 - 2. Labor benefits¹ (45% of A.1) \$ _____
- B. DB Contractor and Subcontractor Labor (professional services)
 - 1. Wages (Raw) \$ _____
 - 2. Labor benefits¹ (145% of B.1, which includes overhead and profit) \$ _____
 - 3. Off-duty peace officers and patrol cruisers¹ \$ _____
- C. Materials (with taxes, freight and discounts) \$ _____
- D. Equipment² (includes 15% overhead and profit) \$ _____
- E. Subcontracts (Time and Materials cost) \$ _____
- F. Utility Direct Costs \$ _____
- G. Overhead and Profit

1. Labor (25% of A.1)	\$ _____
2. Traffic Control (5% of B.3)	\$ _____
3. Materials (15% of C)	\$ _____
4. Subcontracts (5% of E)	\$ _____
5. Utility Direct Costs (5% of F)	\$ _____
H. Grand Total	\$ _____

¹ Premiums on public liability and workers' compensation insurance, Social Security and unemployment insurance taxes.

² Equipment Costs (estimated or actual) based on *Rental Rate Blue Book* equipment rental rates calculated in accordance with Section 4.5.10.3 of the CMA General Conditions.

SECTION III

Justification for Change Order with reference to the Capital Maintenance Contract:

The above three sections represent a true and complete summary of all aspects of this Request for Change Order.

The undersigned Authorized Representative of DB Contractor hereby certifies, under penalty of perjury, as follows:

(a) the above three sections represent a true and complete summary of all aspects of this Request for Change Order;

(b) the amount of compensation requested is justified as to entitlement and amount;

(c) this Request for Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the claim, event, occurrence or matter giving rise to the proposed change;

(d) the cost and pricing data forming the basis for the Request for Change Order is complete, accurate and current; and

(e) There has been no change to the disclosure of Interested Parties (as that term is defined in § 2252.908 of the Texas Government Code and in 1 T.A.C. § 46.4) that was made by DB Contractor in the most recent Form 1295 disclosure of interested parties form provided to TxDOT by DB Contractor. Alternatively, if there has been a change to the disclosure of Interested Parties or if the value of this Change Order is \$1,000,000 or greater, DB Contractor has submitted with this Change Order a current Form 1295. This certification does not apply, and submission of a current Form 1295 is not required, in the event that DB Contractor is a publicly traded business entity, or is a wholly owned subsidiary of a publicly traded business entity.

If the foregoing Request for Change Order includes claims of Subcontractors or Suppliers, the undersigned have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount.

DB Contractor Authorized Representative

Date _____

SECTION IV (Reviewed by TxDOT District Engineer)

TxDOT District Engineer (Dallas)

Date _____

Comments:

SECTION V (Reviewed by TxDOT District Engineer)

TxDOT District Engineer (Dallas)

Date _____

Comments:

SECTION VI (Reviewed by FHWA Representative, if applicable)

FHWA Project Representative

Date _____

Comments:

SECTION VII (Reviewed by TxDOT Chief Engineer)

TxDOT Chief Engineer

Date _____

Comments:

SECTION VIII (Reviewed by TxDOT Executive Director)

TxDOT Executive Director

Date _____

Comments:

EXHIBIT 8

LANE RENTAL CHARGES

1. Periods for Lane Rental Charges

The defined time periods for Lane Rental Charges are shown in Table 8-1. Lane Closures are not allowed during Peak Periods and will be subject to Lane Rental Charges. Lane Closures are only allowed during Off-Peak Periods if the Lane Closure is requested by DB Contractor and approved by TxDOT in its sole discretion.

Table 8-1: Defined Time Periods for Lane Closure

Peak Periods	Off-Peak Periods
Monday-Sunday 5:00 a.m.- 9:00 p.m. and during regional events and holidays	Monday-Sunday 9:00 p.m.-5:00 a.m.

2. Lane Rental Charge

2.1 The hourly Lane Rental Charge varies according to the following circumstances: (i) the time period(s) of the closure; and (ii) the number of lane(s) that are closed. For each Lane Closure, a determination shall be made of the applicable hourly Lane Rental Charge using the amounts shown on Table 8-2. The deduction from each monthly payment for Maintenance Services as set forth in Section 8.2 of the CMA General Conditions shall be the sum during the prior month for each Lane Closure of the applicable hourly Lane Rental Charge multiplied by the number of lanes closed multiplied by the number of hours the Lane Closure was in effect.

Table 8-2: Lane Rental Charges per Hour

Northbound/Southbound I-35E Mainlanes	Peak Periods Lane Rental Charges Per Hour
One Lane Closed	\$8,500
Two Lanes Closed	\$50,000
Three or more Lanes Closed - including Full Mainlane Closure	\$90,000
Northbound/Southbound I-35E Managed Lanes	Peak Periods Lane Rental Charges Per Hour
One or more Lanes Closed - including Full Managed Lanes Closure	\$30,700

2.2 Lane Rental Charges during the Initial Maintenance Term shall be in accordance with Table 8-2. Lane Rental Charges shall be recalculated for each subsequent Maintenance Term, escalating or reducing, as appropriate by a percentage adjustment in the CPI between the most recently published CPI and that CPI published immediately prior to the commencement of the previous Maintenance Term.

2.3 The following principles shall apply to the assessment of Lane Rental Charges:

- (a) A Lane Closure of any duration occurring entirely within one clock hour shall be recorded as a one-hour Lane Closure.
- (b) A Lane Closure of 60 minutes or shorter spanning two clock hours shall be recorded as occupying only one clock hour (that having the higher Lane Rental Charge amount).
- (c) A Lane Closure exceeding 60 minutes duration spanning two clock hours shall be recorded as a 2-hour Lane Closure. The same principle shall apply to Lane Closures of longer duration.
- (d) In the case of a Lane Closure that includes a Lane Closure in both directions of travel, Lane Rental Charges shall apply for each travel direction affected.
- (e) In the case of a Lane Closure that occurs at any time during a regional event or holiday, the Lane Rental Charges shall be assessed as Peak Period.
- (f) In the case of a Lane Closure that includes Lane Closure of one travel lane where the shoulder is utilized temporarily as a replacement travel lane, the Lane Rental Charges shall be that assigned to the shoulder.
- (g) In the case of a Lane Closure that occurs entirely during a Lowest Volume Period no Lane Rental Charge shall apply provided that at least one travel lane (on main lane, ramp or direct connect) remains open to traffic. If a total closure is implemented, Lane Rental Charges shall apply using the Lane Rental amount for a single lane closed during the Off-Peak Period.

3. Exceptions to Lane Rental Charge

3.1 Lane Rental Charges will not be assessed if the Lane Closure is due to any of the following:

- (a) Lane Closure due to a TxDOT-Directed Change;
- (b) a Lane Closure specified, caused or ordered by, and continuing only for so long as required by, TxDOT or any Governmental Entity, or a Utility Owner performing work under a permit issued by TxDOT;
- (c) a Lane Closure required due to a Force Majeure Event;
- (d) a Lane Closure required due to damage to the Project as in Section 4.5.11.3 of the CMA General Conditions;
- (e) a Lane Closure required due to an Incident; or
- (f) a Lane Closure required solely for the hazard mitigation of a Category 1 Defect and persisting for no longer than the Defect Repair Period.

3.2 For each event set forth above, the Lane Closure will be exempt from Lane Rental Charges only if DB Contractor is using commercially reasonable efforts to: (a) mitigate the impact of such event, (b) reopen the affected segment to traffic, and (c) minimize the impact of DB Contractor's activities and the Lane Closure to traffic flow.

3.3 DB Contractor shall not be assessed Lane Rental Charges where rolling lane closures are implemented for the purpose of Maintenance Services above lane(s) if the rolling lane closure is less than 15 minutes in duration during the Off-Peak Periods or Lowest Volume Periods and provided that the queued traffic can be dispersed within 10 minutes and returned to the same Level of Service as existed prior to the commencement of the

Maintenance Services. If the traffic queue resulting from the Maintenance Services cannot be dispersed within 10 minutes, then Lane Rental Charges shall be assessed. Lane Rental Charges shall also be assessed if any rolling lane closure is greater than 15 minutes in duration or is for any purposes other than overhead work.

4. Lane Rental Charges for Failure to Repair Category 1 Defect

If DB Contractor fails to properly identify and timely address the hazard mitigation for a Category 1 Defect as described in Section 9.4.5 of the CMA Specification, then notwithstanding that the affected travel lane(s) remain open to traffic TxDOT shall have the right to assess a Lane Rental Charge for a Lane Closure for the relevant travel lane until the hazard to Users has been mitigated.

5. Acknowledgments Regarding Lane Rental Charges

DB Contractor acknowledges and agrees that Lane Rental Charges are reasonable in order to compensate TxDOT for damages it will incur as a result of such Lane Closures. Such damages include (a) loss of use, enjoyment and benefit of the Project and connecting TxDOT transportation facilities by the general public, (b) 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 (c) additional costs of administering this Capital Maintenance Contract (including engineering, legal, accounting, overhead and other administrative costs). DB 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 and such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances as of the Effective Date.

EXHIBIT 9

NOT USED

EXHIBIT 10

KEY SUBCONTRACTORS

[To Be Inserted From Proposal]

EXHIBIT 11

KEY PERSONNEL

(See Attached)

EXHIBIT 12

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representative(s): TxDOT's Executive Director, the Dallas District Engineer and their designees

DB Contractor's Authorized Representative(s)

[Name] – [Position]

[Name] – [Position]

[Name] – [Position]

EXHIBIT 13

DISPUTES RESOLUTION REQUIREMENTS

1. **Dispute Resolution Procedures.** If the procedures set forth in Sections 4.7 and 4.8 of the CMA General Conditions fail to resolve an issue and DB Contractor elects to pursue a formal Dispute with TxDOT, the Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112 and the DRP Rules, as the same may be amended from time to time. This Exhibit 13 shall not apply to: (a) Claims that are not actionable against TxDOT by DB Contractor on its own behalf or on behalf of any of its Subcontractors in accordance with Section 2 of this Exhibit 13; (b) Claims arising solely in tort; (c) Claims for indemnity under Section 6.9 of the CMA General Conditions; (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 Utility Agreement provides for resolution of claims as set forth in this Exhibit 13); (g) any Dispute based on remedies expressly created by statute; or (h) any Dispute that is actionable only against a Surety.

2. **Additional Requirements for Subcontractor Disputes.** For purposes of this Exhibit 13, a “Subcontractor Dispute” shall include any Dispute by a Subcontractor, including any pass-through claims by a lower tier Subcontractor, against DB Contractor that is actionable by DB Contractor against TxDOT and arises from the Maintenance Services, materials or other services provided or to be provided under the CMC Documents. If DB Contractor determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:
 - a. DB Contractor shall identify clearly in all submissions pursuant to this Exhibit 13, that portion of the Dispute that involves a Subcontractor Dispute.
 - b. Failure of DB Contractor to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related demand by DB Contractor, as provided hereunder, shall constitute a release and discharge of TxDOT by DB Contractor on account of, and with respect to, such Subcontractor Dispute.
 - c. DB Contractor shall require in all Subcontracts that all Subcontractors of any tier:
 - i. agree to submit Subcontractor Disputes to DB Contractor in a proper form and in sufficient time to allow processing by DB Contractor in accordance with this Exhibit 13;
 - ii. agree to be bound by the terms of this Exhibit 13 to the extent applicable to Subcontractor Disputes;
 - iii. agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Exhibit 13 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against DB Contractor;
 - iv. agree that any Subcontractor Dispute brought against a Surety, that also is actionable against TxDOT through DB Contractor, shall be stayed until completion of all steps required under this clause (c); and

- v. 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 DB Contractor.
3. **Mediation.** DB 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 for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation. DB Contractor and TxDOT shall share equally the expenses of the mediation. If any Dispute has been referred to mediation for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party shall have the right, on or after the 31st day, to cease participating in such mediation. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Exhibit 13 for processing a Dispute are tolled, day for day, during mediation.
4. **Subsequent Proceedings.**
 - a. **Exclusive Jurisdiction and Venue.** The Parties agree that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, which is permitted to be brought by a Party in court arising out of the CMC Documents, shall be the district courts of Travis County, Texas.
 - b. **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.
5. **Continuation of Disputed Maintenance Services.** At all times during the procedures for resolving Disputes set forth in this CMC, DB Contractor and all Subcontractors shall continue with the performance of the Maintenance Services and their obligations, including any disputed Maintenance Services or obligations, diligently and without delay, in accordance with this CMC, except to the extent enjoined by order of a court or otherwise approved by TxDOT in its sole discretion. DB Contractor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Maintenance Services even if DB Contractor's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Maintenance Services, the Parties shall continue to comply with all provisions of the CMC Documents, the Project Management Plan, the Maintenance Management Plan, the Governmental Approvals and applicable Law.
6. **Records Related to Claims and Disputes.** Throughout the course of any Maintenance Services that are the subject of any Dispute that is the subject of the procedures for resolving Disputes in this CMC, DB Contractor shall keep separate and complete records of any extra costs, expenses, and/or other monetary effects relating to the disputed Maintenance Services, and shall permit TxDOT access to these and any other records needed for evaluating the Dispute. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such disputed Maintenance Services (or for any longer period required under any other applicable provision of the CMC Documents).
7. **Interest.**
 - a. This Section 7 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.
 - b. In the event a DB Contractor elects to pursue a formal Dispute with TxDOT under this Exhibit 13, TxDOT shall notify DB 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 Texas Prompt Payment Act, Government Code, Chapter 2251.

8. **Attorneys' Fees.** A Party shall pay the attorneys' fees of the other party for Disputes brought pursuant to this Exhibit 13 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.

EXHIBIT 14

MAINTAINED ELEMENTS

ELEMENT CATEGORY	MAINTAINED ELEMENT	RESPONSIBILITY	
		DB CONTRACTOR	OTHERS
1) PAVEMENT GENERAL			
1.1	Travel Lane Pavement Condition	X	
1.2	Travel Lane Ride Quality	X	
1.3	Discontinuities in localized areas and bridge approaches	X	
1.4	Edge drop-offs and other edge defects	X	
1a) PAVEMENT (ASPHALT)			
1a.1	Ruts	X	
1a.2	Cracking	X	
1a.3	Raveling	X	
1a.4	Flushing / bleeding	X	
1b) PAVEMENT (CRCP)			
1b.1	Spalled cracks	X	
1b.2	Popouts and punchouts	X	
1b.3	Longitudinal cracking	X	
1c) PAVEMENT (JCP)			
1c.1	Damaged joints and cracks	X	
1c.2	Slabs with cracks in multiple directions	X	
1c.3	Slabs with longitudinal cracks	X	
2) DRAINAGE			
2.1	Non-bridge class culverts, Pipes, ditches, channels, catch basins, inlets, manholes and outfalls	X	
2.2	Drainage treatment devices	X	
2.3	Discharge systems	X	
2.4	Erosion	X	
2.5	Channels and ditches - Permanent Erosion Control Measures	X	
3) STRUCTURES			
3.1	Structure components	X	
3.2	Load Ratings	X	
3.3	Gantries and High-masts	X	
3.4	Access Points	X	
3.5	Retaining Walls	X	
3.6	MSE Walls	X	
4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS			

ELEMENT CATEGORY	MAINTAINED ELEMENT	RESPONSIBILITY	
		DB CONTRACTOR	OTHERS
4.1	Pavement Markings	*	X
4.2	Raised Reflective Markings	*	X
4.3	Delineators and Markers	*	X
5) CURBS, GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS			
5.1	Curbs		X
5.2	Guardrails and Safety Barriers		X
5.3	Impact Attenuators		X
6) TRAFFIC SIGNS			
6.1	General - All signs		X
6.2	Warning and regulatory signs		X
7) TRAFFIC SIGNALS			
7.1	General		X
7.2	Soundness		X
7.3	Identification Marking		X
7.4	Pedestrian elements and vehicle detectors		X
8) LIGHTING			
8.1	Roadway Lighting - General		X
8.2	Sign Lighting		X
8.3	Aesthetic Lighting		X
8.4	Electrical Supply		X
8.5	Access Panels		X
8.6	High Mast Lighting		X
9) FENCES, WALLS AND SOUND ABATEMENT			
9.1	Design and Location		X
9.2	Construction		X
9.3	Operation		X
10) ROADSIDE MANAGEMENT			
10.1	Vegetated Areas - Except landscaped areas - General		X
10.2	Landscaped Areas		X
10.3	Fire Hazards		X
10.4	Trees, Bushes and Ornamentals		X
10.5	Wetlands		X
10.6	Sidewalks and pedestrian curb ramps		X
11) REST AREAS AND PICNIC AREAS			
11.1	Rest areas and picnic areas		X
12) EARTHWORKS, EMBANKMENTS AND CUTTINGS			
12.1	Slope Failure	X	
12.2	Slopes - General	X	
12.3	Slopes - Erosion	X	
12.4	Slopes - Permanent Erosion Control Measures	X	

ELEMENT CATEGORY	MAINTAINED ELEMENT	RESPONSIBILITY	
		DB CONTRACTOR	OTHERS
13) ITS EQUIPMENT			
13.1	ITS Equipment - Maintenance		X
13.2	Dynamic Message Sign Equipment		X
13.3	CCTV Equipment		X
13.4	Vehicle Detection Equipment		X
14) TOLLING FACILITIES AND BUILDINGS			X
15) AMENITY			
15.1	Graffiti		X
15.2	Animals		X
15.3	Abandoned vehicles and equipment		X
16) SNOW AND ICE CONTROL			
16.1	Travel lanes		X
17) INCIDENT RESPONSE			
17.1	General		X
17.2	Hazardous Materials		X
17.3	Structural Assessment		X
17.4	Temporary and permanent remedy		X
18) CUSTOMER RESPONSE			
18.1	Response to inquiries		X
18.2	Customer Contact Line		X
19) SWEEPING AND CLEANING			
19.1	Obstructions and debris		X
19.2	Sweeping		X
19.3	Litter		X

*DB Contractor is responsible for replacement of striping and markers associated with their renewal of pavement.

EXHIBIT 15

MAINTENANCE LIMITS

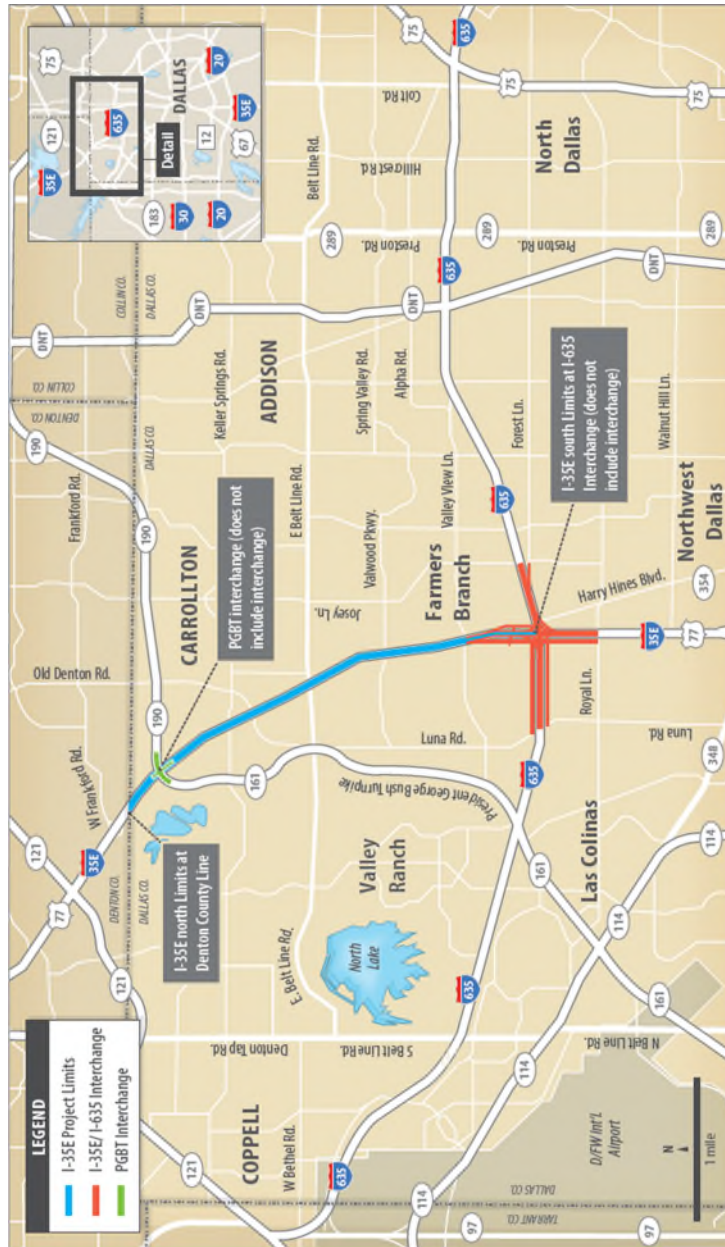


EXHIBIT 16

DB CONTRACTOR OBLIGATIONS RELATED TO PROJECT-SPECIFIC THIRD-PARTY AGREEMENTS

All DB Contractor obligations related to Third Party Agreements have been incorporated, as appropriated, into the requirements found in the CMA Specification.