

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

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

AAP	AASHTO Accreditation Program
AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ACM/AVI	Automatic Coin Machine / Automatic Vehicle Information
ACORD	Association for Cooperative Operations Research and Development
ACT	Antiquities Code of Texas
ADAAG	Americans with Disabilities Act Accessibility Guidelines
ADT	Average Daily Traffic
AISC	American Institute of Steel Construction, Inc
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATT/AVI	Attendant / Automatic Vehicle Identification
AUI	Advanced Utility Installation
AVI	Automatic Vehicle Identification
AWS	American Welding Society
BI	Base Index
BMP	Best Management Practice
BO	Biological Opinion
CADD	Computer Aided Drafting and Design
CCTV	Closed Circuit Television
CDA	Comprehensive Development Agreement
CD-R	Compact Disc Recordable
CD ROM	Compact Disc Read Only Memory
CEPP	Comprehensive Environmental Protection Program
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CFR	Code of Federal Regulations
CMP	Construction Monitoring Plan
CO	Carbon Monoxide

CQAF	(Independent) Construction Quality Acceptance Firm
CQAM	(Independent) Construction Quality Acceptance Manager
CQP	Construction Quality Program
CRCP	Continuous Reinforced Concrete Pavement
CSJ	Control Section Job
CSTM	Materials and Pavements Section of TxDOT Construction Division
CWA	Clean Water Act
CZP	Contributing Zone Plan
DBE	Disadvantaged Business Enterprise
DSS	Decent Safe and Sanitary (dwelling)
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
EDMS	Electronic Data Management System
EMR	Environmental Monitoring Report
EMS	Environmental Management System
ENR CCI	Engineering News Record 20 City Construction Cost Index
EP	Extraction Procedure (toxicity)
EPD	Escrowed Proposal Documents
EPIC	Environmental Permits Issues and Commitments
EPTP	Environmental Protection Training Plan
ESA	Endangered Species Act of 1973, as amended
ESAL	Equivalent Single-Axle Load
ET	Environmental Team
ETCS	Electronic Toll Collection System
FAPG	Federal-Aid Policy Guide
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FM	Farm to Market Road
FOB	Field Operation Building
FONSI	Finding of No Significant Impact
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
GIS	Geographical Information System
HEC	Hydraulic Engineering Circular
HVAC	Heating Ventilation and Air Conditioning
ID	Identification
IH	Interstate Highway

IRI	International Roughness Index
ISDN	Integrated Services Digital Network
ISI	Initial Serviceability Index
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Traffic Sub-system
IVHS	Intelligent Vehicle Highway System
IWP	Investigative Work Plan
JSA	Job Safety Analysis
LRFD	Load and Resistance Factor Design
LSLs	Licensed State Land Surveyor
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSE	Mechanically Stabilized Earth
MUAA	Master Utility Adjustment Agreement
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historical Preservation Act
NICET	National Institute for Certified Engineering Technicians
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NTP	Notice to Proceed
OSHA	Occupational Safety and Health Administration
OVT	Owner Verification Tests
PA	Programmatic Agreement
PCO	Potential Change Order
PCS	Pavement Condition Survey
PH	Percent Hydrogen
PM	Project Manager
PMP	Project Management Plan
PSQCM	Professional Services Quality Control Manager
PUA	Possession and Use Agreement

PVC	Polyvinyl Chloride
QC / QRP	Quality Control / Quality Review Program
QMP	Quality Management Plan
QS	Qualifications Submittal
RCP	Reinforced Concrete Pipe
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RHA	Rivers and Harbors Act
ROE	Right of Entry
ROW	Right of Way
ROWIS	Right of Way Information System
ROW PM	Right of Way Project Manager
RPLS	Registered Professional Land Surveyor
RTP	Ramp Toll Plazas
SDPP	Special Deposit and Possession Procedure
SEC	Securities and Exchange Commission
SF	Square Foot
SH	State Highway
SHPO	State Historic Preservation Officer
SI	System Integrator
SSCB	Single Slope Concrete Barrier
SSTR	Single Slope Traffic Railing
SUE	Subsurface Utility Engineering
SW3P	Storm Water Pollution Prevention Plan
TAS	Texas Accessibility Standards
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TCLP	Toxicity Characteristic Leaching Procedure
THC	Texas Historical Commission
TIM/OS	Turnpikes Intelligent Management / Operation System
TL	Testing Level
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TP	Technical Provisions
TPDES	Texas Pollutant Discharge Elimination System
TSI	Terminal Serviceability Index
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
UAP	TxDOT Utility Accommodation Policy

UCS	Utility Coordination Specialist
UDC	Utility Design Coordinator
UM	Utility Manager
UPA	Utility and Personnel Access-way
UPS	Uninterruptible Power Supply
US	United States Highway
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
USPAP	Uniform Standard of Professional Appraisal Practices
UST	Underground Storage Tank
VE	Value Engineering
VMS	Variable Message Sign
WBS	Work Breakdown Structure

Act shall have the meaning set forth in Recital A of the Capital Maintenance Agreement.

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

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

Affiliate shall mean:

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

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

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

Appeal Period has the meaning set forth in Section 16.3.5.1(a) of the Capital Maintenance Agreement.

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

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

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

Authorized Representative shall have the meaning set forth in Section 18.5.1 of the Capital Maintenance Agreement.

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

Business Day shall mean days on which TxDOT is officially open for business.

Capital Asset Replacement Work shall mean the Work described in Section 3.2 of the Capital Maintenance Agreement.

Capital Asset Replacement Work Submittal shall mean the submittal described in Section 3.2.2 of the Capital Maintenance Agreement.

Capital Maintenance Agreement or **CMA** shall mean that certain Capital Maintenance Agreement executed by TxDOT and Maintenance Contractor providing for Maintenance Contractor to perform, at TxDOT's sole option, certain Maintenance Services for the Project, to which this Exhibit 1 is attached, including any and all amendments thereto.

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

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

CDA Documents shall have the meaning set forth in Section 1.2.1 of the Comprehensive Development Agreement.

CMA Documents shall have the meaning set forth in Section 1.2.1 of the Capital Maintenance Agreement.

Change in Law shall mean: (a) the enactment, adoption, modification, repeal or other change in any Law that occurs after the Proposal Due Date, including any change in the judicial or administrative interpretation of any Law, or (b) adoption of any new Law, which in each case is materially inconsistent with Laws in effect on the Proposal Due Date. The term "**Change in Law**" excludes: (i) any such change in or new Law which was passed or adopted but not yet effective as of the Proposal Due Date and (ii) any change in or new Law relating to Maintenance Contractor's general business operations, including licensing and registration fees, income taxes, gross receipts taxes, social security, medicare, unemployment and other payroll-related taxes.

Change Order shall mean a written order issued by TxDOT to Maintenance Contractor delineating changes in the Maintenance Services within the general scope of the Capital Maintenance Agreement Documents or in the terms and conditions of the CMA Documents in accordance with Section 10 of the Capital Maintenance Agreement and establishing, if appropriate, an adjustment to the Maintenance Price or a time extension.

Claim shall mean: (a) a demand by Maintenance Contractor, which is or potentially could be disputed by TxDOT, for a time extension under the CMA Documents or payment of money or damages from TxDOT to Maintenance Contractor or (b) a demand by TxDOT, which is or potentially could be disputed by Maintenance Contractor, for payment of money or damages from Maintenance Contractor to TxDOT.

Code shall mean Chapter 223 of the Texas Transportation Code.

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

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

Conflict of Interest means, with respect to any individual who is or is proposed to be a Disputes Board Member, any one or more of the following:

(a) Such individual is currently or was in the past employed by any member of the Conflicts Group, except that service as a member of other disputes review boards on other contracts or retention as an independent consultant on other contracts does not create a Conflict of Interest so as to preclude an individual from serving as a Disputes Board Member;

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

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

(d) Such individual shall not know of any reason, including but not limited to the existence of any of the Conflicts of Interest as described in this definition, why he or she cannot be impartial in resolving Disputes; and

(e) In addition to the Conflicts of Interest described above, any other circumstance arising out of such individual's existing or past activities, business interests and/or contractual relationships with any member of the Conflicts Group such that such individual is or is reasonably likely to be unable to render a Disputes Board Decision impartially or such individual's objectivity in performing his or her role on the Disputes Board is or is reasonably likely to be impaired.

Conflicts Group means a Party, a Party's Affiliates and its and their agents, contractors, subcontractors or suppliers and any other Person that is a party to a Contract.

Contract means any agreement, and any supplement or amendment thereto, by Maintenance Contractor with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a

Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term "Contract" excludes Utility Agreements.

Cost and Schedule Proposal shall mean Maintenance Contractor's proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with Section 10.2.1 of the Capital Maintenance Agreement.

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

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

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

- (i) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of users of the Project;
- (ii) a structural deterioration of the affected Maintained Element or any other part of the Project affected by it;
- (iii) damage to the property or equipment of TxDOT or a third party;
- (iv) damage to the environment;
- (v) failure of the affected Maintained Element to meet a Performance Requirement; or
- (vi) failure of a Maintained Element to meet the Target for a measurement record as set forth in the columns headed "Target" and "Measurement Record" in the Performance and Measurement Table.]

Design Documents shall mean all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the performance of design services required under the Capital Maintenance Agreement in accordance with the CMA Documents, the Governmental Approvals and applicable Law.

Developer shall mean NorthGate Constructors, J.V., a Texas joint venture, together with its successors and assigns.

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

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

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

Directive Letter shall have the meaning set forth in Section 10.1.1.2 of the Capital Maintenance Agreement.

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

Dispute Resolution Procedures means collectively, the procedures established under Sections 16.3.4 and 16.3.5 of the Capital Maintenance Agreement and in Section 5 of the Disputes Board Agreement and the applicable portions of Section 201.112 of the Code and the DRP Rules. None of the Informal Resolution Procedures are included in the Dispute Resolution Procedures.

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

Disputes Board Agreement means the agreement in the form attached to the Capital Maintenance Agreement as Exhibit 15.

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

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

Disputes Board Error has the meaning set forth in Section 16.3.5.2 of the Capital Maintenance Agreement.

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

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

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

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

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

Draw Request shall mean a Draw Request and Certificate in the form of Exhibit 7 to the Capital Maintenance Agreement.

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

Effective Date shall mean the date of the Capital Maintenance Agreement or such other date as shall be mutually agreed upon in writing by TxDOT and the Maintenance Contractor.

Element Category shall mean any of the element categories set forth and numbered 1 to 19 in Attachment 1 to Exhibit 2.

Emergency shall mean, in connection with the Maintenance Services, any unforeseen event affecting the Project, whether directly or indirectly which occurs on or originates from the Project or Project ROW and: (a) causes or has the potential to cause disruption to the free flow of traffic on the Project or a threat to the safety of the public or workers; (b) is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the environment or to Adjacent Work; or (c) is recognized by the Texas Department of Public Safety as an emergency.

Emergency Services shall mean, in connection with the Maintenance Services, law enforcement, ambulance service and other similar services from agencies with whom Maintenance Contractor establishes protocols for incident response, safety and security procedures, as set forth in the Incident Management Plan.

Environmental Approvals shall mean all Governmental Approvals arising from or required by any Environmental Law in connection with the Project.

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

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

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

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;

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

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

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

Equivalent Single Axle Load (ESAL) shall mean an 18,000 pound single axle load.

Error shall mean an error, omission, inconsistency, inaccuracy, deficiency or other defect.

Escrowed Proposal Documents or **EPDs** shall have the meaning set forth in Section 17.1 of the Capital Maintenance Agreement.

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

Event of Default shall have the meaning set forth in Section 12.3.1 of the Capital Maintenance Agreement.

Expendable Materials shall mean: (a) tangible personal property that loses its distinct and separate identity when incorporated into real property (examples include framing lumber, bricks, steel, re-bar, concrete) and (b) consumable items, defined as

nondurable tangible personal property that is used to improve real property and that, after being used once for its intended purpose, is completely used or destroyed so that it has no salvage value (examples include non-reusable concrete forms, non-reusable drop cloths, barricade tape, natural gas, and electricity).

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

Final Order means the order issued by the Executive Director pursuant to Section 16.3.5.1 or 16.3.5.4 of the Capital Maintenance Agreement.

Final Order Implementing Decision has the meaning set forth in Sections 16.3.5.1(b) and 16.3.5.4(a)(ii) of the Capital Maintenance Agreement.

Final Order Vacating Decision has the meaning set forth in Section 16.3.5.4(a)(i) of the Capital Maintenance Agreement.

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

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

- (a) Any earthquake, tornado, hurricane or other natural disaster that causes direct physical damage to the Project;
- (b) Any epidemic in the Dallas-Fort Worth area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) Any Change in Law which (1) requires Maintenance Contractor to obtain a new major State or federal environmental approval not previously required for the Project, (2) results in an increase in Maintenance Contractor's costs directly attributable to the Change in Law of at least \$500,000, or (3) specifically targets the Project or Maintenance Contractor;

- (e) Any spill of Hazardous Material by a third party which occurs after Maintenance NTP1 and is required to be reported to a Governmental Entity, and which renders use of the roadway or construction area unsafe absent assessment, containment, and/or remediation;
- (f) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Maintenance Services, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any member of the Maintenance Contractor-Related Entities;
- (g) Total failure of a bridge such that it requires replacement, except to the extent arising out of, related to or caused by, the act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any Maintenance Contractor Related-Entity or Developer-Related Entity; and
- (h) Malicious or other acts by a third party intended to cause loss or damage or other similar occurrence, including vandalism or theft.

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

- (i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;
- (ii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iii) the suspension, termination, interruption, denial or failure to obtain, nonrenewal or change in any Governmental Approval, except for any such matter falling within the scope of clause (c) or clause (e) above;
- (iv) any delay or cost risk for which coverage is to be provided through insurance required under the Capital Maintenance Agreement or by Law; and
- (v) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (g) above.

General Inspection means an inspection of Maintained Elements to identify Defects and assess asset condition. Results of a General Inspection shall be used to develop a renewal work schedule, to maintain asset condition and service levels and to develop

programs of maintenance and renewal work to minimize the effect of Maintenance Services on Users.

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

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

Governmental Approval shall mean any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Maintenance Services or the Project, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner.

Governmental Entity shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than TxDOT.

Guaranteed Obligations shall have the meaning set forth in the Guaranty.

Guarantor shall mean each of the entities which provided a guarantee in the form of Exhibit 9 of some or all of the obligations of Maintenance Contractor under the Capital Maintenance Agreement.

Guaranty shall mean each guarantee executed by a Guarantor guaranteeing some or all of the obligations of Maintenance Contractor under the Capital Maintenance Agreement.

Hazardous Materials shall mean any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. The term "**Hazardous Materials**" includes the following:

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

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

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

Hazardous Materials Management Plan shall mean shall mean the plan prepared by Maintenance Contractor for the safe handling, storage, treatment and/or disposal of Hazardous Materials both within and outside the Project ROW, as more particularly described in Section 2200 of Exhibit 2.

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

Incident Management Plan shall mean the Maintenance Contractor's plan for detection and response to incidents or emergencies pursuant to Section 0205 of Exhibit 2.

Indemnified Parties shall mean TXDOT, the State, the Texas Transportation Commission, FHWA, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

Informal Resolution Procedures has the meaning set forth in Section 16.3.2 of the Capital Maintenance Agreement.

Initial Maintenance Commencement Date shall have the meaning set forth in Section 4.1 of the Capital Maintenance Agreement.

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

Key Maintenance Personnel shall mean those individuals and personnel of the Maintenance Contractor filling the role and job description of:

1. Maintenance Manager
2. Maintenance QC Manager

Lane Closure shall mean full or partial closure of any traffic lane in any portion of the Project and for any duration, including main lanes, ramps, direct connectors, frontage roads and cross roads.

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

Letter of Credit shall have the meaning set forth in Section 7.2 of the Capital Maintenance Agreement.

LIBOR shall mean the offered rate per annum (rounded up to the next highest one one-thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Telerate Page 3750 at approximately 11:00 A.M., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market. All interest based on LIBOR shall be calculated on the basis of a 360-day year for the actual days elapsed.

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

Liquidated Damages for Lane Closures shall have the meaning set forth in Section 12.4 of the Capital Maintenance Agreement.

Losses shall mean any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Capital Maintenance Agreement)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Maintained Element shall mean an element set forth in Attachment 2 to the Maintenance Specification.

Maintenance Contractor shall mean NorthGate Constructors, J.V., a Texas joint venture, together with its successors and assigns.

Maintenance Contractor Default shall have the meaning set forth in Section 12.1 of the Capital Maintenance Agreement.

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

Maintenance Contractor Release of Hazardous Materials means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Maintenance Contractor-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Maintenance Contractor-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Maintenance Contractor-Related Entity in violation of the requirements of the CMA Documents or any applicable Law or Governmental Approval.

Maintenance Management Plan shall mean the plan prepared by Maintenance Contractor and approved by TxDOT as set forth in Section 5.5 of the Capital Maintenance Agreement.

Maintenance Manager means the Maintenance Contractor's Project manager.

Maintenance NTP1 shall mean a written notice issued by TxDOT to Maintenance Contractor authorizing Maintenance Contractor to proceed with the Maintenance Services for the Initial Maintenance Term and establishing the date of commencement of the Initial Maintenance Term.

Maintenance NTP2 shall mean a written notice issued by the TxDOT to Maintenance Contractor authorizing Maintenance Contractor to proceed with the Maintenance Services for the Second Maintenance Term and establishing the date of commencement of the Second Maintenance Term.

Maintenance NTP3 shall mean a written notice issued by TxDOT to Maintenance Contractor authorizing Maintenance Contractor to proceed with the Maintenance

Services for the Third Maintenance Term and establishing the date of commencement of the Third Maintenance Term.

Maintenance Payment Bond shall mean the payment bond delivered by Maintenance Contractor in the form attached to the Capital Maintenance Agreement as Exhibit 7.

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

Maintenance Price shall have the meaning set forth in Section 8.1.1 of the Capital Maintenance Agreement.

Maintenance QC Manager means the Maintenance Contractor's quality control manager who is responsible to independently oversee and perform quality control for the Maintenance Services in accordance with the Maintenance QCP.

Maintenance QCP shall have the meaning set forth in Section 5.6 of the Capital Maintenance Agreement.

Maintenance Records shall mean all data in connection with maintenance of the Project including (a) all inspection and inventory records, whether generated by Developer or a third party, (b) any communication to and/or from TxDOT, the Independent Engineer or other third party, and (c) any information system (as may be introduced or amended by TxDOT from time to time) in connection with maintenance of the Project that TxDOT requires Developer to use or operate.

Maintenance Services shall mean all of the services and obligations required to be performed by Maintenance Contractor under the CMA Documents, including all required maintenance, repairs, rehabilitation and replacements of the Maintained Elements.

Maintenance Specification shall mean Exhibit 2 of the Capital Maintenance Agreement

Maintenance Term shall mean the Initial Maintenance Term, Second Maintenance Term or Third Maintenance Term, as appropriate.

Maintenance Transition shall mean the terms, conditions, requirements and procedures governing the conditions in which Maintenance Contractor is to deliver the Project upon expiration or termination of the Capital Maintenance Agreement, as set forth in Section 0208 of Exhibit 2.

Maintenance Transition Plan shall have the meaning set forth in Section 3.6 of the Capital Maintenance Agreement.

Major Subcontract shall mean a Subcontract in excess of \$250,000.

Major Subcontractor shall mean a Subcontractor whose contract with the Maintenance Contractor is in excess of \$250,000.

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

(a) Any *ex parte* communication or discussion between any Disputes Board Member and either Party (or a member of the Conflicts Group on behalf of either Party) or other *ex parte* communication prohibited under R-10 of the Commercial Rules;

(b) Any offer, solicitation, discussion, agreement or understanding between any Disputes Board Member and any Party or any other Person regarding (i) remuneration conditioned upon the nature or result of a certain Disputes Board Decision or (ii) employment of the Disputes Board Member by any member of the Conflicts Group following termination of such member's services on the Disputes Board, except for employment as a member of a subsequent Disputes Board or similar disputes board for a project other than the Project;

(c) The rendition of advice or consultative services to either Party or member of the Conflicts Group; or

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

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

Nonconforming Work shall mean Maintenance Services that do not conform to the requirements of the CMA Documents, the Governmental Approvals or applicable Law.

Non-maintained Element shall mean an element not set forth in Attachment 2 to the Maintenance Specification.

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

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

Off Peak Times shall mean all times not defined as Peak Times.

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

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

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

Peak Times shall have the meaning set forth in Attachment 6 to Exhibit 2 of the Capital Maintenance Agreement.

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

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

Pre-existing Hazardous Materials shall mean Hazardous Materials that meet both of the following criteria:

- (a) The Hazardous Materials are in, on or under the Project ROW (excluding Developer-Designated ROW) as of the Proposal Due Date; and
- (b) The Hazardous Materials are not the result of a Release of Hazardous Materials by any Maintenance Contractor-Related Entity.

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

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

Project Schedule shall have the meaning set forth in Section 0202 of Exhibit 2.

Proposal shall mean Developer's response to the RFP.

Proposal Due Date shall mean July 15, 2008, the deadline for submission of the Proposal to TxDOT.

Protection in Place shall mean any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Recognized Environmental Condition shall have the meaning set forth in ASTM E-1527-00.

Reference Information Documents shall mean those documents listed in Exhibit 1 to the Capital Maintenance Agreement. Except as expressly provided in the CMA Documents, the Reference Information Documents are not considered CMA Documents and were provided to Maintenance Contractor for informational purposes only and without representation or warranty by TxDOT.

Registered Professional Engineer shall mean a person who is duly licensed and registered by the Texas Board of Professional Engineers to engage in the practice of engineering in the State.

Reimbursable Hazardous Materials Costs shall mean Maintenance Contractor's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 10.8.2 of the Capital Maintenance Agreement, provided that the 25% and 145% mark-ups allowed under Section 10.7.1 shall be reduced to 12.5% and 130%, and the 15% mark-up allowed under Section 10.7.2 shall be reduced to 7.5%.

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

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

Request for Change Proposal shall mean a written notice issued by TxDOT to Maintenance Contractor under Section 10.2.1 of the Capital Maintenance Agreement, advising Maintenance Contractor that TxDOT may issue a TxDOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant to Section 10.2.1 of the Capital Maintenance Agreement.

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

Request for Proposals (RFP) shall mean the Request for Proposals issued by TxDOT on March 28, 2008 with respect to the Project, including all exhibits, forms, and attachments thereto and any subsequent addenda.

RFP Documents shall mean all of the information and materials supplied to Developer in connection with the issuance of the RFQ, the RFP Documents, including Instructions to Proposers, the CDA Documents, the CMA Documents and the Reference Information Documents and any addenda issued in connection therewith.

Right of Entry Agreement shall mean a written agreement between the record title owner and Developer granting TxDOT, Developer, Maintenance Contractor or assignees permission to enter the applicable parcel.

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

Scheduled Substantial Completion Deadline shall mean the scheduled date of Substantial Completion established by Developer's notice to TxDOT pursuant to Section 20.1.3 of the Comprehensive Development Agreement.

Schematic Design shall mean the roadway schematic attached as Appendix 3 to CDA Exhibit 2

Schematic ROW shall mean any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the proposed ROW lines established by TxDOT to delineate the outside limits of the Schematic Design, as such limits may be adjusted from time to time in accordance with the CDA Documents. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

Second Maintenance Term shall have the meaning set forth in Section 4.2.1 of the Capital Maintenance Agreement.

Service Line shall mean: (a) a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, or (b) any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a local agency's lighting and electrical systems, traffic control systems, communications systems and/or irrigation systems.

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

Specialist Inspection means an inspection requiring specialist qualifications or equipment as specified in Section 1909 of the Maintenance Specification.

State shall mean the State of Texas.

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

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

Subcontractor Dispute shall have the meaning set forth in Section 16.4 of the Capital Maintenance Agreement.

Substantial Completion shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.1.2 of the Comprehensive Development Agreement, as and when confirmed by TxDOT's issuance of a certificate in accordance with Section 20.1.5 of the Comprehensive Development Agreement.

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

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

Systems Integrator shall mean the contractor, under separate contract to TxDOT, that shall design, supply, install, test and commission the ETCS for the Project, including scanners, readers, loops, enforcement mechanisms and manual and automated cash collection systems.

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

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

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

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

Third Party Claims shall mean any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

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

Time and Materials Change Order shall mean a Change Order issued in accordance with Section 10.7 of the Capital Maintenance Agreement.

Traffic Management Plan shall mean the plan prepared by Maintenance Contractor for the management of traffic as described in Section 1802 of Exhibit 2.

TxDOT shall mean the Texas Department of Transportation, and any entity succeeding to the powers, authorities and responsibilities of TxDOT invoked by or under the CDA Documents.

TxDOT-Directed Changes shall mean any changes in the scope of the Maintenance Services or terms and conditions of the Maintenance Agreement Documents (including changes in the standards applicable to the Maintenance Services), which TxDOT has directed Developer to perform as described in Section 10.2 of the Capital Maintenance Agreement.

TxDOT's Recoverable Costs means:

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

Unplanned Capital Maintenance shall mean Work consisting of replacement or reconstruction of an asset that, at the Effective Date the Developer does not anticipate carrying out during the term of the CMA.

Useful Life shall mean, for a Maintained Element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the Maintained Element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

User(s) means the registered owner of a vehicle traveling on the Project or any portion thereof.

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

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

Utility Adjustment Work shall mean all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by Developer or by the Utility Owners. The term also includes any reimbursement of Utility Owners which is Developer's responsibility pursuant to Section 6.8 of the Comprehensive Development Agreement. Any Utility Adjustment Work furnished or performed by Developer is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Owner shall mean the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Warranty(ies) shall have the meaning set forth in Section 9.1 of the Capital Maintenance Agreement.

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

EXHIBIT 2
MAINTENANCE SPECIFICATION

0100 GENERAL

0101 General requirements

- A. Maintenance Contractor shall be responsible for and shall carry out Maintenance Services for the Maintained Elements set forth in Exhibit 2, Attachment 2 throughout the Maintenance Term such that each Maintained Element set forth in Exhibit 2, Attachment 2 shall comply with the Performance Requirements set forth in Attachment 1 to this Maintenance Specification.
- B. In carrying out the Maintenance Services, Maintenance Contractor shall take into account and comply with the requirements of this Maintenance Specification.
- C. The limits for Maintenance Services are set forth in Attachment 3 to this Maintenance Specification.

0200 PROJECT MANAGEMENT

0201 General Requirements

- A. Maintenance Contractor shall establish and maintain an organization that effectively manages all the Maintenance Services. This Project management effort will be defined and guided by the Maintenance Management Plan. The Maintenance Management Plan is an umbrella document that describes the Maintenance Contractor's managerial approach, strategy, and quality procedures to maintain the Project and achieve all requirements of the Capital Maintenance Agreement Documents.
- B. TxDOT will audit and monitor the activities described in the Maintenance Management Plan to assess Maintenance Contractor performance. All statements contained in the Maintenance Management Plan shall be of an auditable nature.

0202 Project Schedule

- A. The Parties recognize the importance of the Project Schedule for defining the time-frame for the maintenance of the Project and the achievement of the milestones. The Parties also recognize the importance of the Project Schedule in monitoring the progress of Maintenance Services of the Project and denoting changes that occur.
- B. Every submitted schedule shall be in the form of a single hard copy in full-size color plot sheets, along with a backup disk of the schedule in electronic format.
- C. The scheduling software employed by the Maintenance Contractor shall be compatible with the scheduling software employed by TxDOT. Maintenance Contractor shall implement any new operating practices or software required as a result of TxDOT's amendments to any such systems, standards and procedures. TxDOT's current software in use is Primavera 3.0 (P3). "Compatible", as used in this Section 0202C, shall mean that the Maintenance Contractor-provided electronic file version of the Project Schedule may be loaded or imported by TxDOT using its scheduling software with no modifications, preparation or adjustments. Maintenance Contractor shall be responsible for updating scheduling software to maintain compatibility with current TxDOT-supported scheduling software.
- D. Maintenance Contractor shall prepare a Project Maintenance Baseline Schedule and shall submit it to TxDOT for review and approval. Approval of the Project Maintenance Baseline Schedule shall be a condition precedent to commencing Maintenance Services. .
- E. The Project Maintenance Baseline Schedule shall include a separate narrative report which describes, in general fashion, the Maintenance Contractor's proposed methods of operation for Maintenance Services. The schedule narrative shall describe the general sequence of Maintenance Services and all Milestone Schedule Deadlines.

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- F. The Project Maintenance Baseline Schedule shall include all major activities of Maintenance Services required under the Capital Maintenance Services Documents, in sufficient detail to monitor and evaluate progress, during the Maintenance Period(s).
- G. The Project Maintenance Baseline Schedule shall include activities for maintenance and interfaces with other projects, localities, municipalities and other Governmental Entities.
- H. For each activity, Maintenance Contractor shall indicate the duration (in Days) required to perform the activity and the anticipated beginning and completion date of each activity. In addition, the Project Maintenance Baseline Schedule shall indicate the sequence of performing each activity and the logical dependencies and inter-relationships among the activities.
- I. The Project Maintenance Baseline Schedule shall include a listing of all submittals as called out in the Capital Maintenance Agreement Documents. Submittal activity durations shall include specific durations for TxDOT review and/or approval of the Maintenance Contractor's submittals as called out elsewhere in the Capital Maintenance Agreement Documents.
- J. With the exception of activities relating to Environmental Approvals by Governmental Entities, each activity depicting the Maintenance Contractor's operations shall have duration of not more than 20 Days, and not less than one Day, except as otherwise approved by TxDOT. All activities shown in the schedule, with the exception of the first and last activities, shall have a minimum of one predecessor and a minimum of one successor activity.
- K. Float shall not be considered as time for the exclusive use of or benefit of either TxDOT or the Maintenance Contractor but shall be considered as a jointly owned, expiring resource available to the Project and shall not be used to the financial detriment of either party. Any method utilized to sequester Float calculations will be prohibited without prior approval of TxDOT. Any schedule, including the Project Maintenance Baseline Schedule and all updates thereto, showing an early completion date shall show the time between the scheduled completion date and the applicable Milestone Schedule Deadline as "Project Float."
- L. Maintenance Contractor shall update, on at least a monthly basis, the approved Project Maintenance Baseline Schedule to reflect the current status of the Project, including approved Change Orders.
- M. Each Project Maintenance Status Schedule Update shall accurately reflect all activities as of the effective date of the update schedule. Each Project Status Schedule Update shall indicate the overall completion percentage of the Project.
- N. No changes in activity durations, calendar assignments, logic ties, or constraints will be allowed in the Project Maintenance Status Schedule Update without the written approval of TxDOT.

- O. The Project Maintenance Status Schedule Update shall include a schedule narrative report which describes the status of the Project in detail.
- P. Before Maintenance Services can occur, Maintenance Contractor shall expand and complete the preliminary Renewal Work Schedule submitted with the Proposal and submit it to TxDOT for review. The Renewal Work Schedule shall be sufficiently detailed to indicate the timing of periodic maintenance activities, rehabilitation activities and other Renewal Work, and shall be consistent with the requirements of this Maintenance Specification.

0203 Document Management

- A. Maintenance Contractor shall establish and maintain an electronic document control system to store, catalog, and retrieve all Project-related documents in a format compatible with Texas Reference Marker System. Unless otherwise directed by TxDOT, record retention shall comply with the requirements of the Texas State Records Retention Schedule.
- B. All records and the then-current electronic document control system shall be provided to TxDOT at the time of the expiration or earlier termination of the Agreement.

0204 Quality Management

- A. Maintenance Contractor shall submit a comprehensive Maintenance Quality Management Plan to TxDOT for approval that is consistent with and expands upon the preliminary Quality Management Plan submitted with the Proposal.
- B. The Maintenance Quality Management Plan shall be consistent with BS ISO 9001:2000 and BS ISO 10005:2005, or more current versions as updated by the International Standards Organization. Maintenance Contractor may elect to obtain formal ISO 9001 certification, but will not be required to do so.
- C. The Maintenance Quality Management Plan shall describe the system, policies, and procedures that address the Maintenance Services and provide documented evidence that the Maintenance Services were performed in accordance with the Capital Maintenance Agreement Documents.
- D. The Maintenance Quality Management Plan shall incorporate the following features:
- Maintenance Contractor shall make all quality records immediately available to TxDOT for review. Maintenance Contractor shall provide TxDOT with a copy of any and/or all quality records when requested.
 - The Maintenance Quality Management Plan shall capture all work performed by the Maintenance Contractor, all Contractors and all Subcontractors.
 - Maintenance Contractor shall submit to TxDOT the results of all internal audits within seven Days of their completion,

- Maintenance Contractor shall submit to TxDOT non-conformance reports within seven Days their issuance and resolution. Maintenance Contractor shall notify TxDOT of a nonconforming work within two Days of discovering the nonconforming work.
 - TxDOT will issue a non-conformance report if TxDOT discovers any Nonconforming Work.
- E. The Quality Management Plan shall contain detailed procedures for all activities performed by the Maintenance Contractor. Maintenance Contractor's quality process shall incorporate planned and systematic activities. Maintenance Contractor shall conduct all activities in accordance with the Maintenance Quality Management Plan and the requirements of the Capital Maintenance Agreement Documents.
- F. Inspections, reviews, and testing shall only be performed by personnel with appropriate training and qualifications, using appropriate equipment that is accurately calibrated and maintained in good operating condition at an AMRL (AASHTO R18, "Establishing and Implementing a Quality System for Construction Materials Testing Laboratories") accredited facility, or at a facility with comparable certification (e.g. ISO 17025, "General requirements for the competence of testing and Calibration laboratories".)
- G. Quality terminology, unless defined or modified elsewhere in the Capital Maintenance Agreement Documents, shall have the meaning defined in BS ISO 9001. Terms used in ISO 9001 shall have the meanings defined below:
- Organization: the Maintenance Contractor's organization, including any Affiliates and Contractors.
 - Customers: the Users of the roadways, TxDOT, Customer Groups, and key stakeholders that have an adjacent property interest or connecting roadway.
 - Suppliers: Contractors.
 - Product: the Work.
 - Quality control: the part of quality management focused on fulfilling quality requirements.
 - Quality Management Plan: the Maintenance Quality Management Plan described in this Section 0204.
- H. Maintenance Contractor shall maintain the Maintenance Quality Management Plan to contain current versions of the following information:
- The organizational chart that identifies all quality management personnel, their roles, authorities and line reporting relationships.
 - Description of the roles and responsibilities of all quality management personnel and those who have the authority to stop activities.
 - Identification of testing agencies, including information on each agency's capability to provide the specific services required for the activities; certifications held; equipment; and location of laboratories.
 - Resumes for all quality management personnel.

- I. The Maintenance Quality Management Plan shall contain a complete description of the quality policies and objectives that the Maintenance Contractor will implement throughout its organization. The policies shall demonstrate the Maintenance Contractor senior management's commitment to implement and continually improve the maintenance quality management system.
- J. The Maintenance Quality Management Plan shall contain detailed systems and procedures the Maintenance Contractor will implement, including the following:
- Control of quality records;
 - Management reviews;
 - Resource allocation;
 - Measurement of customer satisfaction;
 - Control of nonconforming products and services;
 - Internal audits;
 - A process to seek continual improvement of the Quality Management Plan.
- K. The Maintenance Quality Management Plan shall contain detailed descriptions of the inspection and test plans, including the timing and frequency of testing, that the Maintenance Contractor will use to meet quality control requirements of the Work.
- L. Maintenance Contractor shall revise its Maintenance Quality Management Plan when its own quality management organization detects a repeating or fundamental non-conformance in the work performed or in the manner the Work is inspected or tested, or when TxDOT advises the Maintenance Contractor of such a problem.
- M. Maintenance Contractor's Maintenance Quality Control Manager staff shall have no responsibilities in the provision of Maintenance Services. Quality control staff shall only have responsibilities on the provision of Maintenance Services.
- N. Maintenance Contractor's Maintenance Quality Control Manager shall report directly to the Maintenance Contractor's principals.
- O. The Quality Control Manager shall prepare a monthly report of the quality inspections and tests performed, results of such inspections and tests, and occurrences and resolution of nonconformance discoveries. Maintenance Contractor shall submit the monthly reports to TxDOT for review.
- P. Maintenance Contractor's Quality Control Manager shall have the authority to stop work for quality-related issues.
- Q. Not later than two Business Days after the Maintenance Contractor completes design of any particular released for construction document, and the Maintenance Contractor has reviewed and checked the design in accordance with the Maintenance Quality Management Plan, and

the Maintenance Contractor's Registered Professional Engineer has signed and sealed the document, the Maintenance Contractor shall submit the signed and sealed document to TxDOT. Maintenance Contractor's Released for Construction Document shall comply with the Capital Maintenance Agreement Documents, and shall be detailed, complete, constructible, and shall allow verification of the design criteria and compliance with Capital Maintenance Agreement Documents.

- R. On the date required by the CDA Documents, the Maintenance Contractor shall submit to TxDOT a complete set of Record Drawings for the portion of the Project actually opened to traffic. The Record Drawings and Documentation shall be an organized, complete record of Plans and supporting calculations and details that accurately represent what the Maintenance Contractor constructed.
- S. Maintenance Contractor shall ensure that the Record Drawings reflect the actual condition of the constructed Work.
- T. Maintenance Contractor shall construct the work in accordance with the Released for Construction Documents, following a reasonable timeframe for TxDOT review and comment, together with the relevant requirements and specifications of the Capital Maintenance Agreement Documents.
- U. The construction Maintenance Quality Management Plan shall contain detailed procedures for the Maintenance Contractor's quality control activities. Maintenance Contractor's construction operations must incorporate quality processes as part of its Quality Management Plan, including planned and systematic activities undertaken by a party independent of the construction process. Maintenance Contractor is to undertake all quality control in accordance with the Quality Management Plan and the requirements set out in the Capital Maintenance Agreement Documents.

0205 Safety Plan

- A. Maintenance Contractor shall be responsible for the safety of its personnel and of the general public affected by the Project.
- B. Maintenance Contractor shall submit to TxDOT for approval a comprehensive safety plan ("Maintenance Safety Plan") that is consistent with and expands upon the preliminary safety plan submitted with the Proposal. The Safety Plan shall fully describe the Maintenance Contractor's policies, plans, training programs, work site controls, and Incident Management Plans to ensure the health and safety of personnel involved in the Project and the general public affected by the Project during the Term of the Agreement.
- C. Maintenance Contractor's Maintenance Safety Plan shall address procedures for immediately notifying TxDOT of all incidents arising out of or in connection with the performance of the Maintenance Services, whether on or adjacent to the Project.

0206 Management of Communications between Maintenance Contractor and TxDOT

- A. Maintenance Contractor shall submit a comprehensive communications plan (“Maintenance Communications Plan”) to TxDOT for approval that is consistent with and expands upon the preliminary communications plan submitted with the Proposal. Maintenance Contractor shall maintain and update the Maintenance Communications Plan as the Maintenance Term progresses.
- B. The Maintenance Communications Plan shall describe the processes and procedures for communication of Project information between the Maintenance Contractor’s organization and TxDOT.
- C. The Maintenance Communications Plan shall describe how the Maintenance Contractor’s organization will respond to unexpected requests for information, communicate changes or revisions to necessary Maintenance Contractor personnel, and notify TxDOT before and after changes are made to the Capital Maintenance Agreement Documents.

0207 Design

- A. In carrying out the Maintenance Services, where there is a requirement for design, the Maintenance Contractor shall ensure that the Project is restored either to the original design used for the construction of the Project, or to a different design that shall be in accordance with the requirements for design set forth in the Comprehensive Development Agreement.

0208 Maintenance Transition

- A. Maintenance Contractor shall submit maintenance transfer plan 180 days prior to transfer of maintenances services under the CMA. As a minimum, the maintenance transition plan shall address the following items.
- Prepare and submit to the TxDOT, for TxDOT approval, a right of entry permit for access to the Project for performance of corrective action regarding the condition of the Project immediately prior to transfer.
 - Prepare and submit maintenance transition punchlist, list and status of equipment warranties, vendors’ test reports, Maintenance Contractor’s test reports, all as-built drawings for work performed during CMA, maintenance records (including NBIS records), copies of warranty and service contracts, and spare parts purchased as part of the CMA.
 - Coordinate the identification of maintenance transition punch list items required to be completed by Maintenance Contractor prior to maintenance transfer. Maintenance transition punch list shall include (a) estimated completion dates, (b) responsible party(s), and (c) items that must be completed prior to maintenance transfer.
 - Prepare (in conjunction with TxDOT), administer and complete all items on the maintenance transfer punchlist to the satisfaction of the TxDOT. Maintenance Contractor shall complete all items on the maintenance transition punch list to the satisfaction of the TxDOT prior to the transfer of maintenance responsibilities to TxDOT.

- Certify to TxDOT in writing that Project can be safely used for its intended purpose and that the maintenance services have been performed in accordance with the terms of the CMA, Governmental Approvals and applicable Law.
- Certify to TxDOT in writing that there are no Hazardous Materials located within, on, in or under the Project ROW due to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor.
- Certify to TxDOT in writing that there is no litigation pending regarding the CMA maintenance services or the Project by any member of the Maintenance Contractor's group.

0300 PUBLIC INFORMATION AND COMMUNICATIONS

0301 General Requirements

- A. It is vital to the success of the Project that TxDOT and the Maintenance Contractor gain and maintain public support. The public will better support TxDOT and the Maintenance Contractor if they are kept abreast of Project information in a timely manner, are notified in advance of potential impacts, have an opportunity to identify issues and recommend solutions, receive timely and appropriate feedback from the Maintenance Contractor, and perceive a high quality, well executed communications plan for keeping them informed, engaged, and educated.
- B. Maintenance Contractor shall provide information within 24 hours of a request by TxDOT, such that TxDOT may communicate such information to interested parties.

0302 Public Information and Communications Plan

Not used.

0303 Public Information Coordinator

Not used.

0304 Public Information Office

Not used.

0305 Customer Groups

Not used.

0306 Public Meetings

Not used.

0307 Meeting Minutes

Not used.

0308 Emergency Event Communications

Not used.

0309 Disseminating Public Information

Not used.

0400 ENVIRONMENTAL

It is not envisioned that there will be any significant requirement for environmental permitting, mitigation, or hazardous material remediation caused by Maintenance Services. Environmental permitting, mitigation, and hazardous material remediation required due to reconstruction etc., shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

0500 THIRD PARTY AGREEMENTS

It is not envisioned that there will be any significant impact on third party agreements by Maintenance Services. If there is any such impact, for example due to extension or reconstruction works, these shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

0600 UTILITY ADJUSTMENTS

It is not envisioned that there will be any significant requirement for utility adjustments caused by Maintenance Services. Utility Adjustments required due to reconstruction etc., shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

0700 RIGHT OF WAY (ROW)

It is not envisioned that there will be any significant ROW requirements for Maintenance Services. ROW requirements due to reconstruction etc., shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

0800 GEOTECHNICAL

It is not envisioned that there will be any geotechnical requirements for Maintenance Services. Geotechnical requirements due to reconstruction etc shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

0900 LAND SURVEYING

It is not envisioned that there will be any significant land surveying requirements for Maintenance Services. Land surveying requirements due to reconstruction etc., shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

1000 GRADING

It is not envisioned that there will be any significant grading requirements for Maintenance Services. Grading requirements due to reconstruction etc., shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

1100 ROADWAYS

It is not envisioned that there will be any significant roadway requirements for Maintenance Services. Roadway requirements required due to reconstruction etc., shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

1200 DRAINAGE

1201 General requirements

- A. Efficient performance of the drainage system is an integral part of the performance of the Project. In that context, all sources of runoff, both within and outside the Project ROW, must be accounted for in the maintenance of the drainage facilities.

1202 Data collection

- A. To maintain a hydraulic system that complies with requirements and accommodates the hydrologic flows in the Project limits.
- B. If documentation is not available for elements of the drainage system within the Project limits, Maintenance Contractor shall videotape or photograph the drainage system to determine condition, size, material, location, and other pertinent information.
- C. The data collected shall be taken into account in the maintenance of the drainage facilities.

1203 Coordination with other agencies

Not used.

1204 Other Requirements

Drainage requirements due to reconstruction etc., shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

1300 STRUCTURES

It is not envisioned that there will be any significant structures requirements for Maintenance Services. Structures requirements required due to reconstruction etc., shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

1400 RAIL

1401 Project work affecting railroad operations

- A. Should the Project cross a railroad right of way owned by an operating railroad, Maintenance Contractor shall coordinate the Work with the operating railroad.
- B. Maintenance Contractor shall be responsible for obtaining the required approvals, permits, and agreements as required for the Work, including any railroad related Work.
- C. Whenever a license agreement for construction, maintenance and use of railroad right-of-way (hereinafter called the “License Agreement”) between the operating railroad and TxDOT is required, Maintenance Contractor shall prepare all the documentation required to obtain the License Agreement, including preparation of the License Agreement application on behalf of TxDOT, the plans and specifications, making necessary modifications as required, and preparation of the License Agreement. Maintenance Contractor shall submit the draft License Agreement to TxDOT for transmittal to the operating railroad. After all comments have been incorporated or satisfactorily resolved by either Maintenance Contractor, railroad or TxDOT, Maintenance Contractor shall submit a complete and final License Agreement to TxDOT for execution.
- D. Maintenance Contractor shall arrange with the operating railroad for railroad flagging as required. Maintenance Contractor shall comply with the operating railroad’s requirements for contractor safety training prior to performing Work or other activities on the operating railroad’s property.
- E. In order to enter the operating railroad’s right-of-way to perform the Work, Maintenance Contractor shall secure a railroad right of entry agreement and shall coordinate the arrangements of the necessary agreements directly with the operating railroad.
- F. Maintenance Contractor shall cooperate and coordinate with all operating railroads for access by the operating railroad and/or their agents to the rail right-of-way as necessary for rail maintenance and operations activities.

1402 Construction Requirements

- A. Maintenance Contractor shall comply with all construction requirements and specifications set forth by the operating railroad.
- B. Maintenance Contractor shall be responsible for scheduling the work to be completed by operating Railroad as well as the work to be completed by its own forces. Maintenance Contractor shall be responsible for all costs associated with the railroad/transit force account work.

1403 Other Requirements

- A. Rail requirements due to reconstruction etc., shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

1500 AESTHETICS AND LANDSCAPING

It is not envisioned that there will be any new aesthetic and landscaping requirements for Maintenance Services. Aesthetic and landscaping requirements due to reconstruction etc shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

1600 SIGNING, DELINEATION, PAVEMENT MARKING, SIGNALIZATION, AND LIGHTING

1601 Administrative Requirements

Not used.

1602 Third Party Signs

Not used.

1603 Construction requirements

- A. Maintenance Contractor shall leave all applicable advance guide signs and/or exit direction signs in place at all times and shall not obstruct the view of the signs to the motorist. Maintenance Contractor shall replace any other removed signs before the end of the work day.

1604 Other requirements

- A. Signing, delineation, pavement marking, signalization, and lighting requirements due to reconstruction etc. shall be dealt with in accordance with Books 2 and 3 of the CDA Documents

1700 INTELLIGENT TRANSPORTATION SYSTEMS

It is not envisioned that there will be any intelligent transportation systems requirements for Maintenance Services. Intelligent transportation systems requirements due to reconstruction etc shall be dealt with in accordance with Books 2 and 3 of the CDA Documents.

1800 TRAFFIC MANAGEMENT

1801 General Requirements

- A. Throughout the Maintenance Term, Maintenance Contractor shall conform with the requirements set forth in this Series 1800, and shall provide for the safe and efficient movement of people, goods, and services, through and around the Project, while minimizing negative impacts to Users, residents, and businesses.
- B. Whilst planning and carrying out Maintenance Services, Maintenance Contractor shall take into account the restrictions (if any) set forth in Attachment 6 to this Maintenance Specification.

1802 Administrative Requirements

- A. As a component of the Maintenance Management Plan, Maintenance Contractor shall develop, implement, and maintain a Traffic Management Plan (TMP) to be used during the Maintenance Term. At a minimum, the TMP shall include the following:
 - (i) Descriptions of the qualifications and duties of the traffic engineering manager, traffic control coordinator, and other personnel with traffic control responsibilities
 - (ii) Procedures to identify and incorporate the needs of transit operators, Utility Owners, Governmental Entities, local governmental agencies, Emergency Service providers, school districts, business owners, and other related Users, Customer Groups or entities in the Project corridor and surrounding affected areas
 - (iii) Procedures for obtaining acceptance of detours, road and lane closures and other traffic pattern modifications from applicable Governmental Entities, and implementing, maintaining and removing those modifications
 - (iv) Procedures for installation, maintenance and removal of interim signing and the corresponding handling of permanent signing during maintenance operations
 - (v) Procedures for installation, maintenance, replacement and removal of traffic control devices, including pavement markings and traffic barriers, if used
 - (vi) Procedures and process for the safe ingress and egress of construction vehicles in the work zone
 - (vii) Provisions to provide continuous access to established truck routes and Hazardous Material (HazMat) routes, and to provide suitable detour routes, including obtaining any approvals required by the appropriate governmental entities for these uses
 - (viii) Procedures to modify plans as needed to adapt to changing Project circumstances
 - (ix) Procedures to communicate TMP information to Maintenance Contractor's public information personnel and notify the public of maintenance of traffic issues

- (x) Descriptions of contact methods, personnel available, and response times for any Emergency conditions requiring TxDOT attention during off-hours.

1803 Design Requirements

- A. Maintenance Contractor shall use the procedures in the TMP and the standards of the TMUTCD to develop detailed traffic control plans that provide for all Maintenance Services, as well as all required switching procedures. The traffic control plans shall include details for all detours, traffic control devices, striping, and signage applicable to each Maintenance Activity event. Information included in the traffic control plans shall be of sufficient detail to allow verification of design criteria and safety requirements, including typical sections, alignment, striping layout, drop off conditions, and temporary drainage. The traffic control plans shall clearly designate all temporary reductions in speed limits. Changes to posted speed limits will not be allowed unless specific prior approval is granted by TxDOT.
- B. Maintenance Contractor shall ensure that opposing traffic on a normally divided roadway shall be separated with appropriate traffic control devices.
- C. Maintenance Contractor shall maintain signing continuity on all active roadways within or intersecting the Project at all times.
- D. Maintenance Contractor shall ensure all streets and intersections remain open to traffic to the greatest extent possible. Maintenance Contractor shall maintain access to all adjacent streets and shall provide for ingress and egress to public and private properties at all times.

1804 Construction Requirements

- A. Construction shall be in accordance with Maintenance Contractor's TMP, the manufacturer's directions or recommendations where applicable, and the applicable provisions of the TMUTCD
- B. If at any time TxDOT determines Maintenance Contractor's traffic control operations do not meet the intent of the TMP or any specific traffic control plan, Maintenance Contractor shall immediately revise or discontinue such operations to correct the deficient conditions
- C. Maintenance Contractor shall provide TxDOT the names of the traffic control coordinator and support personnel, and the phone number(s) where they can be reached 24 hours per day, seven days per week.
- D. Maintenance Contractor shall maintain Existing bicycle and pedestrian access and mobility with the frontage roads and across all cross streets. Maintenance Contractor shall maintain Access to existing transit stop locations during construction or reasonable alternative locations shall be provided.

- E. Maintenance Contractor shall maintain all detours in a safe and traversable condition. Maintenance Contractor shall provide a pavement transition at all detour interfaces, suitable for the posted speed of the section.

1805 Deliverables

- A. The TMP must be approved by TxDOT prior to the start of Maintenance Services. Maintenance Contractor shall provide TxDOT sufficient time for review of, and comment on, the TMP. TxDOT retains the right to require revision and re-submittal of the TMP within a reasonable amount of time.
- B. Each traffic control plan shall be submitted to TxDOT for review a minimum of 10 Days prior to implementation.

1900 MAINTENANCE

1901 General Maintenance Requirements

- A. Maintenance Contractor shall remedy and repair the Maintained Elements including renewal or rehabilitation work not scheduled in the Maintenance Contractor's annually recurring highway maintenance and repair program.
- B. Maintenance Contractor shall perform Capital Maintenance:
 - (i) when required by Maintenance Contractor's approved Maintenance Management Plan and updates thereto; or
 - (ii) when a Performance Requirement is not met and the required level of performance cannot be achieved by means of routine or preventive maintenance.
- C. TxDOT retains maintenance responsibilities for Non-maintained Elements and TxDOT will perform Maintenance Services and other work associated with the Project for Non-Maintained Elements. Third parties, such as Utilities and the Systems Integrator may require access to the Project to perform maintenance or other work. In addition to the requirements for traffic management set forth in Series 1800, Maintenance Contractor shall coordinate its Traffic Management Plan with the traffic management to be performed by others, to minimize disruption to users of the Project
- D. Whenever an activity by Maintenance Contractor disturbs, alters, removes or changes any Non-maintained Element, Maintenance Contractor shall restore the affected Non-maintained Element to a condition no less favorable than its original condition before it was disturbed, altered, removed or changed.
- E. Whenever Maintenance Contractor becomes aware of any Defect in any Maintained Element that Maintenance Contractor considers Maintenance Contractor is not required to repair, or any maintenance activity that Maintenance Contractor considers should be performed, but which Maintenance Contractor considers Maintenance Contractor is not required to perform as part of the Maintenance Services, Maintenance Contractor shall immediately notify TxDOT of the nature of the Defect or maintenance activity and relevant details that will facilitate repair or action by TxDOT.

1902 General Maintenance Obligations

- A. Maintenance Contractor shall take all necessary actions to achieve the following:
 - (i) Maintain the Maintained Elements in a manner appropriate for a facility of the character of the Project.

- (ii) Minimize delay and inconvenience to Users and, to the extent Maintenance Contractor is able to control, users of adjacent and connecting roadways.
 - (iii) Minimize the risk of damage, disturbance, or destruction of third-party property during the performance of Maintenance Services.
 - (iv) Coordinate with and enable TxDOT and others with statutory duties or functions in relation to the Project to perform such duties and functions.
 - (v) Perform systematic Project inspections, periodic maintenance, and routine maintenance in accordance with the provisions of Maintenance Contractor's Maintenance Management Plan and Maintenance Contractor's Safety Plan and this Capital Maintenance Agreement.
- B. Maintenance Contractor is responsible for providing all resources necessary for the performance of all Maintenance Services in the Maintenance Management Plan and as required by the Capital Maintenance Agreement.
- C. Maintenance Contractor shall comply with the requirements of Series 1800 – Traffic Management
- D. All Lanes shall be maintained in an identical manner.
- E. For Category 1 Defects, the Maintenance Contractor shall take necessary action such that the hazard to Users is mitigated within the period given in the column entitled "Category 1 Hazard Mitigation" in Attachment 1 to this Maintenance Specification, and shall permanently remedy the Category 1 Defect within the period given in the column entitled "Category 1 Permanent Remedy" in Attachment 1 to this Maintenance Specification.
- F. For Category 2 Defects, the Maintenance Contractor shall undertake the permanent repair within the period specified in the column entitled "Category 2 Permanent Repair" in Attachment 1 to this Maintenance Specification.
- G. The Maintenance Contractor shall coordinate with TxDOT to achieve a smooth transition of Maintenance Services from and to TxDOT.

1903 Maintenance Management Plan (MMP)

- A. Maintenance Contractor shall prepare a Maintenance Management Plan (MMP) that is consistent with the general maintenance obligations described in Section 1902 (General Maintenance Obligations) and defines the process and procedures for the maintenance of the Project for the Term of the Agreement. The MMP shall include performance requirements, measurement procedures, threshold values at which maintenance is required, inspection procedures and frequencies, and subsequent maintenance to address noted deficiencies, for each physical Maintained Element of the Project in accordance with Attachment 1 to this Maintenance Specification, including impacts to adjacent and connecting roadways. The

MMP shall identify response times to mitigate hazards, permanently remedy, and permanently repair Defects. Response times shall be in accordance with the Attachment 1 to this Maintenance Specification. Maintenance Contractor shall differentiate response times for Defects that require prompt attention due to immediate or imminent damage or deterioration; those items which have no impact on any parties other than Maintenance Contractor; and other Defects. Maintenance Contractor shall update this plan as required, or at least annually.

- B. The MMP shall include procedures for managing records of inspection and Maintenance Services, including appropriate measures for providing protected duplication of the records. Inspection and maintenance records shall be kept for the Maintenance Term and shall be provided to TxDOT at the time the Project is delivered to TxDOT, at either the expiration of the Maintenance Term or earlier termination of the Agreement.
- C. Maintenance Contractor shall submit the MMP to TxDOT for review and approval at least 60 Days following the issuance of NTP1. Approval by TxDOT of the MMP shall be a condition precedent to the performance of Maintenance Services.

To the extent that Maintenance Contractor proposes any enhancements to the Performance Requirements set forth in Attachment 1 to this Maintenance Specification, Maintenance Contractor's MMP shall include performance requirements, measurement procedures, and threshold values at which maintenance is required for each Maintained Element of the Project in accordance with Section 1908 of this Maintenance Specification, including impacts to adjacent work or facilities. Inspection procedures and frequencies, and subsequent maintenance to address noted deficiencies of the Maintained Elements shall also be included, in accordance with the requirements of Section 1909 of this Maintenance Specification. The MMP shall identify response times to mitigate hazards, permanently remedy, and permanently repair Defects, which shall, at a minimum, be in accordance with Attachment 1 to this Maintenance Specification. Maintenance Contractor shall differentiate response times for Defects that require prompt attention due to immediate or imminent damage or deterioration, excluding those items which have no impact on any parties other than Maintenance Contractor, and response times for other Defects. Maintenance Contractor shall update this plan as required, or at least annually.

- E. The MMP shall include Maintenance Contractor's proposals for Capital Maintenance, including the timing, scope and nature of work that Maintenance Contractor proposes during each year for which the Maintenance Services are to apply. Maintenance Contractor shall set forth in the Maintenance Management Plan, by Maintained Element:
 - (i) the estimated Useful Life;
 - (ii) a description of the type of Capital Maintenance anticipated to be performed at the end of the Maintained Element's Useful Life; and
 - (iii) a brief description of any Capital Maintenance anticipated to be performed before the end of the Maintained Element's Useful Life, including reasons why this work should be performed at the proposed time.

- F. Maintenance Contractor shall prepare updates to the Capital Maintenance requirements of the MMP.

1904 Maintenance During Work

Not Used.

1905 Highway Location and Data Requirements

- A. Maintenance Contractor shall implement the Texas Reference Marker System.

1906 Auditable Sections

- A. Maintenance Contractor shall establish Auditable Sections referenced to the Texas Reference Marker System. Maintenance Contractor shall prepare plans identifying the Auditable Sections and shall submit to TxDOT for approval as a condition precedent to commencing Maintenance Services. The plans shall identify the boundaries of each Auditable Section and shall cross reference to an inventory describing each Maintained Element of the Facility contained within each Auditable Section.

1907 Maintenance Management Information System

- A. Maintenance Contractor shall implement a computer based Maintenance Management Information System (MMIS) to record inventory, failures, repairs, maintenance activities and inspections performed. Maintenance Contractor shall enter all of the physical Maintained Elements into the MMIS with Maintained Element identifications (IDs) consistent with those descriptions and units of measure used by TxDOT. All information shall be recorded in a consistent manner and shall be searchable by individual attribute.
- B. The MMIS shall include relevant physical Maintained Element information including but not limited to, location, equipment nomenclature, serial number, name, date of installation, technician ID, type of failure, datetime of failure, date-time of response to the site and date-time returned to service, preventive maintenance work, scheduled work, work repair code, failure and repair history, and statistical data on mean time between failure and mean time to repair. The MMIS shall be configured to report work by TxDOT function code, physical Maintained Element, reference marker, crew and unit of measurement.
- C. The MMIS shall be capable of reporting system performance on a geographical basis to demonstrate compliance with operational and maintenance requirements. The MMIS shall incorporate a Geographical Information System (GIS), which shall use the same database engine as the MMIS and shall use the MMIS for display of physical Maintained Element information. All physical Maintained Elements shall be recorded on the MMIS. The physical Maintained Element locations are to be accurate to within one foot in 100 feet. The information displayed geographically shall include pavement condition measurements, maintenance limits, average daily traffic and truck counts, work performed by roadway

segment, type of work, crew/contractor, etc., and any other information relevant to the provision of Maintenance Services.

- D. When a physical Maintained Element is constructed, installed, maintained, inspected, modified, replaced or removed, the MMIS shall be updated within three days of completion of such work. Defects shall be recorded on the MMIS within 3 days of them coming to the attention of Maintenance Contractor. All other recording requirements shall be recorded on the MMIS within 15 days of completion or occurrence of the relevant activity.
- E. The MMIS shall be fully populated and operational prior to the commencement of Maintenance Services and kept updated and operational for the duration of the Maintenance Term. Maintenance Contractor shall provide equipment, facilities and training necessary to permit remote, real-time, dedicated high-speed access to the MMIS, via one terminal each, for TxDOT. Maintenance Contractor shall handover the MMIS and everything required for its operation to TxDOT, or other entity as directed by TxDOT, upon expiration or earlier termination of Maintenance Term.
- F. In the event that TxDOT does not require Maintenance Contractor to provide a computer based Maintenance Management Information System, Maintenance Contractor shall provide TxDOT with all relevant physical Maintained Element information including but not limited to, location, equipment nomenclature, serial number, name, date of installation, technician ID, type of failure, datetime of failure, date-time of response to the site and date-time time returned to service, preventive maintenance work, scheduled work, work repair code, failure and repair history, and statistical data on mean time between failure and mean time to repair. The MMIS shall be configured to report work by TxDOT function code, physical Maintained Element, reference marker, crew and unit of measurement. When a physical Maintained Element is constructed, installed, maintained, inspected, modified, replaced or removed, the Maintenance Contractor shall provide TxDOT with all relevant information within three days of completion of such work. Maintenance Contractor shall provide all relevant information concerning Defects within 3 days of them coming to the attention of Maintenance Contractor. All other information requirements shall be provided to TxDOT within 15 days of completion or occurrence of the relevant activity.

1908 Performance Requirements

- A. In the Maintenance Management Plan (MMP), Maintenance Contractor shall set forth annually, for TxDOT approval, a revised version of Attachment 1 to this Maintenance Specification that shall, except where indicated below, be consistent with Attachment 1 to this Maintenance Specification
- B. The first such submittal of the revised version of Attachment 1 to this Maintenance Specification shall be submitted for TxDOT approval as a condition precedent to the commencement of Maintenance Services The revised Attachment 1 to this Maintenance Specification shall set forth the following information:

Heading in Attachment 1 to this Maintenance Specification	Contents of Maintenance Contractor's submitted revised Attachment 1 to this Maintenance Specification
Element	As Attachment 1 to this Maintenance Specification
Element Category	As Attachment 1 to this Maintenance Specification
Performance Requirements	As Attachment 1 to this Maintenance Specification
Response to Defects	As Attachment 1 to this Maintenance Specification
Inspection and measurement method	Subject to proposed amendment by Maintenance Contractor as part of annual submittal of MMP
Measurement record	Subject to proposed amendment by Maintenance Contractor as part of annual submittal of MMP
Target	As Attachment 1 to this Maintenance Specification

- C. In its annual submittals of the revised Attachment 1 to this Maintenance Specification, Maintenance Contractor shall propose for TxDOT's approval such amendments to the inspection and measurement methods and measurement records as are necessary to cause these to comply with this Maintenance Specification.
- D. Within this Maintenance Specification, reference to the revised Attachment 1 to this Maintenance Specification means the latest approved version of the revised Attachment 1 to this Maintenance Specification as included within Maintenance Contractor's MMP.
- E. Failure to meet a Performance Requirement, whether through failure to meet the Target for any relevant measurement record, or for any other reason, shall be deemed to be a Defect. Whenever a Defect is identified, either by Maintenance Contractor's inspections, by TxDOT or any third party, Maintenance Contractor shall act to remedy, repair and record the Defect as described in paragraphs F, G and H of this Section 1908.
- F. The remedy or repair of any Maintained Element shall meet or exceed the standard identified in the column entitled "Target" in Attachment 1 to this Maintenance Specification and a Maintenance Record shall be created by Maintenance Contractor to verify that this requirement has been met.
- G. The period for 'Response To Defects' set forth in Attachment 1 to this Maintenance Specification shall be deemed to commence upon the Maintenance Contractor becoming aware of the Defect.
- H. Where action is taken to remedy or repair any Defect in any Maintained Element of the Project in accordance with this Section 1908, Maintenance Contractor shall create a maintenance record that identifies the nature of the remedy or repair. Maintenance Contractor shall include within the relevant maintenance record a measurement record compliant with the requirements set forth in the column entitled "Measurement Record" in the Attachment 1 to this Maintenance Specification.

1909 Inspections

- A. Maintenance Contractor shall establish inspection procedures and plan and implement a program of inspections of the Project that:
- (i) verifies the continuing safety of the Project for users;
 - (ii) prioritizes Category 1 Defects;
 - (iii) ensures that all Category 1 Defects are identified and repaired such that the hazard to Users is mitigated within the period given in the column entitled “Category 1 Hazard Mitigation” in Attachment 1 to this Maintenance Specification;
 - (iv) ensures that all Category 1 Defects are identified and permanently remedied within the period given in the column entitled “Category 1 Permanent Remedy” in Attachment 1 to this Maintenance Specification;
 - (v) identifies Category 2 Defects to be included for repair either within Maintenance Contractor’s annually recurring highway maintenance and repair program or as Renewal Work;
 - (vi) ensures that all Category 2 Defects excluding those items which have no impact on any parties other than Maintenance Contractor are identified and permanently repaired within the period given in the column entitled “Category 2 Permanent Repair” in Attachment 1 to this Maintenance Specification;
 - (vii) is responsive to reports or complaints received from Customer Groups;
 - (viii) takes account of Incidents and Emergencies affecting the Project;
 - (ix) monitors the effects of extreme weather conditions; and
 - (x) collates data to monitor performance of the Project and to establish priorities for future maintenance operations and renewal work.
- B. Maintenance Contractor shall ensure that personnel performing inspections of road pavements and structures are certified as inspectors and/or raters in accordance with TxDOT’s PMIS program.
- C. The periods stated in Attachment 1 to this Maintenance Specification under the headings of Category 1 Defects and Category 2 Defects shall be deemed to start upon the date Maintenance Contractor first obtained knowledge of, or first reasonably should have known of, the defect. For this purpose Maintenance Contractor shall be deemed to first obtain knowledge of the failure not later than the date of delivery of the initial notice to Maintenance Contractor. Maintenance Contractor shall investigate reports and complaints on

the condition of the Project received from all sources. Maintenance Contractor shall record such reports and complaints as Maintenance Records together with details of all relevant inspections and actions taken in respect of Defects, including temporary protective measures and repairs.

- D. In performing inspections to identify Category 1 and Category 2 Defects, Maintenance Contractor shall, for any Maintained Element, conform at a minimum to the inspection standards set forth for that Maintained Element in the column entitled “Inspection and Measurement Method” on Attachment 1 to this Maintenance Specification.
- E. Maintenance Contractor shall perform General Inspections in accordance with the MMP so that: the repairs of all Defects are included in planned programs of work; and in any case in accordance with paragraph G of this Section 1909.
- F. Maintenance Contractor shall record details of the manner of inspection (e.g. center lane closure or shoulder), the weather conditions and any other unusual features of the inspection, on O&M Records in respect of General Inspections.
- G. Maintenance Contractor shall perform General Inspections such that Category 2 Defects are identified and repaired within the period shown in Attachment 1 to this Maintenance Specification or, if the Defect is not specified in Attachment 1 to this Maintenance Specification, within six months of the Defect occurring; provided that Defects which require special equipment to identify or are listed under the heading of Specialist Inspections in Table 1909-1 may have different identification periods.
- H. Maintenance Contractor shall undertake Specialist Inspections for Maintained Elements listed in Table 1909-1 and shall include the inspection results as Maintenance Records.

Table 1909-1 – Specialist Inspections

Maintained Element	Specialist Inspection
All Maintained Elements in Element Category ‘Roadway’ in Attachment 1 to this Maintenance Specification	Annual survey of pavement condition for the entire Project, including main lanes, ramps, and frontage roads, undertaken using automated condition survey equipment to measure all necessary criteria including: ruts, skid resistance and ride quality according to the inspection and measurement methods set forth in Attachment 1 to this Maintenance Specification
All Maintained Elements in Element Category ‘Structures’ in Attachment 1 to this Maintenance Specification	Inspections and load rating calculations at the frequency specified in the CMA Documents. In addition, NBIS inspections as per FHWA regulations and at the frequency specified in FHWA regulations.

1910 Maintenance Contractor Audit Inspections

- A. Maintenance Contractor shall undertake detailed inspections of TxDOT’s randomly selected Auditable Sections for audit purposes (the "Maintenance Contractor's Audit Inspections") at least once quarterly. The audit inspections shall be random and designed such that over a period of one year the sample sections are statistically valid for 100% of the assets for a one year period year +/- 4%. Maintenance Contractor shall assess the condition of each Maintained Element using the inspection and measurement method set forth in the column entitled “Inspection and Measurement Method” in Attachment 1 to this Maintenance Specification.
- B. Maintenance Contractor shall create a new Maintenance Record for each Maintained Element physically inspected in accordance with the column entitled “Measurement Record” on Attachment 1 to this Maintenance Specification. Maintenance Contractor's Audit Inspections shall be undertaken to a schedule agreed with TxDOT on Auditable Sections randomly selected by TxDOT. TxDOT shall be given the opportunity by seven days notice, to accompany Maintenance Contractor when it undertakes the physical inspections associated with the Maintenance Contractor’s Audit Inspections.

2000 BICYCLE AND PEDESTRIAN FACILITIES

It is not envisioned that there will be any significant requirement for bicycle and pedestrian facilities caused by Maintenance Services. Bicycle and pedestrian facilities requirements due to reconstruction etc., shall be dealt with in accordance with the original CDA Documents.

2100 TOLLING

Not used.

2200 OPERATIONS

Not used.

ATTACHMENT 1 TO THE MAINTENANCE SPECIFICATION : PERFORMANCE AND MEASUREMENT REQUIREMENTS FOR MAINTENANCE SERVICES

Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
1) ROADWAY									
							Unless stated otherwise, measurements shall be conducted using procedures, techniques, and measuring equipment consistent with TxDOT's <i>Pavement Management Information System Rater's Manual</i> . Unless otherwise stated, pavement performance measurement records relate to 0.5-mile sections as described in the <i>Pavement Management Information System Rater's Manual</i> .		
	1.1	Pavement	All roadways have a smooth and quiet surface course (including bridge decks, covers, gratings, frames and boxes) with adequate skid resistance and free from Defects.	24 hrs	28 days	6 months	<p>a) Pavement Condition Score Measurements and inspections necessary to derive Pavement Condition Score</p> <p>b) Ruts – Mainlanes, shoulders & ramps Depth as measured using an automated device in compliance with TxDOT Standards.</p> <p>10ft straight edge used to measure rut depth for localized areas.</p>	<p>Pavement Condition Score for 80% of Auditable Sections exceeding:</p> <ul style="list-style-type: none"> • Mainlanes and ramps – 90 • Frontage roads – 80 <p>Pavement Condition Score for each Auditable Section exceeding:</p> <ul style="list-style-type: none"> • Mainlanes and ramps – 80 • Frontage roads – 70 <p>Percentage of wheel path length with ruts greater than ¼" in depth in each Auditable Section</p> <ul style="list-style-type: none"> • Mainlanes, shoulders and ramps – 3% • Frontage roads – 10% <p>Depth of rut at any location greater than 0.5"</p>	<p>100%</p> <p>100%</p> <p>100%</p> <p>100%</p> <p>Nil</p> <p>Nil</p> <p>Nil</p>
	1.1 (cont.)	Pavement (cont.)	All roadways have a smooth and quiet surface course (including bridge decks, covers, gratings, frames and boxes) with adequate skid resistance and free from Defects.	24 hrs	28 days	6 months	<p>c) Ride quality Measurement of International Roughness Index (IRI) according to TxDOT standard Tex-1001-S, Operating Inertial Profilers and Evaluating Pavement Profiles</p>	<p>For 80% of all Auditable Sections measured, IRI throughout 98% of each Auditable Section is less than or equal to:</p> <ul style="list-style-type: none"> • Mainlanes, ramps – 95" per mile** • Frontage roads – 120" per mile** 	<p>100%</p> <p>100%</p>

Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
							** To allow for measurement bias, an adjustment of -10 (minus ten) is made to IRI measurements for concrete pavements before assessing threshold compliance. (Renewal Work and new construction subject to construction quality standards) 3-ft straightedge used to measure discontinuities	IRI measured throughout 98% of Auditable Section of less than or equal to: • Mainlanes, ramps 120" per mile** • Frontage roads – 150" per mile** Mainlanes, ramps, 0.1 mile average – 150" per mile** Frontage roads, 0.1 mile average – 180" per mile** IRI measured throughout 98% of each lane containing a bridge deck in any Auditable Section, 0.1 mile average – 200" per mile** Individual discontinuities greater than 0.75"	100% 100% 100% 100% Nil
							d) Failures Instances of failures exceeding the failure criteria set forth in the TxDOT PMIS Rater’s Manual, including potholes, base failures, punchouts and jointed concrete pavement failures	Occurrence of any failure	Nil
							e) Edge drop-offs Physical measurement of edge drop-off level compared to adjacent surface	Instances of edge drop-off greater than 2" (Number)	Nil
	1.1(cont.)	Pavement (cont.)					f) Skid resistance ASTM E 274 Standard Test Method for Skid Resistance Testing of Paved Surfaces at 50 MPH using a full scale smooth tire meeting the requirements of ASTM E 524 .	• Mainlanes, shoulders and ramps – Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5-mile section of mainlanes, shoulders and ramps are in excess of 30.	100%

Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
								• Frontage roads –Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5-mile section of frontage roads is in excess of 30. • When the Skid Number is below 25 and/or when required by the Wet Weather Accident Reduction Program, areas categorized as high risk, the Concessionaire shall perform a site investigation and perform required corrective action.	100% 100%
			Road users warned of potential skidding hazards	24hrs	7days	N/A	Skid resistance (as above)	Instances where road users warned of potential skidding hazard where remedial action is identified.	100%
	1.2	Crossovers and other paved areas	Crossovers and other paved areas are free of Defects	24 hrs	28 days	6 months	a) Potholes b) Base failures	Potholes of low severity or higher (Number) Base failures of low severity or higher (Number)	Nil Nil
	1.3	Joints in concrete	Joints in concrete paving are sealed and watertight Longitudinal joint separation	24 hrs	28 days	6 months	Visual inspection of joints Measurement of joint width and level difference of two sides of joints	Length unsealed joints greater than ¼" Joint width more than 1" or faulting more than ¼"	Nil Nil
	1.4	Curbs	Curbs are free of defects	24 hrs	28 days	6 months	Visual inspection	Length out of alignment	Nil

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
2) DRAINAGE									
	2.1	Pipes and Channels	Each element of the drainage system is maintained in its proper function by cleaning, clearing and/or emptying as appropriate from the point at which water drains from the travel way to the outfall or drainage way.	24 hrs	28 days	6 months	Visual inspection supplemented by CCTV where required to inspect buried pipe work	Length with less than 90% of cross section clear (feet)	Nil
	2.2	Drainage treatment devices	Drainage treatment and balancing systems, flow and spillage control devices function correctly and their location and means of operation is recorded adequately to permit their correct operation in Emergency.	24 hrs	28 days	6 months	Visual inspection	Devices functioning correctly with means of operation displayed (Number)	100%
	2.3	Travel Way	The travel way is free from water to the extent that such water would represent a hazard by virtue of its position and depth.	24 hrs	28 days	6 months	Visual inspection of water on surface	Instances of hazardous water build-up	Nil
	2.4	Discharge systems	Surface water discharge systems perform their proper function and discharge to groundwater and waterways complies with the relevant legislation and permits.	24 hrs	28 days	6 months	Visual inspection and records	Non-compliances with legislation	Nil

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
3) STRUCTURES									
	3.1	Structures having an opening measured along the centre of the roadway of more than 20 feet between undercopings of abutments or springlines of arches or extreme ends of openings or multiple boxes	Substructures and superstructures are free of: <ul style="list-style-type: none"> • undesirable vegetation • blocked drains, weep pipes manholes and chambers • blocked drainage holes in structural components • defects in joint sealants • defects in pedestrian protection measure • scour damage • corrosion of rebar • paint system failures • impact damage 	24 hrs	28 days	6 months	Inspection and assessment in accordance with the requirements of federal National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration’s Bridge Inspector’s Reference Manual.	Records as required in the TxDOT Bridge Inspection Manual Occurrences of condition rating below seven for any deck, superstructure or substructure	Nil 100%
	3.2	Structure components	i) Expansion joints are free of: <ul style="list-style-type: none"> • dirt debris and vegetation • defects in drainage systems • loose nuts and bolts • defects in gaskets ii) The deck drainage system is free of all and operates as intended. iii) Parapets are free of: <ul style="list-style-type: none"> • loose nuts or bolts • blockages of hollow section drain holes 	24 hrs	28 days	6 months	Inspection and assessment in accordance with the requirements of federal National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration’s Bridge Inspector’s Reference Manual..	Records as required in the TxDOT Bridge Inspection Manual Occurrences of condition rating below seven for any deck, superstructure or substructure	Nil 100%
			<ul style="list-style-type: none"> • vegetation iv) Bearings and bearing shelves are clean.						
	3.2 (cont.)	Structure components (cont.)	v) Sliding and roller surfaces are clean and greased to ensure satisfactory performance. Additional advice contained in bearing manufacturers' instructions in the Structure Maintenance Manual is followed. Special finishes are clean and perform to the appropriate standards. vii) All non-structural items such as hoists and electrical fixings, operate correctly, are clean and lubricated as appropriate, in accordance with the manufacturer's recommendations and certification of lifting devices is maintained.	24 hrs	28 days	6 months	Inspection and assessment in accordance with the requirements of federal National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration’s Bridge Inspector’s Reference Manual..	Records as required in the TxDOT Bridge Inspection Manual Occurrences of condition rating below seven for any deck, superstructure or substructure	

Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
	3.3	Non-bridge class culverts	Non-bridge-class culverts are free of: <ul style="list-style-type: none"> • vegetation and debris and silt • defects in sealant to movement joints • scour damage 	24 hrs	28 days	6 months	Visual inspection	Number with vegetation, debris and silt Number with defects in sealant and movement joints Number with scour damage	Nil Nil Nil
	3.4	Gantries and high masts	Sign signal gantries, high masts are structurally sound and free of: <ul style="list-style-type: none"> • loose nuts and bolts • defects in surface protection systems • graffiti 	24 hrs	28 days	6 months	Visual inspection	Number with loose assemblies Number with defects in surface protection Number with graffiti	Nil Nil Nil
	3.5	Load ratings	All structures maintain the design load capacity.	24 hrs	28 days	6 months	Load rating calculations in accordance with the Manual for Bridge Evaluation and the TxDOT Bridge Inspection Manual. Load restriction requirements as per the TxDOT Bridge Inspection Manual	Number of load restrictions for Texas legal loads (including legally permitted vehicles)	Nil
	3.6	Access points	All hatches and points of access have fully operational and lockable entryways.	24 hrs	28 days	6 months	Visual Inspection	Number with defects in locks or entryways	Nil
	3.7	Mechanically Stabilized Earth and Retaining Walls	Mechanically Stabilized Earth and Retaining Walls free of: <ul style="list-style-type: none"> • blocked weep holes • undesirable vegetation • defects in joint sealants • defects in pedestrian protection • scour damage • corrosion of reinforcing bars • paint system failure • concrete spalling • impact damage Parapets free of: <ul style="list-style-type: none"> • loose nuts and bolts • blockage of drain holes • undesirable vegetation • impact damage • concrete spalling 	24 hours	28 days	6 months	Inspection and assessment in accordance with the requirements of federal Nations Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways - Part 650, the TxDOT Bridge Inspection Manual and the Federal Highway Administration's Bridge Inspector's Reference Manual.	Records as required in the TxDOT Bridge Inspection Manual	100%

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS									
	4.1	Pavement markings	Pavement markings are: <ul style="list-style-type: none"> • clean and visible during the day and at night • whole and complete and of the correct color, type, width and length • placed to meet the TMUTCD and TxDOT's Pavement Marking Standard Sheets 	24 hrs	28 days	6 months	a) Markings - General Portable retroreflector, which uses 30 meter geometry meeting the requirements described in ASTM E 1710 Physical measurement b) Profile Markings Visual inspection	Length meeting the minimum retroreflectivity 175 mcd/sqm/lx for white Length meeting the minimum retroreflectivity 125 mcd/sqm/lx for yellow Length with more than 5% loss of area of material at any point Length with spread more than 10% of specified dimensions. Length performing its intended function and compliant with relevant regulations	100% 100% Nil Nil 100%
	4.2	Raised reflective markers	Raised reflective pavement markers, object markers and delineators are: <ul style="list-style-type: none"> • clean and clearly visible • of the correct color and type • reflective or retroreflective as TxDOT standard • correctly located, aligned and at the correct level • are firmly fixed • are in a condition that will ensure that they remain at the correct level. 	24 hrs	28 days	6 months	Visual inspection	Number of markers associated with road markings that are ineffective in any 10 consecutive markers. (Ineffective includes missing, damaged, settled or sunk) [A minimum of four markers should be visible at 80' spacing when viewed under low beam headlights] Uniformity (replacement rpms having equivalent physical and performance characteristics to adjacent markers).	Nil 100%
	4.3	Delineators & Markers	Object markers, mail box markers and delineators are: <ul style="list-style-type: none"> • clean and visible • of the correct color and type • legible and reflective • Straight and Vertical 	24 hrs	28 days	6 months	Visual inspection	Number of object markers or delineators defective or missing	Nil

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
5) GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS									
	5.1	Guard rails and safety barriers	All guardrails, safety barriers, concrete barriers, etc... are maintained free of Defects. They are appropriately placed and correctly installed at the correct height and distance from roadway or obstacles. Installation and repairs shall be carried out in accordance with the requirements of NCHRP 350 standards.	24 hrs	28 days	6 months	Visual inspection	Length of road restraint systems correctly installed Length free from defects Length at correct height Length at correct distance from roadway and obstacle	100% 100% 100% 100%
	5.2	Impact attenuators	All impact attenuators are appropriately placed and correctly installed	24 hrs	7 days	6 months	Visual inspection	Number correctly placed and installed	100%

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
6) TRAFFIC SIGNS									
	6.1	General – All Signs	i) Signs are clean, correctly located, clearly visible, legible, reflective, at the correct height and free from structural and electrical defects ii) Identification markers are provided, correctly located, visible, clean and legible iii) Sign mounting posts are vertical, structurally sound and rust free iv) All break-away sign mounts are clear of silt or other debris that could impede break-away features and shall have correct stub heights v) Obsolete and redundant signs are removed or replaced as appropriate vi) Visibility distances meet the stated requirements vii) Sign information is of the correct size, location, type and wording to meet its intended purpose and any statutory requirements viii) All structures and elements of the signing system are kept clean and free from debris and have clear access provided. ix) All replacement and repair materials and equipment are in accordance with the requirements of the TMUTCD x) Dynamic message signs are in an operational condition	24 hrs	28 days	6 months	a) Retroreflectivity Coefficient of retro reflectivity b) Face damage Visual inspection c) Placement Visual inspection d) Obsolete signs Visual inspection e) Sign Information Visual inspection f) Dynamic Message Signs Visual inspection	Number of signs with reflectivity below the requirements of TxDOT’s TMUTCD Number of signs with face damage greater than 5% of area Signs are placed in accordance with TxDOT’s Sign Crew Field Book including not twisted or leaning Number of obsolete signs Sign information is of the correct size, location, type and wording to meet its intended purpose Dynamic message signs are fully functioning	Nil Nil 100% Nil 100% 100%
	6.2	General - Safety critical signs	Requirements as 6.1, Plus: "Stop," "Yield," "Do Not Enter," "One Way" and "Wrong Way" signs are clean legible and undamaged.	2hrs	1 week	6 months	Visual inspection	Number of damaged Safety critical signs	Nil

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
7) TRAFFIC SIGNALS									
	7.1	General	i) Traffic Signals and their associated equipment are: <ul style="list-style-type: none"> • clean and visible • correctly aligned and operational • free from damage caused by accident or vandalism • correctly aligned and operational ii) Signal timing and operation is correct iii) Contingency plans are in place to rectify Category 1 defects not immediately repairable to assure alternative traffic control is provided during a period of failure	2 hrs	24 hrs	6 months	a) General condition Visual inspection b) Damage Visual inspection c) Signal timing Timed measurements d) Contingency plans Records Review	Signals are clean and visible Signals are undamaged Installations have correct signal timings Full contingency plans are in place	100% 100% 100% 100%
	7.2	Soundness	Traffic Signals are structurally and electrically sound	24 hrs	28 days	6 months	a) Structural soundness Visual inspection b) Electrical soundness Testing to meet NEC regulations	Inspection records showing safe installation and maintenance	100%
	7.3	Identification marking	Signals have identification markers and the telephone number for reporting faults are correctly located, clearly visible, clean and legible	N/A	28 days	6 months	Visual inspection	Inspection records showing identification markers and other information are easily readable	100%
	7.4	Pedestrian Elements and Vehicle Detectors	All pedestrian elements and vehicle detectors are correctly positioned and fully functional at all times	24 hrs	28 days	6 months	Visual Inspection	Inspection records showing compliance	100%

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
8) LIGHTING									
	8.1	Roadway Lighting – General	i) All lighting is free from defects and provides acceptable uniform lighting quality ii) Lanterns are clean and correctly positioned iii) Lighting units are free from accidental damage or vandalism iv) Columns are upright, correctly founded, visually acceptable and structurally sound v) uniformity ratio of 3.1 with a minimum lux of 1.85 and an average lux of 6.5 to 8.6 on all traveled roadways to be illuminated.	24 hrs	28 days	6 months	a) Mainlane lights operable Night time inspection or automated logs b) Mainlane lights out of action Night time inspection or automated logs	Number of sections with less than 90% of lights functioning correctly at all times Instances of more than two consecutive lights out of action	Nil Nil
	8.2	Sign Lighting	Sign lighting is fully operational	24 hrs	28 days	6 months	Night time inspection or automated logs	Instances of more than one bulb per sign not working	Nil
	8.3	Electrical Supply	Electricity supply, feeder pillars, cabinets, switches and fittings are electrically, mechanically and structurally sound and functioning	24 Hrs	7 Days	1 Month	Testing to meet NEC regulations, visual inspection	Inspection records showing safe installation and maintenance	100%
	8.4	Access Panels	All access panels in place at all times.	24 Hrs	7 Days	1 Month	Visual Inspection	Instances of missing access panels	Nil
	8.5	High Mast Lighting	i) All high mast luminaries functioning on each pole ii) All obstruction lights are present and working (if required) iii) Compartment door is secure with all bolts in place iv) All winch and safety equipment is correctly functioning and maintained without rusting or corrosion (for structural requirements refer to Element Category 3)	24 hrs	48 hrs	1 Month	Yearly inspection and night time inspections or automated logs	Instances of two or more lamps not working per high mast pole Identification of other defects	Nil Nil

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
9) FENCES, WALLS AND SOUND ABATEMENT									
	9.1	Design and Location	Fences and walls act as designed and serve the purpose for which they were intended	24 hrs	28 days	6 months	Visual Inspection	Inspection records showing compliance	100%
	9.2	Construction	Integrity and structural condition of the fence is maintained	24 hrs	28 days	6 months	Structural assessment if visual inspection warrants	Inspection records showing compliance	100%

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
10) ROADSIDE MANAGEMENT									
	10.1	Vegetated Areas – Except landscaped areas – General	Vegetation is maintained so that: i) Height of grass and weeds is kept within the limits described for urban and rural areas. Mowing begins before vegetation reaches the maximum height. ii) Spot mowing at intersections, ramps or other areas maintains visibility of appurtenances and sight distance. iii) Grass or vegetation does not encroach into or on paved shoulders, main lanes, sidewalks, islands, riprap, traffic barrier or curbs. iv) A herbicide program is undertaken in accordance with the TxDOT Herbicide Manual to control noxious weeds and to eliminate grass in pavement or concrete. v) A full width mowing cycle is completed after the first frost. vi) Wildflowers are preserved utilizing the guidelines in the mowing specifications and TxDOT <i>Roadside Vegetation Manual</i> .	24 hrs	7 days	28 days	a) Urban areas Physical measurement of height of grass and weeds b) Rural areas Physical measurement of height of grass and weeds c) Encroachment Visual inspection of instances of encroachment of vegetation d) Wildflowers Visual Inspection with audit of process. e) Sight lines Visual inspection	Individual measurement areas to have 95% of height of grass and weeds between 5 in. and 18 in Individual measurement areas to have 95% of height of grass and weeds between 5 in. and 30 in Occurrences of vegetation encroachment in each auditable section Adherence to vegetation management manuals Instances of impairment of sight lines or sight distance to signs	100% 100% Nil 100% Nil
	10.2	Landscaped Areas	i) All landscaped areas are maintained to their originally constructed condition. Landscaped areas are as designated in the plans. ii) Mowing, litter pickup, irrigation system maintenance and operation, plant maintenance, pruning, insect, disease and pest control, fertilization, mulching, bed maintenance, watering is undertaken as per FMP. iii) The height of grass and weeds is kept between 2 inches and 8 inches. Mowing begins before vegetation reaches 8 inches iv) Damaged or dead vegetation is replaced.	24 hrs	7 days	28 days	Visual inspection	Inspection records showing compliance	100%
	10.3	Fire Hazards	Fire hazards are controlled	24 hrs	7 days	28 days	Visual inspection	Instances of dry brush or vegetation forming fire hazard	Nil

Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
	10.4	Trees, brush and ornamentals	i) Trees, brush and ornamentals on the right of way, except in established no mow areas, are trimmed in accordance with TxDOT standards. ii) Trees, brush and ornamentals are trimmed to insure they do not interfere with vehicles or sight distance, or inhibit the visibility of signs. iii) Dead trees, brush, ornamentals and branches are removed. Potentially dangerous trees or limbs are removed. iv) All undesirable trees and vegetation are removed. Diseased trees or limbs are treated or removed by licensed contractors.	24 hrs	7 days	28 days	Visual inspection	Inspection records showing compliance	100%
	10.5	Wetlands	Wetlands are managed in accordance with the permit requirements	24 hrs	7 days	28 days	Visual inspection, assessment of permit issuers	Instances of permit requirements not met	Nil

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
11) REST AREAS AND PICNIC AREAS									
	11.1	Rest areas and picnic areas	i) Picnic areas are clean and neat in appearance. ii) Trash barrels are painted and attached to their supports to prevent stealing. iii) Site free of any visible litter, all litter properly disposed. Litter removed from the picnic area grounds and barrels before being allowed to accumulate outside of the barrels. iv) All vehicles used in transporting litter are equipped to prevent the accumulated litter from being strewn along the roadway. v) Vegetation damaged due to improper or careless mowing and trimming operations or any other reason is replaced. vi) Weeds, grass and other undesirable growth are removed from beds of plants and shrubs as needed. Trees and shrubs are trimmed neatly. All curbs and sidewalks are edged and repaired. vii) All picnic tables are clean, free of stains and free of any defect. viii) All directional, informational, safety and any other type of signage is properly installed, contains accurate information and is visible from a reasonable distance. ix) All striping is intact and all parking and travel areas are clearly marked. x) All curbs are in place and intact.	24 hrs	28 days	6 months	Inspection records showing compliance	Instances where 90% of measured area shall have grass and weeds height between 2 in. and 8 in. Mowing shall begin before vegetation reaches 8 in. Number of bare ground areas larger than 5 square feet Number of prohibited, invasive or noxious weeds present. Occurrences of encroachment of vegetation or debris for more than two (2) inches onto any curb or sidewalk located throughout each rest area. Occurrences of deviation of soil or mulch above or below the top of the curb. Paved surfaces maintained clean and safe with minimal obstruction. Occurrences of undermining greater than 2"	100% 100% Nil Nil Nil 100% Nil Nil 100%

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
12) EARTHWORKS, EMBANKMENTS AND CUTTINGS									
	12.1	Slope Failure	All structural or natural failures of the embankment and cut slopes of the Facility are repaired	24 hrs	28 days	6 months	Visual inspection by geotechnical specialist and further tests as recommended by the specialist	Recorded instances of slope failure	Nil
	12.2	Slopes - General	Slopes are maintained in general conformance to the original graded cross-sections, the replacement of landscaping materials, reseeding and re-vegetation for erosion control purposes and removal and disposal of all eroded materials from the roadway and shoulders	24 hrs	28 days	6 months		Inspection records showing compliance	100%

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
13) ITS and ETCS EQUIPMENT									
	13.1	ETCS Equipment – Maintenance	All ITS and ETCS equipment is fully functional and housing is functioning and free of defects. i) All equipment and cabinet identification numbers are visible, sites are well drained and access is clear. ii) Steps, handrails and accesses are kept in a good condition. iii) Access to all communication hubs, ground boxes, cabinets and sites is clear, iv) All drainage is operational and all external fixtures and fittings are in a satisfactory condition. v) All communications cable markers, cable joint markers and duct markers are visible and missing markers are replaced. vi) Backup power supply system is available at all times	24 hrs	14 days	1 month	Visual Inspection	Inspection records showing compliance	100%
	13.2	VES Equipment - Maintenance	All VES equipment is kept clean, the identification numbers are visible.	24 hrs	14 days	1 month	Visual Inspection	Inspection records showing compliance	100%
	13.3	Dynamic Message Sign Equipment	Dynamic Message Signs are free from faults such as: i) Any signal displaying an message which is deemed to be a safety hazard ii) Failure of system to clear sign settings when appropriate. iii) 2 or more contiguous sign failures that prevent control office setting strategic diversions iv) Signs displaying an incorrect message.	2 hrs	24 hrs	14 days	Defect measurement dependent on equipment	Inspection records showing compliance	100%
	13.4	CCTV Equipment	CCTV Systems are free from faults that limit the availability of the operators to monitor the area network, such as: i) Failure of CCTV Systems to provide control offices with access and control of CCTV images ii) Failure of a CCTV camera or its video transmission system. iii) Failure of a Pan / Tilt unit or its control system. iv) Moisture ingress onto CCTV camera lens v) Faults that result in significant degradation of CCTV images	2 hrs	24 hrs	14 days	Defect measurement dependent on equipment	Inspection records showing compliance	100%

Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
	13.5	Vehicle Detection Equipment	All equipment free of defects and operational problems such as; i) Inoperable loops. ii) Malfunctioning camera controllers.	2 hrs	24 hrs	1 month	Defect measurement dependent on equipment Traffic Detector Loops: Loop circuit's inductance to be > 50 and < 1,000 micro henries. Insulation resistance to be > 50 meg ohms.	Inspection records showing compliance Instances of loops out of compliance	100% Nil

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
14) TOLLING Facilities and Buildings (Not Used)									

* - Items in these columns shall be reviewed annually by Maintenance Contractor as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
15) AMENITY									
	15.1	Graffiti	Graffiti is removed in a manner and using materials that restore the surface to a like appearance similar to adjoining surfaces. All graffiti is considered a Category 1 Defect.	24 hrs	28 days	N/A	Visual Inspection	Inspection records showing compliance No graffiti shall be visible when traveling at highway speed.	100%
	15.2	Animals	All dead or injured animals are removed from the ROW	2 hrs	N/A	N/A	Visual inspection	No dead or injured animals are present on ROW	100%
	15.3	Abandoned vehicles and equipment	All abandoned vehicles and equipment are removed from the ROW.	1 hr	24 hrs	N/A	Visual inspection	No abandoned vehicles or equipment present	100%

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
16) SNOW AND ICE CONTROL									
	16.1	Travel lanes	Maintain travel way free from snow and ice	2hrs	N/A	N/A	Maximum 1hr response time to complete manning and loading of spreading vehicles Maximum 2hrs from departure from loading point to complete treatment and return to loading point Maximum 1hr response time for snow and ice clearance vehicles to depart from base	Inspection records showing compliance	100%
	16.2	Weather Forecasting	Weather forecast information is obtained and assessed and appropriate precautionary treatment is carried out to prevent ice forming on the travel way	2hrs	N/A	N/A	Operations plan details the process and procedures in place and followed	Inspection records showing compliance	100%
	16.3	Operational Plans	Operate snow and ice clearance plans to maintain traffic flows during and after snowfall and restore the travel way to a clear condition as soon as possible.	2hrs	N/A	N/A	Operations plan details the process and procedures in place and followed	Inspection records showing compliance	100%

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
17) INCIDENT RESPONSE									
	17.1	General	Respond to Incidents in accordance with Section 22.	1 hr	N/A	N/A	Response times met for 98% of incidents measured on a 1 year rolling basis. No complaints from Emergency Services.	Inspection records showing compliance	100%
	17.2	Hazardous Materials	For any hazardous materials spills, comply with the requirements of Section 22.	1 hr	N/A	N/A	FMP details the process and procedures in place and followed.	Inspection records showing compliance	100%
	17.3	Structural assessment	Evaluate structural damage to structures and liaise with emergency services to ensure safe working in clearing the incident	1 hr	N/A	N/A	Inspections and surveys as required by incident	Incident reports showing compliance	100%
	17.4	Temporary and permanent remedy	Propose and implement temporary measures or permanent repairs to Defects arising from the Incident. Ensure the structural safety of any structures affected by the incident	24hrs	28 days	N/A	Review and inspection of the incident site	Auditable inspection records showing compliance	100%

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
18) CUSTOMER RESPONSE									
	18.1	Response to inquiries	Timely and effective response to customer inquiries and complaints.	48 hrs	28 days	N/A	Contact the customer within 48 hours following initial customer inquiry. All work resulting from customer requests is scheduled within 48 hours of customer contact. Follow-up contact with the customer within 72 hours of initial inquiry. All customer concerns/requests are resolved to TxDOT's satisfaction within 2 weeks of the initial inquiry.	Number of responses within specified times	100%
	18.2	Customer contact line	Telephone line manned during business hours and 24 hour availability of messaging system. Faults to telephone line or message system rectified	24 hrs	28 days	N/A	Instances of line out of action or unmanned	Operations records showing non availability including complaints from public.	nil

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Performance and measurement requirements for Maintenance Services									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Category 1 Hazard Mitigation	Category 1 Permanent Remedy	Category 2 Permanent Repair			
19) SWEEPING AND CLEANING									
	19.1	Sweeping	i) Keep all channels, hard shoulders, gore areas, ramps, intersections, islands and frontage roads swept clean, ii) Clear and remove debris from traffic lanes, hard shoulders, verges and central reservations, footways and cycle ways iii) Remove all sweepings without stockpiling in the right of way and dispose of at approved tip.	24 hrs	28 days	6 months	Buildup of dirt, ice rock, debris, etc. on roadways and bridges not to accumulate greater than 24" wide or 1/2" deep	Inspection records showing compliance	100%
	19.2	Litter	i) Keep the right of way in a neat condition, remove litter regularly ii) Pick up large litter items before mowing operations. iii) Dispose of all litter and debris collected at an approved solid waste site.	24 hrs	28 days	6 months	No more than 20 pieces of litter per roadside mile shall be visible when traveling at highway speed.	Inspection records showing compliance	100%

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ATTACHMENT 2 TO THE MAINTENANCE SPECIFICATION : ELEMENTS FOR WHICH MAINTENANCE SERVICES ARE TO BE PROVIDED.

Maintenance Contractor shall maintain the Elements marked ‘R’ in column A to achieve the performance requirements set forth in Attachment 1 to Series 1900 of the Maintenance Specification.

ELEMENT CATEGORY	REF	ELEMENT	REQUIRED		
			A	B	C
1) ROADWAY					
	1.1	Pavement	R		
	1.2	Crossovers and other paved areas	R		
	1.3	Joints in concrete	R		
	1.4	Curbs	R		
2) DRAINAGE					
	2.1	Pipes and Channels	R		
	2.2	Drainage treatment devices	R		
	2.3	Travel Way	R		
	2.4	Discharge systems	R		
3) STRUCTURES					
	3.1	Structures having an opening measured along the centre of the roadway of more than 20 feet between undercopings of abutments or springlines of arches or extreme ends of openings or multiple boxes	R		
	3.2	Structure components	R		
	3.3	Non-bridge class culverts	R		
	3.4	Gantries and high masts	R		
	3.5	Load ratings	R		
	3.6	Access points	R		
	3.7	Mechanically Stabilized Earth and Retaining Walls	R		
4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS					
	4.1	Pavement markings			
	4.2	Raised reflective markers			
	4.3	Delineators & Markers			
5) GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS					
	5.1	Guard rails and safety barriers			
	5.2	Impact attenuators			

ELEMENT CATEGORY	REF	ELEMENT	REQUIRED		
			A	B	C
6) TRAFFIC SIGNS					
	6.1	General – All Signs			
	6.2	General - Safety critical signs			
7) TRAFFIC SIGNALS					
	7.1	General			
	7.2	Soundness			
	7.3	Identification marking			
	7.4	Pedestrian Elements and Vehicle Detectors			
8) LIGHTING					
	8.1	Roadway Lighting – General			
	8.2	Sign Lighting			
	8.3	Electrical Supply			
	8.4	Access Panels			
	8.5	High Mast Lighting			
9) FENCES, SOUND WALLS AND ABATEMENT					
	9.1	Design and Location			
	9.2	Construction			
10) ROADSIDE MANAGEMENT					
	10.1	Vegetated Areas – Except landscaped areas – General			
	10.2	Landscaped Areas			
	10.3	Fire Hazards			
	10.4	Trees, brush and ornamentals			
	10.5	Wetlands			
11) REST AREAS AND PICNIC AREAS					
	11.1	Rest areas and picnic areas			
12) EARTHWORKS, EMBANKMENTS AND CUTTINGS					
	12.1	Slope Failure	R		
	12.2	Slopes - General	R		
13) ITS and ETCS EQUIPMENT					
	13.1	ETCS Equipment – Maintenance			
	13.2	VES Equipment - Maintenance			
	13.3	Dynamic Message Sign Equipment			
	13.4	CCTV Equipment			
	13.5	Vehicle Detection Equipment			
14) TOLLING Facilities and Buildings (Not Used)					

ELEMENT CATEGORY	REF	ELEMENT	REQUIRED		
			A	B	C
15) AMENITY					
	15.1	Graffiti			
	15.2	Animals			
	15.3	Abandoned vehicles and equipment			
16) SNOW AND ICE CONTROL					
	16.1	Travel lanes			
	16.2	Weather Forecasting			
	16.3	Operational Plans			
17) INCIDENT RESPONSE					
	17.1	General			
	17.2	Hazardous Materials			
	17.3	Structural assessment			
	17.4	Temporary and permanent remedy			
18) CUSTOMER RESPONSE					
	18.1	Response to inquiries			
	18.2	Customer contact line			
19) SWEEPING AND CLEANING					
	19.1	Sweeping			
	19.2	Litter			

ATTACHMENT 3 TO THE MAINTENANCE SPECIFICATION : LIMITS FOR MAINTENANCE SERVICES

The limits for maintenance services are defined by the Work performed in the construction of the applicable configuration.

Developer will not be responsible for the maintenance on existing bridges and roadways within the applicable configuration that are not constructed or reconstructed by the Developer. If any portion of an existing bridge constructed is reconstructed by the Developer , then the full length of that bridge shall be maintained by the Developer.

ATTACHMENT 4 -

Not used.

ATTACHMENT 5 : PUBLIC INFORMATION OFFICE OPENING HOURS

Not used.

ATTACHMENT 6 : RESTRICTIONS ON TRAFFIC MANAGEMENT

No Liquidated Damages for Lane Closures will be assessed during the first year of the Initial Maintenance Term.

EXHIBIT 3

MAINTENANCE CONTRACTOR'S PROPOSAL COMMITMENTS

Comment No.	Proposal Location	NorthGate Proposal Commitment
1	C1.2(a)	During this phase, we will perform a field survey of each element and begin to record and catalog the assets through a photo/video record.
2	C1.2(c)	All photographs, video, cameras and recording equipment will be transferred to TxDOT. An additional inventory of specialized equipment will be made for transfer to TxDOT. This will include hand-held field inspection recording units, software and hardware (GIS-MMIS server and laptops) and cell phones (or latest technology) used to implement the NorthGate capital maintenance program.

EXHIBIT 4
MAINTENANCE PRICE

MAINTENANCE PRICE – Configuration 1

Item	Expenditure per Year		
	Option 1 (Years 1-5)	Option 2 (Years 6-10)	Option 3 (Years 11-15)
Total Annual Cost	\$3,661,482.00	\$2,212,167.00	\$2,698,539.00

MAINTENANCE PRICE – Configuration 2

Item	Expenditure per Year		
	Option 1 (Years 1-5)	Option 2 (Years 6-10)	Option 3 (Years 11-15)
Total Annual Cost	\$3,446,459.00	\$2,730,211.00	\$3,325,706.00

MAINTENANCE PRICE – Configuration 3

Item	Expenditure per Year		
	Option 1 (Years 1-5)	Option 2 (Years 6-10)	Option 3 (Years 11-15)
Total Annual Cost	\$3,640,106.00	\$3,559,127.00	\$4,263,668.00

EXHIBIT 5

JOB TRAINING AND SMALL BUSINESS MENTORING PLAN

Northgate Constructors On-the-Job Training Program

Policy Statement

Northgate Constructors will institute an on-the-job training program on the DFW Connector Project (*TxDOT Project # Pending*), in accordance with the regulations of the U.S. Department of Transportation at 23 CFR Part 230, Subpart A, Equal Employment Opportunity on Federal and Federal-aid Construction Contracts, and TxDOT Special Provisions 000-1001 (attached), and 000-1592 (attached as Attachment 9 to CDA Exhibit 3) of the 2004 Specifications. The program is designed to increase participation of minority groups, disadvantaged persons and women in all phases of the highway construction industry.

Nondiscrimination

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

Northgate Annual Goal Commitment

Northgate Constructors will train at a minimum, the number of trainees required by TxDOT's Annual Estimate of Trainees Based upon Contract Amount, using the estimated amount of actual field work (not including design or close out work), for the current year on the DFW Connector Project (*TxDOT Project # Pending*). Northgate Constructors will submit the planned number of trainees to TxDOT for review and approval prior to January 31st of each year. Training will begin in 2010.

Dissemination of OJT Program

Northgate Constructors will advise employees and applicants for employment of available training programs and prerequisites for each program. Upon entering the program, each trainee will receive a copy of their completed **Form 2201, Contractor OJT Enrollment Request Form (Attached)**.

THIS IS AN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Good Faith Efforts

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

Reporting Requirements

Northgate Constructors will notify TxDOT within seven (7) days of intent to assign trainee to the project using the ***Form 2201, Contractor OJT Enrollment Request Form***.

Northgate Constructors will electronically submit ***Form 2202, Contractor OJT Weekly Reporting Form (Attached)***, by Wednesday of each week, to the appropriate TxDOT Area Engineer(s), to document training activity, hours trained, termination, or graduation during the training period indicated.

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

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

Northgate Constructors will utilize ***Form 2201, Contractor OJT Enrollment Request Form*** to notify TxDOT of the replacement trainee's enrollment.

When a trainee is transferred, Northgate Constructors will notify TxDOT's Area Engineer for the previous project and the Area Engineer for the project to which the trainee is being transferred, using ***Form 2202 – Contractor OJT Weekly Reporting Form..***

Northgate Constructors will retain original training records for a period not less than three years following completion of the contract work.

Trainee Requirements

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

THIS IS AN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Trainee Wage Rates

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

THIS IS AN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Texas Department of Transportation Contractor On-the-Job Training Plan

I. Contractor Information		
Contractor		FY 2009 OJT Goal
Contractor Representative	E-mail address	Phone Number
Training must begin on a Federal-aid project. Indicate what project(s) selected trainees will be training on. Submit a Form-1391 for each project listed.		

II. Recruitment (Form FHWA-1273 requirement)
Describe what methods will be used to locate minorities and women as OJT candidates:
Describe how employees and applicants for employment will be advised of the OJT program:

III. Selections (Form FHWA-1273 requirement)
Describe how trainees and their classifications were selected:

Training Classification	Approximate Training Start Date	Projected Number of Minorities	Projected Number of Females

I understand and will comply fully with the plans and specifications under which this training is being performed and will report subsequent revisions to the training program as changes occur. I will take all good faith efforts to ensure that minorities and women have the equal opportunity to compete for and participate as trainees. Furthermore, I will ensure that trainees develop as journey-level workers in the type of classification employed.

Contractor Representative Signature	Date

Texas Department of Transportation Use Only	
Comments:	

<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Print name	Title
	Signature	Date



Texas Department of Transportation CONTRACTOR OJT ENROLLMENT REQUEST FORM

Form 2201
(Rev. 03/09)
Page 1 of 1

First Name: _____ MI: _____ Last Name: _____
SSN (last 4 digits): _____
Address: _____
City: _____ State: _____ Zip Code: _____ Phone: _____

Gender: _____
Ethnicity: _____ If other, please specify: _____

New Hire or Upgrade: _____ Previous Wage: _____
Previous Classification: _____
The candidate expressed interest in the OJT Program by responding to:
If Upgrade:
If New Hire:
If other, please specify:
How did the candidate demonstrate the commitment and capability to complete the program?

Contractor: _____ Phone: _____
Contact Person: _____
Address: _____ City, State, ZIP: _____
Email: _____

Training Classification: _____
Planned Training Start Date: _____ Training Start Wage: _____
Contract CSJ: (9999-99-999) Federal-aid project: Yes No
Is the OJT Special Provision included in the contract? Yes No
*If no, a change order must be generated.
County: _____ District: _____
Area Engineer: _____

Trainee Signature

Contractor Representative Signature

Type Name

Type Name

Electronically submit this form within 7 days to the Texas Department of Transportation (TxDOT) Office of Civil Rights at OCR_TxDOT-OJT-Program@dot.state.tx.us. A signed copy must be maintained in the project files. Upon receipt of this form and if appropriate, TxDOT will furnish an enrollment confirmation letter to the Contractor, the applicable Area Engineer(s) and the District Director of Construction.

THIS IS AN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

SPECIAL PROVISION

000--1001

On-the-Job Training Program

1. **Description.** Texas Department of Transportation's (TxDOT's) program to meet the requirements of the Federal-Aid Highway Act of 1968 and 23 CFR (Code of Federal Regulations) Part 230, Subpart A. The objective is to develop skill improvement programs to provide opportunities for unskilled workers, particularly minorities, women, and disadvantaged persons, to acquire training in the skilled construction trades.
2. **Trainee Assignment.** TxDOT's Office of Civil Rights will allocate training assignments to prequalified contractors based on the past contract volume of federal-aid work performed with TxDOT. TxDOT will notify each contractor who has met the volume of work threshold at the beginning of each reporting year and advise them of the number of trainees they are expected to support.
3. **Program Requirements.** Contractors found to have reached the level(s), as identified in the TxDOT On-The-Job Training (OJT) program document, are required to fulfill all of the requirements of the OJT program at no additional cost to the department other than contractor requested reimbursement of \$0.80 per hour for a trainee.

The contractors are required to compensate the trainee at least 60% of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75% for the third quarter of the training period and 90% for the last quarter of the training period.

Contractors will promptly notify pertinent project engineers of the trainee's work location in sufficient time to allow for observation or interviews.

The program document is available through the TxDOT Office of Civil Rights Contract Compliance Section at 125 E. 11th Street, Austin, Texas 78701.

4. **Non-Compliance.** A contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the department reserves the right to terminate the contract, assess liquidated damages, or such other remedy or remedies as the department deems appropriate.

Small Business Mentoring/Training Program

NorthGate Constructors has created a Small Business Mentor Protégé Program to provide opportunities for disadvantaged and small businesses to participate in the areas of goods and services; design and construction.

Definition of Terms

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

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

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

NorthGate Constructors Mentor (Mentor) – Employees from NorthGate Constructors.

NorthGate Constructors (NGC) Protégé (Mentor Protégé) – DBEs/ HUBs/ SBEs that sign an agreement with NGC to participate in the NGC-Small Business Mentor Protégé Program.

Session – A series of meetings for the NGC-Small Business Mentor Protégés.

Program Goals

NorthGate Constructor's (NGC) Small Business Mentor Protégé Program provides an opportunity to selected Small Business Mentor Protégés to learn about NGC's business opportunities and its business practices. Mentor Protégés will receive information to assist them in bidding and performing on NGC's contracts by working directly with NGC and appropriate subcontractors gaining valuable on-the-job training during a one (1) year mentoring period.

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

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

- 2 Creating a cost budget and measuring costs**
 - a) Establishing a budget with appropriate cost codes
 - b) Monitoring the budget by conducting weekly review of cost reports
 - c) Anticipating necessary changes to the budget
 - d) Adjusting the budget
 - e) Identifying changed conditions

- 3 Measuring Cash flow and profitability**
 - a) Cash in vs. Cash out
 - b) Relationship of cash flow to profitability

- 4 Understanding the role of bonds and insurance**

- 5 Clarifications to the contract documents, when requested by the Mentor Protégé.**

- 6 Human resources**

- 7 Project Safety**

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

Eligibility

To be eligible for the program, the small business must have been certified by the State of Texas as a DBE, HUB, or SBE for at least one consecutive year and must perform a category of work or supply a type of material that adds value to the project (e.g., design services, concrete supplier, rebar tier). Firms interested in the program must submit a Small Business Mentor Protégé application to NorthGate Constructors (NGC). NGC will offer participation in the program to each DBE, HUB, or SBE that has an active role in the project, and will endeavor to maintain, on average, five (5) active participants during the design and construction phase of the project. A total of two (2) active participants will be mentored during the capital maintenance period. The actual number of Protégés participating in the program will depend on the total number of candidate firms working on the project that express interest in the program.

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

Program Approach and Topics

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

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

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

Participant Responsibilities and Reporting

A. Mentor Protégé:

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

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

B. Mentor:

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

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

EXHIBIT 6

FORM OF MAINTENANCE PERFORMANCE BOND

DFW Connector Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Capital Maintenance Agreement for the DFW Connector Project, duly executed and delivered as of _____, 200_ (the "CMA"), on the terms and conditions set forth therein; and

WHEREAS, on or before 60 days after issuance by Obligee of Maintenance NTP1, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations under the CMA Documents.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$[_____] [*amount calculated as set forth in CMA Section 7.1.3*] (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the CMA Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 7.1 of the CMA.

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

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

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the CMA Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages for Lane Closures and Liquidated Damages for Noncompliance Points as specified in the CMA Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive the expiration or termination of the Maintenance Term with respect to those obligations of Principal under the CMA Documents which survive such expiration or termination.

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

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

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

c. obtain bids or negotiated proposals from qualified contractors acceptable to the 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 Contract, and pay to the Obligees the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Maintenance Price for the applicable Maintenance Term incurred by the 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 therefore to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the 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 Subparagraph 4.d of this Bond, and the Obligees refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligees shall be entitled to enforce any remedy available to the Obligees.

6. After the Obligees has terminated the Principal's right to complete the CMA, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligees shall not be greater than those of the Principal under the CMA, and the responsibilities of the Obligees to Surety shall not be greater than those of the Obligees under the CMA. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Maintenance Price for the applicable

Maintenance Term to mitigation costs and damages on the CMA, Surety is obligated without duplication for:

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

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and

c. Liquidated Damages for Lane Closures and Liquidated Damages for Noncompliance Points under the CMA.

7. No alteration, modification or supplement to the CMA Documents or the nature of the Maintenance Services to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

8. In no event shall the term of this bond be beyond the fifth anniversary of the execution dates without the express written consent of the Surety. Surety will have no obligation to extend or replace this bond for additional periods of time. Failure of the surety to extend this bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

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

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

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 200__.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____
Name
Title:
Address:

EXHIBIT 7

FORM OF MAINTENANCE PAYMENT BOND

DFW Connector Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Capital Maintenance Agreement for the DFW Connector Project, duly executed and delivered as of _____, 200_ (the "CMA"), on the terms and conditions set forth therein; and

WHEREAS, on or before 60 days after issuance by Obligee of Maintenance NTP1, Principal is required to furnish a bond (this "Bond") guaranteeing payment of claims by Subcontractors and Suppliers.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$[_____] [*amount calculated as set forth in CMA Section 7.1.3]* (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Maintenance Services, then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 7.1 of the CMA.

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

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

2. No alteration, modification or supplement to the CMA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

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

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

5. In no event shall the term of this bond be beyond the fifth anniversary of the execution date without the express written consent of the Surety. Surety will have no obligation to extend or replace this bond for additional periods of time. Failure of the Surety to extend this bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 200__.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____

Name

Title:

Address:

EXHIBIT 8

FORM OF RETAINAGE BOND

CONTRACT NO. _____
COUNTY _____
BOND NO. _____

RETAINAGE BOND

KNOW ALL PERSONS BY THESE PRESENTS that **CONTRACTOR**, as Principal, and the undersigned surety, are held and firmly bound unto the State of Texas as Obligee, in the amount of TEN PERCENT (10%) of the total amount paid the Principal under the contract, including any increases due to change orders, quantities of work, new items of work, or other additions as the Obligee may pay under the CMA, lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

Whereas, the Principal has entered into the above-referenced contract with the State of Texas, attached hereto, and

Whereas, under the contract, the Principal is required before commencing the work provided for in the contract to execute a bond in the above amount.

Now therefore, the condition of this obligation is such that if the Principal and its heirs, successors, executors, and administrators shall fully indemnify and save harmless the State of Texas from all costs and damages from valid claims filed within 90 days of notification of final acceptance of the work under the contract by any person or entity against the contract funds, and shall fully reimburse the State of Texas for amounts owed by the Principal to the State of Texas with regard to the contract after notification of final acceptance of the work, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that the said surety(s) for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the CMA, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligation on this bond. The surety(s) does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the CMA or to the work or to the Specifications, unless otherwise specified in the contract.

WITNESS our hand this, _____ day of _____, 20____.

CONTRACTOR

SURETY (Print Firm Name and Seal)

By: _____
(Title)

*By: _____
(Title)

By: _____
(Title)

SURETY (Print Firm Name and Seal)

SURETY (Print Firm Name and Seal)

*By: _____
(Title)

*By: _____
(Title)

*NOTE: A Power of Attorney, showing that the surety officer or Attorney-In-Fact has authority to sign such obligation, must be impressed with the corporate seal and attached behind the Payment Bond in each contract.

This form has been approved by the ATTORNEY GENERAL OF TEXAS & TEXAS DEPARTMENT OF INSURANCE.

EXHIBIT 9

FORM OF GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 2009 by _____, a _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

RECITALS

A. NorthGate Constructors, J.V., as maintenance contractor ("Maintenance Contractor"), and TxDOT are parties to that certain Capital Maintenance Agreement of even date herewith ("Capital Maintenance Agreement") pursuant to which the Maintenance Contractor has agreed to maintain the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Capital Maintenance Agreement.

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

C. Maintenance Contractor is a Joint Venture. The Guarantor is _____ The execution of the Capital Maintenance Agreement by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the Capital Maintenance Agreement with Maintenance Contractor. Therefore, in consideration of TxDOT's execution of the Capital Maintenance Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to executed this Guaranty.

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

1. **Guaranty.** Guarantor guarantees to TxDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the Maintenance Contractor arising out of, in connection with, under or related to: (a) the Capital Maintenance Agreement (and the documents executed or to be executed in connection therewith), and (b) each and every other document and agreement executed by the Maintenance Contractor in connection with the consummation of the transactions contemplated by the Capital Maintenance Agreement (the documents described in clauses (a)-(b), inclusive, shall collectively be referred to herein as the "CMA Documents"). The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

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

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

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

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between the

Maintenance Contractor and TxDOT or their respective successors and assigns, with respect to any of the CMA Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the CMA Documents or any modification thereof; (iii) any release of the Maintenance Contractor from any liability with respect to any of the CMA Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by the Maintenance Contractor of the Guaranteed Obligations.

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

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

4. Liability of Guarantor.

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

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

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

Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the CMA Documents.

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

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

thereto or notice of any other matters relating thereto,, except the notice required in Section 12.3 of the Capital Maintenance Agreement, but without diminishing TxDOT's exercise of its rights pursuant to Section 12.2.2 of the Capital Maintenance Agreement; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of the Maintenance Contractor, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

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

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

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

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

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

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

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

8. **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 _____ duly ***[organized][formed]***, validly existing, and in good standing under the laws of the State of _____ and qualified to do business and is in good standing under the laws of the State of Texas;

b. it has all requisite ***[corporate][partnership][limited liability company]*** power and authority to execute, deliver and perform this Guaranty;

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

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

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) ***[the certificate of incorporation or by-laws][certificate of limited partnership or partnership agreement][certificate of formation or limited liability company agreement]*** of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

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

g. it has reviewed and approved copies of the CMA Documents and is fully informed of the remedies TxDOT may pursue, with or without notice to the

Maintenance Contractor or any other Person, in the event of default of any of the Guaranteed Obligations;

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

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

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

10. Governing Law. 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 telex, telegram or telecopying (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
District Office
125 East 11th Street
Austin, TX 78701
Attention: Ed Pensock
Telephone: (512) 936-0960
Facsimile: (512) 936-0970

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

If to Guarantor: _____

Attention: _____
Telephone: _____
Telecopy: _____

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

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

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

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

accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

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

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

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

(a) The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Maintenance Contractor or by any defense which the Maintenance Contractor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. TxDOT is not obligated to file any claim relating to the Guaranteed Obligations if the Maintenance Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of TxDOT so to file will not affect Guarantor's obligations under this Guaranty.

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

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

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

21. Defenses. Guarantor shall be entitled to the benefit of all defenses available to the Developer under the Capital Maintenance Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of the Contractor and any other defense to formation of the Contract, and (c) defenses available to the Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 12.3 of the Capital Maintenance Agreement, without diminishing any rights TxDOT may exercise pursuant to Section 12.2.2 of the Capital Maintenance Agreement.

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

a _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT 10

INSURANCE REQUIREMENTS

1. Builder's Risk Insurance During Construction

At all times during any period in which construction work is in progress during the Maintenance Term, Maintenance Contractor shall procure and keep in force a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, excluding terrorism but including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, and tornado and subsidence; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, (ii) all existing property and improvements that are within the construction work zone or are or will be affected by the construction work, and (iii) valuable papers and restoration of data, plans and drawings.

(c) The policy shall provide coverage per occurrence up to the maximum probable loss amount of \$100,000,000, plus an allowance for professional fees, demolition and debris removal, without risk of co-insurance; provided, however, that the policy may include a sublimit for earth movement and flood of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds on the policy, using ISO form CG 20 26 11 85. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the additional insureds.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, and (x) "soft cost expense" (including costs of

Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

2. Commercial General Liability Insurance

At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below. During any period in which Maintenance Contractor, at its election, maintains in effect builder's third party liability insurance pursuant to Section 3 of this Exhibit 10, the commercial general liability insurance policy need not duplicate the builder's third party liability insurance coverage.

(a) The policy shall be in a form reasonably acceptable to TxDOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall insure against the legal liability of the insureds named in Section 2(d), relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

- (i) Contractual liability;
- (ii) Premises/operations;
- (iii) Independent contractors;
- (iv) Products and completed operations (with acknowledgement that the Project constitutes the premises and not a product);
- (v) Broad form property damage, providing the same coverage as ISO form CG 00 01 10 93 provides;
- (vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;
- (vii) Fellow employee coverage for supervisory personnel;
- (viii) Incidental medical malpractice;
- (ix) No exclusion for work performed within 50 feet of a railroad;

- (x) Except with regard to indemnifying a professional advisor, consultant, sub-consultant, Supplier or manufacturer engaged by Maintenance Contractor, no application of any limitation or exclusion for bodily injury or property damage arising out of professional services, including engineering, architecture and surveying, in any manner to (A) coverage respecting Maintenance Contractor's supervision, coordination, management, scheduling or other similar services or (B) the products and completed operations coverage;
- (xi) Broad named insured endorsement; and
- (xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 4 of this Exhibit 10.

(c) The policy shall have limits of not less than \$600,000 per occurrence and in the aggregate per policy period. Such limits shall be shared by all insured and additional insured parties and shall reinstate annually and may be included in an umbrella insurance combined with such other insurance that this schedule stipulates may be similarly added.

(d) TxDOT and the Indemnified Parties shall be named as additional insured's, using ISO form CG 20 26 11 85. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

(e) The policy shall provide for a deductible or self-insured retention not exceeding \$50,000 per occurrence.

3. Builder's Third Party Liability Insurance

During any period in which construction work is performed under the Capital Maintenance Agreement, Maintenance Contractor, at its election, may procure and keep in effect builder's third party liability insurance, as specified below, in lieu of commercial general liability insurance coverage for construction activities (but Maintenance Contractor shall maintain commercial general liability insurance coverage for all non-construction-related activities).

(a) The policy shall insure against liability to third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, arising out of the construction work or other work of construction or the improvements under construction. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) Maintenance Contractor shall continue the policy in effect for not less than the applicable warranty period under the Capital Maintenance Agreement.

(c) The policy shall otherwise include the same provisions as described for the commercial general liability insurance under Sections 2(b) through (e) of this Exhibit 10.

4. Automobile Liability Insurance

At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall procure and keep in force comprehensive, business, or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Maintenance Services, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) Maintenance Contractor shall be the named insured under its automobile liability policy.

(c) Maintenance Contractor's policy shall have a combined single limit per policy period of not less than \$600,000 any one claim and in the aggregate and may be included in an umbrella insurance combined with such other insurance that this schedule stipulates may be similarly included.

(d) Each policy shall provide a deductible or self-insured retention not exceeding \$50,000 per occurrence.

5. Pollution Liability Insurance

At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, pollution liability insurance as specified below.

(a) The policy shall cover sums that the insured becomes liable to pay to a third party or that are incurred by the order of a regulatory body consequent upon a pollution incident, subject to the policy terms and conditions. Such policy shall cover claims related to pollution conditions to the extent such are caused by the performance of the Maintenance Services or by other activities that occur on the Project.

(b) Maintenance Contractor and the Indemnified Parties shall be the named insureds under such policy. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. The insured vs. insured exclusion shall be deleted, so that the policy will insure Maintenance

Contractor against, and respond to, pollution liability claims and actions of TxDOT against Maintenance Contractor.

(c) The policy shall have a limit of not less than \$2,000,000 per occurrence and in the aggregate per policy period, unless applicable regulatory standards impose more stringent coverage requirements.

(d) The policy shall provide a deductible or self-insured retention not exceeding \$250,000 per occurrence.

6. Professional Liability Insurance

Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, professional liability insurance, as specified in subparagraphs (a), (b) and (c) below, at all times during the performance of the Maintenance Services and during the Maintenance Term, that professional services are rendered respecting design and construction until five years after the professional services have concluded for the Project; provided, however, that the total term of such professional liability coverage need not extend beyond ten (10) years. Maintenance Contractor may satisfy such insurance via a project policy covering all the foregoing providers of professional services.

(a) Each policy shall be Project-specific and provide coverage of liability of the party performing the professional services arising out of any negligent act, error or omission in the performance of professional services or activities for the Project, with no exclusions for bodily injury or property damage.

(b) Each policy shall have a limit of not less than \$10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

(c) Each policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

In addition, Maintenance Contractor shall cause each other Subcontractor that provides professional services for the Project to procure and keep in force professional liability insurance, covering its professional services practice, of not less than \$2,000,000 per claim and in the aggregate per annual policy period. Such policy need not be Project-specific or include a tail period for making claims, and shall include a commercially reasonable deductible.

9. Workers' Compensation Insurance

At all times when work is being performed by any employee of Maintenance Contractor or a Subcontractor under the Capital Maintenance Agreement, Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Maintenance Contractor and/or the Subcontractor, whichever is the applicable employer, shall be the named insured on these policies. Such policy need

not be Project-specific. The workers' compensation insurance policy shall contain the following endorsements:

- (a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act;
- (b) A voluntary compensation endorsement;
- (c) An alternative employer endorsement; and
- (d) An endorsement extending coverage to all states operations on an "if any" basis.

10. Employer's Liability Insurance

At all times during the Maintenance Term, Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

- (a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Maintenance Contractor working on or about any Site or otherwise engaged in the work.
- (b) Maintenance Contractor shall be the named insured.
- (c) The policy shall have a limit of not less than \$25,000,000 per accident and in the aggregate during the period of insurance and may be included in an umbrella insurance combined with such other insurance that this schedule stipulates may be similarly included.
- (d) Such policy need not be Project-specific.

11. Railroad Protective Liability Insurance

Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance as may be required by any railroad in connection with any work performed under the Capital Maintenance Agreement across, under or adjacent to the railroad's tracks or railroad right-of-way. In the event any agreement between TxDOT and a railroad includes railroad protective insurance requirements applicable to the work, Maintenance Contractor shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements. The railroad shall be the named insured on any such policy.

12. Subcontractors' Insurance

- (a) At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall cause each Subcontractor that performs work on the Site to provide commercial general liability

insurance that complies with Section 7.4 of the Capital Maintenance Agreement, with commercially reasonable limits and deductibles or self-insured retentions, in circumstances where the Subcontractor is not covered by Maintenance Contractor-provided liability insurance. Maintenance Contractor shall cause each such Subcontractor that provides such insurance to include each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies. Such insurance need not be Project-specific. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

(b) At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall cause each Subcontractor that has vehicles on the Site or uses vehicles in connection with the work to procure and keep in force, comprehensive, business, or commercial automobile liability insurance meeting the requirements as specified below.

- (i) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the work. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.
- (ii) Each such Subcontractor shall be the named insured under its respective automobile liability policy.
- (iii) Each policy shall include each of the Indemnified Parties as additional insureds.

EXHIBIT 11

MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE

**DFW Connector Capital Maintenance Agreement
Texas Department of Transportation**

**EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate**

Page 1 of 2

**DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project**

Draw Request #

Date:
month/day/year

Texas Department of Transportation
Fort Worth District
P.O. Box 6868
Fort Worth, TX 76115-0868

Shaded Cells Require Entry, if applicable

Draw Request for Capital Maintenance Work performed in the month of 2013 (year)

DFW Connector

A.	Month #	Maintenance Year #	Escalated Monthly Maintenance Fee (from Page 4)
	<input type="text" value="(1-12)"/>	<input type="text" value="(1-15)"/>	
B	Amount Earned this Month		\$0.00
C	Total Change Order Amount Due (from Page 5)		
D	Total Liquidated Damages Amount Due (from Page 6)		
E	Current Amount Due (B + C - D)		\$0.00

**EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate**

Page 2 of 2

**DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project**

Draw Request #

Date:
month/day/year

Request for Payment:

Developer Authorized Representative Date

Review by TxDOT Finance Director:

Review and Final Approval by TX DOT

Draw Request Approved for Payment: Yes No

TxDOT Authorized Representative Date

EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate

Page 1 of 1

DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project

MAINTENANCE DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- Certification by the Maintenance QC Manager
- Draw Request data sheet(s) and documents that support and substantiate the amount requested.

NOTE - following for information only

Draw Request, Developer shall submit a certificate in a form approved by TxDOT and signed and sealed by the Maintenance QC Manager, certifying that:

- ✦ Except as specifically noted in the certification, all Capital Maintenance Work, including that of designers, Subcontractors, Suppliers and Fabricators, which is the subject of the Draw Request has been checked and/or inspected by the Maintenance QC Manager;
- ✦ Except as specifically noted in the certification, all Capital Maintenance Work which is the subject of the Draw Request conforms to the requirements of the CMA Documents, the Governmental Approvals and applicable Law;
- ✦ The Maintenance QCP procedures provided therein are functioning properly and are being followed.

EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate

Page 1 of 1

DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project

Draw Request #

Date:
month/day/year

Texas Department of Transportation
 Fort Worth District
 P.O. Box 68888
 Fort Worth, TX 76115-0888

Enter Shaded Cells only if Applicable

Monthly Maintenance Fee and Escalation Calculations

Note: This form needs to be completed for the 1st month of each maintenance year.

DFW Connector

Date of Substantial Completion:
month/day/year

Days to End of Month (A) =

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

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

¹ As per CMA Section 8.1.3, (B) times the ENR CCI three months prior to the start of maintenance year X (D), divided by the ENR CCI three months prior to the execution of the CMA (E).

(D) = (Maintenance Year)

(D) =

(E) =

(C) = (B x (D)/(E))

Year X Monthly Maintenance Fee (Escalated) (F) = Year X Maintenance Fee (Escalated) (C) divided by 12

(F) = (C)/12

Year 1 Maintenance Fee (from Proposal) = (G)

Year 1 Maintenance Fee (Escalated) (H) = ²

² As per CMA Section 8.1.3, (G) times the ENR CCI three months prior to substantial completion (I), divided by the ENR CCI three months prior to the execution of the CMA (E).

(I) =

(E) =

(H) = (G) x (I)/(E)

Year 1 Monthly Maintenance Fee (Escalated) (J) = Year 1 Maintenance Fee (Escalated) (H) divided by 12.

(J) = (H)/12

Year 1, Month 1, Maintenance Fee (Escalated) (K) ³ = Year 1 Monthly Maintenance Fee (Escalated) (J) times the number of days remaining in the 1st month, after the Date of Substantial Completion (A) divided by the days in the month (L).

³ Assuming that Substantial Completion does not occur on the last day of the month.

(L) =

(K) = (J) x (A)/(L)

EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate

Page 1 of 1

DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project

Draw Request #

Date:
month/day/year

Texas Department of Transportation
 Fort Worth District
 P.O. Box 6968
 Fort Worth, TX 76115-0968

Enter Shaded Cells only if Applicable

Draw Request for Capital Maintenance Work performed in the month of November, 2013 (year)

Change Order Number	1							
Change Order Amount	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Date Change Order Work Began <small>example format (2/4/2014)</small>								
Date C.O. Work Completed <small>example format (4/20/2014)</small>								
A. Previous C.O. Amount Earned	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
B. C.O. Earned this Month	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
C. C.O. Earned to Date (A+B)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
D. Current C.O. Amount Due (B)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total All Change Orders To Date	\$0.00							

EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate

Page 1 of 1

DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project

Draw Request #

Date:
month/day/year

Texas Department of Transportation
Fort Worth District
P.O. Box 6868
Fort Worth, TX 76115-0868

Enter Shaded Cells only if Applicable

Lane Closure Fee and Escalation Calculations

Note: This form needs to be completed for the 1st month of each maintenance year.

DFW Connector

Date of Substantial Completion:
month/day/year

Year X Maintenance Fee (from Proposal) = (A)

Year X hourly Lane Closure Liquidated Damage Fee (D) = ¹

¹ As per CMA Section 12.4.2, the hourly Lane Closure Liquidated Damage Fee (D) is to be escalated \$200 (B) per year on each anniversary of the Initial Maintenance Commencement Date.

(B) = (Annual hourly Lane Closure Liquidated Damage Fee escalation)

(C) = (Current Contract Maintenance year (1-15))

(D) = (A + (B x (C-1)))

Lane-Hours of Lane Closures (E) subject to Lane Closure Liquidated Damage Fee (D)

(E) =

Total Lane Closure Liquidated Damage (F)

(F) = (D x E)

EXHIBIT 12

FORM OF CHANGE ORDER

CHANGE ORDER REQUEST NO. _____ CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• Company Name: _____

DESCRIPTION:

SCOPE:

REASON FOR REQUEST FOR CHANGE ORDER:

Maintenance Manager Date

SECTION II

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

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

- _____ A lump sum, negotiated price Change Order (provide information in Section IIA below)
- _____ A unit price/quantities Change Order (provide information in Section IIB below)
- _____ A Time and Materials Change Order (provide information in Section IIC below)

Section IIA

Lump sum price is \$ _____

Section IIB

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

Total of all items in above Table: \$ _____

Section IIC

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

- A. Maintenance Contractor Labor (construction)
1. Wages¹ \$ _____
 2. Labor benefits² (55% of A.1) \$ _____
- B. Maintenance 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 cruisers ¹	\$ _____
C.	Materials (with taxes, freight and discounts)	\$ _____
D.	Equipment ²	\$ _____
E.	Subcontracts (Time and Materials cost)	\$ _____
F.	Utility Direct Costs	\$ _____
G.	Overhead and Profit	
1.	Labor (25% of A.1)	\$ _____
2.	Traffic Control (5% of B.3)	\$ _____
3.	Materials (15% of C)	\$ _____
4.	Subcontracts (5% of E)	\$ _____
5.	Utility Direct Costs (5% of F)	\$ _____
H.	Grand Total	\$ _____

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

² Equipment Costs (estimated or actual) based on Blue Book Equipment Rental Rates calculated in accordance with Section 10.7.3 of the Capital Maintenance Agreement.

SECTION III

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

Change order required under Comprehensive Development Agreement?
 Yes _____/No _____

If yes, state reason:

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

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

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

Maintenance Contractor Authorized Representative

Date: _____

SECTION IV (Reviewed by Maintenance Manager)

Maintenance Manager

Date: _____

Comments:

SECTION V (Reviewed by TxDOT Project Director)

TxDOT Project Director

Date _____

Comments:

SECTION VI (Approval by TxDOT District Engineer and Deputy Director)

TxDOT District Engineer

Date

TxDOT Deputy Director

Date

Comments:

EXHIBIT 13

AUTHORIZED REPRESENTATIVE

TxDOT Authorized Representative(s)

Amadeo Saenz, Jr., P.E..

Phillip Russell, P.E.

Maribel Chavez, P.E.

Developer's Authorized Representative(s)

Keith N. Sasich

EXHIBIT 14

LIST OF REFERENCE INFORMATION DOCUMENTS (RID) (ITEMS IN [] HAVE BEEN ADDED TO RID DOCUMENTS)

Section 1 Plans and As-Built Documents

1A. Project Schematic

- Microstation, PDF, and plot files of revised Funnel project (January 22, 2008)
- Overall DFW Connector Plan PDF file
- PDF files for SH 26, SH 114, SH 121, SH 360, FM 157, FM 1709, FM 2499, and SP 103
- Survey control points data sheet zip file

1B. Adjacent Roadways

- SH 121 schematic PDF files from FM 2499 to Denton Creek (3 roll plots) April 2006
- Microstation and GEOPAK files for SH 121 schematic
- Microstation files for SH 26 schematic
- Microstation files for SH 360 schematic
- Microstation file for Texan Trail Plan
- SH 121 TIN, DAT, and DTM files (5) March 2006
- Microstation files for SH114 and SH121 topography (2)

1C. DFW Airport

- Microstation files for DFW Airport

1D. ROW Maps

- Existing ROW maps for Funnel Project Tarrant County (15 sheets)
- Proposed ROW maps for Funnel Project Tarrant County (4 PDF files)
- Microstation files for ROW ownership map

1E. Utilities

- SUE Microstation files
- Utility Strip Map and Index PDF files (November 06, 2007)
- Utility legend PDF and Microstation files

1F. Sign Layout

- SH 121 Sign layout PDF sheets (March 20, 1996)

1G. ITS

- ITS Surveillance Layouts PDF sheets (July 21, 2005)
- Transvision TxDOT-Fort Worth CCTV PDF map (July 2007)
- Transvision TxDOT-Fort Worth Detection System PDF map (July 2007)
- Transvision TxDOT-Fort Worth Dynamic Message Sign System PDF map (July 2007)

1H. Grapevine Trails

- City of Grapevine Trail Maps PDF files (January & July 2006)

Section 2 Reports, Studies, and Manuals

2A. DRAFT Master Drainage Study

- Funnel Interchange Draft Master Drainage Study November 2006 (includes Microstation files)
- Funnel – Master Drainage Study – PRELIMINARY MODELS based on July 2007 data
- Funnel – Master Drainage Study Data 4/7/08, Proposed Roadway, Lane Use

2B. Traffic and Toll Studies

- Preliminary SH 114 Managed Lanes (The Funnel) Toll Feasibility Study (March 24, 2006)
- URS Terminal A&B Rail Access study Alternative 1 PDF file (September 30, 2005)
- Wilbur Smith Traffic Diagrams PDF file (May 2, 2006)
- SH 121 & SH 114 Traffic Data projections (November 19, 2007)

2C. Geotechnical Investigation

- Aviles DFW Connector Project Geotechnical Investigation Report (September 25, 2007)

2D. TxDOT PMIS Rater's Manual

- Pavement Management Information System Rater's Manual (May 2007)

Section 3: Environmental

- State Highway 121 Categorical Exclusion (August 2006)
- SH 121 Haz Mat data pdf files (3) (June 23, 2006)
- Public Meeting attendee list and comments (February 23, 2006)

Part 4: Agreements

- City of Grapevine Municipal Maintenance Agreement (January 7, 1969)
- City of Grapevine Signal Agreement (February 24, 1976)
- City of Grapevine Signals Agreement (May 1, 2002)
- City of Southlake Municipal Maintenance Agreement (July 1, 1969)
- City of Southlake Signal Agreement (February 17, 1976)
- Southwestern Bell Telephone Utility MOU (December 9, 1998)

Part 5: Environmental Commitments Document

- Environmental Commitments Document

[Part 6: CSTM&P Unit Rates]

EXHIBIT 15

DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT (this "**Agreement**") is made and entered into this ____ day of _____, 2009, (the "**Effective Date**") by and between the Texas Department of Transportation ("**TxDOT**"), and _____ ("**Maintenance Contractor**"). TxDOT and Maintenance Contractor are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. TxDOT and Maintenance Contractor are parties to that certain Capital Maintenance Agreement, for the DFW Connector Project, dated as of the Effective Date (the "**CMA**").

B. Section 16.3 of the CMA, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the CMA Documents.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the CMA Documents, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the CMA Documents.

1.2 Reference Section of CMA. Section 16.3 of the CMA, which, among other things, discusses the Disputes Board's role in resolving Disputes, is incorporated herein by reference.

1.3 Section References. Unless expressly indicated otherwise, all references in this Agreement to a "Section" mean the Section contained in this Agreement.

Section 2. Purpose and Role of the Disputes Board; Binding Disputes Board Decision.

The sole purpose of the Disputes Board is to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision (as defined in Section 5.5 below). The Disputes Board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in this Agreement and in Section 16.3 of the CMA. Notwithstanding that each Disputes Board Member will have been engaged by a Party under a Disputes Board Member Joinder Agreement (as defined in Section 3.1.2 below), none of the Disputes Board Members shall consider

themselves an appointee, representative, agent or advocate of the Party who engaged him or her. Disputes Board Members are charged with discharging their responsibilities hereunder in an impartial, objective, independent and professional manner without regard to the particular interests of either Party. Upon completion of the remainder of procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

Section 3. Selection, Replacement and Removal of Disputes Board Members and Candidates.

3.1 Selection of Disputes Board Member Candidates and Disputes Board Members.

3.1.1 At all times, each Party shall endeavor to maintain a list of five candidates who satisfy the Disputes Board Member Qualifications (as defined in Section 4 below) and have been approved or deemed approved by the other Party to serve on the Disputes Board (each such list being a “**Disputes Board Member Candidates List**”). As of the Effective Date, (a) TxDOT accepts and consents to the final Disputes Board Member Candidates List of Maintenance Contractor previously approved or deemed approved by TxDOT on or before the Effective Date and (b) Maintenance Contractor accepts and consents to the Disputes Board Member Candidates List of TxDOT previously approved or deemed approved by Maintenance Contractor on or before the Effective Date.

3.1.2 If at any time, pursuant to Section 16.3.4.2 of the CMA, a Dispute is referred by TxDOT or Maintenance Contractor to the Disputes Board for resolution, each Party shall, within 15 days after notice of such referral is given or received (or within 7 days after notice of a Fast-Track Dispute is given or received), appoint and engage one of the preapproved candidates on its Disputes Board Member Candidates List to serve on the Disputes Board. The Disputes Board empanelled to resolve each Dispute shall consist of three individuals, except as otherwise provided for resolution of Small Claims under Section 5.3.3 or as the Parties may agree pursuant to Section 3.1.4 below, which shall consist of (a) one Disputes Board Member selected by TxDOT, (b) one Disputes Board Member selected by Maintenance Contractor and (c) a third individual selected pursuant to Section 3.1.3 below. To set forth the terms and conditions of such appointment and engagement, each Party and its appointed Disputes Board Member shall enter into a Disputes Board Member Joinder Agreement in the form attached hereto as Attachment 1 (each such agreement, upon execution, being referred to herein as a “**Disputes Board Member Joinder Agreement**” and incorporated herein by reference).

3.1.3 The two Disputes Board Members appointed to the Disputes Board shall, as their first duty following appointment shall, within 15 days after their appointment (or within 7 days after their appointment, if the Dispute for resolution by the Disputes Board is a Fast-Track Dispute), select the third Disputes Board Member (the “**Disputes Board Chair**”) from among the remaining candidates that appear on the Parties’ Disputes Board Member Candidate Lists. If the two Disputes Board Members

appointed by Maintenance Contractor and TxDOT are unable to reach agreement on their selection of the Disputes Board Chair within such time period, then either Maintenance Contractor or TxDOT or both shall request that the Chief Administrative Judge of the Travis County District Courts select the Disputes Board Chair from among the remaining candidates that appear on the Parties' Disputes Board Member Candidate Lists. Both Parties waive all rights to appeal the decision of the Chief Administrative Judge, except if the individual designated by such judge to serve as the Disputes Board Chair is not among the qualified and approved candidates remaining on the Parties' Disputes Board Member Candidate Lists. Within 15 days after the selection of the Disputes Board Chair by the two appointed Disputes Board Members or the Chief Administrative Judge (or within 7 days after such selection if the Dispute is a Fast-Track Dispute), the Party on whose list the Disputes Board Chair appears and the individual selected to serve as the Disputes Board Chair on the Disputes Board shall enter into a Disputes Board Member Joinder Agreement.

3.1.4 The Parties may mutually agree at any time prior to the Dispute Board's issuance of a Disputes Board Decision that the relevant Dispute shall be resolved by the Disputes Board Chair alone rather than by the three member Disputes Board, and any such agreement shall be irrevocable upon issuance of the joint written directive next described. If the Parties so agree, they shall issue a joint written directive to the Disputes Board (or to the two appointed Disputes Board Members or the Chief Administrative Judge of the Travis County District Courts, if such Disputes Board Members or Chief Administrative Judge are or is then in the process of selecting the Disputes Board Chair pursuant to Section 3.1.3 above) stating their mutual agreement that the Disputes Board Chair alone shall resolve the relevant Dispute. If the Parties issue such a joint written directive, the Disputes Board Chair rather than the Disputes Board shall resolve the relevant Dispute in accordance with the terms and conditions of this Agreement (except insofar as this Agreement contemplates resolution of a Dispute by a three member Disputes Board) and, if the three member Disputes Board had been previously empanelled, the two Party-appointed Disputes Board Members shall be dismissed from any further service on the Disputes Board.

3.2 Replacing Candidates on a Party's Disputes Board Member Candidates List.

3.2.1 At any time, either Party may replace any of the individuals on its Disputes Board Member Candidates List that are not then serving on the Disputes Board, provided, however, that no such individual shall be added to the Disputes Board Member Candidates List of the proposing Party (the "**Nominating Party**") until complete Disclosure Statements on such individual are furnished to the other Party (the "**Evaluating Party**") and the Evaluating Party approves or is deemed to approve such individual for inclusion on the Nominating Party's Disputes Board Member Candidates List. "**Disclosure Statements**" shall consist of the proposed Disputes Board Member candidate's resume of experience and a discussion of the Disputes Board Member Qualifications as they apply to the proposed candidate. Within 30 days after receipt of a proposed candidate's Disclosure Statements by the Evaluating Party (the "**Disputes Board Member Candidate Evaluation Period**"), the Evaluating Party shall evaluate

the proposed candidate's Disclosure Statements and notify the Nominating Party as to whether the candidate is approved by the Evaluating Party for inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.2 During the Disputes Board Member Candidate Evaluation Period, the Evaluating Party (a) shall submit written inquiry to the Nominating Party if, in the Evaluating Party's reasonable judgment, the Disclosure Statements for the proposed candidate are incomplete such that, if they are not supplemented to the Evaluating Party's reasonable satisfaction, such incompleteness will comprise a basis for the Evaluating Party's disapproval of the proposed candidate and (b) may submit written inquiries to the Nominating Party if the Evaluating Party has questions or concerns about the proposed candidate's qualifications to serve on the Disputes Board in light of the Disputes Board Member Qualifications. Within fifteen days after the Nominating Party's receipt of any such written inquiry from the Evaluating Party, the Nominating Party shall (or shall cause the proposed candidate to) furnish a written response to the Evaluating Party's inquiry. The Evaluating Party may submit up to three such written inquiries. The Disputes Board Member Candidate Evaluation Period shall be extended a total of 30 days (including the 15 day inquiry response period) for each written inquiry made by the Evaluating Party. The submission of incomplete Disclosure Statements (following written inquiry from the Evaluating Party so that the Nominating Party has the opportunity to supplement any such incomplete Disclosure Statements) or failure by the Nominating Party or its proposed candidate to fully respond to the Evaluating Party's written inquiry shall constitute a basis for the Evaluating Party to disapprove the proposed candidate during the Disputes Board Member Candidate Evaluation Period. If the Evaluating Party notifies the Nominating Party of its approval, or does not notify the Nominating Party of its disapproval, of a proposed candidate within the Disputes Board Member Candidate Evaluation Period, such candidate shall be approved or deemed approved by the Evaluating Party.

3.2.3 During the course of the Nominating Party replacing five consecutive potential candidates on its Disputes Board Member Candidates List on a cumulative basis over time, the Evaluating Party may, upon notice to the Nominating Party, disapprove up to two proposed candidates for any or no reason. The Evaluating Party may, upon notice to the Nominating Party, only disapprove all subsequently proposed candidates of the Nominating Party based on any such candidate's failure to satisfy the Disputes Board Member Qualifications (which failure shall be described in detail in the Evaluating Party's notice of disapproval).

3.2.4 In furtherance of the Parties' objective of having in place at all times two Disputes Board Member Candidate Lists comprised of five nominated and approved candidates meeting the Disputes Board Qualifications, but subject to the provisions of Section 3.2.3, if the Evaluating Party does not approve a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List, the Nominating Party shall propose subsequent candidates in reasonably rapid succession, and the selection process shall continue until the Evaluating Party's approval is obtained or deemed obtained as to a proposed candidate's inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.5 If the Evaluating Party disapproves a proposed candidate of the Nominating Party due to failure of such candidate to satisfy the Disputes Board Member Qualifications, but the Nominating Party disagrees that such candidate is not qualified or eligible for service, the Nominating Party may initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the Nominating Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute.

3.3 Removal of Disputes Board Member; Appointment of Replacement.

3.3.1 The appointment of a Disputes Board Member (including the Disputes Board Chair) to the Disputes Board may be terminated at any time by any of the Persons specified below in this Section 3.3.1 due to the occurrence of Misconduct or due to Conflict of Interest not previously waived under Section 4.3.1 (such termination constituting a termination "**For Cause**" hereunder), effective upon service of such Person's notice of termination on the affected Disputes Board Member and, if the terminating Person is a Party, the other Party or, if the terminating Person is not a Party, the Parties. Following termination and removal of a Disputes Board Member For Cause or the death or resignation of a Disputes Board Member, the Disputes Board shall not proceed with the resolution of the applicable Dispute until a replacement Disputes Board Member has been appointed.

(a) Any two members of the Disputes Board may terminate the third Disputes Board Member's appointment For Cause;

(b) TxDOT and Maintenance Contractor may, upon mutual agreement, terminate any Disputes Board Member's appointment For Cause or without cause; and

(c) TxDOT or Maintenance Contractor may unilaterally terminate the appointment of any Disputes Board Member For Cause.

Provided, however, that if a Disputes Board Member's appointment is terminated For Cause and a Party disagrees that such Disputes Board Member should have been terminated For Cause, such Party may, within 5 Business Days after notice of the Disputes Board Member's termination of appointment is received, initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the disagreeing Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute. A Party may not unilaterally or by mutual agreement with the other Party terminate the appointment of any Disputes Board member For Cause and then dispute the propriety of such termination.

3.3.2 In the event that one or more Disputes Board Members needs to be replaced due to removal, death or resignation of one or more Disputes Board Members, replacement Disputes Board Members shall be appointed in the same manner as the predecessor Disputes Board Members(s) until the Disputes Board is reconstituted as a three person board. The appointment of each replacement Disputes Board Member will begin as soon as notice of removal, death or resignation is given or received and shall be completed as soon as possible, but in no event more than 30 days thereafter.

Section 4. Qualifications and Conduct of Disputes Board Members.

“**Disputes Board Member Qualifications,**” as they pertain to each Disputes Board Member or proposed candidate for inclusion on a Party’s Disputes Board Member Candidate List, consist of the requisite experience described in Section 4.1 below and the absence of grounds for disqualification as described in Section 4.2 below.

4.1 Requisite Experience. All Disputes Board Members shall be attorneys who (a) are retired judges with at least ten years prior experience as a sitting judge or (b) are active members of the State Bar of Texas or any other state bar with at least ten years prior experience acting as mediators, arbitrators or dispute board members for commercial disputes, in either case who have not been subject to disciplinary action within the past ten years. Preference shall be given to attorneys who, in addition to meeting the foregoing qualifications, are also experienced in interpreting or adjudicating contract rights and claims involving financing, design, construction, operations and/or maintenance of public infrastructure projects.

4.2 Disqualification. No Disputes Board Member shall have a financial interest in the CMA, in any Contract or the Project or in the outcome of any Dispute decided hereunder, except for payments to that member for services on the Disputes Board.

4.3 Effect of Party’s Prior Approval of Disputes Board Member.

4.3.1 An Evaluating Party’s approval or deemed approval of a proposed candidate for inclusion on the Nominating Party’s Disputes Board Member Candidates List shall constitute an irrevocable waiver of any subsequent objection to such individual’s lack of qualifications under Section 4.1 (except if such individual’s lack of qualifications constitutes Misconduct, as addressed in Section 4.3.2 below).

4.3.2 No approval or deemed approval by the Evaluating Party of a proposed candidate for inclusion on the Nominating Party’s Disputes Board Member Candidates List shall constitute a waiver of any objection to a Conflict of Interest or Misconduct of such individual under Section 4.2, except that any matter fully disclosed in an individual’s Disclosure Statements prior to inclusion of such individual on the Nominating Party’s Disputes Board Member Candidates List with the approval or deemed approval of the Evaluating Party may not be subsequently asserted by the Evaluating Party as a Conflict of Interest or Misconduct constituting grounds for termination and removal of such individual from the Nominating Party’s Disputes Board Member Candidates List or from service as a Disputes Board Member on the Disputes Board.

Section 5. Procedures and Scope of Work of the Disputes Board.

5.1 Procedures; Modification of Procedures. The Disputes Board shall conduct its proceedings to resolve a Dispute in accordance with the requirements specified or referenced herein; provided, however, that:

(a) The Parties may jointly modify the procedures applicable to the Disputes Board's proceedings to resolve a Dispute, effective upon the Disputes Board Chair's receipt of the Parties' written notice of the Parties' mutually agreed modification of such procedures describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the CMA or any requirements applicable to modification of the DRP Rules or the Sections of the Code under which the DRP Rules are promulgated); and

(b) The Disputes Board may modify the procedures applicable to its proceedings to resolve a Dispute so as to be more responsive to the needs of the Parties, provided that (i) the Disputes Board Chair issues written notice to the Parties describing the proposed modification in detail and (ii) both Parties give their written consent thereto, effective upon the Disputes Board Chair's receipt of the Parties' written consent thereto.

5.2 Ineligible Matters. As a preliminary matter prior to consideration of the underlying matter, the Disputes Board shall hear, consider and render a Disputes Board Decision with respect to the responding Party's assertion that a particular claim, demand, dispute, disagreement or controversy is an Ineligible Matter. Resolution of whether a claim, demand, dispute, disagreement or controversy is a Dispute that the Disputes Board has authority to resolve or an Ineligible Matter shall be resolved as a preliminary matter by the Disputes Board, and the Disputes Board Decision shall reflect that the underlying matter is a Dispute eligible for resolution by the Disputes Board unless a majority of the Disputes Board determines with positive assurance that such a determination would not be correct.

5.3 Procedures for Disputes Board's Resolution of Disputes.

5.3.1 The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including time periods in which actions by the Disputes Board shall occur. "**Commercial Rules**" means the dispute resolution proceedings set forth in Attachment 2 attached hereto. For Fast-Track Disputes, the time frames provided in the Commercial Rules for Expedited Procedures (as defined in Attachment 2) shall apply in accordance with the Commercial Rules.

5.3.2 Each Disputes Board Member, or the Disputes Board Chair on behalf of the Disputes Board, shall promptly notify the Parties if any circumstances has or is likely to arise that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A "**Small Claim**" is a Claim or related or similar Claims which arise fairly contemporaneously out of the same set of acts, events or circumstances that the Parties mutually agree to have resolved solely by the Disputes Board Chair. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is \$100,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board Member shall be released from further service. Thereafter, in the context of the Disputes Board Chair's resolution of a Small Claim hereunder, all references in the dispute resolution procedures established in Section 16.3 of the CMA to the "Disputes Board" or the "Disputes Board Members" shall mean and refer to the Disputes Board Chair. At any time prior to the close of the Disputes Board hearing under R-27 of the Commercial Rules, if, due to amendment of the Dispute as to the amount in controversy, aggregation of the Dispute with other Disputes or other changes that cause a Party to no longer consent to resolution of the Dispute as a Small Claim by the Dispute Board Chair, such Party may, upon notice to the Disputes Board Chair and the other Party, withdraw its assent to resolution of the Dispute as a Small Claim by the Disputes Board Chair and require that a full three-member Disputes Board be empanelled to resolve such Dispute.

(c) The Disputes Board Chair shall have no authority to award compensation or damages in a Disputes Board Decision regarding a Small Claim aggregating more than \$100,000, and TxDOT or Maintenance Contractor as the claiming Party, as the case may be, asserting a Small Claim hereby irrevocably waives any right, at law or in equity, to any damages or award arising out of such Small Claim in excess of \$100,000; provided, however, that the amount of \$100,000 as stated in this Section 5.3.3(c) shall be adjusted on every fifth anniversary of the Effective Date by the percentage increase (if any) in the CPI between the date the CPI was most recently published before the Effective Date and the date most recently published before the date of adjustment.

5.4 Aggregation of Disputes. Either Party shall be entitled to request the Disputes Board to aggregate the consideration of multiple Disputes for resolution by the Disputes Board where common questions of fact, Law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the aggregate consideration of all such Disputes. Upon receipt of such a request, the Disputes Board shall consider the aggregated Disputes in a single proceeding unless, as a preliminary matter, the Disputes Board determines (after considering any evidence presented by the Parties in support of, or in opposition to, the proposed aggregation of such Disputes for resolution in a single proceeding) that there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes and/or the efficiencies to be gained by conducting a single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the proposed aggregated Disputes (as specified in the Disputes Board Decision on this matter) by a separately empanelled Disputes Board in a separate proceeding. A Disputes Board Decision regarding whether Disputes will be aggregated for resolution in a single proceeding before the Disputes Board shall be final, binding and not subject to appeal.

5.5 Issuance of Disputes Board Decision and Any Minority Report. The Disputes Board should make every effort to reach a unanimous decision among the Disputes Board Members. If this proves infeasible, the dissenting Disputes Board Member may prepare a minority report. Within 20 days after the final hearing on an

Dispute (other than a Fast-Track Dispute, in which case within 5 days after the final hearing the Fast-Track Dispute), the Disputes Board Chair shall issue the Dispute Board's written decision (each, a "**Disputes Board Decision**"), together with its written findings of fact and conclusions of law in support of the Disputes Board Decision, to the Parties.

5.6 Confidential Materials; Return or Destruction Thereof. "**Confidential Materials**" are all discussions, negotiations, testimony and evidence between the Parties and/or in a proceedings before the Disputes Board that are confidential pursuant to Section 16.3.10 of the CMA. Each Disputes Board Member shall maintain the privacy of Confidential Information pursuant to Section 16.3.10 of the CMA. Within 30 days after issuance of the Final Order Implementing Decision, the Disputes Board Chair shall furnish written notice to each Party listing the Confidential Materials in the Disputes Board's possession and, except for those Confidential Materials that a Party directs the Disputes Board to return to such Party in writing within 15 days after receipt of such notice, the Disputes Board Chair shall destroy all copies of all Confidential Materials in the Disputes Board's possession. Until the time for the Disputes Board Chair's issuance of the foregoing written notice, the Disputes Board shall hold all Confidential Materials in confidence other than making them available for production into evidence in subsequent proceedings.

5.7 Dissolution of Disputes Board. Once the Disputes Board Decision of the Disputes Board becomes final and the Executive Director has issued a Final Order Implementing Decision, the Disputes Board shall be dissolved and the Disputes Board Members serving on such Disputes Board shall be released from further service.

Section 6. Necessity of Submission of Dispute to Disputes Board.

A Party's submission of a Dispute to the Disputes Board for resolution and the Dispute Board's issuance of the Disputes Board Decision shall be conditions precedent to any subsequent proceeding concerning such Dispute, except as otherwise provided in Section 16.3 of the CMA.

Section 7. TxDOT and Maintenance Contractor Responsibilities.

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board Member one copy of the CMA Documents. TxDOT shall also serve upon each Disputes Board Member (and concurrently upon Maintenance Contractor) any other documents which are or may become pertinent to the activities of the Disputes Board, including but not limited to any Change Order, Directive Letter or other written direction, instruction, determination or decision of TxDOT.

7.2 Maintenance Contractor Responsibilities. Maintenance Contractor shall serve on each Disputes Board Member (and concurrently on TxDOT) one set of any documents which are or may become pertinent to the activities of the Disputes Board, except those documents furnished by TxDOT. Such documents may include, but shall not be limited to, any drawings or sketches, calculations, procedures, schedules,

estimates or other documents and Submittals which are used in the performance of the Work or in justifying or substantiating Maintenance Contractor's position.

7.3 Parties' Responsibilities for Costs and Expenses; Cooperation.

7.3.1 Each Party shall be responsible and make payment for its one-half share of all facilities fees, support services costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. A Party that disputes an invoice for any such cost or expense relating to the Disputes Board's proceedings shall notify the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing under any invoice for such costs and expenses at the time require for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

7.3.2 Each Party shall diligently cooperate with the Disputes Board and the other Party and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure was egregious, the Disputes Board shall take into account such egregious failure to cooperate in its determination of the Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 16.3.4.1 of the CMA.

Section 8. Term.

Consistent with the DRP Rules, the term of this Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the CMA and thereafter for so long as either Party has any obligation originating under the CMA Documents until the applicable statute of limitations on any Dispute in regard to such obligation has expired.

Section 9. Payment of Disputes Board Members' Fees, Costs and Expenses.

9.1 Payment for Services. Payment of fees for work performed and services rendered by each Disputes Board Member and for his or her direct out-of-pocket costs and expenses shall be calculated in accordance with the payment terms set forth for such Disputes Board Member in his or her respective Disputes Board Member Joinder Agreement. The personal services of the Disputes Board Member are a condition to receiving payments hereunder. Such payments shall be full compensation for work performed and services rendered by each respective Disputes Board Member, and for all labor, materials, supplies, equipment and incidentals necessary for such Disputes Board Member's participation in the operation of the Disputes Board.

9.2 Disputes Board Member Invoices. Each Disputes Board Member shall submit invoices on a monthly basis concurrently to TxDOT and Maintenance Contractor for payment for such Disputes Board Member's work performed and services rendered in the prior month. Such invoices shall be in a format approved by TxDOT and Maintenance Contractor, accompanied by an itemization of days and hours billed along with a description of activities performed during each day in that billing period, and an itemization of direct non-salary costs incurred supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. The amount to be paid shall be established from the applicable billing rate set forth in each Disputes Board Member's Disputes Board Member Joinder Agreement plus costs and expenses in accordance with such agreement.

9.3 Payment by Parties. Each Party shall be responsible and make payment for its one-half share of all fees, costs and expenses of the Disputes Board Members' service on the Disputes Board. Each Disputes Board Member will be paid within 30 days of the Parties' receipt and acceptance of invoices therefor. A Party that disputes a Disputes Board Member's invoice shall notify such member and the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing to any Disputes Board Member at the time required for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

9.4 Retention of Cost Records and Accounts. Disputes Board Members shall keep available for inspection by representatives of TxDOT and Maintenance Contractor, for a period of five years after the final payment, the cost records and accounts pertaining to this Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of, in connection with, or related to this Agreement is initiated before the expiration of the five year period, the cost records and accounts shall be retained until such claim involving the records is completed.

9.5 Parties to Bear Own Costs. Each Party shall bear its own costs arising out of or in connection with the Dispute Resolution Procedures.

9.6 Diligent Cooperation. The Parties shall diligently cooperate with one another and the Disputes Board, and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of Disputes submitted to the Disputes Board. If either Party refuses to diligently cooperate, and the other Party, after first giving notice setting forth the Party's basis for its contention of non-cooperation and requesting specific action, incurs additional costs or attorneys', accountants' and expert witness fees solely as a result of such failure to diligently cooperate, then the Disputes Board may award such additional costs and, accountants' and expert witness fees to the Party giving such notice, even if such Party is not the prevailing Party in the Dispute. The Party so entitled to such award shall have the right to pursue and enforce it in any subsequent proceedings.

Section 10. Nonassignability.

Disputes Board Members shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Maintenance Contractor.

Section 11. Legal Relations.

11.1 Disputes Board Member as Independent Contractor. The Parties mutually understand and agree that any Disputes Board Member, in the performance of duties as a Disputes Board Member on the Disputes Board, is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Maintenance Contractor. No Disputes Board Member will be entitled to any employee benefits from either Party.

11.2 No Effect on Potential Liabilities Under the CMA Documents or by Law. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth herein, nothing in this Agreement alters the potential liabilities of either Party as provided under the CMA Documents and, subject to the terms and conditions of the CMA Documents, by Law.

11.3 Damages Waiver. Neither TxDOT nor Maintenance Contractor will hold any Disputes Board Member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board, and the Parties expressly waive any right to the foregoing, except as a result of fraud, willful misconduct or criminal actions of the applicable Disputes Board Member.

Section 12. Applicable Law.

The Disputes for resolution by the Disputes Board shall be governed by and resolved under the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

Section 13. Amendment in Writing.

This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

Section 14. Complementary Provisions; Order of Priority.

The Parties intend for the procedures established in Section 16.3.4 of the CMA and any other relevant provisions of the CMA Documents, and the terms and conditions of this Agreement (except where this Agreement says they shall not apply), to be complementary. In the event of any conflict between this Agreement and Section 16.3 of the CMA or any other relevant provision of the CMA Documents, the CMA or other

DRP Governed Agreement shall control.

Section 15. Notices.

Notices hereunder shall be sent as provided in Section 16.11 of the CMA. The address for each Disputes Board Member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

Maintenance Contractor:
NorthGate Constructors, J.V.

By: _____
Name:
Title:

By: _____
Name:
Title:

TxDOT:

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Amadeo Saenz, P.E.
Executive Director

ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT (this "**Agreement**") is entered into this ____ day of _____, ____ by and between _____ [Specify TxDOT or Maintenance Contractor] (the "**Appointing Party**"), and _____, an individual (the "**Disputes Board Member**").

RECITALS

A. TxDOT and Maintenance Contractor are parties to that certain Capital Maintenance Agreement, for the DFW Connector Project, dated as of the Effective Date (the "**CMA**").

B. Section 16.3 of the CMA, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the CMA Documents.

C. The Appointing Party desires to appoint the Disputes Board Member to the Disputes Board to resolve such a dispute and the Disputes Board Member desires to accept such appointment, each on the terms and conditions set forth in CMA Section 16.3, the Disputes Board Agreement and this Agreement, and for that purpose, the parties hereto have agreed to enter into this Agreement pursuant to Section 3.1.2 of the Disputes Board Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Disputes Board Agreement, the receipt and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the CMA Documents and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 16.3 of CMA. The Disputes Board Agreement and Section 16.3 of the CMA, which, among other things, discusses the Disputes Board's role in resolving Disputes, are incorporated herein by reference.

Section 2. Appointment.

2.1 Appointment. The Appointing Party appoints the Disputes Board Member to the Disputes Board to serve thereupon and resolve the applicable Dispute, and the Disputes Board Member accepts such appointment and agrees to perform such service, each in accordance with the terms and conditions of Section 16.3 of the CMA, the Disputes Board Agreement and this Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through resolution of the Dispute before the Disputes Board and issuance of the Final Order Implementing Decision in respect thereto, except that (a) unless he or she is the Disputes Board Chair, he or she may be earlier dismissed from service pursuant to Section 5.3.3(b) of the Disputes Board Agreement because the dispute to be resolved is a Small Claim; (b) the **Disputes Board Member** may resign for health considerations or other reasons of disability; or (c) the **Disputes Board Member** shall resign if he or she discovers facts or circumstance that would, in such member's reasonable good faith judgment, prevent such member from discharging his or her duties in the resolution of a Dispute in the impartial and objective manner required under the Disputes Board Agreement or facts or circumstances that such member reasonably and in good faith believes would result in a Party terminating such member's appointment For Cause. The **Disputes Board Member** shall endeavor to give 30 days' notice prior to the effective date of his or resignation.

Section 3. Representations, Warranties and Covenants.

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and Maintenance Contractor, under penalty of perjury, that such Disputes Board Member satisfies the Disputes Board Member Qualifications.

3.2 Covenants. The Disputes Board Member covenants to TxDOT and Maintenance Contractor that he or she:

(a) Shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with the procedures established under Section 16.3 of the CMA;

(b) Shall not engage in any conduct, including, but not limited to, having any communications, dealings or interactions with either Party, the Conflicts Group or any other Person in any manner, that would be or result in a Disputes Board Error; and

(c) Shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 16.3.10 of the CMA.

Section 4. Compensation.

4.1 Invoicing and Payment. The Disputes Board Member's hourly billing rate and costs and expenses for service on the Disputes Board or means for calculating same are attached hereto as Annex I. Invoicing and payment of fees, costs and expenses shall take place in accordance with Sections 9.1, 9.2 and 9.3 of the Disputes Board Agreement.

4.2 No Compensation After Termination. If the Disputes Board Member's appointment to the Disputes Board is terminated, whether For Cause or otherwise, the Disputes Board Member will not be entitled to receive payment for any services rendered or costs and expenses incurred after the date of termination of such appointment.

Section 5. General Provisions.

5.1 Third Party Beneficiary. Whichever of TxDOT or Maintenance Contractor that is not the Appointing Party is an express third party beneficiary of this Agreement entitled to enforce the terms and conditions hereof against the Disputes Board Member.

5.2 Nonassignability. The Disputes Board Member shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Maintenance Contractor.

5.3 Disputes Board Member as Independent Contractor. The Disputes Board Member is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Maintenance Contractor. The Disputes Board Member is not entitled to any employee benefits from either Party.

5.4 Consequential Damages Waiver. In no event shall TxDOT or Maintenance Contractor have any liability to the Disputes Board Member other than for payment of the Disputes Board Member's fees, costs and expenses hereunder. Neither TxDOT nor Maintenance Contractor shall be liable to the Disputes Board Member for any special, consequential, indirect, enhanced, punitive, or similar damages (including lost profits that are not direct damages), including but not limited to attorneys' fees and expenses, arising under or in connection with this Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

5.6 Entire Agreement. This Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

5.7 Amendment in Writing. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

5.8 Survival. This Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of this Section 5 shall survive termination of this Agreement.

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

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

Appointing Party:

[TxDOT or Maintenance Contractor]

By: _____

Name: _____

Title: _____

Disputes Board Member:

By: _____

Name: _____

Address:

Annex I

to

Disputes Board Member Joinder Agreement

Fees, Costs and Expenses

[to be attached]

ATTACHMENT 2 TO DISPUTES BOARD AGREEMENT

COMMERCIAL RULES

R-1. Agreement of The Parties

(a) The "**Expedited Procedures**" means the rules set forth in Sections E-1 through E-6 below. Unless the Parties determine otherwise, the Expedited Procedures shall apply to Fast-Track Disputes in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(b) The "**Procedures for Large, Complex Commercial Disputes**" means the rules set forth in Sections L-1 through L-3 below. Unless the Parties agree otherwise, such Procedures shall apply to all cases in which the Dispute is valued at \$500,000 or more, exclusive of claimed interest, fees and costs. The Parties may also agree to use such Procedures in cases involving non-monetary Disputes. Such Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(c) All other cases shall be administered in accordance with Sections R-2 through R-43 of these rules.

(d) If there is any inconsistency between these Commercial Rules and Section 16.3 of the CMA, Section 16.3 of the CMA shall control.

R-2. Disputes Board

The term "Disputes Board" in these Commercial Rules refers to the three member Disputes Board, constituted for a particular case, or to the Disputes Board Chair, as the context requires.

R-3. Assumed Objection

Unless the responding Party states otherwise in its response to the claiming Party's notice of referral of a Dispute to the Disputes Board, all aspects of the Dispute will be deemed to be denied by the other Party (other than any objection to the Disputes Board's authority to resolve the Dispute, which must be affirmatively asserted).

R-4. Changes of Claim

After notice of referral of a Dispute to the Disputes Board is given or received, if either Party desires to make any amended, new, or different claim or counterclaim, it shall be made in writing and filed with the Disputes Board. The Party asserting such an amended, new or different claim or counterclaim shall provide a copy to the other Party,

who shall have 15 days from the date of such transmission within which to file an answering statement with the Disputes Board.

R-5. Jurisdiction

(a) The Disputes Board shall have the power to rule on its own jurisdiction, i.e., to determine if an alleged Dispute is an Ineligible Matter.

(b) The Disputes Board shall rule on jurisdictional objections as a preliminary matter prior to proceeding with proceedings to resolve the underlying Dispute.

R-6. Administrative Conference

At the request of either Party or upon the Disputes Board's own initiative, the Disputes Board may conduct an administrative conference, in person or by telephone, with the Parties and/or their representatives. The conference may address such issues as the replacement of one or more Disputes Board Members, potential mediation of the Dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

R-7. Appointment

Because the Disputes Board Agreement between the Parties specifies a method of appointing a Disputes Board, that designation or method shall be followed.

R-8. Disclosure

(a) Any person appointed or to be appointed as a Disputes Board Member shall disclose to the Parties any circumstance likely to give rise to justifiable doubt as to such Disputes Board Member's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the Parties or their representatives. Such obligation shall remain in effect throughout the period of such member's service on the Disputes Board.

(b) In order to encourage disclosure by Disputes Board Members and candidates, disclosure of information pursuant to this R-8 is not to be construed as an indication that the disclosing individual considers that the disclosed circumstance is likely to affect impartiality or independence.

R-9. Disqualification of Disputes Board Member

Each Disputes Board Member shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(a) inability or refusal to perform his or her duties with diligence and in good faith, and

(b) any grounds for disqualification provided by applicable law, the Disputes Board Agreement or the CMA Documents.

R-10. No Ex Parte Communication with Disputes Board Members

(a) During the period that any Disputes Board Member is then serving on a Disputes Board, (i) neither Party, including its counsel or designated representatives, shall communicate ex parte with such Disputes Board Member and (ii) no Disputes Board Member shall communicate ex parte with any Person (other than other Disputes Board Members), including but not limited to, either Party, its counsel or designated representatives, regarding any aspect of the applicable Dispute.

(b) Each Party may communicate with individuals listed on its respective Disputes Board Member Candidates' List for the purposes of (i) ascertaining their availability to serve on a particular Disputes Board and/or (ii) reconfirming such individuals' qualifications under the Disputes Board Member Qualifications and the absence of Conflicts of Interest and Misconduct, provided that the communicating Party simultaneously furnishes copies of all such written correspondence with such individuals to the other Party and gives the other Party advance notice and opportunity to participate in all verbal communication with such individuals. Ex parte communication regarding the substance of any Dispute between a Party and individuals listed on its respective Disputes Board Member Candidates' List is prohibited.

R-11. Hearings After Filling of Vacancies

In the event of the appointment of a substitute Disputes Board Member, the panel of Disputes Board Members shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-12. Preliminary Hearing

(a) At the request of either Party or at the discretion of the Disputes Board, the Disputes Board may schedule as soon as practicable a preliminary hearing with the Parties and/or their representatives. The preliminary hearing may be conducted by telephone at the Disputes Board's discretion.

(b) During the preliminary hearing, the Parties and the Disputes Board should discuss the future conduct of the case, including clarification of the nature of the Dispute, a schedule for the hearings and any other preliminary matters.

R-13. Exchange of Information; Discovery

(a) At least five Business Days prior to the hearing, the Parties shall exchange (i) copies of all exhibits they intend to submit at the hearing and (ii) lists of witnesses anticipated to be called at the hearing, in each case except for witnesses or exhibits to be offered for the purpose of impeachment or rebuttal.

(b) The Disputes Board Chair is authorized to resolve any disputes concerning the exchange of information or the Parties' discovery.

R-14. Date, Time, and Place of Hearing

The Disputes Board Chair shall set the date, time, and place for each hearing at a neutral and reasonably cost-efficient location in Travis County, Texas that is reasonably convenient for the Parties. The Parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The Disputes Board shall send a notice of hearing to the Parties at least 5 Business Days in advance of the hearing date, unless otherwise agreed by the Parties.

R-15. Attendance of Witnesses

Except for each Party's counsel and other authorized representative, upon the request of either Party or its own initiative, the Disputes Board shall have the power to require the exclusion of any witness or potential witness during the testimony of any other witness.

R-16. Representation

Each Party may be represented by counsel or other authorized representative. A Party intending to be so represented shall notify the other Party and the Disputes Board of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates or responds for a Party in the course of the Dispute Resolution Procedures, notice is deemed to have been given by the Party represented by such representative.

R-17. Dispute Board Members' Certifications; Witness Oaths

Before proceeding with the first hearing, each Disputes Board Member shall have entered into a Disputes Member Joinder Agreement with a Party in which he or she certifies, under penalty of perjury as to his or her meeting the Disputes Board Member Qualification and the absence of Conflicts of Interest and Misconduct (and a covenant to not engage in Misconduct). The Disputes Board shall require witnesses to testify under oath.

R-18. Stenographic Record

Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party of these arrangements at least three days in advance of the hearing. The requesting Party shall pay the cost of the record. If the transcript is agreed by the Parties, or determined by the Disputes Board to be the official record of the proceeding, it must be provided to the Disputes Board and made available to the other Party for inspection, at a date, time, and place determined by the Disputes Board.

R-19. Interpreters

Any Party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-20. Postponements

The Disputes Board may postpone any hearing upon agreement of the Parties, upon request of a Party for good cause shown, or upon the Disputes Board's own initiative for good cause shown.

R-21. Proceedings in the Absence of a Party or Representative

The Dispute Board's proceedings may proceed in the absence of either Party or representative who, after due notice, fails to be present or fails to obtain a postponement. An Disputes Board Decision shall not be made solely on the default of a Party. The Disputes Board shall require the Party who is present to submit such evidence as the Disputes Board may require for the making of a Disputes Board Decision.

R-22. Conduct of Proceedings

(a) The claimant Party shall present evidence to support its claim. The respondent Party shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the Disputes Board and the adverse Party. The Disputes Board has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The Disputes Board, exercising its discretion, shall conduct the proceedings with a view to expediting the resolution of the Dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The Parties may agree to waive oral hearings in any case.

R-23. Evidence

(a) The Parties may offer such evidence as is relevant and material to the Dispute and shall produce such evidence as they or the Disputes Board deems relevant and necessary to an understanding and determination of the Dispute. Conformity to the Texas Rules of Evidence shall be required, except where these Commercial Rules contain a contrary rule. All evidence shall be taken in the presence of all of the Disputes Board Members and both of the Parties, except where a Party fails to attend the hearing or has waived the right to be present.

(b) Subject to the Texas Rules of Evidence, the Disputes Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Disputes Board to be cumulative or irrelevant.

(c) The Disputes Board shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) Special discovery and evidentiary rules:

(i) The Disputes Board Chair shall, at the request of either Party, issue subpoenas for the attendance of witnesses or the production of books, records, documents or other evidence, whether for deposition or for hearing, in the manner provided by law for issuance of a subpoena in a civil action pending in a state district court. All provisions of the Texas Rules of Civil Procedure for service and response to subpoenas in a civil action pending in state district court shall apply to subpoenas issued pursuant hereto.

(ii) Each Party shall be entitled to take depositions of witnesses and to propound written discovery in the manner, and to the extent, provided by Law for discovery in a civil action pending in a state district court, consistent with Rule 190.3 of the Texas Rules of Civil Procedure. The Disputes Board Chair shall, at the request of either Party, or may, on his or her own initiative, adopt a discovery control plan as contemplated by Rule 190.4 of the Texas Rules of Civil Procedure.

(iii) The disclosure of expert witness information and the depositions of designated expert witnesses shall be conducted as provided by the Texas Rules of Civil Procedure for cases in state district court.

(iv) At the hearing, each Party shall have the right to be heard, to present evidence, including expert witness testimony, and to cross-examine witnesses, including the Independent Engineer.

R-24. No Evidence by Affidavit; Post-hearing Filing of Documents or Other Evidence

(a) The Disputes Board may not receive and consider the evidence of witnesses by declaration or affidavit.

(b) If the Parties agree or the Disputes Board directs that documents or other evidence be submitted to the Disputes Board after the hearing, the documents or other evidence shall be transmitted to each Disputes Board Member. Both Parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-25. Inspection or Investigation

The Disputes Board may find it necessary to make an inspection or investigation in connection with its proceedings and, if so, shall so advise the Parties. The Disputes

Board shall set the date and time of such inspection or investigation and notify the Parties thereof. Any Party who so desires may be present at such an inspection or investigation. In the event that one or both The Parties are not present at the inspection or investigation, the Disputes Board shall make an oral or written report to the Parties on the result or findings from such inspection or investigation and afford them an opportunity to comment.

R-26. Interim Measures

(a) The Disputes Board may take whatever interim measures it deems necessary, including measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim Disputes Board Decision,.

(c) A request for interim measures addressed by a Party to a Travis County, Texas district court shall not be deemed incompatible with the agreement to have the underlying Dispute resolved by the Disputes Board or a waiver of the right to have the underlying Dispute resolved by the Disputes Board.

R-27. Closing of Hearing

The Disputes Board shall specifically inquire of both Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Disputes Board shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of briefs. If documents are to be filed as provided in R-24 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the Disputes Board is required to make the Disputes Board Decision shall commence, in the absence of other agreements by the Parties, upon the closing of the hearing.

R-28. Reopening of Hearing

The hearing may be reopened only upon application of a Party for good cause shown, as determined in the discretion of the Disputes Board, at any time before the Disputes Board Decision is issued. The Disputes Board may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to issue the Disputes Board Decision.

R-29. Waiver of Rules

Any Party who proceeds with the Disputes Board proceedings after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing to the other Party and the Disputes Board shall be deemed to have waived the right to object.

R-30. Extensions of Time

The Parties may modify any period of time in these rules by mutual agreement. The Disputes Board may for good cause extend any period of time established by these rules, except the time for issuance of the Disputes Board Decision. The Disputes Board shall notify the Parties of any extension.

R-31. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of Disputes Board proceedings under these rules, for any court action in connection therewith, or for the entry of judgment on any Disputes Board Decision made under these rules shall be given in accordance with Section 16.11 of the CMA.

(b) Unless otherwise instructed by the Disputes Board, any documents submitted by either Party to the Disputes Board shall simultaneously be provided to the other Party.

R-32. Majority Decision

When the panel consists of more than one Disputes Board, a majority of the Disputes Board Members must make all decisions.

R-33. Time of Issuance of the Disputes Board Decision

The Disputes Board Decision shall be issued promptly by the Disputes Board and no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

R-34. Form of Disputes Board Decision

(a) Any Disputes Board Decision shall be in writing and signed by a majority of the Disputes Board Members.

(b) The Disputes Board shall also issue written findings of fact and conclusions of law to accompany the Disputes Board Decision.

R-35. Scope of Disputes Board Decision

(a) The Disputes Board may determine the occurrence of any event that is a prerequisite to a Party's claim for any remedy or relief in the Dispute, and grant any remedy or relief to resolve the Dispute, that the Disputes Board deems just and equitable and within the scope of the agreement of the Parties under Section 16.3 of the CMA, including, but not limited to, specific performance of any obligation under the CMA Documents.

(b) In addition to a final Disputes Board Decision, the Disputes Board may make other decisions, including interim, interlocutory, or partial rulings, orders, and decisions. In any interim, interlocutory, or partial Disputes Board Decision, the Disputes Board may assess and apportion the fees, expenses, and compensation related to such Disputes Board Decision as the Disputes Board determines is appropriate, subject, however, to the limitations of the Disputes Board's authority in Section 16.3.4.1(e) of the CMA.

(c) In the final Disputes Board Decision, the Disputes Board shall assess compensation amounts. The Disputes Board may apportion fees and expenses between the Parties in such amounts as the Disputes Board determines is appropriate in its discretion, subject, however, to the limitations of the Disputes Board's authority under Section 16.3.4.1(e).

R-36. Disputes Board Decision upon Settlement

If the Parties settle the Dispute during the course of the Disputes Board proceedings and if the Parties so request, the Disputes Board may set forth the terms of the settlement in a "consent Disputes Board Decision."

R-37. Acceptance of Delivery of Disputes Board Decision

The Parties shall accept as notice and delivery of the written Disputes Board Decision, together with the written findings of fact and conclusions of law, addressed and provided to them in the manner provided under Section 16.11 of the CMA.

R-38. Correction of Errors in Disputes Board Decision

Within 5 Business Days after the transmittal of a Disputes Board Decision, either Party, upon notice to the other Party, may request the Disputes Board, through the Disputes Board Chair, to correct any clerical, typographical, or computational errors in the Disputes Board Decision. The Disputes Board is not empowered under this R-38 to redetermine the merits of any Dispute already decided. The other Party shall be given 5 Business Days to object to the request on the ground that there is no clerical, typographical, or computational error in the decision. The Disputes Board shall perform the request correction of errors within 10 Business Days after transmittal by the Disputes Board Chair of the request for correction of errors unless the other Party objects. Any unresolved disagreement between the Parties as to the existence of a

clerical, typographical, or computational error in the Disputes Board Decision can be subsequently pursued, if at all, under R-28.

R-39. Release of Documents for Subsequent Proceedings

The Disputes Board shall, upon the written request of a Party, furnish to the Party, at the Party's expense, certified copies of any papers in the Disputes Board's possession that may be required in further administrative or judicial proceedings relating to resolution of the Dispute.

R-40. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a Party relating to a Dispute shall be deemed a waiver of the Party's right to have the Dispute resolved by Dispute Board proceedings.

(b) Neither any Disputes Board Member nor the Disputes Board in a proceeding under these rules is a necessary or proper Party in judicial proceedings relating to a Dispute.

R-41. Expenses

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the Dispute Board's proceedings, including required travel and other expenses of the Disputes Board, Disputes Board representatives, and any witness and the cost of any proof produced at the direct request of the Disputes Board, shall be borne equally by the Parties, unless they agree otherwise or unless the Disputes Board in the Disputes Board Decision assesses such expenses or any part thereof against any specified Party or The Parties (in the latter case subject, however, to the limitations of the Disputes Board's authority under Section 16.3.4.1(e)).

R-42. Interpretation and Application of Rules

The Disputes Board shall interpret and apply these rules insofar as they relate to the Disputes Board's powers and duties to resolve the particular Dispute for which such Disputes Board was empanelled to resolve.

R-43. No Suspension for Nonpayment

If a Disputes Board Member's compensation or administrative charges have not been paid in full, such Disputes Board Member may so inform the Parties in order that one of them may advance the required payment. If such payments are not made, and the non-paying Party does not within 30 days after its receipt of the unpaid Disputes Board Member's invoice provide notice to such member and the other Party as to such Party's dispute of such member's invoice, the Disputes Board may order the suspension or termination of the proceedings. If a Party disputes a Disputes Board Member's invoice and provides such notice, no suspension or termination of the proceedings shall occur. Ex parte conversations to resolve a fee dispute between the Dispute Board

Member whose invoice is disputed and the disputed Party are prohibited during the Dispute Board's resolution of the Dispute, and any such conversations shall be deferred until the Disputes Board Decision is final.

EXPEDITED PROCEDURES FOR FAST-TRACK DISPUTES

E-1. Serving of Notices

In addition to notice provided pursuant to Section 16.11 of the CMA, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree, a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-2. Exchange of Exhibits

At least two Business Days prior to the hearing, the Parties shall exchange copies of all exhibits they intend to submit at the hearing. The Disputes Board shall resolve disputes concerning the exchange of exhibits.

E-3. Proceedings on Documents

Where no Party's claim exceeds \$10,000, exclusive of interest and arbitration costs, and other cases in which the Parties agree, the Dispute shall be resolved by submission of documents, unless either Party requests an oral hearing, or the Disputes Board determines that an oral hearing is necessary. The Disputes Board shall establish a fair and equitable procedure for the submission of documents.

E-4. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the Disputes Board shall set the date, time, and place of the hearing, to be scheduled to take place within 10 days after appointment of the Disputes Board Chair. The Disputes Board will notify the Parties in advance of the hearing date.

E-5. The Hearing

(a) Each Party shall have equal opportunity to submit its proofs and complete its case.

(b) The Disputes Board shall determine the order of the hearing and schedule and control its duration consistent with the objective of expedited resolution of the Fast-Track Dispute, and may require further submission of documents within two days after the hearing. For good cause shown, the Disputes Board may schedule additional hearings within seven Business Days after the initial hearing.

(c) Any Party desiring a stenographic record may arrange for one pursuant to the provisions of R-18.

E-6. Time of Award

Unless otherwise agreed by the Parties, the Disputes Board Decision shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES

L-1. Administrative Conference

Prior to the commencing proceedings to resolve a Dispute, the Disputes Board shall, unless the Parties agree otherwise, conduct an administrative conference with the Parties and/or their attorneys or other representatives by conference call within 7 days after the Disputes Board Chair is appointed. In the event the Parties are unable to agree on a mutually acceptable time for the administrative conference, the Dispute Board shall, upon three Business Days' advance notice, schedule the administrative conference for 9 a.m. (CST) on the fourth Business Day and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the following purpose of obtaining additional information about the nature and magnitude of the Dispute and the anticipated length of hearing and scheduling and for such additional purposes as the Parties or the Disputes Board may deem appropriate.

L-2. Preliminary Hearing

As promptly as practicable after the appointment of the Disputes Board, a preliminary hearing shall be held among the Parties and/or their attorneys or other representatives and the Disputes Board. If the Parties agree, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) service of a detailed statement of the Dispute, including damages and defenses, a statement of the issues asserted by each Party and positions with respect thereto, and any legal authorities the Parties may wish to bring to the attention of the Disputes Board;

(b) stipulations to uncontested facts;

(c) the extent to which discovery shall be conducted, in light of the special discovery and evidentiary rules set forth above in R-23(d);

(d) exchange and premarking of those documents which each Party believes may be offered at the hearing;

(e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;

(f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;

(g) the extent to which hearings will proceed on consecutive days;

(h) whether a stenographic or other official record of the proceedings shall be maintained;

(i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and

(j) the procedure for the issuance of subpoenas.

By agreement of the Parties and/or order of the Disputes Board Chair, the pre-hearing activities and the hearing procedures that will govern the Disputes Board's proceedings will be memorialized in a scheduling and procedure order (each, a "**Scheduling and Procedure Order**"). Nothing in any Schedule and Procedure Order shall conflict with the procedures established under Section 16.3 of the CMA.

L-3. Management of Proceedings

(a) The Disputes Board shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases, provided, however, that no action by the Disputes Board under this L-3 shall conflict with the procedures established under Section 16.3 of the CMA.

(b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control if the Disputes Board(s) consider such production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a Large, Complex Commercial Case.

(c) The Parties may conduct discovery, subject to any limitations deemed appropriate and set forth in the discovery control plan and/or the Scheduling and Procedure Order. If the Parties cannot agree on production of documents and other information, the Disputes Board, consistent with the expedited nature of arbitration, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing 10 Business Days prior to the hearing unless the Disputes Board Chair determines otherwise.

(e) The exchange of information pursuant to this rule, as agreed by the Parties and/or directed by the Disputes Board Chair, shall be included within the Scheduling and Procedure Order.

(f) The Disputes Board is authorized to resolve any disputes concerning the exchange of information.

(g) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.