CAPITAL MAINTENANCE AGREEMENT

SOUTHEAST CONNECTOR PROJECT

between

TEXAS DEPARTMENT OF TRANSPORTATION

and

[*DB CONTRACTOR*]

Dated as of: _____, 20__

TARRANT COUNTY

CAPITAL MAINTENANCE AGREEMENT
Southeast Connector Project

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CAPITAL MAINTENANCE AGREEMENT

SOUTHEAST CONNECTOR PROJECT

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

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

and

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

the location of whose principal office is:

[*Address*]
[*Address*].

RECITALS

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

B. TxDOT wishes to enter into an agreement with DB Contractor to develop, design and construct the Southeast Connector project, which consists of approximately 16.6 miles of non-tolled improvements to I-20 from Forest Hill Drive to Park Springs Boulevard, to I-820 from I-20 to Brentwood Stair Road, and to US 287 from Bishop Street to Sublett Road, which is divided among the Base Scope, DWC1, DWC2 and DWC3 as set forth in the Schematic Design and as each term is defined in Section 1.2 (the "**Project**"). In addition, TxDOT wishes to enter into an agreement with DB Contractor to, at TxDOT's discretion, maintain the Project for specified optional terms.

C. Pursuant to the Code and subchapter I in Chapter 9 of Title 43, Texas Administrative Code (the "**Rules**"), TxDOT issued a Request for Qualifications (as amended, the "**RFQ**") on January 17, 2020.

D. TxDOT received three qualification statements on April 15, 2020 and subsequently shortlisted three proposers.

E. On November 20, 2020 TxDOT issued to the shortlisted proposers a Request for Proposals (as amended, the "RFP") to develop, design and construct and, at TxDOT's sole option, maintain the Project.

F. On or before May 6, 2021, TxDOT received responses to the RFP, including the response of DB Contractor (the "**Original Proposal**").

G. On [September 21, 2021], TxDOT issued to the shortlisted Proposers a Request for Proposal Revisions and Best and Final Offers (the "**Request for BAFO**") as an addendum to the RFP.

H. [Include appropriate option.][On or before [●] (the "**Proposal Due Date**"), TxDOT received [●] responses to the Request for BAFO, including the response of DB Contractor (the "**BAFO**", and the Original Proposal

as modified by the BAFO, the "**Proposal**").] [On or before [●] (the "**Proposal Due Date**"), TxDOT received one response to the Request for BAFO, and that response of DB Contractor (the "**BAFO**", and the Original Proposal as modified by the BAFO, the "**Proposal**") was independently evaluated to confirm and validate that (1) the project procurement delivered value for the public investment; and (2) no anticompetitive practices were involved in the procurement.]

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

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

K. Concurrently with the execution of this CMC, TxDOT and DB Contractor are entering into a Design-Build Contract ("**DBC**"), which includes a Design-Build Agreement (the "**Design-Build Agreement**" or "**DBA**") and the DB General Conditions.

L. This Capital Maintenance Agreement, the Design-Build Agreement and the other CMC Documents collectively constitute a design-build contract, as contemplated under the Code and the Rules, and are entered into in accordance with the provisions of the RFP.

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

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

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

SECTION 1. CONTRACT

1.1 Abbreviations

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

BAFO	Best and Final Offer
CMA	has the meaning set forth in the preamble to this CMA.
CMC	this Capital Maintenance Agreement and the CMA General Conditions, including all exhibits and attachments attached hereto, as such may be amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms of the CMC.

DBA	has the meaning set forth in Recital I to this CMA.
DBC	has the meaning set forth in Recital I to this CMA.
DWC	Deferred Work Component
DWC1	Deferred Work Component 1
DWC2	Deferred Work Component 2
DWC3	Deferred Work Component 3
DWC NTP	Deferred Work Component Notice to Proceed

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

1.2 Definitions

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

Base Scope	has the meaning set forth in Exhibit 1 to the DBA.
Best and Final Offer (BAFO)	has the meaning set forth in Recital H to this CMA.
Capital Maintenance Agreement	means this Capital Maintenance Agreement executed by TxDOT and DB Contractor for DB Contractor to perform maintenance for the Project.
CMA General Conditions	has the meaning set forth in Section 1.3.2 of this CMA.
CMA Specification	means the CMA Specification Item 9.
CMC Documents	means the documents identified in Section 1.3 of this CMA.
Code	has the meaning set forth in Recital A to this CMA.
Contract Documents	has the meaning set forth in Section 1.3 of the DBA.
Cumulative Maximum Pavement Renewal Work Price	means the sum of the amount shown for each Maintenance Term year in the column titled "Cumulative Maximum Pavement Renewal Work Price" in Appendix 2 to Exhibit 3-1 to this CMA, plus, if DWC1 is an Exercised DWC, the amount shown for each Maintenance Term year in the column titled "Cumulative Maximum Pavement Renewal Work Price" in Appendix 2 to Exhibit 3-2 to this CMA.
DB Contractor or **Design-Build Contractor**	means _____, a _____, together with its successors and assigns.
DB General Conditions	has the meaning set forth in Section 1.3.2 of the DBA.

Design-Build Agreement	has the meaning set forth in Recital K to this CMA.
Design-Build Specifications	means the Design-Build Specifications, Items 10-28 included in the RFP.
Dispute Resolution Procedures	means the formal process for resolving Disputes described in Section 10.1 and Exhibit 13 to this CMA.
Draw Request	means a Draw Request and Certificate in the form of Exhibit 4 to this CMA.
DRP Rules	means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act, and effective under Rule §9.2 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding Dispute Resolution Procedures applicable to the resolution of all claims and disputes of every kind or character arising under agreements such as and including the CMC Documents.
Deferred Work Component 1 or DWC1	has the meaning set forth in Exhibit 1 to the DBA.
Deferred Work Component 2 or DWC2	has the meaning set forth in Exhibit 1 to the DBA.
Deferred Work Component 3 or DWC3	has the meaning set forth in Exhibit 1 to the DBA.
Deferred Work Component Notice to Proceed or DWC NTP	mean a written notice issued by TxDOT to DB Contractor pursuant to Section 2.9.1 of the DBA authorizing DB Contractor to include the DWC1 Work, the DWC2 Work or the DWC3 Work (as defined in the DBA), as applicable, in the scope of Work under the DBA.
Deferred Work Components or DWC	means DWC1, DWC2 and DWC3, or any subset of them as the context requires.
Effective Date	has the meaning set forth in the preamble to this CMA.
Exercised DWC	means each DWC for which TxDOT issued a DWC NTP in accordance with Section 2.9.1 of the DBA.
General Maintenance Price	means the sum of the amount shown for each Maintenance Term year in the column headed "General Maintenance Price" in Appendix 1 to Exhibit 3-1 to this CMA, plus, for each Exercised DWC, the amount shown for each Maintenance Term year in the column headed "General Maintenance Price" in Appendix 1 to the applicable Exhibit 3-2 to this CMA.
Indemnified Parties	means TxDOT, the State, the Texas Transportation Commission, FHWA, TxDOT consultants and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.
Initial Maintenance Term	has the meaning set forth in Section 2.2.1 of this CMA.

Initial Maintenance Term Commencement Date	has the meaning set forth in Section 2.2.1 of this CMA.
Instructions to Proposers	means the Instructions to Proposers issued by TxDOT on November 20, 2020, as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.
Key Personnel	means the positions identified in Exhibit 11 to this CMA.
Key Personnel Unavailability Liquidated Damages	means the liquidated damages assessed in accordance with Section 6.3 of this CMA.
Lane Closure	means closure of any traffic lane, or the reduction in width of any traffic lane to less than 11 feet, in any portion of the Project or a connecting highway, as applicable, and for any duration, including main lanes, ramps, direct connectors, frontage roads, access roads and cross roads.
Lead Maintenance Firm	means _____, a _____, together with its successors and assigns.
Liquidated Damages	means any liquidated damages specified in Section 6 of this CMA.
Maintenance Limits	means the limits as shown on Exhibit 15 for the Maintenance Services for the Base Scope and for each Exercised DWC, as such limits may be modified by the Record Documents.
Maintenance NTP	means Maintenance NTP2 or Maintenance NTP3, as applicable.
Maintenance NTP2	means a written notice issued by TxDOT to DB Contractor authorizing DB Contractor to proceed with the Maintenance Services for the Second Maintenance Term.
Maintenance NTP3	means a written notice issued by TxDOT to DB Contractor authorizing DB Contractor to proceed with the Maintenance Services for the Third Maintenance Term.
Maintenance Price	means the aggregate General Maintenance Price for the Base Scope and for each Exercised DWC and the Pavement Renewal Work Price for the Base Scope and for DWC1, if DWC1 is an Exercised DWC, subject to adjustments contemplated in Section 8.1 of the CMA General Conditions and to such additions to and deductions from the compensation as may be provided for pursuant to Section 4.5 of the CMA General Conditions and Section 5 of this CMA.
Maintenance Security	has the meaning set forth in Section 4.1 to this CMA.
Maximum Draw-Down Amount	means the amount that TxDOT shall have the right to draw down from the Maintenance Performance Bond in the event DB Contractor fails to timely provide replacement or renewal of Maintenance Security in accordance with CMA General Conditions Section 3.2.3.6 and shall be $20 million.
Monthly Noncompliance Events Report	has the meaning set forth in Exhibit 9 to this CMA.

NCE Cure Period	means the period of time DB Contractor has to cure a particular Noncompliance Event as set forth in the Noncompliance Events Table attached to Exhibit 9 to this CMA.
Noncompliance Charges	means the liquidated amounts specified in Exhibit 9 to this CMA.
Noncompliance Event	means any DB Contractor breach or failure to meet one of the requirements as set forth in Exhibit 9 to this CMA.
Noncompliance Events Report	is defined in Exhibit 9 to this CMA.
Noncompliance Events Table	means the table set forth in Attachment 1 to Exhibit 9 to this CMA.
Noncompliance Points	means the points that may be assessed for certain breaches or failures to perform by DB Contractor, as set forth in Exhibit 9 to this CMA.
Notice of Determination	has the meaning set forth in Exhibit 9 to this CMA.
Original Proposal	has the meaning set forth in Recital F to this CMA.
Pavement Renewal Work Price	means the amount shown for each Maintenance Term year in the column headed "Pavement Renewal Work Price" in Appendix 2 to Exhibit 3-1 to this CMA for the Base Scope, and in Appendix 2 to Exhibit 3-2 to this CMA for DWC1, if DWC1 is an Exercised DWC.
Pavement Renewal Work Unit Rate	means the unit rate shown in the column headed "Pavement Renewal Work Unit Rate" in Appendix 2 to Exhibit 3-1 to this CMA.
Persistent DB Contractor Maintenance Default	has the meaning set forth in Exhibit 9 to this CMA.
Project	has the meaning set forth in Recital B to this CMA; provided, however, that when used in the CMC Documents to refer to the Maintenance Services or other rights and obligations of DB Contractor, Project will mean the Base Scope and each Exercised DWC.
Proposal	has the meaning set forth in Recital H to this CMA.
Proposal Due Date	has the meaning set forth in Recital H to this CMA.
Reference Information Documents (RID)	means the documents posted to the RID folders for the Project, located at https://ftp.txspd.com/ as of the Effective Date. The Reference Information Documents are not considered CMC Documents and were provided to DB Contractor for informational purposes only and without representation or warranty by TxDOT.
Request for BAFO or Request for Proposal Revisions and Best and Final Offers	has the meaning set forth in Recital G to this CMA.
RFP	has the meaning set forth in Recital E to this CMA.
RFQ	has the meaning set forth in Recital C to this CMA.

Rules	has the meaning set forth in Recital C to this CMA.
Transition Work	has the meaning set forth in Exhibit 1 to the DBA.
Uncured Noncompliance Points	means Noncompliance Points assessed on account of breaches or failures that remain uncured.

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

1.3 CMC Documents and Order of Precedence

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

1.3.1 Each of the CMC Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The CMC Documents are intended to be complementary and to describe and provide for a complete agreement.

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

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

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

more advantageous than the requirements of the other CMC Documents, DB Contractor's obligations hereunder shall include compliance with all such statements, offers, terms, concepts or designs, that shall have the priority of CMA amendments, CMA Specification amendments and CMA General Conditions amendments, as applicable.

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

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

1.3.6 Notwithstanding the order of precedence among CMC Documents set forth in Section 1.3.2, if a CMC Document contains differing provisions on the same subject matter than another CMC Document, the provisions that establish the higher quality, manner or method of performing the Maintenance Services or use more stringent standards will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a CMC Document or set of CMC Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless TxDOT in its discretion, approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict. TxDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

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

1.3.8 DB Contractor acknowledges and agrees that it had the opportunity and obligation, prior to the Effective Date, to review the terms and conditions of the CMC Documents and to bring to the attention of TxDOT any conflicts or ambiguities contained therein. DB Contractor further acknowledges and agrees that it has independently reviewed the CMC Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the CMC Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the CMC Documents, they shall not be interpreted or construed against the Person that prepared them, and, instead, other rules of interpretation and construction shall be used.

1.4 Reference Information Documents

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

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

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

SECTION 2. SCOPE OF MAINTENANCE SERVICES

2.1 Maintenance Services

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

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

(b) The CMA Specification.

2.2 Initial Maintenance Term; TxDOT's Right to Terminate

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

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

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

2.3 Failure to Issue a Maintenance NTP

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

2.4 Additional Maintenance Terms

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

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

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

2.5 Special Terms and Conditions

Section 4.5.2.1 of the CMA General Conditions is hereby amended as set forth below. The underlined, bolded text is added to the section, and the stricken text is deleted therefrom.

> TxDOT may at any time issue a Directive Letter to DB Contractor (a) in the event of any desired change in the Maintenance Services, or (b) in the event of any Claim or Dispute regarding the scope of the Maintenance Services or whether DB Contractor has performed in accordance with the requirements of the CMC Documents. The first Directive Letter shall be labeled "Directive Letter No. 1" and subsequent letters shall be numbered sequentially. The Directive Letter will describe the Maintenance Services in question and may state the basis for determining compensation, if any. If the Directive Letter does not state the basis for determining compensation, compensation will be determined pursuant to Section 4.5.10. DB Contractor shall proceed immediately as directed in the Directive Letter. If the Directive Letter states that the Maintenance Services are within DB Contractor's original scope of Maintenance Services, DB Contractor shall proceed with the Maintenance Services as directed but shall have the right pursuant to Section 4.5.5.2 to submit a PCO Notice requesting that TxDOT issue a Change Order except as set forth in the next sentence. If the Directive Letter states that **(i)** the Maintenance Services are within DB Contractor's original scope of Maintenance Services**, (ii)** ~~and~~ the directed Maintenance Services involve less than $10,000 in additional Direct Costs incurred by DB Contractor **and (iii) the aggregate amount of additional Direct Costs for directed Maintenance Services identified in all Directive Letters described in clauses (i) and (ii) for the then current year is less than $50,000**, **then** DB Contractor shall not be entitled to a Change Order or an increase in the Maintenance Price.

2.6 Optional Provisions within Capital Maintenance Contract

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

2.7 DB Contractor's Proposal Commitments

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

2.8 Project Specific Third-Party Agreements

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

2.9 Traffic Control Plan Special Provisions

All Lane Closures within the limits of the Project are subject to TxDOT approval. Lane Closure requests and notifications shall be delivered to TxDOT a minimum of 48 hours prior to the requested implementation. Lane Closures on non-TxDOT controlled facilities shall be coordinated and approved by both TxDOT and the appropriate Governmental Entity.

No Lane Closure that restricts or interferes with traffic shall be allowed 5:00 AM through 9:00 PM Monday through Friday, and 9:00 PM Friday through 9:00 PM Sunday for all main lanes, collector-distributor lanes and ramps. For frontage roads, Lane Closures will be allowed 9:00 AM through 3:30 PM Monday through Friday, and 9:00 PM through 5:00 AM Sunday through Thursday.

No Lane Closure that restricts or interferes with traffic shall be allowed from 12:00 PM (noon) on the day preceding to 12:00 AM (midnight) on the day after the regional event and holiday schedule dates set forth in Section 4.1.17.2.3 of

the CMA General Conditions. The following regional events are hereby added to such schedule:

- Super Bowl Sunday (9:00 am through 11:00 pm);
- Sales Tax Holiday Weekend (5:00 am on Friday through 9:00 pm on Sunday); and
- Any events held within a five (5)-mile radius of any point along the Project ROW with an expected attendance greater than 20,000 (restricted from three hours before the start of the event to two hours after the end of the event).

SECTION 3. COMPENSATION

3.1 Maintenance Price

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

3.2 Form of Maintenance Draw Request and Certificate Requirements

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

SECTION 4. MAINTENANCE SECURITY

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

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

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

4.2 Guaranty

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

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

4.2.3 DB Contractor shall be required to provide a Guaranty guaranteeing DB Contractor's obligations under the CMC Documents during the Maintenance Period in the form set forth in Exhibit 6 to this CMA from a Guarantor approved by TxDOT as of and as a condition to Substantial Completion if (i) DB Contractor elects to

provide a P&P Letter of Credit as Maintenance Security or (ii) DB Contractor is a limited liability entity and elects to provide the P&P Bonds as Maintenance Security. If a Guaranty was provided as of the Effective Date and such Guaranty satisfies the requirements of this Section 4.2 and is in effect on the Substantial Completion Deadline (as defined in the DBC), then DB Contractor shall not be required to provide an additional Guaranty at the Substantial Completion Deadline.

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

4.2.5 If at any time during the course of this CMC, the total combined Tangible Net Worth of DB Contractor, its Equity Members (as applicable) and any Guarantors, is less than $275 million, DB Contractor shall provide one or more guarantees from a Guarantor acceptable to TxDOT so that the combined Tangible Net Worth of DB Contractor, its Equity Members (as applicable) and any Guarantors is at least $275 million. Each such guaranty shall be in the form attached as Exhibit 6 to this CMA, together with appropriate evidence of authorization, execution, delivery and validity thereof, and shall guarantee the Guaranteed Obligations. The minimum Tangible Net Worth amount described above shall be adjusted annually based on changes in the CPI in accordance with the methodology set forth in Section 8.1.3 of the CMA General Conditions, commencing on the first anniversary of the Initial Maintenance Term Commencement Date and continuing annually thereafter during the Maintenance Period.

4.2.6 DB Contractor may replace an existing Guaranty with a new Guaranty upon prior approval by TxDOT. Any new Guaranty shall be provided in the form attached as Exhibit 6 to this CMA together with appropriate evidence of authorization, execution, delivery and validity thereof, and shall guarantee the Guaranteed Obligations. The Guaranty being replaced shall remain in effect until the approved replacement Guaranty becomes effective.

4.3 Insurance Special Provisions

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

SECTION 5. CHANGE ORDERS

5.1 Hazardous Materials

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

SECTION 6. NONCOMPLIANCE POINTS; LIQUIDATED DAMAGES

6.1 [Not Used]

6.2 Noncompliance Points

The performance of the Maintenance Services shall be subject to Noncompliance Points provisions set forth in Exhibit 9 to this CMA.

6.3 Key Personnel Unavailability Liquidated Damages

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

POSITION	KEY PERSONNEL UNAVAILABILITY LIQUIDATED DAMAGES (per day)
Maintenance Manager	$9,000

SECTION 7. IDENTIFIED SUBCONTRACTORS AND KEY PERSONNEL

7.1 Identified Subcontractors

Identified Subcontractors for the Maintenance Services are all team members identified in the Proposal as set forth in Exhibit 10 to this CMA.

7.2 Key Personnel

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

SECTION 8. NOTICE AND AUTHORIZED REPRESENTATIVES

8.1 Notices and Communications

8.1.1 Notices under the CMC Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication or posted to TxDOT's SharePoint site for the Project with receipt confirmed by telephone and followed by a hard copy, to the addresses set forth in this Section 8.1, as applicable (or to such other address as may from time to time be specified in writing by such Person).

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

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

[*Prime Contractor / Firm Name*]
[*Address*]
[*Address*]

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

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

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

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

Texas Department of Transportation
Fort Worth District Office
2501 SW Loop 820
Fort Worth, TX 76133
Attention: Mr. Carl L. Johnson, P.E.
Telephone: (817) 370-6500
E-mail: carl.l.johnson@txdot.gov

With a copy to:

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

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

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

8.1.4 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service,

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

8.2 Designation of Representatives

8.2.1 TxDOT and DB Contractor shall each designate Authorized Representative(s) who shall be authorized to make decisions and bind the Parties on matters relating to the CMC Documents. Exhibit 12 to this CMA hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 8.1.

8.2.2 The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the Maintenance Services and negotiate on behalf of each of the Parties, but who do not have authority to bind TxDOT or DB Contractor.

SECTION 9. REPRESENTATIONS, WARRANTIES, ACKNOWLEDGEMENTS AND CERTIFICATIONS

9.1 Representations and Warranties

DB Contractor represents and warrants that:

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

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

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

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

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

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

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

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

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

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

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

9.1.12 At any time a Guaranty is required to be in place pursuant to the CMC Documents, the applicable Guarantor shall be duly organized, validly existing and in good standing under the laws of the state of its organization, is duly qualified to do business in and is in good standing in the State of Texas, and will remain in good standing for as long as any obligations guaranteed by such Guarantor remain outstanding under the CMC Documents, and each such Guarantor shall have all requisite power and authority to carry on its present and proposed obligations under the CMC Documents.

9.1.13 At any time a Guaranty is required to be in place pursuant to the CMC Documents, all required approvals shall have been obtained with respect to the execution, delivery and performance of such Guaranty,

and performance of such Guaranty will not result in a breach of or a default under the applicable Guarantor's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which the applicable Guarantor is a party or by which its properties and assets may be bound or affected.

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

9.2 Lead Maintenance Firm Representations and Warranties

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

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

(b) The ownership interests of the Lead Maintenance Firm that is a single purpose entity formed for the Project (including options, warrants and other rights to acquire ownership interests) are owned by the Persons whom DB Contractor has set forth in a written certification delivered to TxDOT prior to the Effective Date;

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

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

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

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

9.3 Survival of Representations and Warranties

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

SECTION 10. MISCELLANEOUS PROVISIONS

10.1 Dispute Resolution Procedures

Disputes shall be resolved pursuant to the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act, and effective under Rule

§9.2 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code and subject to (i) the procedures set forth in Section 4.7 of the CMA General Conditions and (ii) the requirements set forth in Exhibit 13 to this CMA.

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

10.2 Entire Agreement

The CMC Documents contain the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to its subject matter.

10.3 Severability

If any clause, provision, section or part of the CMC Documents is ruled invalid under Section 10.1 hereof and Section 4.7 of the CMA General Conditions, or otherwise by a court having proper jurisdiction, then the Parties shall (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Maintenance Price to account for any change in the Maintenance Services resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the CMC Documents, which shall be construed and enforced as if the CMC Documents did not contain such invalid or unenforceable clause, provision, section or part.

10.4 Survival

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

10.5 Counterparts

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

10.6 [Joint and Several Liability

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

liabilities of such Party under the CMC Documents, and such obligations and liabilities shall not in any way be reduced, diminished or released by any change in the constitution of such Party.]

10.7 Further Assurances

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

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

DB CONTRACTOR:
[*DB Contractor*]

By:_____
Name: [●]
Title: [●]

Date:_____

TEXAS DEPARTMENT OF TRANSPORTATION:

By:_____
Name: Marc D. Williams
Title: Executive Director

Date:_____

EXHIBIT 1

IMPLEMENTATION OF CERTAIN CMC PROVISIONS

Amendment to the CMA Specification

The CMA Specification is amended as follows:

1. The third paragraph in Section 9.7.8.1 is hereby deleted in its entirety.

EXHIBIT 2

DB CONTRACTOR'S PROPOSAL COMMITMENTS

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

Comment No.	Proposal Location	Proposal Commitment
1		
2		

EXHIBIT 3

MAINTENANCE PRICE

Exhibit 3-1 Maintenance Price – Base Scope

Exhibit 3-2 Maintenance Price – DWCs

EXHIBIT 3-1

MAINTENANCE PRICE – BASE SCOPE

Appendix 1 General Maintenance Price Schedule - Base Scope

[General Maintenance Prices to be inserted (amounts shown in column A of Form Q-1.1 in the Proposal)]

Appendix 2 Pavement Renewal Work Price Schedule - Base Scope

[Pavement Renewal Work Price and build-up of Cumulative Maximum Pavement Renewal Work Price to be inserted (amounts shown in columns A through E of Form Q-2.1 in the Proposal).

EXHIBIT 3-2

MAINTENANCE PRICE – DWCs

Exhibit 3-2.1 Maintenance Price – DWC1

Exhibit 3-2.2 Maintenance Price – DWC2

Exhibit 3-2.3 Maintenance Price – DWC3

EXHIBIT 3-2.1

MAINTENANCE PRICE – DWC1

Appendix 1 General Maintenance Price Schedule – DWC1

[General Maintenance Prices to be inserted (amounts shown in column A of Form Q-1.2 in the Proposal)]

Appendix 2 Pavement Renewal Work Price Schedule – DWC 1

[Pavement Renewal Work Price and build-up of Cumulative Maximum Pavement Renewal Work Price to be inserted (amounts shown in columns A through E of Form Q-2.2 in the Proposal).]

EXHIBIT 3-2.2

MAINTENANCE PRICE for DWC2

Appendix 1 General Maintenance Price Schedule – DWC2

[General Maintenance Prices to be inserted (amounts shown in column A of Form Q-1.3 in the Proposal)]

EXHIBIT 3-2.3

MAINTENANCE PRICE for DWC3

Appendix 1 General Maintenance Price Schedule – DWC3

[General Maintenance Prices to be inserted (amounts shown in column A of Form Q-1.4 in the Proposal)]

EXHIBIT 4

FORM OF MAINTENANCE DRAW REQUEST AND CERTIFICATE REQUIREMENTS

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

EXHIBIT 4 – APPENDIX 1

FORM OF MAINTENANCE DRAW REQUEST AND CERTIFICATE

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

Texas Department of Transportation
Fort Worth District Office
2501 SW Loop 820
Fort Worth, TX 76133
Attention: Alternative Delivery Supervisor

A. Draw Request for the preceding month (until the end of the month): _____ to _____
month/day/year month/day/year

B. Maintenance Price:

B1. General Maintenance Payment (from Form B1 of this Appendix 1 to Exhibit 4)	$
B2. Pavement Renewal Work Payment (from Form B2 of this Appendix 1 to Exhibit 4)	$
C. Total Change Order amount for the month (from Form C of this Appendix 1 to Exhibit 4)	$
D. Total deductions for the month (from Form D of this Appendix 1 to Exhibit 4)	$
E. Disapproved amounts from previous Draw Request(s) after correction of the deficiencies noted by TxDOT and satisfaction of the requirements of the CMC Documents related thereto (CMA General Conditions Section 8.2.2)	$
F. **Total amount due for the month (B1 + B2 + C – D + E)**	**$**

_____
Printed Name Signature Date
DB Contractor's Authorized Representative

_____
Printed Name Signature Date
TxDOT's Authorized Representative

B1. GENERAL MAINTENANCE PAYMENT CALCULATION

Draw Request #:	**Maintenance Term Year X:**
Exercised DWCs (Select all that apply)	DWC1:_____ DWC2:_____DWC3:_____

General Maintenance Payment	**This Draw Request**
G. General Maintenance Price for Maintenance Term Year X (unadjusted amount from Exhibit 3)[1]	$
H. ENR CCI for the month that is three months prior to the month in which Maintenance Term Year X commenced	
I. ENR CCI for the month that is three months prior to the execution of the CMC (BICCI)	
J. Adjusted General Maintenance Price pursuant to Section 8.1.3(b) of the CMA General Conditions: G x (H / I)	$
K. **General Maintenance Payment:** J/12 (except with respect to partial months or during the last six months of the Maintenance Period. See notes below.)	**$**

Note:
Payments for any partial month or partial year shall be prorated as set forth in CMA General Conditions Section 8.1.2.1(b) and Section 8.1.2.1 (c) and further elaborated below.

For example, for each Maintenance Term year:

- First month's payment: One-twelfth (1/12) of the adjusted General Maintenance Price pro-rated by multiplying by the number of days for which payment is made, and dividing by the total number of days in that month.

- Final month's payment: The remaining balance of the adjusted General Maintenance Price. If there is a subsequent Maintenance Term year, the partial payment for the first month of the next term is added to this remaining balance, such that all payments are made on a calendar month basis.

Payments during the last six months of the Maintenance Period shall be calculated as set forth in CMA General Conditions Section 8.1.2.1(d).

[1] Note that the Annual General Maintenance Price will be the sum of the amount in Exhibit 3-1 and the amounts in the applicable Exhibits 3-2 for each of the Exercised DWCs.

B2. PAVEMENT RENEWAL WORK PAYMENT CALCULATION

Draw Request #: _____ **Maintenance Term Year X:** _____

Pavement Renewal Work Payment	**This Draw Request**
L. Cumulative total number of square yards of Pavement Renewal Work meeting the requirements set forth in Sections 8.1.2.2(a), 8.1.2.2(b), and 8.1.2.2(c) of the CMA General Conditions that has been completed	
M. Pavement Renewal Work Unit Rate from Exhibit 3-1	$
N. Cumulative total Pavement Renewal Work Price earned: L x M	$
O. Cumulative Maximum Pavement Renewal Work Price for Maintenance Term Year X from Exhibit 3-1 [and Exhibit 3-2.1][2]	$
P. Cumulative total Pavement Renewal Work Price eligible for invoicing: lesser of N and O	$
Q. Cumulative total Pavement Renewal Work Payments previously invoiced and paid	$
R. Pavement Renewal Work Price eligible for invoicing: P – Q	$
S. ENR CCI three months prior to the month in which Maintenance Term Year X commenced	
T. ENR CCI three months prior to the execution of the CMC	
U. **Pavement Renewal Work Payment pursuant to Section 8.1.3(c) of the CMA General Conditions: R x (S / T)**	**$**

[2] Note that this language is only applicable if DWC1 was exercised.

C. CHANGE ORDER SUMMARY

Draw Request #: _____ **Maintenance Term Year X:** _____

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

Note:

Annual escalation of the Maintenance Price per Section 8.1.3 of the CMA General Conditions is calculated in Form B1 and Form B2 and shall be excluded from this Form C.

D. DEDUCTIONS SUMMARY

Draw Request #: _____ **Maintenance Term Year X:** _____

Deduction / Withholding	**This Draw Request**
1. Total Key Personnel Unavailability Liquidated Damages under Section 6.3 of the CMA	$
2. Total Noncompliance Charges under Section 6.2 and Exhibit 9 to the CMA	$
3. Any other sums owed to TxDOT (see Section 8.2.3 of CMA General Conditions)	$
4.	$
5.	$
6.	$
Total	**$**

DRAW REQUEST CERTIFICATION

Draw Request #: _____ **Maintenance Term Year X:** _____

The undersigned hereby certifies that:

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

Exceptions:

_____
_____
_____
_____
_____

_____

Printed Name Signature Date
Maintenance Quality Manager

EXHIBIT 4 APPENDIX 2

DRAW REQUEST CONTENTS CHECKLIST

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

☐ A completed Form of Draw Request and Certificate (Appendix 1 to this Exhibit 4)

☐ The Draw Request for a monthly payment must be accompanied by an attached report containing information that TxDOT can use to verify the Draw Request and monthly payment and all components of the charges and fees imposed pursuant to Section 6 of the CMA for the prior month. Such attached report shall include:

(a) a description of any charges and fees imposed pursuant to Section 6 of the CMA assessed during the prior month in relation to the Maintenance Services, including the date and time of occurrence and a description of the events and duration of the events for which the charges and fees were assessed;

(b) any adjustments to reflect previous over-payments and/or under-payments;

(c) a detailed calculation of any interest payable in respect of any amounts owed; and

(d) any other amount due and payable from DB Contractor to TxDOT or from TxDOT to DB Contractor under this Capital Maintenance Contract, including any retainage and any other deductions related to the Maintenance Services that TxDOT is entitled to make and any carry-over deductions or other adjustments from prior months not yet paid by DB Contractor.

EXHIBIT 5

FORMS OF BONDS

- Appendix 1: Form of Maintenance Performance Bond
- Appendix 2: Form of Maintenance Payment Bond

EXHIBIT 5 APPENDIX 1

FORM OF MAINTENANCE PERFORMANCE BOND

SOUTHEAST CONNECTOR PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("**Obligee**"), has awarded to _____, a _____ ("**Principal**"), a Capital Maintenance Contract for the Southeast Connector Project, duly executed and delivered as of [DATE] (the "**CMC**"), on the terms and conditions set forth therein; and

WHEREAS, [on or before 14 days prior to the Initial Maintenance Term Commencement Date][after issuance by Obligee of Maintenance [NTP2][NTP3] and no later than 14 days prior to the commencement of the subsequent Maintenance Term] [***include appropriate bracketed text***], Principal is required to furnish and maintain at all times a bond (this "**Bond**") guaranteeing the faithful performance of its obligations related to the Maintenance Services under the CMC Documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of any of the CMC Documents, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to any of the CMC Documents, or any rescission or attempted rescission of the CMC, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of the Obligee, or any fraud practiced by any other person other than the Obligee seeking to recover from this Bond, shall in any way affect the obligations of Surety on this Bond, and Surety does hereby waive notice of such changes, extensions of time, alterations, additions, omissions or other modifications. Surety agrees that payments made to contractors and suppliers to satisfy claims on the Maintenance Payment Bond do not reduce Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where Surety has arranged for completion of the work to satisfy this Bond will not be considered Maintenance Payment Bond claims.

9. In no event shall the term of this Bond be beyond the [__]***[term of the bond may not be less than 5 years, except that a bond in the amount required for the last year after the Maintenance Period may be for a***

***term not less than 1 year.*]** anniversary of the execution date without the express written consent of the Surety. Surety will have no obligation to extend or replace this Bond for additional periods of time. [Failure of the Principal to file a replacement bond as required under Section 3.2.3 of the CMA General Conditions, provide evidence of renewal, and, if applicable, adjustment of the amount, of the existing bonds or provide a replacement P&P Letter of Credit and Guaranty (if required) meeting the requirements of Sections 3.2.1 and 3.2.2 of the CMA General Conditions and Section 4.2 of the CMA shall constitute an obligation of the Principal and Surety to pay to Obligee cash collateral, in accordance with Section 2 above.] **[*Bracketed language required for the bond for the Initial Maintenance Term and Second Maintenance Term with the cash collateral amount determined in accordance with Sections 3.2.3.6 and 3.2.3.7 of the CMA General Conditions*]**

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

_____

_____

_____

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

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

Principal:

_____
By: _____
Its: _____
(Seal)

Surety:

_____
By: _____
Its: _____
(Seal)

[***ADD APPROPRIATE SURETY ACKNOWLEDGMENTS***]

_____
or secretary attest

SURETY

By: _____
Name
Title:
Address:

EXHIBIT 5 APPENDIX 2

FORM OF MAINTENANCE PAYMENT BOND

SOUTHEAST CONNECTOR PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("**Obligee**"), has awarded to _____, a _____ ("**Principal**"), a Capital Maintenance Contract for the Southeast Connector, duly executed and delivered as of [DATE] (the "**CMC**"), on the terms and conditions set forth therein; and

WHEREAS, [on or before 14 days prior to the Initial Maintenance Term Commencement Date][after issuance by Obligee of Maintenance [NTP2][NTP3] and no later than 14 days prior to the commencement of the subsequent Maintenance Term] [***include appropriate bracketed text***], Principal is required to furnish and maintain a bond (this "**Bond**") guaranteeing payment in full to all Subcontractors and Suppliers.

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

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

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

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

2. Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of any of the CMC Documents, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to any of the CMC Documents, or any rescission or attempted rescission of the CMC, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of the Obligee, or any fraud practiced by any other person other than the Obligee seeking to recover from this Bond, shall in any way affect the obligations of Surety on this Bond, and Surety does hereby waive notice of such changes, extensions of time, alterations, additions, omissions or other modifications. Surety agrees that payments made under the Maintenance Performance Bond do not reduce Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where Surety has arranged for completion of the work to satisfy the Maintenance Performance Bond will not be considered claims on this Bond.

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

_____

_____

_____

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

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

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

Principal:

_____
By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

By: _____
Name
Title:
Address:

EXHIBIT 6

FORM OF GUARANTY

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

R E C I T A L S

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

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

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

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

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

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

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

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

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

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

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

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

4. Liability of Guarantor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON NEXT PAGE]

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

_____
a _____

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 7

FORM OF REQUEST FOR CHANGE ORDER

REQUEST FOR CHANGE ORDER NO. _____ CONTRACT NO. _____

SECTION I

Originator:_____ Date:_____

Title:_____

Contract No:_____

DB Contractor Name:_____

DESCRIPTION:

_____
_____
_____
_____
_____

SCOPE:

_____
_____
_____
_____
_____

REASON FOR REQUEST FOR CHANGE ORDER:

_____
_____
_____
_____

SECTION II

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

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

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

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

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

Section IIA

Lump sum price is $_____

Section IIB

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

Total of all items in above Table: $_____

Section IIC

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

A. DB Contractor Labor (construction)
   1. Wages $ _____
   2. Labor benefits[1] (45% of A.1) $ _____

B. DB Contractor and Subcontractor Labor (professional services)
   1. Wages (Raw) $ _____
   2. Labor benefits[1] (145% of B.1, which includes overhead and profit) $ _____
   3. Off-duty peace officers and patrol cruisers[1] $ _____

C. Materials (with taxes, freight and discounts) $ _____

D. Equipment[2] (includes 15% overhead and profit) $ _____

E. Subcontracts (Time and Materials cost) $ _____

F. Utility Direct Costs $ _____

G. Overhead and Profit

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

H. Grand Total $ _____

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

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

SECTION III

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

_____

_____

_____

_____

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

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

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

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

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

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

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

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

_____

DB Contractor Authorized Representative

Date_____

SECTION IV (Reviewed by TxDOT District Engineer)

_____

TxDOT District Engineer (Insert District)

Date_____

Comments:

_____

_____

_____

_____

SECTION V (Reviewed by TxDOT District Engineer)

_____

TxDOT District Engineer (Insert District)

Date_____

Comments:

_____

_____

_____

_____

SECTION VI (Reviewed by FHWA Representative, if applicable)

_____

FHWA Project Representative

Date_____

Comments:

_____

_____

SECTION VII (Reviewed by TxDOT Chief Engineer)

_____

TxDOT Chief Engineer

Date_____

Comments:

SECTION VIII (Reviewed by TxDOT Executive Director)

_____

TxDOT Executive Director

Date_____

Comments:

EXHIBIT 8

[Not Used]

EXHIBIT 9

NONCOMPLIANCE POINTS PROVISIONS

1. Noncompliance Points System

1.1 Certain DB Contractor's failures to perform and breaches of its contractual obligations under the CMC Documents during the Maintenance Period in relation to the Maintenance Services constitute Noncompliance Events (**NCEs**) that may result in the assessment of Noncompliance Points. The table set forth in Attachment 1 to this Exhibit 9 identifies each Noncompliance Event, the points assessed per event and the NCE Cure Period (if any) available to DB Contractor for each Noncompliance Event (the "**Noncompliance Events Table**"). Noncompliance Points are a system to measure DB Contractor performance and trigger the remedies set forth or referenced in this Exhibit 9.

1.2 The persistent accumulation of Noncompliance Points may also result in a Persistent DB Contractor Maintenance Default calculated in accordance with Section 4.

1.3 The inclusion in the Noncompliance Events Table of a breach or failure to perform bears no implication as to whether such breach or failure to perform constitutes a material breach.

2. Assessment Notification and Cure Process

2.1 Electronic Database and Notification Initiated by DB Contractor

2.1.1 DB Contractor will provide an electronic database, which DB Contractor shall utilize for the application and performance of the Noncompliance Points system under this Exhibit 9 and the CMC Documents. Upon the occurrence of any Noncompliance Event specified in the Noncompliance Events Table, DB Contractor shall enter such Noncompliance Event into the electronic database in real time upon discovery but no later than 12:00 noon the next business day if the occurrence takes place after normal business hours. The format and design of the electronic database provides DB Contractor and TxDOT the ability to make full or partial entries and edits to any existing entry. At a minimum, each electronic database entry by DB Contractor shall:

(a) Include a description of the Noncompliance Event in reasonable detail, including the number of Noncompliance Points assigned thereto as set forth in the Noncompliance Events Table;

(b) Identify the party entering the Noncompliance Event;

(c) Identify the reference number and headings and sub-headings assigned to the Noncompliance Event in the Noncompliance Events Table;

(d) Identify the Project location (if applicable);

(e) Identify the date and exact time of occurrence;

(f) Identify the applicable response date and time, if any;

(g) Indicate the applicable NCE Cure Period, if any as set forth in the Noncompliance Events Table;

(h) Indicate status of cure, whether the item is open, cured (by DB Contractor), rejected by TxDOT, or disputed by DB Contractor;

(i) Indicate the date and exact time of cure (if any);

(j) Provide either as an attachment or as a cite, documentation otherwise submitted to TxDOT of the cure (if any); and

(k) Provide such other information as may be required by the electronic database.

2.1.2. In cases of dispute of entries, TxDOT may edit or enter comments to DB Contractor entries at any time. If DB Contractor disagrees with TxDOT entries, the changes or entries inserted by TxDOT must remain in place, subject to the provisions regarding Dispute resolution in Section 7.

2.1.3. TxDOT may provide to DB Contractor a "**Notice of Determination**" via the electronic database or in writing. A Notice of Determination may: (a) make a determination of occurrence of a Noncompliance Event; (b) make a determination of whether a Noncompliance Event was cured during the applicable NCE Cure Period (if any); (c) reject or dispute an entry in the electronic database by DB Contractor; or (d) make a determination of the number Noncompliance Points to be assessed.

2.1.4. TxDOT reserves the right at any time to: modify the format and design of the electronic database, or require DB Contractor to provide the notifications and responses required by this Exhibit 9 in writing rather than by entry into the electronic database.

2.1.5. Each Maintenance Services Report required to be submitted to TxDOT pursuant to Section 9.8.3 of the CMA Specification shall include a report of all Noncompliance Events occurring on the Project to date (such report, a "**Noncompliance Events Report**"). The Noncompliance Events Report shall (a) include all information required to be entered in the electronic database as described in Section 2.1.1, (b) identify whether each Noncompliance Event was initiated by DB Contractor or TxDOT, (c) identify for each Noncompliance Event for which a cure is available, whether the cure has occurred and (d) if any Noncompliance Event is in dispute, identify the anticipated date of its resolution.

2.2 Notification Initiated by TxDOT

If TxDOT believes there has occurred any Noncompliance Event specified in the Noncompliance Events Table, as such table may be revised from time to time, TxDOT may deliver to DB Contractor a Notice of Determination setting forth one or more of the following: the Noncompliance Event, the applicable NCE Cure Period (if any), TxDOT's determination whether the Noncompliance Event was cured during the applicable NCE Cure Period (if any), and the Noncompliance Points to be assessed with respect thereto. TxDOT may deliver the Notice of Determination via the electronic database or in writing, and delivery shall be deemed given upon proper entry of the information into the electronic database or receipt by DB Contractor of the written notice, whichever is sooner. DB Contractor acknowledges that it is responsible for the notification to TxDOT of all Noncompliance Events and that a notification of a Noncompliance Event initiated by TxDOT rather than by DB Contractor constitutes a Noncompliance Event as further described in Section 3(e) of this Exhibit 9.

2.3 NCE Cure Periods

2.3.1. DB Contractor shall cure each Noncompliance Event by the end of the NCE Cure Period (if any) for each such Noncompliance Event set forth in the Noncompliance Events Table. The start of the NCE Cure Period shall be determined according to the "Assessment Category" shown in the Noncompliance Events Table.

2.3.2. The NCE Cure Periods set forth in the Noncompliance Events Table shall be the only cure period for DB Contractor applicable to the Noncompliance Events. If any NCE Cure Period in the Noncompliance Events Table differs from a cure period in Section 7.6.1.2 of the CMA General Conditions that might otherwise apply to the Noncompliance Event, such NCE Cure Period set forth in the Noncompliance Events Table shall control for purposes of the assessment of Noncompliance Points under this Exhibit 9.

2.3.3 For each "Category A" Noncompliance Event, the NCE Cure Period shall start not later than the date and time of delivery by TxDOT of a Notice of Determination to DB Contractor (which may be via the Noncompliance Events database).

2.3.4 For each "Category B" Noncompliance Event, the NCE Cure Period shall start upon the earlier of (i) the date and time DB Contractor first obtained knowledge of, or first reasonably should have known of, the Noncompliance Event or (ii) the date and time DB Contractor received notice thereof by any third party. For this purpose, if the notice of the Noncompliance Event is initiated by TxDOT and DB Contractor had no actual knowledge or could not have reasonably known of the Noncompliance Event, DB Contractor shall be deemed to first obtain knowledge of the Noncompliance Event no later than the date and time of delivery of the initial notice to DB Contractor as described in Section 2.2.

2.3.5 For each "Category C" Noncompliance Event, no NCE Cure Period is applicable.

2.4 Notification of Cure

2.4.1. When DB Contractor determines that it has completed the cure of any Noncompliance Event, DB Contractor shall enter in the electronic database, a record that it has completed the cure, a brief description of the cure, and any modifications to the Maintenance Management Plan to protect against future similar Noncompliance Events.

2.4.2. Thereafter, TxDOT shall have the right, but not the obligation, to inspect to verify completion of the cure. If satisfied that the Noncompliance Event is fully cured, TxDOT shall deliver to DB Contractor a Notice of Determination with its acceptance or rejection of the cure either by entry into the electronic database or in a separate writing within a reasonable time after DB Contractor's notice of cure. If TxDOT has not provided a Notice of Determination within seven days after TxDOT's receipt of DB Contractor's notice of cure, DB Contractor shall enter into the electronic database that the item is pending TxDOT action. If TxDOT has not provided such notice of its acceptance or rejection within a further seven days, DB Contractor shall not be assessed any further Noncompliance Points for the Noncompliance Event, but the cure shall not be deemed accepted or rejected until TxDOT provides the Notice of Determination. If TxDOT issues a Notice of Determination with its acceptance of a cure, the cure is effective as of the date of DB Contractor's notice of cure described in Section 2.4.1.

2.4.3. Subject to the time restrictions in this Section 2, TxDOT may reject DB Contractor's notice of cure if TxDOT determines that DB Contractor has not fully cured the Noncompliance Event or if TxDOT cannot determine if DB Contractor has fully cured the Noncompliance Event. Upon making this determination, TxDOT shall deliver a Notice of Determination to DB Contractor rejecting the cure either by entry into the electronic database or in a separate writing. Any Dispute regarding rejection of cure shall be resolved according to the dispute resolution procedures set forth in this Capital Maintenance Contract.

3. Assessment of Noncompliance Points

If TxDOT is notified or otherwise becomes aware of a Noncompliance Event or if TxDOT serves a Notice of Determination under Section 2.2, TxDOT may assess Noncompliance Points in accordance with the Noncompliance Events Table, subject to the following:

(a) For each Noncompliance Event for which an NCE Cure Period is identified in the Noncompliance Events Table (Category A or B), that is not a late, incomplete or defective Submittal, provided that the Noncompliance Event is not cured, Noncompliance Points shall first be assessed at the end of the first NCE Cure Period.

(b) For each Noncompliance Event for which an NCE Cure Period is identified in the Noncompliance Events Table (Category A or B) that is a late, incomplete, or defective Submittal, Noncompliance

Points shall first be assessed at the date of expiration of the time period or milestone event required by the CMC Documents for the Submittal.

(c) For each Noncompliance Event for which there is no NCE Cure Period identified in the Noncompliance Events Table (Category C), Noncompliance Points shall be assessed on the date on which the breach or failure occurred. Each subsequent instance of a breach or failure assessed against the same line item in the Noncompliance Events Table will be treated as a separate Noncompliance Event.

(d) If a Noncompliance Event for which an NCE Cure Period is provided in the Noncompliance Events Table (Category A or B) is not fully cured within the applicable NCE Cure Period then continuation of such Noncompliance Event beyond such NCE Cure Period shall be treated as a new and separate Noncompliance Event, without necessity for further notice, for the purpose of assessing Noncompliance Points. Additionally, if a Noncompliance Event for which an NCE Cure Period is provided in the Noncompliance Events Table is not fully cured within the applicable NCE Cure Period, then without further notice, (i) a new cure period equal to the NCE Cure Period set forth in the Noncompliance Events Table shall apply upon the later of (a) expiration of the NCE Cure Period, and (b) if applicable, delivery by TxDOT of its Notice of Determination with its rejection of a cure, and (ii) if applicable, additional Noncompliance Charges shall be assessed against DB Contractor in accordance with Section 8 and deducted from the applicable monthly payment for the Maintenance Services.

(e) For the purpose of assessing Noncompliance Points, a failure by DB Contractor to report to TxDOT and to keep an accurate record of a Noncompliance Event as and when required under Section 2.1 of this Exhibit 9 constitutes a distinct failure to perform separate from and in addition to the subject Noncompliance Event itself.

(f) TxDOT may, but is not obligated to, assess fewer than the maximum number of Noncompliance Points for any particular Noncompliance Event.

4. Trigger Points for Persistent DB Contractor Maintenance Default

4.1 A Persistent DB Contractor Maintenance Default, entitling TxDOT to require submittal of DB Contractor's remedial plan under Section 9, shall exist on any date during the Maintenance Period when: (a) 100 or more Noncompliance Points have been assessed in any consecutive 365-day period; or (b) 250 or more Noncompliance Points, cured or uncured, have been assessed in any consecutive 1,095-day period. For the purpose of this determination all assessed Noncompliance Points shall be included, regardless of whether the breaches or failures giving rise to the Noncompliance Event were cured.

4.2 The number of cured Noncompliance Points that would otherwise then be counted under Section 4.1 is subject to reduction in accordance with Section 9.

5. Special Provisions for Certain Noncompliance Events

5.1 The provisions of this Section 5 apply to a Noncompliance Event identified in the Noncompliance Events Table that is directly attributable to a Force Majeure Event.

5.2 If any such Noncompliance Event occurs, then:

(a) The applicable NCE Cure Period for any such Noncompliance Event shall be extended if such Noncompliance Event is not reasonably capable of being cured within the applicable NCE Cure

Period solely due to the occurrence of such Force Majeure Event. The extension shall be for a reasonable period of time under the circumstances, taking into account the scope of the efforts necessary to cure, the effect of the Force Majeure Event on DB Contractor's ability to cure, availability of temporary remedial measures, and the need for rapid action due to impact of the Noncompliance Event on safety or traffic movement; and

(b) Regardless of which Party initiates notice of such Noncompliance Event, no Noncompliance Points shall be assessed, counted toward a Persistent DB Contractor Maintenance Default for purposes of Section 4, nor result in Noncompliance Charges under Section 8; provided, however, that the Noncompliance Event is cured within the applicable NCE Cure Period, as it may be extended pursuant to Section 5.2(a).

5.3 For the avoidance of doubt, for any Noncompliance Event directly attributable to a Force Majeure Event where DB Contractor is unable to comply with a requirement of the CMC Documents due to an ongoing Force Majeure Event, then solely during the period that such Force Majeure Event prevents compliance with such requirement, no Noncompliance Points or Noncompliance Charges will be assessed for such Noncompliance Event and DB Contractor shall be excused from performance of the underlying requirement.

6. TxDOT Step-in

6.1 If TxDOT exercises a step-in right under Section 7.6.3 of the CMA General Conditions with respect to any portion of the Project (the "**affected Project portion**"), then:

(a) During the period that TxDOT is in control of the Maintenance Services for the affected Project portion (the "**step-in or suspension period**"), neither the condition of the affected Project portion nor the performance of or failure to perform Maintenance Services respecting the affected Project portion shall result in a new Noncompliance Event, assessment of new Noncompliance Points or new Noncompliance Charges pursuant to Section 8.

(b) All NCE Cure Periods that are available for Noncompliance Events respecting the affected Project portion and that arose prior to and are pending as of the date the step-in or suspension period commences shall be deemed forfeited by DB Contractor; and Noncompliance Points shall be assessed at the time and date of the notice of step-in or suspension;

(c) During the step-in or suspension period for Noncompliance Events respecting the affected Project portion, Section 3(d) shall not be applied to Noncompliance Events that arose prior to the date such step-in or suspension period commences; and

(d) The step-in or suspension period for the affected Project portion shall be disregarded for purposes of determining a Persistent DB Contractor Maintenance Default under Section 5. For avoidance of doubt, this means that (i) such step-in or suspension period shall not be included in counting the consecutive time periods set forth in Section 4 and (ii) such consecutive time periods shall be treated as consecutive notwithstanding the intervening step-in or suspension period.

6.2 Refer to Section 7.6.3.3 of the CMA General Conditions for TxDOT's right to damages and to offset the payments to DB Contractor under this CMC if TxDOT incurs costs arising out of exercise of its step-in right under Section 7.6.3 of the CMA General Conditions.

7. Provisions Regarding Dispute Resolution

7.1 DB Contractor may object to the assessment of Noncompliance Points or the starting point for or duration of the NCE Cure Period respecting any Noncompliance Event by delivering to TxDOT notice of such objection not later than five days after TxDOT delivers its Notice of Determination.

7.2 DB Contractor may object to TxDOT's rejection of any certification of completion of a cure given pursuant to Section 2.4.3 by delivering to TxDOT notice of such objection not later than five days after TxDOT delivers its notice of rejection.

7.3 If for any reason DB Contractor fails to deliver its notice of objection within the applicable time period, DB Contractor shall be conclusively deemed to have accepted the matters set forth in the applicable notice, and shall be forever barred from challenging them.

7.4 If DB Contractor gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according to the dispute resolution procedures set forth in this CMC.

7.5 In the case of any Dispute as to the number of Noncompliance Points to assign for Noncompliance Events added to the Noncompliance Events Table, the sole issue for resolution shall be how many Noncompliance Points should be assigned to the new Noncompliance Event in comparison with the number of Noncompliance Points set forth in the Noncompliance Events Table for Noncompliance Events of equivalent severity.

7.6 Pending the resolution of any Dispute arising under this Section 7, the provisions of this Exhibit 9 shall remain in effect as if the matter were not in Dispute. If the final decision regarding the Dispute is that (a) the Noncompliance Points should not have been assessed, (b) the number of Noncompliance Points must be adjusted, (c) the starting point or duration of the NCE Cure Period must be adjusted, or (d) a Noncompliance Event has been cured, then the number of Noncompliance Points assigned or assessed, the Uncured Noncompliance Points balance and/or the related liabilities of DB Contractor shall be adjusted to reflect such decision.

8. Noncompliance Charges

8.1 Upon assessment of the tenth Noncompliance Point pursuant to Section 3, and upon assessment of each subsequent tenth Noncompliance Point pursuant to Section 3, TxDOT shall be entitled to immediate and automatic Noncompliance Charges from DB Contractor in an amount equal to $60,000 (such amount calculated at a rate of $6,000 per Noncompliance Point). Notwithstanding the above, from and after the date that is six months prior to the end of the Maintenance Term, any remaining or newly assessed Noncompliance Points shall be deducted from payments in accordance with Item 8 of the CMA General Conditions at a rate of $6,000 per Noncompliance Point regardless of the 10 Noncompliance Point threshold.

8.2 Noncompliance Charges per Noncompliance Point shall be increased commencing on the Initial Maintenance Term Commencement Date and annually thereafter throughout the Maintenance Period by the percentage based on CPI in accordance with the methodology set forth in Section 8.1.3(d) of the CMA General Conditions (provided that the comparison CPI shall be the CPI published for the month three months prior to the month in which the Initial Maintenance Term Commencement Date occurs and three months before each anniversary of such month thereafter). In no event shall the amount be less than the amount in effect during the immediately preceding year. If there is a decrease or no increase in the CPI index then there shall be no increase in the amount of Noncompliance Charges.

8.3 DB Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the Texas highway system, and the fact that inconvenience or hazard to the traveling public

will be one of the significant impacts of any failure by DB Contractor to perform the Maintenance Services in an efficient and timely manner and properly maintain the facility, it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT and the public in the event of such failure. Consequently, DB Contractor agrees to pay TxDOT the sums of money determined pursuant to Section 8.1 as deemed compensation to TxDOT resulting from DB Contractor's failure to meet the Performance Requirements herein as evidenced by the Noncompliance Points. DB Contractor further acknowledges and agrees that such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date.

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

9. Remedial Plan Delivery and Implementation upon Persistent DB Contractor Maintenance Default

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

9.2 Upon the occurrence of a Persistent DB Contractor Maintenance Default, DB Contractor shall, within 45 days after notice of the Persistent DB Contractor Maintenance Default, prepare and submit a remedial plan for TxDOT approval. The remedial plan shall set forth a schedule and specific actions to be taken by DB Contractor to improve its performance and reduce (a) DB Contractor's cumulative number of Noncompliance Points assessed under Section 4 to the point that such Persistent DB Contractor Maintenance Default is cured and (b) the cumulative number of Uncured Noncompliance Points outstanding by at least fifty percent. TxDOT may require that such actions include improving DB Contractor's quality management practices, plans and procedures, revising and restating Management Plans, changing organizational and management structure, increasing monitoring and inspections, changing the Maintenance Manager and other important personnel, replacement of Subcontractors, and delivering security to TxDOT.

9.3 If (a) DB Contractor complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan; (b) as a result thereof DB Contractor achieves the requirements set forth in Sections 9.2(a) and (b); and (c) as of the date it achieves such requirements there exist no other uncured DB Contractor Maintenance Defaults for which a notice was given, then TxDOT shall reduce each of the cured Noncompliance Points that would otherwise then be counted toward Persistent DB Contractor Maintenance Default by 25% of its then current value. Such reduction would be calculated by taking the current value of any applicable Noncompliance Point multiplied by 0.75. For example, any applicable Noncompliance Point then worth 1 point would be reduced to a value of 0.75 points (=1*0.75), any applicable Noncompliance Point then worth 0.75 points due to a prior reduction would be further reduced to a value of 0.56 points (=0.75*0.75), and so on, as applicable.

9.4 DB Contractor's failure to deliver to TxDOT the required remedial plan within such 45-day period shall constitute a material DB Contractor Maintenance Default that may result in issuance of a notice thereof by TxDOT triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material DB Contractor Maintenance Default that may result in issuance of a notice thereof by TxDOT triggering a 30-day cure period. If either of the events remains uncured within

the period specified in this Section 9.4, TxDOT may declare that an Event of Default has occurred in accordance with Section 7.6 of the CMA General Conditions.

10. CMA General Conditions Amendments

The CMA General Conditions are hereby amended as follows: the underlined text is hereby added to the CMA General Conditions.

10.1 A new subsection (q) is hereby added to Section 7.6.1.1 of the CMA General Conditions as follows:

> (q) There occurs any Persistent DB Contractor Maintenance Default, TxDOT delivers to DB Contractor written notice of the Persistent DB Contractor Maintenance Default, and either (i) DB Contractor fails to deliver to TxDOT, within 45 days after such notice is delivered, a remedial plan meeting the requirements for approval set forth in Section 9 of Exhibit 9 to the CMA or (ii) DB Contractor fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan.

10.2 New subsections (d) and (e) are hereby added to Section 7.6.1.2.1 of the CMA General Conditions:

> (d) Respecting a DB Contractor Default under clause (q)(i) of Section 7.6.1.1, a period of five days after TxDOT delivers to DB Contractor written notice of the DB Contractor Default;
>
> (e) Respecting a DB Contractor Default under clause (q)(ii) of Section 7.6.1.1, a period of 30 days after TxDOT delivers to DB Contractor written notice of the DB Contractor Default.

10.3 The first paragraph of Section 7.6.2.1 of the CMA General Conditions is hereby amended as set forth below:

> 7.6.2.1 If any DB Contractor Maintenance Default described in Section 7.6.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 7.6.1.2.1, or if the circumstances described in Section 9.4 of Exhibit 9 to the CMA exist, TxDOT may declare that an "**Event of Default**" has occurred and notify DB Contractor to discontinue the Maintenance Services. The declaration of an Event of Default shall be in writing and given to DB Contractor, with a copy to Surety and any Guarantor. In addition to all other rights and remedies provided by Law or equity and such rights and remedies as are otherwise available under the CMC Documents, including the Maintenance Performance Bond, any letter of credit, and Guaranty, if an Event of Default shall occur, TxDOT shall have the following rights without further notice and without waiving or releasing DB Contractor from any obligations and DB Contractor shall have the following obligations (as applicable):

10.4 A new Section 8.2.4 is hereby added to the CMA General Conditions as follows:

> 8.2.4 TxDOT shall not be required to make any monthly payment if DB Contractor has failed to file the Noncompliance Events Report required to be filed under Exhibit 9 to the CMA, unless and until the required reports are filed.

Attachment 1 to Exhibit 9
Noncompliance Events Table

Ref.	Main Heading	Sub Heading	Failure to:	No. of Points	Assessment Category	NCE Cure Period
1	General	Records and Documents	Make all books, records and documents available for inspection by TxDOT or its Authorized Representatives as required by the CMC Documents, including Section 5.10 of the CMA General Conditions.	1	A	10 Days
2	General	Submittals	Prepare, implement, maintain, update or timely deliver, or otherwise be compliant with any Submittal requirement within the CMC Documents, including Section 9.9 of the CMA Specification. This Noncompliance Event shall not apply to failure to timely deliver a Submittal described more specifically in another line item in this Exhibit 9 (for which Noncompliance Points shall be assessed in accordance with the particular line item).	1	B	10 Days
3	General	Cost and Schedule Proposal	Submit a timely and sufficient cost and schedule proposal in response to a Request for a Change Proposal, as required by the CMC Documents including Section 4.5.4.1 of the CMA General Conditions, or as otherwise agreed to by TxDOT in writing.	2	A	10 Days
4	General	Reporting	Comply with any of the reporting, record keeping or documentation requirements as required by the CMC Documents.	1	B	10 Days
5	General	System	Establish, use and maintain or provide information updates to any system that enables TxDOT's access to the project information including Maintenance Management System, Electronic Content Management System, and Noncompliance Event database, as required by the CMC Documents.	1	A	10 Days
6	Maintenance Services	Hazard Mitigation of Category 1 Defect	Address a Category 1 Defect such that the hazard to Users is mitigated in accordance with Section 9.4.5 of the CMA Specification.	3	B	Defect Repair Period

Ref.	Main Heading	Sub Heading	Failure to:	No. of Points	Assessment Category	NCE Cure Period
7	Maintenance Services	Permanent Repair of Defect	Perform a permanent repair of a Defect in accordance with Section 9.4.4 of the CMA Specification.	1	B	Defect Repair Period
8	Maintenance Services	Deterioration of a Defect	Take action to prevent a Defect not classified as a Category 1 Defect from deteriorating to become a Category 1 Defect in accordance with Section 9.4.4 of the CMA Specification.	4	C	None
9	Maintenance Services	Lane Closure	Provide a Lane Closure notice, or Report to TxDOT no later than 24 hours after its occurrence, any Lane Closure together with its duration.	2	B	1 Days
10	Maintenance Services	Traffic Control	Implement a traffic control measure in a manner consistent with a Traffic Control Plan as required by the CMC Documents, including Section 4.1.17.1 of the CMA General Conditions.	2	B	4 Hours
11	Maintenance Services	Project Management - Safety	Carry out any Maintenance Services in a manner that prevents any hazard to project workers or the general public as required by the CMC Documents, including the Maintenance Safety Plan and Section 4.2 of the General Conditions.	3	C	None
12	Maintenance Services	Project Management – General	Carry out any Maintenance Services in accordance with other applicable plans and procedures included in the Maintenance Management Plan and Quality Management Plan and as required by the CMC Documents.	2	B	10 Days
13	Maintenance Services	Compliance	Comply with all commercial and legal requirements that affect the performance of the Maintenance Services, including obtaining all required government approvals and permits, and coordinating with third parties, such as rail and toll agencies, as required by the CMC Documents.	2	B	10 Days

EXHIBIT 10

IDENTIFIED SUBCONTRACTORS

[*To Be Inserted From Proposal*]

EXHIBIT 11

KEY PERSONNEL

(See Attached)

EXHIBIT 12

AUTHORIZED REPRESENTATIVES

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

DB Contractor's Authorized Representative(s)

[Name] – [Position]

[Name] – [Position]

[Name] – [Position]

EXHIBIT 13

DISPUTES RESOLUTION REQUIREMENTS

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

2. **Additional Requirements for Subcontractor Disputes**. For purposes of this Exhibit 13, a "Subcontractor Dispute" shall include any Dispute by a Subcontractor, including any pass-through claims by a lower tier Subcontractor, against DB Contractor that is actionable by DB Contractor against TxDOT and arises from the Maintenance Services, materials or other services provided or to be provided under the CMC Documents. If DB Contractor determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:

    a. DB Contractor shall identify clearly in all submissions pursuant to this Exhibit 13, that portion of the Dispute that involves a Subcontractor Dispute.

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

    c. DB Contractor shall require in all Subcontracts that all Subcontractors of any tier:

        i. agree to submit Subcontractor Disputes to DB Contractor in a proper form and in sufficient time to allow processing by DB Contractor in accordance with this Exhibit 13;

        ii. agree to be bound by the terms of this Exhibit 13 to the extent applicable to Subcontractor Disputes;

        iii. agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Exhibit 13 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against DB Contractor;

        iv. agree that any Subcontractor Dispute brought against a Surety, that also is actionable against TxDOT through DB Contractor, shall be stayed until completion of all steps required under this clause (c); and

v. agree that the existence of a dispute resolution process for Disputes involving Subcontractor Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against TxDOT. Subcontractors shall, at all times, have rights and remedies only against DB Contractor.

3. **Mediation.** DB Contractor and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation. DB Contractor and TxDOT shall share equally the expenses of the mediation. If any Dispute has been referred to mediation for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party shall have the right, on or after the 31st day, to cease participating in such mediation. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Exhibit 13 for processing a Dispute are tolled, day for day, during mediation.

4. **Subsequent Proceedings.**

a. **Exclusive Jurisdiction and Venue**. The Parties agree that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, which is permitted to be brought by a Party in court arising out of the CMC Documents, shall be the district courts of Travis County, Texas.

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

5. **Continuation of Disputed Maintenance Services.** At all times during the procedures for resolving Disputes set forth in this CMC, DB Contractor and all Subcontractors shall continue with the performance of the Maintenance Services and their obligations, including any disputed Maintenance Services or obligations, diligently and without delay, in accordance with this CMC, except to the extent enjoined by order of a court or otherwise approved by TxDOT in its sole discretion. DB Contractor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Maintenance Services even if DB Contractor's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Maintenance Services, the Parties shall continue to comply with all provisions of the CMC Documents, the Project Management Plan, the Maintenance Management Plan, the Governmental Approvals and applicable Law.

6. **Records Related to Claims and Disputes**. Throughout the course of any Maintenance Services that are the subject of any Dispute that is the subject of the procedures for resolving Disputes in this CMC, DB Contractor shall keep separate and complete records of any extra costs, expenses, and/or other monetary effects relating to the disputed Maintenance Services, and shall permit TxDOT access to these and any other records needed for evaluating the Dispute. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such disputed Maintenance Services (or for any longer period required under any other applicable provision of the CMC Documents).

7. **Interest.**

a. This Section 7 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

b. In the event a DB Contractor elects to pursue a formal Dispute with TxDOT under this Exhibit 13, TxDOT shall notify DB Contractor whether it will dispute the claim not later than the 21st day after

the date TxDOT receives the Claim. A payment becomes overdue and begins to accrue interest in accordance with the Texas Prompt Payment Act, Government Code, Chapter 2251.

8. **Attorneys' Fees.** A Party shall pay the attorneys' fees of the other party for Disputes brought pursuant to this Exhibit 13 only if such payment is required pursuant to the Texas Prompt Payment Act and the payment of attorneys' fees is ordered in a TxDOT administrative order or in a judicial order.

EXHIBIT 14

MAINTAINED ELEMENTS

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

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

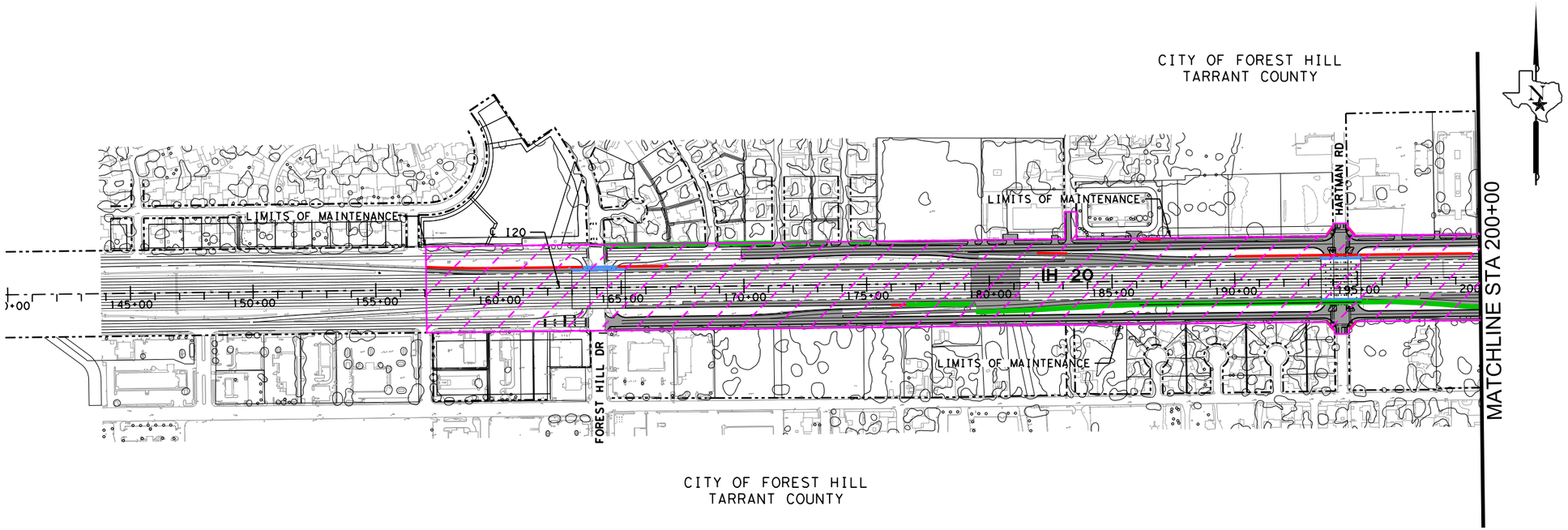
ELEMENT CATEGORY	MAINTAINED ELEMENT	RESPONSIBILITY	
		DB CONTRACTOR	OTHERS
13) ITS EQUIPMENT			
13.1	ITS Equipment - Maintenance		X
13.2	Dynamic Message Sign Equipment		X
13.3	CCTV Equipment		X
13.4	Vehicle Detection Equipment		X
14) TOLLING FACILITIES AND BUILDINGS			X
15) AMENITY			
15.1	Graffiti	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

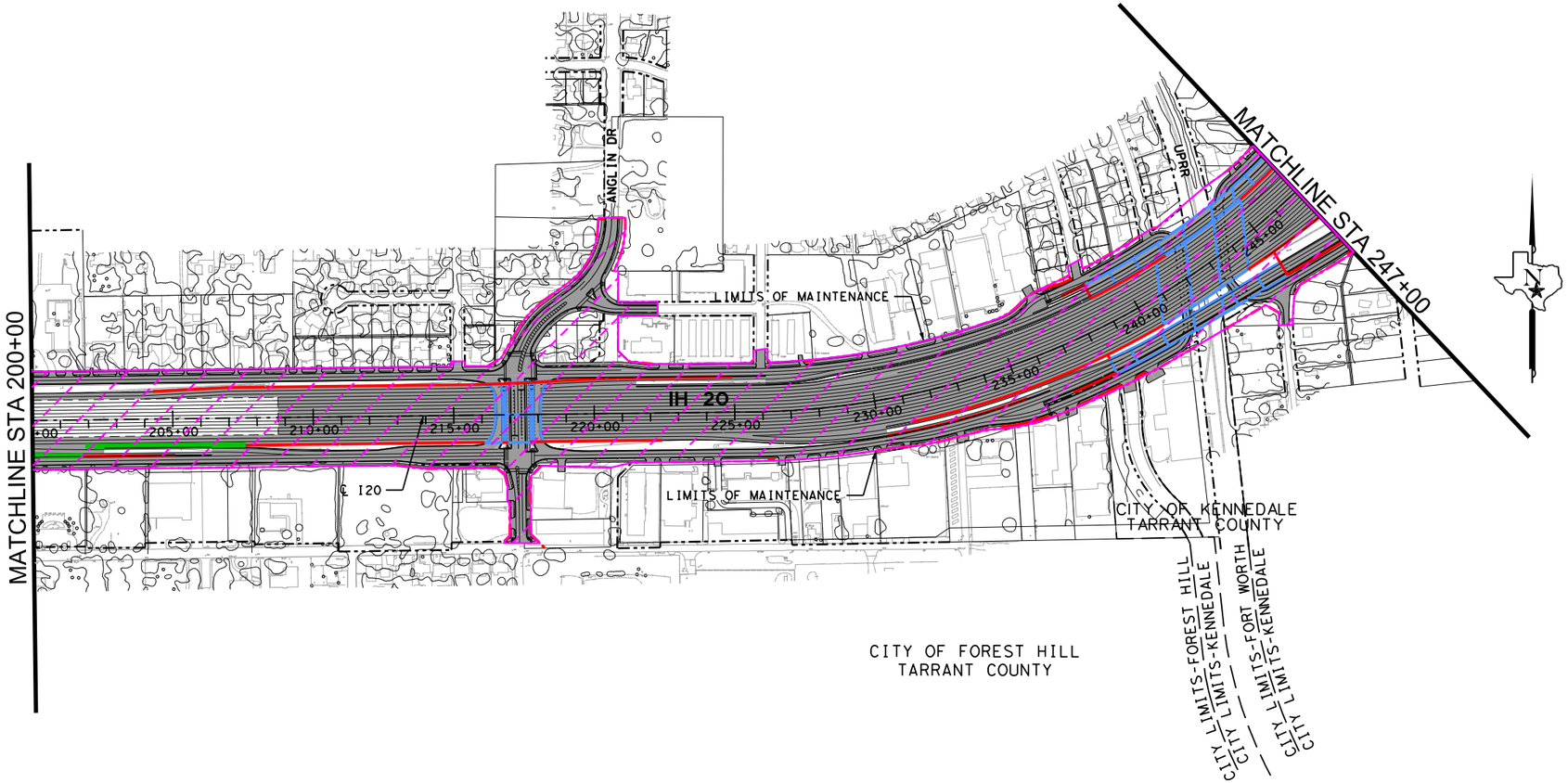
*DB Contractor is responsible for replacement of striping and markers associated with their renewal of pavement.

EXHIBIT 15

MAINTENANCE LIMITS

See Attached





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SCALE IN FEET

LEGEND

- TRANSITION PAVEMENT
- PROPOSED PROJECT
- AREA OF MAINTENANCE
- PROPOSED LIMITS OF MAINTENANCE
- PROPOSED BRIDGE
- PROPOSED RETAINING WALL
- PROPOSED NOISE WALL
- RIGHT OF WAY

NOTES:

1. MAINTAIN ANY AND ALL AREAS OF EARTHWORK AFFECTED BY THE CONSTRUCTION PROCESS.
2. MAINTENANCE LIMITS SHOWN ARE BASED ON THE SCHEMATIC PROVIDED TO THE DB CONTRACTOR AND DESIGN BUILD AGREEMENT EXHIBIT 1 PROJECT SCOPE. THE DB CONTRACTOR IS NOT RESPONSIBLE, PER THE CAPITAL MAINTENANCE AGREEMENT, TO MAINTAIN SECTIONS OF ROADWAY THAT WERE NOT CONSTRUCTED OR REHABILITATED BY THE DB CONTRACTOR. FINAL MAINTENANCE LIMITS WILL BE DETERMINED BY THE DB CONTRACTOR'S FINAL DESIGN AND CONSTRUCTION AND WILL BE ACCORDING TO THE CAPITAL MAINTENANCE AGREEMENT REQUIREMENTS.
3. REFER TO DESIGN BUILD AGREEMENT EXHIBIT 1 PROJECT SCOPE REGARDING THE LIMITS OF EXISTING PAVEMENT AREAS.

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SOUTHEAST CONNECTOR

EXHIBIT 15 CMA MAINTENANCE LIMITS
BASE SCOPE

SCALE: 1"=500' SHEET 1 OF 9

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.

STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

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MATCHLINE STA 291+00

CITY OF FORT WORTH
TARRANT COUNTY

CITY OF ARLINGTON
TARRANT COUNTY

LIMITS OF MAINTENANCE

FORT WORTH CITY LIMITS

ARLINGTON CITY LIMITS

IH 20

ITY OF FORT WORTH
TARRANT COUNTY

OF FORT WORTH

OF FOREST HILL

LIMITS OF MAINTENANCE

VILLAGE CREEK

CITY OF KENNED.
TARRANT COUNT

MATCHLINE STA 247+00

IH 20

MANSFIELD HWY

CITY OF KENNEDALE
TARRANT COUNTY

MATCHLINE STA 147+00

SCALE IN FEET
250 0 250 500

LEGEND

- TRANSITION PAVEMENT
- PROPOSED PROJECT
- AREA OF MAINTENANCE
- PROPOSED LIMITS OF MAINTENANCE
- PROPOSED BRIDGE
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EXHIBIT 15 CMA MAINTENANCE LIMITS
BASE SCOPE

SCALE: 1"=500' SHEET 2 OF 9

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

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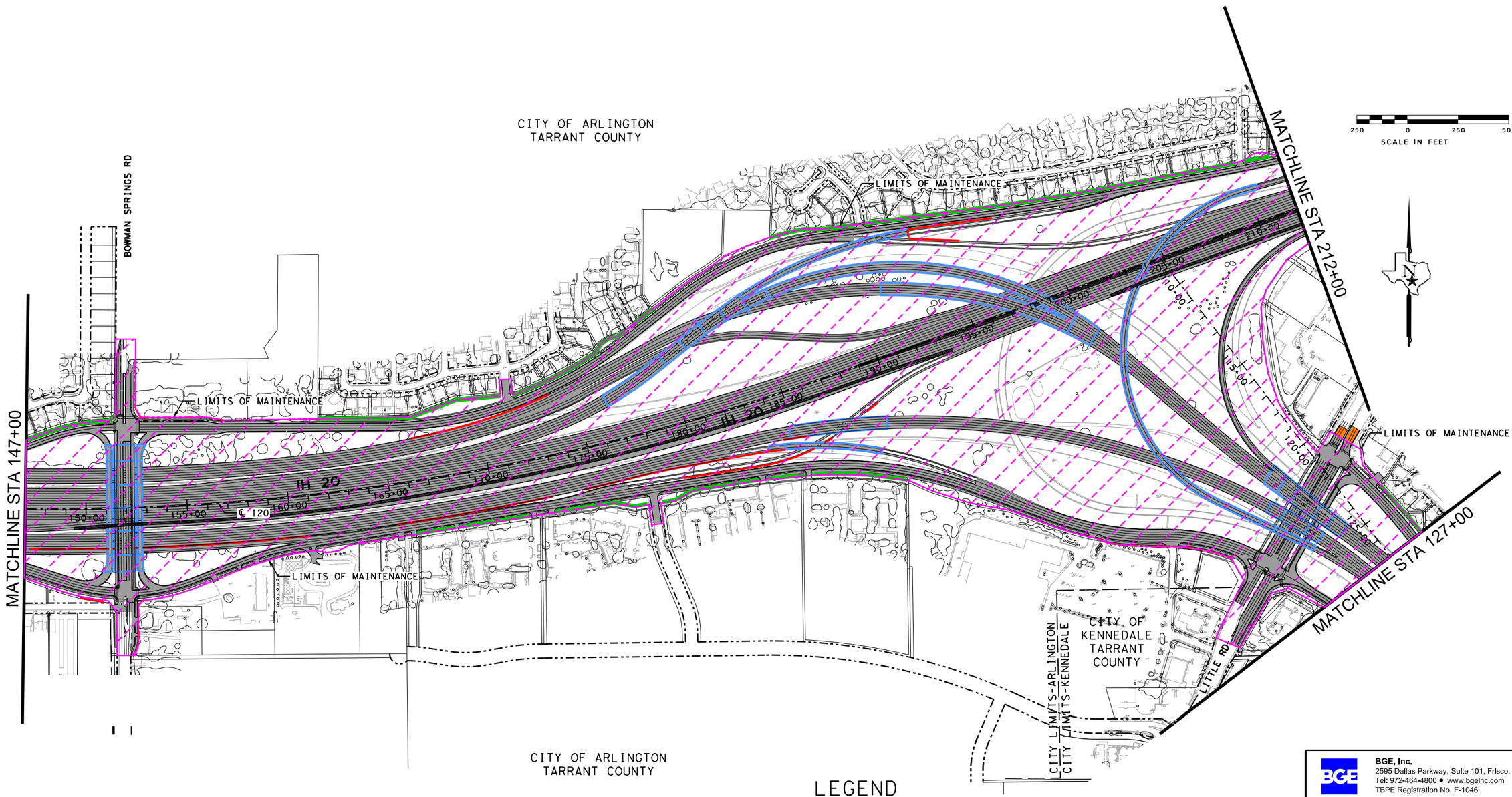

LEGEND

- TRANSITION PAVEMENT
- PROPOSED PROJECT
- AREA OF MAINTENANCE
- PROPOSED LIMITS OF MAINTENANCE
- PROPOSED BRIDGE
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SOUTHEAST CONNECTOR

EXHIBIT 15 CMA MAINTENANCE LIMITS
BASE SCOPE

SCALE: 1"=500' SHEET 3 OF 9

FED.RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

NOTES:

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LEGEND

- TRANSITION PAVEMENT
- PROPOSED PROJECT
- AREA OF MAINTENANCE
- PROPOSED LIMITS OF MAINTENANCE
- PROPOSED BRIDGE
- PROPOSED RETAINING WALL
- PROPOSED NOISE WALL
- RIGHT OF WAY

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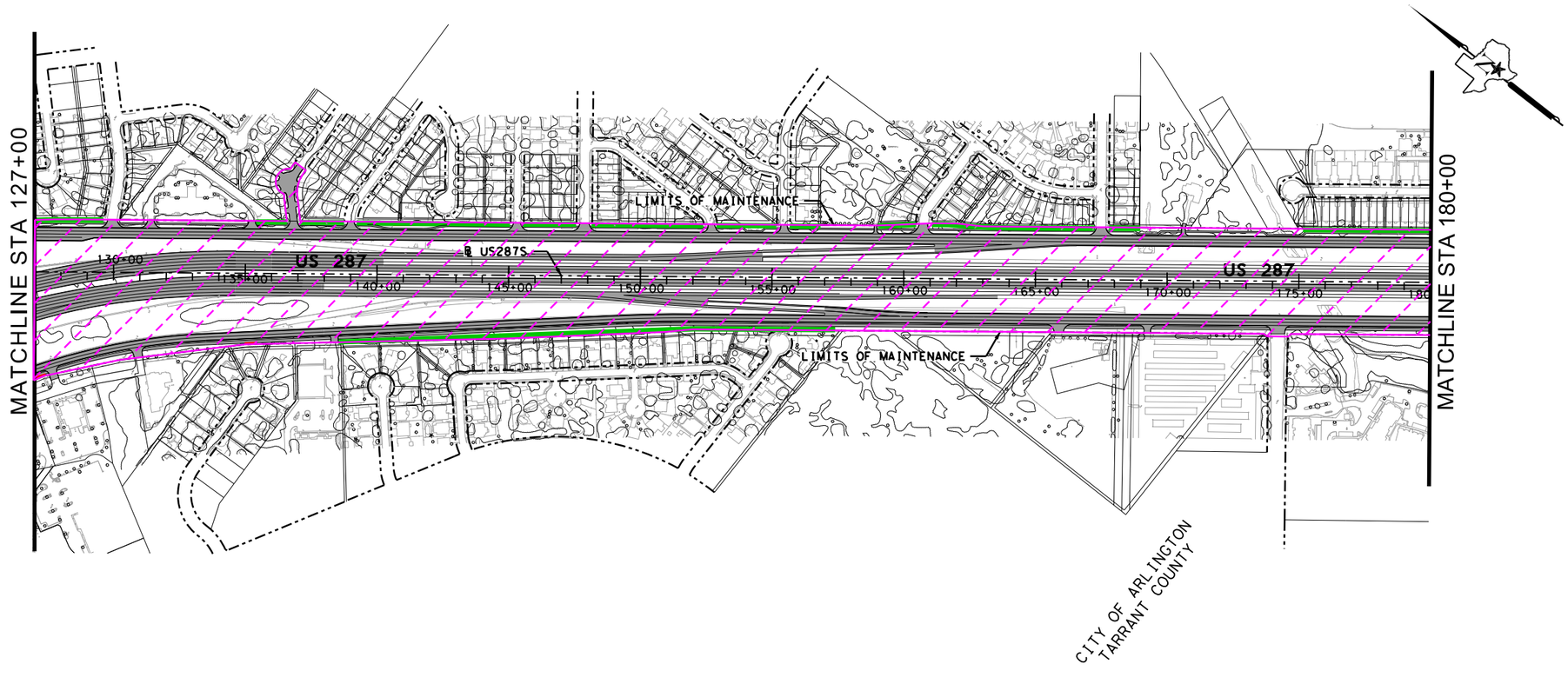
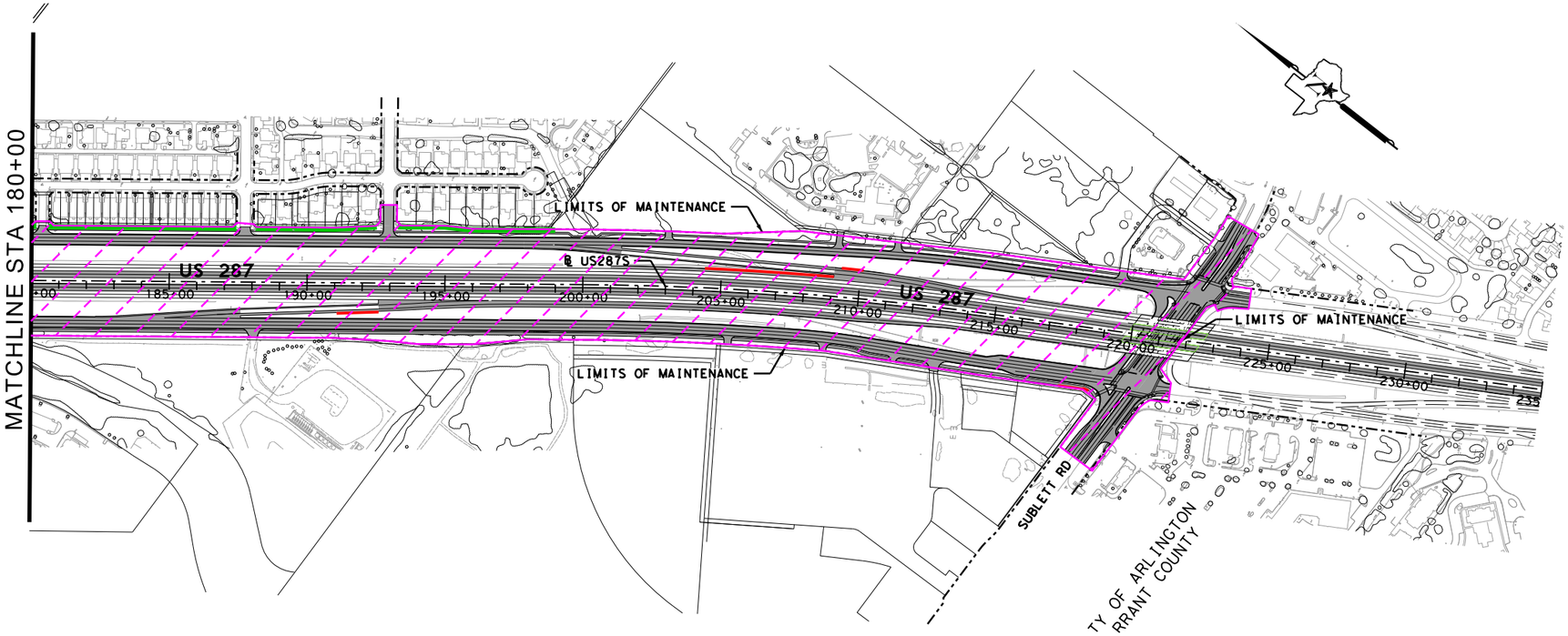
EXHIBIT 15 CMA MAINTENANCE LIMITS
BASE SCOPE

SCALE: 1"=500' SHEET 4 OF 9

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.





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SCALE IN FEET

LEGEND

- TRANSITION PAVEMENT
- PROPOSED PROJECT
- AREA OF MAINTENANCE
- PROPOSED LIMITS OF MAINTENANCE
- PROPOSED BRIDGE
- PROPOSED RETAINING WALL
- PROPOSED NOISE WALL
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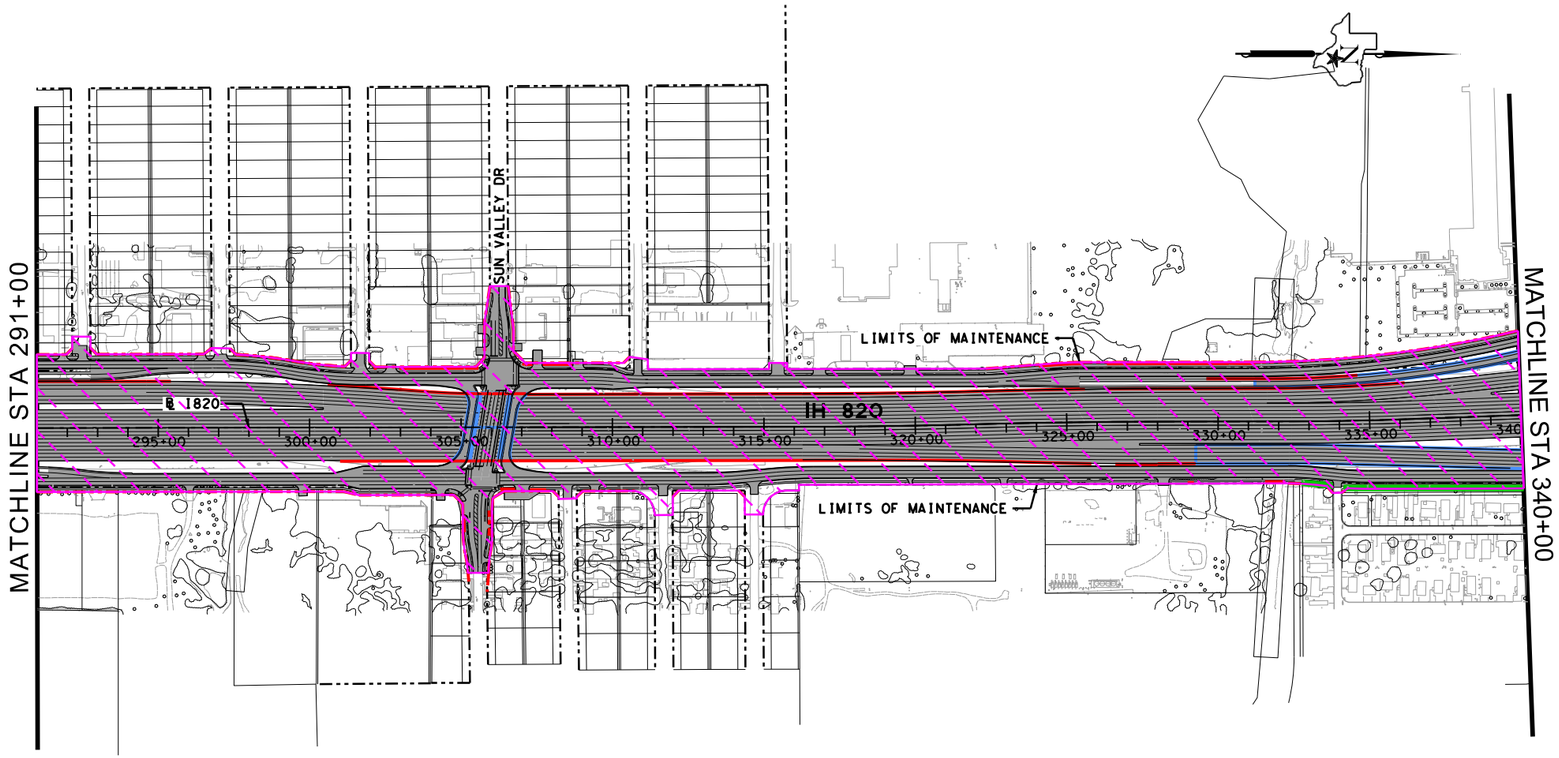
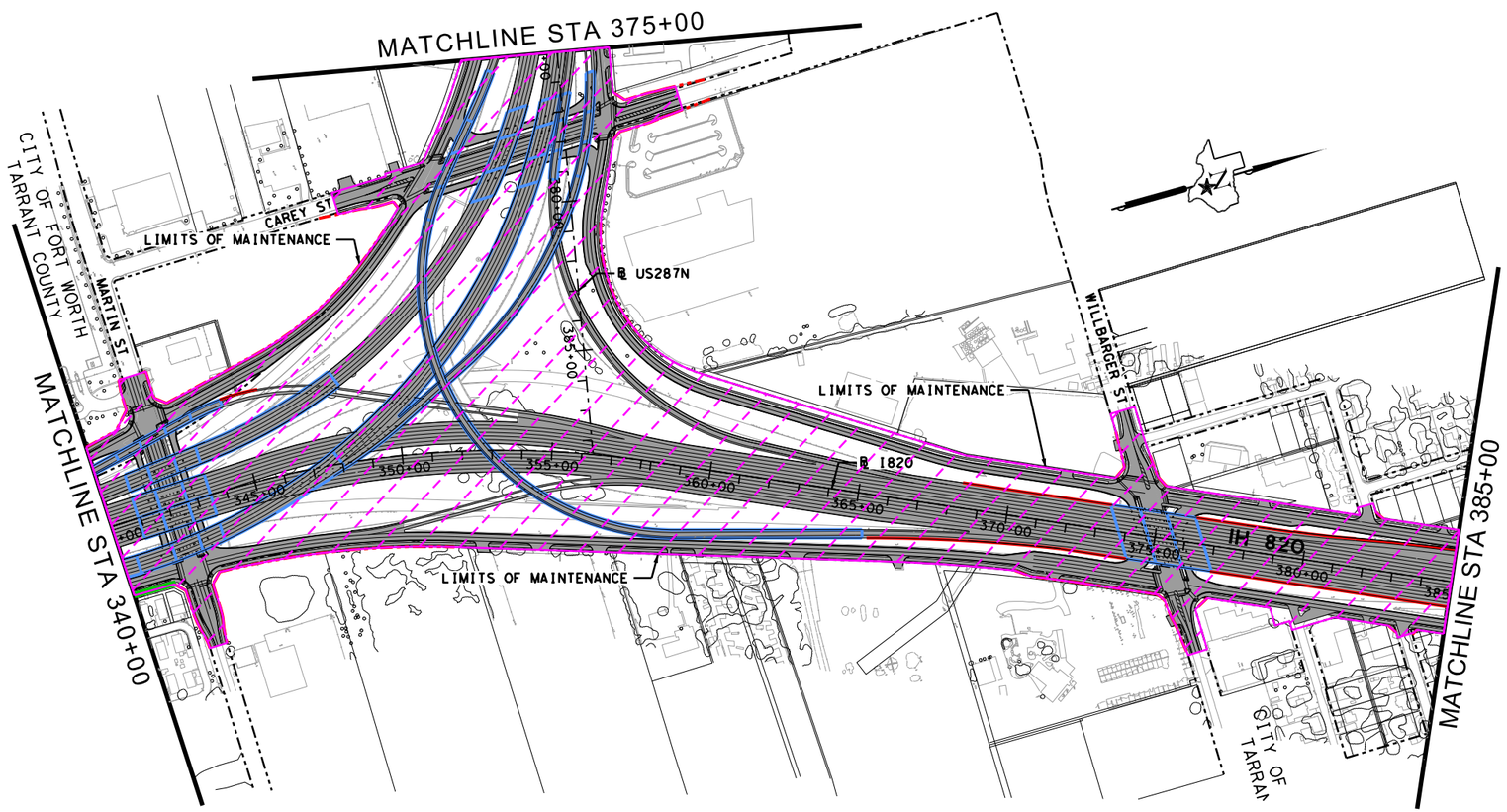
BASE SCOPE

SCALE: 1"=500' SHEET 5 OF 9

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.





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SCALE IN FEET

LEGEND

- TRANSITION PAVEMENT
- PROPOSED PROJECT
- AREA OF MAINTENANCE
- PROPOSED LIMITS OF MAINTENANCE
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EXHIBIT 15 CMA MAINTENANCE LIMITS BASE SCOPE

SCALE: 1"=500' SHEET 6 OF 9

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

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SCALE IN FEET

LEGEND

- TRANSITION PAVEMENT
- PROPOSED PROJECT
- AREA OF MAINTENANCE
- PROPOSED LIMITS OF MAINTENANCE
- PROPOSED BRIDGE
- PROPOSED RETAINING WALL
- PROPOSED NOISE WALL
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EXHIBIT 15 CMA MAINTENANCE LIMITS BASE SCOPE

SCALE: 1"=500' SHEET 7 OF 9

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

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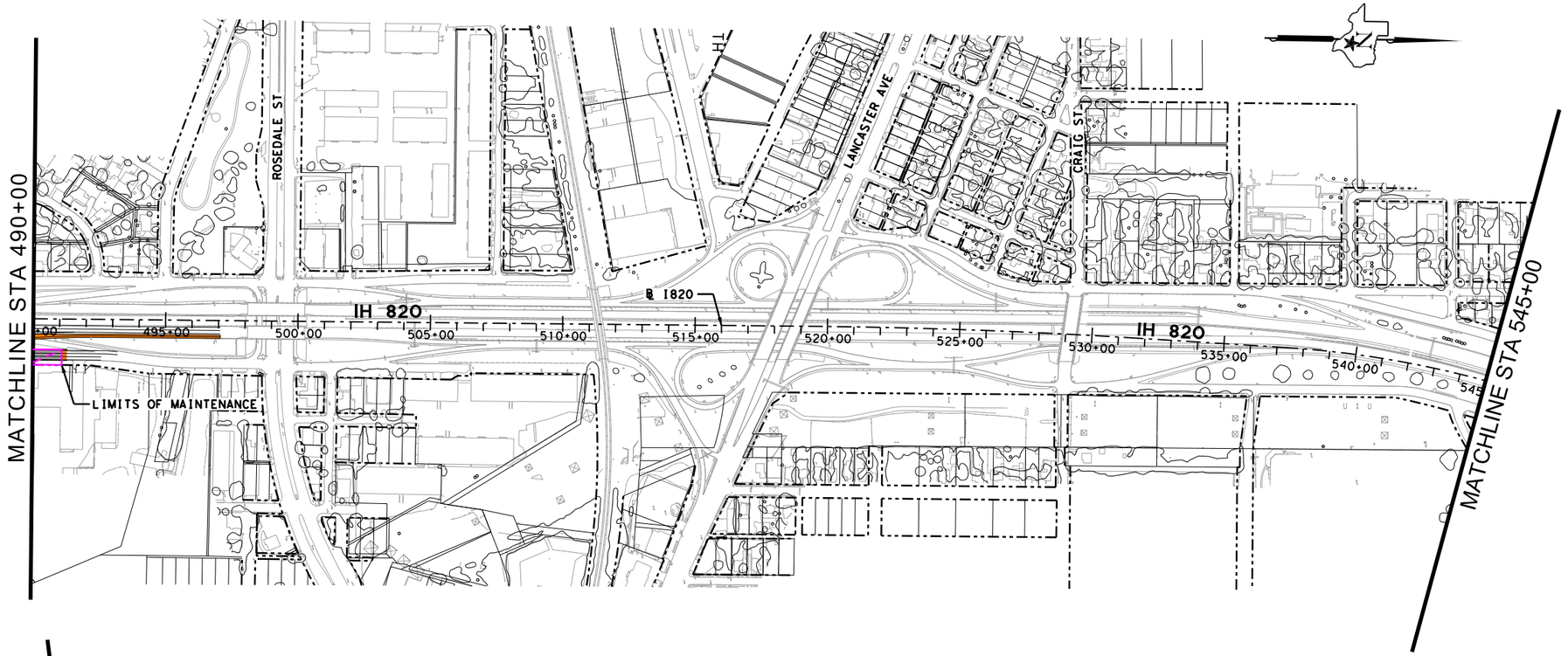

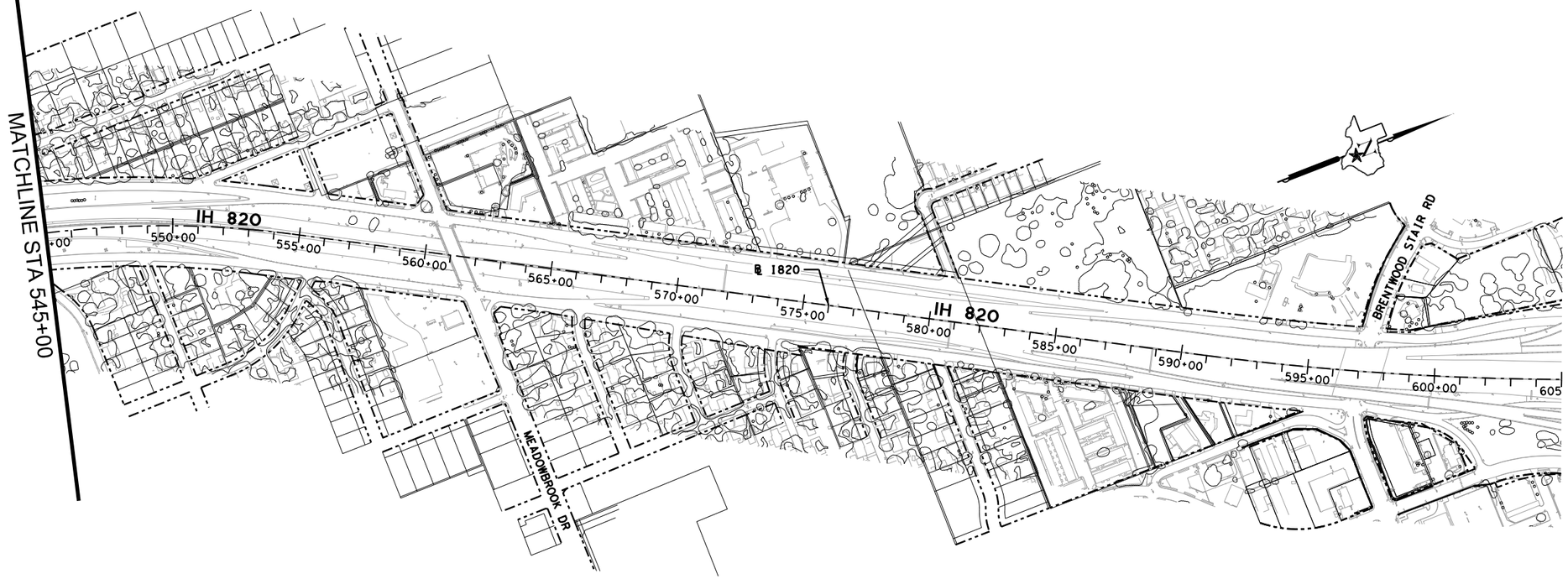

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SCALE IN FEET

LEGEND

- TRANSITION PAVEMENT
- PROPOSED PROJECT
- AREA OF MAINTENANCE
- PROPOSED LIMITS OF MAINTENANCE
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BASE SCOPE

SCALE: 1"=500' SHEET 8 OF 9

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

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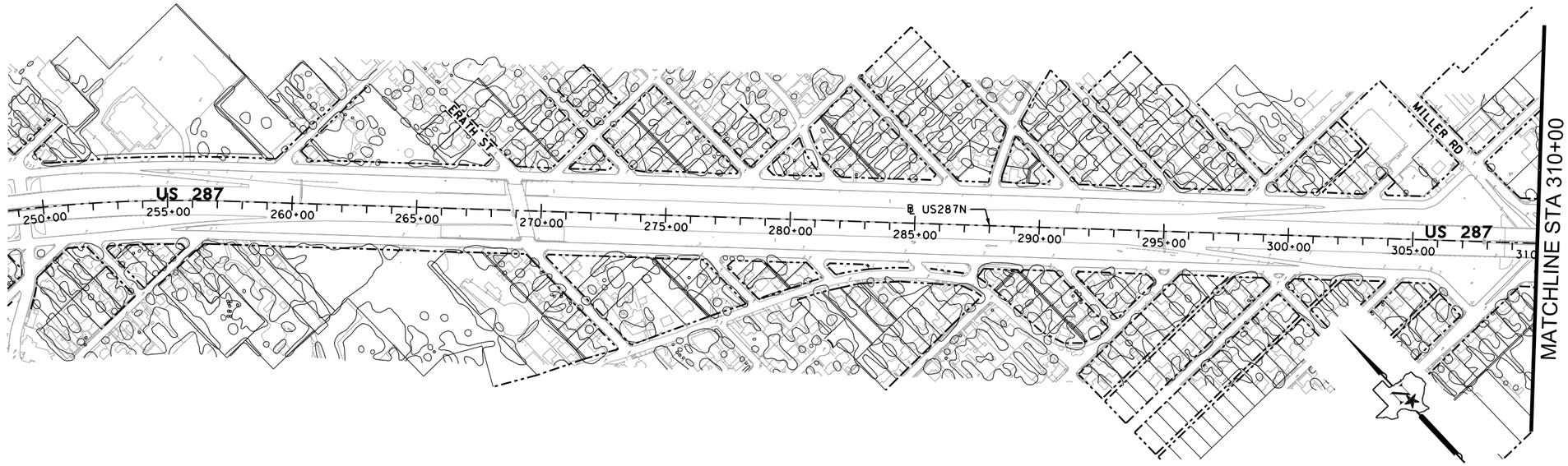

SCALE IN FEET

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LEGEND

- TRANSITION PAVEMENT
- PROPOSED PROJECT
- AREA OF MAINTENANCE
- PROPOSED LIMITS OF MAINTENANCE
- PROPOSED BRIDGE
- PROPOSED RETAINING WALL
- PROPOSED NOISE WALL
- RIGHT OF WAY

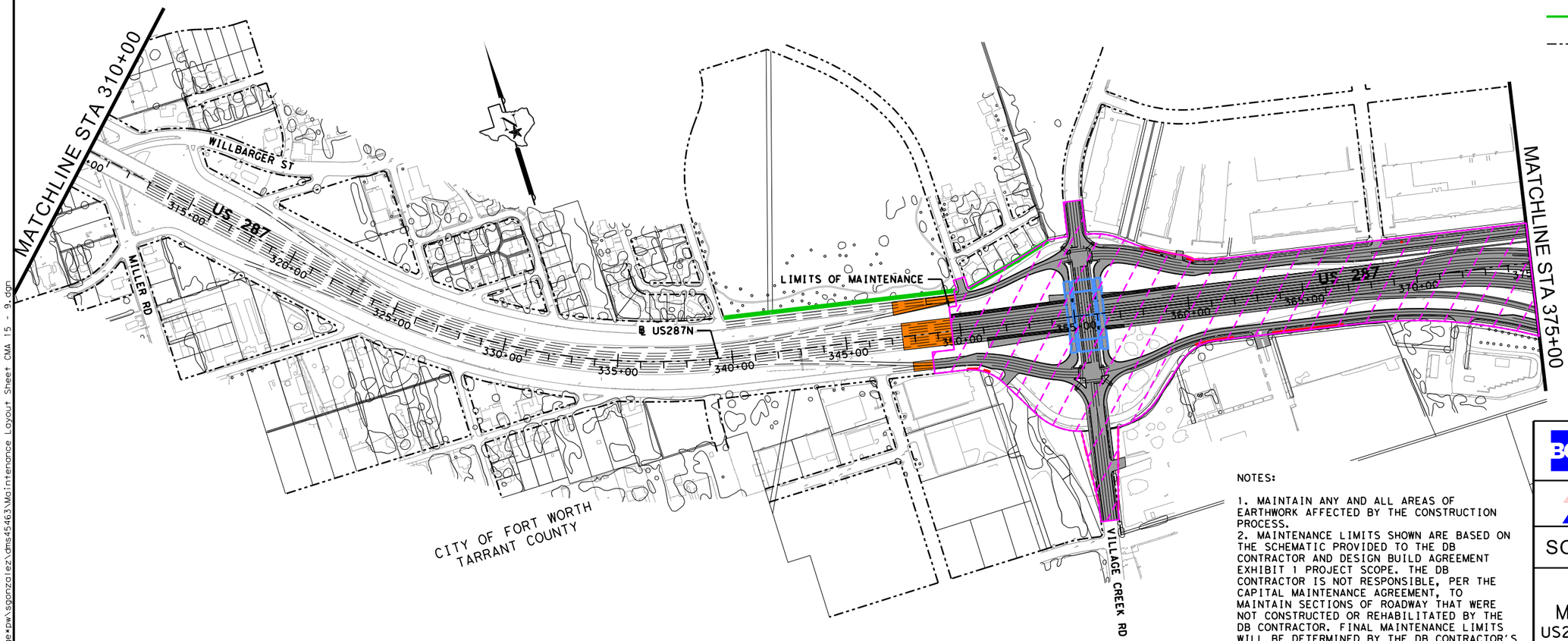

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EXHIBIT 15 CMA MAINTENANCE LIMITS

US287N STA 349+62 TO 375+00

SCALE: 1"=500' SHEET 9 OF 9

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

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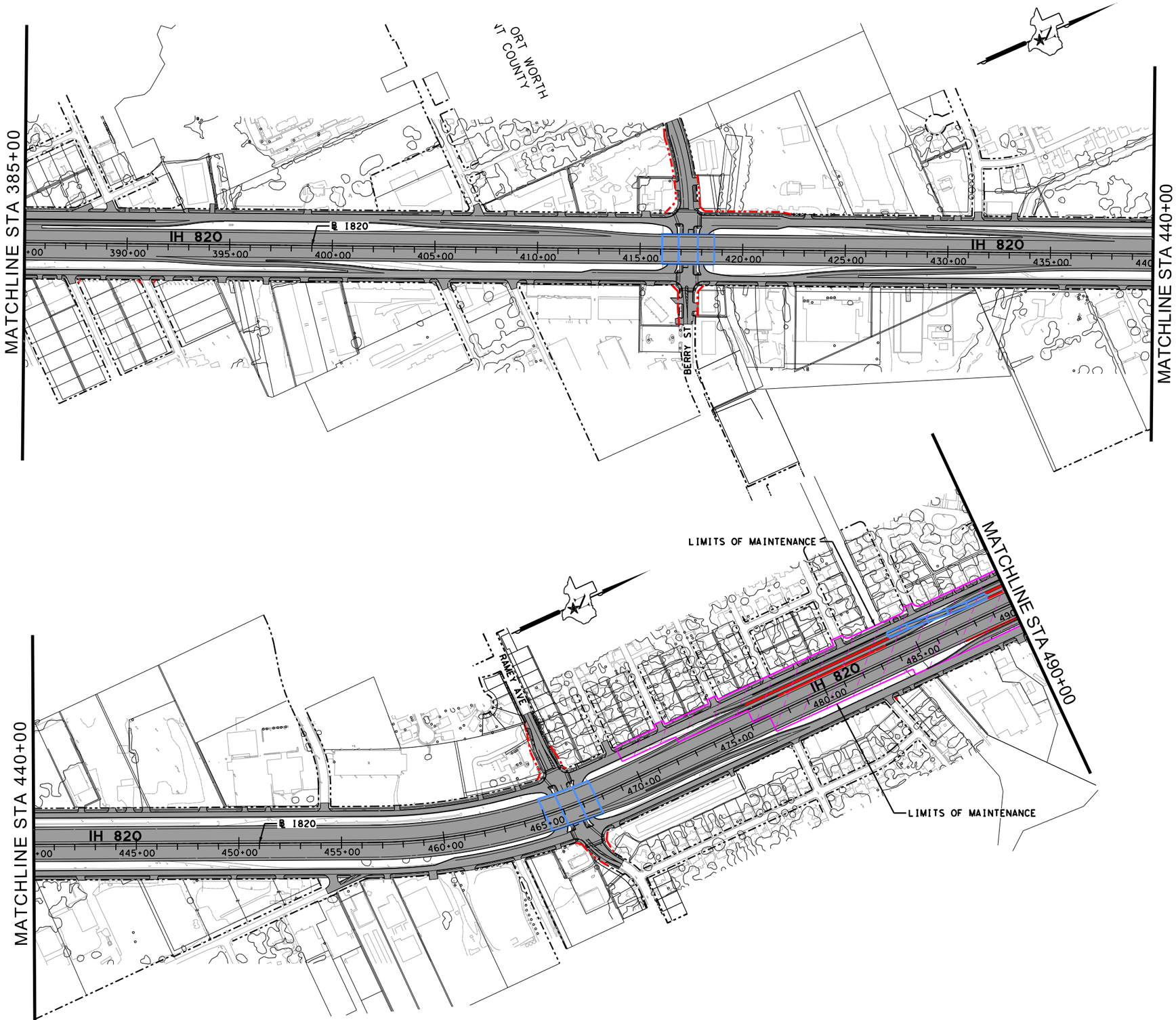

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SCALE IN FEET

LEGEND

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EXHIBIT 15 CMA MAINTENANCE LIMITS

DWC-1 (I820)

SCALE: 1"=500' SHEET 1 OF 2

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

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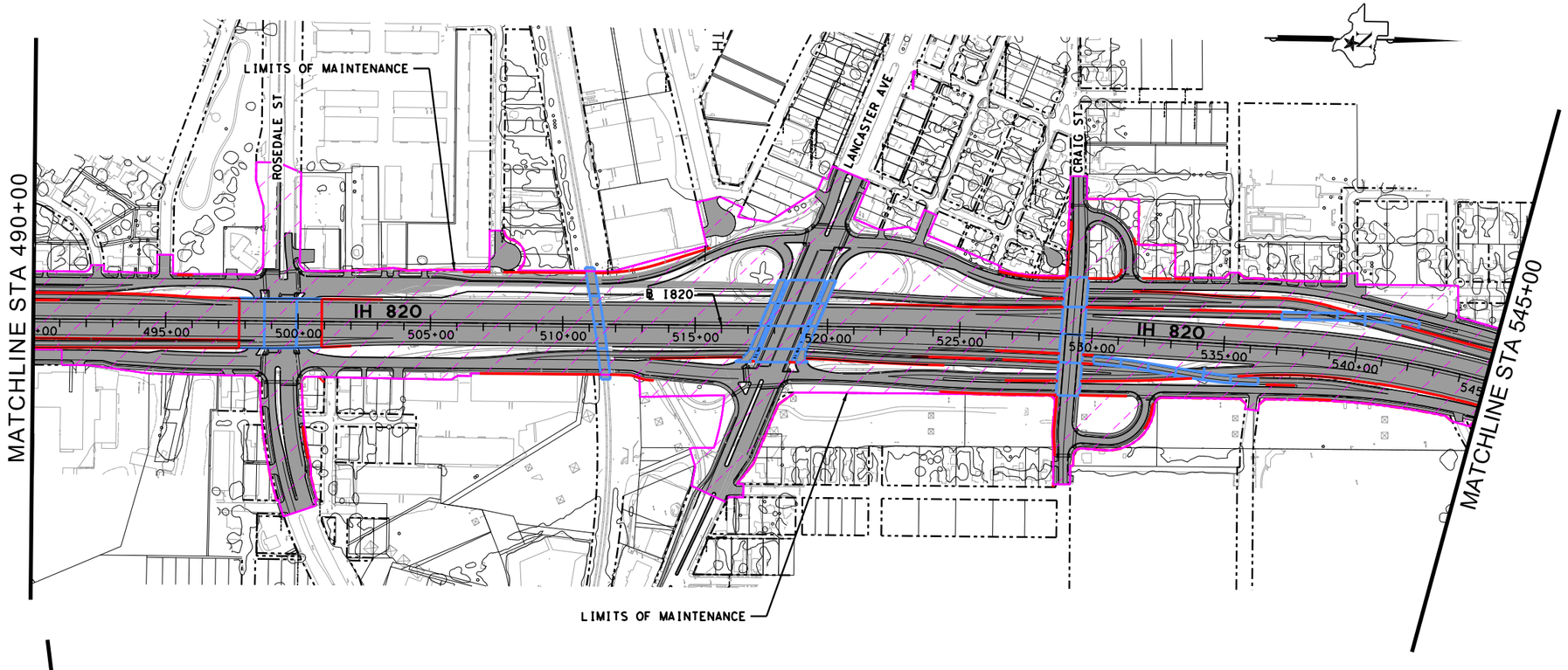

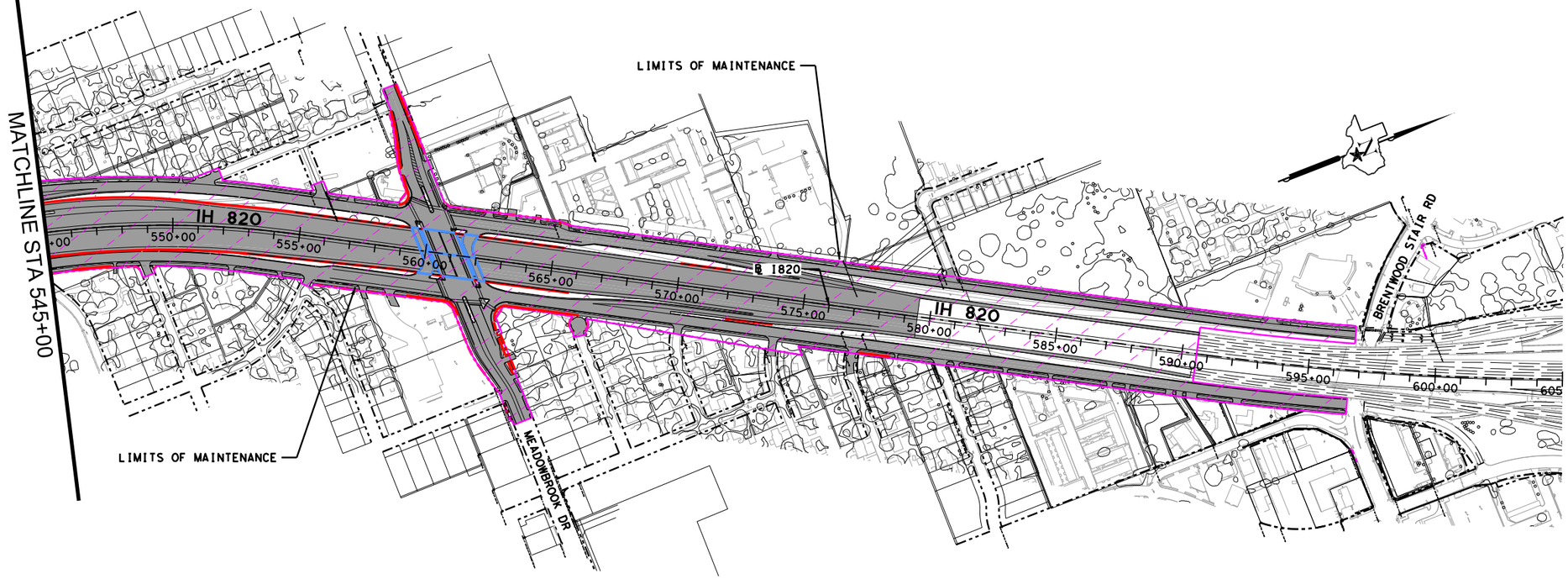

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SCALE IN FEET

LEGEND

- PROPOSED PROJECT
- AREA OF MAINTENANCE
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EXHIBIT 15 CMA MAINTENANCE LIMITS

DWC-1 (I820)

SCALE: 1"=500' SHEET 2 OF 2

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

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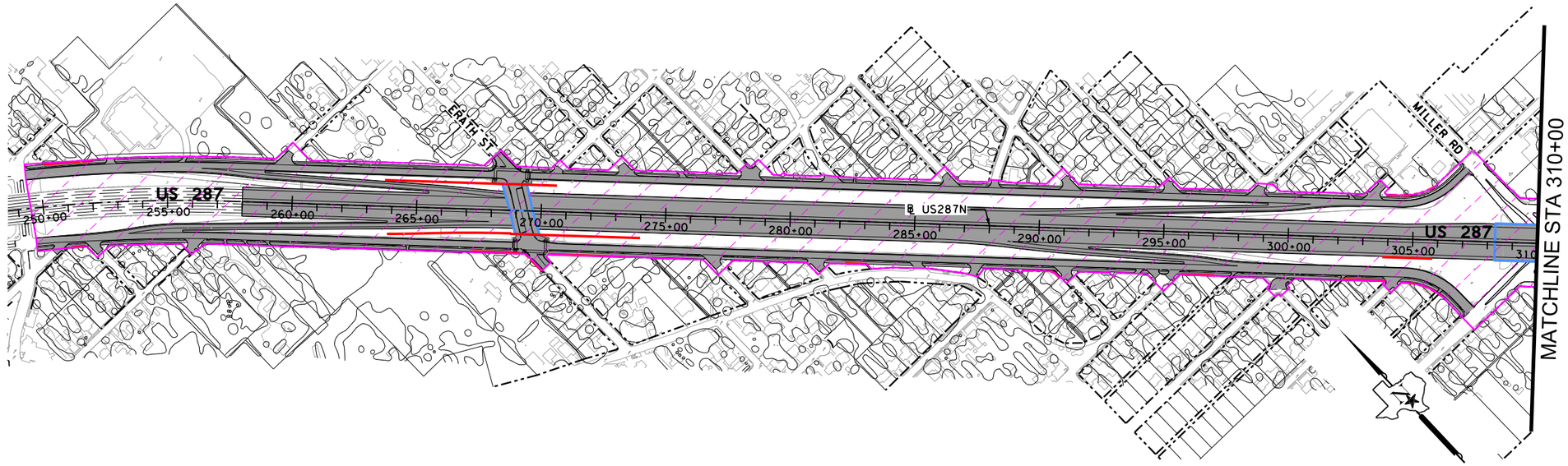

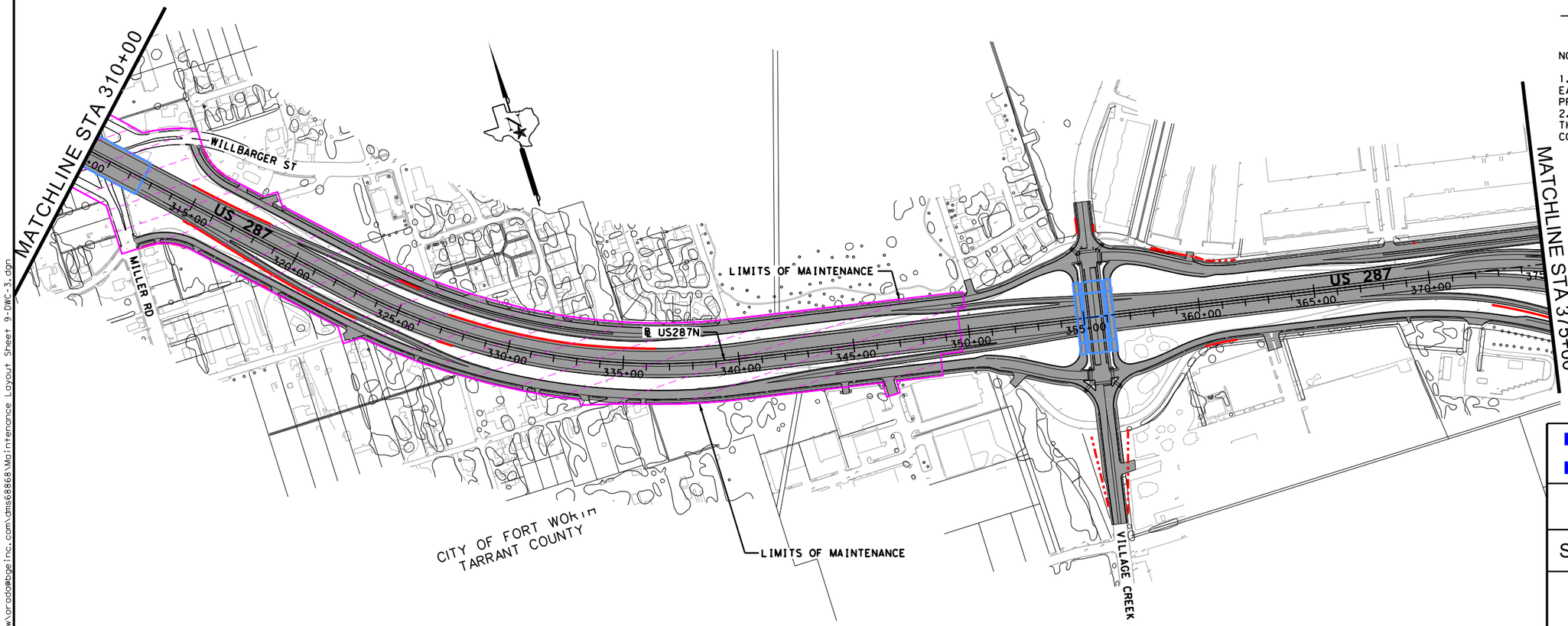

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SCALE IN FEET

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EXHIBIT 15 CMA MAINTENANCE LIMITS
DWC-2(US 287)

SCALE: 1"=500' SHEET 1 OF 1

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

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LEGEND

- PROPOSED PROJECT
- AREA OF MAINTENANCE
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EXHIBIT 15 CMA MAINTENANCE LIMITS

DWC-3 (I20)

SCALE: 1"=500' SHEET 1 OF 1

FED. RD. DIV. NO.	STATE	FEDERAL AID PROJECT			HIGHWAY NO.
STATE DISTRICT	COUNTY	CONTROL NO.	SECTION NO.	JOB NO.	SHEET NO.

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EXHIBIT 16

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

The DB Contractor's obligations related to Third Party Agreements have been incorporated, as appropriate, into the requirements found in the CMA Specification.