

CAPITAL MAINTENANCE AGREEMENT

FOR THE

SH 130 TURNPIKE

By and Between

**The Texas Turnpike Authority,
a Division of the Texas Department of Transportation**

and

**Lone Star Infrastructure,
a Texas Limited Liability Company**

Dated

June 19, 2002

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LIST OF EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Definitions
B	Maintenance Labor and Material Payment and Performance Bonds
C	Maintenance Price
D	Maintenance Transfer Protocol
E	Capital Maintenance Form of Draw Request and Certificate
F	Form of Change Order
G	Specifications
G-1	Special Specification, Ride Quality for Pavement Surfaces
G-2	TxDOT Test Method 1001-S

**CAPITAL MAINTENANCE AGREEMENT
SH 130 Turnpike**

This **CAPITAL MAINTENANCE AGREEMENT** (this "**Agreement**") is made and entered into as of June 19, 2002, by and between **THE TEXAS TURNPIKE AUTHORITY ("TTA")**, a Division of the **TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT")** and **LONE STAR INFRASTRUCTURE, LLC ("Maintenance Contractor")**.

RECITALS

A. On June 19, 2002 the TTA entered into that certain Exclusive Development Agreement with Lone Star Infrastructure, a joint venture comprised of Fluor Daniel, a Division of Fluor Enterprises, Inc., Balfour Beatty Construction, Inc. and T. J. Lambrecht Construction, Inc. (the "**EDA**").

B. The EDA provides, among other things, that Maintenance Contractor shall, upon the election by the TTA, in its sole discretion, provide to the TTA certain capital maintenance, repair, upkeep and renovation services in connection with the Project.

C. Provided that the TTA issues Maintenance NTP1 in accordance with the terms hereof, Maintenance Contractor shall provide the Maintenance Services in accordance with the terms and provisions of this Agreement.

D. This Agreement is entered into by the TTA pursuant to Chapters 361 and 362 of the Texas Transportation Code (the "**Act**") and Chapter 54 of the TTA Rules (43 Tex. Admin. Code Sections 54.1 et seq. (the "**Rules**").

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the TTA and Maintenance Contractor agree as follows:

1.0 DEFINITIONS: INTERPRETATION OF CONTRACT DOCUMENTS

1.1 Definitions

Definitions of various terms used herein are contained in Exhibit A. Initially capitalized terms not otherwise defined herein or in Exhibit A attached hereto shall have the meanings set forth in the EDA.

1.2 Contract Documents

1.2.1 The term "**Contract Documents**" as used in this Agreement shall mean the documents listed below in this Section 1.2.1. Each of the Contract 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 Contract

Documents are intended to be complementary and to describe and provide for a complete contract. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below.

- (a) Amendments to this Agreement;
- (b) this Agreement (including all Exhibits);
- (c) the EDA;
- (d) the TxDOT Standards;
- (e) AASHTO Guidelines;
- (f) Design Documents, as identified in the construction plans;
and
- (g) the Proposal, to the extent that it meets or exceeds the requirements of the other Contract Documents. In other words, if the Proposal Documents include statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contain terms which are more advantageous to the TTA than the requirements of the other Contract Documents, Maintenance Contractor's obligations hereunder shall include compliance with all such statements, offers and terms, and such statements, offers and terms.

1.2.2 This Agreement and the other Contract Documents attempt to set forth all requirements applicable under the Act as to the maintenance of the embankment and cut slopes, drainage facilities, pavement, shoulders, bridges, bridge approach slabs, sound walls and retaining walls of the Project constructed under the EDA and attempt to define the rights and responsibilities of each Party in connection therewith. To the extent requirements, rights and responsibilities have not been addressed in this Agreement and the other Contract Documents, the Parties agree to carry out their respective responsibilities in the spirit of cooperation contemplated by the Act, recognizing that they may not have defined in sufficient detail or anticipated fully all activities necessary for the maintenance and repair of the embankment and cut slopes, drainage facilities, pavement, shoulders, bridges, bridge approach slabs, sound walls and retaining walls of the Project.

1.2.3 It is the purpose of this Agreement to provide for the performance of Maintenance Services on the embankment and cut slopes, drainage facilities, pavement, shoulders, bridges, bridge approach slabs, sound walls and retaining walls and such other items set forth herein, each as more particularly described in this Agreement. Maintenance Contractor shall at all times retain responsibility for the

performance of the Maintenance Services in accordance with the terms and conditions of this Agreement.

2.0 TTA OPTION AND EFFECTIVENESS OF AGREEMENT

2.1 TTA Option

2.1.1 The TTA shall have the option, exercisable in its sole and absolute discretion as described below, without liability to Maintenance Contractor, to either (i) make this Agreement effective between the Parties and to require Maintenance Contractor to provide the Maintenance Services, or (ii) terminate this Agreement.

2.1.2 On or before 270 days after Final Acceptance of the first Segment of the Project to be constructed in accordance with the EDA, the TTA shall either issue Maintenance NTP1 to Maintenance Contractor or terminate this Agreement. Failure by the TTA to issue Maintenance NTP1 on or before such date shall be deemed a termination under Section 2.1.1(ii). If the TTA elects (or is deemed to elect) to terminate this Agreement, neither Party shall have any further rights or obligations hereunder.

3.0 SCOPE OF MAINTENANCE SERVICES

3.1 General Scope of Maintenance Services

3.1.1 Maintenance Contractor shall maintain and repair all embankment and cut slopes, drainage facilities, pavement, shoulders, bridges, bridge approach slabs, sound walls and retaining walls for Segment 1, Segment 2, Segment 3, Segment 4 and Segment 6 of the Project commencing one year after Final Acceptance of each such Segment, as further described in this Agreement, throughout the term of this Agreement. One year after the date that Final Acceptance of a Segment of the Project is achieved in accordance with the EDA, such Segment shall be automatically included in the scope of the Maintenance Services, unless this Agreement is terminated in accordance with the terms hereof. Notwithstanding anything to the contrary herein, the scope of the Maintenance Services specifically excludes any work or services for Segment 5 of the Project.

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

3.1.3 It is the intent of this Agreement that Maintenance Contractor shall perform all duties traditionally performed by the TTA or TxDOT in maintaining the embankment and cut slopes, drainage facilities, pavement, shoulders, bridges, bridge approach slabs, sound walls and retaining walls of the Project. The traditional duties include but are not exclusive of repairing eroded slopes, cleaning catch basins and drainage ditches, patching pot holes, crack sealing, applying seal coats, milling and overlays. Repairs to such items required as the result of damage caused by Third Parties shall be performed by Maintenance Contractor under a Change Order, subject to the limitations in Section 10, and otherwise such repairs are included within the Maintenance Price. Maintenance Services do not include the maintenance of pavement markings, except for replacements arising out of, related to or necessitated by the performance of Maintenance Services by Maintenance Contractor. The Maintenance Services include replacement of bridges in the event of total failure, subject to Maintenance Contractor's right to a Change Order for Third Party damage or occurrence of a Force Majeure Event.

3.1.4 Except as set forth in this Agreement, the TTA will retain the responsibility for maintaining all other items on the Project. Maintenance Contractor and TTA's maintenance crews shall coordinate their schedules to minimize the impact on the traveling public. Maintenance Contractor shall not be entitled to a Change Order as a result of such coordination or delays arising from the activities or maintenance undertaken by the TTA's maintenance crews, except as expressly noted below. If Maintenance Contractor has coordinated activities with the TTA's maintenance crews

and, as a sole result of the actions of the TTA's maintenance crews, gets unreasonably delayed on a critical path item (with respect to which Maintenance Contractor cannot work around or otherwise divert its labor or equipment), Maintenance Contractor shall be entitled to a Change Order to compensate it for the substantiated costs arising solely as a result of such delay.

3.1.5 Maintenance Contractor shall perform the Maintenance Services in accordance with the Contract Documents, the Governmental Approvals, applicable Laws and any other requirements as may be determined by the TTA and shall cooperate and coordinate its work with Governmental Agencies, railroads and Utility Owners during performance of any Maintenance Services that will or may affect any of their respective facilities or rights. Maintenance Contractor shall perform the Maintenance Services in a safe, reasonable, and prudent manner, shall employ good business practices and appropriate management techniques and shall conduct its commercial affairs in a manner consistent with good faith and fair dealing. Unless specifically designated to the contrary, in cases where this Agreement refers to TxDOT Standards or any manual, policy, guidance document or similar document, it shall mean the latest edition or revision thereof and amendments or supplements thereto in effect on the Proposal Date. Maintenance Services shall conform to the TxDOT manuals, standards, special provisions, policies and procedures, in each case as modified hereby. These include, but are not limited to, the following:

- Highway Design Manual
- Maintenance Manual
- Vegetation Management Manual
- Traffic Control Standard Sheets Book
- Traffic Operations Manual
- TxDOT 1993 Standard Specifications for Construction of Highways, Streets and Bridges
- Manual of Testing Procedures
- Texas Manual on Uniform Traffic Control Devices for Streets and Highways (TMUTCD)

3.1.6 Notwithstanding the responsibilities undertaken by Maintenance Contractor hereunder, the TTA, in its sole discretion, reserves the right to perform some or all of the Maintenance Services with its own personnel, and/or to enter into special contracts with TxDOT or others therefor and, in such case, to negotiate a reduction in the Maintenance Price in connection with the deletion of such Maintenance Services from the Maintenance Contractor's obligations under this Agreement.

3.2 Capital Asset Management Services; Routine Pavement Operations; Pavement Maintenance; Bridge Maintenance; Sound Walls and Retaining Walls; Embankment and Cut Slopes; Drainage Facilities

3.2.1 Capital Asset Management Services Program

The Capital Asset Management Services Program involves 1) routine pavement operations, 2) pavement and shoulders maintenance, 3) bridge and bridge approach slab maintenance, 4) sound wall and retaining wall maintenance, 5) embankment and cut slope maintenance, and 6) drainage facilities maintenance ("**Capital Asset Management Services**"). Capital Asset Management Services include inspection, testing, maintenance, repair, rehabilitation and refurbishment of the embankment and cut slopes, drainage facilities, pavement, shoulders, bridges, bridge approach slabs, sound walls and retaining walls of the Project in order to ensure that the Project remains safe, modern, suitable for the purposes for which it was built, and efficient to operate and maintain and in good repair; and preparation of the Project for Maintenance Transfer to the TTA at the completion of the last Maintenance Term for which a notice to proceed has been issued or earlier termination of this Agreement.

3.2.2 Routine Pavement Operations

Maintenance Contractor shall perform the following routine pavement repairs to the satisfaction of the TTA:

Asphalt Pavement (Traveled Lanes and Shoulders)

- Repair ruts greater than ½" in depth as measured by AASHTO PP38-00;
- Seal cracks wider than ¼" as measured in accordance with the Distress Identification Manual for the Long-Term Pavement Performance Project, Strategic Highway Research Program, SHRP-P-338;
- All patching shall be even with the surrounding pavement surface within a tolerance of ¼" high or low;
- Immediately repair potholes and base failures of low severity or higher as defined in the SHRP identification manual SHRP-P-338;
- Eliminate edge drop-offs greater than 2" and less than 4" and more than 50 feet in length; and
- Eliminate all edge drop-offs greater than 4".

Concrete Pavement (Traveled Lanes and Shoulders)

- Add "any/all"
corner cracks"
- as measured in accordance with SHRP-P-338;
 - Seal joints greater than 1/4" between traveled lanes and shoulders, between entrance and exit ramps and traveled lanes or shoulders, and between bridge approach slab and pavement or bridge;
 - Immediately repair spalls and potholes as defined in the SHRP identification manual SHRP-P-338;
 - Repair pavement failures as defined in TxDOT's *Pavement Management Information System Rater's Manual* (June 2000 ed.), punch-outs of low severity or higher, faulting of 1/8" or more or low severity or higher spalling as defined in the SHRP identification manual SHRP-P-338 within 72 hours of discovery. Immediately make temporary repairs if the failure could cause a safety problem; and
 - Eliminate edge drop-offs greater than 2" and less than 4" and more than 50 feet in length;
 - Eliminate all edge-drop offs greater than 4"; and
 - Clean and reseal joints where sealant has failed or is missing.

3.2.3 Pavement Maintenance Program

3.2.3.1 Maintenance Contractor shall prepare a pavement maintenance program ("**Pavement Maintenance Program**") to minimize the annual costs of maintenance for the Project, such as resurfacing, while maintaining a safe level of service for the general public. The Pavement Maintenance Program shall be designed to analyze pavement roughness, surface deformations and distress data to identify areas requiring rehabilitation. Pavement maintenance requirements shall be established to maintain the visual distress score and the IRIs for the Project within the minimum performance standards. Maintenance Contractor shall submit to the TTA, for its review and approval, the Pavement Maintenance Program meeting the following requirements within three months after the TTA issues Maintenance NTP1. The Pavement Maintenance Program shall include the names and resumes of the technical personnel responsible for performing, evaluating and analyzing the items required by the Pavement Maintenance Program. Personnel performing the rating and equipment operators shall be trained and certified by TxDOT for the year in which testing is to be performed.

3.2.3.2 The Pavement Maintenance Program shall contain the following major components: (1) Visual Distress Data, which shall include rutting, cracking, potholes/failures and patching for asphalt pavements, and cracking,

punchouts and spalling for concrete pavements; (2) Ride Quality Data (IRI); (3) Deflection Data; (4) Skid Resistance Data (5) Traffic Data (ADT and truck counts broken down into percentages of different types of trucks), based on information provided to Maintenance Contractor by the TTA; and (6) Evaluation of Pavement Structural Capacity and Pavement Rehabilitation. Reports for the Pavement Maintenance Program shall be prepared in accordance with TxDOT's most current Pavement Management Information System Publications.

3.2.3.3 Recognizing that the development of pavement management methods, products and rehabilitation and maintenance procedures is continuing, Maintenance Contractor and the TTA understand that new methods, procedures and products may present opportunities for improved pavement management during the time frame of this Agreement. The Parties mutually agree to permit the use of new technologies and methods, provided that any such technologies and methods are approved in writing by the TTA prior to implementation.

3.2.3.4 Maintenance Contractor, after completion of all paving and before Substantial Completion, shall perform (1) a Falling Weight Deflectometer ("FWD") survey using the TxDOT-approved sensor array spacing to determine the resilient modulus of the subgrade, using TxDOT's modulus back calculation procedure; and (2) an IRI survey using an inertial profiler certified at the Texas Transportation Institute Annex to determine the smoothness of the newly constructed pavement. All traveled lanes, including the mainline and the inside shoulders, ramps, and frontage roads shall be tested. Test spacings shall be in accordance with Section 3.2.3.6(3). Maintenance Contractor shall also generate a summary of the elastic moduli of the pavement and subbase materials and their depths for later use in determining the need for pavement rehabilitation. These surveys shall be conducted as described below and are to provide a benchmark against which to measure the results of future FWD surveys, IRI surveys and other required or appropriate tests.

3.2.3.5 Maintenance Contractor shall perform a Pavement Condition Survey ("PCS") every year of the term of this Agreement to evaluate pavement performance and determine whether pavement rehabilitation is required. The PCS's shall be performed between September 1st and November 30th of each year.

3.2.3.6 Unless otherwise specified or approved by the TTA, the PCS shall be conducted using procedures, techniques, and measuring equipment consistent with TxDOT's Pavement Management Information System Rater's Manual and shall include the following information:

(1) Visual Distress Data: Maintenance Contractor shall visually evaluate the pavement of the Project in 0.10 mile increments in accordance with TxDOT's Pavement Management Information System Rater's Manual.

(2) Ride Quality Data: Maintenance Contractor shall determine an average IRI using measuring equipment capable of measuring an IRI in accordance with AASHTO PP43 or TxDOT Test Method 1001-S as provided in Appendix G-2 of Exhibit G. Maintenance Contractor shall measure the IRI for each

traffic lane of the Project, including mainline, toll plaza entrances and exits, ramps and frontage roads, in 0.10-mile sections. Each bridge, including the approach slab and 150 foot portion of the roadway on both ends shall be treated as a separate IRI section, and shall be excluded from penalty and bonus requirements. However, corrective action shall take place for IRI above 95 as required in Appendix G-1 of Exhibit G. Two IRIs shall be made for each lane, one in each wheel track. The reported IRIs shall be (i) the average of the two IRIs and (ii) the wheel track with the highest IRI. Control points shall be established by Maintenance Contractor so that each PCS, and the reported 0.10 mile IRI results for each year of the term of this Agreement, address the same 0.10 mile sections.

(3) Deflection Data: During the 4th, 8th, 12th and 14th year of the term of this Agreement, the PCSs shall include the performance of non-destructive testing of the Project using an approved FWD meeting the requirements of the most current TxDOT Specifications. Maintenance Contractor shall conduct FWDs at 500 foot intervals in each lane, staggered at 250 feet in adjacent lanes, of the Project. Additional tests shall be made at cracks, joints or other locations on the pavement as necessary to adequately characterize the structural condition of the pavement. The FWD tests shall be performed at a nominal load level of 9,000 lbs. +/- 1,000 lbs. During FWD testing, the pavement temperature will be determined in accordance with the procedure presented in the TxDOT's *FWD User's Manual*. Asphalt surface layer moduli shall be normalized to a nominal temperature of 77 degrees Fahrenheit using the TTI Modulus Temperature Correction Program (MTCP). The FWD tests shall be performed using an FWD which has been calibrated at the SHRP FWD calibration facility at TTI within the past 12 months. Maintenance Contractor shall use the FWD data to determine the need for both flexible and rigid pavement rehabilitation and shall convert the resilient modulus (" M_R ") from the FWD to an equivalent laboratory M_R value by means of methods defined in the *AASHTO Guide for Design of Pavement Structures* (AASHTO, 1993), *Part III* to use with the AASHTOWare(R) DARWin(R) 3.01, Pavement Design and Analysis System.

(4) Skid Resistance Data. Maintenance Contractor shall conduct skid resistance tests and implement improvements to the pavement surface in accordance with TxDOT's *Wet Weather Accident Reduction Program* (WWARP) if any 0.1 mile section should have more than five wet weather accidents in one (1) year. The skid resistance tests shall be performed in accordance with the requirements of ASTM E 274 Standard Test Method for Skid Resistance Testing of Paved Surfaces using a Full Scale Tire. Skid resistance tests shall be conducted at 50 MPH using a smooth tire meeting the requirements of ASTM E 524.

(5) Traffic Data. Traffic data used for this evaluation shall be based on traffic counts and accumulated ESALs provided by the TTA for the following locations:

Segment 1

Mainline - Mainline Toll Plaza between CR 107 and CR 118

Ramps – Northbound entrance ramp from CR 107

Frontage Roads – Frontage road located west of SH 130, south of SH 29

Segment 2

Mainline - Mainline Toll Plaza between Pflugerville Road East and Cameron Road

Ramps – Southbound entrance ramp from Gregg Manor Road

Frontage Roads – Northbound frontage road between US 290 and Boyce Lane

Segment 3

Mainline - Mainline Toll Plaza between FM 973 and FM 969

Ramps – Northbound exit ramp to FM 969

Frontage Roads –Southbound frontage road south of Bloor Road

Segment 4

Mainline - Mainline Toll Plaza between Pearce Lane and Elroy Road

Ramps – Southbound entrance ramp from FM 812

Frontage Roads – Southbound frontage road between Pearce Lane and Elroy Road

Segment 6

Mainline - Mainline Toll Plaza north of SH 80

Ramps – Northbound entrance ramp from FM 621

Frontage Roads – Northbound frontage road between CR 108 and SH 142

The accumulated ESALs data provided by the TTA to Maintenance Contractor from the toll collection stations shall be used to compute the accumulated ESALs in accordance with the procedures contained in Appendix D of the 1993 AASHTO Guide for Design of Pavement Structures.

(6) Evaluation of Pavement Capacity and Pavement Rehabilitation

Using the accumulated traffic and truck classification data and the results of the PCS, Maintenance Contractor shall compare, for each Segment, the accumulated ESALs with the original design ESALs and develop a prediction of future pavement capacity and a pavement rehabilitation strategy to (i) maintain the visual distress score contained in Table 1 and the IRI within or better than the parameters contained in Figure 3.2-1 below, (ii) maintain an IRI less than 170 inches/mile at the end of the 30-year design life for the mainline and ramps and 20-year design life for frontage roads and (iii) ensure that, at any point in time, the remaining pavement service life is equal to, as a minimum, 30 years less the number of years that this Agreement has been in effect for mainline and ramps and 20 years less the number of years that this Agreement has been in effect for frontage roads. Maintenance Contractor shall make this evaluation for each 0.10 mile section of each traffic lane of the Project, including mainline, ramps and frontage roads, and at each bridge location. The prediction of remaining life shall be based on performing backcalculations using the same methodology as used by the pavement designers in the original pavement design.

3.2.3.7 Corrective actions to repair pavement by Maintenance Contractor shall be (i) based on FHWA, AASHTO, TTA, TxDOT and/or US Army Construction Engineering Research Laboratory methods, (ii) in accordance with the requirements of Section 3.2 of Exhibit B of the EDA and (iii) subject to the TTA's review and written acceptance. Variations to the criteria in Table 1 may be proposed after joint evaluation by the TTA and Maintenance Contractor of each PCS. Any variations to the criteria must be approved in writing by the TTA.

3.2.3.8 With respect to the regularly scheduled PCSs, Maintenance Contractor shall submit on or before January 1 of the calendar year following the PCS, the results of the PCS and Maintenance Contractor's proposed rehabilitation strategy, including repairs, overlays or other procedures, to the TTA for review and written acceptance by the TTA. The TTA and Maintenance Contractor shall agree on the rehabilitation strategy within 45 Days, and Maintenance Contractor shall complete the repairs, rehabilitation and/or overlays within 180 Days thereafter. Acceptance by the TTA of routine pavement maintenance during the periods between PCS's will not be required. Maintenance Contractor shall perform routine pavement maintenance as required to prevent accidents related to pavement conditions.

3.2.3.9 Table 1 and Figure 3.2-1 establish the minimum acceptable criteria for the pavement over the term of this Agreement. The IRI values shown in Figure 3.2-1 are for both rigid and flexible pavements. For rigid pavement, the daily average pay adjustment criteria of subtracting 10.0 inches/mile from the actual field measured inertial profiler IRI results in accordance with TxDOT Special Specification, Ride Quality for Pavement Surfaces as provided in Appendix G-1 of Exhibit G, applies only to the initial construction of the rigid pavement and does not apply to the field measured IRI values during the term of this Agreement.

The use of flexible pavement, as noted in Section 3.2.3.11, requires additional structural overlays during the term of this Agreement. Following a structural overlay the pavement smoothness requirements shall

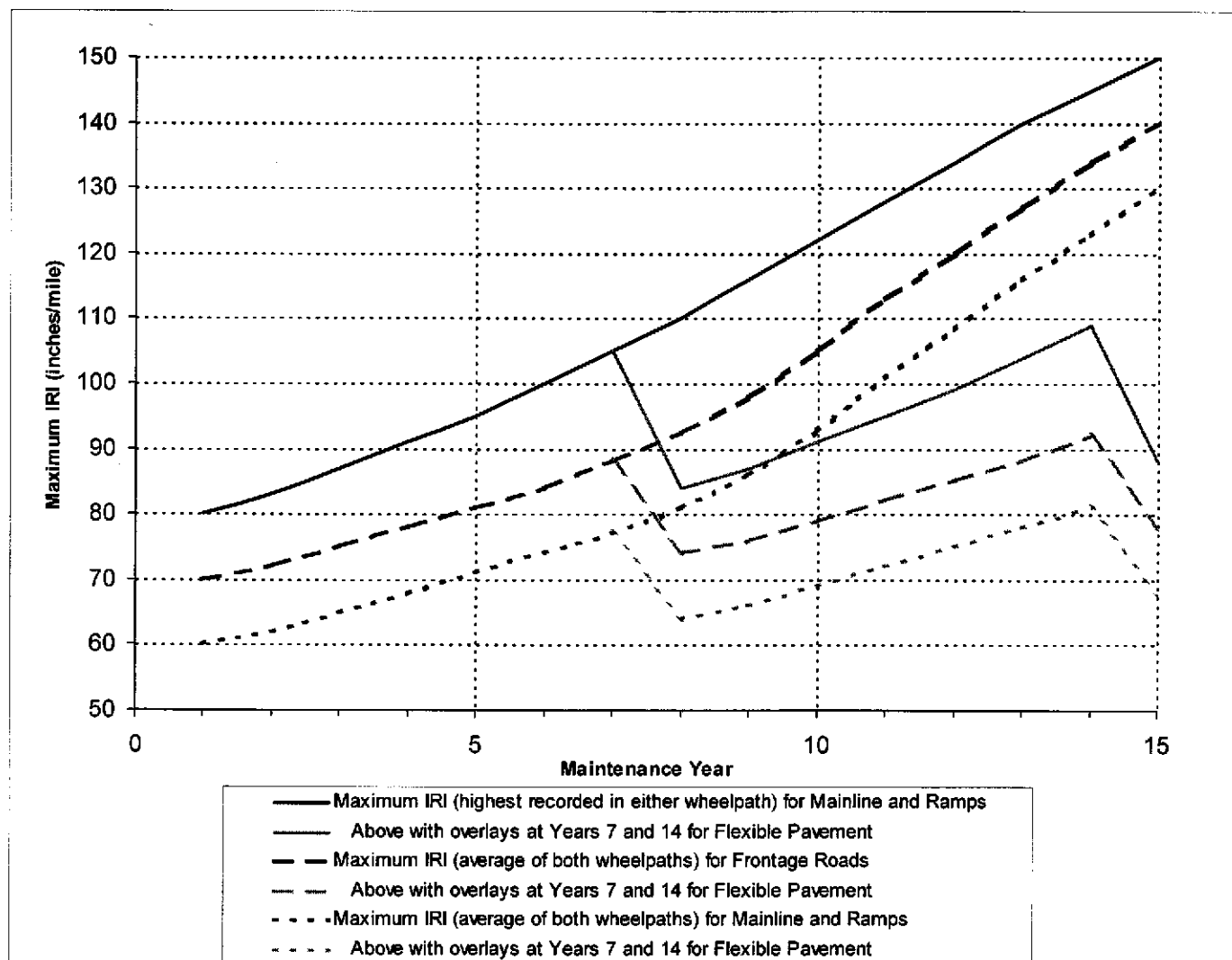
meet the requirements of Table 1 and Figure 3.2-1, re-starting with year 1, except that the IRI requirements shall be increased by 4 inches/mile for the 1st structural overlay and 8 inches/mile for the 2nd structural overlay.

Conditions reflecting lesser/greater values than those noted in the tables shall be repaired and rehabilitated by Maintenance Contractor to the satisfaction of the TTA.

Table 1

	0 through 5 Years	6 through 8 Years	9 through 12 Years	13 through 15 Years
Visual Distress Score	90-100	80-89	80-89	80-89

Figure 3.2-1



3.2.3.10 For each Segment, Maintenance Contractor shall maintain the pavement within or better than the parameters contained in Table 1; provided, however, that, if the accumulated ESALs for a Segment exceed the design ESALs for such Segment during the term of this Agreement, the TTA and Maintenance Contractor, in the TTA's discretion, shall negotiate a Change Order to continue with this Agreement.

3.2.3.11 If the Developer selects a flexible pavement section, the Maintenance Contractor shall be responsible for completing the staged construction pavement section in accordance with Section 3.2.1 and Section 3.2.5 (j) of Exhibit B of the EDA. Placement of the staged overlays, including pre-leveling course(s), shall meet the ride requirements of the TxDOT Special Specification, Ride Quality for Pavement Surfaces as provided in Appendix G-1 of Exhibit G, except (i) that any 0.1 mile section(s) that has a average lane roughness (IRI) exceeding 95.0 inches per mile will NOT be excluded from any penalty pay adjustment and (ii) the specification IRI requirements will be increased 4 inches/mile for the 1st structural overlay and 8 inches/mile for the 2nd overlay. Each of the positive and negative pay adjustments (PA) for pavement smoothness included with this specification will be escalated or reduced based on the Engineering News Record Construction Cost Index (ENR CCI). The procedure for determining the escalation or reduction shall be as follows:

(a) The ENR CCI for the month in which this Agreement is executed will establish the Base Index (BI); and

(b) The positive and negative pay adjustments (PA) for the overlay shall be escalated or reduced by multiplying them by the ENR CCI for the month immediately preceding the start of the overlay placement and dividing such amount by the Base Index.

(c) The formula that reflects the foregoing is:

$$\text{Adjusted PA} = (\text{PA}) \times (\text{ENR CCI})/(\text{BI})$$

3.2.4 Bridge Maintenance

3.2.4.1 Maintenance Contractor shall inspect all bridges in Segment 1, Segment 2, Segment 3, Segment 4, and Segment 6 in accordance with, and within the frequency specified in, the federal National Bridge Inspection Standards (NBIS), 23 CFR Part 650 Subpart C. Maintenance Contractor shall also inspect all bridges and box culverts/drainage conduits with spans greater than twenty (20) feet in accordance with the NBIS in connection with the termination of this Agreement, whether at the expiration of a Maintenance Term or any earlier termination (including a termination for convenience or a termination for default). The individual designated by Maintenance Contractor to perform the bridge inspections required under this Agreement shall be a Registered Professional Engineer in the State and approved in

writing by the TTA in advance. All deficiencies found during the inspection will be reported by Maintenance Contractor to the TTA.

3.2.4.2 Maintenance Contractor shall include in the annual maintenance work plan, a schedule to make repairs and remediate any bridge deficiencies identified by the bridge inspections or such other inspections undertaken by or on behalf of the TTA. Maintenance Contractor shall maintain all bridges to a sufficiency rating of 80 or better as calculated in accordance with Appendix B of the FHWA Recording and Coding Code for the Structure Inventory and Appraisal of the Nation's Bridges.

3.2.4.3 Maintenance Contractor shall maintain the structural load carrying capacity for bridges and other structures within each Segment of the Project to meet the requirements of the Governmental Approvals and applicable Law, as the same exist at Final Acceptance of the applicable Segment under the EDA.

3.2.4.4 Maintenance Contractor shall repair bridge damage, including damaged expansion joints, caused by normal deterioration and all other causes. Such repairs, including replacement in the event of complete failure of a bridge, are included within the Maintenance Price, except as set forth in Section 10.

3.2.4.5 When damage to a bridge structure is discovered, the safety of the traveling public shall be of immediate concern. If there is any question about the ability of the structure to be maintained open to service in a safe manner, Maintenance Contractor shall immediately establish detours or Lane Closures. If directed by the TTA in writing and subject to Governmental Approvals and applicable Law, when damage causes Lane Closures, repair work by Maintenance Contractor shall be undertaken and diligently completed on a 24 hours per Day, 7 Days per week schedule until repairs are complete and lanes are reopened. Maintenance Contractor must address, repair and resolve structurally critical conditions to the satisfaction of the TTA by Maintenance Contractor immediately upon discovery.

3.2.4.6 Maintenance Contractor shall conduct and complete all repair, remedial and corrective measures, including design and construction, in accordance with the TxDOT's Standards. The design of these repairs shall be performed by a Registered Professional Engineer. Such design shall be accepted by the TTA prior to executing the repairs, except that Maintenance Contractor may perform emergency shoring or temporary stabilization to stabilize a structure before the final repair method is accepted by the TTA.

3.2.5 Sound Walls and Retaining Walls

Maintenance Contractor shall inspect sound walls and retaining walls annually and take corrective action to maintain them vertically in safe and operable condition. Maintenance Contractor shall inspect the retaining wall drainage system every 6 months and clear and remove any obstructions. Maintenance Contractor shall inspect MSE walls every 6 months during the Initial Maintenance Term and annually during the Second Maintenance Term and Third Maintenance Term to

check for detrimental movement and/or loss of backfill. If detrimental movement or loss of backfill are identified or occurs, Maintenance Contractor shall promptly take remedial action to ensure Project safety and operability and to correct, stabilize and prevent further movement or loss of backfill.

3.2.6 Embankment and Cut Slopes

Maintenance Contractor shall repair all structural or natural failures of the embankment and cut slopes of the Project (excluding Segment 5) throughout the term of this Agreement. Such work shall include all work required to maintain the slopes in general conformance to the original graded cross-sections, the replacement of landscaping materials, reseeding and re-vegetation for erosion control purposes and removal and disposal of all eroded materials from the roadway and shoulders. The TTA and Maintenance Contractor acknowledge that plant establishment requirements and obligations are not included within the Maintenance Services, but are part of the Developer's obligations under the EDA, Section 3.9.10, for a period of 3 years after the date of Final Acceptance of a Segment. However, if a structural or natural failure of the embankment or cut slope occurs in a landscaped area after the 3 year time period expires, the Maintenance Contractor shall be responsible to perform plant establishment activities for 90 calendar days in accordance with *Item 192 (Roadside Planting and Establishment)* of the 1993 TxDOT *Standard Specifications for Construction of Highways, Streets, and Bridges*.

3.2.7 Drainage Facilities

Maintenance Contractor shall inspect drainage structures including culverts, pipes, inlets, catch basins, manholes, ditches, channels, retention ponds and water treatment facilities between February 15 and April 15 of each year, after major storm events (approximately a 10-year event as determined by the TTA) or as otherwise directed by TTA, to assess their physical condition and verify that they are functioning properly and as designed. Unless otherwise directed in writing by the TTA, representatives of the TTA shall accompany Maintenance Contractor on all such inspections. Maintenance Contractor shall promptly undertake and rectify all problems, deficiencies, items or needed repairs noted on such inspections. Maintenance Contractor shall maintain all drainage structures with a maximum of 1/5 of the cross-sectional area silted at any time. Maintenance Contractor shall remove the accumulated dirt, refuse and other debris from drainage structures and their appurtenances and shall dispose of the materials in accordance with Section 5.7. Maintenance Contractor shall visually inspect all detention basins annually and after major storm events and shall clear such basins of any sediment that prevents the basin from performing as designed. Maintenance Contractor acknowledges that certain drainage structures may require additional cleaning as necessary to ensure that they are operating safely and as designed.

3.2.8 Tracking System

Maintenance Contractor, within 90 Days after issuance by the TTA of Maintenance NTP1, shall submit to the TTA its methodology and system for tracking

notifications, the completion of initial repairs, the installation of temporary warning devices and the completion of final repairs. Such tracking system shall be subject to the written approval of the TTA.

3.3 Traffic Control and Operations

Maintenance Contractor shall perform the Maintenance Services in a manner that recognizes that the safety of the public and the convenience of traffic are of prime importance as well as providing a safe work environment for all maintenance workers. Maintenance Contractor shall coordinate activities with the TTA's maintenance crews to minimize the impacts to the traveling public.

3.3.1 Traffic Control Plan

3.3.1.1 Maintenance Contractor shall be responsible for the safety of traffic and the public during the performance of the Maintenance Services. Maintenance Contractor shall perform all Maintenance Services that affects traffic operations in conformance with the TMUTCD. The installation and removal of traffic control devices shall be supervised by personnel certified in accordance with Special Provision SP008-131 of the TxDOT Standards. Maintenance Contractor shall furnish, erect and maintain such fences, temporary railing, barricades, lights, signs, electronic advisory message boards and other devices and take such other protective measures as are necessary or desirable to prevent accidents, damage or injury to the public or the Project, and/or as required by the Governmental Approvals, applicable Law, the TxDOT Standards and/or the Manuals.

3.3.1.2 On or before 90 Days after issuance by the TTA of Maintenance NTP1, Maintenance Contractor shall submit the procedures to be followed to keep the public and emergency response agencies, including the Texas Department of Public Safety, local fire and police departments, and others informed of traffic restrictions. Maintenance Contractor shall also identify the methods of communications to be used between Maintenance Contractor and the TTA to coordinate traffic control requirements within and outside the Project limits. All of such procedures shall be subject to the prior written approval of the TTA and any other applicable Governmental Entities.

3.3.2 Traffic Operation Restrictions

3.3.2.1 Maintenance Contractor shall keep the number of Lane Closures to an absolute minimum and shall keep each Lane Closure to the shortest time necessary for safe and efficient operations. Should emergencies occur, including vehicle accidents and structural failures, Maintenance Contractor shall take steps to open the roadway as soon as possible. Minimum distance between Lane Closures shall be no less than 3 miles. No more than one exit or entrance ramp may be closed at one time unless approved by the TTA in writing. The TTA has the authority to deny a Lane Closure in the case of a special event or other public activity that could cause substantial delay to the traveling public.

Unless otherwise approved by the TTA in writing, Lane Closures for the performance of Maintenance Services, including Warranty work, shall not be allowed on the main lanes on the following holiday and high traffic volume periods:

New Year's Eve and New Year's Day (December 31 through January 1)

Easter Holiday Weekend (Thursday through Monday)

Memorial Day Weekend (Thursday through Tuesday)

Independence Day (July 3 through July 5th Noon)

Labor Day Weekend (Thursday through Tuesday)

Texas vs. Oklahoma Football Game Weekend (Friday through Sunday)

Thanksgiving Holiday (Wednesday through Monday)

Christmas Holiday (December 23 through 26)

Other days deemed high traffic volume day(s), as determined by the TTA

Lane Closures shall not be allowed from 12 noon of the above described starting day through 10:00 pm on the ending day unless otherwise specified.

3.3.2.2 Except for emergencies, no traffic lane shall be closed during peak traffic hours. Peak traffic hours are defined as 7:00 a.m. to 9:30 a.m. and 3:30 p.m. to 7:00 p.m. Monday through Friday and Saturdays 8:00 a.m. to 5:00 p.m. If Maintenance Contractor violates the foregoing restrictions, Maintenance Contractor shall be subject to liquidated damages in accordance with Section 8.5.

3.3.3 Railroad Flagging Services

Maintenance Services that affect the operation of the railroad owned by the Capital Metro Transportation Authority or its successors, requires the services of railroad flagmen, as determined by the Chief Engineer of the Capital Metro Transportation Authority. Except as directed by the railroad, the railroad shall furnish the necessary flag protection on the railroad right-of-way that is required for bridge inspection, maintenance, repair, reconstruction or replacement. The cost of all such railroad flagging services shall be the responsibility of Maintenance Contractor. Maintenance Contractor shall be solely responsible for all coordination with the railroad and for any delays arising therefrom.

3.4 Requirements Applicable to Design and Construction Work

3.4.1 To the extent that Maintenance Contractor performs any design or construction work as part of the Maintenance Services, Maintenance Contractor shall comply with the requirements and specifications for design and construction set forth in the EDA and the Scope of Work, except as otherwise approved in advance in writing by the TTA. Maintenance Services that require the preparation of plans and specifications shall be performed by a design firm approved in writing by the TTA. The scope of work and the preliminary plans and specifications shall be approved by the TTA in writing in advance of the preparation of final plans.

3.4.2 In connection with the performance by Maintenance Contractor of any design or construction work as part of the Maintenance Services, Maintenance Contractor shall procure and maintain the insurance and payment and performance bonds required by the TxDOT Standards for similar design and construction work; provided, however, that in the event of design and construction work associated with major capital repair or a catastrophic failure of a portion of the Project, the TTA may increase the insurance and bonding requirements associated with such design and construction work. In such event, Maintenance Contractor shall be entitled to reimbursement for any increase in premiums, except to the extent that the major capital repair or catastrophic failure arises from the negligence, willful act or omission or breach of the EDA or Maintenance Agreement by Developer or Maintenance Contractor.

3.4.3 Maintenance Contractor shall ensure that all repair and replacement work, as well as any other Maintenance Services, conforms to the Governmental Approvals, applicable Law and the Final Design Documents accepted by the TTA under the EDA and does not change any of the features, parameters or design specifications of the Project, unless otherwise agreed to by the TTA in writing.

3.5 No Limitations Resulting from Minimum Required Actions

Maintenance Contractor acknowledges and agrees that, although certain sections of this Agreement include minimum requirements (either in terms of frequencies or times of the year or otherwise in which certain actions are required), Maintenance Contractor's obligations to maintain the Project and perform Maintenance Services shall not be limited by and to such minimums. Maintenance Contractor shall remain responsible to maintain the Project, perform all Maintenance Services in accordance with the performance standards set forth in this Agreement, the Governmental Approvals and applicable Law and ensure that the Project is maintained in a manner that allows it to be operated and used by the public in the manner designed and intended.

4.0 MAINTENANCE TERM

The term of the Agreement includes an initial term and two options to extend the term. The maximum term of this Agreement, including both extensions thereof, is 15 years.

4.1 Initial Maintenance Term

The Initial Maintenance Term shall commence one year after Final Acceptance of the first Segment of the Project to be constructed in accordance with the EDA, and shall expire on the August 31st that occurs a minimum of one year after Final Acceptance of the last Segment of the Project to be constructed in accordance with the EDA, unless terminated earlier in accordance with the terms of this Section 4.1. Prior to the issuance of Maintenance NTP2, the TTA shall have the option, in its sole and absolute discretion, to terminate this Agreement, without liability to Maintenance Contractor, effective August 31 of any year by providing written notice of such termination to Maintenance Contractor on or before May 31 of such year. Failure by the TTA to terminate this Agreement on or before such date shall be deemed an election by the TTA to proceed with this Agreement for the following fiscal year. Prior to the issuance of Maintenance NTP2, if the TTA elects to terminate this Agreement under this Section 4.1, neither Party shall have any further rights or obligations hereunder. Once such election to proceed with this Agreement has been made, any termination of this Agreement by the TTA with an effective date prior to August 31 of the following fiscal year, or which does not otherwise meet the notice requirements set forth above, shall be governed by Section 12 or Section 13, as appropriate.

4.2 Second Maintenance Term

The TTA, at its option, in its sole discretion, shall have the right to extend the term of this Agreement for an additional five (5) years "the "Second Maintenance Term"). The Second Maintenance Term shall commence as of the expiration of the Initial Maintenance Term and shall continue for a period of five (5) years, unless terminated earlier in accordance with the terms hereof. If the TTA elects to exercise its extension rights for a Second Maintenance Term, the TTA shall issue Maintenance NTP2 on or before 90 Days prior to the scheduled expiration of the Initial Maintenance Term (as set forth in the then current Project Schedule under the EDA).

4.3 Third Maintenance Term

The TTA, at its option, in its sole discretion, shall have the right to extend the term of this Agreement for an additional term (the "Third Maintenance Term"). The Third Maintenance Term shall commence as of the expiration of the Second Maintenance Term and shall continue for a period of ten (10) years minus the actual number of Days of the Initial Maintenance Term, unless terminated earlier in accordance with the terms hereof. If the TTA elects to exercise its extension rights for a Third Maintenance Term, the TTA shall issue Maintenance NTP3 on or before 180 Days prior to the expiration of the Second Maintenance Term.

4.4 Expiration of Termination Responsibilities

In connection with any expiration or termination of this Agreement, whether at the end of a Maintenance Term or otherwise, Maintenance Contractor shall remain responsible for the completion of any repair, rehabilitation or replacement work identified or determined necessary by the TTA as a result of any PCS or bridge and box culvert/drainage conduit inspection undertaken prior to, or in connection with, the expiration or termination of this Agreement.

5.0 MANAGEMENT AND ADMINISTRATION

5.1 Reporting

Maintenance Contractor is required to utilize a computer system that is capable of corresponding with the TTA via e-mail and that is capable of transmitting electronic files via an FTP site. Maintenance Contractor shall report to the TTA the following information:

(a) Work Accomplished Maintenance Contractor shall report to the TTA the Maintenance Services accomplished in accordance with the TxDOT Maintenance Management Information System (MMIS) User Manual. Maintenance Contractor shall input this information within 2 weeks of the date the services are performed. The report shall use TxDOT's "function codes", as the same are described in the aforementioned MMIS User Manual to categorize the Maintenance Services performed by Maintenance Contractor. The report will show, by reference marker, the following:

- (1) The date(s) of the Maintenance Services;
- (2) Beginning and ending reference marker;
- (3) Function code; and
- (4) The quantity of Maintenance Services performed.

(b) Highway Condition Report (HCR) — By 8:10 AM, each Day that Maintenance Contractor is performing Maintenance Services and as changes occur on such Days, Maintenance Contractor shall report to the TTA weather conditions and any Lane Closures using TxDOT's HCR System.

(c) Complaints/Service Requests — Maintenance Contractor shall report weekly to the TTA, on a format approved by TTA, information on any complaints or service requests received by the Maintenance Contractor. This information will include the following:

- (1) The date and time of the complaint;
- (2) The location and nature of the problem;
- (3) Injuries and police involvement, including agency, name and badge number;
- (4) Who made the complaint; and
- (5) Date and action taken to address the complaint

(d) Accidents/Incidents: Maintenance Contractor shall report in writing to the TTA, no later than the 15th of each calendar month on a format approved by the

TTA, information from the previous month on any accident or incident related to Maintenance Services being performed by Maintenance Contractor or within a work zone, including:

- (1) accidents involving Maintenance Contractor or any Subcontractor personnel, equipment, barricades or tools;
- (2) traffic accidents within the limits or in the vicinity of any Maintenance Services being performed by Maintenance Contractor or any Subcontractors;
- (3) releases of Hazardous Materials;
- (4) any accident involving Maintenance Contractor or the traveling public that causes damage to any Project appurtenance, structure, improvement or fixture.
- (5) with respect to any accident/incident, the information provided shall include as a minimum:
 - The date and time of the accident/incident;
 - The location of the problem;
 - The nature of the problem;
 - All parties involved in the incident, including names, addresses, telephone numbers and their involvement (including witnesses);
 - Responsible party and insurance information;
 - Action taken to address the incident; and
 - Documentation of traffic control in place at location.

(e) Agreements: Maintenance Contractor shall provide to the TTA copies of all agreements and Subcontracts between Maintenance Contractor and Subcontractors and other Persons that are associated with, related to or affected by the Maintenance Services.

5.2 Staffing Plan; Key Maintenance Personnel; Qualifications of Employees

5.2.1 On or before 90 Days after the TTA issues Maintenance NTP1, Maintenance Contractor shall update and obtain the TTA's written approval, of any changes to the staffing or Key Maintenance Personnel as presented in the Proposal. Resumes of the technical personnel responsible for performing / analyzing PCS data and the bridge inspections shall be set forth in the staffing plan.

5.2.2 Maintenance Contractor shall promptly notify the TTA in writing of any proposed changes in any Key Maintenance Personnel. Maintenance Contractor

shall not change, or permit any change in, any Key Maintenance Personnel without the prior written consent of the TTA. During the term of this Agreement, before Maintenance Contractor replaces any Key Maintenance Personnel, the TTA shall be given the opportunity to interview and approve the replacement candidate(s). Maintenance Contractor's request to replace any Key Maintenance Personnel shall include a proposed replacement, who shall be available within 30 Days after the TTA's approval.

5.2.3 All individuals performing Maintenance Services shall have the skill and experience and any licenses or certifications required to perform the Maintenance Services assigned to them. If the TTA determines, in its sole discretion, that any Person employed by Maintenance Contractor or any Subcontractor is not performing the Maintenance Services in a proper and skillful manner or is detrimental to the progress of the Maintenance Services and/or the Project, then, at the written request of the TTA, Maintenance Contractor shall remove such Person from the Project and such Person shall not be reemployed on the Project without the prior written approval of the TTA. If such Person is not removed or if Maintenance Contractor fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Maintenance Services, then the TTA may suspend the affected portion of the Maintenance Services by delivery of written notice of such suspension to Maintenance Contractor. Such suspension shall in no way relieve Maintenance Contractor of any obligation contained in the Contract Documents or entitle Maintenance Contractor to a Claim or Change Order. Once compliance is achieved, Maintenance Contractor shall be entitled to and shall promptly resume the Maintenance Services. During the period of any such suspension, Maintenance Contractor shall not be entitled to the payment of any portion of the Maintenance Price or any other payment hereunder.

5.2.4 Maintenance Contractor shall designate in writing who shall have onsite field and office authority to represent and act for Maintenance Contractor. Said authorized representative shall be present at the jobsite at all times while Maintenance Services is actually in progress. While any night work or shift work is to be performed by Maintenance Contractor, a superintendent shall be at the jobsite at all times. Maintenance Contractor shall provide phone and pager numbers for all Key Maintenance Personnel. The TTA requires the ability to contact these key individuals 24 hours per Day, 7 Days per week.

5.2.5 If the approved individuals filling the Key Maintenance Personnel roles are not available for the Maintenance Services and do not undertake or perform the Maintenance Services after approval thereof pursuant to Section 5.2.1, as appropriate, Maintenance Contractor acknowledges that the TTA, the Maintenance Services and the Project will suffer significant and substantial Losses and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to the TTA in such event. Therefore, if such individuals filling the Key Maintenance Personnel roles are not available, Maintenance Contractor agrees to pay the TTA a liquidated amount as follows as deemed compensation to the TTA for such Losses:

POSITION	LIQUIDATED DAMAGES AMOUNT
Maintenance Manager	\$50,000
Maintenance QC Manager	\$50,000

Maintenance Contractor understands and agrees that any damages payable in accordance with this Section 5.2.5 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. The TTA shall have the right to deduct any amount owed by Maintenance Contractor to the TTA hereunder from any amounts owed by the TTA to Maintenance Contractor, including any Retainage which may be payable by the TTA to Maintenance Contractor. Notwithstanding the foregoing, liquidated damages under this Section 5.2.5 shall not be due and payable from Maintenance Contractor if (i) Maintenance Contractor removes or replaces such personnel at the direction of the TTA; (ii) such individual dies, retires, becomes injured or leaves the employment of Maintenance Contractor, or such entity that employed the individual, as applicable, in connection with the Maintenance Services; or (iii) Maintenance Contractor identifies the replacement for any Key Personnel within 30 days after issuance of Maintenance NTP1; provided, however, in each such case, Maintenance Contractor shall promptly propose to the TTA a replacement for such personnel, which individual shall be subject to the TTA's written consent.

5.2.6 In addition to the approval rights of the TTA set forth in Sections 5.2.1 and 5.2.2 and the liquidated damages set forth in Section 5.2.5, Maintenance Contractor acknowledges and agrees that the Key Maintenance Personnel positions are of critical importance to the TTA and the Project. If an individual in a position described in the immediately preceding list leaves that position for a reason other than as set forth in clauses (i)-(ii) of Section 5.2.5, the TTA shall have the unilateral right to terminate this Agreement without further liability to Maintenance Contractor, except for payment for such Maintenance Services that has been completed and accepted as of the date of termination, unless Maintenance Contractor provides the TTA a replacement acceptable to the TTA within 30 Days after the earlier of (i) the date on which such individual has left his/her position; or (ii) Maintenance Contractor or the TTA becomes aware that such individual intends to leave his/her position.

5.2.7 The Maintenance Contractor's Project manager (the "**Maintenance Manager**") shall be a Registered Professional Engineer and shall have a minimum of 10 years of managerial experience in maintaining transportation systems of a comparable nature to the Project.

5.3 Annual Preventative Maintenance Work Plan

5.3.1 On or before 60 Days after the TTA issues Maintenance NTP1, Maintenance Contractor shall prepare, and submit to the TTA for its written approval, a maintenance work plan for maintaining the embankment and cut slopes, drainage facilities, pavement, shoulders, bridges, bridge approach slabs, sound walls and

retaining walls for the portions of the Project to be maintained by Maintenance Contractor (a "**Maintenance Work Plan**") for the period between Final Acceptance and the remainder of the Fiscal Year in which Final Acceptance occurs. Following the first Maintenance Work Plan, Maintenance Contractor shall submit to the TTA a Maintenance Work Plan by June 1 of each year for the subsequent Fiscal Year. Each Maintenance Work Plan shall show the projected dates of the various Maintenance Services to maintain, replace, renovate, refurbish or renew facilities and the type of maintenance, replacement, renovation and refurbishment methods Maintenance Contractor will utilize. The duration, number of working days, of any Maintenance Services set forth in the Maintenance Work Plan that requires Lane Closures shall be mutually agreed upon between the TTA and Maintenance Contractor.

5.3.2 The Maintenance Work Plan shall be consistent with applicable Government Approvals, applicable Law, the TxDOT Standards and the Manuals.

5.3.3 The TTA shall review the annual Maintenance Work Plan and meet with Maintenance Contractor within 30 Days after its submittal to discuss revisions and clarifications or to resolve any disagreements. Within 15 Days after such meeting, Maintenance Contractor shall resubmit the final Maintenance Work Plan to the TTA. The TTA will either approve or disapprove the Maintenance Work Plan within 15 Days, with objections or corrections noted in writing. If the TTA disapproves the Maintenance Work Plan, Maintenance Contractor shall revise the plan to the satisfaction of the TTA in order to resolve the TTA's issues and concerns.

5.4 Maintenance Services Quality Control Plan

5.4.1 On or before 60 Days after issuance of Maintenance NTP1 by the TTA, Maintenance Contractor shall prepare a Maintenance Services quality control plan ("**Maintenance QCP**") meeting the requirements of this Section 5.4. The Maintenance QCP is intended to (1) place the responsibility for the quality of all design, construction, maintenance and repair associated with the Maintenance Services on Maintenance Contractor and (2) allow the TTA to oversee the Maintenance Services. Subject to revision to address the Maintenance Services and the specific design and construction work that will be undertaken in connection therewith, the Maintenance QCP must be consistent with the design quality control/quality assurance program requirements set forth in Section 2.2 of the Scope of Work and the construction quality control/quality assurance program requirements set forth in Section 9.1.1 of the Scope of Work. With respect to design quality control and quality assurance, final plans shall be independently checked and certified by a Senior Engineer (as defined in the EDA) from a design firm who has not been involved with the preparation of the design and/or plans. With respect to construction quality control and construction quality assurance, construction quality control shall be performed under the direction of the Maintenance QC Manager, with construction quality assurance, including inspection and materials testing, performed by the independent Construction Quality Assurance Firm. Quality oversight functions will be performed by the TTA. The TTA shall review the Maintenance QCP and meet with Maintenance Contractor within 30 Days after its submittal to discuss revisions and clarifications or to attempt to resolve any disagreements. Within 15 Days after such meeting, Maintenance Contractor shall

resubmit the final Maintenance QCP to the TTA. The TTA will either approve or disapprove the Maintenance QCP within 15 Days, with objections or corrections noted in writing. If the TTA disapproves the Maintenance QCP, Maintenance Contractor shall revise the plan to the satisfaction of the TTA in order to resolve the TTA's issues and concerns.

5.4.2 The Maintenance Contractor shall have a quality control manager ("**Maintenance QC Manager**") who is responsible to independently oversee and perform quality control for the Maintenance Services in accordance with the Maintenance QCP. The Maintenance QCP shall demonstrate the Maintenance QC Manager's functional independence from the Maintenance Contractor work forces. The Maintenance QC Manager will coordinate the activities of the maintenance CQAF. No separate Maintenance QA Manager will be required. The Maintenance QC Manager shall be a graduate civil engineer or have equivalent experience.

5.4.3 The Maintenance QC Manager shall submit an annual report to the TTA by October 1 of each year. This annual report shall include the following elements:

(a) An assessment of the actual Maintenance Services achievements versus the planned goals established in the Maintenance Reporting Plan, as well as corrective actions and measures to be taken in the ensuing year to ensure that any shortcomings are corrected; and

(b) An assessment of compliance with the various traffic control requirements and limitations contained in Section 3.3, as well as any corrective measures taken to correct any breach or violations of such requirements and limitations and any corrective measures necessary to prevent any future breach or violations of such requirements and limitations.

5.5 Maintenance Transfer Plan

5.5.1 Maintenance Contractor, within 240 Days after issuance by the TTA of Maintenance NTP1, shall submit to the TTA, for the TTA's approval, a plan for Maintenance Transfer (the "**Maintenance Transfer Plan**"). Upon the TTA's approval, the Maintenance Transfer Plan shall be updated and submitted to the TTA for approval with the annual Maintenance Work Plan for the last year of the then-current Maintenance Term. The Maintenance Transfer Plan shall set forth the capital improvements as well as other activities that Maintenance Contractor proposes to complete prior to Maintenance Transfer to the TTA at the end of such Maintenance Term or the earlier termination of this Agreement. The Maintenance Transfer Plan shall be developed in accordance with, and shall contain the elements set forth in Exhibit D hereto. The TTA shall review the plan and meet with Maintenance Contractor within 45 Days after its submittal to discuss revisions and clarifications or to attempt to resolve any disagreements. Within 15 Days after such meeting, Maintenance Contractor shall resubmit the final Maintenance Transfer Plan to the TTA. The TTA will either approve or disapprove the Maintenance Transfer Plan within 15 Days, with objections or corrections noted in writing. If the TTA disapproves the Maintenance Transfer Plan,

Maintenance Contractor shall revise the plan to the satisfaction of the TTA in order to resolve the TTA's issues and concerns.

5.6 Maintenance Sites

5.6.1 Maintenance Contractor shall maintain offices/yards located within 10 miles of each of the following intersections: (a) SH 130 and US 79, (b) SH 130 and SH 71, and (c) a third location to be determined by the TTA. The TTA must be able to reach the Maintenance Manager at these offices/yards during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday). During normal business hours, each office shall be staffed with at least one Person available to accept telephone calls, certified mail and service of summons and subpoenas on behalf of Maintenance Contractor. Maintenance Contractor shall also provide and maintain a telephone line that Maintenance Contractor monitors 24 hours per day, 7 days per week, for reports from the TTA or other Persons of maintenance problems that may impact public safety.

5.6.2 The TTA may acquire certain maintenance site(s) in the vicinity of the Project. To the extent actually acquired by the TTA and not used by the TTA in its sole discretion for other purposes, Maintenance Contractor may utilize such site(s) as its offices/yards as required under Section 5.6.1. If Maintenance Contractor utilizes the TTA's site(s), Maintenance Contractor shall provide all utility connections and improvements that Maintenance Contractor requires in connection with such usage and shall maintain and keep the site(s) in good and orderly condition during the period of its use thereof. Notwithstanding the foregoing, the TTA may terminate Maintenance Contractor's right to use the TTA's site(s) upon 120 Days notice, at which time Maintenance Contractor shall vacate the site(s) entirely and shall maintain separate offices/yards in accordance with Section 5.6.1. Maintenance Contractor acknowledges and agrees that the foregoing right to use the TTA's site(s) is a revocable license and not a lease or a license coupled with an interest and that all costs associated with the use of such site(s) is the responsibility of Maintenance Contractor.

5.7 Waste Disposal and Hazardous Materials.

5.7.1 Maintenance Contractor shall manage, store, contain, transport, and dispose of, or cause the disposal of, all waste (hazardous and nonhazardous), residue, construction debris, materials, Hazardous Materials, supplies (including paints, herbicides and chemicals which may be Hazardous Materials), produced, used or generated as a result of the activities of any member of the Maintenance Contractor Group or used by any member of Maintenance Contractor Group in performance of the Maintenance Services, in accordance with all applicable Laws and Governmental Approvals. Maintenance Contractor shall also be responsible for Hazardous Materials and Releases of Hazardous Materials arising out of, related to, or associated with the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor Group. Maintenance Contractor's personnel handling Hazardous Materials shall be appropriately trained in Hazardous Materials handling and disposal. Maintenance Contractor shall provide evidence of such personnel's training to the TTA.

5.7.2 As between Maintenance Contractor and the TTA, the TTA shall be considered the generator of Hazardous Materials; provided, however, that Maintenance Contractor shall be considered the generator of any Hazardous Materials which result from Release(s) of Hazardous Material generated by, arising from, related to or attributable to the negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor Group or the Developer Group. The foregoing shall not preclude or limit any rights or remedies that the TTA may have against Third Parties.

5.7.3 Hazardous Materials Management costs, including assessment, containment, and remediation expenses, which result from Release(s) of Hazardous Material attributable to the negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor Group, shall not be compensable to Maintenance Contractor, regardless of the cause of the Release of Hazardous Materials.

5.7.4 For any Hazardous Materials which are Maintenance Contractor's responsibility under this Agreement, Maintenance Contractor shall be solely responsible for all costs of Hazardous Materials Management and for restoring the real property affected thereby to its condition prior to the Release of Hazardous Materials, including, to the extent required, any grading and reinforcement necessary to restore the weight-bearing and functional capacity of the Project. If, within a reasonable time (as determined by the TTA) after a Release of Hazardous Materials for which Maintenance Contractor is responsible, Maintenance Contractor has not taken action under this Section 5.7.4, the TTA may undertake such action itself. In such event, Maintenance Contractor shall reimburse TTA for any expenses it incurs as a result of Maintenance Contractor's failure. In lieu of reimbursement, the TTA may elect, in its sole discretion, to deduct such amounts from any amounts payable to Maintenance Contractor under this Agreement. In either case, the amount reimbursed or deducted will include interest on the amounts expended by the TTA, accruing at the lesser of (i) 12% per annum and (ii) the maximum rate allowable under applicable Law, from the date of disbursement.

5.7.5 If a Release of Hazardous Materials occurs as a result of the negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor Group, Maintenance Contractor shall (a) promptly notify the TTA in writing and advise the TTA of any obligation to notify state or federal agencies under Laws; and (b) take reasonable steps, to avoid excavation or dewatering in areas with Hazardous Materials. Where excavation or dewatering of Hazardous Materials is unavoidable, Maintenance Contractor shall utilize appropriately-trained personnel, shall select the most cost-effective approach to Hazardous Materials Management, and shall bear all costs associated with such Hazardous Materials Management, unless otherwise directed by TTA. Maintenance Contractor shall afford the TTA the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit the TTA's ability to ascertain the nature and extent of the Hazardous Materials.

5.7.6 Maintenance Contractor shall not be responsible or liable for any Hazardous Materials present in soil, surface water or groundwater at the Project on or

before the date of this Agreement, unless the Release of Hazardous Material occurred or was exacerbated as a result of the negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor Group or the Developer Group.

5.8 Governmental Approvals

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

5.8.2 If any Governmental Approvals required to be obtained by Maintenance Contractor must formally be issued in the name of the TTA, the TTA shall cooperate with Maintenance Contractor to obtain such Governmental Approvals as may be reasonably requested by Maintenance Contractor. Maintenance Contractor shall be responsible for preparing all documentation necessary for any application for a Governmental Approval.

5.9 Use of Project

Maintenance Contractor shall not use the Project, the Final ROW or any of the premises provided by the TTA for any purpose other than the performance of Maintenance Services. Maintenance Contractor shall not be entitled to, and shall not purport to, grant the use of the Project or the Final ROW to anyone without the written approval of the TTA. Maintenance Contractor shall be responsible for paying all tolls for its personnel; Subcontractors and suppliers unless otherwise approved in writing by the TTA.

5.10 TTA Responsibility for Policy Decisions

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

5.11 TTA Oversight, Inspection and Evaluation

5.11.1 The TTA shall retain the right to oversee, inspect and test all materials and each detail of the Maintenance Services and to determine Maintenance Contractor's compliance with the terms hereof, the Governmental Approvals and applicable Law, including the requirements and specifications set forth in the TxDOT Standards, as modified hereby.

5.11.2 Maintenance Contractor shall remedy, correct, or re-perform, at its expense, and within the time periods specified in Section 5.11.3, any Nonconforming

Work, and shall promptly take all action necessary to prevent similar deficiencies from occurring in the future.

5.11.3 Maintenance Contractor shall correct and cure any Nonconforming Work within 14 Days of receipt of written notice from the TTA requesting correction, or immediately upon written or oral notice if needed to remove an immediate or present threat to the safety of persons or property (as determined by the TTA), unless the Nonconforming Work cannot be reasonably cured within such period. In such event, Maintenance Contractor shall commence meaningful steps to cure such Nonconforming Work within such period and shall diligently prosecute such cure to completion as soon thereafter as is practicable.

5.11.4 If Maintenance Contractor fails to cure any Nonconforming Work as required by Section 5.11.3, in addition to any other remedies it may have under this Agreement, the TTA may cause the Nonconforming Work to be remedied, corrected or removed. In such event, Maintenance Contractor shall reimburse TTA for any expenses it incurs as a result of Maintenance Contractor's failure. In lieu of reimbursement, the TTA may elect, in its sole discretion, to deduct such amounts from any amounts payable to Maintenance Contractor under this Agreement. In either case, the amount reimbursed or deducted will include interest on the amounts expended by the TTA, accruing at the lesser of (i) 12% per annum; and (ii) the maximum rate allowable under applicable Law, from the date of disbursement. If the TTA remedies, removes or replaces Nonconforming Work, it shall have no liability for the quality therefore and Maintenance Contractor shall retain all responsibility and liability for such work and all Maintenance Services.

5.11.5 The TTA may require Maintenance Contractor to remove or uncover such portions of any finished construction work comprising the performance of Maintenance Services as directed by the TTA. After examination by the TTA, Maintenance Contractor shall restore the work to the standards required by this Agreement, the Governmental Approvals and applicable Law. Provided that Maintenance Contractor has complied with the Maintenance QCP, if the work exposed and examined is in conformance with the requirements of this Agreement, the Governmental Approvals and applicable Law, then uncovering, removing and restoring the work shall be at the TTA's expense. If the work exposed or examined is not in conformance with the requirements of this Agreement, the Governmental Approvals and applicable Law or Maintenance Contractor did not comply with the requirements of the Maintenance QCP, then uncovering, removing and restoring the work shall be at Maintenance Contractor's expense.

5.11.6 No action taken by the TTA in the course of any review, inspection or testing will be, or will be deemed to be, a waiver of any of the TTA's rights to oversee the Maintenance Services, to make inspections or to conduct tests, to require remedial work or to exercise any other remedy for Maintenance Contractor's failure to comply with the terms of this Agreement, the Governmental Approvals or applicable Law. The fact that the TTA may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work or relieve or release Maintenance

Contractor from any of its obligations or liabilities under this Agreement, the Governmental Approvals or applicable Law.

6.0 DBE, SUBCONTRACT AND EMPLOYMENT REQUIREMENTS

6.1 Disadvantaged Business Enterprises

Maintenance Contractor shall comply with the TxDOT Disadvantaged Business Enterprise (DBE) program in effect as of the date on which Maintenance NTP1 is issued by the TTA, including undertaking good faith efforts to reach the DBE goals specified in the TxDOT program and maintaining and submitting documentation as required thereunder. The parties anticipate that the TxDOT DBE program in effect on the date of issuance of the Maintenance NTP1 will be substantially similar to the current TxDOT DBE program, a copy of which may be obtained from the TxDOT Business Opportunity Programs Office, 125 E. 11th Street, Austin, Texas 78701. In the event of any change in the DBE program that would materially impact the Maintenance Contractor's cost of compliance, as demonstrated by the Maintenance Contractor to TTA's reasonable satisfaction, TTA shall either: 1) adjust the Contract Price to reflect the cost increase demonstrated by the Contractor as a result of the change in the DBE program; or 2) require compliance with the TxDOT DBE program in effect as of the Proposal Date instead of the program in effect on the date of issuance of the Maintenance NTP1.

Notwithstanding any provision in the TxDOT DBE program to the contrary, Maintenance Contractor shall submit its DBE commitment agreements and good faith efforts documentation within 90 days following issuance of the Maintenance NTP1.

6.2 Civil Rights

Maintenance Contractor and its Subcontractors shall not discriminate on the basis of race, color, national origin or sex in the performance of the Maintenance Services. Maintenance Contractor shall carry out, and shall cause the Subcontractors, to carry out applicable requirements of 49 CFR, Part 21 relating to U.S. DOT-assisted contracts. Failure to carry out these requirements shall constitute a material breach of this Agreement that may result in the termination of the Contract Documents or such other remedy, as TTA deems appropriate.

6.3 Subcontracts

6.3.1 Each instrument evidencing any agreement of Maintenance Contractor with any Subcontractor shall provide that, pursuant to terms in form and substance satisfactory to the TTA: (a) the rights of Maintenance Contractor under such instrument are assigned to TTA contingent only upon written request from the TTA or its successor or assign following default by Maintenance Contractor or termination or expiration of this Agreement, and (b) all warranties (express and implied) of such Subcontractor shall inure to the benefit of the TTA.

6.3.2 Maintenance Contractor shall provide the TTA with a list of all Subcontractors from time to time upon request, shall allow the TTA access to all Subcontracts and records regarding Subcontracts and shall deliver to the TTA, within 10

Days after execution, copies of all Major Subcontracts and, within 10 Days after receipt of a request from the TTA, copies of all other Subcontracts as may be requested.

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

6.3.4 Each Subcontract shall:

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

(b) Require the Subcontractor to carry out its scope of work in accordance with this Agreement, the Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plans.

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

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

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

(f) With respect to any Subcontract which, when aggregated with all Subcontracts between Maintenance Contractor and such Subcontractor for the same Fiscal Year, is in excess of \$100,000: (i) be terminable by the Subcontractor only for cause; and (ii) include an indemnity from the Subcontractor in favor of Maintenance Contractor and the Indemnified Parties against any and all Losses arising out of, related

to or associated with, the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by the Subcontractor or any of its officers, employees, agents or representatives.

(g) Expressly require the Subcontractor to participate in meetings between Maintenance Contractor and the TTA, upon the TTA's request, concerning matters pertaining to such Subcontract or its work, provided that all direction to such Subcontractor shall be provided by Maintenance Contractor, and provided further that nothing in this clause (g) shall limit the authority of the TTA to give such direction or take such action which, in its opinion, is necessary to remove an immediate and present threat to the safety of life or property.

(h) Expressly provide that all Liens, claims and charges of the Subcontractor and its subcontractors at any time shall not attach to any interest of the TTA in the Project or the Final ROW.

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

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

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

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

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

7.0 INSURANCE AND BONDS

7.1 Payment and Performance Bonds

7.1.1 On or before 90 Days after issuance by the TTA of Maintenance NTP1 and as a condition to Final Acceptance under the EDA, Maintenance Contractor shall provide to the TTA, and shall maintain at all times, a Payment Bond and a Performance Bond, in the forms attached as Exhibit B hereto, which shall guarantee the performance of the Maintenance Services and shall also guarantee payment to Persons performing certain work for Maintenance Contractor under this Agreement. Any bond provided in accordance with this Section 7 shall be issued by a surety licensed to do business in the State with a current A.M. Best and Company rating level of A-minus (A-) or better, or as otherwise approved in writing by the TTA, in its sole discretion. The Payment Bond and the Performance Bond shall be cancelable only for non-payment of premium and shall meet all statutory requirements applicable to performance and labor and material payment bonds.

7.1.2 The Payment Bond and the Performance Bond shall each have a term equal or greater to the then-current Maintenance Term; provided that for any Maintenance Term that exceeds 5 years, Maintenance Contractor may provide a Payment Bond and a Performance Bond with a five-year term with renewals of such bonds for the remainder of the Maintenance Term. During each such period, the amount of each bond shall be equal to 75% of the aggregate sum of the annual Maintenance Price for all Segments for all years of the applicable Maintenance Term. Unless the TTA has notified Maintenance Contractor in writing that it will not elect to extend this Agreement for a Second Maintenance Term (or a Third Maintenance Term following a Second Maintenance Term), Maintenance Contractor shall be responsible for obtaining renewal, and adjusting the amount, of the Payment Bond and the Performance Bond and shall provide TTA with evidence of such renewal and adjustment at least 60 Days prior to expiration of the existing bonds. The Surety shall have no obligation to extend or replace the existing bonds.

7.1.3 The TTA shall release the Performance Bond at such time as, and provided that, (i) Maintenance Contractor is in compliance with the terms of the Contract Documents and is not in default thereunder; (ii) no event has occurred that with the giving of notice or passage of time would constitute a default by Maintenance Contractor hereunder or under the Contract Documents; (iii) the Warranties under this Agreement have expired and there is no remaining Warranty work; and (iv) the then-current Maintenance Term has expired without renewal thereof by the TTA or, if the then-current Maintenance Term is the third Maintenance Term, the Third Maintenance Term has expired. The TTA shall release the Payment Bond upon the latest to occur of (x) one year after the expiration of the then-current Maintenance Term without renewal thereof by the TTA or, if the then-current Maintenance Term is the Third Maintenance Term, the Third Maintenance Term; (y) delivery to the TTA of evidence satisfactory to the TTA that all Persons performing the Maintenance Services have been fully paid and (z) delivery to the TTA of unconditional waivers of claims in form and substance satisfactory to the TTA, executed by all of such Persons.

7.1.4 Performance by a surety or a Guarantor of any of the obligations of Maintenance Contractor shall not relieve Maintenance Contractor of any of its obligations hereunder.

7.1.5 In the event any of the bonds required herein for the Second Maintenance Term or Third Maintenance Term become commercially unavailable, Maintenance Contractor may substitute a letter of credit or other form of security for the Maintenance Services acceptable to the TTA.

7.2 Insurance

Maintenance Contractor shall procure and maintain insurance in connection with this Agreement and the performance of Maintenance Services in the manner and as set forth in Section 10 of the EDA, which section is incorporated herein by reference; provided, however, that, subject to Section 3.4.2 above, the specific types of coverage and amounts of coverage shall be in accordance with the TxDOT Standards and not the provisions of such Section 10.

7.3 Premiums

Except for increased premiums that are Maintenance Contractor's responsibility under Section 3.4.2, Maintenance Contractor shall be entitled to reimbursement for the costs of bonds and insurance premiums, as follows:

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

7.3.2 The TTA shall be entitled to any return or retrospective premiums with respect to said bonds and insurance. Maintenance Contractor shall deliver any such funds to the TTA within 10 days following Maintenance Contractor's receipt thereof.

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

7.3.4 Maintenance Contractor shall promptly notify the TTA if it becomes apparent at any time during the Maintenance Term that required bonds or insurance are no longer available or if the premiums for renewals materially increase from the prior rates. In such event Maintenance Contractor shall work with the TTA to find commercially reasonable alternatives to the required coverages that are acceptable to the TTA.

8.0 COMPENSATION

8.1 Payment for Maintenance Services

During the term of this Agreement, in full consideration for the performance by the Maintenance Contractor of its duties and obligations under this Agreement, the TTA shall pay the amounts determined as set forth in Section 8.1.1, as adjusted in accordance with Section 8.1.2 ("Maintenance Price") subject only to such additions to and deductions from the compensation as may be provided for in Section 10. The term "Maintenance Price" as used herein shall initially mean the prorated "yearly maintenance cost" for "year 1" set forth in Exhibit C, for the first Segment of the Project to achieve Final Acceptance. As each Segment is added to the scope of the Maintenance Services, the term "Maintenance Price" shall also mean the yearly maintenance costs set forth on Exhibit C for any additional Segments added to the scope of the Maintenance Services hereunder, as appropriate. The Maintenance Price shall be paid in accordance with this Section 8.1. The Maintenance Price (and the individual components thereof) shall be increased or decreased only by a Change Order issued in accordance with Section 10 or by an amendment to this Agreement. No portion of the Maintenance Price shall be payable on account of services provided (a) prior to issuance of Maintenance NTP1, or (b) after the termination, expiration or non-renewal of the term of this Agreement.

8.1.1 For each Segment, commencing on the date that such Segment is added to the scope of the Maintenance Services in accordance with Section 3.1.1, Maintenance Contractor shall be paid for Maintenance Services provided under this Agreement, a monthly payment equivalent to one-twelfth (1/12) of the "yearly maintenance cost" for the applicable term year of that Segment set forth on Exhibit C. Such amount shall be payable in arrears pursuant to invoices submitted on the first day of each month of the Maintenance Term. The first term year for each Segment, shall be the period commencing on the date that such Segment is added to the scope of the Maintenance Services in accordance with Section 3.1.1 and ending on the subsequent August 31. Thereafter, the second and subsequent term years for such Segment shall be the corresponding September 1 to August 31 periods (to match TTA's Fiscal Year). In the event that the first term year for any Segment is less than a full year, the "yearly maintenance cost" for "year 1" set forth on the applicable sheet in Exhibit C will be a reduced amount, prorated on the basis of actual days. In the event the TTA issues NTP 5 under the EDA, the yearly amounts set forth on sheet 5 of Exhibit C shall be added to the yearly maintenance costs for Segment 2 set forth on sheet 2 of Exhibit C. In the event the TTA fails to exercise its option in NTP1 to have Segments 1, 2, 3 and 4 include an undivided roadbed (base configuration without Alternative No. 4), the yearly amounts set forth on sheets 7 through 10 of Exhibit C shall be added to the yearly maintenance costs for Segments 1 through 4 set forth in sheets 1 through 4 of Exhibit C, respectively. In the event the TTA fails to exercise its option in NTP4 to have Segment 6 include a two lane barrier-divided facility (base configuration without Alternative No. 5), the yearly amounts set forth on sheet 11 of Exhibit C shall be added to the yearly maintenance costs for Segment 6 set forth on sheet 6 of Exhibit C.

8.1.2 The annual Maintenance Price (MP) for each Segment will be escalated or reduced based on the Engineering News Record Construction Cost Index (ENR CCI), commencing on each September 1 during the term of this Agreement (and on the date of commencement of the first term year for the shortened first term for each Segment). The procedure for determining the escalation or reduction shall be as follows:

(a) The ENR CCI for the month in which this Agreement is executed will establish the Base Index (BI); and

(b) The prorated or total annual Maintenance Price for each Segment (Segment MP) for the ensuing term year, whether a "shortened first year" or a full Fiscal Year respectively, shall be escalated or reduced by multiplying the annual Maintenance Price for said Segment, set forth in the Proposal for such year (or prorated annual Maintenance Price in the case of a "shortened first year"), by the ENR CCI for the month immediately preceding the start of the term year for said Segment and dividing such amount by the Base Index.

(c) The formula that reflects the foregoing is:

$$\text{Adjusted MP} = (\text{annual MP for each Segment from Proposal}) \times (\text{ENR CCI})/(\text{BI})$$

8.1.3 The following example of how this Section 8.1 would be implemented is based on the assumption that the initial Maintenance Term will commence at the beginning of the TTA's Fiscal Year, and that Segment X is added to scope of the Maintenance Services 30 months after commencement of the Initial Maintenance Term:

(a) The Maintenance Contractor would receive no payments for such Segment X during the first 30 months of the Initial Maintenance Term.

(b) The total amount payable to Maintenance Contractor for Segment X during year 3 of the Initial Maintenance Term would be 1/2 of the "yearly maintenance costs" for "year 1" set forth on the sheet for Segment X in Exhibit C, as adjusted in accordance with Section 8.1.2 (payable in monthly installments after Segment X is added to the scope of the Maintenance Services, each installment equal to 1/12th of the "yearly maintenance costs" for "year 1" set forth on the sheet for Segment X in Exhibit C, as adjusted).

(c) If the TTA issues Maintenance NTP2 and Maintenance NTP3 and the Agreement is not terminated prior to the expiration of the Third Maintenance Term, the total annual payment due Maintenance Contractor for years 4 through 15 of the term of the Agreement, would equal the "yearly maintenance costs" for "year 2" through "year 13", respectively, as adjusted in accordance with Section 8.1.2 (payable in monthly installments each equal to 1/12th of the "yearly maintenance costs" for each such year set forth on the sheet for Segment X in Exhibit C, as adjusted). Maintenance

Contractor would not be entitled to payment of any portion of the "yearly maintenance costs" for "year 14" and "year 15" set forth on the sheet for Segment X in Exhibit C.

8.2 Invoicing and Payment

8.2.1 Maintenance Contractor shall submit to the TTA, pursuant to Section 8.1, an invoice for Maintenance Services for the preceding month. The invoice shall specify the amount of the Maintenance Services for each Segment, shall show any other amounts owing, and shall include a certification of the invoice by the Maintenance Contractor and the Maintenance QC Manager. The invoice shall be in the form of Exhibit E.

8.2.2 Within 10 Business Days after the TTA's receipt of an invoice, the TTA will review the invoice and all attachments and certificates thereto, and shall notify Maintenance Contractor of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the invoice. Maintenance Contractor may include such disapproved amounts in the next month's invoice after correction of the deficiencies noted by the TTA. All such disapproved amounts shall be deemed in dispute unless otherwise agreed. Within 10 Business Days after the approval by the TTA of an invoice, the TTA shall pay Maintenance Contractor the amount of the invoice approved for payment less any amounts that the TTA is otherwise entitled to withhold. No payment by the TTA shall, at any time, preclude the TTA from showing that such payment was incorrect, or from recovering any money paid in excess of those amounts due hereunder.

8.2.3 Maintenance Contractor shall promptly pay each Subcontractor for Maintenance Services performed, no later than 10 Days after receipt of payment for such Maintenance Services from the TTA, the amount to which such Subcontractor is entitled, less any retainage provided for in the Subcontract, as well as any other offsets and deductions provided in the Subcontract or by Law. Maintenance Contractor further agrees to return retainage payments to each Subcontractor within 10 Days after the Subcontractor's services are satisfactorily completed. For the purpose of this Section 8.2.3, satisfactory completion shall have been accomplished when:

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

(b) the Maintenance Services performed by the Subcontractor have been inspected and approved by the Maintenance QC Manager and the final quantities of the Subcontractor's work have been determined and agreed upon.

The inspection and approval of a Subcontractor's work does not eliminate or impair the Maintenance Contractor's responsibility for the Maintenance Services under this Agreement. Any delay or postponement of payments to Subcontractors from the above-referenced time frames may occur only for good cause following written approval by the TTA. Maintenance Contractor shall, by appropriate agreement with

each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. The TTA shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by Law. Interest on late payments to Subcontractors shall be Maintenance Contractor's responsibility, and shall not be a part of the Maintenance Price.

8.2.4 Failure by the TTA to pay any amount in dispute shall not postpone, alleviate, diminish, release, alter or modify in any respect Maintenance Contractor's obligation to perform under this Agreement and complete all Maintenance Services in accordance with this Agreement, and Maintenance Contractor shall not cease or slow down its performance under this Agreement on account of any such amount or dispute. Any dispute regarding such payment shall be resolved pursuant to Section 15 of this Agreement. Upon resolution of any such dispute, subject to the limitations specified in this Section 8.2, the TTA shall promptly pay to Maintenance Contractor any amount owing. If payment is made after the 90th Day following the proper submission of the invoice, then the payment shall, subject to the limitations specified in this Section 8.2, include interest on the amount owing, from the date that the payment was due (based on the agreement of the Parties or the decision of the judge) until the date of payment, which shall accrue at the rate of the lesser of (i) 12% per annum; and (ii) the maximum rate allowable under applicable Law.

8.3 Taxes

Maintenance Contractor shall pay, prior to delinquency, any and all property taxes and other taxes, fees, charges or levies (not based on income) imposed by a Governmental Entity on Maintenance Contractor which are related to the Maintenance Services; provided, however, that Maintenance Contractor shall not be in breach of this Section 8.3 for failure to make such payments prior to delinquency to the extent that (i) such failure is due to a good faith dispute by Maintenance Contractor as to whether Maintenance Contractor is subject to such taxes or the amount thereof; (ii) Maintenance Contractor seeks expeditiously to resolve such dispute; (iii) such taxes will not become a Lien against the Project and/or the Final ROW; (iv) failure to pay such taxes during the pendency of such dispute shall not adversely affect the Project; and (v) Maintenance Contractor posts such bonds or other security reasonably requested by the TTA.

8.4 Conditional Nature of Payment under Contract Documents

Maintenance Contractor acknowledges and agrees that the TTA's obligations to make any payments under this Agreement or the other Contract Documents, including payments of the Maintenance Price, are expressly conditioned upon the availability of (i) funds from the Project financing; (ii) subject to the Project Finance Documents, funds from operations of the Project; and (iii) other funds obtained by the TTA which are approved and appropriated for payment for the Maintenance Services.

8.5 Liquidated Damages

8.5.1 Maintenance Contractor acknowledges and agrees that because of the unique nature of the Project and the fact that it is an essential part of the highway system of the State, it is impracticable and extremely difficult to ascertain and determine lost toll revenues due to the failure by Maintenance Contractor to meet various requirements of the Maintenance Services, as more particularly described in this Section 8.5, as well as interest and financing costs and charges with respect to amounts which otherwise would have been payable from toll revenues during the period of lane closure. Maintenance Contractor also acknowledges and agrees that it is of critical importance to the TTA and the Project financing that lanes be open to traffic and toll collection each and every Day. Consequently, Maintenance Contractor agrees to pay the TTA the following sums of money as deemed compensation to the TTA for the loss of net toll revenues and any other lost profits or opportunities resulting from Maintenance Contractor's failure to meet the Lane Closure restrictions herein. Maintenance Contractor further acknowledges and agrees that such amounts are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date.

8.5.2 Maintenance Contractor shall pay to the TTA a liquidated amount equal to \$5,000 per Lane Closure per hour (or portion of an hour) with respect to each violation of the traffic operation restrictions set forth in Section 3.3.2 plus the amount set forth in Section 8.5.3; provided, however, that, each Fiscal Year, the \$5000 per Lane Closure per hour amount shall escalate \$200 per Lane Closure per hour as of the first day of each Fiscal Year.

8.5.3 Maintenance Contractor shall pay to the TTA a liquidated amount equal to \$250 per Lane Closure per hour (or portion of an hour) that a Lane Closure occurs in connection with the performance of Maintenance Services; provided, however, that, each Fiscal Year, the \$250 per Lane Closure per hour amount shall escalate \$10 per Lane Closure per hour as of the first day of each Fiscal Year.

8.5.4 Notwithstanding the foregoing, except as provided in any Change Order and provided that Maintenance Contractor otherwise complies with the requirements and procedures set forth in this Agreement with respect to Lane Closures, liquidated damages shall not be assessed for any Lane Closures required in connection with (i) the repair of any damage caused solely and directly by Third Parties, or (ii) single Lane Closures between the hours of 8:00 p.m. and 6:00 a.m.

8.5.5 Liquidated damages shall be payable by Maintenance Contractor to the TTA within 10 Business Days after Maintenance Contractor's receipt of an invoice therefore from the TTA. Interest on such amounts shall accrue at the lesser of (i) 12% per annum; and (ii) the maximum rate allowable under applicable Law following the expiration of such 10 Day period. Alternatively, the TTA may, in its sole discretion, elect to reduce any payments owing or payable by the TTA to Maintenance Contractor by the amount of any liquidated damages owing or payable by Maintenance Contractor to the TTA.

8.6 Claims Against Third Parties

Maintenance Contractor shall not have the authority or responsibility to assert and pursue any and all claims against any Third Party for damage to the Project with respect to which Maintenance Contractor is obligated to repair as part of the Maintenance Services. The TTA shall notify Maintenance Contractor in writing of damage caused by Third Parties to the embankment and cut slopes, drainage facilities, pavement, shoulders, bridges, bridge approach slabs, retaining walls and sound walls.

9.0 WARRANTIES FOR MAINTENANCE SERVICES

9.1 Warranties for Maintenance Services

With respect to all Maintenance Services involving overlays, repairs, replacements, rehabilitations, upgrades, additions or enhancements, performed within 12 months of the expiration or termination of this Agreement, Maintenance Contractor warrants that:

(a) all designs performed pursuant to this Agreement shall conform to all professional engineering and architectural principles generally accepted as standards of the industry in the State at the time the designs are furnished;

(b) materials and equipment furnished under this Agreement shall be new at the time furnished, and subject to normal wear and tear, deterioration and replacement cycles thereafter and of good quality and suitable for the purpose used;

(c) such Maintenance Services shall be free of defects, including design defects, errors, inaccuracies and omissions;

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

(e) such Maintenance Services shall meet all of the requirements of this Agreement, the Governmental Approvals and applicable Law.

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

9.2 Warranty Term

All Warranties on the Maintenance Services described in Section 9.1 shall remain in effect until 1 year after such Maintenance Services are completed and finally accepted by the TTA. If the TTA determines that such Maintenance Services have not met the standards set forth in Section 9.1 at any time during the Warranty period for such Maintenance Services, then Maintenance Contractor shall correct such Maintenance Services as specified below. The Warranties for repaired, replaced or corrected Maintenance Services shall extend beyond the original Warranty period if necessary to provide at least a one year Warranty period following acceptance by the TTA of the repaired, replaced or corrected Maintenance Services, but not to exceed three years after the expiration or termination of this Agreement.

9.3 Implementation of Warranty Work

Within 7 Days of receipt by Maintenance Contractor of notice from the TTA specifying a failure of the Maintenance Services described in Section 9.1 to satisfy the Warranties, Maintenance Contractor and the TTA shall mutually agree when and how Maintenance Contractor shall remedy such failure; provided, however, that in case

of an emergency requiring immediate curative action, Maintenance Contractor shall implement such action as it deems necessary and shall immediately notify the TTA in writing of the emergency. Maintenance Contractor and the TTA shall promptly meet in order to agree on a remedy. If Maintenance Contractor does not use its best efforts to effectuate such remedy within the agreed time, or if Maintenance Contractor and the TTA fail to reach such an agreement within such 7 Day period (or immediately, in the case of emergency conditions), then the TTA shall have the right to perform or have performed by Third Parties the necessary remedy, and the TTA shall, at its option, deduct from any moneys due or to become due Maintenance Contractor and/or obtain reimbursement from Maintenance Contractor for such cost, with interest thereon from the date of the TTA's disbursement until payment is received by the TTA at the lesser of (i) 12% per annum; and (ii) the maximum amount allowable under applicable Law. All costs of repairing, replacing or correcting such Maintenance Services pursuant to the Warranties, including additional testing and inspections, shall be deemed included in the Maintenance Price. Maintenance Contractor shall reimburse the TTA for all expenses, direct and indirect, incurred by the TTA as a result of such Warranty work, including any costs incurred by the TTA for independent quality assurance and/or quality control with respect to the Warranty work, within 10 Days after Maintenance Contractor's receipt of invoices therefor. The procedures, processes, tests, inspections, materials, equipment, machinery, personnel and other actions and items utilized or required under this Agreement with respect to the repair/replacement shall apply equally to any Warranty work. During performance of any Warranty work, Maintenance Contractor shall comply with the traffic operation restrictions set forth in Section 3.3. If Maintenance Contractor violates such restrictions, Maintenance Contractor shall be subject to liquidated damages in accordance with Section 8.5.

9.4 Subcontractor and Extended Warranties

9.4.1 Without in any way derogating Maintenance Contractor's own representations and warranties (including the Warranties under Section 9.1) and other obligations with respect to the Maintenance Services, Maintenance Contractor shall obtain from all Subcontractors and cause to be extended to the TTA appropriate representations, warranties (for periods at least coterminous with the Warranties), guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. Maintenance Contractor shall enforce all such representations, warranties and guarantees on behalf of the TTA. All representations, warranties, guarantees and other obligations of Subcontractors (a) shall be written so as to survive all TTA and Maintenance Contractor inspections, tests and approvals; and (b) shall run directly to and be enforceable by Maintenance Contractor, the TTA and/or their respective successors and assigns. Maintenance Contractor assigns to TTA all of Maintenance Contractor's rights and interest in and to all extended warranties for periods exceeding the Warranty period which are received by Maintenance Contractor from any of its Subcontractors. To the extent that any Subcontractor representation, warranty or guaranty would be voided by reason of Maintenance Contractor's negligence in incorporating material or equipment into the work, Maintenance Contractor shall be responsible for correcting such defect.

9.4.2 Upon receipt from the TTA of notice of a failure of any repair or replacement performed by a Subcontractor to satisfy the requirements under this Agreement, the Governmental Approvals and/or applicable Law, Maintenance Contractor shall enforce or perform any such Subcontractor representation, warranty, guaranty or obligation, in addition to Maintenance Contractor's other obligations hereunder. The TTA's rights under this Section 9.4 shall commence at the time such representation, warranty, guaranty, or obligation is furnished and shall continue until the expiration of the Warranties. Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Maintenance Contractor if such cost is covered by such a Subcontractor representation, warranty, guaranty, or obligation and Maintenance Contractor shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors.

9.4.3 The foregoing provisions concerning Subcontractor warranties are intended to provide the TTA with an additional Person and source in which to seek recourse for Maintenance Services to satisfy the requirements under the Contract Documents, the Governmental Approvals and/or applicable Law. In no event shall the foregoing provisions be interpreted to modify, limit, discharge, release, negate or waive the Warranties or Maintenance Contractor's obligations with respect to the Maintenance Services and Maintenance Contractor shall not be entitled to use the existence of Subcontractor warranties as a defense to Maintenance Contractor's obligations under this Agreement and the other Contract Documents.

9.5 Effect of the Activities By TTA, TxDOT and Developer on Warranties

Maintenance Contractor acknowledges and agrees that the Developer, TxDOT, the TTA and their respective agents may perform certain maintenance work during the period in which the Warranties are in effect and agrees that the Warranties shall apply notwithstanding such activities; provided that, the Warranties shall only apply to the extent the repair, replacement or correction of Maintenance Services is required as a result of Maintenance Contractor's actions or omissions.

9.6 No Limitation on Liability

The Warranties are in addition to all rights and remedies available under this Agreement, applicable Law or in equity, and shall not limit Maintenance Contractor's liability or responsibility imposed by this Agreement or applicable Law with respect to the Maintenance Services, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud.

9.7 Damages for Breach of Warranty

If Maintenance Contractor fails or refuses to satisfy its obligations with respect to the Warranties, then, in addition to the TTA's other rights and remedies hereunder, at Law or in equity, Maintenance Contractor shall be liable for the cost of performance of such obligations by others, with interest thereon at the lesser of (i) 12% per annum; and (ii) the maximum rate allowable by applicable Law.

9.8 Warranty Beneficiaries

In addition to benefiting the TTA, TxDOT and their respective successors and assigns, the Warranties and Subcontractors warranties provided under this Section 9 shall inure to the benefit and shall be directly enforceable by local agencies and Utility Owners, with respect to their facilities.

10.0 CHANGE ORDERS

This Section 10 sets forth the requirements applicable to Change Orders. Maintenance Contractor acknowledges and agrees that the Maintenance Price constitutes full compensation for performance of all of the Maintenance Services, subject only to those limited exceptions specified in this Section 10, and that the TTA is subject to constraints which substantially restrict its ability to increase the Maintenance Price. Maintenance Contractor agrees to provide its best efforts to adjust the scope of Maintenance Services so as to accommodate Change Orders without an increase in the Maintenance Price. Maintenance Contractor unconditionally and irrevocably waives the right to any Claim for a time extension or for any monetary compensation in addition to the Maintenance Price and other compensation specified in this Agreement for the Maintenance Services, except as expressly set forth in this Section 10. To the extent that any other provision of this Agreement expressly provides for a Change Order to be issued, such provision is incorporated into and subject to this Section 10.

10.1 Change Order Definition and Requirements

10.1.1 The term "**Change Order**" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 10. The TTA may issue unilateral Change Orders as specified below in Section 10.2. Change Orders may be requested by Maintenance Contractor only pursuant to Section 10.3. Notwithstanding anything to the contrary contained in this Agreement or any other Contract Document, a Change Order shall not be effective for any purpose unless (i) executed by the TTA, as specified herein, and (ii) funds are available to the TTA from the Project financing or are otherwise appropriated to the TTA, in each case, for such purpose. If funds are not available to the TTA from the Project financing in connection with a particular Change Order, the effectiveness and validity of such Change Order shall be subject to appropriations and, in such event, the work required under the Change Order shall not be required of Maintenance Contractor. Change Orders may be issued for the following purposes (or combination thereof):

- (a) to modify the scope of Maintenance Services;
- (b) to revise a time deadline;
- (c) to revise the Maintenance Price;
- (d) to revise other terms and conditions of the Contract Documents;
- (e) to modify, upgrade or make capital improvements to the Project; and
- (f) to repair and correct any damage to the Project caused solely and directly by Third Parties.

Upon the TTA's approval of the matters set forth in the Change Order form, whether it is initiated by the TTA or Maintenance Contractor, the TTA shall execute such Change Order form indicating approval thereof. The TTA, at its sole discretion, may direct Maintenance Contractor to proceed with the Maintenance Services under a unilateral or directed Change Order with the amount of any such adjustment to be determined in the future.

10.1.2 Before starting to work on any Maintenance Services for which a Change Order is necessary hereunder, Maintenance Contractor shall have received either: (i) written notice to proceed from TTA directing Maintenance Contractor to proceed and stating that it is issued pursuant to this Section 10.1; or (ii) a Change Order for such work signed by the TTA. In the absence of such written notice to proceed or executed Change Order, Maintenance Contractor shall not be required to perform the extra Maintenance Services or be entitled to payment therefor.

10.1.3 Notwithstanding anything to the contrary contained herein and except as agreed to in writing by the TTA, in its sole and absolute discretion, Maintenance Contractor shall not be entitled to a Change Order that results from, relates to, arises out of or is associated with the design and construction of the Project; design defects, omissions, errors or inaccuracies; construction defects or flaws; the materials and supplies used in connection with the construction of the Project; the Development Work; or the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor Group or the Developer Group.

10.2 TTA-Initiated Change Orders

10.2.1 In accordance with the procedures set forth in this Section 10, TTA may, at any time and from time to time, without notice to any Surety or Guarantor, authorize and/or require changes in the Maintenance Services within the general scope of this Agreement. All additions, deductions or changes to the Maintenance Services as directed by Change Orders shall be executed under the conditions of the original Contract Documents.

10.2.2 If the TTA desires to initiate a change in the Maintenance Services or to evaluate whether to initiate a change, the TTA may, at its discretion, issue to Maintenance Contractor a request for quotation. Within 10 Business Days after Maintenance Contractor's receipt of a request for quotation, the TTA and Maintenance Contractor shall consult, at no charge to the TTA, to define the proposed scope of work of the proposed Change Order, the estimated cost and time impacts. Maintenance Contractor shall provide such data and information regarding such matters as requested by the TTA. After such consultation, the TTA shall notify Maintenance Contractor in writing whether TTA (i) wishes to issue a Change Order; (ii) wishes to request Maintenance Contractor to prepare a Change Order form; (iii) wishes to request Maintenance Contractor to modify the Maintenance Services and prepare a Change Order form based on the modified Maintenance Services; or (iv) no longer wishes to issue a Change Order.

10.2.3 If so requested, Maintenance Contractor shall, within 10 Business Days after receipt of the notification by the TTA described in Section 10.2.2, prepare and submit to the TTA for review and approval a Change Order form for the requested change, incorporating and fully reflecting all requests made by the TTA. If Maintenance Contractor determines that it cannot meet the time allowed, Maintenance Contractor shall notify TTA in writing of Maintenance Contractor's proposed deadline for providing the Change Order form, which deadline shall be subject to approval by the TTA. The cost of developing the Change Order form, including any modifications thereto requested by the TTA, shall be borne by Maintenance Contractor and shall not be reimbursable, except that the actual costs of design and engineering work required for preparation of plans or exhibits necessary to the Change Order form shall be included in the Change Order as reimbursable items.

10.2.4 If Maintenance Contractor and the TTA agree that a change in the requirements relating to the Maintenance Services has occurred, but disagree as to whether the change justifies additional compensation or adjustment to the scope of Maintenance Services or disagree as to the amount of any such increase or change, the TTA may, in its sole discretion, order Maintenance Contractor to proceed with the performance of the work in question, notwithstanding such disagreement. Such order may, at the TTA's option, be in the form of: (a) a notice to proceed as described in Section 10.1.2 pending further discussions regarding issuance of a Change Order; or (b) a Change Order directing Maintenance Contractor to proceed with the changed requirements without entitlement to additional compensation, or change in the scope of Maintenance Services. If a Change Order is issued under Section 10.2.4(b), Maintenance Contractor shall have the right to submit the issue to the dispute resolution process as provided in Section 17.

10.2.5 The TTA may issue a Change Order at any time, regardless of whether it has requested a quotation. Any such Change Order shall state that Maintenance Contractor shall be entitled to compensation in accordance with Section 10.6.5 for the additional Maintenance Services required thereby.

10.3 Maintenance Contractor-Initiated Change Orders

10.3.1 Maintenance Contractor may request a Change Order only if (i) Maintenance Contractor could not have reasonably anticipated the circumstances giving rise to the requested Change Order, (ii) Maintenance Contractor could not have avoided the need for a Change Order with the exercise of reasonable diligence and/or with the performance of its obligations under this Agreement, (iii) such Maintenance Services will result in a substantial increase in costs, and (iv) the Change Order is directly and primarily attributable to one or more of the following:

- (a) the occurrence of a Force Majeure Event;
- (b) the occurrence of a TTA-Caused Delay; and
- (c) damage to the Project, to the extent caused by Third Parties.

10.3.2 Maintenance Contractor shall deliver to the TTA written notice stating that an event or situation has occurred within the scope of Section 10.3.1 that Maintenance Contractor believes justifies a Change Order.

10.3.3 Maintenance Contractor shall deliver each such written notice as promptly as possible after the occurrence. If any such written notice is delivered later than 10 Days after Maintenance Contractor first discovered, or should have discovered in the exercise of reasonable prudence, the occurrence which is described therein, Maintenance Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of such notice, and shall be deemed to have waived the right to seek a time extension with respect to any delay which accrued prior to the date of delivery of the written notice. Maintenance Contractor's failure to provide the written notice within 60 Days after Maintenance Contractor first discovered, or should have discovered in the exercise of reasonable prudence, the occurrence of a given event or situation shall preclude Maintenance Contractor from any relief, unless Maintenance Contractor can show, based on clear and convincing evidence, that (a) the TTA was not prejudiced by the lack of the written notice, or (b) the TTA had actual knowledge, prior to the expiration of the 60-Day period, of the event or situation with respect to which Maintenance Contractor believed it was entitled to a Change Order. If Maintenance Contractor is able to satisfy the requirements of clause (a) or clause (b) above, Maintenance Contractor shall be entitled to a Change Order, but shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the written notice, and shall be deemed to have waived the right to seek any time extension with respect to any delay which accrued prior to the date of delivery of the written notice. The following factors, among others, shall be considered in determining whether the TTA has been prejudiced by Maintenance Contractor's failure to provide notice in a timely fashion: (i) the effect of the delay on alternatives available to the TTA; that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within the required time period; and (ii) the impact of the delay on the TTA's ability to obtain and review objective information contemporaneously with the event.

10.3.4 The written notice shall: (a) state the date of occurrence and the nature and circumstances of the occurrence that constitute a change; (b) state the name, title, and activity of each TTA representative knowledgeable of the claimed change; (c) identify, and include copies of, any documents and the substance of any oral communication involved in the claimed change; (d) state the basis for a claim that the work is not required by this Agreement, if applicable; (e) identify particular elements of performance for which additional compensation may be sought under this Section 10; (f) provide an estimate of the time within which a response from the TTA to the written notice is required to minimize cost, delay, or disruption of performance; (g) address price element(s) that have been or may be affected by the claimed change; (h) identify labor or materials, or both, that will be added, deleted or wasted by the claimed change and what equipment will be idled or required; (i) state the delay and disruption in the manner and sequence of performance that has been or will be caused; and (j) state the adjustments to the Maintenance Price estimated due to the claimed change.

10.3.5 Within 15 Business Days after receipt of notice, the TTA will respond in writing to Maintenance Contractor to: (a) confirm that a change has occurred and, when necessary, direct the method and manner of further performance; (b) deny that a change has occurred and, when necessary, direct the method and manner of further performance; or (c) advise Maintenance Contractor that the necessary information has not been submitted to decide which of the above alternatives applies, and indicate the needed information and date by which it is to be received by the TTA for further review. The TTA will respond to such additional information within 10 Business Days of receipt from Maintenance Contractor. Any adjustments made to this Agreement shall not include increased costs or time extensions for delay resulting from Maintenance Contractor's failure to provide requested additional information under this Section 10.3.5.

10.3.6 Maintenance Contractor shall deliver all requests for Change Orders under this Section 10.3 to the TTA within 30 Days after delivery of the written notice described in Section 10.3.2, or such longer period of time as may be reasonably necessary, provided that Maintenance Contractor shall have notified the TTA in writing prior to expiration of said 30-Day period how much additional time is required and obtained the TTA's approval of the same. The TTA may require design and construction costs to be covered by separate Change Order requests. If Maintenance Contractor fails to deliver a complete request for Change Order within the appropriate time period, Maintenance Contractor shall be required to provide a new written notice, as described in Section 10.3.2, before it may submit a request for Change Order and Maintenance Contractor shall not be entitled to increased costs or time extensions resulting from Maintenance Contractor's failure to deliver a complete request for Change Order.

10.3.7 Each request for Change Order shall meet all requirements set forth in Section 10.4; provided that if any such requirements cannot be met due to the nature of the occurrence, Maintenance Contractor shall provide an incomplete Change Order which fills in all information capable of being ascertained and which shall include a list of those Change Order requirements which are not fulfilled together with an explanation satisfactory to the TTA stating why such requirements cannot be met, shall provide such information regarding projected time impact on the Maintenance Services as is requested by the TTA and, in all events, shall include sufficient detail to ascertain the basis for the proposed Change Order and for any ascertainable amounts with respect thereto. Maintenance Contractor shall furnish, when requested by the TTA, such further information and details as may be required to determine the facts or contentions involved. Maintenance Contractor agrees that it shall give the TTA access to any and all of Maintenance Contractor's books, records and other materials relating to the Development Work, and shall cause its Subcontractors to do the same, so that the TTA can investigate the basis for such proposed request for Change Order. Maintenance Contractor shall provide the TTA with a monthly update to each outstanding incomplete request for Change Orders, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the TTA, time expenditures to date and time anticipated for completion of the activities for which the time extension is requested. The TTA may reject

Maintenance Contractor's request at any point in the process. Once a complete request for Change Order is provided, the TTA's failure to respond thereto within 15 Business Days of receipt of the request shall be deemed a rejection of such request. Although the TTA intends to review incomplete Change Orders for the purposes described in Section 10.3.8, the TTA shall have no obligation to review the back-up associated with any request for Change Order until a complete Change Order is provided.

10.3.8 Prior to submission by Maintenance Contractor of any request for a Change Order which is based in whole or in part on any facts alleged in a submittal by any Subcontractor to Maintenance Contractor, Maintenance Contractor shall review all such Subcontractor claims and determine in good faith whether the claims are justified as to both entitlement and amount, and Maintenance Contractor's request for a Change Order shall include only those items which Maintenance Contractor has determined are so justified and which otherwise meet all requirements hereunder for Maintenance Contractor-initiated Change Orders. Maintenance Contractor shall include with its request for Change Order a summary of its analysis of all Subcontractor claims components.

10.3.9 Maintenance Contractor shall initiate each request for a Change Order, after satisfaction of all conditions precedent set forth above, by submitting a Change Order form and supporting documentation to the TTA for its review and approval. If the TTA refuses to issue a Change Order based on Maintenance Contractor's request, Maintenance Contractor shall nevertheless perform all Maintenance Services as required by this Agreement, and shall have the right to submit the claim in accordance with the dispute resolution process as provided in Section 15 hereof.

10.4 Contents of Change Orders

10.4.1 Each Change Order shall (i) be prepared in form acceptable to the TTA, (ii) otherwise meet all applicable requirements of this Section 10 and (iii) be substantially in the form of Exhibit F. Each Change Order form prepared by Maintenance Contractor shall include as attachments, an estimate detailing all consequences of the event, situation or proposed change giving rise to the proposed Change Order and identify (a) if Maintenance Contractor claims that such event, situation or change requires a modification to the Maintenance Services, the proposed modification of the Maintenance Price (if any) occasioned by such change and all facts justifying such modification; (b) the potential effect (if any) of such event, situation or change on Maintenance Contractor's ability to comply with its obligations under this Agreement; and (c) the measures Maintenance Contractor has taken to mitigate to the maximum extent possible, the additional work needing to be performed and the cost of such work, including a review of reasonable alternatives.

10.4.2 For all requests for Change Orders initiated by Maintenance Contractor hereunder, the Change Order form shall include an attachment containing a narrative justification therefor, detailing all causes of the proposed change and making specific reference to all applicable provisions of this Agreement, data and documents, including data and reports proving the necessity and amount of such proposed change.

10.4.3 Each Change Order form shall contain a written representation by Maintenance Contractor that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change.

10.4.4 Each request for Change Order that results from a change in the Development Work under the EDA shall (a) indicate that is initiated pursuant to a change order signed by Developer and Maintenance Contractor in accordance with Section 14.4.5 of the EDA; (b) include any terms and conditions set forth therein; and (c) include a copy of the applicable EDA change order.

10.5 Determination of Terms of Change Orders

10.5.1 The amount of each Change Order, whether established pursuant to Section 10.6.4 or Section 10.6.5, shall be calculated based on, and shall be limited to, the categories of costs and the mark-ups thereto specified in Section 10.6.5.

10.5.2 Any increase in the Maintenance Price pursuant to a Change Order shall exclude: (a) costs caused by the breach, default, fault, act, omission, negligence, recklessness, gross negligence or willful misconduct of any member of the Maintenance Contractor Group; (b) costs to the extent they are unnecessary or could reasonably be avoided by Maintenance Contractor or the other members of the Maintenance Contractor Group, including resequencing, reallocating or redeploying its forces to other portions of the Maintenance Services or to other activities unrelated to the Maintenance Work, including any additional costs reasonably incurred in connection with such resequencing, reallocation or redeployment; and (c) costs for any rejected Maintenance Work which failed to meet the requirements of the Contract Documents, applicable Law or the Governmental Approvals.

10.5.3 Increases in the Maintenance Price resulting from the repair of damage to the extent caused by Third Parties shall exclude the first \$2,000 per incident in costs incurred by or on behalf of Maintenance Contractor in connection with each such repair. In connection with such Change Order, the Maintenance Price shall only be increased by the amount of the Change Order, whether established pursuant Section 10.6.4 or Section 10.6.5, less \$2,000 and less any amount recovered by the TTA from such Third Party or from any insurance coverage (provided that if the TTA recovers from such Third Party or from any insurance coverage, such amounts shall be remitted to Maintenance Contractor up to the amount of the increase in the Maintenance Price).

10.5.4 Maintenance Contractor shall provide a timeline and Maintenance Service schedule analysis in conjunction with any request for a time extension, describing the impact on all affected Maintenance Services and the timing thereof.

10.5.5 Any extension of any time period relating to the performance of Maintenance Services shall exclude any delay to the extent that it (a) was due to the delay, breach, default, fault, act, omission, negligence, recklessness, gross negligence or willful misconduct of any member of the Maintenance Contractor Group, or (b) could

reasonably have been avoided by Maintenance Contractor or the other members of the Maintenance Contractor Group, including by resequencing, reallocating or redeploying its forces to other portions of the Maintenance Services.

10.5.6 To the extent that Maintenance Contractor undertakes any work or makes any payment that is not part of the Maintenance Services, unless Maintenance Contractor has been directed by the TTA in writing to do such work or make such payment, Maintenance Contractor shall be deemed to have performed such work or made such payment voluntarily and shall not be entitled to a Change Order in connection therewith.

10.6 Negotiation of Change Orders

10.6.1 TTA and Maintenance Contractor, on its own behalf and on behalf of its Subcontractors, shall each use its best efforts to negotiate a reasonable cost for each Change Order.

10.6.2 Maintenance Contractor shall submit a detailed cost proposal identifying all categories of costs, supported by documentation satisfactory to the TTA (i) showing all impacts on this Agreement from additions, deletions and modifications to the Maintenance Services shown in the Change Order being priced; and (ii) setting out the proposed costs in such a way that a fair evaluation can be made. The TTA shall have the right to request additional information and clarifications and to require that any or all of the information submitted by Maintenance Contractor in the EPDs be used in evaluating the proposal, as well as all actual cost data subsequently delivered to the TTA in accordance with this Agreement.

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

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

10.6.5 The TTA may, at its discretion, issue a Change Order based on time and materials, thereby instructing Maintenance Contractor to perform the work, indicating expressly the intention to treat the items as changes in the Maintenance Services, and setting forth the kind, character, and limits of the Maintenance Services as far as they can be ascertained, the terms under which changes to the Maintenance Price will be determined and the estimated total change in Maintenance Price anticipated thereunder. Upon final determination of the allowable costs, the TTA shall issue a modified Change Order setting forth the final adjustment to the Maintenance Price. The costs and mark-ups associated with a Change Order described in this

Section 10.6.5, the basis for compensation and the records required to be kept, submitted and retained by Maintenance Contractor shall be in accordance with Section 14.7 of the EDA.

10.6.6 At any time within 4 years after the completion of any Change Order (excluding negotiated, lump-sum Change Orders), the TTA shall have the right to review, audit and adjust the amount of any increase in the Maintenance Price or the value of any reduction in Maintenance Services, taking into account actual cost data furnished to it by Maintenance Contractor or otherwise available to the TTA.

10.7 Retainage for Change Orders

10.7.1 Except as provided below, the TTA shall withhold 5% from each payment to be made to Maintenance Contractor for the Maintenance Services performed under a Change Order (the "**Retainage**").

10.7.2 The Retainage for a particular Change Order shall be held by the TTA until 60 Days after the Maintenance Services performed under such Change Order has been accepted by the TTA, as evidenced by a written notice from the TTA indicating such acceptance. At such time, and provided that Maintenance Contractor is not in breach or default hereunder, the TTA shall release to Maintenance Contractor all Retainage held with respect to such Change Order other than amounts applied to the payment of Losses or which the TTA deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, the cost of any uncompleted Maintenance Services and/or Nonconforming Work. Final payment of such Retainage not applied to Losses shall be made upon Maintenance Contractor's showing, to the TTA's satisfaction, that all such matters have been resolved, including delivery to the TTA of a certification representing and warranting that there are no outstanding claims of Maintenance Contractor or any claims, Liens or stop notices of any Subcontractor or laborer with respect to the Maintenance Services. Notwithstanding the foregoing, no portion of any Retainage shall be released unless and until (a) Maintenance Contractor shall have applied in writing for such release; and (b) such release shall have been approved in writing by each Surety and any Guarantor.

10.7.3 Prior to the release of any Retainage by the TTA pursuant to the terms hereof, such amounts shall be held in the Construction Fund and invested in the manner permitted by, and undertaken pursuant to, the Project Finance Documents. Upon the release of any Retainage, Maintenance Contractor shall additionally be entitled to and shall be paid any interest income that has accrued upon the amounts of Retainage released to Maintenance Contractor.

10.8 Change Orders Under the EDA.

Maintenance Contractor acknowledges that it has reviewed the EDA and provisions impacting this Agreement. Maintenance Contractor expressly agrees to comply with Section 14.4.5 of the EDA.

11.0 REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

11.1 Acknowledgments by Maintenance Contractor

Maintenance Contractor agrees that, to the extent of the Maintenance Services, it has full responsibility for the maintenance, repair and upkeep of the Project. Maintenance Contractor expressly assumes the risk of the design and construction of the Project; design defects, omissions, errors or inaccuracies; construction defects and flaws; the materials and supplies used in connection with the construction of the Project; the Development Work; and the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor Group and the Developer Group and acknowledges and agrees that it has incorporated into the Maintenance Price all costs associated with such risks. Maintenance Contractor expressly agrees that Maintenance Contractor shall not be entitled to (i) assert or use the design and construction of the Project; design defects, omissions, errors or inaccuracies; construction defects and flaws; the materials and supplies used in connection with the construction of the Project; the Development Work; and/or the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor Group and the Developer Group as defenses to the full and complete performance of the Maintenance Services and any other obligation under this Agreement; and (ii) any Change Order resulting from, related to or arising out of the design and construction of the Project; design defects, omissions, errors or inaccuracies; construction defects and flaws; the materials and supplies used in connection with the construction of the Project; the Development Work; and/or the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor Group and the Developer Group. Maintenance Contractor specifically acknowledges and agrees that Maintenance Contractor is not entitled to rely on any documents or information provided by the TTA, including the Reference Documents. Maintenance Contractor understands and agrees that the TTA shall not be responsible or liable in any respect for any Losses suffered by any member of Maintenance Contractor Group by reason of the design and construction of the Project; design defects, omissions, errors or inaccuracies; construction defects or flaws; the materials and supplies used in connection with the construction of the Project; the Development Work; or the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of the Maintenance Contractor Group or the Developer Group.

11.2 DISCLAIMER BY TTA

The TTA does not represent or warrant the design and construction of the Project; the existence or non-existence of any design defects, omissions, errors, or inaccuracies; the existence of any construction defects or flaws; the traffic volume projections or revenue projections; the materials and supplies used in connection with the construction of the Project; the Development Work; the compliance by any member of the Developer Group with the terms of the EDA; or, the utility, suitability, or fitness of the Project for its intended use.

11.3 TTA Representations and Warranties

The TTA represents and warrants to Maintenance Contractor as follows:

(a) The TTA is a division of TXDOT, existing under Chapters 361 and 362 of the Act, and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement and other Contract Documents to which it is a Party.

(b) Each Person executing this Agreement or any other Contract Document on behalf of the TTA to which the TTA is a Party has been or at such time will be duly authorized to execute each such document on behalf of the TTA.

(c) Neither the execution and delivery by the TTA of this Agreement and the other Contract Documents, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which the TTA is a Party or by which it is bound.

(d) There is no action, suit, proceeding, or litigation pending and served on the TTA which challenges the TTA's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Contract Documents to which TTA is a Party, or which challenges the authority of the officials executing this Agreement or the other Contract Documents.

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

11.4 Maintenance Contractor Representations and Warranties

Maintenance Contractor represents, warrants and covenants to the TTA as follows:

(a) Maintenance Contractor has and throughout the term of this Agreement shall maintain all required authority, license status, professional ability, skills and capacity to perform Maintenance Contractor's obligations hereunder and shall perform them in accordance with the requirements contained in this Agreement.

(b) Maintenance Contractor has evaluated the feasibility of performing the Maintenance Services within the deadlines specified herein and for the Maintenance Price, without relying on any matter other than this Agreement, and has reasonable grounds for believing and does believe that such performance is feasible and practicable.

(c) Maintenance Contractor acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws and the conditions and schedules contained in all Governmental Approvals prior to entering into this Agreement. Maintenance Contractor shall comply with the foregoing at its sole cost and expense and without any increase in the Maintenance Price on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in this Agreement. Maintenance Contractor has no reason to believe that any Governmental Approval required to be obtained by Maintenance Contractor will not be granted in due course and, thereafter, remain in effect in order to enable the Maintenance Services to proceed in accordance with this Agreement.

(d) All design and engineering work furnished by Maintenance Contractor shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the State, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Maintenance Services in accordance with this Agreement, the Governmental Approvals and applicable Law and who shall assume professional responsibility for the accuracy and completeness of all design and construction documents prepared or reviewed by them.

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

(f) At all times, including during the course of, and notwithstanding the existence of, any dispute, Maintenance Contractor shall perform as directed by the TTA,

in a diligent manner and without delay, shall abide by the TTA's decision or order, and shall comply with all applicable provisions of this Agreement.

(g) Maintenance Contractor is a limited liability company, duly formed, validly existing and in good standing under the Laws of the State of Texas and is duly qualified to do business and is in good standing under the Laws of the State.

(h) Maintenance Contractor has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the other Contract Documents to which Maintenance Contractor is a Party and to perform each and all of the obligations of Maintenance Contractor provided for herein and therein.

(i) Maintenance Contractor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.

(j) Each person executing this Agreement on behalf of Maintenance Contractor has been or will at such time be duly authorized to execute each such document on behalf of Maintenance Contractor.

(k) Neither the execution and delivery of this Agreement by Maintenance Contractor, nor the compliance by Maintenance Contractor with any provision hereof, nor the consummation of the transactions contemplated hereby by Maintenance Contractor shall violate or conflict with, or result in a breach of, any provisions of the organizational documents of Maintenance Contractor, any other agreements and instruments to which it is a Party or by which it is bound or any Law or regulation applicable to Maintenance Contractor.

(l) No consent or approval of, filing with or notice to any Person is required to be obtained or made by Maintenance Contractor in connection with Maintenance Contractor's execution, delivery and performance of this Agreement to which it is a party, or the consummation of the transactions contemplated hereby or thereby, which, if not obtained or made, would prevent Maintenance Contractor from performing its obligations hereunder or thereunder.

(m) There is no action, suit, proceeding, or litigation pending and served on Maintenance Contractor which challenges Maintenance Contractor's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement or which challenges the authority of Maintenance Contractor official executing this Agreement.

(n) Maintenance Contractor is in compliance with all Laws applicable to Maintenance Contractor or its activities in connection with this Agreement.

(o) The information, statements, certifications and materials set forth in the Proposal are true, complete and accurate in all material respects and are not misleading in any material respect.

(p) In entering into this Agreement, Maintenance Contractor has not relied on any representation, warranty, promise or statement, express or implied, of the TTA, or anyone acting for or on behalf of the TTA, other than as expressly set forth in this Agreement, and that all matters concerning the Maintenance Services and the Project have been or shall be independently verified by Maintenance Contractor, and that Maintenance Contractor has executed this Agreement and has agreed to undertake and complete the Maintenance Services based solely upon Maintenance Contractor's own prior investigations and examinations, or Maintenance Contractor's election not to do so.

12.0 DEFAULT AND REMEDIES

12.1 Maintenance Contractor Defaults

Maintenance Contractor shall be in default under this Agreement upon the occurrence of any one or more of the following events or conditions, following notice and opportunity to cure (if applicable) as specified in Section 12.2:

- (a) An Event of Default under the EDA.
- (b) Maintenance Contractor fails to perform and complete the Maintenance Services in accordance with this Agreement, the Governmental Approvals and applicable Law, or refuses to repair, remove, correct and replace rejected materials, Nonconforming Work or Maintenance Services deemed unacceptable by the TTA.
- (c) Maintenance Contractor fails to maintain the insurance required under Section 7 or fails to provide any Payment Bond or Performance Bond; provided that, the TTA shall not seek recourse against the then-current Performance Bond in the event of Maintenance Contractor's failure to provide a Payment Bond or a Performance Bond for any subsequent Maintenance Term.
- (d) Maintenance Contractor breaches any other covenant, agreement, obligation, term or condition contained in this Agreement which is not otherwise specifically referenced in this Section 12.1.
- (e) Maintenance Contractor assigns or transfers this Agreement or any right or interests herein, except as expressly permitted hereunder.
- (f) Maintenance Contractor fails to discharge or obtain a stay of any final judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate arising out of the prosecution of the Work (provided that, for purposes hereof, posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay).
- (g) Maintenance Contractor fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable Law.
- (h) Maintenance Contractor or any Guarantor is a party to fraud.
- (i) Maintenance Contractor or any Guarantor breaches any representation or warranty contained in this Agreement and/or any representation or warranty made by Maintenance Contractor or any Guarantor in this Agreement or any certificate, invoice, schedule, instrument or other document delivered pursuant to this Agreement shall have been false, inaccurate or misleading when made.

(j) Maintenance Contractor in any of its reports to be submitted to the TTA hereunder, which misrepresent or omit in any material respect any material information required to be included therein.

(k) Maintenance Contractor efforts to commence a voluntary case seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; efforts to seek the appointment of a trustee, receiver, liquidator, custodian or other similar official to protect a substantial part of Maintenance Contractor's assets; filing of an answer admitting the material allegations of a petition filed against Maintenance Contractor in any involuntary case commenced against Maintenance Contractor; consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case commenced against Maintenance Contractor; making of an assignment for the benefit of creditors; failure, be unable, or admit in writing the inability generally, to pay Maintenance Contractor's debts as they become due; or shall take any action to authorize any of the foregoing.

(l) An involuntary case shall be commenced against Maintenance Contractor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Maintenance Contractor or Maintenance Contractor's debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Maintenance Contractor or any substantial part of Maintenance Contractor's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Maintenance Contractor in good faith or shall remain undismissed and unstayed for a period of 90 Days.

(m) Guarantor, or any Person which provided a guaranty to the TTA with respect to this Agreement, the Maintenance Services and/or the Project revokes or attempts to revoke its obligations under its guaranty or otherwise takes the position that such instrument is no longer in full force and effect.

(n) Maintenance Contractor fails to furnish skilled and experienced personnel for the Project or fails to remove an individual from the Project as requested by the TTA pursuant to Section 5.2.3.

12.2 Maintenance Contractor Cure Periods

Maintenance Contractor shall be entitled to 15 Days written notice and opportunity to cure any of the defaults described in clauses (b), (c), (d), (f), (g), (i) and (n) above (other than any default which by its nature cannot be cured); provided that if such default is capable of cure but, by its nature, cannot be cured within 15 Days (as determined by the TTA), such additional period of time shall be allowed as may be reasonably necessary to cure the default so long as Maintenance Contractor commences such cure within such 15 Day period and thereafter diligently prosecutes such cure to completion. Notwithstanding the foregoing, the TTA may, without notice and without awaiting lapse of the period to cure any default, in the event of existence of

a condition on or affecting the Project which the TTA believes poses an immediate and imminent danger to public health or safety, rectify the dangerous condition at Maintenance Contractor's cost, and so long as the TTA undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose the TTA to any liability to Maintenance Contractor and shall not entitle Maintenance Contractor to any other remedy, it being acknowledged that the State has a paramount public interest in providing and maintaining safe public use of and access to the Project. The TTA's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

12.3 TTA Remedies

12.3.1 If any default described in Section 12.1 is not subject to cure or is not cured within the period (if any) specified in Section 12.2, the TTA may declare that an "**Event of Default**" has occurred. The declaration of an Event of Default shall be in writing and given to Maintenance Contractor, with a copy to Surety. If an Event of Default shall occur, then Maintenance Contractor shall have the following obligations:

(a) The TTA may terminate this Agreement or a portion thereof, including Maintenance Contractor's rights of entry upon, possession and control of the Project, in which case, the provisions of Section 12.5 shall apply; and/or

(b) If requested by the TTA, Maintenance Contractor shall withdraw from the Final ROW and shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any member of Maintenance Contractor Group in the performance of the Maintenance Services as the TTA may direct; and/or

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

(d) Maintenance Contractor shall assign to the TTA the Subcontracts requested by the TTA and Maintenance Contractor shall terminate, at its sole cost, those Subcontracts not assigned to the TTA; and/or

(e) The TTA may deduct from any amounts payable by the TTA to Maintenance Contractor such amounts payable by Maintenance Contractor to the TTA, including liquidated damages or other damages payable to the TTA under the Contract Documents.

12.3.2 If an Event of Default occurs, Maintenance Contractor shall be liable to the TTA, in addition to any other Losses intended to be covered by liquidated damages payable hereunder, for all costs incurred by the TTA or any Person acting on the TTA's behalf in completing the Maintenance Services. Upon the occurrence of an

Event of Default, the TTA shall be entitled to withhold all or any portion of further payments to Maintenance Contractor until such time as the TTA is able to determine how much, if any, remains payable to Maintenance Contractor and the amount payable by Maintenance Contractor to the TTA in connection with the TTA's damages and claims against members of the Maintenance Contractor Group or as otherwise required by the Contract Documents. Promptly upon such determination, the TTA shall notify Maintenance Contractor in writing of the amount, if any, that Maintenance Contractor shall pay the TTA or the TTA shall pay Maintenance Contractor the applicable amount. All costs and charges incurred by the TTA, including attorneys' fees and costs, together with the cost of completing the Maintenance Services under the Contract Documents, will be deducted from any amounts due or which may become due Maintenance Contractor. If such costs and charges exceed the amounts of the Maintenance Price which would have been payable by the TTA to Maintenance Contractor under this Agreement, then Maintenance Contractor, its Surety(ies) and the Guarantor shall, immediately upon the TTA's demand, pay to the TTA the amount of such excess.

12.3.3 If an Event of Default shall occur, then the TTA shall have the following rights without further notice and without waiving or releasing Maintenance Contractor from any obligations:

(a) The TTA shall have the right, but shall not be obligated, to pay such amount and/or perform such act as may then be required.

(b) The TTA may appropriate any or all materials and equipment on the Site as may be suitable and acceptable and may, subject to the rights of Surety if the TTA elects to proceed against the performance bond, enter into an agreement for the completion of this Agreement according to the terms and provisions thereof with another contractor or the Surety, or use such other methods as may be required for the completion of this Agreement, including completion of the Development Work by the TTA.

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

(d) All costs and charges incurred by the TTA, together with the cost of completing the Development Work, will be deducted from any monies due or that may become due Maintenance Contractor and the Surety. If such expense exceeds the sum which would be available from such monies, then Maintenance Contractor and the Surety shall be liable and shall pay to Maintenance Contractor the amount of such

excess plus interest thereon at the lesser of (i) 12% per annum; and (ii) the maximum rate allowable under applicable Law.

12.3.4 Each right and remedy of the TTA hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the TTA of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by the TTA of any or all other such rights or remedies.

12.3.5 Maintenance Contractor and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a breach or default by Maintenance Contractor hereunder or by the TTA's declaration of an Event of Default, or by actions taken by the TTA under this Section 17.2

12.3.6 In the event that this Agreement is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Article 13.

12.4 TTA Default

12.4.1 Each of the following events shall constitute a default by the TTA:

(a) The TTA's failure to observe or perform any material covenant, agreement, term or condition required to be observed or performed by the TTA under this Agreement.

(b) An event of default by TTA occurs under any other Contract Document.

12.4.2 Except as set forth in Section 12.4.1(a), Maintenance Contractor acknowledges that no act or omission of any Governmental Entity, other than the TTA shall constitute a TTA Default hereunder.

12.5 TTA Cure Periods

The TTA shall be entitled to 15 Days notice and opportunity to cure any of the events described in clause (a) of Section 12.4.1 (other than any default which by its nature cannot be cured); provided that if such default is capable of cure but, by its nature, cannot be cured within 15 Days, such additional period of time shall be allowed as may be reasonably necessary to cure the default so long as TTA commences such cure within such 15 Day period and thereafter diligently prosecutes such cure to completion. If any default described in Section 12.4 is not subject to cure or is not cured within the period (if any) specified in this Section 12.5, Maintenance Contractor may declare that a "TTA Default" has occurred. The declaration of a TTA Default shall be in writing and given to the TTA.

12.6 Maintenance Contractor Remedies

Upon the occurrence and during the continuance of a TTA Default, Maintenance Contractor may exercise any rights and remedies available to Maintenance Contractor at Law or under this Agreement or the other Contract Documents, to the extent the rights and remedies under this Agreement or other Contract Documents are consistent with applicable Law; provided, however:

(a) Maintenance Contractor shall have no right to seek or obtain equitable relief against the TTA arising out of a TTA Default except (i) writ of mandamus to the extent available, (ii) equitable remedies regarding monetary compensation, including quantum meruit; and (iii) equitable remedies available in the case of a TTA Default resulting from action by the TTA which is manifestly outside the TTA's legal authority.

(b) The TTA's obligations and liabilities are strictly limited to those set forth in this Agreement, and Maintenance Contractor shall not have and may not assert, and waives, any claim against the TTA based on any supposed or alleged duties arising in tort.

(c) The TTA's payment of any monetary damages or other compensation or award hereunder shall be conditioned upon express legislative authorization and appropriation of the payment to Maintenance Contractor of such damages, compensation or award.

(d) Maintenance Contractor shall have no right to unilaterally terminate this Agreement or any other Contract Documents.

12.7 Limitation of Liability

Under no circumstances shall either party be entitled to, and both parties expressly waive all right to recover, any remote, speculative or incidental consequential damages (including lost profits and loss of revenues) arising out of breach of the Agreement by the other party (whether such claim arises in contract, negligence or other tort, or any other theory of law), except to the extent covered by insurance; provided that this limitation shall not affect the rights and remedies of the parties expressly set forth in the Contract Documents, such as the right to collect Liquidated Damages and the right to indemnity. Furthermore, nothing in this Section 12.7 shall limit the TTA's rights or remedies if Maintenance Contractor fails or refuses to satisfy its obligations with respect to the Warranties.

13.0 TERMINATION FOR CONVENIENCE

13.1 Termination for Public Convenience

13.1.1 The TTA reserves the right, at any time, without cost and in its sole and absolute discretion, to terminate all or a portion of the Maintenance Services for convenience by providing written notice of such termination to Maintenance Contractor. In the event of such termination, the TTA shall pay Maintenance Contractor any amounts owing Maintenance Contractor with respect to Maintenance Services performed to the date of termination, and the reasonable costs incurred by Maintenance Contractor in terminating any Subcontracts not assigned to the TTA.

13.1.2 The TTA shall notify Maintenance Contractor of its decision to terminate by delivering to Maintenance Contractor a written notice of termination specifying the extent of termination and its effective date. Termination or partial termination of this Agreement shall not relieve or release Maintenance Contractor or any Surety of its obligation for any claims arising out of the Maintenance Services performed as of the effective date of the termination or thereafter, in the case of a partial termination.

13.2 Termination Closing

In addition to the performance by Maintenance Contractor of the Maintenance Transfer Protocol and procedures set forth in Exhibit D, on the effective date of the termination of this Agreement or upon expiration of a Maintenance Term without extension thereof by the TTA, Maintenance Contractor shall deliver to TTA:

- (a) Any reports then required be delivered pursuant to the Maintenance Reporting Plan or otherwise required by this Agreement;
- (b) Subcontracts and other agreements which TTA agrees in writing to assume in accordance with Section 13.4; and,
- (c) Possession and control of the Project in the condition Maintenance Contractor is required to maintain at that time under this Agreement.

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

After receipt of a notice of termination for convenience, and except as otherwise directed in writing by the TTA, Maintenance Contractor shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 13:

- (a) Stop Maintenance Services as specified in the notice;
- (b) Place no further Subcontracts, except as necessary to complete the continued portion of the Maintenance Services, if any, or for mitigation of damages;

(c) Terminate all Subcontracts to the extent they relate to the Maintenance Services terminated except to the extent that continuation of the Subcontract is necessary in order to mitigate damages;

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

(e) Settle all outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of the TTA;

(f) Transfer title and deliver to the TTA or its designee, in the manner, at the times, and as and to the extent, if any, directed by the TTA, (i) fabricated or unfabricated parts, work in process, completed work, supplies and other material produced or acquired for the Maintenance Services subject to the notice of termination, and (ii) all design and construction documents related to the Project and/or the Maintenance Services and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to the TTA under this Agreement;

(g) Complete performance in accordance with this Agreement of all Maintenance Services not terminated;

(h) Take all action that may be necessary, or that the TTA may direct, for the protection and preservation of (i) the Project, (ii) the Maintenance Services previously performed, and (iii) the equipment, machinery, materials and property related to the Project, the Maintenance Services and this Agreement that is in the possession of Maintenance Contractor and in which the TTA has or may acquire an interest; and

(i) Subject to the approval of the TTA, use its best efforts to sell, in a manner, at the times and at the price or prices at to the extent directed or authorized by the TTA, any property of the types referred to in subsection (i) of clause (f); provided, however, that Maintenance Contractor (i) is not required to extend credit to any purchaser, and (ii) may acquire the property under the conditions prescribed and at prices approved by the TTA. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the TTA under this Agreement or paid in any other manner directed by the TTA.

13.4 Disposition of Collateral Agreements

13.4.1 Not later than 60 Days prior to the effective date of termination under Section 13.1, Maintenance Contractor shall assemble at its offices in the State and make available for the TTA's review at such offices, at any time or times during normal business hours, all contracts, Subcontracts and other agreements and

amendments thereof, which are in effect and pertain in any way to the performance of Maintenance Services.

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

13.4.3 On the effective date of termination (a) Maintenance Contractor and the TTA shall execute and deliver a written assignment and assumption agreement with respect to any such contracts, Subcontracts and other agreements that the TTA elects, in its sole and absolute discretion, to assume; and (b) Maintenance Contractor shall deliver to the TTA true and complete copies of all such assigned and assumed contracts, Subcontracts and other agreements, including all amendments thereof.

13.4.4 TTA's assumption of any such contracts and agreements shall pertain only to obligations arising from and after the effective date of termination.

13.5 Settlement Process

13.5.1 After receipt of a notice of termination, Maintenance Contractor shall submit a final termination settlement proposal to the TTA in the form and with the certification prescribed by the TTA. Maintenance Contractor shall submit the proposal promptly, but no later than 90 Days from the effective date of termination unless Maintenance Contractor has requested a time extension in writing within such 90 Day period and the TTA has agreed in writing to such extension. If Maintenance Contractor fails to submit the proposal within the time allowed, the TTA may conclusively determine, on the basis of information available to it, the amount, if any, due Maintenance Contractor because of the termination and shall pay Maintenance Contractor the amount so determined.

13.5.2 Subject to the provisions of Section 13.5.1, Maintenance Contractor and the TTA may agree upon the amount to be paid to Maintenance Contractor by reason of the total or partial termination of Maintenance Services pursuant to this Section 13. Such negotiated settlement may include a reasonable allowance for profit solely on Maintenance Services that has been completed and accepted by the TTA as of the termination date. Such agreed amount, exclusive of settlement costs, shall not exceed the Maintenance Price less the amount of payments previously made to Maintenance Contractor and less the portions of the Maintenance Price related to Maintenance Services not terminated. Upon determination of the settlement amount, Maintenance Contractor will be paid the agreed amount and this Agreement will be amended accordingly to implement the partial or total termination. The TTA's execution and delivery of any settlement agreement shall not affect any of its rights under this Agreement with respect to completed Maintenance Services, relieve Maintenance Contractor from its obligations with respect thereto, including Warranties, or affect the TTA's rights under the Performance Bond and/or the Payment Bond.

13.5.3 If Maintenance Contractor and the TTA fail to agree, as provided in this Section 13.5, upon the amount to be paid to Maintenance Contractor by reason of the termination of Maintenance Services pursuant to this Section 13, the amount payable shall be determined by the dispute resolution process in accordance with Section 15.

13.5.4 The amount otherwise due Maintenance Contractor under this Section 13 shall be reduced by (a) all unliquidated advances or other payments made to Maintenance Contractor with respect to any portion of the Maintenance Services or this Agreement that has been terminated, (b) the amount of any claim which the TTA may have against any member of Maintenance Contractor Group in connection with this Agreement; (c) the amount of any Losses suffered by any Indemnified Party as a result of the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any member of Maintenance Contractor Group; (d) any existing or threatened claims, Liens and stop notices relating to the Project; (e) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by Maintenance Contractor or sold, pursuant to the provisions of this Section 13, and not otherwise recovered by or credited to the TTA; (f) in the case of a termination resulting from or arising out of an Event of Default, the amount of any Losses suffered or incurred by any member of the Indemnified Parties arising out of, associated with or relating to the Event of Default and any other amounts for which Maintenance Contractor is obligated under Section 12; and (g) any amounts due or payable by Maintenance Contractor to the TTA, plus any interest accrued thereon under the terms of this Agreement.

13.6 Preservation of Records

Unless otherwise provided for in this Agreement or by applicable Law, Maintenance Contractor shall, from the effective date of termination until the expiration of 5 years after final settlement under this Agreement, preserve and make available to the TTA at no cost to the TTA and at all reasonable times, all of its books, records, documents and other evidence relating to the costs and expenses of Maintenance Contractor under this Agreement and relating to the Maintenance Services terminated hereunder, or, to the extent approved by the TTA, photographs, micrographs, or other authentic reproductions thereof.

13.7 Right to Stop Work for Failure to Make Undisputed Payment

Maintenance Contractor shall have the right to stop work in the event of failure by the TTA to make an undisputed payment within 30 Days of the date due hereunder, but Maintenance Contractor shall not have the right to terminate this Agreement.

14.0 INDEMNIFICATION; RELEASES

14.1 Indemnification by Maintenance Contractor

14.1.1 MAINTENANCE CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD EACH OF THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL LOSSES ARISING OUT OF, RELATING TO OR RESULTING FROM:

(A) THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT OR ANY OTHER CONTRACT DOCUMENTS BY ANY MEMBER OF MAINTENANCE CONTRACTOR GROUP.

(B) THE FAILURE OR ALLEGED FAILURE BY ANY MEMBER OF MAINTENANCE CONTRACTOR GROUP TO COMPLY WITH ANY APPLICABLE LAWS OR THE GOVERNMENTAL APPROVALS.

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

(D) THE ACTS, OMISSIONS, NEGLIGENCE, RECKLESSNESS, WILLFUL MISCONDUCT, BREACH OF CONTRACT OR LAW BY ANY MEMBER OF MAINTENANCE CONTRACTOR GROUP.

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

(F) ANY AND ALL STOP NOTICES AND/OR LIENS FILED IN CONNECTION WITH THE MAINTENANCE SERVICES, INCLUDING ALL EXPENSES AND ATTORNEYS' FEES AND COSTS INCURRED IN DISCHARGING ANY STOP NOTICE OR LIEN.

(G) ANY RELEASE(S) OF HAZARDOUS MATERIALS ATTRIBUTABLE TO THE ACTS, OMISSIONS, NEGLIGENCE, WILLFUL MISCONDUCT, RECKLESSNESS OR BREACH OF CONTRACT OR LAW BY ANY MEMBER OF MAINTENANCE CONTRACTOR GROUP; OR (II) THE RELEASE OF ANY HAZARDOUS MATERIALS CAUSED TO BE PRESENT ON THE FINAL ROW OR ELSEWHERE BY ANY MEMBER OF MAINTENANCE CONTRACTOR GROUP REGARDLESS OF WHETHER THOSE ARE THE PERSONS WHO ACTUALLY CAUSED THE RELEASE AND REGARDLESS OF THE CAUSE FOR THE RELEASE.

(H) THE CLAIM OR ASSERTION BY ANY CONTRACTOR OF INCONVENIENCE, DISRUPTION, DELAY OR LOSS CAUSED BY INTERFERENCE BY ANY MEMBER OF MAINTENANCE CONTRACTOR GROUP WITH OR HINDERING THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY OTHER CONTRACTORS RELATING TO THE PROJECT, ANY OTHER PROJECT.

(I) ANY CLAIM, DEMAND, SUIT, PROCEEDING, INVESTIGATION OR CAUSE OF ACTION BROUGHT AGAINST THE TTA AND/OR THE INDEMNIFIED PARTIES IN CONNECTION WITH THE PROJECT OR THE MAINTENANCE SERVICES.

THE FOREGOING INDEMNITY SHALL ALSO INURE TO THE BENEFIT OF UTILITY OWNERS AND GOVERNMENTAL ENTITIES, TO THE EXTENT THAT ANY MEMBER OF THE MAINTENANCE CONTRACTOR GROUP PERFORMS WORK ON, NEAR OR ADJACENT TO THEIR RESPECTIVE FACILITIES.

14.1.2 SUBJECT TO SECTION 14.2, MAINTENANCE CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD EACH OF THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL LOSSES RESULTING FROM ERRORS, OMISSIONS, INCONSISTENCIES OR OTHER DEFECTS IN THE DESIGN OR CONSTRUCTION, REGARDLESS OF WHETHER SUCH ERRORS, OMISSIONS, INCONSISTENCIES OR DEFECTS WERE ALSO INCLUDED IN THE SCHEMATIC DESIGN OR REFERENCE DOCUMENTS.

14.2 Restrictions

Maintenance Contractor's indemnity obligations hereunder shall not extend to any Losses incurred by an Indemnified Party to the extent caused by:

- (a) the negligence, reckless or willful misconduct, bad faith or fraud of such Indemnified Party, or
- (b) the TTA's material breach of any of its material obligations under this Agreement.

Such indemnities shall not be construed to affect any extension of statutes of limitations otherwise applicable to causes of action for breach of contract held by the TTA against Maintenance Contractor.

14.3 Employee Claims

In claims by an employee of any member of Maintenance Contractor Group, the indemnification obligation under Section 14.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Maintenance Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

14.4 Release

To the maximum extent permitted by Law, Maintenance Contractor hereby releases, discharges and acquits each of the Indemnified Parties from any and all duty and obligation to (i) cause construction, equipping, operations, maintenance, policing, renewal, replacement, traffic management or other management of or for the Project, the Final ROW, by any member of Maintenance Contractor Group, and (ii) satisfy the standards and requirements set forth in this Agreement, the Governmental Approvals and/or applicable Law, except for the TTA's duties and responsibilities expressly set forth in the Contract Documents.

14.5 No Relief from Responsibility

No rights of the TTA described in this Section 14, no exercise or failure to exercise such rights, no failure of the TTA to meet any particular standard of care in the exercise of such rights and no certificates or statements by the TTA regarding completion or acceptance shall:

(a) relieve Maintenance Contractor of its responsibility for the selection and the competent performance of all members of Maintenance Contractor Group;

(b) relieve Maintenance Contractor of any of its obligations or liabilities under the Contract Documents;

(c) be deemed or construed to waive any of the TTA's rights and remedies under the Contract Documents; or

(d) be deemed or construed as any kind of representation or warranty, express or implied, by the TTA.

14.6 Right to Rely

Notwithstanding the provisions of Section 14.4 and Section 14.5, (a) Maintenance Contractor shall be entitled to rely on specific written deviations the TTA gives under this Agreement, (b) the TTA is not relieved from any liability arising out of a material misrepresentation under any written statement the TTA knowingly and intentionally delivers, and (c) the TTA is not relieved from its obligations under this Agreement.

14.7 Survival

The indemnifications and releases under this Agreement, including under this Section 14 shall survive the expiration or termination of this Agreement.

14.8 Waivers, Releases and Limitations on Liability

Unless stated expressly to the contrary in any such provision, to the extent that waivers, releases or limitations on liability or remedies are expressed in the Agreement, then all such waivers, releases or limitations shall apply as written, notwithstanding the fault, negligence or strict liability of the party to be released or whose liability is limited, and shall extend to the officers, employees and related entities of such party.

15.0 INCORPORATION BY REFERENCE

The following provisions of the EDA shall be incorporated herein by reference and shall apply to this Agreement, the Maintenance Services and the Parties; provided, however, that to the extent the provisions described below apply to "Developer", "Development Work", "Developer Group", "Development Price", or words of similar import, such provisions shall apply to Maintenance Contractor, Maintenance Services, Maintenance Contractor Group and Maintenance Price, as applicable:

- (a) Section 2.3 of the EDA with regard to partnering.
- (b) Section 14.7 of the EDA concerning time and materials Change Orders.
- (c) Sections 19.2-19.3 of the EDA with regard to employees, Subcontractors and Subcontracts.
- (d) Section 25 of the EDA with regard to dispute resolution.
- (e) Section 26 of the EDA with regard to documents and records.
- (f) Section 28 of the EDA with regard to governing law and other matters.
- (g) Section 29 of the EDA with regard to miscellaneous provisions.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

MAINTENANCE

CONTRACTOR: **Lone Star Infrastructure,**
a Texas limited liability company

By: _____
Name: _____
Title: _____

TTA: **TEXAS TURNPIKE AUTHORITY,**
a division of the Texas Department of
Transportation

By: _____
Name: Michael W. Behrens, P.E.
Title: Executive Director, TxDOT