

## EXHIBIT 1

### ABBREVIATIONS AND DEFINITIONS

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

<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ACORD</b>	Association for Cooperative Operations Research and Development
<b>ALJ</b>	Administrative Law Judge
<b>AMRL</b>	AASHTO Materials Reference Laboratory
<b>ASTM</b>	American Society of Testing and Materials
<b>BI</b>	Base Index
<b>CADD</b>	Computer Aided Drafting and Design
<b>CERCLA</b>	Comprehensive Environmental Response Compensation and Liability Act
<b>CFR</b>	Code of Federal Regulations
<b>COMA</b>	Comprehensive Maintenance Agreement
<b>CPI</b>	Consumer Price Index
<b>CRP</b>	Community Rehabilitation Programs
<b>DBA</b>	Design-Build Agreement
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DRP</b>	Dispute Resolution Procedure
<b>ECMP</b>	Environmental Compliance and Mitigation Plan
<b>ENR CCI</b>	Engineering News Record Construction Cost Index
<b>EPD</b>	Escrowed Proposal Documents
<b>ETCS</b>	Electronic Toll Collection System
<b>FHWA</b>	Federal Highway Administration
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GET</b>	Guardrail End Treatment
<b>HMMP</b>	Hazardous Materials Management Plan
<b>HUB</b>	Historically Underutilized Business
<b>IRI</b>	International Roughness Index
<b>ISO</b>	International Standards Organization
<b>ITP</b>	Instructions to Proposers
<b>ITS</b>	Intelligent Transportation System
<b>IVHS</b>	Intelligent Vehicle Highway System
<b>MMP</b>	Maintenance Management Plan
<b>MP</b>	Maintenance Price
<b>MPH</b>	Miles Per Hour
<b>MS4</b>	Municipal Separate Storm Sewer System
<b>NAVD</b>	North American Vertical Datum

<b>NBIS</b>	National Bridge Inspection Standards
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NTP</b>	Notice to Proceed
<b>OSHA</b>	Occupational Safety and Health Administration
<b>PCO</b>	Potential Change Order
<b>PMIS</b>	Pavement Management Information System
<b>PUAA</b>	Project Utility Adjustment Agreement
<b>QC</b>	Quality Control
<b>QCP</b>	Quality Control Plan
<b>QMP</b>	Quality Management Plan
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>ROW</b>	Right of Way
<b>SH</b>	State Highway
<b>TIBH</b>	Texas Industries for the Blind and Handicapped
<b>TMP</b>	Traffic Management Plan
<b>TMUTCD</b>	Texas Manual on Uniform Traffic Control Devices
<b>TxDOT</b>	Texas Department of Transportation
<b>TxMAP</b>	Texas Maintenance Assessment Program
<b>UAAA</b>	Utility Adjustment Agreement Amendment
<b>USFWS</b>	United States Fish and Wildlife Service
<b>VES</b>	Violation Enforcement System

**Additional Properties** means any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the Schematic ROW, that may be acquired in connection with the Project, including (a) the DB Contractor-Designated ROW, and (b) any additional real property outside of the Schematic ROW that must be acquired due to (i) a TxDOT-Directed Change issued under the Design-Build Agreement or (ii) a Change Order resulting from a Necessary Basic Configuration Change, subject to TxDOT's reasonable determination that the property is necessary. The term "Additional Properties" shall include any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs DB Contractor to acquire for the Project. The term "Additional Properties" specifically excludes: (i) Replacement Utility Property Interests and (ii) any temporary easements or other real property interests that DB Contractor may deem necessary or advisable to acquire, at its own cost and expense, for work space, contractor lay-down areas, material storage areas, borrow sites, or other convenience of DB Contractor. For purposes of clarity, "Additional Properties" excludes Replacement Utility Property Interests

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

**Affiliate(s)** means:

- (a) any shareholder, member, partner or joint venture member of Maintenance Contractor,
- (b) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Maintenance Contractor, or any of its respective shareholders, members, partners or joint venture members; and
- (c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Maintenance Contractor, (ii) any of the shareholders, members, partners or joint venture members of Maintenance Contractor; or (iii) any Affiliate of Maintenance Contractor under clause (b) of this definition.

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

**Asset Condition Score** means the score (from one to five) assigned by Maintenance Contractor following Maintenance Contractor’s Audit Inspection, which records, for each Maintenance Element, Component and overall, for all of the Auditable Sections audited in any quarter, the extent to which Maintenance Contractor has met the Baseline Condition Score thresholds for each measurement record according to the criteria set forth in Attachment 1 to Exhibit 2 to the Comprehensive Maintenance Agreement.

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

**Audit Inspection** means a detailed inspection of the specified proportion of Auditable Sections undertaken quarterly by Maintenance Contractor as part of the Maintenance Services in accordance with Section 0240 of Exhibit 2 to the Comprehensive Maintenance Agreement to establish an Asset Condition Score for each Maintenance Element and verify compliance with the Performance Requirements.

**Authority** means the North Texas Tollway Authority.

**Authorized Representative(s)** has the meaning set forth in Section 18.5.1 of the Comprehensive Maintenance Agreement.

**Base Index** has the meaning set forth in Section 8.1.3.1(a) of the Comprehensive Maintenance Agreement.

**Baseline Condition Score** means the Asset Condition Scores determined by TxDOT as detailed in Section 0240 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Base Scope Schematic** shall mean the base scope schematic plans for the Project included in the Reference Information Documents.

**Business Day(s)** means day(s) on which TxDOT is officially open for business.

**Capital Asset Replacement Work** means the Maintenance Services that involve removal, replacement, rehabilitation, restoration or major repair of the Maintenance Elements or any portion thereof in order to meet requirements of the approved Maintenance Management Plan or to meet the Performance Requirements where they cannot be achieved by means of routine or preventive maintenance, as further described in Section 3.3 of the Comprehensive Maintenance Agreement and Section 0150 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Capital Asset Replacement Work Submittal** means the submittal described in Section 3.3.2 of the Comprehensive Maintenance Agreement and 0150 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Change in Law** means:

- (a) Enactment, adoption, modification, repeal or other change in any Law that occurs after the Proposal Due Date, including any change in the judicial or administrative interpretation of any Law; or
- (b) Adoption of any new Law, which in each case is materially inconsistent with Laws in effect on the Proposal Due Date.

The term "**Change in Law**" excludes:

- (i) Any such change in or new Law which was passed or adopted but not yet effective as of the Proposal Due Date; and
- (ii) Any change in or new Law relating to Maintenance Contractor's general business operations, including licensing and registration fees, income taxes, gross receipts taxes, social security, Medicare, unemployment and other payroll-related taxes.

**Change Order(s)** means a written order issued by TxDOT to Maintenance Contractor delineating changes in the Maintenance Services within the general scope of the Comprehensive Maintenance Agreement Documents or in the terms and conditions of the COMA Documents in accordance with Section 10 of the Comprehensive Maintenance Agreement and establishing, if appropriate, an adjustment to the Maintenance Price or a time extension.

**Chief Executive Officer of Maintenance Contractor** means the chief executive officer, president or other senior officer of Maintenance Contractor, or the governing body of Maintenance Contractor in each case having authority to negotiate and resolve a Dispute with the Executive Director and bind Maintenance Contractor by his or her decision in regard to such Dispute.

**Claim(s)** means: (a) a demand by Maintenance Contractor, which is or potentially could be disputed by TxDOT, for a time extension under the COMA Documents or payment of money or damages from TxDOT to Maintenance Contractor or (b) a demand by TxDOT, which is or

potentially could be disputed by Maintenance Contractor, for payment of money or damages from Maintenance Contractor to TxDOT.

**Code** means the Texas Transportation Code, including specifically Chapter 223.

**Component** means each of those Maintenance Element Categories listed as a “Component” in Tables 2 and 3 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Comprehensive Maintenance Agreement** or **COMA** means that certain Comprehensive Maintenance Agreement executed by TxDOT and Maintenance Contractor providing for Maintenance Contractor to perform, at TxDOT’s sole option, certain Maintenance Services for the Project, to which this Exhibit 1 is attached, including any and all amendments thereto.

**Comprehensive Maintenance Agreement Documents** or **COMA Documents** has the meaning set forth in Section 1.2.1 of the Comprehensive Maintenance Agreement.

**Construction Documents** means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of Maintenance Services under the terms of the COMA.

**Cost and Schedule Proposal** means Maintenance Contractor’s proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with Section 10.2.1 of the Comprehensive Maintenance Agreement.

**CPI** means “Consumer Price Index U.S. City Averages for all Urban Consumers, All Items” (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics.

**Cure Period** has the meaning set forth in Section 0230 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Customer Groups** has the meaning set forth in Section 3.2.4 of the Technical Provisions.

**Day(s)** or **day(s)** means calendar days unless otherwise expressly specified.

**DB Contractor** means [\_\_\_\_\_], together with its successors and assigns.

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

**DB Contractor Event of Default** means Event of Default defined under the DBA.

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

**DBA Documents** has the meaning set forth in Section 1.2 of the Design-Build Agreement.

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

- (a) A hazard, nuisance or other risk to public or worker health or safety, including the health and safety of users of the Project;
- (b) A structural deterioration of the affected Maintenance Element or any other part of the Project affected by it;
- (c) Damage to the property or equipment of TxDOT or a third party;
- (d) Damage to the environment; or
- (e) Failure of the Maintenance Element to meet a Performance Requirement set forth in the column headed "Breach or Failure to Meet Minimum Performance Requirement" in Attachment 1 to Exhibit 2 to the Comprehensive Maintenance Agreement.

**Defect Hazard Noncompliance Event** means any failure to meet a minimum Performance Requirement set forth in Table 1-1 of Attachment 1 to Exhibit 2 to the Comprehensive Maintenance Agreement for which the Maintenance Contractor may be assessed Noncompliance Points pursuant to Section 19 of the Comprehensive Maintenance Agreement.

**Defense and Indemnification Procedures** has the meaning set forth in Section 15.9 of the Comprehensive Maintenance Agreement.

**Design-Build Agreement (DBA)** has the meaning set forth in Recital I of the Comprehensive Maintenance Agreement.

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

**Deviation(s)** means a no-cost change in the Maintenance Services or other requirements of the COMA Documents issued in writing by TxDOT's Authorized Representative or his/her designee under Section 10.12 of the Comprehensive Maintenance Agreement, including any no-cost change, deviation, modification, alteration or exception from the Maintenance Specifications.

**Directive Letter** has the meaning set forth in Section 10.1.1.2 of the Comprehensive Maintenance Agreement.

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

**Draw Request(s)** means a Draw Request and Certificate in the form of Exhibit 11 to the Comprehensive Maintenance Agreement.

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

**Electronic Toll Collection System (ETCS)** means the roadside, all-electronic tolling collection system for the Project and all associated infrastructure.

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

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

**ENR Construction Cost Index** means the 12-month "Construction Cost Index" published by Engineering News-Record, Two Penn Plaza, 9th Floor, New York, NY 10121.

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

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

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) Health and safety of employees and other persons; and
- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

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

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.), as amended;
- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 et seq.), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 et seq.), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 et seq.);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, et seq.), as amended;
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, et. seq.), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 et seq.), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 et seq.), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.);
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 et seq.), as amended;



- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 et seq.), as amended;
- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 et seq.), as amended;
- (xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Project Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know-Act);
- (xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);
- (xxi) The Texas Water Code;
- (xxii) The Texas Parks and Wildlife Code;
- (xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);
- (xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and
- (xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Act).

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

**Escrowed Proposal Documents** or **EPDs** has the meaning set forth in Section 17.1 of the Comprehensive Maintenance Agreement.

**Event of Default** has the meaning set forth in Section 12.3.1 of the Comprehensive Maintenance Agreement.

**Exchange Act** means 15 U.S.C. § 78a et seq., as amended.

**Executive Director** means the Executive Director of TxDOT.

**Final Acceptance** means the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the Design-Build Agreement.

**Final Payment** means the last payment made under the Comprehensive Maintenance Agreement.

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

- (a) Any earthquake, tornado, hurricane (Category 3 and higher) or other natural disaster that (i) causes direct physical damage to the Project and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway Administrator, unless such damage is caused by the DB Contractor's action or inaction or the DB Contractor's means and methods of construction;
- (b) Any epidemic in the Dallas-Fort Worth Metropolitan Statistical Area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) Any Change in Law which (i) requires Maintenance Contractor to obtain a new major State or federal environmental approval not previously required for the Project, (ii) results in an increase in Maintenance Contractor's costs directly attributable to the Change in Law of at least \$500,000, or (iii) specifically targets the Project or Maintenance Contractor;
- (e) Any spill of Hazardous Material by a third party which occurs after Maintenance NTP1 and is required to be reported to a Governmental Entity, and which renders use of the roadway or construction area unsafe absent assessment, containment, and/or remediation, and does not result from DB Contractor's failure to exercise reasonable efforts to protect the Site from third parties;
- (f) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Maintenance Services, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any member of the Maintenance Contractor-Related Entities; and
- (g) Total failure of a bridge such that it requires replacement, except to the extent arising out of, related to or caused by, the act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any Maintenance Contractor Related-Entity or DB Contractor-Related Entity.

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

- (i) Any fire or other physical destruction or damage, or delay, to the Project which (A) occurs by action of the elements, including lightning, explosion, drought, rain,

flood, snow, storm, except as specified in clause (a) above, or (B) is caused by third parties, except as specified in clause (c), (e) or (g) above;

- (ii) Any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iii) The suspension, termination, interruption, denial or failure to obtain, nonrenewal or change in any Governmental Approval, except for any such matter falling within the scope of clause (d) or clause (f) above;
- (iv) Any delay or cost risk for which coverage is to be provided through insurance required under the Comprehensive Maintenance Agreement or by Law; and
- (v) Any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (g) above.

**General Inspection(s)** means an inspection of Maintenance Elements to identify Defects and assess asset condition. Results of a General Inspection shall be used to develop or update the Schedule for Capital Asset Replacement Work, to maintain asset condition and service levels, and to develop programs of maintenance and renewal work to minimize the effect of Maintenance Services on Users.

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

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

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

**Governmental Entity/Entities** means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than TxDOT, in each case having jurisdiction over the party, the Project or, the Maintenance Services.

**Guaranteed Obligations** has the meaning set forth in the Guaranty.

**Guarantor** means each of the entities which provided a guarantee in the form of Exhibit 9 to the Comprehensive Maintenance Agreement of some or all of the obligations of Maintenance Contractor under the Comprehensive Maintenance Agreement.

**Guaranty** means each guarantee executed by a Guarantor guaranteeing some or all of the obligations of Maintenance Contractor under the Comprehensive Maintenance Agreement.

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

- (a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);
- (b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (d) Any flammable substances or explosives;
- (e) Any radioactive materials;
- (f) Any asbestos or asbestos-containing materials;
- (g) Any lead and lead-based paint;
- (h) Any radon or radon gas;
- (i) Any methane gas or similar gaseous materials;
- (j) Any urea formaldehyde foam insulation;

- (k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
- (l) Pesticides;
- (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment; and
- (n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

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

**Hazardous Materials Management Plan** means the plan prepared by Maintenance Contractor for Hazardous Materials Management both within and outside the Project ROW, as more particularly described in Section 0260 of Exhibit 2 to the Comprehensive Maintenance Agreement.

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

**Incident Management Plan** means the Maintenance Contractor's plan for detection and response to incidents or emergencies pursuant to Section 0140 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Indemnified Party(ies)** means TXDOT, the State, the Texas Transportation Commission, the Authority, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

**Initial Maintenance Term** has the meaning set forth in Section 4.1 of the Comprehensive Maintenance Agreement.

**Initial Maintenance Term Commencement Date** has the meaning set forth in Section 4.1 of the Comprehensive Maintenance Agreement.

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

**Lane Rental Charges** has the meaning set forth in Section 12.4.1 of the Comprehensive Maintenance Agreement.

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

**Lead Maintenance Firm** means [\_\_\_\_\_] *[Insert name]*, a [\_\_\_\_\_] *[Insert entity type]*.

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

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

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

**Lowest Volume Times** shall mean the period from 10:30 p.m. to 6:00 a.m (Monday to Friday) and all hours Sunday, except in each case for the specific hours of restrictions during Major Events and Major Holidays as described in Attachment 6 to Exhibit 2.

**Maintenance Communication Plan** has the meaning set forth in Section 0190 of the Maintenance Specification.

**Maintenance Contractor** means [\_\_\_\_\_] together with its successors and assigns.

**Maintenance Contractor Default** has the meaning set forth in Section 12.1 of the Comprehensive Maintenance Agreement.

**Maintenance Contractor-Related Entity** means: (a) Maintenance Contractor, (b) Maintenance Contractor's partners, joint venturers and/or members, (c) Subcontractors (including the Lead

Maintenance Firm (if any) and Suppliers), (d) any other Persons performing any of the Maintenance Services, (e) any other Persons for whom Maintenance Contractor may be legally or contractually responsible, and (f) the employees, agents, officers, directors, members, managers, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

**Maintenance Contractor Release of Hazardous Materials** means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the actions, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any Maintenance Contractor-Related Entity; (b) Release(s) of Hazardous Materials caused to be present on, in or under the Site or elsewhere by any Maintenance Contractor-Related Entity, regardless of whether those are the persons who actually caused the Release and regardless of the cause; or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Maintenance Contractor-Related Entity in violation of the requirements of the COMA Documents or any applicable Law or Governmental Approval.

**Maintenance Document Management Plan** has the meaning set forth in Section 0210 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Maintenance Element(s)** means any of the elements of the Project set forth in Attachment 2 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Maintenance Element Category(ies)** means any of the categories of Maintenance Elements set forth in Attachment 2 of Exhibit 2 to the Comprehensive Maintenance Agreement. (“Components” as used in Tables 2 and 3 of Attachment 1 to the Comprehensive Maintenance Agreement refers to the Maintenance Element Categories listed in such tables.)

**Maintenance Management Plan** means the plan prepared by Maintenance Contractor and approved by TxDOT as set forth in Section 5.5 of the Comprehensive Maintenance Agreement.

**Maintenance Management System** has the meaning set forth in Section 0160 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Maintenance Manager** means the Maintenance Contractor’s manager who is responsible for overseeing and performing the Maintenance Services in accordance with the COMA, as described more fully in Exhibit 2 to the Comprehensive Maintenance Agreement.

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

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

**Maintenance NTP3** means a written notice issued by TxDOT to Maintenance Contractor authorizing Maintenance Contractor to proceed with the Maintenance Services for the Third Maintenance Term and establishing the date of commencement of the Third Maintenance Term.

**Maintenance Payment Bond** means the payment bond delivered by Maintenance Contractor in the form attached to the Comprehensive Maintenance Agreement as Exhibit 7 to the Comprehensive Maintenance Agreement.

**Maintenance Performance Bond** means the performance bond delivered by Maintenance Contractor in the form attached to the Comprehensive Maintenance Agreement as Exhibit 6 to the Comprehensive Maintenance Agreement.

**Maintenance Period** means the period starting at the commencement of Comprehensive Maintenance Agreement and ending at the end of the Maintenance Term.

**Maintenance Price** or **MP** has the meaning set forth in Section 8.1.1 of the Comprehensive Maintenance Agreement.

**Maintenance Quality Manager** has the meaning set forth in Section 0170 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Maintenance Record(s)** means all documents, data and records, written or electronic, in all media, in connection with maintenance of the Project including (a) all inspection and inventory records, whether generated by DB Contractor, Maintenance Contractor or a third party, (b) any communication to and/or from Maintenance Contractor and TxDOT, DB Contractor or a third party, and (c) any information system (as may be introduced or amended by TxDOT from time to time) in connection with maintenance of the Project that TxDOT requires Maintenance Contractor to use or operate.

**Maintenance Safety Plan** has the meaning set forth in Section 0180 of of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Maintenance Services** means all of the services and obligations required to be performed by Maintenance Contractor under the COMA Documents, including all required maintenance, repairs, rehabilitation and replacements of the Project, including Capital Asset Replacement Work and Incident management.

**Maintenance Services Deliverables Schedule** has the meaning set forth in Section 0220 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Maintenance Services Quality Control Plan or Maintenance Services QCP** has the meaning set forth in Section 0170 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Maintenance Specification** means Exhibit 2 to the Comprehensive Maintenance Agreement.

**Maintenance Term** means the Initial Maintenance Term, Second Maintenance Term or Third Maintenance Term, as appropriate.

**Maintenance Transition** means the terms, conditions, requirements and procedures governing the conditions in which Maintenance Contractor is to deliver the Project upon expiration or termination of the Comprehensive Maintenance Agreement, as set forth in Section 0200 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**Maintenance Transition Plan** has the meaning set forth in Section 3.7 of the Comprehensive Maintenance Agreement.



**Major Events** means the list of major regional events described in Attachment 6 to Exhibit 2.

**Major Holidays** means the list of holidays described in Attachment 6 to Exhibit 2.

**Major Subcontract** means a Subcontract in excess of \$250,000.

**Major Subcontractor** means a Subcontractor whose contract with the Maintenance Contractor is a Major Subcontract.

**Noncompliance Event** means any Maintenance Contractor breach or failure to meet the minimum performance requirements as set forth in Attachment 1 to Exhibit 2 to the Comprehensive Maintenance Agreement.

**Noncompliance Points** means the points that may be assessed for certain breaches or failures to perform by Maintenance Contractor, as set forth in Attachment 1 to Exhibit 2 to the Comprehensive Maintenance Agreement.

**Nonconforming Work** means Maintenance Services that do not conform to the requirements of the COMA Documents, the Governmental Approvals or applicable Law.

**Non-Maintained Element(s)** means traffic signals and lighting systems that are maintained by local Governmental Entities, ITS equipment and software, and the Electronic Toll Collection System.

**Notice of Partial Termination for Convenience** means written notice issued by TxDOT to DB Contractor terminating part of the Maintenance Services of Maintenance Contractor for convenience under Section 14.1 of the Comprehensive Maintenance Agreement.

**Notice of Termination for Convenience** means written notice issued by TxDOT to DB Contractor terminating the Maintenance Services of Maintenance Contractor for convenience under Section 14.1 of the Comprehensive Maintenance Agreement.

**Off-Peak Times** means the period from 9:00 A.M. to 3:30 P.M. and 7:00 P.M. to 10:30 P.M. (Monday to Friday) and all hours Saturday, except in each case for the specific hours of restrictions during Major Events and Major Holidays as described in Attachment 6 to Exhibit 2.

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

**Option Work Exhibits** means Option Work exhibits depicting the Option 1, Option 2 and Option 3 work included in the Reference Information Documents and described in Section 1.2.2 of the Technical Provisions.

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

**PCO Notice** has the meaning set forth in Section 10.3.2.3 of the Comprehensive Maintenance Agreement.

**Peak Times** means (a) the period from 6:00 A.M. to 9:00 A.M. and from 3:30 P.M. to 7:00 P.M., Monday through Friday, and (b) the specific hours of restrictions during Major Events and Major Holidays as described in Attachment 6 to Exhibit 2.

**Performance Requirement(s)** means, for each Maintenance Element in connection with the Maintenance Services, the “Minimum Performance Requirements” set forth in Attachment 1 to Exhibit 2 to the Comprehensive Maintenance Agreement.

**Person(s)** means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

**Plan or Plans** means (only where capitalized) contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Maintenance Services to be done.

**Project** has the meaning set forth in Recital B to the Comprehensive Maintenance Agreement.

**Project ROW** means the Schematic ROW and the Additional Properties, but excluding therefrom any portion of the Schematic ROW eliminated from the Project by a Change Order under the Design-Build Agreement.

**Proposal** means DB Contractor’s response to the RFP.

**Proposal Commitments** has the meaning set forth in Exhibit 3 to the Comprehensive Maintenance Agreement.

**Proposal Due Date** means [January 20], 2015, the deadline for submission of the Proposal to TxDOT.

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

**Public Information Act** means Tex. Gov’t Code Ann. ch. 555, as amended.

**Quarterly Noncompliance Events Report** has the meaning set forth in Section 19.2.1.3 of the Comprehensive Maintenance Agreement.

**Recognized Environmental Condition** has the meaning set forth in ASTM E-1527-05.

**Record Drawings** means construction drawings and related documentation revised to show significant changes made during Maintenance Contractor’s construction processes; usually based on marked-up final design documents furnished by Maintenance Contractor; also known as as-built plans.

**Reference Information Documents** means those documents listed in Exhibit 14 to the Comprehensive Maintenance Agreement. Except as expressly provided in the COMA Documents, the Reference Information Documents are not considered COMA Documents and were provided to Maintenance Contractor for informational purposes only and without representation or warranty by TxDOT.

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

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

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

**Renewal Work** means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element of a type that is not normally included as an annually recurring cost in highway maintenance and repair budgets.

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

**Request for Change Order** means a written notice issued by DB Contractor to TxDOT under Section 10.3.2.5 of the Comprehensive Maintenance Agreement, advising TxDOT that DB Contractor seeks a Change Order.

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

**Request for Partnering** has the meaning set forth in Section 10.3.2.2 of the Comprehensive Maintenance Agreement.

**Request for Proposals (RFP)** has the meaning set forth in Recital E of the Comprehensive Maintenance Agreement.

**Request for Qualification (RFQ)** has the meaning set forth in Recital C of the Comprehensive Maintenance Agreement.

**Rules** means Sections 27.1-27.9 of Title 43, Texas Administrative Code.

**Schedule Activity(ies)** means the smallest division of the Maintenance Services at each WBS level to be tracked in the Maintenance Services Deliverables Schedule.

**Schematic ROW** means any real property (which term is inclusive of all estates and interests in real property), as well as improvements and fixtures, within the proposed ROW lines established on the Base Scope Schematic and Option Work Exhibits, as such limits may be adjusted from time to time in accordance with the COMA Documents. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

**Second Maintenance Term** has the meaning set forth in Section 4.2.1 of the Comprehensive Maintenance Agreement.

**Service Line** means a utility line, up to and including the meter, that connects to a main line and services individuals, businesses and other entities.

**Site** means Schematic ROW, Additional Properties, Replacement Utility Property Interests, and any temporary rights or interests that DB Contractor or Maintenance Contractor may acquire at its own cost and expense in connection with the Project.

**Specialist Inspection(s)** means an inspection requiring specialist qualifications or equipment as specified in Section 0230 of the Maintenance Specification.

**State** means the State of Texas.

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

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

**Substantial Completion** means the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.1.1 of the Design-Build Agreement, as and when confirmed by TxDOT's issuance of a certificate in accordance with Section 20.1.1 of the Design-Build Agreement.

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

**Surety(ies)** means each properly licensed surety company, insurance company or other Person approved by TxDOT, which has issued any Maintenance Payment Bond or Maintenance Performance Bond.

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

**Technical Provisions** means the project-specific technical provisions entitled “Technical Provisions for State Highway 360 Project” included in the DBA Documents, and all exhibits and attachments thereto, as such document may be supplemented, amended and restated or otherwise modified from time to time in accordance with the terms of the Design-Build Agreement.

**Termination for Convenience** means a termination pursuant to Section 14.1 of the Comprehensive Maintenance Agreement.

**Third Maintenance Term** has the meaning set forth in Section 4.3.1 of the Comprehensive Maintenance Agreement.

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

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

**Time and Materials Change Order** means a Change Order issued in accordance with Section 10.7 of the Comprehensive Maintenance Agreement.

**Traffic Management Plan** means the plan prepared by Maintenance Contractor for the management of traffic as described in Section 1120 of Exhibit 2 to the Comprehensive Maintenance Agreement.

**TxDOT** means the Texas Department of Transportation, and any entity succeeding to the powers, authorities and responsibilities of TxDOT invoked by or under the COMA Documents.

**TxDOT-Directed Change(s)** means any changes in the scope of the Maintenance Services or terms and conditions of the Comprehensive Maintenance Agreement Documents (including changes in the standards applicable to the Maintenance Services), which TxDOT has directed DB Contractor to perform as described in Section 10.2 of the Comprehensive Maintenance Agreement.

**TxDOT’s Recoverable Costs** means:

- (a) The costs of any assistance, action, activity or Maintenance Services undertaken by TxDOT which Maintenance Contractor is liable for or is to reimburse under the terms of the COMA Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of

TXDOT staff and employees performing such action, activity or Maintenance Services; plus

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

**Uncured Noncompliance Points** means Noncompliance Points assessed on account of breaches or failures that remain uncured.

**Unplanned Capital Maintenance** means Maintenance Services consisting of replacement or reconstruction of an asset that, at the Effective Date the Maintenance Contractor does not anticipate carrying out during the term of the COMA.

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

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

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

**Utility Adjustment(s)** means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term "**Utility Adjustment**" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project ROW, the foregoing

disposition for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the foregoing disposition for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

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

**Warranty(ies)** has the meaning set forth in Section 9.1 of the Comprehensive Maintenance Agreement.

**Warranty Period** has the meaning set forth in Section 9.2.1 of the Comprehensive Maintenance Agreement.

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**EXHIBIT 2**  
**MAINTENANCE SPECIFICATION**

(Attached)



**EXHIBIT 3**

**MAINTENANCE CONTRACTOR'S PROPOSAL COMMITMENTS**

Comment No.	Proposal Location	Proposal Commitment

**EXHIBIT 4**  
**MAINTENANCE PRICE**

(To be inserted from Proposal)

**EXHIBIT 5**

**JOB TRAINING AND SMALL BUSINESS OPPORTUNITY PLAN**

(Attached)

**EXHIBIT 6**

**FORM OF MAINTENANCE PERFORMANCE BOND**

**SH 360 Project**

Bond No. \_\_\_\_\_

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to \_\_\_\_\_, a \_\_\_\_\_ (“Principal”), a Comprehensive Maintenance Agreement for the SH 360 Project, duly executed and delivered as of \_\_\_\_\_, 20\_\_ (the “COMA”), on the terms and conditions set forth therein; and

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

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

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

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

1. The COMA Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the COMA.
2. This Bond specifically guarantees the performance of each and every obligation of Principal under the COMA Documents, as they may be amended and supplemented, including but not limited to its liability for payment in full of all damages owing under Section 5.4.7 or 5.4.8 of the COMA, Noncompliance Charges owing under Section 12.3 of the COMA, Lane Rental Charges owing under Section 12.5 of the COMA, and any other damages owing as specified in the COMA Documents, but not to exceed the Bonded Sum.
3. The guarantees contained herein shall survive the expiration or termination of the Maintenance Term with respect to those obligations of Principal under the COMA Documents which survive such expiration or termination.
4. Whenever Principal shall be, and is declared by Obligee to be, in default under the COMA Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

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- a. Arrange for the Principal to perform and complete the COMA; or
- b. Complete the Project in accordance with the terms and conditions of the COMA Documents then in effect, through its agents or through independent contractors; or
- c. Obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Maintenance Services, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the COMA, and pay to the Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Maintenance Price for the applicable Maintenance Term incurred by the Obligee resulting from the Principal's default; or
- d. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances (i) after investigation, determine the amount for which it may be liable to the Obligee and, promptly after the amount is determined, tender payment therefor to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefor.

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

6. After the Obligee has terminated the Principal's right to complete the COMA, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the COMA, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the COMA. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Maintenance Price for the applicable Maintenance Term to mitigation costs and damages on the COMA, Surety is obligated without duplication for:

- a. The responsibilities of the Principal for correction of defective Maintenance Services and completion of the Maintenance Services;
- b. Actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and
- c. All damages owing under Section 5.4.7 or 5.4.8 of the COMA, Noncompliance Charges owing under Section 12.3 of the COMA, Lane Rental Charges owing under Section 12.5 of the COMA, and any other damages owing as specified in the COMA.

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

8. In no event shall the term of this bond be beyond the end of the [Initial] [Second] [Third] Maintenance Term without the express written consent of the Surety. Surety will have no obligation to extend or replace this bond for additional periods of time. Failure of the Surety to extend this bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of \_\_\_\_\_, 201[\_\_]

Principal:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

\_\_\_\_\_  
or secretary attest

By: \_\_\_\_\_  
Name  
Title:  
Address:

**EXHIBIT 7**

**FORM OF MAINTENANCE PAYMENT BOND**

**SH 360 Project**

Bond No. \_\_\_\_\_

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to \_\_\_\_\_, a \_\_\_\_\_ (“Principal”), a Comprehensive Maintenance Agreement for the SH 360 Project, duly executed and delivered as of \_\_\_\_\_, 20\_\_ (the “COMA”), on the terms and conditions set forth therein; and

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

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

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

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

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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5. In no event shall the term of this bond be beyond the [Initial] [Second] [Third] Maintenance Term without the express written consent of the Surety. Surety will have no obligation to extend or replace this bond for additional periods of time. Failure of the Surety to extend this bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of \_\_\_\_\_, 201[\_\_\_].

Principal:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

By: \_\_\_\_\_  
Name  
Title:  
Address:



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**EXHIBIT 8**

**Reserved**

## EXHIBIT 9

### FORM OF GUARANTY

THIS GUARANTY (this "Guaranty") is made as of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

### R E C I T A L S

A. \_\_\_\_\_, as maintenance contractor ("Maintenance Contractor"), and TxDOT are parties to that certain Comprehensive Maintenance Agreement of even date herewith ("Comprehensive Maintenance Agreement") pursuant to which the Maintenance Contractor has agreed to perform, among other things, the Maintenance Services in respect of the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Comprehensive Maintenance Agreement.

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

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

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

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

2. **Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against the Maintenance Contractor. If any payment made by the Maintenance Contractor or

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

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

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

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

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

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

#### **4. Liability of Guarantor.**

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

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

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of the Maintenance Contractor, if and as permitted by the Maintenance Contract, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the COMA Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than infeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the COMA Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the COMA Documents or any agreement or instrument executed pursuant thereto;

(iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or existence of the Maintenance Contractor; (iv) any defenses, set-offs or counterclaims that the Maintenance Contractor may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

**5. Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against the Maintenance Contractor or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the COMA Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, the Maintenance Contractor or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against the Maintenance Contractor by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of the Maintenance Contractor under any of the COMA Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except any notice TxDOT may give under Section 12.3 of the Comprehensive Maintenance Agreement, but without diminishing TxDOT's exercise of its rights pursuant to Section 12.2.2 of the Comprehensive Maintenance Agreement; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of the Maintenance Contractor, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all guaranty and suretyship defenses under applicable law.

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

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

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

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

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

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

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

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

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

a. it is a \_\_\_\_\_ duly ~~[organized]~~**[formed]**, validly existing, and in good standing under the laws of the State of \_\_\_\_\_ and qualified to do business and is in good standing under the laws of the State of Texas;

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

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

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

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) ~~[the certificate of incorporation or by-laws]~~**[certificate of limited partnership or partnership agreement]**~~[certificate of formation or limited liability company agreement]~~ of Guarantor, (2) any judgment, decree, order, contract,

agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

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

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

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

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

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

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

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

**12. Severability.** If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than

voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

**13. Notices.** Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone to the addresses set forth below (or to such other address as may from time to time be specified in writing by such Person:

If to TxDOT: Texas Department of Transportation  
7600 Chevy Chase Drive, Bldg. 2, Suite 400  
Austin, Texas 78752  
Attention: Mr. Tony Payberah, P.E.  
Telephone: (214) 319-6537  
Facsimile: (214) 320-6117

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

If to Guarantor: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Telecopy: \_\_\_\_\_

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

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

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

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



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

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

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

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

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

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

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

**21. Defenses.** Guarantor shall be entitled to the benefit of all defenses available to the Maintenance Contractor under the Comprehensive Maintenance Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of the Contractor and any other defense to formation of the Contract, and (c) defenses available

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to the Maintenance Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except any notice TxDOT may give under Section 12.3 of the Comprehensive Maintenance Agreement, without diminishing any rights TxDOT may exercise pursuant to Section 12.2.2 of the Comprehensive Maintenance Agreement.

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

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 10****INSURANCE REQUIREMENTS****1. Builder's Risk Insurance During Construction**

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

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

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

(c) The policy shall provide coverage per occurrence up to the greater of the maximum probable loss amount as determined by Maintenance Contractor's insurance advisor and reviewed and approved by TxDOT or \$100,000,000, without risk of co-insurance; provided, however, that the policy may also include the following sublimits (i) for earth movement and flood an amount of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate, (ii) for existing property and improvements an amount of not less than \$1,000,000, (iii) for building ordinance compliance an amount of not less than \$5,000,000, (iv) for "soft cost expense" an amount acceptable to TxDOT, not less than \$5,000,000, (v) for demolition, not less than \$5,000,000, (vi) for debris removal, not less than \$25,000,000, (vii) for professional fees, not less than \$2,000,000, and (viii) for valuable papers and restoration of data, plans and drawings, not less than \$500,000.

(d) The Indemnified Parties shall be named as additional insureds on the policy. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the additional insureds.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in

applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, and (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

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

## 2. Commercial General Liability Insurance

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

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

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

- (i) Contractual liability;
- (ii) Premises/operations;
- (iii) Independent contractors;
- (iv) Products and completed operations (with acknowledgement that the Project constitutes the premises and not a product);
- (v) Broad form property damage, providing the same coverage as ISO form CG 00 01 12 07 provides;
- (vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;
- (vii) Fellow employee coverage for supervisory personnel;
- (viii) Incidental medical malpractice;
- (ix) No exclusion for work performed within 50 feet of a railroad;
- (x) No exclusion for claims arising from professional services except for CG 22 80 or its equivalent;
- (xi) Broad named insured endorsement; and
- (xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 4 of this Exhibit 10.

(c) The policy shall have limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the general aggregate per policy period, applicable on a per project or per location basis. Such limits may be shared by all insured and additional insured parties and shall reinstate annually.

(d) The policy shall name Maintenance Contractor as a named insured. The Indemnified Parties shall be named as additional insureds, using ISO forms CG 20 10 07 04 and CG 20 37 07 04 or CG 20 33 07 04 and CG 20 26 07 04 or their equivalents. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

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

### 3. Automobile Liability Insurance

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

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

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

(c) Maintenance Contractor's policy shall have a combined single limit per policy period of not less than \$1,000,000 combined single.

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

(e) The Indemnified Parties shall be named as additional insureds.

### 4. Pollution Liability Insurance

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

(a) The policy shall cover sums that the insured becomes liable to pay to a third party or that are incurred by the order of a regulatory body consequent upon a pollution incident, subject to the policy terms and conditions. Such policy shall cover claims related to pollution conditions to the extent such are caused by, arise out of or are otherwise related to the performance of the Maintenance Services or by other activities that occur on the Project. If the policy is carried on a claims made basis, it shall include a five-year extended reporting period from the end of the policy period.

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

(c) The policy shall have a limit of not less than \$10,000,000 per occurrence and in the aggregate per policy period, unless applicable regulatory standards impose more stringent coverage requirements.

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

#### 5. Professional Liability Insurance

Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, professional liability insurance, as specified in subparagraphs (a), (b) and (c) below, at all times during the performance of the Maintenance Services and during the Maintenance Term, that professional services are rendered respecting design and construction until five years after the professional services have concluded for the Project; provided, however, that the total term of such professional liability coverage need not extend beyond 10 years. The policy shall insure Maintenance Contractor if it is rendering the professional services. The policy shall insure the lead design firm if Maintenance Contractor is not itself rendering the professional services.

(a) Maintenance Contractor may satisfy such insurance requirement by providing either a Project-specific professional liability policy or maintaining an annual "practice" professional liability insurance policy. Such coverage shall be carried at any time the party is performing professional services and for a period of three years after completion of such services. Coverage shall be provided for claims arising out of any negligent act, error or omission in the performance of professional services or activities for the Project, including coverage for bodily injury or property damage.

(b) Each policy shall have a limit of not less than \$10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually if this requirement is met by providing a project-specific policy.

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

In addition, Maintenance Contractor shall cause each other Subcontractor that provides professional services for the Project to procure and keep in force professional liability insurance, covering its professional services practice, of not less than \$2,000,000 per claim and in the aggregate per annual policy period where the estimated contract value exceeds \$500,000, and \$1,000,000 per claim and in the aggregate per annual policy period where the estimated contract value is equal to or less than \$500,000. Such policy need not be Project-specific but shall be maintained for a three year period after completion of all professional services by such Subcontractor, and shall include a commercially reasonable deductible.

#### 6. Workers' Compensation Insurance

At all times when work is being performed by any employee of Maintenance Contractor under the Comprehensive Maintenance Agreement, Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Maintenance Contractor shall be the named insured on these policies. Such policy need not be Project-specific. The workers' compensation insurance policy shall contain the following endorsements:

- (a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act, to the extent required under such Act;
- (b) A voluntary compensation endorsement;
- (c) An alternative employer endorsement;
- (d) An endorsement extending coverage to all states operations on an "if any" basis; and
- (e) If any work is over or adjacent to navigable waters, coverage for any claims arising from the United States Longshore and Harbor Worker's Act and/or Jones Act

#### 7. Employer's Liability Insurance

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

- (a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Maintenance Contractor working on or about any Site or otherwise engaged in the work.
- (b) Maintenance Contractor shall be the named insured.
- (c) The policy shall have a limit of not less than \$1,000,000 per accident, per disease, and in the aggregate.
- (d) Such policy need not be Project-specific.

#### 8. Umbrella/Excess Liability

In addition to the Commercial General Liability, Automobile Liability and Employer's Liability Insurance policies required hereby, Maintenance Contractor shall also maintain \$50 million of umbrella/excess liability on a following form basis in excess of each of the noted policies.

#### 9. Railroad Insurance

Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance, commercial general liability insurance and contractor's protective liability insurance as may be required by any railroad in connection with any work performed under the Comprehensive Maintenance Agreement across, under or adjacent to the railroad's tracks or railroad right-of-way. All insurance policies (except the

Railroad Protective Liability Insurance Policy, which will name the railroad only) shall be in a form acceptable to the operating railroad and shall name the Indemnified Parties as additional insureds. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by Maintenance Contractor upon operating railroad property. In the event any agreement between TxDOT and a railroad includes railroad protective insurance requirements applicable to the work, Maintenance Contractor shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements.

#### 10. Subcontractors' Insurance

(a) At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall cause each Subcontractor that performs work on the Site to provide the following insurance that complies with Section 7.4 of the Comprehensive Maintenance Agreement, unless the Subcontractor is otherwise covered by Maintenance Contractor-provided liability insurance. Such insurance need not be Project-specific. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

- (i) Commercial General Liability Insurance including operations and products/completed operations and non-owned and hired autos (unless covered by a separate policy per clause (ii) below), with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, such aggregate to be applicable on a per project or location basis.
- (ii) Business (or Commercial) Automobile Liability Insurance with a minimum \$1,000,000 combined single limit.
- (iii) Worker's Compensation insurance as required by statute including voluntary compensation and alternate employer endorsements.
- (iv) Employer's Liability Insurance with a minimum limit per accident, disease and an aggregate of \$500,000.
- (v) For subcontracts with an estimated value of \$10,000,000 or more, umbrella/excess liability insurance with a minimum limit of \$5,000,000 excess of the commercial general liability and automobile liability (if applicable) noted above.

(b) Maintenance Contractor shall cause each Subcontractor that provides a commercial general liability or automobile liability insurance policy to include the Indemnified Parties as additional insureds in each such policy.



**EXHIBIT 11**

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

**Page 1 of 2**

**SH 360 Comprehensive Maintenance Agreement  
Texas Department of Transportation**

Draw Request #

Date:   
month/day/year

Texas Department of Transportation  
[Address]

Shaded Cells Require Entry, if applicable

Draw Request for Maintenance Services performed in the month of

A	Month #	<input type="text" value="(1-12)"/>	Maintenance Year #	<input type="text" value="(1-15)"/>	Escalated Monthly Maintenance Payment (from Page 4)	<input type="text"/>
B	Amount Earned this Month					\$0.00
C	Total Change Order Amount Due (from Page 6)					\$0.00
D	Total Damages under Sections 5.4.7 and 5.4.8 of COMA					
E	Total Noncompliance Charges					
F	Total Lane Rental Charges (from Page 8)					
G	Current Amount Due (B + C – D – E - F)					

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

Page 2 of 2

**SH 360 Comprehensive Maintenance Agreement  
Texas Department of Transportation**

Draw Request #

Date:   
month/day/year

**Request for Payment:**

---

Maintenance Contractor Authorized Representative	Date
---	------

---

**Review and Final Approval by TxDOT**

**Draw Request Approved for Payment:**       Yes       No

---

TxDOT Authorized Representative	Date
---------------------------------	------

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

Page 1 of 1

**SH 360 Comprehensive Maintenance Agreement  
Texas Department of Transportation**

**MAINTENANCE DRAW REQUEST CHECKLIST**

**Enclosed with this cover sheet are the following:**

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

**NOTE - following for information only**

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

- ◆ Except as specifically noted in the certification, all Maintenance Services, including that of designers, Subcontractors and Suppliers, which are the subject of the Draw Request have been checked and/or inspected by the Maintenance QC Manager;
- ◆ Except as specifically noted in the certification, all Maintenance Services which are the subject of the Draw Request conform to the requirements of the COMA Documents, the Governmental Approvals and applicable Law;
- ◆ The Maintenance Services QCP procedures provided therein are functioning properly and are being followed.

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

Page 1 of 1

**SH 360 Comprehensive Maintenance Agreement  
Texas Department of Transportation**

Draw Request #

Date:

month/day/year

Texas Department of Transportation

Enter Shaded Cells only if Applicable

**Monthly Maintenance Payment and Escalation Calculations**

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

Date of Final Acceptance:

month/day/year

# Days to End of Month = \_\_\_\_\_

---

**Escalated Monthly Maintenance Payment (Year [X]) = (F) + (J)**

Where,

Year [X] = Maintenance Term year X

(F) = Year [X] Monthly Routine O&M Payment (Escalated)

(J) = Year [X] Monthly Renewal – Other Work Payment (Escalated)

**For the Year 1, Month 1 Escalated Monthly Maintenance Payment will be paid pro-rata based on the days remaining in the month after the Initial Maintenance Term Commencement Date, subject to Section 8.1.4 of the COMA.**

---

**(F) = Year [X] Monthly Routine O&M Payment (Escalated) = (C) /12**

Where,

(C) = Year [X] Routine O&M Payment = {(B) x (D)} / (E)

- (B) = Year [X] Annual Routine Maintenance Price (Unescalated amount from Proposal for Base Scope and exercised Options)
- (D)= CPI three months prior to the month in which Maintenance Term Year X commenced
- (E)= CPI three months prior to the execution of the COMA

---

**(J) = Year [X] Monthly Renewal - Other Work Payment (Escalated) = (H) /12**

Where,

(H) = Year [X] Renewal – Other Work Payment = {(G) x (I)} / (N)

- (G) = Year [X] Annual Renewal - Other Work Price (Unescalated amount from Proposal for Base Scope and exercised Options)
- (I)= ENR CCI three months prior to the month in which Maintenance Term year X commenced
- (N)= ENR CCI three months prior to the execution of the COMA

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

Page 1 of 1

**SH 360 Comprehensive Maintenance Agreement  
Texas Department of Transportation**

Draw Request #

Date:   
month/day/year

Texas Department of Transportation  
[Address]

Enter Shaded Cells only if applicable

Draw Request for Maintenance Services  
performed in the month of Change Order

Change Order Number	1						
Change Order Amount	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Date Change Order Work Began example format (2/4/20__)							
Date Change Order Work Completed example format (4/20/20__)							
1. Previous Change Order Amount Earned	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2. Change Order Amount. Earned This Month	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3. Change Order Amount. Earned to Date (A +B)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
4. Current Change Order Amount Due(B)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total All Change Orders To Date							

t

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

**Page 1 of 1**

**SH 360 Comprehensive Maintenance Agreement  
Texas Department of Transportation**

Draw Request #

Date:   
month/day/year

Texas Department of Transportation  
[Add Address]

**Lane Rental Charges for Lane Closures**

	<b>Hours of Lane Closure (A)</b>	<b>Directional Traffic Volume (Hourly) (B)</b>	<b>Lane Rental Charges per hour for a partial lane closure (201X\$) (C)</b>	<b>Lane Rental Charges (A x C)</b>
		< 1,700	\$[_____]	
		1,700 to 1,799	\$[_____]	
		1,800 to 1,899	\$[_____]	
		1,900 to 1,999	\$[_____]	
		2,000 to 2,099	\$[_____]	
		2,100 to 2,199	\$[_____]	
		2,200 to 2,299	\$[_____]	
		2,300 to 2,399	\$[_____]	
		2,400 to 2,499	\$[_____]	
		2,500 to 2,599	\$[_____]	
		2,600 to 2,699	\$[_____]	
		2,700 to 2,799	\$[_____]	
		2,800 to 2,899	\$[_____]	
		2,900 to 2,999	\$[_____]	
		3,000 to 3,099	\$[_____]	
		3,100 to 3,199	\$[_____]	
		3,200 to 3,299	\$[_____]	
		3,300 to 3,399	\$[_____]	
		3,400 to 3,499	\$[_____]	
		3,500 to 3,599	\$[_____]	
		3,600 to 3,699	\$[_____]	
		3,700 to 3,799	\$[_____]	
		3,800 to 3,899	\$[_____]	
		3,900 to 3,999	\$[_____]	

		4,000 or more	<b>\$[_____]</b>	
Total Hours	[_____]		Total Lane Rental Charges	\$[_____]



**EXHIBIT 12**

**FORM OF CHANGE ORDER**

CHANGE ORDER REQUEST NO. \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_

**SECTION I**

Originator: \_\_\_\_\_

Date: \_\_\_\_\_

• Title: \_\_\_\_\_

Contract No: \_\_\_\_\_

• Company Name: \_\_\_\_\_

**DESCRIPTION:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCOPE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REASON FOR REQUEST FOR CHANGE ORDER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Maintenance Manager**

\_\_\_\_\_  
**Date**

**SECTION II**

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

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

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

**Section IIA**

Lump sum price is \$ \_\_\_\_\_

**Section IIB**

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

Total of all items in above Table: \$ \_\_\_\_\_

**Section IIC**

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

- A. Maintenance Contractor Labor (construction)
  - 1. Wages<sup>1</sup> \$ \_\_\_\_\_
  - 2. Labor benefits<sup>2</sup> (55% of A.1) \$ \_\_\_\_\_
- B. Maintenance Contractor and Subcontractor Labor (professional services)
  - 1. Wages (Raw) \$ \_\_\_\_\_
  - 2. Labor benefits<sup>1</sup> (145% of B.1, which includes overhead and profit) \$ \_\_\_\_\_
  - 3. Off-duty peace officers and patrol cruisers<sup>1</sup> \$ \_\_\_\_\_
- C. Materials (with taxes, freight and discounts) \$ \_\_\_\_\_
- D. Equipment<sup>2</sup> \$ \_\_\_\_\_
- E. Subcontracts (Time and Materials cost) \$ \_\_\_\_\_

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

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

<sup>2</sup> Equipment Costs (estimated or actual) based on *Rental Rate Blue Book* equipment rental rates calculated in accordance with Section 10.7.3 of the Comprehensive Maintenance Agreement.

**SECTION III**

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

\_\_\_\_\_

\_\_\_\_\_

Change order required under Design-Build Agreement? Yes \_\_\_\_\_/No \_\_\_\_\_  
 If yes, state reason:

\_\_\_\_\_

\_\_\_\_\_

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

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

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

\_\_\_\_\_  
**Maintenance Contractor Authorized Representative**

**Date:** \_\_\_\_\_

**SECTION IV (Reviewed by Maintenance Manager)**

\_\_\_\_\_  
**Maintenance Manager**

**Date:** \_\_\_\_\_

**Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION V (Reviewed by TxDOT Project Director)**

\_\_\_\_\_  
TxDOT Project Director

Date \_\_\_\_\_

**Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
TxDOT District Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
TxDOT Deputy Director

\_\_\_\_\_  
Date

**Comments:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT 13**

**AUTHORIZED REPRESENTATIVE**

**TxDOT Authorized Representative(s)**

TxDOT's Executive Director, Chief Planning and Projects Officer and their designees

LtGen J.F. Weber, USMC (Ret)

Russell Zapalac, P.E.

Ed Pensock, P.E.

Lonnie J. Gregorcyk, P.E.

**Maintenance Contractor's Authorized Representative(s)**

[\_\_\_\_\_]
[\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Facsimile: [\_\_\_\_\_]
E-mail: [\_\_\_\_\_]

## **EXHIBIT 14**

### **LIST OF REFERENCE INFORMATION DOCUMENTS**

*[To be updated prior to execution of COMA]*

*All files posted within the folders and sub-folders listed below and included in the RID\_INDEX are included in this Exhibit 14.*

1. Request for Qualifications Minute Order
2. Project Development Agreement
3. Project Schematics
  - CADD FILES & AERIALS
  - GPK - Interim Schematics
  - TIN - Interim Schematics
  - Options
    - Option 1 DGNs
    - Option 2 DGNs
    - Option 3 DGNs
4. Ultimate Project Schematics
  - Design Reference DGN Files
  - Design Sheets
  - Cross Sections
  - GPK
  - TIN
  - Plots
5. Environmental - Finding of no Significant Impact (FONSI)
6. Frontage Road Request
7. Hazmat
8. Right-of-Way
  - ROW Transfer Map DGN Files
9. As-Builts
10. Survey



11. Drainage

- CAD\_Files
- CulvertMaster Files
- FlowMaster Files
- Master\_HH\_Report Files
- Mountain\_Creek\_HEC\_RAS\_Study Files
- HEC-RAS\_SH360 Files (Total of 285 files)
- SH 360 HMS Models Files

12. City Design Requirements

a. City Of Arlington

- Paving Drainage Details
- Traffic Counts Maps

b. City of Grand Prairie

- Engineering Standards
- Floodplain
- Inspection
- Ordinances Engineering
- Permit Forms
  - FloodPlain Permits
  - Natural Gas Pad Pipeline
  - TRA
- Private Development
  - Grading-Erosion\_Control\_Requirements
  - Impact\_Fees
  - Plan\_Submittal\_Requirements
  - Project\_Final\_Acceptance
  - ROW
- Stormwater
- Traffic Detail Drawings
- Wastewater Criteria

c. City of Mansfield

- Integrated Stormwater Management (iSWM)
  - 2006 DESIGN MANUAL FOR SITE DEVELOPMENT
  - iSWM Criteria Manual
  - iSWM Program Guidance
  - iSWM Technical Manual

13. Local Agreements

14. RR Agreements

15. NTTA Design Standards & Guidelines

16. Private Developments

## EXHIBIT 15

### LANE RENTAL CHARGES FOR LANE CLOSURES

1. Fees ("Lane Rental Charges") shall be assessed for certain Lane Closures during the COMA Term in accordance with this Exhibit 15.

2. Lane Rental Charges for Lane Closures shall be assessed for any period during which one or more lanes in the main lanes, entrance ramps, frontage roads, and cross streets are closed or do not meet the minimum requirements for permitted Lane Closures set forth in Attachment 6 to Exhibit 2.

3. Lane Rental Charges for Lane Closures shall apply to any Lane Closures (on main lanes, ramps, cross streets, and direct connectors only) that occur in connection with the performance of Maintenance Services and shall be assessed every hour or part thereof for each lane closed. Maintenance Contractor shall report to TxDOT on a daily basis any Lane Closures or reduced widths which give rise to Lane Rental Charges.

4. Maintenance Contractor shall not be assessed Lane Rental Charges for rolling Lane Closures if (a) the purpose of the rolling Lane Closure is solely for construction and/or maintenance activities above the closed lane(s), (b) the rolling Lane Closure is entirely during the Off-Peak Time or Lowest Volume Time, (c) the rolling Lane Closure is less than 15 minutes in duration and (d) the queued traffic is dispersed within 10 minutes and returned to the same level of service as existed prior to the commencement of the Maintenance Services. If any of the foregoing conditions is not met, then Lane Rental Charges shall be assessed in accordance with Table 15-1.

5. Except as provided in Section 6 hereof, Lane Rental Charges for Lane Closures, as defined in this Exhibit 16, shall be calculated for any period during the Maintenance Term in accordance with Table 15-1. The directional average hourly volume available from electronic toll transactions for the corresponding time and day(s) of the week (excluding holidays) from the previous full month will be used to determine the amount of Lane Rental Charges. Each of the amounts of Lane Rental Charges set forth in Table 15-1 shall be increased annually on January 1 of each year after the Effective Date by a percentage equal to the percentage increase in the CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year. In no event shall the amount be less than the amount in effect during the immediately preceding year. If there is a decrease or no increase in the CPI index then there shall be no increase in the amounts of Lane Rental Charges.

6. The amount of the Lane Rental Charges for Lane Closures during any period in which all lanes in one direction (including main lanes, ramps, cross streets, and direct connectors) are closed shall be based on loss of gross toll revenues using the directional average hourly volume available from electronic toll transactions for the corresponding time and day(s) of the week (excluding holidays) from the previous full month and applying the current toll rate for the location.

**Table 15-1: Lane Rental Charges for partial Lane Closures by volume per hour**

<b>Directional Traffic Volume (Hourly)</b>	<b>Lane Rental Charge per hour for a partial Lane Closure (2014\$)</b>
< 1,700	\$[_____]
1,700 to 1,799	\$[_____]
1,800 to 1,899	\$[_____]
1,900 to 1,999	\$[_____]
2,000 to 2,099	\$[_____]
2,100 to 2,199	\$[_____]
2,200 to 2,299	\$[_____]
2,300 to 2,399	\$[_____]
2,400 to 2,499	\$[_____]
2,500 to 2,599	\$[_____]
2,600 to 2,699	\$[_____]
2,700 to 2,799	\$[_____]
2,800 to 2,899	\$[_____]
2,900 to 2,999	\$[_____]
3,000 to 3,099	\$[_____]
3,100 to 3,199	\$[_____]
3,200 to 3,299	\$[_____]
3,300 to 3,399	\$[_____]
3,400 to 3,499	\$[_____]
3,500 to 3,599	\$[_____]
3,600 to 3,699	\$[_____]
3,700 to 3,799	\$[_____]

3,800 to 3,899	\$[_____]
3,900 to 3,999	\$[_____]
4,000 or more	\$[_____]