

## **EXHIBIT 1**

### **ABBREVIATIONS AND DEFINITIONS**

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

<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ACI</b>	American Concrete Institute
<b>ACORD</b>	Association for Cooperative Operations Research and Development
<b>ADT</b>	Average Daily Traffic
<b>AMRL</b>	AASHTO Materials Reference Laboratory
<b>AREMA</b>	American Railway Engineering and Maintenance of Way Association
<b>ASTM</b>	American Society of Testing and Materials
<b>AWS</b>	American Welding Society
<b>BI</b>	Base Index
<b>CADD</b>	Computer Aided Drafting and Design
<b>CCTV</b>	Closed Circuit Television
<b>CERCLA</b>	Comprehensive Environmental Response Compensation and Liability Act
<b>CFR</b>	Code of Federal Regulations
<b>CMA</b>	Capital Maintenance Agreement
<b>CRP</b>	Community Rehabilitation Program
<b>DBE</b>	Disadvantaged Business Enterprise
<b>ENR CCI</b>	Engineering News Record 20 City Construction Cost Index
<b>EPD</b>	Escrowed Proposal Documents
<b>ETCS</b>	Electronic Toll Collection System
<b>FEIS</b>	Final Environmental Impact Statement
<b>FHWA</b>	Federal Highway Administration
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GIS</b>	Geographical Information System
<b>HEC</b>	Hydraulic Engineering Circular
<b>HUB</b>	Historically Underutilized Business
<b>IH</b>	Interstate Highway
<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>LRFD</b>	Load and Resistance Factor Design
<b>MOU</b>	Memorandum of Understanding
<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>NEC</b>	National Electrical Code
<b>NEPA</b>	National Environmental Policy Act
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NTP</b>	Notice to Proceed
<b>OSR</b>	Old San Antonio Road
<b>PCO</b>	Potential Change Order
<b>PUAA</b>	Project Utility Adjustment Agreement
<b>QC</b>	Quality Control
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>ROW</b>	Right of Way
<b>SH</b>	State Highway
<b>SOAH</b>	Texas State Office of Administrative Hearings
<b>SUE</b>	Subsurface Utility Engineering
<b>TCLP</b>	Toxicity Characteristic Leaching Procedure
<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>UAAA</b>	Utility Adjustment Agreement Amendment
<b>USFWS</b>	United States Fish and Wildlife Service
<b>UTP</b>	Unshielded Twisted Pair
<b>VES</b>	Violation Enforcement System
<b>WBS</b>	Work Breakdown Structure

**Additional Properties** shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the Schematic ROW, that will be acquired in connection with the Project, including (a) rest area sites, (b) the DB Contractor-Designated ROW, and (c) any additional real property outside of the Schematic ROW that must be acquired due to a TxDOT-Directed Change issued under the DBA, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs DB Contractor to acquire for the Project. For purposes of clarity, “Additional Properties” excludes Replacement Utility Property Interests.

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

**Affiliate(s)** shall mean:

- (a) any shareholder, member, partner or joint venture member of Maintenance Contractor,

- (b) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Maintenance Contractor, or any of its respective shareholders, members, partners or joint venture members; and
- (c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Maintenance Contractor, (ii) any of the shareholders, members, partners or joint venture members of Maintenance Contractor; or (iii) any Affiliate of Maintenance Contractor under clause (b) of this definition.
- (d) For purposes of this definition the term “control” shall mean the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. “Affiliated” shall mean having the status of an Affiliate.

**Appeal Period** has the meaning set forth in Section 16.3.6.1(a) of the Capital Maintenance Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Code** shall mean the Texas Transportation Code, including specifically Chapter 223.

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

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

- (a) Such individual is currently or was in the past employed by any member of the Conflicts Group, except that service as a member of other disputes review boards on other contracts or retention as an independent consultant on other contracts does not create a Conflict of Interest so as to preclude an individual from serving as a Disputes Board Member;
- (b) Such individual has or is reasonably likely to have a pecuniary interest in the outcome of the applicable Dispute or such individual has any (i) ownership interest in any member of the Conflicts Group, except a remote interest or (ii) financial interest in any of the CMA Documents or any Contract (except that such individual's interest in receiving, and

receipt of, payment for service on the Disputes Board shall not be considered a financial interest for purposes of this definition), in either case except for a remote interest. An ownership interest is remote only if it is less than 0.5% of the issued and outstanding shares or other legal or beneficial ownership interest, or less than 0.5% of the issued and outstanding indebtedness, of a member of the Conflicts Group. Mere use of the Project shall not constitute a pecuniary, ownership or financial interest for purposes of this definition;

- (c) Such individual has or had substantial prior involvement in any aspect of the DBA or CMA, a Subcontract or the Project of a nature which could reasonably be expected to affect his or her ability to impartially resolve Disputes;
- (d) Such individual knows of any reason, including but not limited to the existence of any of the Conflicts of Interest as described in this definition, why he or she cannot be impartial in resolving Disputes; and
- (e) In addition to the Conflicts of Interest described above, any other circumstance arising out of such individual's existing or past activities, business interests and/or contractual relationships with any member of the Conflicts Group such that such individual is or is reasonably likely to be unable to render a Disputes Board Decision impartially or such individual's objectivity in performing his or her role on the Disputes Board is or is reasonably likely to be impaired.

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

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

**Consultant(s)** means the company or companies working directly for TxDOT.

**Contract Documents** shall have the meaning set forth in Section 1.2 of the DBA.

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

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

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

**DB Contractor** shall mean \_\_\_\_\_, together with its successors and assigns.



10.12 of the Capital Maintenance Agreement, including any no-cost change, deviation, modification, alteration or exception from the Maintenance Specifications.

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

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

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

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

**Disputes Board Agreement** means the agreement in the form attached to the Capital Maintenance Agreement as Exhibit 16.

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

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

**Disputes Board Error** has the meaning set forth in Section 16.3.6.2 of the Capital Maintenance Agreement.

**Disputes Board Member(s)** means an individual serving as one of the three members of the Disputes Board.

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

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

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

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

**Draw Request** shall mean a Draw Request and Certificate in the form of Exhibit 11 to the Capital Maintenance Agreement.

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

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

**Element** shall mean any of the elements set forth and numbered 1.1 to 19.2 in Attachment 1 to Exhibit 2.

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

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

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

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

**Environmental Laws** shall mean any Law applicable to the Project or the Maintenance Services regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any 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** shall have the meaning set forth in Section 17.1 of the Capital Maintenance Agreement.

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

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

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

**Executive Director** shall mean the Executive Director of TxDOT.

**Fast-Track Dispute** shall mean a Dispute so designated by the Parties in respect of Section 16.3.4.2 of the Capital Maintenance Agreement.

**Final Acceptance** shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the DBA for both Segments or for the Project as a whole, as and when confirmed by TxDOT's issuance of Certificates of Final Acceptance for both Segments or a Certificate of Final Acceptance for the Project in accordance with Section 20.3.5 of the DBA.

**Final Order** means the order issued by the Executive Director pursuant to Section 16.3.6.1 or 16.3.6.4 of the Capital Maintenance Agreement.

**Final Order Implementing Decision** has the meaning set forth in Section 16.3.6.4(a)(ii) of the Capital Maintenance Agreement.

**Final Order Vacating Decision** has the meaning set forth in Section 16.3.6.4(a)(i) of the Capital Maintenance Agreement.

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

**Float** means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect the schedule deadline. Such Float is generally identified as the difference between the early completion date and late completion date for activities as shown on the Project Schedule.

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

- (a) Any earthquake, tornado, hurricane (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 area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) Any Change in Law which (1) requires Maintenance Contractor to obtain a new major State or federal environmental approval not previously required for the Project, (2) results in an increase in Maintenance Contractor's costs directly attributable to the Change in Law of at least \$500,000, or (3) specifically targets the Project or Maintenance Contractor;
- (e) Any spill of Hazardous Material by a third party which occurs after Maintenance NTP1 and is required to be reported to a Governmental Entity, and which renders use of the roadway or construction area unsafe absent assessment, containment, and/or remediation;
- (f) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Maintenance Services, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any member of the Maintenance Contractor-Related Entities;
- (g) Total failure of a bridge such that it requires replacement, except to the extent arising out of, related to or caused by, the act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any Maintenance Contractor Related-Entity or DB Contractor-Related Entity;
- (h) Malicious or other acts by a third party intended to cause loss or damage or other similar occurrence, including vandalism or theft; and
- (i) A collision (motor vehicle, aircraft or railroad train) by a third party that causes damage to the Project, 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:





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

**Hazardous Materials Management Plan** shall mean the plan prepared by Maintenance Contractor for Hazardous Materials Management both within and outside the Project ROW, as more particularly described in Section 2200 of Exhibit 2.

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

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

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

**Ineligible Matters** shall have the meaning set forth in Section 16.3.2.1 of the Capital Maintenance Agreement.

**Informal Resolution Procedures** has the meaning set forth in Section 16.3.3 of the Capital Maintenance Agreement.

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

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

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

1. Maintenance Manager
2. Maintenance QC Manager

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

**Law** or **Laws** shall mean (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by TxDOT within the scope of its administration of the CMA 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.

**LIBOR** shall mean the offered rate per annum (rounded up to the next highest one one-thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Telerate Page 3750 at approximately 11:00 A.M., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next 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** shall mean any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement or similar notification under the Uniform Commercial Code or similar Law of any jurisdiction).

**Liquidated Damages** shall mean any of (i) Liquidated Damages for Lane Closures, (ii) Liquidated Damages for Asset Condition Score, (iii) liquidated damages assessed in respect of Key Maintenance Personnel pursuant to Section 5.4.6 and Section 5.4.7 of the Capital Maintenance Agreement, and (iv) the liquidated damages specified in Section 12.4.3 of the Capital Maintenance Agreement.

**Liquidated Damages for Asset Condition Score** shall have the meaning set forth in Section 12.4.2 of the Capital Maintenance Agreement.

**Liquidated Damages for Lane Closures** shall have the meaning set forth in Section 12.4.1 of the Capital Maintenance Agreement.

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

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

**Maintenance Communication Plan** shall have the meaning set forth in Section 0206 of the Maintenance Specification.

**Maintenance Contractor** shall mean \_\_\_\_\_, together with its successors and assigns.

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

**Maintenance Contractor-Related Entity** shall mean: (a) Maintenance Contractor, (b) Maintenance Contractor's partners, joint venturers and/or members, (c) Subcontractors (including Suppliers), (d) any other Persons performing any of the Maintenance Services, (e) any other Persons for whom Maintenance Contractor may be legally or contractually responsible, and (f) the employees, agents, officers, directors, 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 or contract by any Maintenance Contractor-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Maintenance Contractor.

Contractor-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Maintenance Contractor-Related Entity in violation of the requirements of the CMA Documents or any applicable Law or Governmental Approval.

**Maintenance Document Management Plan** shall have the meaning set forth in Section 0203 of Exhibit 2.

**Maintenance Management Information System** shall have the meaning set forth in Section 1907 of Exhibit 2.

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

**Maintenance Manager** means the Maintenance Contractor's manager who is responsible to oversee and perform the Maintenance Services in accordance with the CMA.

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

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

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

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

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

**Maintenance Period** means the period starting at the CMA Commencement Date and ending at the end of the Maintenance Term

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

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

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

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



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

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

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

**Non-maintained Element(s)** shall mean an element not set forth in [Attachment 2](#) to the Maintenance Specification.

**Notice of Partial Termination for Convenience** shall mean written notice issued by TxDOT to DB Contractor terminating part of the Maintenance Services of Maintenance Contractor for convenience under [Section 14.1](#) of the Capital Maintenance Agreement.

**Notice of Termination for Convenience** shall mean written notice issued by TxDOT to DB Contractor terminating the Maintenance Services of Maintenance Contractor for convenience under [Section 14.1](#) of the Capital Maintenance Agreement.

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

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

**Pavement Condition Score** shall have the meaning set forth in Section 1911 of the Maintenance Specification.

**PCO Notice** shall have the meaning set forth in [Section 10.3.2.3](#) of the Capital Maintenance Agreement.

**Performance Requirement(s)** shall mean, for each Maintained Element in connection with the Maintenance Services, the requirements set forth in the Performance and Measurement Table Baseline in the column headed “Performance Requirement” in [Attachment 1](#) to [Exhibit 2](#).

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

**Plan(s)** 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.









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

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

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

**Utility Agreement** shall mean a PUA, MUAA and/or UAAA, as the context may require.

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

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

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

**EXHIBIT 2**

**MAINTENANCE SPECIFICATION**

(Attached)

**EXHIBIT 3**

**MAINTENANCE CONTRACTOR'S PROPOSAL COMMITMENTS**

Comment No.	Proposal Location	Proposal Commitment

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

(To be added from Proposal)

**EXHIBIT 5**

**JOB TRAINING AND SMALL BUSINESS MENTORING PLAN**

(To be added prior to CMA execution)

**EXHIBIT 6**

**FORM OF MAINTENANCE PERFORMANCE BOND**

**Horseshoe Project**

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

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

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

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

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

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

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





**EXHIBIT 7**

**FORM OF MAINTENANCE PAYMENT BOND**

**Horseshoe Project**

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

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

WHEREAS, on or before 60 days after issuance by Obligee of Maintenance NTP1, Principal is required to furnish a bond (this “Bond”) guaranteeing payment 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 CMA Section 7.1.3] (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Maintenance Services, then Surety shall pay for the same in an amount 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 CMA.

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

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

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

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

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

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

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

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

Principal:

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

Surety:

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

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

**SURETY**

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



WITNESS our hand this, \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CONTRACTOR**

\_\_\_\_\_  
**SURETY** (Print Firm Name and Seal)

By: \_\_\_\_\_  
(Title)

\*By: \_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
**SURETY** (Print Firm Name and Seal)

\_\_\_\_\_  
**SURETY** (Print Firm Name and Seal)

\*By: \_\_\_\_\_  
(Title)

\*By: \_\_\_\_\_  
(Title)

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

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

## EXHIBIT 9

### FORM OF GUARANTY

THIS GUARANTY (this "Guaranty") is made as of \_\_\_\_\_, 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 Capital Maintenance Agreement of even date herewith ("Capital 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 Capital Maintenance Agreement.

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

**10. Governing Law; 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 CMA 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













(c) Maintenance Contractor's policy shall have a combined single limit per policy period of not less than \$25,000,000 combined single limit and may be included in an umbrella insurance combined with such other insurance that this schedule stipulates may be similarly included.

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

#### 5. Pollution Liability Insurance

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

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

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

(c) The policy shall have a limit of not less than \$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 \$100,000 per occurrence.

#### 6. Professional Liability Insurance

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

(a) Each policy shall be Project-specific and provide coverage of liability of the party performing the professional services arising out of any negligent act, error or omission in the performance of professional services or activities for the Project, 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.

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

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

#### 7. Workers' Compensation Insurance

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

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

#### 8. Employer's Liability Insurance

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

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

#### 9. Railroad Protective Liability Insurance

Maintenance Contractor shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance as may be required by any railroad in connection with any work performed under the Capital Maintenance Agreement across, under or adjacent to the railroad's tracks or railroad right-of-way. All insurance policies shall be in a form acceptable to the operating railroad and shall name the railroad as named insured. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by Maintenance Contractor upon operating railroad property. In the event



(i) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Subcontractor working on or about any Site or otherwise engaged in the work.

(ii) Subcontractor shall be the named insured.

(iii) The policy shall have a limit of not less than \$5,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 10 stipulates may be similarly included.

**EXHIBIT 11**

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

**Horseshoe Capital Maintenance Agreement  
Texas Department of Transportation**

**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:**

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

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**O&M Manager**

**Date**







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

\_\_\_\_\_

**TxDOT Project Director**

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

**Comments:**

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

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

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

**TxDOT District Engineer**

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

**TxDOT Deputy Director**

**Comments:**

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



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

**EXHIBIT 14**

**LIST OF REFERENCE INFORMATION DOCUMENTS (RID)**

**EXHIBIT 15**

**LIQUIDATED DAMAGES FOR LANE CLOSURES**

1. Liquidated Damages for Lane Closures shall be assessed for any Lane Closure during the term of the CMA during which one or more lanes (including main lanes, ramps and direct connectors) are closed or have a width that is less than the minimum requirements for permitted Lane Closures set forth in Section 18 of the Technical Provisions.

2 Liquidated Damages for Lane Closures shall be applied in accordance with Table 15-1 below to any Lane Closure that occurs in connection with the performance of Maintenance Services as described above 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 Liquidated Damages for Lane Closures.

**Table 15-1: Liquidated Damages for Lane Closures**

	<b>Main Lanes and Collector-Distributor Roadways</b>	<b>Ramps, Frontage Roads, and Arterials</b>
<b>Lane Closures Permitted</b>	\$0 per hour per lane	\$0 per hour per lane
<b>Lane Closures Not Permitted</b>	\$2000 per hour per lane	\$1000 per hour per lane

Permitted and non-permitted closures are described in Attachment 6 to Exhibit 2 of the CMA.

## EXHIBIT 16

### DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT (this “**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201[\_\_\_], (the “**Effective Date**”) by and between the Texas Department of Transportation (“**TxDOT**”), and \_\_\_\_\_ (“**Maintenance Contractor**”). TxDOT and Maintenance Contractor are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties**.”

#### RECITALS

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

B. Section 16.3 of the CMA, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the “**Disputes Board**”) to resolve each Dispute if, as and when, a Dispute arises under the CMA Documents requiring the services of such Disputes Board, in each case, in accordance with the terms, and subject to the conditions, of Section 16 of the CMA.

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

#### **Section 1. Definitions and References.**

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

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

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

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

The sole purpose of the Disputes Board is to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision (as defined in Section 5.5 below). The Disputes Board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in this Agreement and in Section 16.3 of the CMA. Notwithstanding that each Disputes Board Member will have been engaged by a Party under a Disputes Board Member Joinder Agreement (as defined in Section 3.1.2 below), none of the Disputes Board Members shall consider themselves an appointee, representative, agent or advocate of the Party who engaged him or her. Disputes Board Members are charged with discharging their responsibilities hereunder in an impartial, objective, independent and professional manner without regard to the particular interests of either Party. Upon

completion of the remainder of procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

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

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

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

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

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

3.1.4 The Parties may mutually agree at any time prior to the Dispute Board's issuance of a Disputes Board Decision that the relevant Dispute shall be resolved by the Disputes Board Chair alone rather than by the three member Disputes Board, and any such agreement shall be irrevocable upon

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

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

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

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

3.2.3 During the course of the Nominating Party replacing five consecutive potential candidates on its Disputes Board Member Candidates List on a cumulative basis over time, the Evaluating Party may, upon notice to the Nominating Party, disapprove up to two proposed candidates for any or no

reason. The Evaluating Party may, upon notice to the Nominating Party, only disapprove all subsequently proposed candidates of the Nominating Party based on any such candidate’s failure to satisfy the Disputes Board Member Qualifications (which failure shall be described in detail in the Evaluating Party’s notice of disapproval).

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

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

3.3 Removal of Disputes Board Member; Appointment of Replacement.

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

- (a) Any two members of the Disputes Board may terminate the third Disputes Board Member’s appointment For Cause;
- (b) TxDOT and Maintenance Contractor may, upon mutual agreement, terminate any Disputes Board Member’s appointment For Cause or without cause; and
- (c) TxDOT or Maintenance Contractor may unilaterally terminate the appointment of any Disputes Board Member For Cause.

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

3.3.2 In the event that one or more Disputes Board Members needs to be replaced due to removal, death or resignation of one or more Disputes Board Members, replacement Disputes Board















































