

## 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>ACORD</b>	Association for Cooperative Operations Research and Development
<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>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 Programs
<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>FHWA</b>	Federal Highway Administration
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GIS</b>	Geographical Information System
<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>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>NTP</b>	Notice to Proceed
<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>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>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 and (b) any additional real property outside of the Schematic ROW that must be acquired due to a TxDOT-Directed Change issued under the Design-Build Agreement, 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.

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** 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.

**Austin Bridge & Road** shall mean Austin Bridge & Road, LP, a Delaware limited partnership.

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

**BAFO** shall mean the Proposal Revision and Best and Final Offer submitted by the DB Contractor in response to the Request for BAFOs, as described in Section 9.0 of the ITP.

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

**Bay** shall mean Berry Contracting, LP, d/b/a Bay Ltd., a Texas limited liability company.

**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.

**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.

**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, 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 CMA.

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

**Contract Documents** shall have the meaning set forth in Section 1.2 of the Design-Build Agreement.

**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 Austin-Bay, JV, a joint venture comprised of Austin Bridge & Road and Bay, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended, together with its successors and assigns.

**DB Contractor Event of Default** shall mean Event of Default defined under the Design-Build Agreement.

**DB Contractor-Related Entity(ies)** shall mean (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.

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

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

**Defense and Indemnification Procedures** has the meaning set forth in Section 15.9 of the CMA.

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

**Design-Build Agreement** shall have the meaning set forth in Recital I of the Capital Maintenance Agreement.

**Deviation(s)** shall mean: a no-cost change in the Maintenance Services or other requirements of the CMA Documents issued in writing by TxDOT’s Authorized Representative or his/her designee under Section 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 Section 16 of the Capital Maintenance Agreement and the applicable portions of Section 201.112 of the Code and the

dispute resolution procedures established thereunder as described in Title 43 of the Texas Administrative Code, Section 9.2, as the same may be amended from time to time.

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

**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.

**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.

**Final Acceptance** shall mean 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** 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 (i) below, subject to the exclusions listed in clauses (i) through (v) 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 Corpus Christi 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:

- (i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;

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

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

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

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

**Governmental Approval** shall mean any permit, license, consent, concession, grant, franchise, authorization, 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, 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** shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than TxDOT, in each case having jurisdiction over the party, the Project or, the Maintenance Services .

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

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

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

**Hazardous Materials** shall mean any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other

mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. The term “**Hazardous Materials**” includes the following:

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

**Hazardous Materials Management** shall mean procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials

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

**Hazardous Materials Management Plan** shall mean 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.

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

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

**Job Training and Small Business Opportunity Plan** shall mean the plan set forth in Exhibit 5 to this Capital Maintenance Agreement.

**Joint Venturer** shall mean each of Austin Bridge & Road and Bay, each a party to the Joint Venture Agreement made December 5, 2012, as amended, establishing DB Contractor.

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

1. Capital Maintenance Manager

**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 Asset Condition Score, (ii) liquidated damages assessed in respect of Key Maintenance Personnel pursuant to Section 5.4.6 of the Capital Maintenance Agreement, and (iii) 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.

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

**Maintained Element(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 Austin-Bay, JV, a joint venture comprised of Austin Bridge & Road and Bay, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended, 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-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 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 Commencement of Capital Maintenance Agreement 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 QCP.

**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.

**Maintenance Safety Plan** shall have the meaning set forth in Section 0205 of the Maintenance Specification.

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

**Maintenance Services Change Orders** 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.

**Maintenance Services Deliverables Schedule** shall have the meaning set forth in Section 0202 of the Maintenance Specification.

**Maintenance Services Quality Control Plan or Maintenance Services QCP** shall have the meaning set forth in Section 0204 of Exhibit 2.

**Maintenance Specification** shall mean Exhibit 2 of the Capital Maintenance Agreement

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

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

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

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

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

**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 Exhibit 2 of 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.

**Original Proposal** shall mean DB Contractor's original Proposal submitted in response to the RFP on December 14, 2012.

**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 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.

**PMIS** shall have the meaning set forth in Section 1909 of the Maintenance Specification.

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

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

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

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

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

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

**Proposal** shall mean DB Contractor's original Proposal submitted in response to the RFP, as modified by the original BAFO in accordance with ITP Section 5.8 and including any clarifications.

**Proposal Commitments** shall have the meaning set forth in Exhibit 3 of the CMA.

**Proposal Due Date** shall mean February 14, 2013, the deadline for submission of the BAFO to TxDOT.

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



**Public Information Act** shall mean Tex. Gov't Code Ann. ch. 555, as amended.

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

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

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

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

**Released for Construction Document** or **released for construction documents** means the portions of the Final Design Documents, as set forth in Section 2.2.7.1 of the Technical Provisions, that are required to be signed and sealed by the Maintenance Contractor's Registered Professional Engineer.

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

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

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

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

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

**Request for Proposals (RFP)** shall have the meaning set forth in Recital E of the Capital Maintenance Agreement.

**Request for Proposal Revisions and Best and Final Offers** or **Request for BAFOs** shall mean Addendum 7 to the RFP.

**Request for Qualification (RFQ)** shall have the meaning set forth in Recital C of the Capital Maintenance Agreement.

**Retainage Bond** shall mean the retainage bond delivered by Maintenance Contractor in the Form attached to the Capital Maintenance Agreement or Exhibit 8.

**Rules** shall mean Title 43, Part 1, Chapter 9, Subchapter I of the 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 Design** shall mean the roadway schematic attached as Appendix 3 to Design-Build Agreement Exhibit 2.

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

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

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

**Site** shall mean Schematic ROW, Additional Properties, Replacement Utility Property Interests, and any temporary rights or interests that DB 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 1909 of the Maintenance Specification.

**State** shall mean the State of Texas.

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

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

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

**Supplier** shall mean any Person not performing work at or on the Project ROW which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to

Maintenance Contractor or to any Subcontractor in connection with the performance of the Maintenance Services. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Project ROW shall not be deemed to be performing Maintenance Services at the Project ROW.

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

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

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

**Technical Provisions** means Book 2, as such document may be revised or amended pursuant to the Design-Build Agreement.

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

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

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

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

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

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

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

**TxDOT-Directed Change(s)** shall mean any changes in the scope of the Maintenance Services or terms and conditions of the Capital 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 Capital Maintenance Agreement.

**TxDOT’s Recoverable Costs** means:

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

**Unit-priced Change Order** shall mean a Change Order issued in accordance with Section 10.6.7 of the Capital Maintenance Agreement.

**Unplanned Capital Maintenance** shall mean 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 CMA.

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

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

**Utility** or **utility** shall mean a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public. The term "Utility" or "utility" specifically excludes: (a) storm water facilities providing drainage for the Project ROW, (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.

**Utility Agreement** shall mean a PUAA, 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)

## **0100 GENERAL**

### **0101 General requirements**

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

## **0200 PROJECT MANAGEMENT**

### **0201 General Requirements**

- A. Maintenance Contractor shall establish and maintain an organization that effectively manages all the Maintenance Services. This Project management effort will be defined and guided by the Maintenance Management Plan. The Maintenance Management Plan is an umbrella document that describes the Maintenance Contractor's managerial approach, strategy, and quality procedures to maintain the Project and achieve all requirements of the CMA Documents. Unless otherwise agreed by Texas Department of Transportation (TxDOT), the Maintenance Management Plan shall be consistent with the capital maintenance plan submitted with the Proposal.
- B. TxDOT will audit and monitor the activities described in the Maintenance Management Plan to assess Maintenance Contractor performance. All statements contained in the Maintenance Management Plan shall be of an auditable nature, as described in Section 19.2 of the Technical Provisions.

### **0202 Project Schedule**

- A. The Parties recognize the importance of the Project Schedule for defining the time-frame for the maintenance of the Project and the achievement of the milestones. The Parties also recognize the importance of the Project Schedule in monitoring the progress of Maintenance Services of the Project and denoting changes that occur.
- B. Every submitted schedule shall be in the form of a single hard copy in full-size color plot sheets, along with a backup disk of the schedule in electronic format.

- C. The scheduling software employed by the Maintenance Contractor shall be compatible with the scheduling software employed by TxDOT. Maintenance Contractor shall implement any new operating practices or software required as a result of TxDOT’s amendments to any such systems, standards and procedures. TxDOT’s current software in use is Primavera 6.2 (P6). “compatible”, as used in this Section 0202C, shall mean that the Maintenance Contractor-provided electronic file version of the Project Schedule may be loaded or imported by TxDOT using its scheduling software with no modifications, preparation or adjustments. Maintenance Contractor shall be responsible for updating scheduling software to maintain compatibility with current TxDOT supported scheduling software.
- D. Maintenance Contractor shall prepare a Maintenance Services Deliverables Schedule and shall submit it to TxDOT for review and approval. Approval of the Maintenance Services Deliverables Schedule shall be a condition precedent to commencing Maintenance Services.
- E. The Maintenance Services Deliverables Schedule shall refer to the activities within the Maintenance Management Plan which will provide a narrative describing, in general fashion, the Maintenance Contractor’s proposed methods of operation for Maintenance Services. The Maintenance Management Plan shall address the general sequence of Maintenance Services and all Schedule deadlines.
- F. The Maintenance Services Deliverables Schedule shall include all major activities of Maintenance Services required under the CMA Documents, in sufficient detail to monitor and evaluate progress, during the Maintenance Period(s).
- G. The Maintenance Services Deliverables Schedule shall include activities for maintenance and interfaces with other projects, localities, municipalities and other Governmental Entities.
- H. For each activity, Maintenance Contractor shall indicate the duration (in Days) required to perform the activity and the anticipated beginning and completion date of each activity. In addition, the Maintenance Services Deliverables Schedule shall indicate the sequence of performing each activity and the logical dependencies and inter-relationships among the activities.
- I. The Maintenance Services Deliverables Schedule shall include a listing of all submittals as called out in the CMA Documents. Submittal activity durations shall include specific durations for TxDOT review and/or approval of the Maintenance Contractor’s submittals as called out elsewhere in the CMA Documents.
- J. With the exception of activities relating to Environmental Approvals by Governmental Entities, each activity depicting the Maintenance Contractor’s operations shall have duration of not more than 20 Days, and not less than one Day, except as otherwise approved by TxDOT.



- K. Maintenance Contractor shall update or provide a notification of no change to the current schedule, on at least an annual basis, the approved Maintenance Services Deliverables Schedule to reflect the current status of the Project, including approved Change Orders.
- L. Each Maintenance Services Deliverables Schedule update shall accurately reflect all activities as of the Effective Date of the updated schedule.
- M. The Maintenance Services Deliverables Schedule update shall include a schedule narrative report which describes the status of the Maintenance Services in detail.
- N. On or before 60 days after the issuance of Maintenance NTP1, Maintenance Contractor shall submit the first Capital Asset Replacement Work Submittal (forming part of the Maintenance Management Plan) for TxDOT for review as further described in Section 1903.

### **0203 Maintenance Document Management Plan**

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

### **0204 Maintenance Services Quality Control Plan**

- A. Maintenance Contractor shall submit a comprehensive quality control plan (“Maintenance Services Quality Control Plan”) to TxDOT for approval that is consistent with and expands upon the preliminary Maintenance Services Quality Control Plan submitted with the Proposal.
- B. The Maintenance Services Quality Control Plan shall be consistent with current versions of ISO standards relating to quality and audit as updated by the International Standards Organization. Maintenance Contractor may elect to obtain formal ISO quality certification, but will not be required to do so.
- C. The Maintenance Services Quality Control Plan shall describe the system, policies, and procedures that address the Maintenance Services and provide documented evidence that the Maintenance Services were performed in accordance with the CMA Documents.
- D. The Maintenance Services Quality Control Plan shall incorporate the following features:
  - Maintenance Contractor shall make all quality records immediately available to TxDOT for review. Maintenance Contractor shall provide TxDOT with a copy of any and/or all quality records when requested.

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

- Identification of testing agencies, including information on each agency’s capability to provide the specific services required for the activities; certifications held; equipment; and location of laboratories.
  - Resumes for all quality management personnel.
- I. The Maintenance Services Quality Control Plan shall contain a complete description of the quality policies and objectives that the Maintenance Contractor will implement throughout its organization. The policies shall demonstrate the Maintenance Contractor senior management’s commitment to implement and continually improve the maintenance quality management system.
- J. The Maintenance Services Quality Control Plan shall contain detailed systems and procedures the Maintenance Contractor will implement, including the following:
- Control of quality records;
  - Management reviews;
  - Resource allocation;
  - Measurement of customer satisfaction;
  - Control of nonconforming products and services;
  - Internal audits;
  - A process to seek continual improvement of the Maintenance Services Quality Control Plan.
- K. The Maintenance Services Quality Control Plan shall contain detailed descriptions of the inspection and test plans, including the timing and frequency of testing, that the Maintenance Contractor will use to meet quality control requirements of the Maintenance Services.
- L. Maintenance Contractor shall revise its Maintenance Services Quality Control Plan when its own quality management organization detects a repeating or fundamental non-conformance in the work performed or in the manner the Maintenance Services are inspected or tested, or when TxDOT advises the Maintenance Contractor of such a problem.
- M. Maintenance Contractor’s Maintenance QC Manager staff shall have no responsibilities in the provision of Maintenance Services. Quality control staff shall only have responsibilities on the provision of Maintenance Services.
- N. Maintenance Contractor’s Maintenance QC Manager shall report directly to the Maintenance Contractor’s principals.
- O. The Maintenance QC Manager shall prepare an annual report of the quality inspections and tests performed, results of such inspections and tests, and occurrences and resolution of nonconformance discoveries. Maintenance Contractor shall submit the annual reports to TxDOT for review.

- P. Maintenance Contractor’s QC Manager shall have the authority to stop work for quality-related issues.
- Q. Not later than two Business Days after the Maintenance Contractor completes design of any particular Released for Construction Documents, and the Maintenance Contractor has reviewed and checked the design in accordance with the Maintenance Services Quality Control Plan, and the Maintenance Contractor’s Registered Professional Engineer has signed and sealed the document, the Maintenance Contractor shall submit the signed and sealed document to TxDOT. Maintenance Contractor’s Released for Construction Documents shall comply with the CMA Documents, and shall be detailed, complete, constructible, and shall allow verification of the design criteria and compliance with CMA Documents.
- R. Maintenance Contractor shall perform Maintenance Services in accordance with the Released for Construction Documents, following a reasonable timeframe for TxDOT review and comment, together with the relevant requirements and specifications of the CMA Documents.
- S. On or about the Effective Date of termination of Maintenance Services, the Maintenance Contractor shall submit to TxDOT a complete set of Record Drawings. The Record Drawings and Documentation shall be an organized, complete record of drawings and supporting calculations and details that accurately represent what the Maintenance Contractor constructed.
- T. Maintenance Contractor shall ensure that the Record Drawings reflect the actual condition of the Maintenance Services construction.
- U. The Maintenance Services Quality Control Plan shall contain detailed procedures for the Maintenance Contractor’s quality control activities. Maintenance Contractor’s construction or maintenance operations must incorporate quality processes as part of its Quality Management Plan, including planned and systematic activities undertaken by a party independent of the construction or maintenance process. Maintenance Contractor is to undertake all quality control in accordance with the Quality Management Plan and the requirements set out in the CMA Documents.

**0205 Maintenance Safety Plan**

- A. Maintenance Contractor shall be responsible for the safety of its personnel and of the general public affected by the Project.
- B. Maintenance Contractor shall submit to TxDOT for approval a comprehensive safety plan (“Maintenance Safety Plan”) that is consistent with and expands upon the preliminary safety plan submitted with the Proposal. The Maintenance Safety Plan shall fully describe the Maintenance Contractor’s policies, plans, training programs, work site controls, and Incident Management Plans to ensure the health and safety of personnel involved in the Project and the general public affected by the Project during the Maintenance Term.

- C. Maintenance Contractor’s Maintenance Safety Plan shall address procedures for immediately notifying TxDOT of all Incidents arising out of or in connection with the performance of the Maintenance Services, whether on or adjacent to the Project.

**0206 Management of Communications between Maintenance Contractor and TxDOT**

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

**0207 Design**

- A. In carrying out the Maintenance Services, where there is a requirement for design, the Maintenance Contractor shall ensure that the Project is restored either to the original design used for the construction of the Project, or to a different design that shall be in accordance with the requirements for design set forth in the Contract Documents.
- B. TxDOT shall retain the approval of certain documents as described in Section 3.0 of the Design-Build Agreement

**0208 Maintenance Transition**

- A. Maintenance Contractor shall submit the Maintenance Transition Plan within the time period specified in Section 3.6.1 of the CMA Document. As a minimum, the Maintenance Transition Plan shall address the following items.
- Prepare and submit to the TxDOT, for TxDOT approval, a right of entry permit for access to the Project for performance of corrective action regarding the condition of the Project immediately prior to transfer.
  - Prepare and submit Maintenance Transition punch list, list and status of equipment Warranties, vendors’ test reports, Maintenance Contractor’s test reports, all as-built drawings for Capital Asset Replacement Work, Maintenance Records (including NBIS records), copies of Warranty and service contracts, and spare parts purchased as part of the Maintenance Services.

- Coordinate the identification of Maintenance Transition punch list items required to be completed by Maintenance Contractor prior to maintenance transfer. Maintenance Transition punch list shall include (a) estimated completion dates, (b) responsible Party(s), and (c) items that must be completed prior to maintenance transfer.
- Prepare (in conjunction with TxDOT), administer and complete all items on the maintenance transfer punch list to the satisfaction of the TxDOT. Maintenance Contractor shall complete all items on the Maintenance Transition punch list to the satisfaction of the TxDOT prior to the transfer of maintenance responsibilities to TxDOT.
- Certify to TxDOT in writing that the Project can be safely used for its intended purpose and that the Maintenance Services have been performed in accordance with the terms of the CMA Documents, Governmental Approvals and applicable Law.
- Certify to TxDOT in writing that there are no Hazardous Materials located within, on, in or under the Project ROW due to the actions, omissions, negligence, willful Misconduct, or breach of applicable Law or contract by the Maintenance Contractor or any Major Subcontractors.
- Certify to TxDOT in writing that there is no litigation pending regarding the Maintenance Services or the Project by the Maintenance Contractor or any Major Subcontractors.

## **0300 PUBLIC INFORMATION AND COMMUNICATIONS**

### **0301 General Requirements**

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

## **0400 ENVIRONMENTAL**

It is not envisioned that there will be any requirement for environmental permitting, mitigation, or Hazardous Material remediation caused by Maintenance Services. Environmental permitting, mitigation, and Hazardous Material remediation required due to reconstruction etc., shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **0500 THIRD PARTY AGREEMENTS**

It is not envisioned that there will be any impact on third party agreements by Maintenance Services. If there is any such impact, for example due to extension or reconstruction works, these shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **0600 UTILITY ADJUSTMENTS**

It is not envisioned that there will be any requirement for Utility Adjustments caused by Maintenance Services. Utility Adjustments required due to reconstruction etc., shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **0700 RIGHT OF WAY (ROW)**

It is not envisioned that there will be any ROW requirements for Maintenance Services. ROW requirements due to reconstruction etc., shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **0800 GEOTECHNICAL**

It is not envisioned that there will be any geotechnical requirements for Maintenance Services. Geotechnical requirements due to reconstruction etc shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **0900 LAND SURVEYING**

It is not envisioned that there will be any land surveying requirements for Maintenance Services. Land surveying requirements due to reconstruction etc., shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **1000 GRADING**

Grading requirements shall be in accordance with Attachment 1 (Table 19-1) and Attachment 2 to CMA Exhibit 2. Grading requirements due to reconstruction etc., shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **1100 ROADWAYS**

Roadways shall be maintained in accordance with Attachment 1 (Table 19-1) and Attachment 2 to Exhibit 2. Roadway requirements required due to reconstruction etc., shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **1200 DRAINAGE**

Not Used.

## **1300 STRUCTURES**

General: Maintenance of all structures shall be in accordance with Attachment 1 (Table 19-1) and Attachment 2 to Exhibit 2. Structures requirements required due to reconstruction etc., shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **1400 RAIL**

### **1401 Project work affecting railroad operations**

- A. Should the Project cross a railroad right of way owned by an operating railroad, Maintenance Contractor shall coordinate the Maintenance Services with the operating railroad.
- B. Maintenance Contractor shall be responsible for obtaining the required approvals, permits, and agreements as required for the Maintenance Services, including any railroad related Maintenance Services.
- C. Whenever an agreement for construction, maintenance and use of railroad right-of-way between the operating railroad and TxDOT is required, Maintenance Contractor shall prepare all the documentation required to obtain the agreement, including preparation of the agreement application on behalf of TxDOT, the drawings and specifications, making necessary modifications as required, and preparation of the agreement. Maintenance Contractor shall submit the draft agreement to TxDOT for transmittal to the operating railroad. After all comments have been incorporated or satisfactorily resolved by Maintenance Contractor, railroad or TxDOT, Maintenance Contractor shall submit a complete and final agreement to TxDOT for execution.
- D. Maintenance Contractor shall arrange with the operating railroad for railroad flagging as required. Maintenance Contractor shall comply with the operating railroad's requirements for contractor safety training prior to performing Maintenance Services or other activities on the operating railroad's property.
- E. Maintenance Contractor shall cooperate and coordinate with all operating railroads for access by the operating railroad and/or their agents to the rail right-of-way as necessary for rail maintenance and operations activities.
- F. Maintenance Contractor shall procure and maintain, prior to working adjacent to and entry upon operating railroad property, insurance policies naming TxDOT, TxDOT's Consultants, and railroad as named insured. Maintenance Contractor shall obtain insurance per Exhibit 10 of the CMA Documents.



- G. All insurance policies shall be in a form acceptable to the operating railroad. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by the Maintenance Contractor upon operating railroad property.

**1402 Construction Requirements**

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

**1500 AESTHETICS AND LANDSCAPING**

**1501 Project work affecting aesthetics and landscaping**

- A. Maintenance Contractor shall repair all structural or natural failures of the embankment and cut slopes of the Project throughout the term of this CMA. Such work shall include all work required to maintain the slopes in general conformance to the original graded cross-sections, the replacement of landscaping materials, reseeding and re-vegetation for erosion control purposes and removal and disposal of all eroded materials from the roadway and shoulders. TxDOT and Maintenance Contractor acknowledge that plant establishment requirements and obligations are not included within the Maintenance Services, but are part of the DB Contractor’s obligations under the Design-Build Agreement for a period of 3 years after the date of Final Acceptance. However, if a structural or natural failure of the embankment or cut slope occurs in a landscaped area after the 3 year time period expires, the Maintenance Contractor shall be responsible to perform plant establishment activities for 90 calendar days in accordance with Item 192 (Landscape Planting) and Item 193 (Landscape Establishment) of the 2004 TxDOT Standard Specifications for Construction of Highways, Streets, and Bridges.

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

**1601 Administrative Requirements**

Not used.

**1602 Third Party Signs**

Not used.

### **1603 Construction requirements**

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

### **1604 Other requirements**

- A. Signing, delineation, pavement marking, signalization, and lighting requirements due to reconstruction etc. shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **1700 INTELLIGENT TRANSPORTATION SYSTEMS**

It is not envisioned that there will be any intelligent transportation system requirements for Maintenance Services. Intelligent transportation system requirements due to reconstruction etc.. shall be dealt with in accordance with appropriate sections of the Design-Build Agreement.

## **1800 TRAFFIC MANANGEMENT**

### **1801 General Requirements**

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

### **1802 Administrative Requirements**

- A. As a component of the Maintenance Management Plan, Maintenance Contractor shall develop, implement, and maintain a Traffic Management Plan (TMP) to be used during the Maintenance Term. At a minimum, the TMP shall include the following:
  - (i) Descriptions of the qualifications and duties of the traffic engineering manager, traffic control coordinator, and other personnel with traffic control responsibilities
  - (ii) Procedures to identify and incorporate the needs of transit operators, Utility Owners, Governmental Entities, local governmental agencies, Emergency

Service providers, school districts, business owners, and other related Users, Customer Groups or entities in the Project corridor and surrounding affected areas

- (iii) Procedures for obtaining acceptance of detours, road and Lane Closures and other traffic pattern modifications from applicable Governmental Entities, stakeholders, and adjacent sections of roads and adjacent landowners, and implementing, maintaining and removing those modifications
- (iv) Procedures for installation, maintenance and removal of interim signing and the corresponding handling of permanent signing during maintenance operations
- (v) Procedures for installation, maintenance, replacement and removal of traffic control devices, including pavement markings and traffic barriers, if used
- (vi) Procedures and process for the safe ingress and egress of construction vehicles in the work zone
- (vii) Provisions to provide continuous access to established truck routes and Hazardous Material (HazMat) routes, and to provide suitable detour routes, including obtaining any approvals required by the appropriate Governmental Entities for these uses
- (viii) Procedures to modify plans as needed to adapt to changing Project circumstances
- (ix) Procedures to communicate TMP information to Maintenance Contractor’s public information personnel and notify the public of maintenance of traffic issues
- (x) Descriptions of contact methods, personnel available, and response times for any Emergency conditions requiring TxDOT attention during off-hours.

**1803 Design Requirements**

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

- D. Maintenance Contractor shall ensure all streets and intersections remain open to traffic to the greatest extent possible. Maintenance Contractor shall maintain access to all adjacent streets and shall provide for ingress and egress to public and private properties at all times.

#### **1804 Construction Requirements**

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

#### **1805 Deliverables**

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

### **1900 MAINTENANCE**

#### **1901 General Maintenance Requirements**

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

## **1902 General Maintenance Obligations**

- A. Maintenance Contractor shall take all necessary actions to achieve the following:
  - (i) Maintain the Maintained Elements in a manner appropriate for a facility of the character of the Project.
  - (ii) Minimize delay and inconvenience to Users and, to the extent Maintenance Contractor is able to control, Users of adjacent and connecting roadways.
  - (iii) Minimize the risk of damage, disturbance, or destruction of third-party property during the performance of Maintenance Services.

- (iv) Coordinate with and enable TxDOT and others with statutory duties or functions in relation to the Project to perform such duties and functions.
  - (v) Perform systematic Project inspections, periodic maintenance, and routine maintenance in accordance with the provisions of Maintenance Contractor’s Maintenance Management Plan and Maintenance Contractor’s Maintenance Safety Plan and the CMA Documents.
- B. Maintenance Contractor is responsible for providing all resources necessary for the performance of all Maintenance Services in the Maintenance Management Plan and as required by the CMA Documents.
- C. Maintenance Contractor shall comply with the requirements of Series 1800 – Traffic Management
- D. All Lanes shall be maintained in accordance with the same standard of maintenance.
- E. For Category 1 Defects, the Maintenance Contractor shall take necessary action such that the hazard to Users is mitigated within the period given in the column entitled “Category 1 Hazard Mitigation” in Attachment 1 to this Maintenance Specification, and shall permanently remedy the Category 1 Defect within the period given in the column entitled “Category 1 Permanent Remedy” in Attachment 1 to this Maintenance Specification.
- F. For Category 2 Defects, the Maintenance Contractor shall undertake the permanent repair within the period specified in the column entitled “Category 2 Permanent Repair” in Attachment 1 to this Maintenance Specification.
- G. The Maintenance Contractor shall coordinate with TxDOT to achieve a smooth transition of Maintenance Services from and to TxDOT.

**1903 Maintenance Management Plan (MMP)**

- A. Maintenance Contractor shall prepare a Maintenance Management Plan (MMP) that is consistent with the general maintenance obligations described in Section 1902 (General Maintenance Obligations) and defines the process and procedures for the maintenance of the Project throughout the Maintenance Term. The MMP shall include Performance Requirements, measurement procedures, threshold values at which maintenance is required, inspection procedures and frequencies, and subsequent maintenance to address noted deficiencies, for each Maintained Element of the Project in accordance with Attachment 1 to this Maintenance Specification, including impacts to adjacent and connecting roadways. The MMP shall identify response times to mitigate hazards, permanently remedy, and permanently repair Defects. Response times shall be in accordance with the Attachment 1 to this Maintenance Specification. Maintenance Contractor shall update this plan as required, or at least annually.

- B. The MMP shall include procedures for managing records of inspection and Maintenance Services, including appropriate measures for providing protected duplication of the records. Inspection and Maintenance Records shall be kept for the Maintenance Term and shall be provided to TxDOT at the time the Project is delivered to TxDOT, at either the expiration of the Maintenance Term or earlier termination of the Agreement. All records obtained during the Warranty Periods shall be kept and provided to TxDOT at the end of the last Warranty Period.
- C. Maintenance Contractor shall submit the MMP to TxDOT for review and approval no later than 60 Days following the issuance of NTP1. Approval by TxDOT of the MMP shall be a condition precedent to the performance of Maintenance Services.
- D. To the extent that Maintenance Contractor proposes any enhancements to the Performance Requirements set forth in Attachment 1 to this Maintenance Specification, Maintenance Contractor's MMP shall include Performance Requirements, measurement procedures, and threshold values at which maintenance is required for each Maintained Element of the Project in accordance with Section 1908 of this Maintenance Specification, including impacts to Adjacent Work or facilities. Inspection procedures and frequencies, and subsequent maintenance to address noted deficiencies of the Maintained Elements shall also be included, in accordance with the requirements of Section 1909 of this Maintenance Specification. The MMP shall identify response times to mitigate hazards, permanently remedy, and permanently repair Defects, which shall, at a minimum, be in accordance with Attachment 1 to this Maintenance Specification. Maintenance Contractor shall update this plan as required, or at least annually.
- E. The MMP shall include Maintenance Contractor's proposals for Capital Asset Replacement Work, as set forth in Section 3.2 of the Agreement and as further described below. The Capital Asset Replacement Work Submittal (which is to be a component of the MMP) shall include the timing, scope and nature of work that Maintenance Contractor proposes during each year for which the Maintenance Services are to apply. Maintenance Contractor shall set forth, by Maintained Element:
- (i) the estimated Useful Life;
  - (ii) a description of the type of Capital Asset Replacement Work anticipated to be performed at the end of the Maintained Element's Useful Life;
  - (iii) a brief description of any Capital Asset Replacement Work anticipated to be performed before the end of the Maintained Element's Useful Life, including reasons why this work should be performed at the proposed time; and
  - (iv) a Capital Asset Replacement Work Schedule as described in Section 0202 (Project Schedule) of this document.
- F. Maintenance Contractor shall prepare updates to the Capital Asset Replacement Work requirements of the MMP as set forth in Section 3.2 of the Agreement.

#### **1904 Maintenance During Work**

See applicable area of Design-Build Agreement.

#### **1905 Highway Location and Data Requirements**

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

#### **1906 Auditable Sections**

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

#### **1907 Maintenance Management System**

- A. Maintenance Contractor shall implement a computer based Maintenance Management System (MMS), compatible with TxDOT MMS, to record inventory, failures, repairs, maintenance activities and inspections performed.
- B. The MMS shall include relevant Maintained Element information including but not limited to, location to the nearest tenth mile, using the posted reference marker number, Geographic Information System (GIS) data and control number for bridge class structures, asset description, date of installation, type of failure, date-time of failure, date-time of response to the site and date-time returned to service, preventive maintenance work, scheduled work, work repair code, time of failure, to time of repair. The MMS shall be configured to report work by TxDOT “function code” shown in Attachment 7, Maintained Element, reference marker, and unit of measurement, as the same described in the aforementioned MMS User Manual, to categorize the Maintenance Services performed by the Maintenance Contractor.
- C. The MMS system shall be able to record all complaints/service requests. The Maintenance Contractor shall be able to report weekly to the TxDOT, on a format approved by TxDOT, information on any complaints or service requests received by the Maintenance Contractor. This information will include the following:
- (i) The date and time of the complaint;
  - (ii) The location and nature of the problem;
  - (iii) Injuries and police involvement, including agency, name and badge number;
  - (iv) Who made the complaint; and



- (v) Date and action taken to address the complaint
- D. The MMS system shall be able to record all accidents/Incidents. The Maintenance Contractor shall be able to report in writing to the TxDOT, no later than the 15th of each calendar month on a format approved by the TxDOT, information from the previous month on any accident or Incident related to Maintenance Services being performed by Maintenance Contractor or within a work zone, including:
- (i) accidents involving Maintenance Contractor or any Subcontractor personnel, equipment, barricades or tools;
  - (ii) traffic accidents within the limits or in the vicinity of any Maintenance Services being performed by Maintenance Contractor or any Subcontractors;
  - (iii) Releases of Hazardous Materials;
  - (iv) any accident involving Maintenance Contractor or the traveling public that causes damage to any Project appurtenance, structure, improvement or fixture.
  - (v) with respect to any accident/Incident, the information provided shall include as a minimum:
    - a. The date and time of the accident/Incident;
    - b. The location of the problem;
    - c. The nature of the problem;
    - d. All parties involved in the Incident, including names, addresses, telephone numbers and their involvement (including witnesses);
    - e. Responsible party and insurance information;
    - f. Action taken to address the Incident; and
    - g. Documentation of traffic control in place at location.
- E. When a Maintained Element is constructed, installed, maintained, inspected, modified, replaced or removed, the MMS shall be updated within three days of completion of such work. Defects shall be recorded on the MMS within 3 days of them coming to the attention of Maintenance Contractor. All other recording requirements shall be recorded on the MMS within 15 days of completion or occurrence of the relevant activity.
- F. The MMS shall be fully populated and operational prior to the commencement of Maintenance Services and kept updated and operational for the duration of the Maintenance Term. Maintenance Contractor shall provide equipment, facilities and training necessary to permit remote, real-time, dedicated high-speed access to the MMS, via one terminal each, for TxDOT. Maintenance Contractor shall handover the MMS and everything required for its operation to TxDOT, or other entity as directed by TxDOT, upon expiration or earlier termination of Maintenance Term.
- G. In the event that TxDOT does not require Maintenance Contractor to provide a computer based Maintenance Management System, Maintenance Contractor shall provide TxDOT with all relevant Maintained Element information including but not limited to, location to the nearest tenth mile, using the posted reference marker number, GIS data and control number for bridge class structures, asset description, date of installation, type of failure, date-time of

failure, date-time of response to the site and date-time returned to service, preventive maintenance work, scheduled work, work repair code, time of failure, to time of repair. A report shall be available to summarize work by TxDOT “function code”, Maintained Element, reference marker, and unit of measurement, as the same described in the aforementioned MMS User Manual, to categorize the Maintenance Services performed by the Maintenance Contractor. When a Maintained Element is constructed, installed, maintained, inspected, modified, replaced or removed, the Maintenance Contractor shall provide TxDOT with all relevant information within three days of completion of such work. Maintenance Contractor shall provide all relevant information concerning Defects within 3 days of them coming to the attention of Maintenance Contractor. All other information requirements shall be provided to TxDOT within 15 days of completion or occurrence of the relevant activity.

**1908 Performance Requirements**

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

Table 1908-1 – Attachment 1 Information Matrix

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

- C. In its annual submittals of the revised Attachment 1 to this Maintenance Specification, Maintenance Contractor shall propose for TxDOT’s approval such amendments to the inspection and measurement methods and measurement records as are necessary to cause these to comply with this Maintenance Specification.

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

**1909 Inspections**

- A. Maintenance Contractor shall establish inspection procedures and plan and implement a program of inspections of the Project to be included within the Project Schedule that:
  - (i) verifies the continuing safety of the Project for Users;
  - (ii) prioritizes Category 1 Defects;
  - (iii) ensures that all Category 1 Defects are identified and repaired such that the hazard to Users is mitigated within the period given in the column entitled “Category 1 Hazard Mitigation” in Attachment 1 to this Maintenance Specification;
  - (iv) ensures that all Category 1 Defects are identified and permanently remedied within the period given in the column entitled “Category 1 Permanent Remedy” in Attachment 1 to this Maintenance Specification;
  - (v) identifies Category 2 Defects to be included for repair either within Maintenance Contractor’s annually recurring highway maintenance and repair program or as Capital Asset Replacement Work;

- (vi) ensures that all Category 2 Defects are identified and permanently repaired within the period given in the column entitled “Category 2 Permanent Repair” in Attachment 1 to this Maintenance Specification;
  - (vii) is responsive to reports or complaints received from Customer Groups;
  - (viii) takes account of Incidents and Emergencies affecting the Project;
  - (ix) monitors the effects of extreme weather conditions; and
  - (x) collates data to monitor performance of the Project and to establish priorities for future maintenance operations and Capital Asset Replacement Work.
- B. Maintenance Contractor shall ensure that personnel performing inspections of road pavements and structures are certified as inspectors and/or raters in accordance with TxDOT’s PMIS program or applicable certifying agency for the type of inspection being performed.
- C. The periods stated in Attachment 1 to this Maintenance Specification under the headings of Category 1 Defects and Category 2 Defects shall be deemed to start upon the date Maintenance Contractor first obtained knowledge of, or first reasonably should have known of, the defect. For this purpose Maintenance Contractor shall be deemed to first obtain knowledge of the failure not later than the date of delivery of the initial notice to Maintenance Contractor. Maintenance Contractor shall investigate reports and complaints on the condition of the Project received from all sources. Maintenance Contractor shall record such reports and complaints as Maintenance Records together with details of all relevant inspections and actions taken in respect of Defects, including temporary protective measures and repairs.
- D. In performing inspections to identify Category 1 and Category 2 Defects, Maintenance Contractor shall, for any Maintained Element, conform at a minimum to the inspection standards set forth for that Maintained Element in the column entitled “Inspection and Measurement Method” on Attachment 1 to this Maintenance Specification.
- E. Maintenance Contractor shall perform General Inspections in accordance with the MMP so that: the repairs of all Defects are included in planned programs of work; and in any case in accordance with paragraph G of this Section 1909.
- F. Maintenance Contractor shall record details of the manner of inspection (e.g. center Lane Closure or shoulder), the weather conditions and any other unusual features of the inspection, on O&M Records in respect of General Inspections.
- G. Maintenance Contractor shall perform General Inspections such that Category 2 Defects are identified and repaired within the period shown in Attachment 1 to this Maintenance Specification or, if the Defect is not specified in Attachment 1 to this Maintenance

Specification, within six months of the Defect occurring; provided that Defects which require special equipment to identify or are listed under the heading of Specialist Inspections in Table 1909-1 may have different identification periods.

- H. Maintenance Contractor shall undertake Specialist Inspections for Maintained Elements listed in Table 1909-1 and shall include the inspection results as Maintenance Records.

Table 1909-1 – Specialist Inspections

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

**1910 Maintenance Contractor Audit Inspections**

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

**1911 Asset Condition Score by Maintenance Contractor**

- A. Within ten days of the quarterly Audit Inspections, Maintenance Contractor shall assess its achievement of the Performance Requirements by self scoring against the Targets set forth on Attachment 1 to this Maintenance Specification.

B. Maintenance Contractor shall report quarterly to TxDOT an Asset Condition Score to include, for each Element Category, all of the Auditable Sections inspected in the most recent Audit Inspection. Maintenance Contractor shall assess the Asset Condition Score according to the measurement criteria set forth in Table 1911-1.

Table 1911-1 – Asset Condition Score Criteria for Element Categories  
(Reported quarterly for each Element Category for all inspected Auditable Sections)

Score	Criteria
5	<ul style="list-style-type: none"> <li>• Targets for individual Elements are almost entirely met (95% to 100% compliance with the relevant Targets for each Element within each Auditable Section), and</li> <li>• Is fully functional and in nearly new condition, meeting or exceeding Performance Requirement.</li> </ul>
4	<ul style="list-style-type: none"> <li>• Targets for individual Elements are substantially met (less than 95% compliance and 90% or greater compliance with the relevant Targets for each Element within each Auditable Section), and</li> <li>• Is functional and in good condition, meeting Performance Requirement.</li> </ul>
3	<ul style="list-style-type: none"> <li>• Targets for individual Elements are mostly met (less than 90% compliance and 75% or greater compliance with the relevant Targets for each Element within each Auditable Section), and</li> <li>• Is in fair condition, but suggesting need for early replacement, renewal or repair of individual Element and/or maintenance or operation improvement action to meet Performance Requirement.</li> </ul>
2	<ul style="list-style-type: none"> <li>• Targets for individual Elements are barely met (less than 75% compliance and 50% or greater compliance with the relevant Targets for each Element within each Auditable Section), or</li> <li>• In poor condition demonstrating need for immediate replacement, renewal or repair of individual Element and/or immediate change to MMP.</li> </ul>
1	<ul style="list-style-type: none"> <li>• Targets for individual Elements are not met (less than 50% compliance with the relevant Targets for each Element within each Auditable Section), or</li> <li>• In very poor condition demonstrating need for immediate replacement, renewal or repair of individual Element and/or immediate change to MMP.</li> </ul>

Notes to Table 1911-1:

1. The Asset Condition Score for any Element Category shall be determined by the lowest Asset Condition Score for any Element within the Element Category. The calculation of Asset Condition Score is demonstrated by the following example: Assume there are 52 Auditable Sections, of these 25%, or 13 are audited each quarter. If there are five Targets to be assessed for Element “pavement markings”, there are therefore  $5 \times 13 = 65$  measurement records for pavement markings. If 62 of these measurement records meet the Target, there would be 95.38% compliance and an Asset Condition Score of five assigned for that Element. However, if one of the remaining Elements in the Element Category achieves an Asset Condition Score of four the Asset Condition Score for the Element Category shall be four.
  2. The mean of the Asset Condition Scores across Elements in any Element Category is calculated to 1 decimal point and also recorded.
  3. Where a measurement record relates to a service measured over time or an Element that is not represented in more than 25% of Auditable Sections then the Asset Condition Score will be based on the total service and not a 5% random sample. This applies to the performance measurement of Element Categories: structures, traffic signals, Incident response, customer service, snow and ice control, facility buildings and toll equipment or other Element Categories meeting the above criteria identified following establishment of the Auditable Sections.
  4. Pavement Condition Score is a component of Asset Condition Score for Element Category “Pavement”, but Pavement Condition Score shall also be reported annually for the entire Project.
  5. DB Contractor acknowledges that Asset Condition Score is a mechanism to benchmark the performance of the Project against the performance of other similar facilities and that TxDOT may, during the Term, alter the Asset Condition Score criteria to reflect Good Industry Practice.
  6. “Mean” in this context shall be the arithmetic mean.
- C. Where specific Measurement criteria are not provided in Attachment 1 to this Maintenance Specification, Maintenance Contractor shall use Good Industry Practice to assess the Asset Condition Score against the general criteria stated in Table 1911-1.
-

## **2000 BICYCLE AND PEDESTRIAN FACILITIES**

It is not envisioned that there will be any requirement for bicycle and pedestrian facilities caused by Maintenance Services. Bicycle and pedestrian facilities requirements due to reconstruction etc. shall be dealt with in accordance with appropriate sections of Design-Build Agreement.





Performance and Measurement Table Baseline									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitigation	Cat 1 Perma- nent Remedy	Cat 2 Perma- nent Repair			
							<ul style="list-style-type: none"> <li>• Mainlanes and ramps – 80</li> <li>• Frontage roads – 70</li> </ul>	100%	
	1.2 cont						<p><b>b) Ruts – Mainlanes, shoulders &amp; ramps</b> Depth as measured using an automated device in compliance with TxDOT standards.</p> <p>10ft straight edge used to measure rut depth for localized areas.</p>	<p>Percentage of wheel path length with ruts greater than ¼" in depth in each Auditable Section</p> <ul style="list-style-type: none"> <li>• Mainlanes, shoulders and ramps – 3%</li> <li>• Frontage roads – 10%</li> </ul> <p>Depth of rut at any location greater than 0.5"</p>	<p>Nil</p> <p>Nil</p> <p>Nil</p>
							<p><b>c) Ride quality</b> Measurement of International Roughness Index (IRI) according to TxDOT standard Tex-1001-S, Operating Inertial Profilers and Evaluating Pavement Profiles</p>	<p>For 80% of all Auditable Sections measured, IRI throughout 98% of each Auditable Section is less than or equal to:</p> <ul style="list-style-type: none"> <li>• Mainlanes, ramps – 95" per mile**</li> <li>• Frontage roads – 120" per</li> </ul>	<p>100%</p> <p>100%</p>

Performance and Measurement Table Baseline									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitigation	Cat 1 Perma- nent Remedy	Cat 2 Perma- nent Repair			
							mile**		
	1.2 cont			24 hrs	28 days	6 months	<p>** To allow for measurement bias, an adjustment of -10 (minus ten) is made to IRI measurements for concrete pavements before assessing threshold compliance.</p>	<p>IRI measured throughout 98% of Auditable Section of less than or equal to:</p> <ul style="list-style-type: none"> <li>• Mainlanes, ramps 120" per mile**</li> <li>• Frontage roads – 150" per mile**</li> </ul>	<p>100%</p> <p>100%</p>
							<p>(Capital Asset Replacement Work and new construction subject to construction quality standards)</p>	<p>Mainlanes, ramps, 0.1 mile average – 150" per mile**</p> <p>Frontage roads, 0.1 mile average – 180" per mile**</p> <p>IRI measured throughout 98% of each lane containing a bridge deck in any Auditable Section , 0.1 mile average – 200" per mile**</p>	<p>100%</p> <p>100%</p> <p>100%</p>
							<p>10-ft straightedge used to measure discontinuities</p>	<p>Individual discontinuities greater than 0.75"</p>	<p>Nil</p>
							<p><b>d) Failures</b> Instances of failures exceeding the failure criteria set forth in</p>	<p>Occurrence of any failure</p>	<p>Nil</p>

Performance and Measurement Table Baseline									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitigation	Cat 1 Perma- nent Remedy	Cat 2 Perma- nent Repair			
							the TxDOT PMIS Rater’s Manual, including potholes, base failures, punchouts and jointed concrete pavement failures		
	1.2 cont			24 hrs	28 days	6 months	<p><b>e) Edge drop-offs</b> Physical measurement of edge drop-off level compared to adjacent surface</p> <p><b>f) Skid resistance</b> ASTM E274/E274M-11 Standard Test Method for Skid Resistance Testing of Paved Surfaces at 50 MPH using a full scale smooth tire meeting the requirements of ASTM E524-08 .</p>	Instances of edge drop-off greater than 2” (Number)	Nil
							<ul style="list-style-type: none"> <li>• Mainlanes, shoulders and ramps – Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5-mile section of mainlanes, shoulders and ramps are below 25.</li> </ul>		100%
							<ul style="list-style-type: none"> <li>• Frontage roads –Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5-mile section of frontage roads is below 25.</li> </ul>		100%

Performance and Measurement Table Baseline									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitigation	Cat 1 Perma- nent Remedy	Cat 2 Perma- nent Repair			
	1.2 cont							<ul style="list-style-type: none"> <li>When the skid number is below 25 and/or when required by the Wet Weather Accident Reduction Program, areas categorized as high risk, the Maintenance Contractor shall perform a site investigation and perform required corrective action.</li> </ul>	100%
			Road Users warned of potential skidding hazards	24hrs	7days	N/A			<b>Skid resistance</b> (as above)
1.3	Crossovers and other paved areas	Crossovers and other paved areas are free of Defects	24 hrs	28 days	6 months	<b>a) Potholes</b>  <b>b) Base failures</b>	Potholes of low severity or higher (Number)	Nil	
							Base failures of low severity or higher (Number)	Nil	
1.4	Joints in concrete	Joints in concrete paving are sealed and watertight	24 hrs	28 days	6 months	Visual inspection of joints	Length unsealed joints greater than ¼"	Nil	
		Longitudinal joint separation				Measurement of joint width and level difference of two sides of joints	Joint width more than 1" or faulting more than ¼"	Nil	

Performance and Measurement Table Baseline									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitigation	Cat 1 Perma- nent Remedy	Cat 2 Perma- nent Repair			
	1.5	Curbs	Curbs are free of defects	24 hrs	28 days	6 months	Visual inspection	Length out of alignment	Nil
<b>3) STRUCTURES</b>									
	3.1	Structures having an opening measured along the centre of the roadway of more than 20 feet between undercopings of abutments or springlines of arches or extreme ends of openings or multiple boxes	Substructures and superstructures are free of: <ul style="list-style-type: none"> <li>• blocked drains, weep pipes manholes and chambers</li> <li>• blocked drainage holes in structural components</li> <li>• defects in joint sealants</li> <li>• defects in pedestrian protection measure</li> <li>• scour damage</li> <li>• corrosion of rebar</li> <li>• paint system failures</li> <li>• impact damage by any Maintenance Contractor – Related Entity</li> </ul>	24 hrs	28 days	6 months	Inspection and assessment in accordance with the requirements of federal National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration’s Bridge Inspector’s Reference Manual.	Records as required in the TxDOT Bridge Inspection Manual  Occurrences of condition rating below seven for any deck, superstructure or substructure  All condition states to be one for all structure components	Nil  100%
	3.2	Structure components	i) Expansion joints are free of: <ul style="list-style-type: none"> <li>• defects in drainage systems</li> <li>• loose nuts and bolts</li> <li>• defects in gaskets</li> </ul> ii) The deck drainage system is free of all and operates as	24 hrs	28 days	6 months	Inspection and assessment in accordance with the requirements of federal National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection	Records as required in the TxDOT Bridge Inspection Manual  Occurrences of condition rating below seven for any deck, superstructure or substructure	Nil  100%

Performance and Measurement Table Baseline									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitigation	Cat 1 Perma- nent Remedy	Cat 2 Perma- nent Repair			
			intended. iii) Parapets are free of: <ul style="list-style-type: none"> <li>• loose nuts or bolts</li> <li>• blockages of hollow section drain holes</li> </ul>				Manual, and the Federal Administration’s Bridge Inspector’s Reference Manual..	All condition states to be one for all structure components	
	3.2 cont.		<ul style="list-style-type: none"> <li>• • accident damage</li> </ul> iv) Bearings and bearing shelves are clean. v) Sliding and roller surfaces are clean and greased to ensure satisfactory performance. Additional advice contained in bearing manufacturers' instructions in the Structure Maintenance Manual is followed. Special finishes are clean and perform to the appropriate standards. vii) All non-structural items such as hoists and electrical fixings, operate correctly, are clean and lubricated as appropriate, in accordance with the manufacturer's recommendations and certification of lifting devices is maintained.	24 hrs	28 days	6 months			

Performance and Measurement Table Baseline									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitigation	Cat 1 Perma- nent Remedy	Cat 2 Perma- nent Repair			
	3.3	Non-bridge class culverts	Non-bridge-class culverts are free of: <ul style="list-style-type: none"> <li>defects in sealant to movement joints</li> <li>scour damage</li> </ul>	24 hrs	28 days	6 months	Visual inspection	Number with vegetation, debris and silt  Number with defects in sealant and movement joints  Number with scour damage	Nil  Nil  Nil
	3.4	Gantries and high masts	Sign signal gantries, high masts are structurally sound and free of: <ul style="list-style-type: none"> <li>loose nuts and bolts</li> <li>defects in surface protection systems</li> </ul>	24 hrs	28 days	6 months	Visual inspection	Number with loose assemblies  Number with defects in surface protection	Nil  Nil
	3.5	Load ratings	All structures maintain the design load capacity.	24 hrs	28 days	6 months	Load rating calculations in accordance with the Manual for Bridge Evaluation and the TxDOT Bridge Inspection Manual. Load restriction requirements as per the TxDOT Bridge Inspection Manual	Number of load restrictions for Texas legal loads (including legally permitted vehicles)	Nil



Performance and Measurement Table Baseline									
ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*	TARGET
				Cat 1 Hazard Mitigation	Cat 1 Perma- nent Remedy	Cat 2 Perma- nent Repair			
	3.6	Access points	Not used						
	3.7	Mechanically Stabilized Earth and Retaining Walls	<p>Mechanically Stabilized Earth and Retaining Walls free of:</p> <ul style="list-style-type: none"> <li>• blocked weep holes</li> <li>•</li> <li>• defects in joint sealants</li> <li>• defects in pedestrian protection</li> <li>• scour damage</li> <li>• corrosion of reinforcing bars</li> <li>• paint system failure</li> <li>• concrete spalling</li> <li>• impact damage by any Maintenance Contractor – Related Entity</li> </ul> <p>Parapets free of:</p> <ul style="list-style-type: none"> <li>• loose nuts and bolts</li> <li>• blockage of drain holes</li> <li>•</li> <li>• impact damage by any Maintenance Contractor – Related Entity</li> <li>• concrete spalling</li> </ul>	24 hours	28 days	6 months	Inspection and assessment in accordance with the requirements of federal Nations Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways - Part 650, the TxDOT Bridge Inspection Manual and the Federal Highway Administration's Bridge Inspector's Reference Manual.	Records as required in the TxDOT Bridge Inspection Manual	100%

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

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

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

ELEMENT CATEGORY	REF	ELEMENT	REQUIRED		
			A	B	C
<b>1) ROADWAY</b>					
	1.1	Obstructions and debris			
	1.2	Pavement	R		
	1.3	Crossovers and other paved areas	R		
	1.4	Joints in concrete	R		
	1.5	Curbs	R		
<b>3) STRUCTURES</b>					
	3.1	Structures having an opening measured along the centre of the roadway of more than 20 feet between undercopings of abutments or springlines of arches or extreme ends of openings or multiple boxes	R		
	3.2	Structure components	R		
	3.3	Non-bridge class culverts	R		
	3.4	Gantries and high masts	R		
	3.5	Load ratings	R		
	3.6	Access points			
	3.7	Mechanically Stabilized Earth and Retaining Walls	R		
<b>12) EARTHWORKS, EMBANKMENTS AND CUTTINGS</b>					
	12.1	Slope Failure	R		
	12.2	Slopes - General	R		

**ATTACHMENT 3 TO THE MAINTENANCE SPECIFICATION : LIMITS FOR MAINTENANCE SERVICES**

The limits for Maintenance Services are defined by the physical limits of all Work under the Design-Build Agreement as defined in the Design-Build Agreement.

Maintenance Contractor shall be responsible for the Maintenance Services within the above defined physical limits for all applicable Element Categories subject to the following limitations:

- Only new constructed elements are to be maintained by the Maintenance Contractor; and
- Overlay sections specified in Technical Provisions Section 1.2.1.2 are excluded.

**ATTACHMENT 4 -**

Not used.

**ATTACHMENT 5 : PUBLIC INFORMATION OFFICE OPENING HOURS**

Not used.

**ATTACHMENT 6 : RESTRICTIONS ON TRAFFIC MANAGEMENT**

Lane Closure restrictions for maintenance work will be as follows:

No Lane Closure that restricts or interferes with traffic shall be allowed from noon on the day preceding to 10:00 PM on the day after the following holiday schedule. For this Project, unless otherwise noted in the plans and/or as directed by TxDOT, daily Lane Closures shall be limited according to the following restrictions:

- A. General restrictions for US 77 mainlanes, ramps, frontage roads and arterials:
  - I. New Year’s Eve and New Year’s Day (December 31 through January 1)
  - II. Easter Holiday Weekend (Friday through Sunday)
  - III. Memorial Day Weekend (Friday through Monday)
  - IV. Independence Day (July 3 through noon on July 5)
  - V. Labor Day Weekend (Friday through Monday)
  - VI. Thanksgiving Holiday (Wednesday through Sunday)
  - VII. Christmas Holiday (December 23 through December 26)
  - VIII. At least one through mainline in each direction shall remain open at all times, unless otherwise approved by TxDOT
  - IX. Complete closure of the mainlanes will not be allowed, unless approved by the TxDOT.
  
- B. Frontage roads and arterial crossings:
  - I. At least one through mainline in each direction shall remain open at all times, unless otherwise approved by TxDOT.
  - II. Provide and maintain access to properties and businesses adjacent to the right-of-way at all times unless otherwise directed by the TxDOT.
  - III. No mainlane and frontage road closures may occur at the same time, unless approved by the TxDOT.
  
- C. Ramps:
  - I. No two adjacent ramp closures may occur at the same time.



**ATTACHMENT 7 : MAINTENANCE PLANNING ACTIVITIES & ASSOCIATED FUNC. CODES**

All segment 78 functions are trackable

**DISTRICT CROSS REFERENCE CODE CHART 12 (FIMS SEGMENT 78, AND PORTIONS OF 70, 71 AND 72)**

Effective September, 2012 (Rev Date: July, 2011)

Code	Description	Code	Description	Code	Description	Code	Description
110 P03 CY	Removal and Replacement Removal of base and/or subgrade materials from distressed or failed areas and replacement with suitable materials. (Includes resurfacing.)	522 R0 MI	Street Sweeping Routine street sweeping. Units are the actual miles swept regardless of centerline miles.	593 T04 LF	Cable Median Barrier Installation and maintenance of high tension cable median barrier systems, including the cable, posts and end treatments.	733 T03 EA	Vandalized Signs Replacement or repair of signs damaged by vandalism.
120 P03 CY	In Place Repair In place repair base and/or subgrade material. (Includes resurfacing, and/or may not include additional stabilizing material.)	523 R1 MI	Debris Routine patrolling to remove and dispose of debris, including dead animals.	594 T04 LF	Concrete Barrier Installation, removal and maintenance of concrete barriers, including attached headlight barrier fence.	738 T11 EA	Installation and Maintenance of Flashing Beacons Installation and maintenance of overhead flashing beacons, pedestal or sign mounted flashing beacons, etc.
135 R05 EA LF	Install and/or Maintain Underdrains Installation, repair and maintenance of all types of underdrains.	524 R0 AC	Spot Litter Spot removal and disposal of litter, including dead animals, from the right of way.	595 T04 LF	Guard Fence Installation and maintenance of guard fence, MGBF, turn down ends, headlights barrier fence, including posts, metal beams, etc. (End treatment other than turn down ends, see function 596.)	742 T07 EA	Installation and Maintenance of Isolated Traffic Signals Installation and maintenance of isolated traffic signals, diamond interchange signals, etc.
145 S06 SY	Unpaved Road Maintenance Repair of gravel or dirt roads, including blading, addition of base, etc.	525 R0 HRS	Adopt-A-Highway Installation of posts and signs, materials furnished to groups, and the personnel and equipment used to assist in removal and disposal of collected litter.	596 T05 EA	Guardrail End Treatment Systems Installation and maintenance of guardrail end treatment systems. (For attenuators other than GETS, see function 725).	743 T06 EA	Replaced by Function Code 743
211 P01 SY	Leveling or Overlay with Laydown Machine The application of asphaltic tack coat and placing of asphaltic concrete materials to improve the ride qualities or level up low spots.	526 R0 SY	Hand Sweeping Hand sweeping of riprap, islands, medians, curb & gutter, bullpens, driveways, etc.	597 T03 EA	Mailboxes, Installation and Maintenance	744 T08 CL M	Traffic Management System Maintenance and operation of traffic management systems on freeways or non-freeways, entrance/exit ramps, motorist information (e.g. changeable message signs, highway advisory radio, etc.) surveillance and related communications equipment. (ITS Control Center personnel should charge to segment 70, detail 0570.)
212 P01 SY	Leveling or Overlay with a Maintainer The application of asphaltic tack coat and placing layers of asphaltic concrete material.	530 S10 SF	Removal of Graffiti Removal of graffiti from fixtures, wing walls, bridge structures, etc. Not to be used in lieu of function 733 (Vandalized Signs), 731 or 732 (Sign Installation).	598 S06 HRS	Boat Ramp Maintenance Work performed in maintaining boat ramps, including mowing, litter removal, emptying litter barrels, maintenance of paved and unpaved areas, etc.	750 T09 EA	Installation and Removal of Pavement Markers Installation and/or removal of traffic buttons or reflective pavement markers.
213 P01 SY	Leveling by Hand The application of asphaltic tack coat and placing layers of asphaltic concrete material by hand. This includes repair of pavement areas greater than one square yard.	531 S06 HRS	Picnic Area Maintenance (Without Restrooms) Refer to function 532 for description.	610 S04 HRS	Bridge, Movable Span Operation, routine maintenance and inspection of movable span bridges (swing barge, lift or turn). Restricted use: Beaumont, Houston, Pharr and Yoakum Districts only.	790 S07 HR	Miscellaneous Traffic Services All traffic surveys (including all motor vehicle and pedestrian counts at intersections and directly related locations) and other traffic services not covered elsewhere. <b>Note:</b> Traffic control performed during the pavement evaluation process should be charged to segment 71, detail 3214 and the appropriate function (600 thru 690).
214 P01 SY	Leveling or Overlay with Drag Box The application of asphaltic tack coat and placing layers of asphaltic concrete material.	532 S06 HRS	Rest Area Maintenance (With Restrooms) Work performed in janitorial and grounds maintenance, including mowing, litter pickup, emptying litter barrels, maintenance of plantings, cleaning restroom, cleaning arbors, graffiti removal, minor paintings, etc. This item shall also include special maintenance required to repair/replace arbors, picnic tables, fixtures, litter barrels, paved areas, etc. (including maintenance of treatment plants and dump stations).	611 S04 HRS	Bridge, Portable Installation, removal, maintenance and inspection of portable bridges.	799 S07 HR	Traffic Control The placement, maintenance and removal of barricades, signs, cones, lights and other such devices needed to handle traffic during emergencies or special events. This includes flaggers.
225 P06 LM	Sealing Cracks Cleaning, filling and sealing cracks in the pavement using asphaltic rubber or other sealants.	533 S06 HRS	Rest Area Facility Maintenance through Regional Contracts (Maintenance Division Use Only)	620 S05 CY	Bridge Channel Maintenance Removal of silt and drift, filling eroded areas, channel maintenance (including easements) and maintenance and repair of jetties and dikes.	806	Replaced by Function Code 799
231 P05 SY	Seal Coat Application of a single layer of asphaltic material followed by the application of a single layer of aggregate over the full width of the lane or a shoulder (greater than 6' in width) for a minimum of 1000 continuous feet.	535 S0 HRS	Maintenance of Specialty Facilities All maintenance costs to specialty facilities including border safety inspection facilities (BSIFs), toll booths, service plazas, fencing and associated appurtenances. This includes both temp and perm facilities. The highway class code will determine the type of facility.	628 S02 LF	Bridge Rail Maintenance of bridge rail, posts & post connections to deck, including painting.	807	Replaced by Function Code 799 Accident Flag selected
232 P04 SY	Strip or Spot Seal Coat Application of a single layer of asphaltic material followed by the application of a single layer of aggregate over areas less than the full width of the lane or shoulder (6' or less in width), or the full width of the lane or shoulder but less than 1000 feet in length.	541 R0 AC	Chemical Vegetation Control, Edges Complete control of vegetation encroaching in pavement edges, shoulders, medians, islands and curbs with herbicides.	645 S02 LF	Bridge Joint Maintenance Repair of bridge joints, including cleaning and sealing	809	Replaced by Function Code 799 Disaster Project, Task number
233 P04 SY	Fog Seal Retain aggregate, enliven surface and/or seal hairline cracks by the application of a thin layer of asphaltic material.	542 R0 AC	Chemical Vegetation Control, Overspray Control of undesirable vegetation growth by overspraying wide areas of the right of way including fixtures (i.e. signs, delineators, guardrails, culverts, etc.) with herbicides.	646 S02 LF	Bridge Joint Replacement Replacement of bridge joints	810	Replaced by Function Code 523 Disaster Project, Task number
241 P09 EA	Pothole Repair The repair of holes with an area of less than or equal to one square yard. Charge to Function 213 if greater than one square yard.	543 R0 HRS	Hand Vegetation Control Hand cleaning vegetation out of islands, medians, riprap, drainage channels, etc. by chemical, manual or mechanical means.	650 S01 SF	Bridge Deck Repair to bridge decks.	811 S07 HR	Snow and Ice Response Emergency response to clear roads during or after a snow/ice event. Includes sanding, deicing, clearing and removal, etc.
242	Replaced by Function 241	544 R0 AC	Chemical Vegetation Control, Rope-wick Control of tall vegetation (i.e. Johnsongrass) in the right of way with a wick applicator.	660 S01 SF	Bridge Superstructure, Concrete Routine maintenance of the concrete components of the bridge superstructure, including bearings, concrete diaphragms, and beams.	813	Replaced by Function Code 799, 523 Disaster Project, Task number
243	Replaced by Function 241	545 R0 HRS	Chemical Vegetation Control, Basal Application Control of undesirable brush species in the right of way with a low volume basal bark application.	665 S01 SF	Bridge Superstructure, Steel Routine maintenance of the steel components of the bridge superstructure, including steel diaphragms and beams.	814	Replaced by Function Code 563 Disaster Project, Task number
244	Replaced by Function 241	548 R0 SY	Seeding, Sodding, Hydromulching and Blanketing Seeding, sodding, hydromulching and/or placing soil retention blankets.	670 S03 SF	Bridge Substructure, Concrete Routine maintenance of the concrete components of the bridge substructure, including caps, columns, abutments, wingwalls, pilings, etc.	824	Replaced by Function Code 211, 212, 213, 214
245 P10 SY	Adding or Widening Pavement Widening travel lanes up to 2 feet, adding shoulders up to 4 feet to correct a maintenance problem (includes sub-grade, base & surfacing), or adding turn lanes to improve safety.	551 R0 AC	Landscaping The installation or maintenance of landscape plantings and their facilities including planter walls, borders, sprinkler systems, etc. (excluding picnic and rest areas).	675 S03 SF	Bridge Substructure, Steel and Timber Routine maintenance of the steel or timber components of the bridge substructure, including caps, abutments, pile extensions, etc.	825	Replaced by Function Code 560, 561, 562, 563
252 P02 SY	Milling and Planing The removal of pavement surface by milling or planing.	552 R0 CL	Tree and Brush Control The trimming, pruning and disposal of shrubs, vines, and trees (excluding picnic and rest areas).	680 S03 SF	Bridge Painting Cleaning and painting of superstructure or substructure.	826	Replaced by Function Code 721, 731, 732; Disaster or Damage Claim Project, Task number
253 P02 SY	Spot Milling The removal of pavement surface by milling using a small milling machine (4 feet or less drum width).	558 R0 LF	Storm Water Pollution Protection Maintenance or installation of storm water pollution protection plan (SW3P) in accordance with EPA regulations on projects designated by area engineers.	690 S04 HRS	Bridge, Mechanical and Electrical Maintenance and repair of the electrical & mechanical components of a bridge.	827	Replaced by Function Code 742; Disaster or Damage Claim Project, Task number
265 P04 SY	Treat Bleeding Pavement Treatment of excess asphalt on the pavement surface.	560 R06 SY	Riprap Installation and Maintenance Installation and maintenance of ditch liners, retarders, down drains, riprap, flumes, concrete mowing strips, gabions, retaining walls and other erosion protection.	695 S04 HRS	Fender Systems Installation and maintenance of fender systems.	828	Replaced by Function Code 742; Disaster or Damage Claim Project, Task number
270 P07 LF	Edge Repair Repair of raveled, low or damaged pavement edges with asphaltic materials.	561 R04 CY	Ditch Maintenance Removal and hauling of silt, drift, and/or filling eroded areas. Not to be used for work at culverts or bridges (see functions 570 or 620).	711 T01 LF	Paint and Bead Striping Striping or re-striping lane lines, centerlines and edge lines using paint and beads.	829	Replaced by Function Code 742; Disaster or Damage Claim Project, Task number
315 P08 SY	Slab Stabilization / Jacking Leveling concrete pavement through the use of hydraulically placed material.	562 R04 LF	Reshaping Ditches Reshaping ditches using maintainer and/or gradall, etc. Not to be used for work at culverts or bridges (see functions 570 or 620).	712 T02 LF	High Performance Striping Striping or re-striping lane lines, centerlines and edge lines using thermoplastic or other high performance materials.	830 R1 HR	Hazardous Material Clean up, Spills or Leaking Storage Tanks Investigations, testing, clean up, removal, disposal and restoration work associated with a spill or leaking storage tanks.
325 P06 LF	Cleaning and Sealing Joints and Cracks Cleaning, filling and sealing joints and cracks in concrete pavement.	570 R0 EA	Culvert and Storm Drain Maintenance The installation, repair and maintenance of culverts up to bridge classification (twenty feet measured along centerline of roadway). This work includes silt and debris removal from inlet, storm drains, retention ponds and culverts (except those costs associated with function 571).	713 T02 EA	Specialty Markings Medians, islands and other pavement markings not covered under function 711 or 712. (Including make-ready operations for all stripe alignment, such as spotting, tabs, temporary tape, etc.)	831 R1 HR	Hazardous Material Clean up, Abandoned Materials Investigations, testing, clean up, removal, disposal and restoration work associated with abandoned hazardous materials of unknown ownership.
330 P08 SY	Blowouts and Stress Relief Repair of blowouts and cutting pavement for stress relief.	571 R0 EA	Storm Water Pump Station Maintenance Repair and maintenance of motors, pumps, generators, wet wells, dry wells, debris screening baskets, buildings, etc., including costs of utility services.	715 T02 LF	Removal of Pavement Striping Use when striping is not going to be replaced.		
345 P08 SY	Repair Spalling Clean and repair spalled areas (not full depth of concrete slab).	581 T03 EA	Removal of Illegal Signs on ROW, TEMP (Temporary, no special handling required.) Removal of illegal signs on right of way, including disposal and written notice to owners.	716 S11 LM	Performance Based Contract Distribution (Contract Payments ONLY) These contracts are set up to pay the contractor a fixed price on a periodic basis of type of work performed and/or amount of work performed		
360 P08 SY	Full Depth Removal and Replacement The removal and replacement of failed areas for the full depth of the concrete slab.	582 S10 HRS	Removal of Encroachments, Other than Signs Removal of illegal encroachments (other than signs) on the ROW, including disposal and written notice to owners.	721 T03 EA	Delineators Installation, maintenance and/or replacement of damaged or missing reflectors and/or posts. This function shall include straightening of posts. Measured by each post and each reflector replaced.		
455 P07 LF SY	Reshaping Unpaved Shoulders Restore soft or flexible base shoulders to original sections. Includes reshaping front slope to eliminate low pavement edges along a paved shoulder.	585 S08 SY	Driveway Installation/Removal and Maintenance See access management policy.	724 T04 LF	Roadway Access Control Installation and maintenance of barriers (other than those covered by functions 594 or 595) designed to control access on highways, including post and cable fences, ROW fences and cattle guards.		
480 S08 SY	Side Road Approaches, Crossovers and Turnouts The installation or maintenance of side road approaches, crossovers, historical markers, mailbox and litter barrel turnouts, etc.	591 S09 HRS	Utilities and Driveway Inspection	725 T05 EA	Vehicle Attenuators Installation and maintenance of vehicle attenuators, crash cushions, etc. (Excludes the end treatment devices on guard fence.)		
488 S08 SY	Concrete Appurtenance Installation and Maintenance The maintenance, installation, or removal of concrete appurtenances which include curbs and/or gutters, raised medians, sidewalks and sound barriers.			731 T03 EA	Installation/Maintenance of Small Signs The installation and maintenance of signs (less than 4 ft. X 4 ft.). Includes the installation of an old sign on a new post, the installation of a new sign on an existing post, removing or straightening of signs and posts. Not to be used in lieu of function 732 (Installation of Large Signs), function 733 (Vandalized Signs), or function 525 (Adopt-A-Highway). Measured by each post and each sign maintained.		
495 S06 SY	Parking Area Maintenance Repair of sub-grade, base or surface of areas including parking lots, park and ride lots and camping pads.			732 T10 EA	Installation/Maintenance of Large Signs The installation or maintenance of signs (equal to or greater than 4 ft. X 4 ft.) Includes the installation of an old sign on a new post, the installation of a new sign on an existing post, removing or straightening of signs and posts. Not to be used in lieu of function 731 (Installation of Small Signs), function 733 (Vandalized Signs), or function 525 (Adopt-A-Highway).		
511 R02 AC	Mowing Mowing of the right of way.						
513 R02 HRS	Spot Mowing Spot mowing of the right of way.						
520 R10 CY	Illegal Dumpsite Removal and Disposal Removal and disposal of debris discarded or deposited in an unauthorized area in the right of way such as under a bridge, overpass, culvert, etc.						
521 R03 AC	Litter Removal and disposal of litter from the entire right of way, excluding paved areas, picnic and rest areas.						
	P01 Pavement Leveling		R01 Sweeping		S01 Bridge Superstructure Maintenance		T01 Paint and Bead Striping
	P02 Milling		R02 Mowing		S02 Bridge Rail and Joints		T02 High Performance Striping
	P03 Base Repair		R03 Litter Control		S03 Bridge Substructure Maintenance		T03 Sign Maintenance
	P04 Spot Seal Coat		R04 Drainage Maintenance		S04 Specialty Bridge Maintenance		T04 Safety Barrier Maintenance
	P05 Full Width Seal Coat		R05 Drainage Structures		S05 Bridge Channel Maintenance		T05 Crash Attenuators
	P06 Crack Seal		R06 Erosion Control		S06 Specialty Maintenance		T06 Traffic Signal Maintenance
	P07 Edge Maintenance		R07 Vegetation and Pest Control		S07 Traffic Control Services		T07 Illumination Maintenance
	P08 Concrete Pavement Maintenance		R08 Tree and Brush Control		S08 County Road Approaches, Crossovers, & Turnouts		T08 Traffic Management Systems
	P09 Pothole Repair		R09 Landscape Maintenance		S09 Utility & Driveway Inspection		T09 Raised Pavement Markings
	P10 Adding or Widening Pavement		R10 Debris and Cleanup		S10 Graffiti & Encroachment Removal		T10 Large Sign Maintenance
							T11 Beacon Maintenance



**EXHIBIT 3**

**MAINTENANCE CONTRACTOR’S PROPOSAL COMMITMENTS**

**KEY PERSONNEL**

DB Contractor commits to provide the following individuals to serve as the following Key Personnel:

<b>Name of Key Personnel</b>	<b>Key Personnel Position</b>
Zane Webb, P.E.	Capital Maintenance Manager

**OTHER PROPOSAL COMMITMENTS**

<b>Comment No.</b>	<b>Proposal Location</b>	<b>Proposal Commitment</b>
7 CMA Term	Vol 1: Sec D Page 21	Maintenance records will be formatted consistent with TxDOT formatting of its statewide asset inventory and condition assessments, and with TxDOT’s maintenance management systems.
13	Vol 1: Sec D Page 37	Capital Maintenance Manager will participate in discussions involving design alternative review, materials selection, and life-cycle cost analysis helps to ensure that sustainability and long-term asset maintenance and preservation issues are considered from the onset of project development.
19	Vol 1: Sec D Page 42	The Capital Maintenance Manager, Mr. Zane Webb, will play an active role during project development and construction, as well as leading all capital maintenance activities during the CMA term. Mr. Webb will provide technical insight and valuable TxDOT experience to discussions involving design alternative review, materials selection and life-cycle cost analysis to ensure maintainability.
20 CMA Term	Vol 1: Sec D Page 43	A maintenance facility will be established in the vicinity of the project for use during the CMA term.
25 CMA Term	Vol 1: Sec D Page 68	Maintenance Quality Control, Mr. Graff will submit an annual report summarizing the actual versus planned maintenance services completed, along with an assessment of compliance with traffic control requirements. The annual report will identify opportunities for improvement, corrective measures and lessons learned, and these will be incorporated within Austin-Bay’s maintenance management plan to refine maintenance practices, ensure results and deliver sound capital maintenance services.
27	Vol 1: Sec D Page 75	MQCM will have the authority and obligation to stop work should a quality-related issue warrant such action.

28 CMA Term	Vol 1: Sec D Page 78	During the maintenance period, the design and construction quality managers will be available for assistance to provide a history of construction issues, and as-built clarifications.
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**EXHIBIT 4**

**MAINTENANCE PRICE**

**MAINTENANCE PRICE—Form BAFO N**

<b>DETAILED COSTING FORM – FORM BAFO N</b>				
<b>US 77 Upgrade from Kingsville to Driscoll Project Operation and Maintenance Full Facility</b>				
<b>Item</b>	<b>Expenditure per Year</b>			<b>Total cost (5×A)+(5×B)+(5×C)</b>
	<b>Years 1-5 (A)</b>	<b>Years 6-10 (B)</b>	<b>Years 11-15 (C)</b>	
Roadway	\$333,021	\$1,257,545	\$2,367,609	\$19,790,875
Structures	\$72,498	\$74,043	\$76,362	\$1,114,515
Lighting	\$0	\$0	\$0	\$0
Fences, walls and sound abatement	\$46,070	\$46,070	\$46,070	\$691,050
Administrative, bonds, insurance and other costs not listed above	\$137,703	\$137,703	\$137,703	\$2,065,545
Earthworks, Embankments and Cuttings	\$67,845	\$67,845	\$67,845	\$1,017,675
<b>Total Annual Cost</b>	<b>\$657,137</b>	<b>\$1,583,206</b>	<b>\$2,695,589</b>	<b>\$24,679,660</b>

Notes:

- (1) Annual expenditures are presented as of BAFO Due Date.
- (2) Years in the table refers to the number of years after Substantial Completion.

**EXHIBIT 5**

**JOB TRAINING AND SMALL BUSINESS OPPORTUNITY PLAN**

TxDOT had determined that Maintenance Contractor's training goal for this contract would be zero trainees. Therefore, it is not required that Maintenance Contractor implement a Job Training and Small Business Opportunity Plan. Maintenance Contractor is encouraged, however, to engage in voluntary efforts to train its employees, and if Maintenance Contractor chooses to do so, it should follow TxDOT procedures in doing so, which are set forth in TxDOT's OJT Program Manual.

**EXHIBIT 6**

**FORM OF MAINTENANCE PERFORMANCE BOND**

**[To be replaced with actual Maintenance Performance Bond]**

**US 77 Upgrade from Kingsville to Driscoll Project**

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

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to Austin-Bay, JV, a joint venture comprised of Austin Bridge & Road, LP, a Delaware limited partnership, and Berry Contracting, LP, d/b/a Bay Ltd., a Texas limited liability company, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended (“Principal”), a Capital Maintenance Agreement for the US 77 Upgrade from Kingsville to Driscoll Project, duly executed and delivered as of \_\_\_\_\_, 2013 (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:

- a. arrange for the Principal to perform and complete the CMA; or
- b. complete the Project in accordance with the terms and conditions of the CMA Documents then in effect, through its agents or through independent contractors; or
- c. obtain bids or negotiated proposals from qualified contractors acceptable to the 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 CMA, 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 their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the 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 Sureties 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 CMA, 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 CMA, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the CMA. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Maintenance Price for the applicable Maintenance Term to mitigation costs and damages on the CMA, Surety is obligated without duplication for:

- a. the responsibilities of the Principal for correction of defective Maintenance Services and completion of the Maintenance Services;
- b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and
- c. all Liquidated Damages under the CMA.

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

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

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

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

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of \_\_\_\_\_, 20\_\_.

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**

**[To be replaced with actual Maintenance Payment Bond]**

**US 77 Upgrade from Kingsville to Driscoll Project**

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

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to Austin-Bay, JV, a joint venture comprised of Austin Bridge & Road, LP, a Delaware limited partnership, and Berry Contracting, LP, d/b/a Bay Ltd., a Texas limited liability company, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended (“Principal”), a Capital Maintenance Agreement for the US 77 Project, duly executed and delivered as of \_\_\_\_\_, 2013 (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:

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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 \_\_\_\_\_, 20\_\_.

Principal:

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

Surety:

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

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

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

**EXHIBIT 8**

**FORM OF RETAINAGE BOND**

CONTRACT NO. \_\_\_\_\_  
COUNTY \_\_\_\_\_  
BOND NO. \_\_\_\_\_

**RETAINAGE BOND**

**KNOW ALL PERSONS BY THESE PRESENTS that CONTRACTOR**, as Principal, and the undersigned surety, are held and firmly bound unto the State of Texas as Obligee, in the amount of FOUR PERCENT (4%) of the total amount paid the Principal under the contract, including any increases due to change orders, quantities of work, new items of work, or other additions as the Obligee may pay under the CMA, lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

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

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

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

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

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

**CONTRACTOR**

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

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

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

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

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

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

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

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

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

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

## EXHIBIT 9

### FORM OF GUARANTY

THIS GUARANTY (this "Guaranty") is made as of \_\_\_\_\_, 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. Austin-Bay, JV, 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 joint venture comprised of Austin Bridge & Road, LP, a Delaware limited partnership, and Berry Contracting, LP, d/b/a Bay Ltd., a Texas limited liability company, established pursuant to the Joint Venture Agreement entered into by and between Austin Bridge & Road and Bay made December 5, 2012, as amended. 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 against the Maintenance Contractor. If any payment made by the Maintenance Contractor or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the CMA Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting the Maintenance Contractor, Guarantor or their respective assets, and (b) the existence of any claim or set-off which the Maintenance Contractor has or Guarantor may have against TxDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

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

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

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

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the CMA Documents or the

pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the CMA Documents.

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

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

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

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

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

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than 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.

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

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

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

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

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

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

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

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

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

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

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

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

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or

cancellation, or a loss of rights under: (1) ***[the certificate of incorporation or by-laws][certificate of limited partnership or partnership agreement][certificate of formation or limited liability company agreement]*** of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

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

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

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

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

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

**10. Governing Law; 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 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  
Strategic Projects Division  
814 Arion Parkway, Suite 401  
San Antonio, Texas 78216  
Attn: Mr. Frank Holzmann, P.E.  
Telephone: (210) 232-8157  
E-mail: frank.holzmann@txdot.gov

With copies to: Texas Department of Transportation  
Office of General Counsel  
125 East 11th Street  
Austin, Texas 78701  
Attn: John J. Ingram, Esq.  
Telephone: (512) 463-8630  
E-mail: jack.ingram@txdot.gov

Texas Department of Transportation  
Strategic Projects Division  
814 Arion Parkway, Suite 401  
San Antonio, Texas 78216  
Attn: Mr. Beau Buchanan, P.E.  
Telephone: (830) 463-9147  
E-mail: beau.buchanan@txdot.gov

Texas Department of Transportation  
Strategic Projects Division  
7745 Chevy Chase, Bldg. 5, Ste. 300  
Austin, Texas 78752  
Attention: Dieter Billek, P.E.  
Telephone: (512) 334-3831  
E-mail: dieter.billek@txdot.gov

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

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

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

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

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

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

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

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

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

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

person to pay TxDOT, or allow the claim of TxDOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

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

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

**21. Defenses.** Guarantor shall be entitled to the benefit of all defenses available to the Maintenance Contractor under the Capital Maintenance Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of the Contractor and any other defense to formation of the Contract, and (c) defenses available to the 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 for the notice provided in Section 12.3 of the Capital Maintenance Agreement, without diminishing any rights TxDOT may exercise pursuant to Section 12.2.2 of the Capital Maintenance Agreement.

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

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT 10

### INSURANCE REQUIREMENTS

#### 1. Builder's Risk Insurance During Construction

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

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

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of 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, including off-site storage, or in the course of inland transit on land to the Site, (ii) all existing property and improvements that are within the construction work zone or are or will be affected by the construction work, and (iii) valuable papers and restoration of data, plans and drawings.

(c) The policy shall provide coverage per occurrence up to the maximum probable loss amount of \$10,000,000, including a sublimit acceptable to TxDOT for professional fees, demolition and debris removal, 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 \$500,000 per occurrence and \$1,000,000 aggregate, (ii) for existing property and improvements an amount of not less than \$100,000, (iii) for building ordinance compliance an amount of not less than \$500,000, and (iv) for "soft cost expense" an amount acceptable to TxDOT.

(d) TxDOT and 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. During any period in which Maintenance Contractor, at its election, maintains in effect builder's third party liability insurance pursuant to Section 3 of this Exhibit 10, the commercial general liability insurance policy need not duplicate the builder's third party liability insurance coverage.

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

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

- (i) Contractual liability;
- (ii) Premises/operations;
- (iii) Independent contractors;
- (iv) Products and completed operations (with acknowledgement that the Project constitutes the premises and not a product), with coverage to remain in place post-completion for 10 years or through the applicable statute of limitations or repose period;
- (v) Broad form property damage, providing the same coverage as ISO form CG 00 01 04 13 or its equivalent provides;
- (vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;
- (vii) Fellow employee coverage for supervisory personnel;
- (viii) Incidental medical malpractice;
- (ix) No exclusion for work performed within 50 feet of a railroad;
- (x) Except with regard to indemnifying a professional advisor, consultant, sub-consultant, Supplier or manufacturer engaged by Maintenance Contractor, no application of any limitation or exclusion for bodily injury or property damage arising out of professional services, including engineering, architecture and surveying, in any manner to (A) coverage respecting Maintenance Contractor's supervision, coordination, management, scheduling or other similar services or (B) the products and completed operations coverage;
- (xi) Broad named insured endorsement; and



(xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 4 of this Exhibit 10.

(c) The policy shall have limits of not less than \$5,000,000 per occurrence and in the aggregate per policy period. Such limits may be satisfied by umbrella insurance and shall be shared by all insured and additional insured parties and shall reinstate annually and may be included in an umbrella insurance combined with such other insurance that this schedule stipulates may be similarly added.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds, using ISO Forms CG 20 33 07 04 and CG 20 37 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 other additional insureds.

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

### 3. Builder's Third Party Liability Insurance

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

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

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

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

### 4. Automobile Liability Insurance

At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall procure and keep in force, or cause to be procured and kept 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. If Maintenance Contractor does not supply any vehicles that would be the subject of such policy, the joint venture member(s) of Maintenance Contractor which supplies the vehicles shall be the named insured rather than Maintenance Contractor.

(c) Maintenance Contractor's policy shall have a combined single limit per policy period of not less than \$5,000,000 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 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 \$1,000,000 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 \$10,000 per occurrence.

#### 6. Professional Liability Insurance

Maintenance Contractor shall procure and keep in force, or others to procure and keep 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. Such policy need not be Project-specific. Maintenance Contractor may satisfy such insurance via a practice policy covering all the foregoing providers of professional services and/or by showing that all of the foregoing providers of professional services each has a practice policy with coverages satisfying paragraphs (a), (b), and (c) below.

(a) Each policy shall 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, including coverage for bodily injury or property damage.

(b) Each policy shall have a limit of not less than \$1,000,000 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 \$100,000 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 \$200,000 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. If Maintenance Contractor does not have any employees involved with the Project, then the joint venture member(s) of Maintenance Contractor which provide(s) the employees shall be the named insured rather than Maintenance Contractor. Such policy need not be Project-specific. The workers' compensation insurance policy shall contain the following endorsements:

- (a) [Intentionally Omitted];
- (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. If Maintenance Contractor does not have any employees involved with the Project, then the joint venture member(s) of Maintenance Contractor which provide(s) the employees shall be the named insured rather than Maintenance Contractor.

(c) 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 schedule stipulates may be similarly included.

- (d) Such policy need not be Project-specific.

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 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 TxDOT, TxDOT's Consultants, and railroad as named insureds. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by DB 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 commercial general liability insurance that complies with Section 7.4 of the Capital Maintenance Agreement, with commercially reasonable limits and deductibles or self-insured retentions, in circumstances where the Subcontractor is not covered by Maintenance Contractor-provided liability insurance. Maintenance Contractor shall cause each such Subcontractor that provides such insurance to include each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies, except for the Worker's Compensation Insurance and Professional 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.

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

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

(c) At all times when Maintenance Services are being performed by any employee of a Subcontractor, Maintenance Contractor shall cause Subcontractor to 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. Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

- (i) [Intentionally Omitted];

- (ii) A voluntary compensation endorsement;
- (iii) An alternative employer endorsement; and
- (iv) An endorsement extending coverage to all states operations on an "if any" basis.

(d) At all times during the performance of the Maintenance Services, Maintenance Contractor shall cause each Subcontractor to procure and keep in force employer's liability insurance as specified below.

- (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 \$500,000 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**

**US 77 from Kingsville to Driscoll Capital 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 Capital Maintenance Work performed in  
the month of

[Month], (year)

A	Month #	Maintenance Year #	Escalated Monthly Maintenance Fee (from Page 4)
	(1-12)	(1-15)	
B	Amount Earned this Month		\$0.00
C	Total Change Order Amount Due (from Page 5)		\$0.00
D	Total Liquidated Damages Amount (from Page 6)		
E	Current Amount Due (B + C-D)		

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**  
**US 77 from Kingsville to Driscoll Capital Maintenance Agreement**  
**Texas Department of Transportation**

Draw Request # 1

Date:    
month/day/year

**Request for Payment:**

---

<b>Maintenance Contractor Authorized Representative</b>	<b>Date</b>
---	-------------

---

**Review and Final Approval by TxDOT**

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

---

<b>TxDOT Authorized Representative</b>	<b>Date</b>
--	-------------

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**  
**US 77 from Kingsville to Driscoll Capital 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 the 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 Capital Maintenance Work, including that of designers, Subcontractors and Suppliers, which is the subject of the Draw Request has been checked and/or inspected by the Maintenance QC Manager;
- ◆ Except as specifically noted in the certification, all Capital Maintenance Work which is the subject of the Draw Request conforms to the requirements of the Contract 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**  
**US 77 from Kingsville to Driscoll Capital Maintenance Agreement**  
**Texas Department of Transportation**

Draw Request #

Date:   
 month/day/year

Texas Department of Transportation  
 [Address]

 Enter Shaded Cells only if Applicable

**Monthly Maintenance Fee 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

Year X Maintenance Fee (from Proposal) = \$01

(B)

Year X Maintenance Fee (Escalated) (C) = <sup>1</sup>

<sup>1</sup> As per CMA Section 8.1.3 (B) times the ENR CCI three months prior to month in which Maintenance Term year commenced (D), divided by the ENR CCI three months prior to the execution of the CMA (E).

$$(X) = 0 \text{ (Maintenance Year)}$$

$$(D) = 100 \qquad (E) = 100$$

$$\$0.00 (C) = (B \times (D))/(E)$$

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

$$\$0.00 (F) = (C)/12$$

Year 1 Maintenance Fee (from Proposal) = \$01

(G)

Year 1 Maintenance Fee (Escalated) (H) = <sup>2</sup>

<sup>2</sup> As per CMA Section 8.1.3 (G) times the ENR CCI three months prior to month in which Maintenance Term year commenced (I), divided by the ENR CCI three months prior to the execution of the CMA (E).

$$(I) = 100 \qquad (E) =$$

$$100$$

$$\$0.00 (H) = (G) \times (I)/(E)$$

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

$$\$0.00 (J) = (H)/12$$

Year 1, Month 1, Maintenance Fee (Escalated) (K)<sup>3</sup> = Year 1 Monthly Maintenance Fee (Escalated) (J) times the number of days remaining in the 1st month, after the Date of Final Acceptance, (A) divided by the days in the month (L).

<sup>3</sup> Assuming that Final Acceptance does not occur on the last day of the month

$$(L) = 30$$

$$\$0.00 (K) = (J) \times (A)/(L)$$

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

**US 77 from Kingsville to Driscoll Capital 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 Capital Maintenance Work  
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 (4/20/20__)							
Date Change Order Work Completed example format (4/20/20__)							
Previous C.O. Amount Earned	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
C.O. Earned This Month	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
C.O. Earned to Date (A +B)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Current C.O. Amount Due(B)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total All Changed Orders To Date							

**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:**

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

\_\_\_\_\_  
**Capital 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 Blue Book Equipment Rental Rates calculated in accordance with Section 10.7.3 of the Capital Maintenance Agreement.

**SECTION III**

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Change order required under 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 Capital Maintenance Manager)**

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

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

**Comments:**

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

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

\_\_\_\_\_  
**TxDOT Project Manager**

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

**Comments:**

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

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

\_\_\_\_\_  
**TxDOT CDA Program Director**

**Date**

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

**Date**

**Comments:**

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



**EXHIBIT 13**

**AUTHORIZED REPRESENTATIVE**

**TxDOT Authorized Representative(s)**

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

Phil Wilson

Russell Zapalac

Ed Pensock

Lonnie Gregorcyk

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

Mr. Shankar Narayanan  
Chairman, Management Committee  
Austin-Bay, JV  
6330 Commerce Drive, Suite 150  
Irving, Texas 75063  
Telephone: (214) 596-7371  
E-mail: snarayanan@austin-ind.com

**EXHIBIT 14**

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

(Attached)

**US 77 Kingsville to Driscoll RFP Reference Information Documents (RIDS) Listing**

Updated: January 22, 2013

Description		Folder / File Name <sup>1</sup>	Status <sup>2</sup>	Date <sup>2</sup>
<b>ENVIRONMENTAL DOCUMENTS</b>		<b>Environmental</b>		
Environmental Assessment		Environmental Assessment		
	Environmental Assessment Volume 1	<a href="#">ea_vol1.pdf</a>		
	Environmental Assessment Volume 2	<a href="#">ea_vol2.pdf</a>		
	Environmental Assessment Volume 3	<a href="#">ea_vol3.pdf</a>		
	Environmental Assessment Volume 4	<a href="#">ea_vol4.pdf</a>		
US 77 FONSI		FONSI		
	Finding of No Significant Impact	<a href="#">SKMBT_C45012071107270.pdf</a>	Added	1-Oct-12
US 77 Biological Assessment & Biological Opinion		US 77 Biological Assessment & Biological Opinion		
	Final Biological Opinion - Letter from DE	<a href="#">Final BO for Nueces_etc US 77.AHinojosa.6-25-12.pdf</a>	Added	Nov. 2, 2012
	Biological Opinion - Supporting Documentation	<a href="#">0412_052.pdf.pdf</a>	Added	Nov. 2, 2012
	Final Biological Opinion	<a href="#">Signed BO US 77 Section 7.pdf</a>	Added	Nov. 2, 2012
	Final Biological Assessment	<a href="#">Final US 77 BA submitted 2-2012.pdf</a>	Added	Nov. 2, 2012
Shapefiles		Shapefiles		
	US 77 Waters and Wetlands Shapefile	<a href="#">US_77_Wetlands_Waters_Kingsville_Driscoll.zip</a>	Added	7-Dec-12
<b>AS BUILTS, EXISTING DESIGN PLANS, AND OTHER</b>		<b>As Built, Existing Design Plans, and Other</b>		
As Built Drawings		As Built Drawings		
	US 77 As Built Drawings	<a href="#">US77 AB FM 70 at Bishop CSJ 102-3-73.pdf</a>		
	US 77 As Built Drawings	<a href="#">US 77 AB in Driscoll CSJ 102-2-64 102-3-58 102-3-56-V1.pdf</a>		
	US 77 As Built Drawings	<a href="#">US 77 AB N of Bishop to S. of Kingsville CSJ 102-3-28 102-4-36-V1.pdf</a>		
	US 77 As Built Drawings	<a href="#">US77 AB N of Driscoll to Kleberg Co. Line CSJ 102-3-8 102-2-10-V1.pdf</a>		
	US 77 As Built Drawings	<a href="#">US77 AB N of King Ave to S. of Kenedy St CSJ 102-4-63-V1.pdf</a>		
	US 77 As Built Drawings	<a href="#">US77 DRG N. OF DRISCOLL TO N. BISHOP CSJ: 102-3-15.pdf</a>		
	US 77 As Built Drawings	<a href="#">US77 AB Nueces Co. Line to S of Kingsville CSJ 102-4-29.pdf</a>		
	US 77 As Built Drawings	<a href="#">US 77DRG FROM NUECES CO LINE TO FM HWY 772 102-4-20 091062.pdf</a>		
<b>SCHEMATIC PLANS</b>		<b>Schematic Plans</b>		
Schematics - FM 1898 to CR 16		Schematic Plans		
	US 77 FM 1898 to CR 16 EA Schematic	<a href="#">map_39.pdf</a>		
	US 77 FM 1898 to CR 16 EA Schematic	<a href="#">map_40.pdf</a>		
	US 77 FM 1898 to CR 16 EA Schematic	<a href="#">map_41.pdf</a>		
	US 77 FM 1898 to CR 16 EA Schematic	<a href="#">map_42.pdf</a>		
	US 77 FM 1898 to CR 16 EA Schematic	<a href="#">map_43.pdf</a>		
US 77 Geometric Schematic		US 77 Geometric Schematic		
	US 77 Geometric Schematics	<a href="#">US77-DS39.pdf</a>		
	US 77 Geometric Schematics	<a href="#">US77-DS40.pdf</a>		
	US 77 Geometric Schematics	<a href="#">US77-DS41.pdf</a>		
	US 77 Geometric Schematics	<a href="#">US77-DS42.pdf</a>		
	US 77 Geometric Schematics	<a href="#">US77-DS43.pdf</a>		
	US 77 Curve Data	<a href="#">US77-CVDATA-KLEBERG04.pdf</a>		
	US 77 Curve Data	<a href="#">US77-CVDATA-NUECES01.pdf</a>		
	US 77 Frontage Road Profile	<a href="#">US77-NBFRPF-KLEBERG02.pdf</a>		
	US 77 Frontage Road Profile	<a href="#">US77-NBFRPF-NUECES01.pdf</a>		
	US 77 Frontage Road Profile	<a href="#">US77-RAMPPF-KLEBERG02.pdf</a>		

**US 77 Kingsville to Driscoll RFP Reference Information Documents (RIDS) Listing**

Updated: January 22, 2013

Description		Folder / File Name <sup>1</sup>	Status <sup>2</sup>	Date <sup>2</sup>
	US 77 Frontage Road Profile	<a href="#">US77-RAMPPF-NUECES01.pdf</a>		
	US 77 Ramp Profile	<a href="#">US77-SBFRPF-KLEBERG02.pdf</a>		
	US 77 Ramp Profile	<a href="#">US77-SBFRPF-NUECES01.pdf</a>		
	DGN Schematic Sheets	<a href="#">DGN Schematic Sheets.zip</a>		
	DGN Reference Files	<a href="#">DGN Reference Files.zip</a>		
	GEOPAK Files	<a href="#">GEOPAK Files.zip</a>		
	US 77 Aerials	<a href="#">US 77 Aerials.zip</a>		
	TIN Files	<a href="#">TIN.zip</a>	Added	24-Sep-12
	US 77 North End of Project	<a href="#">US77 North End of Project.pdf</a>	Added	9-Oct-12
	US 77 BAFO Schematic	<a href="#">US 77 BAFO Schematic</a>	Added	22-Jan-13
	US 77 Geometric Schematics for BAFO	<a href="#">BAFO_Schematic1_2013-01-22.pdf</a>	Added	22-Jan-13
	US 77 Geometric Schematics for BAFO	<a href="#">BAFO_Schematic2_2013-01-22.pdf</a>	Added	22-Jan-13
<b>DBE FORMS</b>		<b>DBE Forms</b>		
	DBE Forms	DBE Forms		
	DBE Form	<a href="#">DBE Program Commitment Agreement Form 4901 080107.pdf</a>		
	DBE Form	<a href="#">DBE Program Mat and Supply Commitment Agreement Form 4901-MS 070107.pdf</a>		
	DBE Form	<a href="#">DBE Program Trucking Commitment Agreement Form 4901-T 080107.pdf</a>		
<b>PUBLIC INVOLVEMENT</b>		<b>Public Involvement</b>		
	Public Involvement	Public Involvement		
	Citizens Meeting Ramp Modifications	<a href="#">Citizen Meeting US 77 Ramp Modifications 091305-V1.pdf</a>		
	Citizens Meeting Ramp Reversal	<a href="#">Citizen Meeting US 77 Ramp Reversals 060903-V1.pdf</a>		
	Citizens Meeting Notes	<a href="#">Notes on Citizen Meeting US 77 111300-V1.pdf</a>		
	Public Meeting Notes	<a href="#">US 77 Public Meeting Kingsville TX 070661-V1.pdf</a>		
	Public Meeting Notes	<a href="#">US 77 Public Meeting Kingsville TX 081897-V1.pdf</a>		
	US 77 Ramp Modifications	<a href="#">US 77 Ramp Modifications 100405-V1.pdf</a>		
<b>MAPS</b>		<b>Maps</b>		
	Maps	Maps		
	Corpus Christi Control Section Map	<a href="#">US77 DRG CONTROL SECTION MAP CORPUS CHRISTI DISTRICT 022806.pdf</a>		
	ROW Map	ROW Map		
	US 77 ROW Map	<a href="#">0102-03-084_-085 MAP to ROW DIV (10-3-12).pdf</a>	Added	15-Nov-12
<b>REPORTS, STUDIES AND MANUALS</b>		<b>Reports, Studies and Manuals</b>		
	Bridge Inspection Reports	Bridge Inspection Reports		
	NBI: 178-0102-03-008, Drain / Culvert	<a href="#">178-0102-03-008</a>		
	NBI: 178-0102-03-009, Drain / Culvert	<a href="#">178-0102-03-009</a>		
	NBI: 178-0102-03-051, Drain / Culvert	<a href="#">178-0102-03-051</a>		
	NBI: 178-0102-03-038, Drain / Culvert	<a href="#">178-0102-03-038</a>		
	NBI: 178-0102-03-053, Drain / Culvert	<a href="#">178-0102-03-053</a>		
	NBI: 178-0102-03-054, US 77 SB @ Bishop Channel	<a href="#">178-0102-03-054</a>		
	NBI: 178-0102-03-063, US 77 NB @ Bishop Channel	<a href="#">178-0102-03-063</a>		
	NBI: 178-0102-03-064, US 77 NB @ Carretta Creek	<a href="#">178-0102-03-064</a>		
	NBI: 178-0102-03-055, US 77 SB @ Carretta Creek	<a href="#">178-0102-03-055</a>		
	NBI: 137-0102-04-056, US 77 SB @ San Fernando Creek	<a href="#">137-0102-04-056</a>		
	NBI: 137-0102-04-065, US 77 NB @ San Fernando Creek	<a href="#">137-0102-04-065</a>		

**US 77 Kingsville to Driscoll RFP Reference Information Documents (RIDS) Listing**

Updated: January 22, 2013

Description	Folder / File Name <sup>1</sup>	Status <sup>2</sup>	Date <sup>2</sup>
<b>Hydraulic Impact Analysis Report</b>	Hydraulic Impact Analysis Report		
Hydraulic Impact Analysis Report - Volume 1	<a href="#">Final Report Submitted 04-2011 (volume 1).pdf</a>		
Hydraulic Impact Analysis Report - Volume 2	<a href="#">Final Report Submitted 04-2011 (volume 2).pdf</a>		
<b>Pavement Condition</b>	Pavement Condition		
Pavement Conditions Report 1	<a href="#">US 77 CDA Study Report 1 Jun 29 2007 Draft.pdf</a>		
Pavement Conditions Report 2	<a href="#">US 77 CDA Study Report 2 Jun 29 2007 Draft.pdf</a>		
Pavement Conditions Report 3	<a href="#">US 77 CDA Study Report 3 Jun 29 2007 Draft.pdf</a>		
Pavement Management Information System (PMIS) Report	<a href="#">US0077_678_692.pdf</a>		
US 77 Pavement Conditions	<a href="#">US 77 Pavement Conditions.pdf</a>		
<b>Utility Information</b>	Utility Information		
Utilities Information	<a href="#">Workshop updated CD.zip</a>		
Microstation SUE resource file from TN&P	<a href="#">SUE.rsc</a>		
Utility Information for 0102-04-096	<a href="#">US77_0102-04-096_UTILITIES.dgn</a>	Added	1-Oct-12
Microstation Resource file for 0102-04-096	<a href="#">TNP_SUE.rsc</a>	Added	1-Oct-12
US 77 Overhead Utilities	<a href="#">US77_Overhead Utility RID_Kingsville to Driscoll__10-31-12.pdf</a>	Updated	2-Nov-12
Texas Administrative Code for OH Utilities	<a href="#">TX Admin Code_OH Electric Comm.pdf</a>	Added	9-Oct-12
SUE-DGN File for 03_081	<a href="#">03_081_UTILITIES.dgn</a>	Added	2-Nov-12
SUE-DGN File for 03_082	<a href="#">03_082_utilities_TxDOT.dgn</a>	Added	2-Nov-12
SUE-DGN File for 03_096	<a href="#">04_096_UTILITIES.dgn</a>	Added	2-Nov-12
SUE-PDF File for 081	<a href="#">TXD12158-0102-03-081.pdf</a>	Added	2-Nov-12
SUE-PDF File for 096	<a href="#">TXD12158-0102-04-096.pdf</a>	Added	2-Nov-12
SUE-PDF File for 082	<a href="#">US77_0102-03-082_UTILITIES.pdf</a>	Added	15-Nov-12
RWSC RID (Former Attachment 6-2)	<a href="#">RWSC RID (former Attachment 6-2).pdf</a>	Added	3-Dec-12
SUE-PDF File for 081_Revised	<a href="#">0102-03-081 Revised 20121206.pdf</a>	Added	6-Dec-12
SUE-PDF File for 082_Revised	<a href="#">0102-03-082 Revised 20121206.pdf</a>	Added	6-Dec-12
SUE Revisions list	<a href="#">Response Letter 20121206.pdf</a>	Added	6-Dec-12
SUE-DGN File for 081_Revised	<a href="#">03_081_UTILITIES.dgn</a>	Added	11-Dec-12
SUE-DGN File for 082_Revised	<a href="#">US77_0102-03-082_UTILITIES.dgn</a>	Added	11-Dec-12
<b>Value Engineering Report</b>	Value Engineering Report		
Value Engineering Study for US 77	<a href="#">TxDOT Corpus Christi US 77 DB VE Study Report Rev 1 FINAL.pdf</a>	Updated	24-Sep-12
<b>Survey Control</b>	Survey Control		
Survey Control Files	<a href="#">Survey Control.zip</a>	Added	1-Oct-12
<b>Traffic Data</b>	Traffic Data		
Updated Traffic Data	<a href="#">Updated Traffic Data 10-9-2012.pdf</a>	Added	2-Nov-12
<b>PMIS Data</b>	PMIS Data		
PMIS Data (2001-2012)	<a href="#">US77_PMIS_2001_2012.xls</a>	Added	2-Nov-12

Notes:

- 1 Blue Text represents File Name with Extension; Black Text represents Folder Name
- 2 If blank, represents original files issued with RFP. Updates will include status and date to this column
- 3 Information available via secure log-in only