

## 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 Program
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DRP</b>	Dispute Resolution Procedure
<b>ENR CCI</b>	Engineering News Record 20 City Construction Cost Index
<b>EPD</b>	Escrowed Proposal Documents
<b>ETCS</b>	Electronic Toll Collection System
<b>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>LOS</b>	Level of Service
<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, (b) the Developer-Designated ROW, and (c) any additional real property outside of the Schematic ROW that must be acquired due to a TxDOT-Directed Change issued under the Development Agreement, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs Developer 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.

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

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

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

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

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

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

**Bond Trustee** shall mean the Person or Persons acting as bond trustee, paying agent or other designated representative of the bondholders under any bond indenture or resolution for the bonds or any other indebtedness issued by TxDOT to finance the Project, its legal successor, or any other commercial bank or trust company duly organized and existing under the laws of any state or the United States of America, which is authorized under the laws of the State to exercise corporate trust powers and is subject to examination by federal authority, appointed pursuant to the Project finance documents as its successor or its successors.

**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.

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

**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.

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

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

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

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

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

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

**Commencement of Capital Maintenance Agreement** shall have the meaning set forth in Section 2.2 of the CMA.

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

- (a) Such individual is currently or was in the past employed by any member of the Conflicts Group, except that service as a member of other disputes review boards on other contracts or retention as an independent consultant on other

contracts does not create a Conflict of Interest so as to preclude an individual from serving as a Disputes Board Member;

- (b) Such individual has or is reasonably likely to have a pecuniary interest in the outcome of the applicable Dispute or such individual has any (i) ownership interest in any member of the Conflicts Group, except a remote interest or (ii) financial interest in any of the CMA Documents or any Contract (except that such individual's interest in receiving, and receipt of, payment for service on the Disputes Board shall not be considered a financial interest for purposes of this definition), in either case except for a remote interest. An ownership interest is remote only if it is less than 0.5% of the issued and outstanding shares or other legal or beneficial ownership interest, or less than 0.5% of the issued and outstanding indebtedness, of a member of the Conflicts Group. Mere use of the Project shall not constitute a pecuniary, ownership or financial interest for purposes of this definition;
- (c) Such individual has or had substantial prior involvement in any aspect of the Development Agreement or CMA, a Contract or the Project of a nature which could reasonably be expected to affect his or her ability to impartially resolve Disputes;
- (d) Such individual knows of any reason, including but not limited to the existence of any of the Conflicts of Interest as described in this definition, why he or she cannot be impartial in resolving Disputes; and
- (e) In addition to the Conflicts of Interest described above, any other circumstance arising out of such individual's existing or past activities, business interests and/or contractual relationships with any member of the Conflicts Group such that such individual is or is reasonably likely to be unable to render a Disputes Board Decision impartially or such individual's objectivity in performing his or her role on the Disputes Board is or is reasonably likely to be impaired.

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

**Construction Documents** means all shop drawings, 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 Development 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.

**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 15.8 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.

**Developer** shall mean AGL Constructors, a Texas joint venture comprised of Archer Western Contractors, LLC, Granite Construction Company and The Lane Construction Company , together with its successors and assigns.

**Developer-Designated ROW** shall mean any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Schematic ROW that Developer determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT to be acquired at Developer's cost and expense. The term specifically includes any easements required for drainage for the Project, except that TxDOT shall be responsible for the purchase price of drainage easements approved by TxDOT. The term specifically includes any air space, surface rights and subsurface rights within the Developer-Designated ROW. The term specifically excludes the Replacement Utility Property Interests, any temporary easements or other temporary real property interests that

Developer may deem necessary or advisable to acquire, at its own cost and expense, for excessive work space, contractor lay-down areas, material storage areas, or other convenience of Developer.

**Developer Event of Default** shall mean Event of Default defined under the Development Agreement.

**Developer-Related Entity (ies)** shall mean (a) Developer, (b) Developer's shareholders, partners, joint venturers and/or members, (c) Subcontractors to the Developer (including Suppliers), (d) any other Persons performing any of the Maintenance Services, (e) any other Persons for whom Developer 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.

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

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

**Disputes Board Agreement** means the agreement in the form attached to the Capital Maintenance Agreement as Exhibit 15.

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

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

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

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

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

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

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

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

**Draft Interim Schematic** shall mean the preliminary design plans included in the RIDs for the Project constructed under the Development Agreement.

**Draft Interim Schematic ROW** shall mean any real property (which term is inclusive of all estates and interests in real property), as well as improvements and fixtures, within the proposed ROW lines established on the Draft Interim Schematic, as such limits may be adjusted from time to time in accordance with the Contract Documents.

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

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

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

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

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

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

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

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

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

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) Health and safety of employees and other persons; and
- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

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

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.), as amended;
- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 et seq.), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 et seq.), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 et seq.);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, et seq.), as amended;

- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, et. seq.), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 et seq.), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 et seq.), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.);
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 et seq.), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 et seq.), as amended;
- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 et seq.), as amended;
- (xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Project Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know-Act);
- (xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);
- (xxi) The Texas Water Code;
- (xxii) The Texas Parks and Wildlife Code;
- (xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);
- (xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and

(xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Act).

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

**Escrowed Proposal Documents** or **EPDs** shall have the meaning set forth in Section 17.1 of the Capital Maintenance Agreement.

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

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

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

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

**Fast-Track Dispute** shall mean a Dispute so designated by the Parties in respect of Section 16.3.3.2.

**Final Acceptance** shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the Development Agreement.

**Final Order** means the order issued by the Executive Director pursuant to Section 16.3.5.1 or 16.3.5.4 of the Capital Maintenance Agreement.

**Final Order Implementing Decision** has the meaning set forth in Section 16.3.5.4(a)(ii) of the Capital Maintenance Agreement.

**Final Order Vacating Decision** has the meaning set forth in Section 16.3.5.4(a)(i) of the Capital Maintenance Agreement.

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

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

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

- (a) Any earthquake, tornado, hurricane (Category 3 and higher) or other natural disaster that (i) causes direct physical damage to the Project and (ii) has been proclaimed a disaster or state of emergency by the President of the United States, the Governor of the State of Texas, or the Federal Highway

Administrator, unless such damage is caused by the Developer's action or inaction or the Developer's means and methods of construction;

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

**Ineligible Matters** shall have the meaning set forth in Section 16.3.1.2 of the Capital Maintenance Agreement.

**Informal Resolution Procedures** has the meaning set forth in Section 16.3.2 of the Capital Maintenance Agreement.

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

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

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

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

**Law** or **Laws** shall mean (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by TxDOT within the scope of its administration of the CMA Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the

Maintenance Services, whether taking effect before or after the Proposal Due Date, including Environmental Laws. “Law” or “Laws,” however, exclude Governmental Approvals.

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

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

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

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

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

**Losses** shall mean any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys’, 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 AGL Constructors, a Texas joint venture comprised of Archer Western Contractors, LLC, Granite Construction Company and The Lane Construction Company, 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 Services QCP.

**Maintenance Records** shall mean all data in connection with maintenance of the Project including (a) all inspection and inventory records, whether generated by Developer 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 Developer 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.

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

- (a) Any *ex parte* communication or discussion between any Disputes Board Member and either Party (or a member of the Conflicts Group on behalf of either Party) or other *ex parte* communication prohibited under R-10 of the Commercial Rules;
- (b) Any offer, solicitation, discussion, agreement or understanding between any Disputes Board Member and any Party or any other Person regarding (i) remuneration conditioned upon the nature or result of a certain Disputes Board Decision or (ii) employment of the Disputes Board Member by any member of the Conflicts Group following termination of such member's services on the Disputes Board, except for employment as a member of a subsequent Disputes Board or similar disputes board for a project other than the Project;
- (c) The rendition of advice or consultative services to either Party or member of the Conflicts Group; or
- (d) A material lack of the requisite experience under Section 4.1 of the Disputes Board Agreement that was not and could not reasonably have been discovered by the Nominating Party or the Evaluating Party at the time such individual was proposed and approved for inclusion on the Nominating Party's Disputes Board Member Candidates' List, including, by way of example and not limitation, a situation where such individual has materially misrepresented his or her experience to the Parties.

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

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

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

**Notice of Partial Termination for Convenience** shall mean written notice issued by TxDOT to Developer 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 Developer 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.

**Option Work** shall mean those options exercised by TxDOT during the performance of the Development Agreement.

**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.

**Period A** shall have the meaning set forth in Table 18-1A and Table 18-1B of the Technical Provisions.

**Period B** shall have the meaning set forth in Table 18-1A and Table 18-1B of the Technical Provisions.

**Period C** shall have the meaning set forth in Table 18-1A and Table 18-1B of the Technical Provisions.

**Period D** shall have the meaning set forth in Table 18-1A and Table 18-1B of the Technical Provisions.

**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 Developer-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 Draft Interim Schematic ROW and the Additional Properties, but excluding therefrom any portion of the Draft Interim Schematic ROW eliminated from the Project by a Change Order under the Development Agreement.

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

**Proposal** shall mean Developer's response to the RFP.

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

**Proposal Due Date** shall mean November 19, 2012, the deadline for submission of the Price Proposal 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 Developer to TxDOT under Section 10.3.2.5 of the Capital Maintenance Agreement, advising TxDOT that Developer 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.

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

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

**Scheduled Substantial Completion Deadline** shall mean the scheduled date of Substantial Completion for the Project to be constructed under the Development Agreement established by Developer's notice to TxDOT pursuant to Section 20.1.3 of the Development Agreement.

**Scheduling and Procedure Order** shall have the meaning set forth in Section L-2 of Attachment 2 to Exhibit 15.

**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 Developer 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 Development Agreement, as and when confirmed by TxDOT's issuance of a certificate in accordance with Section 20.1.5 of the Development 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.

**Systems Integrator (SI)** or **Integrator** shall mean the contractor, under separate contract to TxDOT, that shall design, construct, supply, install, test and commission the ETCS for the Project, including scanners, readers, loops, enforcement mechanisms and other equipment necessary for the toll systems.

**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 Development 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 Developer 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(ies)** or **utility(ies)** 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 PUA 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 6.0 (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 a monthly 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.
- O. This section O, is not applicable for the Maintenance Services Deliverables Schedule but shall be utilized for the Capital Asset Replacement Work Schedule. Float shall not be considered as time for the exclusive use of or benefit of either TxDOT or the Maintenance Contractor but shall be considered as a jointly owned, expiring resource available to the Project and shall not be used to the financial detriment of either Party. Any method utilized to sequester Float calculations will be prohibited without prior approval of TxDOT. Any schedule, including the Capital Asset Replacement Work and all updates thereto, showing an

early completion date shall show the time between the scheduled completion date and the applicable deadline as "Project Float."

### **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 a monthly 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 monthly 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 Development 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.

### **0302 Public Information and Communications Plan**

Not used.

### **0303 Public Information Coordinator**

Not used.

### **0304 Public Information Office**

Not used.

### **0305 Customer Groups**

Not used.

### **0306 Public Meetings**

Not used.

### **0307 Meeting Minutes**

Not used.

### **0308 Emergency Event Communications**

Not used.

### **0309 Disseminating Public Information**

Not used.

## **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 Development 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 Development 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 Development 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 Development 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 Development 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 Development 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 Development 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 Development Agreement.

## **1200 DRAINAGE**

### **1201 General requirements**

- A. Efficient performance of the drainage system is an integral part of the performance of the Project. In that context, all sources of runoff, both within and outside the Project ROW, must be accounted for in the maintenance of the drainage facilities.

### **1202 Data collection**

- A. To maintain a hydraulic system that complies with requirements and accommodates the hydrologic flows in the Project limits.
- B. If documentation is not available for Elements of the drainage system within the Project limits, Maintenance Contractor shall videotape or photograph the drainage system to determine condition, size, material, location, and other pertinent information.
- C. The data collected shall be taken into account in the maintenance of the drainage facilities for compliance with performance specifications in Attachment 1.

### **1203 Coordination with other agencies**

Not used.

### **1204 Other Requirements**

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

## **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 Development 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 Developer's obligations under the Development 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 Development 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 Development Agreement.

## 1800 TRAFFIC MANAGEMENT

### 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, operators of the managed lane facilities 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.
- G. The MMP shall include a schematic clearly illustrating the limits, using Auditable Sections per section 1906, of the Maintenance Services as described in Attachment 3 of this Exhibit.

The schematic shall delineate the limits of specific areas such as ramps to the managed lanes and the physical limits of bridges and retaining walls.

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

See applicable area of Development 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 Information System**

- A. Maintenance Contractor shall implement a computer based Maintenance Management Information System (MMIS), in accordance with TxDOT MMIS User Manual, to record inventory, failures, repairs, maintenance activities and inspections performed.
- B. The MMIS 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 MMIS shall be configured to report work by TxDOT “function code”, Maintained Element, reference marker, and unit of measurement, as the same described in the aforementioned MMIS User Manual, to categorize the Maintenance Services performed by the Maintenance Contractor.
- C. The MMIS 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 MMIS 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 MMIS shall be updated within three days of completion of such work. Defects shall be recorded on the MMIS within 3 days of them coming to the attention of Maintenance Contractor. All other recording requirements shall be recorded on the MMIS within 15 days of completion or occurrence of the relevant activity.
- F. The MMIS 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 MMIS, via one terminal each, for TxDOT. Maintenance Contractor shall handover the MMIS 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 Information 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 MMIS 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.
- 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 Lance 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 limits of the Project managed lanes 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. Developer 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.

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## **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 Development Agreement.

## **2100 TOLLING**

Not used.

## 2200 OPERATIONS

Not used.

**ATTACHMENT 1 TO THE MAINTENANCE SPECIFICATION**  
**Table 19-1: Performance and Measurement Table Baseline**

<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>1) ROADWAY</b>									
							Unless stated otherwise, measurements shall be conducted using procedures, techniques, and measuring equipment consistent with TxDOT's <i>Pavement Management Information System Rater's Manual</i> . For the purposes of this project, pavement performance measurement records relate to 0.1-mile sections.		
	1.1	Obstructions and debris	Roadway and clear zone free from obstructions and debris	2 hrs	N/A	N/A	Visual Inspection	Number of obstructions and debris	Nil
	1.2	Pavement	All roadways have a smooth surface course (including bridge decks, covers, gratings, frames and boxes) with adequate skid resistance and free from Defects.	24 hrs	28 days	6 months	a) <b>Pavement Condition Score</b> Measurements and inspections necessary to derive Pavement Condition Score	Pavement Condition Score for 80% of Auditable Sections exceeding:  <ul style="list-style-type: none"> <li>• Mainlanes and ramps – 90</li> <li>• Frontage roads – 80</li> </ul> Pavement Condition Score for each Auditable Section exceeding:	100%  100%       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			
							<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>	<ul style="list-style-type: none"> <li>• Mainlanes, shoulders and ramps – 3%</li> <li>• Frontage roads – 10%</li> </ul> <p>Percentage of wheel path length with ruts greater than 1/4" in depth in each Auditable Section</p> <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> </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			
	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>(Capital Asset Replacement Work and new construction subject to construction quality standards)</p> <p>10-ft straightedge used to measure discontinuities</p>	<ul style="list-style-type: none"> <li>• Frontage roads – 120" per mile**</li> </ul> <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>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>Individual discontinuities greater than 0.75"</p>	<p>100%</p> <p>100%</p> <p>100%</p> <p>100%</p> <p>100%</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			
							<b>d) Failures</b> Instances of failures exceeding the failure criteria set forth in the TxDOT PMIS Rater's Manual, including potholes, base failures, punchouts and jointed concrete pavement failures	Occurrence of any failure	Nil
	1.2 cont			24 hrs	28 days	6 months	<b>e) Edge drop-offs</b> Physical measurement of edge drop-off level compared to adjacent surface	Instances of edge drop-off greater than 2" (Number)	Nil
							<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 .	• 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 in excess of 30.	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>• 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 in excess of 30.</li> <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 Concessionaire shall perform a site investigation and perform required corrective action.</li> </ul>	100%	
			Road Users warned of potential skidding hazards	24hrs	7days	N/A	Skid resistance (as above)	Instances where road Users warned of potential skidding hazard where remedial action is identified.	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			
	1.3	Crossovers and other paved areas	Crossovers and other paved areas are free of Defects	24 hrs	28 days	6 months	a) <b>Potholes</b>  b) <b>Base failures</b>	Potholes of low severity or higher (Number)  Base failures of low severity or higher (Number)	Nil  Nil
	1.4	Joints in concrete	Joints in concrete paving are sealed and watertight  Longitudinal joint separation	24 hrs	28 days	6 months	Visual inspection of joints  Measurement of joint width and level difference of two sides of joints	Length unsealed joints greater than ¼"  Joint width more than 1" or faulting more than ¼"	Nil  Nil
	1.5	Curbs	Curbs are free of defects	24 hrs	28 days	6 months	Visual inspection	Length out of alignment	Nil
<b>2) DRAINAGE</b>									
	2.1	Pipes and channels	Each Element of the drainage system is maintained in its proper function by cleaning, clearing and/or emptying as appropriate from the point at which water drains from the travel way to the outfall or drainage way.	24 hrs	28 days	6 months	Visual inspection supplemented by CCTV where required to inspect buried pipe work	Length with less than 90% of cross section clear (feet)	Nil

<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 Permanent Remedy	Cat 2 Permanent Repair			
	2.2	Drainage treatment devices	Drainage treatment and balancing systems, flow and spillage control devices function correctly and their location and means of operation is recorded adequately to permit their correct operation in Emergency.	24 hrs	28 days	6 months	Visual inspection	Devices functioning correctly with means of operation displayed (Number)	100%
	2.3	Travel way	The travel way is free from water to the extent that such water would represent a hazard by virtue of its position and depth.	24 hrs	28 days	6 months	Visual inspection of water on surface	Instances of hazardous water build-up	Nil
	2.4	Discharge systems	Surface water discharge systems perform their proper function and discharge to groundwater and waterways complies with the relevant legislation and permits.	24 hrs	28 days	6 months	Visual inspection and records	Non-compliances with legislation	Nil
	2.5	Protected species	Named species and habitats are protected.	24 hrs	28 days	6 months	Visual inspection	Compliance with the requirement	100%
<b>3) STRUCTURES</b>									
	3.1	Structures having an opening measured along the centre of the roadway of more	Substructures and superstructures are free of: <ul style="list-style-type: none"> <li>• undesirable vegetation</li> <li>• debris and bird droppings</li> <li>• blocked drains, weep</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	Records as required in the TxDOT Bridge Inspection Manual Occurrences of condition	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			
		than 20 feet between undercopings of abutments or springlines of arches or extreme ends of openings or multiple boxes	pipes manholes and chambers <ul style="list-style-type: none"> <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 (Maintenance Contractor is not responsible for damage caused by collision (motor vehicle, aircraft or railroad train), vandalism, or other destructive acts of third parties.)</li> </ul>				of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration’s Bridge Inspector’s Reference Manual.	rating below seven for any deck, superstructure or substructure	
	3.2	Structure components	i) Expansion joints are free of: <ul style="list-style-type: none"> <li>• dirt debris and vegetation</li> <li>• defects in drainage systems</li> <li>• loose nuts and bolts</li> <li>• defects in gaskets</li> </ul> ii) The deck drainage system is	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	Records as required in the TxDOT Bridge Inspection Manual  Occurrences of condition rating below seven for any deck, superstructure or	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			
			free of all and operates as 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>				TxDOT Bridge inspection Manual, and the Federal Administration’s Bridge Inspector’s Reference Manual..	substructure	
	3.2 cont.		<ul style="list-style-type: none"> <li>• vegetation</li> <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	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 Permanent Remedy	Cat 2 Permanent Repair			
			recommendations and certification of lifting devices is maintained.						
	3.3	Non-bridge class culverts	Non-bridge-class culverts are free of: <ul style="list-style-type: none"> <li>• vegetation and debris and silt</li> <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 Number with graffiti	Nil 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 Permanent Remedy	Cat 2 Permanent Repair			
	3.6	Access points	All hatches and points of access have fully operational and lockable entryways.	24 hrs	28 days	6 months	Visual Inspection	Number with defects in locks or entryways	Nil
	3.7	Mechanically Stabilized Earth and Retaining Walls	Mechanically Stabilized Earth and Retaining Walls free of: <ul style="list-style-type: none"> <li>• blocked weep holes</li> <li>• undesirable vegetation</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</li> </ul> (Maintenance Contractor is not responsible for damage caused by collision (motor vehicle, aircraft or railroad train), vandalism, or other	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%

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			
			destructive acts of third parties.)  Parapets free of: <ul style="list-style-type: none"> <li>• loose nuts and bolts</li> <li>• blockage of drain holes</li> <li>• undesirable vegetation</li> <li>• impact damage</li> </ul> (Maintenance Contractor is not responsible for damage caused by collision (motor vehicle, aircraft or railroad train), vandalism, or other destructive acts of third parties.) <ul style="list-style-type: none"> <li>• concrete spalling</li> </ul>						
<b>4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS</b>									
	4.1	Pavement markings	Pavement markings are: <ul style="list-style-type: none"> <li>• clean and visible during the day and at night</li> <li>• whole and complete and of the correct color, type, width and length</li> <li>• placed to meet the</li> </ul>	24 hrs	28 days	6 months	a) Markings - General Portable retroreflectometer, which uses 30 meter geometry meeting the requirements described in ASTM E 1710	Length meeting the minimum retroreflectivity 175 mcd/sqm/lx for white  Length meeting the minimum retroreflectivity	100%  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			
			TMUTCD and TxDOT's Pavement Marking Standard Sheets				Physical measurement  b) Profile Markings Visual inspection	125 mcd/sqm/lx for yellow  Length with more than 5% loss of area of material at any point Length with spread more than 10% of specified dimensions. Length performing its intended function and compliant with relevant regulations	Nil  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			
<b>5) GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS</b>									
	5.1	Guard rails and safety barriers	All guardrails, safety barriers, concrete barriers, etc... are maintained free of Defects. They are appropriately placed and correctly installed at the correct height and distance from roadway or obstacles. Installation and repairs shall be carried out in accordance with the requirements of NCHRP 350 standards.	24 hrs	28 days	6 months	Visual inspection	Length of road restraint systems correctly installed  Length free from defects  Length at correct height  Length at correct distance from roadway and obstacle	100%  100%  100%  100%
	5.2	Impact attenuators	All impact attenuators are appropriately placed and correctly installed	24 hrs	7 days	6 months	Visual inspection	Number correctly placed and installed	100%
<b>6) TRAFFIC SIGNS</b>									
	6.1	General – All signs	i) Signs are clean, correctly located, clearly visible, legible, reflective, at the correct height and free from structural and electrical defects  ii) Identification markers are provided, correctly located, visible, clean and legible	24 hrs	28 days	6 months	<b>a) Retroreflectivity</b> Coefficient of retro reflectivity  <b>b) Face damage</b> Visual inspection	Number of signs with reflectivity below the requirements of TxDOT's TMUTCD  Number of signs with face damage greater than 5% of area	Nil  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			
	6.1 cont.		iii) Sign mounting posts are vertical, structurally sound and rust free  iv) All break-away sign mounts are clear of silt or other debris that could impede break-away features and shall have correct stub heights				<b>c) Placement</b> Visual inspection  <b>d) Obsolete signs</b> Visual inspection	Signs are placed in accordance with TxDOT’s Sign Crew Field Book including not twisted or leaning  Number of obsolete signs	100%  Nil
			v) Obsolete and redundant signs are removed or replaced as appropriate vi) Visibility distances meet the stated requirements vii) Sign information is of the correct size, location, type and wording to meet its intended purpose and any statutory requirements viii) All structures and Elements of the signing system are kept clean and free from debris and have clear access provided. ix) All replacement and repair materials and equipment are				<b>e) Sign Information</b> Visual inspection  <b>f) Dynamic Message Signs</b> Visual inspection	Sign information is of the correct size, location, type and wording to meet its intended purpose  Dynamic message signs are fully functioning	100%  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			
			in accordance with the requirements of the TMUTCD x) Dynamic message signs are in an operational condition						
	6.2	General - Safety critical signs	Requirements as 6.1, Plus: "Stop," "Yield," "Do Not Enter," "One Way" and "Wrong Way" signs are clean legible and undamaged.	2hrs	1 week	6 months	Visual inspection	Number of damaged safety critical signs	Nil
<b>7) TRAFFIC SIGNALS</b>									
	7.1	General	i) Traffic Signals and their associated equipment are: <ul style="list-style-type: none"> <li>• clean and visible</li> <li>• correctly aligned and operational</li> <li>• free from damage caused by accident or vandalism</li> <li>• correctly aligned and operational</li> </ul> ii) Signal timing and operation is correct iii) Contingency plans are in place to rectify Category 1 defects not immediately repairable to assure alternative traffic control is provided	2 hrs	24 hrs	6 months	<b>a) General condition</b> Visual inspection  <b>b) Damage</b> Visual inspection  <b>c) Signal timing</b> Timed measurements  <b>d) Contingency plans</b> Records review	Signals are clean and visible  Signals are undamaged  Installations have correct signal timings  Full contingency plans are in place	100%  100%  100%  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			
			during a period of failure						
	7.2	Soundness	Traffic signals are structurally and electrically sound	24 hrs	28 days	6 months	a) <b>Structural soundness</b> Visual inspection b) <b>Electrical soundness</b> Testing to meet NEC regulations	Inspection records showing safe installation and maintenance	100%
	7.3	Identification marking	Signals have identification markers and the telephone number for reporting faults are correctly located, clearly visible, clean and legible	N/A	28 days	6 months	Visual inspection	Inspection records showing identification markers and other information are easily readable	100%
	7.4	Pedestrian Elements and vehicle detectors	All pedestrian Elements and vehicle detectors are correctly positioned and fully functional at all times	24 hrs	28 days	6 months	Visual Inspection	Inspection records showing compliance	100%
<b>8) LIGHTING</b>									

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			
	8.1	Roadway lighting – General	i) All lighting is free from defects and provides acceptable uniform lighting quality ii) Lanterns are clean and correctly positioned iii) Lighting units are free from accidental damage or vandalism iv) Columns are upright, correctly founded, visually acceptable and structurally sound	24 hrs	28 days	6 months	<b>a) Mainlane lights operable</b> Night time inspection or automated logs  <b>b) Mainlane lights out of action</b> Night time inspection or automated logs	Number of sections with less than 90% of lights functioning correctly at all times  Instances of more than two consecutive lights out of action	Nil  Nil
	8.2	Sign lighting	Sign lighting is fully operational	24 hrs	28 days	6 months	Night time inspection or automated logs	Instances of more than one bulb per sign not working	Nil
	8.3	Electrical supply	Electricity supply, feeder pillars, cabinets, switches and fittings are electrically, mechanically and structurally sound and functioning	24 Hrs	7 Days	1 Month	Testing to meet NEC regulations, visual inspection	Inspection records showing safe installation and maintenance	100%
	8.4	Access panels	All access panels in place at all times.	24 Hrs	7 Days	1 Month	Visual inspection	Instances of missing access panels	Nil

<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			
	8.5	High mast lighting	i) All high mast luminaries functioning on each pole ii) All obstruction lights are present and working (if required) iii) Compartment door is secure with all bolts in place iv) All winch and safety equipment is correctly functioning and maintained without rusting or corrosion (for structural requirements refer to Element Category 3)	24 hrs	48 hrs	1 Month	Yearly inspection and night time inspections or automated logs	Instances of two or more lamps not working per high mast pole  Identification of other defects	Nil  Nil
<b>9) FENCES, WALLS AND SOUND ABATEMENT</b>									
	9.1	Design and location	Fences and walls act as designed and serve the purpose for which they were intended	24 hrs	28 days	6 months	Visual Inspection	Inspection records showing compliance	100%
	9.2	Construction	Integrity and structural condition of the fence is maintained	24 hrs	28 days	6 months	Structural assessment if visual inspection warrants	Inspection records showing compliance	100%
<b>10) ROADSIDE MANAGEMENT</b>									

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			
	10.1	Vegetated areas – Except landscaped areas – General	Vegetation is maintained so that: i) Height of grass and weeds is kept within the limits described for urban and rural areas. Mowing begins before vegetation reaches the maximum height. ii) Spot mowing at intersections, ramps or other areas maintains visibility of appurtenances and sight distance. iii) Grass or vegetation does not encroach into or on paved shoulders, main lanes, sidewalks, islands, riprap, traffic barrier or curbs.	24 hrs	7 days	28 days	<b>a) Urban areas</b> Physical measurement of height of grass and weeds  <b>b) Rural areas</b> Physical measurement of height of grass and weeds  <b>c) Encroachment</b> Visual inspection of instances of encroachment of vegetation	Individual measurement areas to have 95% of height of grass and weeds between 5 in. and 18 in  Individual measurement areas to have 95% of height of grass and weeds between 5 in. and 30 in  Occurrences of vegetation encroachment in each auditable section	100%  100%  Nil
	10.1 cont.		iv) A herbicide program is undertaken in accordance with the TxDOT Herbicide Manual to control noxious weeds and to eliminate grass in pavement or concrete.	24 hrs	7 days	28 days	<b>d) Wildflowers</b> Visual Inspection with audit of process.	Adherence to vegetation management manuals	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			
			v) A full width mowing cycle is completed after the first frost.  vi) Wildflowers are preserved utilizing the guidelines in the mowing specifications and TXDOT <i>Roadside Vegetation Manual</i> .				e) <b>Sight lines</b> Visual inspection	Instances of impairment of sight lines or sight distance to signs	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			
	10.2	Landscaped areas	i) All landscaped areas are maintained to their originally constructed condition. Landscaped areas are as designated in the plans. ii) Mowing, litter pickup, irrigation system maintenance and operation, plant maintenance, pruning, insect, disease and pest control, fertilization, mulching, bed maintenance, watering is undertaken as per MMP. iii) The height of grass and weeds is kept between 2“ and 8”. Mowing begins before vegetation reaches 8 in iv) Damaged or dead vegetation is replaced.	24 hrs	7 days	28 days	Visual inspection	Inspection records showing compliance	100%
	10.3	Fire hazards	Fire hazards are controlled	24 hrs	7 days	28 days	Visual inspection	Instances of dry brush or vegetation forming fire hazard	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			
	10.4	Trees, brush and ornamentals	i) Trees, brush and ornamentals on the right of way, except in established no mow areas, are trimmed in accordance with TxDOT standards. ii) Trees, brush and ornamentals are trimmed to insure they do not interfere with vehicles or sight distance, or inhibit the visibility of signs. iii) Dead trees, brush, ornamentals and branches are removed. Potentially dangerous trees or limbs are removed. iv) All undesirable trees and vegetation are removed. Diseased trees or limbs are treated or removed by licensed contractors.	24 hrs	7 days	28 days	Visual inspection	Inspection records showing compliance	100%
	10.5	Wetlands	Wetlands are managed in accordance with the permit requirements	24 hrs	7 days	28 days	Visual inspection, assessment of permit issuers	Instances of permit requirements not met	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			
<b>11) REST AREAS AND PICNIC AREAS</b>									
	11.1	Rest areas and picnic areas	i) Picnic areas are clean and neat in appearance.	24 hrs	28 days	6 months	Inspection records showing compliance	Instances where 90% of measured area shall have grass and weeds height between 2 in. and 8 in.	100%
			ii) Trash barrels are painted and attached to their supports to prevent stealing.					Mowing shall begin before vegetation reaches 8 in.	100%
			iii) Site free of any visible litter, all litter properly disposed. Litter removed from the picnic area grounds and barrels before being allowed to accumulate outside of the barrels.	24 hrs	28 days	6 months		Number of bare ground areas larger than 5 square feet	Nil
			iv) All vehicles used in transporting litter are equipped to prevent the accumulated litter from being strewn along the roadway.					Number of prohibited, invasive or noxious weeds present.	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			
	11.1 cont		v) Vegetation damaged due to improper or careless mowing and trimming operations or any other reason is replaced.  vi) Weeds, grass and other undesirable growth are removed from beds of plants and shrubs as needed. Trees and shrubs are trimmed neatly. All curbs and sidewalks are edged and repaired.  vii) All picnic tables are clean, free of stains and free of any defect.  viii) All directional, informational, safety and any other type of signage is properly installed, contains accurate information and is visible from a reasonable distance.				Occurrences of encroachment of vegetation or debris for more than two (2) inches onto any curb or sidewalk located throughout each rest area.  Occurrences of deviation of soil or mulch above or below the top of the curb.  Paved surfaces maintained clean and safe with minimal obstruction.  Occurrences of undermining greater than 2”	Nil  Nil  100%  Nil	

<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			
			ix) All striping is intact and all parking and travel areas are clearly marked.  x) All curbs are in place and intact.					Number of unsealed cracks > ½ inch.  Number of lights fully functional.	Nil  100%
<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%

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			
<b>13) ITS and ETCS EQUIPMENT</b>									
	13.1	ETCS equipment – Maintenance	All ITS and ETCS equipment is fully functional and housing is functioning and free of defects. i) All equipment and cabinet identification numbers are visible, sites are well drained and access is clear. ii) Steps, handrails and accesses are kept in a good condition. iii) Access to all communication hubs, ground boxes, cabinets and sites is clear, iv) All drainage is operational and all external fixtures and fittings are in a satisfactory condition. v) All communications cable markers, cable joint markers and duct markers are visible and missing markers are replaced. vi) Backup power supply system is available at all times	24 hrs	14 days	1 month	Visual inspection	Inspection records showing compliance	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			
	13.2	VES equipment - Maintenance	All VES equipment is kept clean, the identification numbers are visible.	24 hrs	14 days	1 month	Visual inspection	Inspection records showing compliance	100%
	13.3	Dynamic message sign equipment	Dynamic message signs are free from faults such as: i) Any signal displaying an message which is deemed to be a safety hazard ii) Failure of system to clear sign settings when appropriate. iii) 2 or more contiguous sign failures that prevent control office setting strategic diversions iv) Signs displaying an incorrect message.	2 hrs	24 hrs	14 days	Defect measurement dependent on equipment	Inspection records showing compliance	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			
	13.4	CCTV equipment	CCTV Systems are free from faults that limit the availability of the operators to monitor the area network, such as: i) Failure of CCTV Systems to provide control offices with access and control of CCTV images ii) Failure of a CCTV camera or its video transmission system. iii) Failure of a pan / tilt unit or its control system. iv) Moisture ingress onto CCTV camera lens v) Faults that result in significant degradation of CCTV images	2 hrs	24 hrs	14 days	Defect measurement dependent on equipment	Inspection records showing compliance	100%
	13.5	Vehicle detection equipment	All equipment free of defects and operational problems such as; i) Inoperable loops. ii) Malfunctioning camera controllers.	2 hrs	24 hrs	1 month	Defect measurement dependent on equipment  Traffic detector loops: Loop circuit's inductance to be > 50 and < 1,000 micro henries. Insulation resistance to be > 50 meg ohms.	Inspection records showing compliance  Instances of loops out of compliance	100%  Nil
<b>14) TOLLING Facilities and Buildings (Not Used)</b>									

<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>15) AMENITY</b>									
	15.1	Graffiti	Graffiti is removed in a manner and using materials that restore the surface to a like appearance similar to adjoining surfaces	24 hrs	28 days	6 months	All graffiti is considered a Category 1 defect	Inspection records showing compliance	100%
	15.2	Animals	All dead or injured animals are removed from the ROW	2 hrs	N/A	N/A	Visual inspection	No dead or injured animals are present on ROW	
	15.3	Abandoned vehicles and equipment	All abandoned vehicles and equipment are removed from the ROW.	1 hr	24 hrs	N/A	Visual inspection	No abandoned vehicles or equipment present	
<b>16) SNOW AND ICE CONTROL</b>									
	16.1	Travel lanes	Maintain travel way free from snow and ice	2hrs	N/A	N/A	Maximum 1hr response time to complete manning and loading of spreading vehicles  Maximum 2hrs from departure from loading point to complete treatment and return to loading point  Maximum 1hr response time for snow and ice clearance vehicles to depart from base	Inspection records showing compliance	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			
	16.2	Weather forecasting	weather forecast information is obtained and assessed and appropriate precautionary treatment is carried out to prevent ice forming on the travel way	2hrs	N/A	N/A	Operations plan details the process and procedures in place and followed	Inspection records showing compliance	100%
	16.3	Operational plans	Operate snow and ice clearance plans to maintain traffic flows during and after snowfall and restore the travel way to a clear condition as soon as possible.	2hrs	N/A	N/A	Operations plan details the process and procedures in place and followed	Inspection records showing compliance	100%
<b>17) INCIDENT RESPONSE</b>									
	17.1	General	Respond to Incidents in accordance with MMP.	1 hr	N/A	N/A	Response times met for 98% of Incidents measured on a 1 year rolling basis. No complaints from Emergency Services.	Inspection records showing compliance	100%
	17.2	Hazardous Materials	For any Hazardous Materials spills, comply with the requirements of MMP.	1 hr	N/A	N/A	MMP details the process and procedures in place and followed.	Inspection records showing compliance	100%
	17.3	Structural assessment	Evaluate structural damage to structures and liaise with Emergency Services to ensure safe working in clearing the Incident	1 hr	N/A	N/A	Inspections and surveys as required by Incident	Incident reports showing compliance	100%
	17.4	Temporary and permanent remedy	Propose and implement temporary measures or	24 hrs	28 days	N/A	Review and inspection of the Incident site	Auditable inspection records showing	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			
			permanent repairs to Defects arising from the Incident. Ensure the structural safety of any structures affected by the Incident					compliance	
<b>18) CUSTOMER RESPONSE</b>									
	18.1	Response to inquiries	Timely and effective response to customer inquiries and complaints.	48 hrs	28 days	N/A	Contact the customer within 48 hours following initial customer inquiry.	Number of responses within specified times	100%
	18.1 cont			48 hrs	28 days	N/A	All work resulting from customer requests is scheduled within 48 hours of customer contact.  Follow-up contact with the customer within 72 hours of initial inquiry.  All customer concerns/requests are resolved to TxDOT's satisfaction within 2 weeks of the initial inquiry.		
	18.2	Customer contact line	Telephone line manned during business hours and 24 hour availability of messaging system. Faults to telephone line or message system rectified	24 hrs	28 days	N/A	Instances of line out of action or unmanned	Operations records showing non availability including complaints from public.	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			
	19.1	Sweeping	i) Keep all channels, hard shoulders, gore areas, ramps, intersections, islands and frontage roads swept clean, ii) Clear and remove debris from traffic lanes, hard shoulders, verges and central reservations, footways and cycle ways iii) Remove all sweepings without stockpiling in the right of way and dispose of at approved tip.	24 hrs	28 days	6 months	Buildup of dirt, ice rock, debris, etc. on roadways and bridges not to accumulate greater than 24" wide or 1/2" deep	Inspection records showing compliance	100%
	19.2	Litter	i) Keep the right of way in a neat condition, remove litter regularly ii) Pick up large litter items before mowing operations. iii) Dispose of all litter and debris collected at an approved solid waste site.	24 hrs	28 days	6 months	No more than 20 pieces of litter per roadside mile shall be visible when traveling at highway speed.	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’ to achieve the Performance Requirements set forth in Attachment 1 to Series 1900 of the Maintenance Specification. For purposes of this Attachment 2, Column A shall be applicable for the Initial Maintenance Term, Column B shall be applicable to the Second Maintenance Term, and Column C shall be applicable to the Third Maintenance Term.

ELEMENT CATEGORY	REF	ELEMENT	REQUIRED		
			A	B	C
<b>1) ROADWAY</b>					
	1.1	Obstructions and debris			
	1.2	Pavement	R	R	R
	1.3	Crossovers and other paved areas	R	R	R
	1.4	Joints in concrete	R	R	R
	1.5	Curbs	R	R	R
<b>2) DRAINAGE</b>					
	2.1	Pipes and Channels	R	R	R
	2.2	Drainage treatment devices	R	R	R
	2.3	Travel Way	R	R	R
	2.4	Discharge systems	R	R	R
	2.5	Protected species			
<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	R	R
	3.2	Structure components	R	R	R
	3.3	Non-bridge class culverts	R	R	R
	3.4	Gantries and high masts	R	R	R
	3.5	Load ratings	R	R	R
	3.6	Access points			
	3.7	Mechanically Stabilized Earth and Retaining Walls	R	R	R
<b>4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS</b>					

ELEMENT CATEGORY	REF	ELEMENT	REQUIRED		
			A	B	C
	4.1	Pavement markings			
	4.2	Raised reflective markers			
	4.3	Delineators & Markers			
<b>5) GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS</b>					
	5.1	Guard rails and safety barriers			
	5.2	Impact attenuators			
<b>6) TRAFFIC SIGNS</b>					
	6.1	General – All Signs			
	6.2	General - Safety critical signs			
<b>7) TRAFFIC SIGNALS</b>					
	7.1	General			
	7.2	Soundness			
	7.3	Identification marking			
	7.4	Pedestrian Elements and Vehicle Detectors			
<b>8) LIGHTING</b>					
	8.1	Roadway Lighting – General			
	8.2	Sign Lighting			
	8.3	Electrical Supply			
	8.4	Access Panels			
	8.5	High Mast Lighting			
<b>9) FENCES, SOUND WALLS AND ABATEMENT</b>					
	9.1	Design and Location			
	9.2	Construction			
<b>10) ROADSIDE MANAGEMENT</b>					
	10.1	Vegetated Areas – Except landscaped areas – General			
	10.2	Landscaped Areas			
	10.3	Fire Hazards			
	10.4	Trees, brush and ornamentals			
	10.5	Wetlands			
<b>11) REST AREAS AND PICNIC AREAS</b>					
	11.1	Rest areas and picnic areas			
<b>12) EARTHWORKS, EMBANKMENTS AND CUTTINGS</b>					
	12.1	Slope Failure	R	R	R
	12.2	Slopes - General	R	R	R

ELEMENT CATEGORY	REF	ELEMENT	REQUIRED		
			A	B	C
<b>13) ITS and ETCS EQUIPMENT</b>					
	13.1	ETCS Equipment – Maintenance			
	13.2	VES Equipment - Maintenance			
	13.3	Dynamic Message Sign Equipment			
	13.4	CCTV Equipment			
	13.5	Vehicle Detection Equipment			
<b>14) TOLLING Facilities and Buildings (Not Used)</b>					
<b>15) AMENITY</b>					
	15.1	Graffiti			
	15.2	Animals			
	15.3	Abandoned vehicles and equipment			
<b>16) SNOW AND ICE CONTROL</b>					
	16.1	Travel lanes			
	16.2	Weather Forecasting			
	16.3	Operational Plans			
<b>17) INCIDENT RESPONSE</b>					
	17.1	General			
	17.2	Hazardous Materials			
	17.3	Structural assessment			
	17.4	Temporary and permanent remedy			
<b>18) CUSTOMER RESPONSE</b>					
	18.1	Response to inquiries			
	18.2	Customer contact line			
<b>19) SWEEPING AND CLEANING</b>					
	19.1	Sweeping			
	19.2	Litter			

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

The limits for Maintenance Services are defined by (1) the physical limits of the tolled managed lanes defined as the edge of pavement, back of curb, or inside face of barrier, whichever is present and furthest from the centerline including any existing Elements within those limits; and (2) the physical limits of all other newly constructed bridges and retaining walls in the remainder of the project such as those associated with general purpose, frontage, arterial, ramps and cross street lanes. No other Elements associated with Work performed on the general purpose, frontage, arterial, ramps and cross streets lanes along with any existing Elements will be within the limits of the Maintenance Services.

At ingress/egress locations, the limits for the Maintenance Services are defined by a line perpendicular to the centerline equidistant between the gores of the ramp.

**ATTACHMENT 4 TO THE MAINTENANCE SPECIFICATION**

Not used.

**ATTACHMENT 5 TO THE MAINTENANCE SPECIFICATION**  
**PUBLIC INFORMATION OFFICE OPENING HOURS**

Not used.

**ATTACHMENT 6 TO THE MAINTENANCE SPECIFICATION**  
**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 I 35E managed lanes.
  - 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. No Lane Closures will be permitted between 5:30 A.M. and 8:00 P.M. Monday through Thursday and between 5:30 A.M. Friday and 3:00 A.M. Saturday.
  - IX. At least two through mainlanes in each direction must be open between 8:00 P.M. and 10:00 P.M. Monday through Thursday, and between 3:00 A.M. Saturday through 10:00 P.M. Sunday.
  - X. At least one through mainlane in each direction must be open between 10:00 P.M. and 5:30 A.M. Sunday through Friday.
  - XI. Complete closure of the mainlanes will not be allowed, unless approved by the TxDOT.
  
- B. Arterial crossings:
  - I. No Lane Closures will be permitted between 5:30 A.M. and 9:00 P.M. Monday through Thursday and between 5:30 A.M. Friday and 3:00 A.M. Saturday.
  - II. At least one lane in each direction shall remain open from 9:00 P.M. and 5:30 A.M. Monday through Thursday nights and between 3:00 Saturday and 5:30 A.M. Monday.
  - III. Provide and maintain access to properties and businesses adjacent to the right-of-way at all times unless otherwise directed by the TXDOT.
  - IV. Prior approval of lane closures must be obtained in accordance with the TMP to avoid main lane and frontage road closures occurring at the same time, unless approved by the TXDOT.
  
- C. Ramps:
  - I. No two adjacent ramp closures may occur at the same time.

**EXHIBIT 3**

**MAINTENANCE CONTRACTOR'S PROPOSAL COMMITMENTS**

Not used

**EXHIBIT 4-1**

**MAINTENANCE PRICE**

(all figures are in U.S. dollars, Year 2012)

<b>YEAR</b>	<b>Pavement Maintenance Program</b>	<b>Bridge Maintenance</b>	<b>Drainage Facilities</b>	<b>Noise Walls and Retaining Walls</b>	<b>Traffic Control</b>	<b>Embankment and Cut Slopes</b>	<b>Miscellaneous Maintenance Items <sup>a</sup></b>	<b>(A) Annual Lump Sum Payment for Periodic Capital Maintenance Services</b>	<b>(B) Total Lump Sum for 5 Year Period (5 x A)</b>
<b>1 to 5</b>								<b>\$1,899,984.45</b>	<b>\$9,499,922.25</b>
<b>6 to 10</b>	613,549.65	840,075.60	364,285.95	20,482.35	81,928.35	24,371.55	12,289.20	<b>\$1,956,982.65</b>	<b>\$9,784,913.25</b>
<b>11 to 15</b>	631,957.20	865,278.75	375,214.35	21,096.60	84,386.40	25,102.35	12,657.75	<b>\$2,015,693.40</b>	<b>\$10,078,467.00</b>
<b>Totals</b>	<b>\$1,841,186.55</b>	<b>\$2,520,961.80</b>	<b>\$1,093,176.00</b>	<b>\$61,464.90</b>	<b>\$245,857.50</b>	<b>\$73,135.65</b>	<b>\$36,878.10</b>		
								<b>Totals (Σ B : Years 1 through 15)</b>	<b>\$29,363,302.50</b>

<sup>a</sup> Miscellaneous Maintenance Items shall be full compensation for all remaining items not already paid under other maintenance items.

**EXHIBIT 4-2**

**MAINTENANCE OPTION PRICE**

<b>I-35E Managed Lanes Project Capital Maintenance Agreement</b>	<b>Annual Expenditure</b> <b>(all figures are in U.S. dollars, Year 2012, as of Price Proposal Due Date)</b>			
	<b>Years 1 to 5 (A)</b> <small>(from Form N-2.1)</small>	<b>Years 6 to 10 (B)</b> <small>(from Form N-2.1)</small>	<b>Years 11 to 15 (C)</b> <small>(from Form N-2.1)</small>	<b>Total Cost (D)=(5×A)+ (5×B)+(5×C)</b>
<b>Option 1</b>	98,274.75	101,223.15	104,260.80	1,518,793.50
<b>Option 2</b>	163,792.65	168,705.60	173,766.60	2,531,324.25
<b>Option 3</b>	65,516.85	67,483.50	69,505.80	1,012,530.75
<b>Option 4</b>	65,515.80	67,483.50	69,505.80	1,012,525.50
<b>Option 5</b>	65,515.80	67,483.50	69,505.80	1,012,525.50
<b>Option 6</b>	65,515.80	67,483.50	69,505.80	1,012,525.50
<b>Option 7</b>	65,515.80	67,483.50	69,505.80	1,012,525.50
<b>Option 8</b>	98,274.75	101,224.20	104,260.80	1,518,798.75
<b>Option 9</b>	65,515.80	67,483.50	69,505.80	1,012,525.50
<b>Total Amount</b>	<b>\$753,438.00</b>	<b>\$776,053.95</b>	<b>\$799,323.00</b>	<b>\$11,644,074.75</b>

**EXHIBIT 4-2.1**

**MAINTENANCE OPTION PRICE BREAKDOWN – OPTION 1**

(all figures are in U.S. dollars, Year 2012)

<b>YEAR</b>		<b>Pavement Maintenance Program</b>	<b>Bridge Maintenance</b>	<b>Drainage Facilities</b>	<b>Noise Walls and Retaining Walls</b>	<b>Traffic Control</b>	<b>Embankment and Cut Slopes</b>	<b>Miscellaneous Maintenance Items <sup>a</sup></b>	<b>(A) Annual Lump Sum Payment for Periodic Capital Maintenance Services</b>	<b>(B) Total Lump Sum for 5 Year Period (5 x A)</b>
<b>1 to 5</b>									\$98,274.75	\$491,373.75
<b>6 to 10</b>									\$101,223.15	\$506,115.75
<b>11 to 15</b>		\$32,687.55	\$44,756.25	\$19,407.15	\$1,090.95	\$4,364.85	\$1,298.85	\$655.20	\$104,260.80	\$521,304.00
<b>Totals</b>		\$95,232.90	\$130,395.30	\$56,542.50	\$3,179.40	\$12,716.55	\$3,784.20	\$1,907.85		
									<b>Totals (ΣB : Years 1 through 15)</b>	<b>\$1,518,793.50</b>

<sup>a</sup> Miscellaneous Maintenance Items shall be full compensation for all remaining items not already paid under other maintenance items.

**EXHIBIT 4-2.2**

**MAINTENANCE OPTION PRICE BREAKDOWN – OPTION 2**

(all figures are in U.S. dollars, Year 2012)

<b>YEAR</b>		<b>Pavement Maintenance Program</b>	<b>Bridge Maintenance</b>	<b>Drainage Facilities</b>	<b>Noise Walls and Retaining Walls</b>	<b>Traffic Control</b>	<b>Embankment and Cut Slopes</b>	<b>Miscellaneous Maintenance Items<sup>a</sup></b>	<b>(A) Annual Lump Sum Payment for Periodic Capital Maintenance Services</b>	<b>(B) Total Lump Sum for 5 Year Period (5 x A)</b>
<b>1 to 5</b>									\$163,792.65	\$818,963.25
<b>6 to 10</b>									\$168,705.60	\$843,528.00
<b>11 to 15</b>		\$54,479.25	\$74,593.05	\$32,346.30	\$1,818.60	\$7,274.40	\$2,164.05	\$1,090.95	\$173,766.60	\$868,833.00
<b>Totals</b>		\$158,722.20	\$217,324.80	\$94,239.60	\$5,299.35	\$21,194.25	\$6,305.25	\$3,179.40		
									<b>Totals (ΣB : Years 1 through 15)</b>	<b>\$2,531,324.25</b>

<sup>a</sup> Miscellaneous Maintenance Items shall be full compensation for all remaining items not already paid under other maintenance items.

**EXHIBIT 4-2.3**

**MAINTENANCE OPTION PRICE BREAKDOWN – OPTION 3**

(all figures are in U.S. dollars, Year 2012)

<b>YEAR</b>		<b>Pavement Maintenance Program</b>	<b>Bridge Maintenance</b>	<b>Drainage Facilities</b>	<b>Noise Walls and Retaining Walls</b>	<b>Traffic Control</b>	<b>Embankment and Cut Slopes</b>	<b>Miscellaneous Maintenance Items<sup>a</sup></b>	<b>(A) Annual Lump Sum Payment for Periodic Capital Maintenance Services</b>	<b>(B) Total Lump Sum for 5 Year Period (5 x A)</b>
<b>1 to 5</b>									<b>\$65,516.85</b>	<b>\$327,584.25</b>
<b>6 to 10</b>									<b>\$67,483.50</b>	<b>\$337,417.50</b>
<b>11 to 15</b>		<b>\$21,791.70</b>	<b>\$29,836.80</b>	<b>\$12,938.10</b>	<b>\$727.65</b>	<b>\$2,909.55</b>	<b>\$865.20</b>	<b>\$436.80</b>	<b>\$69,505.80</b>	<b>\$347,529.00</b>
<b>Totals</b>		<b>\$63,490.35</b>	<b>\$86,929.50</b>	<b>\$37,695.00</b>	<b>\$2,119.95</b>	<b>\$8,477.70</b>	<b>\$2,521.05</b>	<b>\$1,272.60</b>		
									<b>Totals (ΣB : Years 1 through 15)</b>	<b>\$1,012,530.75</b>

<sup>a</sup> Miscellaneous Maintenance Items shall be full compensation for all remaining items not already paid under other maintenance items.

**EXHIBIT 4-2.4**

**MAINTENANCE OPTION PRICE BREAKDOWN – OPTION 4**

(all figures are in U.S. dollars, Year 2012)

<b>YEAR</b>		<b>Pavement Maintenance Program</b>	<b>Bridge Mainten- ance</b>	<b>Drainage Facilities</b>	<b>Noise Walls and Retaining Walls</b>	<b>Traffic Control</b>	<b>Embank- ment and Cut Slopes</b>	<b>Miscella- neous Mainten- ance Items<sup>a</sup></b>	<b>(A) Annual Lump Sum Payment for Periodic Capital Maintenance Services</b>	<b>(B) Total Lump Sum for 5 Year Period (5 x A)</b>
<b>1 to 5</b>									<b>\$65,515.80</b>	<b>\$327,579.00</b>
<b>6 to 10</b>									<b>\$67,483.50</b>	<b>\$337,417.50</b>
<b>11 to 15</b>		<b>\$21,791.70</b>	<b>\$29,836.80</b>	<b>\$12,938.10</b>	<b>\$727.65</b>	<b>\$2,909.55</b>	<b>\$865.20</b>	<b>\$436.80</b>	<b>\$69,505.80</b>	<b>\$347,529.00</b>
<b>Totals</b>		<b>\$63,490.35</b>	<b>\$86,929.50</b>	<b>\$37,693.95</b>	<b>\$2,119.95</b>	<b>\$8,477.70</b>	<b>\$2,521.05</b>	<b>\$1,272.60</b>		
									<b>Totals (ΣB : Years 1 through 15)</b>	<b>\$1,012,525.50</b>

<sup>a</sup> Miscellaneous Maintenance Items shall be full compensation for all remaining items not already paid under other maintenance items.

**EXHIBIT 4-2.5**

**MAINTENANCE OPTION PRICE BREAKDOWN – OPTION 5**

(all figures are in U.S. dollars, Year 2012)

<b>YEAR</b>		<b>Pavement Maintenance Program</b>	<b>Bridge Maintenance</b>	<b>Drainage Facilities</b>	<b>Noise Walls and Retaining Walls</b>	<b>Traffic Control</b>	<b>Embankment and Cut Slopes</b>	<b>Miscellaneous Maintenance Items<sup>a</sup></b>	<b>(A) Annual Lump Sum Payment for Periodic Capital Maintenance Services</b>	<b>(B) Total Lump Sum for 5 Year Period (5 x A)</b>
<b>1 to 5</b>									\$65,515.80	\$327,579.00
<b>6 to 10</b>									\$67,483.50	\$337,417.50
<b>11 to 15</b>		\$21,791.70	\$29,836.80	\$12,938.10	\$727.65	\$2,909.55	\$865.20	\$436.80	\$69,505.80	\$347,529.00
<b>Totals</b>		<b>\$63,490.35</b>	<b>\$86,929.50</b>	<b>\$37,693.95</b>	<b>\$2,119.95</b>	<b>\$8,477.70</b>	<b>\$2,521.05</b>	<b>\$1,272.60</b>		
									<b>Totals (ΣB : Years 1 through 15)</b>	<b>\$1,012,525.50</b>

<sup>a</sup> Miscellaneous Maintenance Items shall be full compensation for all remaining items not already paid under other maintenance items.

**EXHIBIT 4-2.6**

**MAINTENANCE OPTION PRICE BREAKDOWN – OPTION 6**

(all figures are in U.S. dollars, Year 2012)

<b>YEAR</b>		<b>Pavement Maintenance Program</b>	<b>Bridge Maintenance</b>	<b>Drainage Facilities</b>	<b>Noise Walls and Retaining Walls</b>	<b>Traffic Control</b>	<b>Embankment and Cut Slopes</b>	<b>Miscellaneous Maintenance Items <sup>a</sup></b>	<b>(A) Annual Lump Sum Payment for Periodic Capital Maintenance Services</b>	<b>(B) Total Lump Sum for 5 Year Period (5 x A)</b>
<b>1 to 5</b>									\$65,515.80	\$327,579.00
<b>6 to 10</b>									\$67,483.50	\$337,417.50
<b>11 to 15</b>		\$21,791.70	\$29,836.80	\$12,938.10	\$727.65	\$2,909.55	\$865.20	\$436.80	\$69,505.80	\$347,529.00
<b>Totals</b>		<b>\$63,490.35</b>	<b>\$86,929.50</b>	<b>\$37,693.95</b>	<b>\$2,119.95</b>	<b>\$8,477.70</b>	<b>\$2,521.05</b>	<b>\$1,272.60</b>		
<sup>a</sup> Miscellaneous Maintenance Items shall be full compensation for all remaining items not already paid under other maintenance items.									<b>Totals (Σ B : Years 1 through 15)</b>	<b>\$1,012,525.50</b>

**EXHIBIT 4-2.7**

**MAINTENANCE OPTION PRICE BREAKDOWN – OPTION 7**

(all figures are in U.S. dollars, Year 2012)

<b>YEAR</b>		Pavement Maintenance Program	Bridge Maintenance	Drainage Facilities	Noise Walls and Retaining Walls	Traffic Control	Embankment and Cut Slopes	Miscellaneous Maintenance Items <sup>a</sup>	<b>(A) Annual Lump Sum Payment for Periodic Capital Maintenance Services</b>	<b>(B) Total Lump Sum for 5 Year Period (5 x A)</b>
<b>1 to 5</b>									\$65,515.80	\$327,579.00
<b>6 to 10</b>									\$67,483.50	\$337,417.50
<b>11 to 15</b>		\$21,791.70	\$29,836.80	\$12,938.10	\$727.65	\$2,909.55	\$865.20	\$436.80	\$69,505.80	\$347,529.00
<b>Totals</b>		<b>\$63,490.35</b>	<b>\$86,929.50</b>	<b>\$37,693.95</b>	<b>\$2,119.95</b>	<b>\$8,477.70</b>	<b>\$2,521.05</b>	<b>\$1,272.60</b>		
									<b>Totals (ΣB : Years 1 through 15)</b>	<b>\$1,012,525.50</b>

<sup>a</sup> Miscellaneous Maintenance Items shall be full compensation for all remaining items not already paid under other maintenance items.

**EXHIBIT 4-2.8**

**MAINTENANCE OPTION PRICE BREAKDOWN – OPTION 8**

(all figures are in U.S. dollars, Year 2012)

<b>YEAR</b>		<b>Pavement Maintenance Program</b>	<b>Bridge Maintenance</b>	<b>Drainage Facilities</b>	<b>Noise Walls and Retaining Walls</b>	<b>Traffic Control</b>	<b>Embankment and Cut Slopes</b>	<b>Miscellaneous Maintenance Items<sup>a</sup></b>	<b>(A) Annual Lump Sum Payment for Periodic Capital Maintenance Services</b>	<b>(B) Total Lump Sum for 5 Year Period (5 x A)</b>
<b>1 to 5</b>									\$98,274.75	\$491,373.75
<b>6 to 10</b>									\$101,224.20	\$506,121.00
<b>11 to 15</b>		\$32,687.55	\$44,756.25	\$19,407.15	\$1,090.95	\$4,364.85	\$1,298.85	\$655.20	\$104,260.80	\$521,304.00
<b>Totals</b>		<b>\$95,233.95</b>	<b>\$130,395.30</b>	<b>\$56,542.50</b>	<b>\$3,179.40</b>	<b>\$12,716.55</b>	<b>\$3,784.20</b>	<b>\$1,907.85</b>		
									<b>Totals (ΣB : Years 1 through 15)</b>	<b>\$1,518,798.75</b>

<sup>a</sup> Miscellaneous Maintenance Items shall be full compensation for all remaining items not already paid under other maintenance items.

**EXHIBIT 4-2.9**

**MAINTENANCE OPTION PRICE BREAKDOWN – OPTION 9**

(all figures are in U.S. dollars, Year 2012)

<b>YEAR</b>		<b>Pavement Maintenance Program</b>	<b>Bridge Maintenance</b>	<b>Drainage Facilities</b>	<b>Noise Walls and Retaining Walls</b>	<b>Traffic Control</b>	<b>Embankment and Cut Slopes</b>	<b>Miscellaneous Maintenance Items <sup>a</sup></b>	<b>(A) Annual Lump Sum Payment for Periodic Capital Maintenance Services</b>	<b>(B) Total Lump Sum for 5 Year Period (5 x A)</b>
<b>1 to 5</b>									\$65,515.80	\$327,579.00
<b>6 to 10</b>									\$67,483.50	\$337,417.50
<b>11 to 15</b>		\$21,791.70	\$29,836.80	\$12,938.10	\$727.65	\$2,909.55	\$865.20	\$436.80	\$69,505.80	\$347,529.00
<b>Totals</b>		\$63,490.35	\$86,929.50	\$37,693.95	\$2,119.95	\$8,477.70	\$2,521.05	\$1,272.60		
									<b>Totals (ΣB : Years 1 through 15)</b>	<b>\$1,012,525.50</b>

<sup>a</sup> Miscellaneous Maintenance Items shall be full compensation for all remaining items not already paid under other maintenance items.

## **EXHIBIT 5**

### **JOB TRAINING PLAN AND SMALL BUSINESS OPPORTUNITY PLAN**

#### **On-the-Job Training Program**

##### **Policy Statement**

AGL Constructors (AGL) will institute an on-the-job training program for the IH 35E Managed Lanes Project in accordance to the Texas Department of Transportation (TxDOT), On-the-Job Training Program (OJT). AGL will implement the TxDOT OJT Program in its entirety.

##### **Attachment**

- Texas Department of Transportation (TxDOT), On-the-Job Training Program (OJT) – Revised February 2013, with Special Provision 000-2638 (see attached)

## **Small Business Opportunity Plan**

AGL has created Small Business Opportunity Plan to provide opportunities for disadvantaged and small business to participate in the areas of goods and services; design and construction.

### **Program Goals**

AGL's Small Business Opportunity Plan provides an opportunity to selected small businesses to learn about AGL's business opportunities and its business practices. Opportunity Plan participants will receive information to assist them in bidding and performing on AGL's contracts by working directly with AGL and appropriate subcontractors gaining valuable on-the-job during a one (1) year mentoring period.

The Small Business Opportunity Plan will offer participants the opportunity to grow and enhance their business skills by focusing on fundamental construction business tenets:

- 1. Schedule and scheduling**
  - a. Short-term and long term scheduling
  - b. How to schedule
  - c. Progressing a schedule
  - d. Keeping a schedule
  - e. Identifying and applying appropriate resources
  - f. Schedule recovery
- 2. Creating a cost budget and measuring costs**
  - a. Establishing a budget with appropriate costs codes
  - b. Monitoring the budget by conducting weekly review of cost reports
  - c. Anticipating necessary changes to the budget
  - d. Adjusting the budget
  - e. Identifying changed conditions
- 3. Measuring Cash Flow and profitability**
  - a. Cash in vs. cash out
  - b. Relationship of cash flow to profitability
- 4. Understanding the role of bonds and insurance**
- 5. Clarifications to the contract documents, when requested by the Mentor Participant.**
- 6. Human resources**
- 7. Additional areas that participants express interests**

AGL will introduce the Mentor Participants to key AGL staff members and to TxDOT to provide networking opportunities with individuals. AGL mentors, in collaboration with AGL's staff, subcontractors, bonding agents, and other applicable parties, will meet with the Mentor participants during regularly scheduled meetings and will work individually with the Mentor Participants as needed to achieve program goals.

### **Eligibility**

To be eligible for the program, the small businesses must be certified by the State of Texas as a DBE, HUB or SBE for at least one consecutive year and must perform a category of the work that adds value to the project (e.g., design services, concrete contractor, and rebar tier). Firms interested in the program must submit a Small Business Opportunity Plan application to AGL. AGL will offer participation in the program to each DBE, HUB or SBE that has an active role in the project, and will endeavor to maintain, on average, five (5) active participants during the design and construction phase of the project. Additional firms will be evaluated for mentoring

during the capital maintenance period. The actual number of those participating in the program will depend on the total number of candidate firms working on the project that express interest in the program.

Once selected by AGL, the Mentor Participants must commit the necessary time and efforts needed for the program. This is a voluntary program and either party may withdraw at any time by providing notice outlining the reason for withdrawal from the program (a courtesy copy will be provided to TxDOT). Upon completion of the one year (1) program, AGL will provide each Mentor participant with a Certificate of Completion.

### **Small Business Opportunity Coordinator**

**Name:** David Thiel

**Phone:** (214) 585-8644

**Email:** [dthiel@walshgroup.com](mailto:dthiel@walshgroup.com)

### **Program Approach and Topics**

AGL Small Business Opportunity Plan aims to provide effective mentoring to small businesses that have already been selected as subcontractors for the project. AGL will make best efforts to mentor the participants while working on the project, attending project meetings, and participating in project discussions, allowing participants to gain an understanding of the project operations and receive one-on-one training. The intent of this approach is to provide actual project experience.

Each Mentor participant will be invited to attend project meetings through which the Mentor participants will gain practical experience related to project operations. Meeting topics may include planning strategies, schedule reviews, budgeting and cost tracking, subcontractor interface coordination, insurance, bonding, safety (including safety task assessments), and quality reviews. The various meetings are held either at the project office or at the particular field site, as applicable.

### **Participant Responsibilities and Reporting**

#### **A. Mentor Participants**

- a. The mentor participant is responsible for complying with the following guidelines:
  - i. Attend and be on-time for all meetings related to the program.
  - ii. Perform assignments given by the mentor

#### **B. Mentor**

- a. An AGL mentor is assigned to each Participant and will perform the mentoring activities described in the Plan. The Mentor is responsible to ensure the Participant receives and understands the information presented during the meetings. The Mentor will have regular contact with each Participant to respond to any questions that the Participant may have regarding the Plan.
- b. The Mentor will complete a quarterly report for each Participant that outlines topics covered, progress towards completion, and recommended future training. The Mentor will submit each quarterly report to AGL's Small Business Mentor Coordinator, David Thiel and TxDOT.

TEXAS DEPARTMENT OF TRANSPORTATION

*Transforming Lives...*

# One Opportunity at a Time



**On-the-Job Training Program**  
**OFFICE OF CIVIL RIGHTS**

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## 1. DEFINITIONS

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- A. **Alternate Training Program** means any program approved under 23 CFR CH 1, §230.111(f)(1) and (f)(2). Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a federal-aid highway contractor or subcontractor need not be formally approved by the State highway agency or the Federal Highway Administration Division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered in a manner reasonably calculated to meet the equal employment opportunity (EEO) obligations of the contractor. Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the State highway agency or the division Administrator provided:
- i. The U.S. Department of Labor has clearly approved the program aspects relating to EEO and the payment of trainee wage rates in lieu of prevailing wage rates.
  - ii. They are reasonably calculated to qualify the average trainees for journeyman status in the classification concerned by the end of the training period.
  - iii. They are administered in a manner calculated to meet the equal employment obligations of the contractors.
- B. **Department** means the Texas Department of Transportation.
- C. **DOT** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration.
- D. **Federal-aid contract** is any contract between the Department and a contractor that is paid for in whole or in part with DOT assistance.
- E. **Journeyman** means a person who is capable of performing all the duties within a given job classification or craft.
- F. **Program Sponsor** is that entity which shall be responsible for providing the necessary reports to the State to insure compliance with the Davis Bacon Act and other standards as outlined in the Department's On-the-Job Training Program Manual and the On-the-Job Training Program Special Provision.
- G. **Supportive Services** means those services provided to increase the overall effectiveness of approved on-the-job training programs for highway construction workers and highway contractors through the performance of various functions necessary to the program but which are not considered to be part of the actual on-the-job craft training.
- H. **Trainee** means a person who is receiving on-the-job training through any program approved by the FHWA or the U.S. Department of Labor.

## **2. BACKGROUND**

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### **2.1 NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES**

#### **Title VII of the Civil Rights Act (1964)**

The Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment and was passed to bring equality in hiring, transfers, promotions, compensation, access to training, and other employment-related decisions.

#### **Form FHWA-1273 – Section II, Nondiscrimination**

A contractor's minimum EEO requirements are set forth in the contract provisions referenced in Form FHWA-1273 as "Section II, Nondiscrimination." These include acceptance of a general operating policy that prohibits discrimination based on race, color, religion, sex, national origin, age, or disability.

Contract provisions also require nondiscrimination in selection and retention of subcontractors, material suppliers and vendors; maintenance of non-segregated facilities; on-the-job training and training special provisions; and adherence to employment preference in Appalachian contracts, where applicable.

#### **Title 49, Code of Federal Regulations, Part 21**

Title 49, Code of Federal Regulations (CFR), Part 21 of the DOT Regulations of the implementation of Title VI require assurances from states that no person on grounds of race, color, or national origin is excluded from participation, denied the benefits of, or in any other way subjected to discrimination under any program or activity for which the recipient receives assistance from the DOT, including the FHWA.

#### **Title 23 CFR 230**

The provisions of 23 CFR 230 - are applicable to all state transportation agencies that receive federal financial assistance in connection with the Federal-aid Highway Program. Subpart A requires the establishment of the on-the-job training program and on-the-job training supportive services program.

#### **Department Policy – Nondiscrimination Statement**

The Department, a recipient of federal financial assistance under Title VI of the Civil Rights Act of 1964 and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. \*2000d-3), color, national origin, sex, age and disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.

### **2.2 ALTERNATE TRAINING PROGRAMS**

Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of 23 CFR Part 230 Appendix B of Subpart A that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the FHWA division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The contractor may propose another skilled or semi-skilled craft training program for use in fulfilling its OJT requirements, based on its company workforce needs, by submitting a written request detailing the reason for the proposed training program. The contractor's proposed skilled or semi-skilled craft training program must be approved by the U.S. Department of Labor.

This request should be forwarded to the Department's Office of Civil Rights (OCR). A copy of the contractor's proposed training program must accompany the contractor's written request.

## **3. PROGRAM GUIDELINES**

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### **3.1 POLICY STATEMENT**

The Department has established a Federal On-the-Job Training (OJT) Program in accordance with regulations of the DOT at 23 CFR Part 230, Subpart A, Equal Employment Opportunity on Federal and Federal-aid Construction Contracts. It is the policy of the Department to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups, disadvantaged persons and women in all phases of the highway construction industry.

The Federal OJT Program is administered through a construction contract special provision. A copy of this special provision is located in Appendix A.

### **3.2 PROGRAM OBJECTIVES**

The OCR is the office of primary responsibility for the administration of the program with assistance from the Construction Division, Districts, and Area Offices in administering the program. The Federal OJT program targets women, minorities, and disadvantaged individuals for entry into journey-level positions to ensure that a competent workforce is available to meet highway construction hiring needs, and to address the historical under-representation of members of these groups in highway construction skilled crafts.

The program addresses the following considerations:

- Flexibility for contractors in selecting the projects they can place trainees on by removing project specific-based goals;
- Emphasis on the recruitment of trainees who are likely to become members of a contractor's regular workforce upon completion of the program;
- Emphasis on training in skilled craft classifications; and
- Assisting contractors in meeting their EEO goals through training of women, minorities, and disadvantaged individuals.

### **3.3 PROGRAM AREAS**

The Federal OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journeyman in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification were developed jointly by the Department, Associated General Contractors, construction industry representatives, and others. The approved training programs are listed in Appendix B.

Each training program details the training curriculum that should be provided to the trainee and the number of hours in each classification code. The training curriculum serves as a general guideline. As contractors expect different things from their employees, it is the contractor's decision how to handle training and when to graduate a trainee from the program. Keep in mind, however, that the hours listed are a maximum, and a trainee shall not be kept in the training program for longer than the maximum number of hours listed.

## 4. GOAL REQUIREMENTS

### 4.1 ANNUAL GOAL METHODOLOGY

Each year, OCR sets an overall agency goal on the number of trainees to be enrolled for the calendar year. The goal is based on the construction letting for the previous fiscal year and is sent to the FHWA for approval. OCR notifies contractors of their goal by January 31.

Each year, the ranges will be reviewed to maximize training potential. The formula for assigning contractor goals is illustrated in the following table:

<b>ANNUAL GOAL BASED ON TOTAL CONTRACT AMOUNT WITH DEPARTMENT</b>				
<b>Annual Estimated (Range) Contract Amount</b>				<b>Trainees Required Annually</b>
Over	\$195,000,000.01			7
	\$160,000,000.01	to	\$195,000,000.00	6
	\$125,000,000.01	to	\$160,000,000.00	5
	\$90,000,000.01	to	\$125,000,000.00	4
	\$55,000,000.01	to	\$90,000,000.00	3
	\$20,000,000.00	to	\$55,000,000.00	2

### 4.2 GOAL CREDIT

Credit will be counted toward the contractor's annual goal for the year in which the trainee entered training. Credit will be counted, pending official enrollment, for each trainee on the project when it is documented that the trainee has graduated from the program.

To encourage contractors to place trainees in the more technical classifications, which include more than 2080 maximum training hours, two credits will be counted per trainee graduation in the classifications denoted by an asterisk (\*) in Appendix B.

Credit will be counted toward the contractor's annual goal if documentation is provided that a graduate from the Texas Construction Career Academy (TCCA) has been hired for employment. Should a graduate's employment be terminated, credit will still be allowed if that employee was retained for at least 15 calendar days for a voluntary separation and at least 30 calendar days for all other separations. If the TCCA graduate is also enrolled as a trainee into the OJT program, an additional credit will be allowed when it is documented that the trainee has graduated from the program. (TCCA program information can be found in section 8, Supportive Services.)

Credit will not be counted when the contractor fails to provide acceptable training or evidences a lack of good faith effort in meeting the requirements of this program.

### **4.3 BANKING CREDIT**

Contractors have the opportunity to pursue additional OJT credits once the assigned goal has been met. This is referred to as “banking.” In the event the contractor has additional trainees that have graduated from the program or that have been approved for good faith effort, the contractor may bank the additional credit(s) toward the following year’s goal. However, if the contractor is not assigned an annual goal in the following year, goal credit will be lost.

### **4.4 GOOD FAITH EFFORT**

If a contractor fails to meet the total trainee goal, OCR shall determine good faith effort on a case-by-case basis. Criteria used to determine good faith effort include, but are not limited to, the following:

- Percentage of completion based on the trainee’s maximum training hours;
- Reason for termination;
- Contractor efforts to replace the trainee; and
- The state of the contractor’s work load.

## **5. TRAINEE GUIDELINES**

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### **5.1 TRAINEE REQUIREMENTS**

The proposed trainee must meet the following requirements:

- Has not completed a training course leading to journeyman status for the proposed training classification;
- Has not worked as a journeyman in the proposed classification;
- Does not have journeyman experience in the proposed classification; and
- Is not enrolled in another training classification.

The contractor should satisfy the above requirements by including appropriate questions in the employee application or by other suitable means.

### **5.2 SELECTION PROCEDURES**

The contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with the training special provision.

This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not. The prospective trainee must express interest in entering the OJT Program, as well as exhibit sufficient commitment to complete the training. These criteria are captured on the Federal OJT Program Enrollment Form.

### **5.3 WAGE RATES**

The trainee will be paid the appropriate Davis-Bacon wage rates or the prevailing wage rate for training crafts on Department projects.

The contractor shall compensate the trainee at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period; 75 percent for the third quarter; and 90 percent for the last quarter, respectively.

Contractors using alternate training programs as defined in the manual must compensate the trainee in accordance with the approved Davis-Bacon wage rates in the contract.

## **6. CONTRACTOR RESPONSIBILITIES**

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### **6.1 RESPONSIBILITIES**

A contractor's responsibilities in implementing the training special provision include the following:

- Training must commence on a federal-aid highway construction project which also must contain the OJT special provision. If not, a change order must be generated;
- Training may occur on Department construction and maintenance projects and local-administered federal-aid projects, with approval of that local entity;
- Training may be provided by a subcontractor. Program requirements are still the responsibility of the contractor who has been assigned the goal;
- The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment;
- The contractor will periodically review the training and promotion potential of minorities, women, and disadvantaged employees and will encourage eligible employees to apply for such training and promotion;
- The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each;
- The contractor shall furnish each trainee with a copy of their enrollment form, the program curriculum, and training progress reports reflecting the total training hours accumulated;
- Upon graduation, the contractor will provide each trainee with a certificate showing the type and length of training satisfactorily completed; and
- If a trainee is terminated, the contractor is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.

### **6.2 ENROLLMENTS**

Within 30 days of the annual notification, the contractor shall make every effort to enroll minority, women, and economically disadvantaged trainees to the extent that such persons are available within a reasonable area of recruitment.

Within 60 days of the annual notification, one or more trainees must be enrolled into the program. Should the contractor not have any individuals enrolled or undergoing training by this time, the following information must be provided to the OCR:

1. An action plan utilizing the Department's Contractor On-the-Job Training Plan form located in Appendix C;
2. A listing of recruitment sources used for minority, women, and disadvantaged individuals, such as minority, women, and disadvantaged organizations, associations, newspapers and flyers;
3. A copy of the applicant log that shows name of the applicant, gender, race/ethnicity, and date of application; and
4. The Metropolitan Statistical Area(s) used for outreach and recruitment where each of the contractor's projects are located.

### **6.3 REPORTING REQUIREMENTS**

The contractor is required to submit form 2201, Federal OJT Program Enrollment Form, within seven business days of its intent to assign trainees to a project and the training classification to be utilized.

The contractor will report on the previous month's OJT activity by submitting form 2202, Federal OJT Program Monthly Reporting Form, to each applicable Area Engineer(s) where training occurred by the 10<sup>th</sup> of each month. A copy must also be submitted to OCR. If there are no hours worked during the month, the contractor's monthly report must reflect no hours. Upon graduation or termination, the contractor should include this information on the monthly report submitted. Additionally, if requested, reimbursement will be made under the federal-aid contract identified on this form.

If a trainee is transferred to another project, the contractor must notify both the Area Engineer on the previous project and the Area Engineer on the project the trainee is being transferred to. This information must also be indicated on the Federal OJT Program Monthly Reporting Form.

The certified payroll must reflect the trainee's training classification and the actual number of hours training for that payroll period.

The contractor will utilize the appropriate forms as described herein to notify the Department of the termination of a trainee and the enrollment of a replacement trainee. The replacement trainee need not be enrolled in the same training classification code as the terminated trainee. Copies of the reporting forms are located in Appendix C.

### **6.4 REIMBURSEMENT**

Except as otherwise noted below, the contractor, upon request, will be reimbursed 80 cents per hour upon completion of training given an employee in accordance with an approved training program:

- Reimbursement is not allowed for any trainee enrolled in the Federal OJT Program that is training on an American Recovery and Reinvestment Act of 2009 (ARRA) project.
- Reimbursement is not allowed if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by the contractor.
- Reimbursement is not allowed if the contractor evidences a lack of good faith effort in meeting the requirements of the Training Special Provision.

### **6.5 COMPLIANCE**

The contractor has a fundamental role and responsibility to take all reasonable and necessary steps to ensure that the terms and conditions of its contract are fully met. This includes, but is not limited to, its employment policy. The contractor is responsible for having in place and implementing an equal opportunity policy that ensures equal access to employment and training.

Under 23 CFR 230 and 23 USC 140, the Department has the authority to conduct contractor compliance reviews of contractors to ensure compliance with the equal employment opportunity contract provisions and the implementation of special requirements for the provision of on-the-job training (23 CFR 230.111).

### **6.6 RECORDS**

The contractor shall retain the original training records for a period of three years following completion of the contract work. Such records shall be available at reasonable times and places for inspection by authorized representatives of the Department and the FHWA.

## **7. DEPARTMENT RESPONSIBILITIES**

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### **7.1 MONITORING REQUIREMENTS**

Upon receipt of the Federal OJT Program Enrollment Form, OCR will either approve or deny the request and notify the contractor of the decision in writing. If the request is approved, OCR will notify the applicable Department Area Engineer and the District Director of Construction.

Each month, the contractor will submit the Federal OJT Program Monthly Reporting Form, which will contain sufficient data and narrative content to enable evaluation of both progress and problems encountered. The Area Engineer, or designee, will verify the training hours indicated on the form against the certified payroll. The form must be signed and retained in the project files.

Area office personnel will conduct labor interviews and wage rate monitoring utilizing the Construction Division's Labor Standards Review Form. The area office should conduct at least one interview per trainee during their training period to verify their training status and/or progress toward completing the training program. Copies of the completed forms must be forwarded to OCR.

For reimbursement, district personnel can either add a detail number during activation or by change order to pay the contractor. Reimbursement is allowed on multiple federal-aid contracts as long as the total hours to be reimbursed have been verified through a review of the certified payrolls and accurately reflects the total hours of actual training. The contractor will not be reimbursed if there was a lack of good faith effort on the part of the contractor in meeting the requirements of the program. Additionally, reimbursement is not allowed for any trainee enrolled in the Federal OJT Program that is training on an ARRA project.

To ensure that the contractors' trainee goals are complied with, the Department will monitor the contractor's recruitment efforts, training, and hiring. This will be accomplished by a review of the OJT Program reporting forms.

OCR will continually monitor the contractor's OJT progress through an OJT database developed and maintained by the Department. The OJT database will consist of information obtained from the contractor's reporting forms.

### **7.2 ANNUAL REPORT**

On an annual basis, the Department will submit to FHWA a report on the achievement of the Department's annual training goal.

In the event the Department does not achieve the annual training goal, the Department will inform the FHWA in writing by January 31 indicating the specific reasons the goal was not achieved and the steps the Department took in their methodology to adjust future goals.

## **8. SUPPORTIVE SERVICES (PURSUANT TO 23 CFR PART 230.113(F)(1)(2))**

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The On-the-Job Training Supportive Services (OJT/SS) Program was established in Title 23 Code of Federal Regulations, Part 230 to supplement the OJT program and support state transportation agency training programs by providing services to highway construction contractors and assistance to highway construction trainees.

The primary objectives of the OJT/SS program are to increase the overall effectiveness of the State highway agencies' approved training programs and to seek other ways to increase the training opportunities for women, minorities, and disadvantaged individuals.

### **Texas Construction Career Academy**

The OCR has partnered with the University of Texas at Arlington to administer the TCCA. The TCCA is a recruitment and pre-employment training program.

The key benefits of the TCCA are listed below:

- Provides contractors with a means to demonstrate good faith efforts in meeting EEO objectives by participating in the program;
- Assists contractors in filling positions in under-represented classifications;
- Recruits motivated individuals for contractor employment consideration;
- Provides participants with a true understanding of the construction work environment;
- Provides participants with transportation assistance; and
- Hosts job fairs where contractors and potential employees will be introduced.

Training sessions will be conducted throughout the state. Program curriculum will include introductory courses and practical exercises related to the highway construction industry. Additional program and contact information can be found at [www.texasconstructioncareeracademy.org](http://www.texasconstructioncareeracademy.org).

## **APPENDIX A**

### **Federal On-the-Job Training Program Special Provision**



## SPECIAL PROVISION

000--2638

### On-the-Job Training Program

1. **Description.** The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.
2. **Trainee Assignment.** Training assignments are based on the past volume of state-let highway construction contracts awarded with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.
3. **Program Requirements.** Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75% for the third quarter, and 90% for the last quarter, respectively.
4. **Reimbursement.** If requested, contractors may be reimbursed \$0.80 per training hour at no additional cost to the Department. Training may occur on this project, all other Department contracts, or local-administered federal-aid projects with concurrence of the local government entity. However, reimbursement for training is not available on projects to the extent that such projects that do not contain federal funds.
5. **Compliance.** The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.

## **APPENDIX B**

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### **Overview of Training Programs**

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## TRAINING CLASSIFICATIONS

One credit shall be counted for each trainee who graduates from the program.

Two goal credits shall be counted for each trainee who graduates from the more technical training classifications with **more than 2080** maximum training hours. These training classifications are denoted by an asterisk (\*).

<u>CODE</u>	<u>TRAINING CLASSIFICATION</u>	<u>MAXIMUM HOURS</u>
0106	Asphalt Raker .....	520
0112	Batching Plant Operator, Asphalt .....	720
0115	Batching Plant Operator, Concrete.....	720
0124	Concrete Finisher, Paving and Structures .....	1040
0139	Electrician* .....	4160
0143	Telecommunication Technician* .....	2080
0144	Communications Cable Installer.....	720
0145	Traffic Signal/Light Pole Worker*.....	4160
0151	Form Builder/Setter, Structures .....	1040
0160	Form Setter, Paving and Curb.....	720
0175	Laborer, Utility.....	520
0187	Mechanic .....	1440
0194	Servicer.....	520
0196	Painter, Structures .....	1040
0202	Piledriver .....	720
0205	Pipelayer.....	520
0214	Blaster.....	1040
0300	Asphalt Distributor Operator.....	1040
0303	Asphalt Paving Machine Operator .....	1040
0305	Broom or Sweeper Operator .....	320
0306	Crawler Tractor Operator .....	720
0315	Concrete Paving Curing, Float, Texturing Machine Operator .....	1040
0318	Concrete Pavement Finishing Machine Operator.....	1040
0329	Joint Sealer .....	520
0333	Concrete Saw Operator.....	520
0339	Subgrade Trimmer .....	1040
0341	Small Slipform Machine Operator.....	720
0342	Crane Operator, Lattice Boom 80 Tons or Less .....	1040
0343	Crane Operator, Lattice Boom Over 80 Tons* .....	2080
0344	Crane Operator, Hydraulic 80 Tons or Less.....	1040
0345	Crane Operator, Hydraulic Over 80 Tons.....	1040
0346	Loader/Backhoe Operator.....	1040
0347	Excavator Operator, 50,000 Pounds or Less.....	720

<b><u>CODE</u></b>	<b><u>TRAINING CLASSIFICATION</u></b>	<b><u>MAXIMUM HOURS</u></b>
0348	Excavator Operator, Over 50,000 Pounds.....	1040
0351	Crusher or Screen Plant Operator .....	1040
0360	Foundation Drill Operator, Crawler Mounted.....	1040
0363	Foundation Drill Operator, Truck Mounted .....	1040
0369	Front End Loader Operator, 3 CY or Less .....	520
0372	Front End Loader Operator, Over 3 CY .....	1040
0380	Milling Machine Operator.....	1040
0384	Reclaimer/Pulverizer Operator .....	720
0390	Motor Grader Operator, Fine Grade*.....	2080
0393	Motor Grader Operator, Rough.....	1040
0396	Pavement Marking Machine Operator.....	720
0399	Concrete/Gunite Pump Operator .....	720
0402	Roller Operator, Asphalt.....	1040
0405	Roller Operator, Other.....	520
0411	Scraper Operator.....	520
0413	Off Road Hauler .....	520
0417	Self-Propelled Hammer Operator.....	520
0428	Agricultural Tractor Operator .....	520
0437	Trenching Machine Operator, Light .....	520
0440	Trenching Machine Operator, Heavy .....	1040
0441	Tunneling Machine Operator, Heavy .....	1560
0442	Tunneling Machine Operator, Light.....	720
0443	Percussion or Rotary Drill Operator .....	520
0444	Boring Machine Operator .....	720
0445	Directional Drilling Operator.....	1040
0446	Directional Drilling Locator.....	720
0500	Reinforcing Steel Worker.....	720
0509	Structural Steel Worker.....	1040
0513	Sign Erector.....	1040
0515	Spreader Box Operator .....	520
0520	Work Zone Barricade Servicer .....	720
0600	Truck Driver, Single Axle .....	520
0606	Truck Driver, Single or Tandem Axle Dump Truck.....	720
0607	Truck Driver, Tandem Axle Tractor with Semi Trailer .....	1040
0609	Truck Driver Lowboy-Float.....	1040
0612	Truck Driver Transit-Mix .....	1040
0615	Boom Truck Operator .....	1040
0705	Structural Steel Welder*.....	2080
0706	Welder .....	1040
0708	Slurry Seal or Micro-Surfacing Machine Operator .....	1040

**ASPHALT RAKER – CODE 0106**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of placement of materials ..... 5 hours
    - C. Perform duties of asphalt raker ..... 35 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Adjustment of screed to regulate width and depth of material..... 35 hours
    - C. Distribution of material..... 380 hours
- Total ..... 520 hours

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**BATCHING PLANT OPERATOR, ASPHALT - CODE 0112**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of equipment in operation..... 35 hours
    - C. Adjustment of scales, operation of controls and weighing..... 50 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine cleaning, lubrication and servicing ..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Operating controls and scales for measurement and discharge of asphaltic materials into trucks, or carriers..... 570 hours
- Total ..... 720 hours

**BATCHING PLANT OPERATOR, CONCRETE – CODE 0115**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of equipment in operation..... 35 hours
  - C. Adjustment of scales, operation of controls and weighing..... 50 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine cleaning, lubrication and servicing ..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Operating controls and scales for measurement and discharge of concrete materials into trucks, carriers or mixer ..... 570 hours
- Total ..... 720 hours

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**CONCRETE FINISHER, PAVING AND STRUCTURES – CODE 0124**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of use of machine in operation..... 25 hours
  - C. Starting and manipulating controls for moving equipment and attachments..... 25 hours
  - D. Observation of use of straight edges and steel trowels ..... 25 hours
  - E. Observation of forming a finishing of edges and joints..... 25 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine cleaning work area and materials, holding materials, tools and handling canvas belting or burlap strips..... 200 hours
  - C. Routine fueling, lubricating and servicing..... 35 hours
- III. Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Basic operation of tools and machine..... 165 hours
  - C. Use of straight edges, trowels, or floats ..... 100 hours
  - D. Forming and finishing edges, joints, curbs and gutters ..... 200 hours
  - E. Operation of finishing machine ..... 210 hours
- Total ..... 1040 hours

**ELECTRICIAN\* – CODE 0139**

**MAXIMUM TRAINING TIME: 104 WEEKS OR 4160 HOURS**

\*Two training credits will be counted for graduation in this classification

I. Orientation	
A. Safety procedures .....	10 hours
B. Basic rules of National Electrical Code .....	100 hours
C. Basic tools – their care and uses .....	100 hours
II. Technical Studies and Review	
A. Safety procedures.....	10 hours
B. Advance study of National Electrical Code.....	100 hours
C. Construction blueprints, reading and application .....	200 hours
III. Applied Techniques of Electrical Construction	
A. Safety procedures.....	10 hours
B. Care and Maintenance of trade tools and equipment.....	100 hours
C. Wire ways – types, uses and methods of installation .....	900 hours
D. Circuit wiring .....	800 hours
E. Protective equipment – switches, panels, etc. ....	300 hours
F. Feeders and services .....	300 hours
G. Lighting fixtures and wall outlets.....	250 hours
H. Control wiring .....	150 hours
I. Testing of completed work.....	100 hours
J. Underground conduit and wire.....	300 hours
K. Installation of outside lighting, maintenance and repairs.....	430 hours
Total .....	4160 hours

**TELECOMMUNICATION TECHNICIAN\* – CODE 0143**

**MAXIMUM TRAINING TIME: 52 WEEKS OR 2080 HOURS**

\*Two training credits will be counted for graduation in this classification

- I. Orientation
  - A. Safety procedures ..... 10 hours
  - B. Theories and types of telecommunications systems ..... 40 hours
  - C. Operation of specialized tools and equipment..... 40 hours
  - D. Familiarization with standards and practices... ..... 40 hours
  
- II. Basic Design Familiarity
  - A. Safety procedures..... 10 hours
  - B. Understanding and interpretation of specifications... ..... 20 hours
  - C. Blueprint or construction plans reading..... 50 hours
  
- III. Applied Techniques of Telecommunications Construction
  - A. Safety procedures..... 10 hours
  - B. Care and maintenance of trade tools and equipment ..... 60 hours
  - C. Handling and installation of copper cables..... 300 hours
  - D. Handling and installation of fiber cables..... 400 hours
  - E. Termination and testing of copper cables..... 300 hours
  - F. Termination and testing of fiber cables ..... 250 hours
  - G. Installation and deployment of telecommunications equipment ..... 250 hours
  - H. Operational testing and troubleshooting of systems ..... 250 hours
  - I. Documentation of tests and installations..... 50 hours
  
- Total ..... 2080 hours

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**COMMUNICATIONS CABLE INSTALLER – CODE 0144**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation
  - A. Safety Procedures ..... 10 hours
  - B. Theories and types of Telecommunications systems.. ..... 5 hours
  - C. Operation of specialized tools and equipment..... 25 hours
  - D. Familiarization with standards and practices.... ..... 25 hours
  
- II. Basic Design Familiarity
  - A. Safety procedures..... 10 hours
  - B. Understanding and interpretation of specifications... ..... 20 hours
  - C. Blueprint or Construction Plans Reading..... 45 hours
  
- III. Applied Techniques of Cable Installation
  - A. Safety procedures..... 10 hours
  - B. Care and maintenance of trade tools and equipment ..... 70 hours
  - C. Handling and installation of copper cables... ..... 100 hours
  - D. Handling and installation of fiber cables..... 200 hours
  - E. Figure 8 techniques and long pulls..... 100 hours
  - F. Handling and installation of innerduct... ..... 100 hours
  
- Total ..... 720 hours

**TRAFFIC SIGNAL/LIGHT POLE WORKER\* – CODE 0145**

**MAXIMUM TRAINING TIME: 104 WEEKS OR 4160 HOURS**

\*Two training credits will be counted for graduation in this classification

I. Orientation	
A. Safety procedures... ..	10 hours
B. Basic rules of National Electrical Code .....	100 hours
C. Basic tools – their care and uses .....	100 hours
II. Technical Studies and Review	
A. Safety procedures.....	10 hours
B. Advance study of National Electrical Code.....	100 hours
C. Construction blueprints, reading and application .....	200 hours
III. Applied Techniques of Electrical Construction	
A. Safety procedures.....	10 hours
B. Care and maintenance of trade tools and equipment .....	100 hours
C. Wire ways – types, uses and methods of installation .....	900 hours
D. Circuit wiring .....	800 hours
E. Protective equipment – switches, panels, etc. ....	300 hours
F. Feeders and services .....	300 hours
G. Lighting fixtures and wall outlets.....	250 hours
H. Control wiring .....	150 hours
I. Testing of completed work.....	130 hours
J. Underground conduit and wire.....	300 hours
K. Installation of outside lighting, maintenance and repairs.....	400 hours
Total .....	4160 hours

**FORM BUILDER/SETTER, STRUCTURES – CODE 0151**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Materials and tools selection ..... 15 hours
    - C. Placing forms, form stripping and setting of precast concrete ..... 20 hours
  
  - II. Applied techniques
    - A. Safety procedures..... 10 hours
    - B. Blueprint or construction plans reading and application..... 30 hours
    - C. Basic form design ..... 30 hours
    - D. Formwork: pier, pile and cap formwork; decking formwork; endwall formwork; box culverts, inlets and headwall formwork, parapet and hand railing formwork..... 225 hours
    - E. Stripping and salvage of forms for reuse and cleaning work area..... 30 hours
  
  - III. Actual Operation of Form Setting
    - A. Safe operating procedures..... 10 hours
    - B. Align forms. Drive stakes for braces and erect scaffolding..... 100 hours
    - C. Observe and assist in setting precast concrete ..... 25 hours
    - D. Measure space between forms, fit together, line, plumb vertically, set to elevation ..... 250 hours
    - E. Check forms while concrete is being poured ..... 285 hours
- Total ..... 1040 hours

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**FORM SETTER, PAVING AND CURB – CODE 0160**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of setting grade line..... 20 hours
    - C. Observation of pulling, loading, hauling and placing forms ..... 30 hours
  
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine cleaning of forms and care of air and hand tools ..... 25 hours
  
  - III. Actual Operation of Form Setting
    - A. Safe operating procedures..... 10 hours
    - B. Set grade line..... 70 hours
    - C. Pull, load, haul and place forms..... 100 hours
    - D. Set forms to finish grade, drive pins, set and check alignment, and spray forms ..... 375 hours
    - E. Check forms while pouring concrete ..... 70 hours
- Total ..... 720 hours

**LABOR, UTILITY – CODE 0175**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of tools and machines..... 20 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Care of power and air tools..... 15 hours
  - C. Erosion control..... 20 hours
  - D. Dewatering systems ..... 20 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Erect shoring and bracing .....75 hours
  - C. Pipe installation .....75 hours
  - D. Equipment operator assistance: position machines,  
verify grades, signal operator to dumping positions ..... 115 hours
  - E. Assist in placing and tying reinforcing steel.....75 hours
  - F. Unload and transport material.....75 hours
- Total ..... 520 hours

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**MECHANIC – CODE 0187**

**MAXIMUM TRAINING TIME: 36 WEEKS OR 1440 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Cleaning, disassembling and inspection of engine parts..... 40 hours
  - C. Installation and adjustment of minor parts..... 50 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Engine reconditioning ..... 200 hours
  - C. Clutch installation..... 50 hours
  - D. Transmission reconditioning ..... 100 hours
- III. Actual Repair of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Electrical systems ..... 200 hours
  - C. Hydraulic systems ..... 200 hours
  - D. Final drive and track assemblies ..... 150 hours
  - E. Welding and fabrication ..... 100 hours
  - F. General field maintenance ..... 320 hours
- Total ..... 1440 hours

**SERVICER – CODE 0194**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observing fueling, greasing and cleaning filters.....40 hours
    - C. Fuel and grease used for different types of equipment.....40 hours
  - II. Actual Operation
    - A. Safe operating procedures..... 10 hours
    - B. Servicing all types of equipment.....80 hours
    - C. Installation and adjustment of minor parts.....80 hours
    - D. General field maintenance and operation of service truck..... 260 hours
- Total ..... 520 hours

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**PAINTER, STRUCTURES – CODE 0196**  
*(May also require SSPC QP 1 or QP 2 certification)*

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Operate maintain and load equipment .....40 hours
    - C. Product and work orientation.....50 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Equipment maintenance and cleanup... ..60 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Brushing and rolling..... 100 hours
    - C. Material training... ..50 hours
    - D. Hazardous materials... .. 200 hours
    - E. Sandblasting... .. 200 hours
    - F. Spraying..... 310 hours
- Total ..... 1040 hours

**PILEDRIVER – CODE 0202**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation .....50 hours
    - C. Starting and manipulating controls for moving equipment and attachments.....45 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing.....35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Basic operation of crane or pile driving rig in hoisting and moving..... 200 hours
    - C. Placement of pile in preparation for driving..... 140 hours
    - D. Seating of pile hammer on pile in preparation for driving ..... 120 hours
    - E. Driving of pile..... 100 hours
- Total ..... 720 hours

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**PIPELAYER - CODE 0205**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of spade operation and laying of pipe .....20 hours
    - C. Study of various types of pipe and related materials..... 5 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Ditch preparation, handle materials and tools..... 20 hours
  - III. Actual Handling of Pipe and Spade
    - A. Safe operating procedures..... 10 hours
    - B. Ditch grading with compressed air driven or hand spade.....50 hours
    - C. Handle materials, assist in lowering pipe.....50 hours
    - D. Work with pipe layer in laying all types of pipe and duct. Adjust pipe to elevation insert spigot end of pipe into bell end of last laid pipe ..... 345 hours
- Total ..... 520 hours

**BLASTER – CODE 0214**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of work of Powder man..... 50 hours
    - C. Assist Powder man by carrying explosives, placing in holes, connecting lead wires ..... 45 hours
  - II. Applied Techniques of Powder man
    - A. Safety procedures..... 15 hours
    - B. Storage, transporting, placing and discharging of explosives..... 330 hours
  - III. Actual Blasting Operations
    - A. Safe operating procedures..... 25 hours
    - B. Use of detonators and explosives..... 100 hours
    - C. Storage, movement and placing of explosives ..... 300 hours
    - D. Placing wires, detonators and explosives, tamping and discharging..... 165 hours
- Total ..... 1040 hours

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**ASPHALT DISTRIBUTOR OPERATOR – CODE 0300**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of vehicle in operation ..... 35 hours
    - C. Starting and manipulating valves and controls to distribute material and move equipment..... 30 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Regulates valves and levers to distribute oil or bituminous liquid for highway surfacing ..... 115 hours
    - C. Operation of equipment..... 795 hours
- Total ..... 1040 hours

**ASPHALT PAVING MACHINE OPERATOR - CODE 0303**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures ..... 10 hours
    - B. Observation of machine in operations ..... 35 hours
    - C. Starting and manipulating controls for moving equipment and attachments ..... 30 hours
  - II. Care and Maintenance
    - A. Safety procedures ..... 10 hours
    - B. Routine fueling, lubricating and servicing ..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safety operating procedures ..... 10 hours
    - B. Observation of machine in operations ..... 120 hours
    - C. Operating of machine ..... 790 hours
- Total ..... 1040 hours

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**BROOM OR SWEEPER OPERATOR – CODE 0305**

**MAXIMUM TRAINING TIME: 8 WEEKS OR 320 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation..... 5 hours
    - C. Starting and manipulating controls for moving equipment and attachments..... 10 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Proper start-up, proper engagement and position of broom  
and proper sweeping technique ..... 15 hours
    - C. Removal and replacement of broom wafers ..... 10 hours
    - D. Operation of sweeper in cleaning of pavements ..... 215 hours
- Total ..... 320 hours

**CRAWLER TRACTOR OPERATOR - CODE 0306**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 35 hours
  - C. Starting and manipulating controls for moving equipment and attachments..... 30 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Movement and stockpiling of material ..... 150 hours
  - C. Pushing and rough grading..... 125 hours
  - D. Clearing and grubbing..... 125 hours
  - E. Finish grading ..... 160 hours
  - F. Special applications..... 30 hours
- Total ..... 720 hours

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**CONCRETE PAVING CURING, FLOAT, TEXTURING MACHINE OPERATOR – CODE 0315**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machines in operation..... 35 hours
  - C. Starting and manipulating controls for moving equipment and attachments..... 30 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Operation of curing system..... 120 hours
  - C. Operation of machine..... 790 hours
- Total ..... 1040 hours

**CONCRETE PAVEMENT FINISHING MACHINE OPERATOR - CODE 0318**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 35 hours
  - C. Starting and manipulating controls for moving equipment and attachments..... 30 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
  
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Screed regulation indoctrination and operation ..... 120 hours
  - C. Operation of machine..... 790 hours
  
- Total ..... 1040 hours

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**JOINT SEALER – CODE 0329**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation ..... 10 hours
  
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine cleaning and servicing ..... 35 hours
  
- III. Actual Operation
  - A. Safe operating procedures..... 10 hours
  - B. Cleaning and sealing joints in concrete paving,  
sidewalks, driveways and approach slabs ..... 445 hours
  
- Total ..... 520 hours

**CONCRETE SAW OPERATOR – CODE 0333**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 35 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine oiling, greasing, cleaning and servicing saw..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Operation of saw..... 420 hours
- Total ..... 520 hours

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**SUBGRADE TRIMMER – CODE 0339**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 50 hours
  - C. Use of paving forms or electronic controls ..... 40 hours
  - D. Manipulation of hand and foot levers..... 40 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Raising and lowering screed; regulating width of screed..... 100 hours
  - C. Operation of machine..... 745 hours
- Total ..... 1040 hours

**SMALL SLIPFORM MACHINE OPERATOR – CODE 0341**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation..... 35 hours
    - C. Starting and manipulating controls for moving equipment and attachments... 30 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Screed regulation indoctrination and operation ..... 120 hours
    - C. Operation of machine..... 470 hours
- Total ..... 720 hours

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**CRANE OPERATOR, LATTICE BOOM 80 TONS OR LESS - CODE 0342**  
*(May also require crane operator certification)*

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures... 10 hours
    - B. Observation of machine in operation..... 50 hours
    - C. Starting and manipulating controls for moving equipment and attachments... 40 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures... 50 hours
    - B. Loading and unloading materials... 110 hours
    - C. Hoisting materials... 585 hours
    - D. Placement of beams, pipe, girders, piles, rock riprap, etc. .... 150 hours
- Total ..... 1040 hours

**CRANE OPERATOR, LATTICE BOOM OVER 80 TONS\* – CODE 0343**  
*(May also require crane operator certification)*

**MAXIMUM TRAINING TIME: 52 WEEKS OR 2080 HOURS**

\*Two training credits will be counted for graduation in this classification

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating controls for moving equipment and attachments.....	40 hours
II. Care and Maintenance	
A. Safety procedures.....	10 hours
B. Routine fueling, lubricating and servicing.....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	100 hours
B. Loading and unloading materials .....	150 hours
C. Hoisting materials.....	800 hours
D. Placement of beams, pipe, girders, piles, rock riprap, etc. ....	885 hours
Total .....	2080 hours

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**CRANE OPERATOR, HYDRAULIC 80 TONS OR LESS – CODE 0344**  
*(May also require crane operator certification)*

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating controls for moving equipment and attachments.....	40 hours
II. Care and Maintenance	
A. Safety procedures.....	10 hours
B. Routine fueling, lubricating and servicing.....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	50 hours
B. Loading and unloading materials .....	110 hours
C. Hoisting materials.....	280 hours
D. Placement of beams, pipe, girders, piles, etc.....	455 hours
Total .....	1040 hours

**CRANE OPERATOR, HYDRAULIC OVER 80 TONS – CODE 0345**  
*(May also require crane operator certification)*

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating controls for moving equipment and attachments.....	40 hours
II. Care and Maintenance	
A. Safety procedures.....	10 hours
B. Routine fueling, lubricating and servicing.....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	50 hours
B. Loading and unloading materials .....	110 hours
C. Hoisting materials.....	280 hours
D. Placement of beams, pipe, girders, piles, etc.....	455 hours
Total .....	1040 hours

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**LOADER/BACKHOE OPERATOR – CODE 0346**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Observation of machine in operation.....	50 hours
C. Starting and manipulating controls for moving equipment and attachments.....	45 hours
II. Care and Maintenance	
A. Safety procedures.....	10 hours
B. Routine fueling, lubricating and servicing.....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Trenching operations (for Pipe laying, etc.).....	500 hours
C. Excavation (for structures, footings, etc.).....	380 hours
Total .....	1040 hours

**EXCAVATOR OPERATOR, 50,000 POUNDS OR LESS – CODE 0347**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 25 hours
  - C. Starting and manipulating controls for moving equipment and attachments..... 25 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Excavation for footings and removal of unsuitable materials ..... 250 hours
  - C. Loading materials..... 100 hours
  - D. Trenching for pipe, etc..... 165 hours
  - E. Placement of pipe, precast concrete structures, etc. .... 90 hours
- Total ..... 720 hours

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**EXCAVATOR OPERATOR, OVER 50,000 POUNDS – CODE 0348**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 50 hours
  - C. Starting and manipulating controls for moving equipment and attachments..... 40 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Excavation for footings and removal of unsuitable materials ..... 250 hours
  - C. Loading materials..... 190 hours
  - D. Trenching for pipe, etc..... 255 hours
  - E. Placement of pipe, precast concrete structures, etc. .... 190 hours
- Total ..... 1040 hours

**CRUSHER OR SCREEN PLANT OPERATOR – CODE 0351**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 35 hours
    - C. Starting of crusher operating conveyors ..... 30 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Operation of conveyors and crusher operations..... 120 hours
    - C. Operation of crusher..... 790 hours
- Total ..... 1040 hours

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**FOUNDATION DRILL OPERATOR, CRAWLER MOUNTED – CODE 0360**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 35 hours
    - C. Starting and manipulating controls for moving equipment and attachments..... 30 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Small hole drilling..... 300 hours
    - C. Large hole drilling ..... 300 hours
    - D. Casing operation ..... 110 hours
    - E. General operating ..... 200 hours
- Total ..... 1040 hours

**FOUNDATION DRILL OPERATOR, TRUCK MOUNTED – CODE 0363**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 35 hours
  - C. Starting and manipulating controls for moving equipment and attachments..... 30 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Small hole drilling..... 300 hours
  - C. Large hole drilling..... 300 hours
  - D. Casing operation ..... 110 hours
  - E. General operating..... 200 hours

Total ..... 1040 hours

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**FRONT END LOADER, 3 CY OR LESS – CODE 0369**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 20 hours
  - C. Starting and manipulating controls for moving equipment and attachments..... 15 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Loading materials..... 235 hours
  - C. Excavation..... 150 hours
  - D. Special applications..... 35 hours

Total ..... 520 hours

**FRONT END LOADER, OVER 3 CY – CODE 0372**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 20 hours
    - C. Starting and manipulating controls for moving equipment and attachments..... 15 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Loading materials..... 400 hours
    - C. Excavation..... 250 hours
    - D. Charge hoppers with materials on asphalt and concrete plants..... 270 hours
    - E. Special applications..... 20 hours
- Total ..... 1040 hours

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**MILLING MACHINE OPERATOR – CODE 0380**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 35 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Planing roadbed ..... 700 hours
    - C. Discharging material into hauling unit..... 240 hours
- Total ..... 1040 hours

**RECLAIMER/PULVERIZER OPERATOR – CODE 0384**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 35 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Machine
  - A. Safe operating procedures..... 10 hours
  - B. Pulverizing road bed ..... 520 hours
  - C. Mixing materials..... 100 hours
- Total ..... 720 hours

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**MOTOR GRADER OPERATOR, FINE GRADE\* – CODE 0390**

**MAXIMUM TRAINING TIME: 52 WEEKS OR 2080 HOURS**

\*Two training credits will be counted for graduation in this classification

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 100 hours
  - C. Starting and manipulating controls for moving equipment and attachments..... 95 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Scraping and leveling dirt on roadway ..... 305 hours
  - C. Spreading and mixing materials on roadway ..... 295 hours
  - D. Shaping and blading subgrades..... 275 hours
  - E. Balancing and rough shaping base course materials ..... 275 hours
  - F. Fine grading and dressing of shoulders and slopes ..... 670 hours
- Total ..... 2080 hours

**MOTOR GRADER OPERATOR, ROUGH – CODE 0393**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 100 hours
    - C. Starting and manipulating controls for moving equipment and attachments..... 95 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Scraping and leveling dirt on roadway ..... 220 hours
    - C. Spreading and mixing materials on roadway ..... 200 hours
    - D. Shaping and blading subgrades..... 180 hours
    - E. Balancing and rough shaping base course materials ..... 180 hours
- Total ..... 1040 hours

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**PAVEMENT MARKING MACHINE OPERATOR – CODE 0396**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 35 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Machine
    - A. Safe operating procedures..... 10 hours
    - B. Laying stripes and markers..... 520 hours
    - C. Loading machine with appropriate materials..... 100 hours
- Total ..... 720 hours

**CONCRETE/GUNITE PUMP OPERATOR – CODE 0399**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 35 hours
  - C. Introduction to pumping fresh concrete, gunite and grout..... 100 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Machine
  - A. Safe operating procedures..... 10 hours
  - B. Operation of pumping machine ..... 520 hours
- Total ..... 720 hours

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**ROLLER OPERATOR, ASPHALT - CODE 0402**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 35 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Roll base course to desired compaction ..... 440 hours
  - C. Roll asphalt surfaces to desired compaction and smoothness and assure proper sealing of joints ..... 500 hours
- Total ..... 1040 hours

**ROLLER OPERATOR, OTHER – CODE 0405**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 35 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Roll base course to desired compaction ..... 210 hours
    - C. Roll embankment to desired compaction..... 210 hours
- Total ..... 520 hours

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**SCRAPER OPERATOR – CODE 0411**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 20 hours
    - C. Starting and manipulating controls for moving equipment and attachments..... 15 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Loading and transporting materials..... 150 hours
    - C. Spreading material..... 150 hours
    - D. Rough roadway grading ..... 70 hours
    - E. Compaction of embankment ..... 50 hours
- Total ..... 520 hours

**OFF ROAD HAULER – CODE 0413**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 35 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Loading and transporting materials..... 350 hours
    - C. Operation of off-road water tanker.....70 hours
- Total ..... 520 hours

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**SELF-PROPELLED HAMMER OPERATOR – CODE 0417**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 35 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Breaking concrete, asphalt and other materials..... 350 hours
    - C. Other related tasks.....70 hours
- Total ..... 520 hours

**AGRICULTURAL TRACTOR OPERATOR – CODE 0428**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 30 hours
    - C. Starting and manipulating controls for moving equipment and attachments..... 25 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Pulling compaction implements ..... 200 hours
    - C. Pull graders for dressing operations ..... 200 hours
- Total ..... 520 hours

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**TRENCHING MACHINE OPERATOR, LIGHT – CODE 0437**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation ..... 30 hours
    - C. Starting and manipulating controls for moving equipment and attachments..... 25 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Excavation for footing and removal of unsuitable materials..... 100 hours
    - C. Trenching for pipe, etc..... 300 hours
- Total ..... 520 hours

**TRENCHING MACHINE OPERATOR, HEAVY – CODE 0440**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Observation of machine in operation ..... 30 hours
  - C. Starting and manipulating controls for moving equipment and attachments..... 25 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine fueling, lubricating and servicing..... 35 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Excavation for footing and removal of unsuitable materials..... 320 hours
  - C. Trenching for pipe, etc..... 600 hours

Total ..... 1040 hours

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**TUNNELING MACHINE OPERATOR, HEAVY – CODE 0441**

**MAXIMUM TRAINING TIME: 39 WEEKS OR 1560 HOURS**

- I. Orientation and Observation
  - A. Safety procedures..... 10 hours
  - B. Elementary surveying of tunnel alignment and grade..... 60 hours
  - C. General tunneling procedures and operation ..... 200 hours
- II. Care and Maintenance
  - A. Safety procedures..... 10 hours
  - B. Routine lubricating and servicing..... 35 hours
  - C. Electrical connections, motors, and switches... 40 hours
  - D. Hydraulic components, use and maintenance... 40 hours
  - E. Spoil haulage equipment and track installation, use and maintenance ..... 40 hours
- III. Actual Operation of Equipment
  - A. Safe operating procedures..... 10 hours
  - B. Soft ground tunneling..... 225 hours
  - C. Ground stabilization ..... 150 hours
  - D. Rock tunneling ..... 240 hours
  - E. Direct pipe jacking ..... 240 hours
  - F. Two pass tunneling ..... 240 hours
  - G. Grouting ..... 20 hours

Total ..... 1560 hours

**TUNNELING MACHINE OPERATOR, LIGHT – CODE 0442**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures ..... 10 hours
    - B. Elementary surveying of tunnel alignment and grade.....40 hours
    - C. General boring procedures and operation ..... 150 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine lubricating and servicing.....35 hours
    - C. Hydraulic components, use and maintenance .....40 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Soft ground tunneling..... 225 hours
    - C. Rock tunneling ..... 200 hours
- Total ..... 720 hours

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**PERCUSSION OR ROTARY DRILL OPERATOR – CODE 0443**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. General drilling procedures and operation .....65 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing.....35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Small hole drilling..... 195 hours
    - C. Large hole drilling ..... 195 hours
- Total ..... 520 hours

**BORING MACHINE OPERATOR – CODE 0444**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures ..... 10 hours
    - B. Elementary surveying of tunnel alignment and grade..... 40 hours
    - C. General boring procedures and operation ..... 150 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine lubricating and servicing..... 35 hours
    - C. Hydraulic components, use and maintenance ..... 40 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Soft Ground tunneling..... 225 hours
    - C. Rock tunneling ..... 200 hours
- Total ..... 720 hours

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**DIRECTIONAL DRILLING OPERATOR – CODE 0445**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. General drilling procedures and operation ..... 65 hours
    - C. Identification of steering head tools ..... 65 hours
    - D. Controlling drill speed and direction ..... 65 hours
    - E. Pullback of pipe ..... 65 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Drilling fluid characteristics ..... 65 hours
    - C. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Operation of directional drilling machine ..... 650 hours
- Total ..... 1040 hours

**DIRECTIONAL DRILLING LOCATOR – CODE 0446**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. General locating equipment operation.....55 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing.....35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Machine setup..... 200 hours
    - C. Operation of locating equipment..... 400 hours
- Total ..... 720 hours

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**REINFORCING STEEL WORKER – CODE 0500**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of steel being set and welding of rods..... 15 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Steel bar placement .....50 hours
  - III. Actual Steel Setting
    - A. Safety procedures..... 10 hours
    - B. Rod placement and fastening..... 300 hours
    - C. Rod cutting and welding..... 175 hours
    - D. Fabrication of reinforcement assembly ..... 150 hours
- Total ..... 720 hours

**STRUCTURAL STEEL WORKER – CODE 0509**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of steel worker ..... 20 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Tool review..... 10 hours
  - III. Operating with Steel Workers
    - A. Safety procedures..... 10 hours
    - B. Raise and place fabricated structural steel..... 150 hours
    - C. Emphasis on girders, plates and columns..... 100 hours
    - D. Fasten steel members together by welding or bolting ..... 400 hours
    - E. Signal erection crane, rig equipment..... 330 hours
- Total ..... 1040 hours

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**SIGN ERECTOR – CODE 0513**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Safe Use of Tools and Equipment
    - A. Safety procedures..... 10 hours
    - B. Power and hand tools..... 20 hours
    - C. Special fittings and hardware ..... 10 hours
    - D. Specifications or design for concrete mixer ..... 20 hours
  - II. Basic Design Familiarity
    - A. Blueprint or Construction Plans Reading ..... 50 hours
  - III. Applied Techniques of Sign Erection
    - A. Safety procedures..... 10 hours
    - B. Preparation of layout for signs ..... 30 hours
    - C. Cuts, ties and sets reinforcing steel for footings..... 25 hours
    - D. Sets forms for, places concrete and sets anchor bolts ..... 300 hours
    - E. Erects wood or metal structures ..... 250 hours
    - F. Places clamps, brackets or other required hardware on structures ..... 250 hours
    - G. Stripping and Salvage of Forms for Re-use ..... 65 hours
- Total ..... 1040 hours

**SPREADER BOX OPERATOR – CODE 0515**

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation of machine in operation..... 25 hours
    - C. Starting, stopping and manipulating controls for moving equipment and attachments..... 20 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safety procedures..... 10 hours
    - B. Selection and loading of materials..... 40 hours
    - C. Spreading of stone or other granular materials ..... 370 hours
- Total ..... 520 hours

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**WORK ZONE BARRICADE SERVICER – CODE 0520**

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Operation of traffic control truck..... 15 hours
    - C. Traffic control device orientation ..... 25 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Care and storage of equipment and materials ..... 35 hours
  - III. Traffic Control Operation
    - A. Safety procedures..... 10 hours
    - B. Fabrication of traffic control devices..... 140 hours
    - C. Erection and Maintenance of traffic control devices..... 395 hours
    - D. Operation of traffic control truck..... 80 hours
- Total ..... 720 hours

**TRUCK DRIVER, SINGLE AXLE – CODE 0600**  
*(May require CDL license for driving on highway)*

**MAXIMUM TRAINING TIME: 13 WEEKS OR 520 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation (as a passenger) of vehicle in operation..... 50 hours
    - C. Starting and manipulating vehicle..... 40 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Loading and unloading materials and operation of vehicle..... 365 hours
- Total ..... 520 hours

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**TRUCK DRIVER, SINGLE OR TANDEM AXLE DUMP TRUCK – CODE 0606**  
*(May require CDL license for driving on highway)*

**MAXIMUM TRAINING TIME: 18 WEEKS OR 720 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation (as a passenger) of vehicle in operation..... 50 hours
    - C. Starting and manipulating vehicle..... 40 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Loading and unloading materials and operation of vehicle..... 565 hours
- Total ..... 720 hours

**TRUCK DRIVER, TANDEM AXLE TRACTOR WITH SEMI TRAILER – CODE 0607**  
*(May require CDL license for driving on highway)*

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation (as a passenger) of vehicle in operation..... 50 hours
    - C. Starting and manipulating vehicle..... 40 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Loading and unloading materials and operation of vehicle..... 885 hours
- Total ..... 1040 hours

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**TRUCK DRIVER LOWBOY- FLOAT – CODE 0609**  
*(May require CDL license for on-highway use)*

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

- I. Orientation and Observation
    - A. Safety procedures..... 10 hours
    - B. Observation (as a passenger) of vehicle in operation..... 50 hours
    - C. Starting and manipulating vehicle..... 40 hours
  - II. Care and Maintenance
    - A. Safety procedures..... 10 hours
    - B. Routine fueling, lubricating and servicing..... 35 hours
  - III. Actual Operation of Equipment
    - A. Safe operating procedures..... 10 hours
    - B. Loading and unloading materials and operation of vehicle..... 500 hours
    - C. Loading and unloading equipment... 385 hours
- Total ..... 1040 hours

**TRUCK DRIVER TRANSIT-MIX – CODE 0612**  
*(May require CDL license for on-highway use)*

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Observation (as a passenger) of vehicle in operation.....	50 hours
C. Starting and manipulating vehicle.....	40 hours
II. Care and Maintenance	
A. Safety procedures.....	10 hours
B. Routine fueling, lubricating and servicing.....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Mixing materials.....	20 hours
C. Loading materials at plant.....	115 hours
D. Operation of vehicle... ..	600 hours
E. Discharging materials... ..	150 hours
Total .....	1040 hours

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**BOOM TRUCK OPERATOR – CODE 0615**  
*(May require CDL license for on-highway use)*

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Observation (as a passenger) of vehicle in operation.....	50 hours
C. Starting and manipulating vehicle.....	40 hours
II. Care and Maintenance	
A. Safety procedures.....	10 hours
B. Routine fueling, lubricating and servicing.....	35 hours
III. Actual Operation of Equipment	
A. Safe operating procedures.....	10 hours
B. Loading and unloading materials .....	410 hours
C. Hoisting materials.....	475 hours
Total .....	1040 hours

**STRUCTURAL STEEL WELDER\* – CODE 0705**  
*(Requires certification by the American Welding Society)*

**MAXIMUM TRAINING TIME: 52 WEEKS OR 2080 HOURS**

\*Two training credits will be counted for graduation in this classification

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Welding equipment .....	20 hours
C. Materials selection .....	20 hours
D. Observation of welder .....	20 hours
E. Observation of welding of permanent metal deck forms.....	40 hours
II. Applied Techniques of Welding	
A. Safety procedures.....	10 hours
B. Acetylene-cutting, brazing and welding .....	300 hours
C. Electric-cutting and welding .....	300 hours
III. Actual Welding Operations	
A. Safety procedures.....	10 hours
B. Cut, lay out, fit and weld .....	700 hours
C. Structural steel welding .....	650 hours
Total .....	2080 hours

\* \* \*

**WELDER – CODE 0706**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

I. Orientation and Observation	
A. Safety procedures.....	10 hours
B. Welding equipment .....	20 hours
C. Materials selection .....	20 hours
D. Observation of welder .....	20 hours
II. Applied Techniques of Welding	
A. Safety procedures .....	10 hours
B. Acetylene-cutting, brazing and welding .....	300 hours
C. Electric-cutting and welding .....	300 hours
III. Actual Welding Operations	
A. Safety procedures.....	10 hours
B. Cut, lay out, fit and weld sheet metal, cast iron and other metal parts.....	350 hours
Total .....	1040 hours

**SLURRY SEAL OR MICRO-SURFACING MACHINE OPERATOR – CODE 0708**

**MAXIMUM TRAINING TIME: 26 WEEKS OR 1040 HOURS**

I.	Orientation and Observation	
A.	Safety procedures.....	10 hours
B.	Observation of machine in operation .....	35 hours
C.	Starting and manipulating controls for moving equipment and attachments.....	30 hours
II.	Care and Maintenance	
A.	Safety procedures.....	10 hours
B.	Routine fueling, lubricating and servicing.....	35 hours
III.	Actual Operation of Equipment	
A.	Safe operating procedures.....	10 hours
B.	Screed regulation indoctrination and operation .....	120 hours
C.	Operation of machine and leveling of materials.....	790 hours
	Total .....	1040 hours

## **APPENDIX C**

### **Reporting Forms**

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## Texas Department of Transportation Contractor On-the-Job Training Plan

(Rev. 1/2013)

The training and upgrading of minorities and women toward journeyworker status is a primary objective of the training provision. Accordingly, the contractor shall make every effort to enroll minority and women trainees to the extent that such persons are available within a reasonable area of recruitment. Contractors are encouraged to conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether members of a minority group or not.

For questions, contact the Texas Department of Transportation's (TxDOT) Office of Civil Rights at (512) 416-4750. Forward a signed copy to [OCR\\_TxDOT-OJT-Program@txdot.gov](mailto:OCR_TxDOT-OJT-Program@txdot.gov).

### I. CONTRACTOR INFORMATION

Contractor	Federal Goal	Year
Address	City, State Zip	
Contractor Representative	E-mail Address	Phone Number

### II. TRAINING INFORMATION

Training Classification	Projected Number of Trainees	Approximate Training Start Date

### III. CONTRACTOR ACKNOWLEDGEMENT STATEMENT

I understand and will comply fully with the plans and specifications under which this training is being performed.

Signature \_\_\_\_\_ Date \_\_\_\_\_

### IV. TxDOT USE ONLY

Print Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Approved <input type="checkbox"/>	Disapproved <input type="checkbox"/>
Comments:	



## FEDERAL ON-THE-JOB TRAINING PROGRAM ENROLLMENT FORM

Form 2201  
(Rev. 08/12)  
Page 1 of 1

TRAINEE INFORMATION				
Last name:	First name:	MI:	SSN (last 4 digits):	Goal year:
Address:				
City:	State:	Zip code:	Phone:	
Gender:		If other, please specify: _____		
Race/Ethnicity: _____				
New Hire or Upgrade:	If upgrade, current job classification:		Current wage:	
The candidate expressed interest in the OJT Program by responding to:				
If upgrade:		If new hire:	If other, please specify: _____	
How did the candidate demonstrate the commitment and capability to complete the program?				

TRAINING INFORMATION		
Proposed trainee job classification:	Training start wage:	Planned training start date:
Starting Federal-aid project CSJ:	Is the OJT Special Provision included in the contract? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, a change order must be generated.	
Area Engineer:	District:	County:

CONTRACTOR INFORMATION	
Contractor:	
Contact person:	Phone:
Address:	City, State, Zip:
E-mail:	

\_\_\_\_\_  
Trainee Signature

\_\_\_\_\_  
Contractor Representative Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Submit this form within 7 days to TxDOT's Office of Civil Rights at [OCR\\_TxDOT-OJT-Program@txdot.gov](mailto:OCR_TxDOT-OJT-Program@txdot.gov). A signed copy must be maintained in the project files. Upon receipt of this form and if appropriate, OCR will furnish an enrollment confirmation letter to the contractor, the Area Engineer, and the District Director of Construction.

THIS IS AN EQUAL OPPORTUNITY PROGRAM





## LABOR STANDARDS REVIEW

Form 2220  
(Rev. 10/11)  
Page 1 of 2

Project CSJ: \_\_\_\_\_ County: \_\_\_\_\_ Date: \_\_\_\_\_

Employer: \_\_\_\_\_

### Employee Interview

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

Job Classification: \_\_\_\_\_ Wage Rate: \_\_\_\_\_

Describe your work duties and tools used:

\_\_\_\_\_

Work being performed (observed): \_\_\_\_\_

\*Do you work over 40 hours per week?  Yes  No Overtime Wage Rate: \_\_\_\_\_ How paid? (cash or check) \_\_\_\_\_

\*Work on all projects (private, municipal, state or county) is counted for overtime.

Is any money deducted from your pay besides income and social security taxes?

Yes  No If yes, explain:

\_\_\_\_\_

Has employee seen posting of minimum wage rates?  Yes  No Are you paid weekly?  Yes  No If not, how often? \_\_\_\_\_

Are you currently enrolled in an apprenticeship or training program?  Yes  No

If so, has copy of training program been provided?  Yes  No

Interviewed by: \_\_\_\_\_

### On-the-Job Training (if applicable)

When did you begin working for this company? Approximate Month/Year: \_\_\_\_\_

Job classification at hire: \_\_\_\_\_

List previous job classification/craft with this company or other companies:

\_\_\_\_\_

In which classification/craft training are you enrolled? \_\_\_\_\_

What is the name and title of your trainer? \_\_\_\_\_

**LABOR STANDARDS REVIEW**

Form 2220  
(Rev. 10/11)  
Page 2 of 2

**On-the-Job Training** (continued)

Please explain the training you are receiving:

\_\_\_\_\_

Have you received a copy of the *Contractor OJT Enrollment Request Form* that you signed?

Yes  No

Have you received a copy of the *OJT Program curriculum*?  Yes  No

\_\_\_\_\_  
Interviewer (Signature and Title)

\_\_\_\_\_  
Date

**Payroll Review**

Payroll Period: \_\_\_\_\_ Classification: \_\_\_\_\_

Minimum Hourly Rate: \_\_\_\_\_ Rate Paid: \_\_\_\_\_

\*OJT Current Training Period (if applicable):

First Half @ min. 60%       Third Quarter @ min. 75%       Last Quarter @ min. 90%

\*Trainee's current training quarter. Minimum percentage of prevailing wage rate to be paid for the corresponding quarter.

If employee interview or payroll review indicates non-compliance, describe actions taken:

\_\_\_\_\_

Supplemental Payrolls Submitted?  Yes  No

\_\_\_\_\_  
Reviewer (Signature and Title)

\_\_\_\_\_  
Date



# APPENDIX D

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## Federal Regulation 23 CFR Part 230



**§ 230.111 Implementation of special requirements for the provision of on-the-job training.**

(a) The State highway agency shall determine which Federal-aid highway construction contracts shall include the "Training Special Provisions" (appendix B) and the minimum number of trainees to be specified therein after giving appropriate consideration to the guidelines set forth in § 230.111(c). The "Training Special Provisions" shall supersede section 7(b) of the Special Provisions (appendix A) entitled "Specific Equal Employment Opportunity Responsibilities." Minor wording revisions will be required to the "Training Special Provisions" in areas having "Hometown" or "Imposed Plan" requirements.

(b) The Washington Headquarters shall establish and publish annually suggested minimum training goals. These goals will be based on the Federal-aid apportioned amounts and the minority population. A State will have achieved its goal if the total number of training slots on selected federally aided highway construction contracts which have been awarded during each 12-month period equals or exceeds the State's suggested minimum annual goal. In the event a State highway agency does not attain its goal during a calendar year, the State highway agency at the end of the calendar year shall inform the Administrator of the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goal during the next calendar year. The information is to be submitted not later than 30 days from the end of the calendar year and should be factual, and should not only indicate the situations occurring during the year but show the project conditions at least through the coming year. The final determination will be made on what training goals are considered to be realistic based on the information submitted by a State.

(c) The following guidelines shall be utilized by the State highway agency in selecting projects and determining the number of trainees to be provided training therein:

(1) Availability of minorities, women, and disadvantaged for training.

(2) The potential for effective training.

(3) Duration of the contract.

(4) Dollar value of the contract.

(5) Total normal work force that the average bidder could be expected to use.

(6) Geographic location.

(7) Type of work.

(8) The need for additional journeymen in the area.

(9) Recognition of the suggested minimum goal for the State.

(10) A satisfactory ratio of trainees to journeymen expected to be on the contractor's work force during normal operations (considered to fall between 1:10 and 1:4).

(d) Training programs which are established shall be approved only if they meet the standards set forth in appendix B with regard to:

(1) The primary objectives of training and upgrading minority group workers, women and disadvantaged persons.

(2) The development of full journeymen.

(3) The minimum length and type of training.

(4) The minimum wages of trainees.

(5) Trainees certifications.

(6) Keeping records and furnishing reports.

(e)(1) Training programs considered by a State highway agency to meet the standards under this directive shall be submitted to the FHWA division Administrator with a recommendation for approval.

(2) Employment pursuant to training programs approved by the FHWA division Administrator will be exempt from the minimum wage rate provisions of section 113 of title 23 U.S.C. Approval, however, shall not be given to training programs which provide for employment of trainees at wages less than those required by the Special Training Provisions. (Appendix B.)

(f)(1) Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be formally approved by the State highway agency or the FHWA division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered

## § 230.113

in a manner reasonably calculated to meet the equal employment opportunity obligations of the contractor.

(2) Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the State highway agency or the division Administrator provided:

(i) The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity and the payment of trainee wage rates in lieu of prevailing wage rates.

(ii) They are reasonably calculated to qualify the average trainees for journeyman status in the classification concerned by the end of the training period.

(iii) They are administered in a manner calculated to meet the equal employment obligations of the contractors.

(g) The State highway agencies have the option of permitting Federal-aid highway construction contractors to bid on training to be given under this directive. The following procedures are to be utilized by those State highway agencies that elect to provide a bid item for training:

(1) The number of training positions shall continue to be specified in the Special Training Provisions. Furthermore, this number should be converted into an estimated number of hours of training which is to be used in arriving at the total bid price for the training item. Increases and decreases from the estimated amounts would be handled as overruns or underruns;

(2) A section concerning the method of payment should be included in the Special Training Provisions. Some off-site training is permissible as long as the training is an integral part of an approved training program and does not comprise a substantial part of the overall training. Furthermore, the trainee must be concurrently employed on a federally aided highway construction project subject to the Special Training Provisions attached to this directive. Reimbursement for offsite training may only be made to the contractor where he does one or more of

the following: Contributes to the cost of the training, provides the instruction to the trainee, or pays the trainee's wages during the offsite training period;

(3) A State highway agency may modify the special provisions to specify the numbers to be trained in specific job classifications;

(4) A State highway agency can specify training standards provided any prospective bidder can use them, the training standards are made known in the advertised specifications, and such standards are found acceptable by FHWA.

[40 FR 28053, July 3, 1975; 40 FR 57358, Dec. 9, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

## § 230.113 Implementation of supportive services.

(a) The State highway agency shall establish procedures, subject to the availability of funds under 23 U.S.C. 140(b), for the provision of supportive services in support of training programs approved under this directive. Funds made available to implement this paragraph shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section.

(b) In determining the types of supportive services to be provided which will increase the effectiveness of approved training programs, State highway agencies shall give preference to the following types of services in the order listed:

(1) Services related to recruiting, counseling, transportation, physical examinations, remedial training, with special emphasis upon increasing training opportunities for members of minority groups and women;

(2) Services in connection with the administration of on-the-job training programs being sponsored by individual or groups of contractors and/or minority groups and women's groups;

(3) Services designed to develop the capabilities of prospective trainees for undertaking on-the-job training;

(4) Services in connection with providing a continuation of training during periods of seasonal shutdown;

(5) Followup services to ascertain outcome of training being provided.

(c) State highway agencies which desire to provide or obtain supportive services other than those listed above shall submit their proposals to the Federal Highway Administration for approval. The proposal, together with recommendations of the division and regional offices shall be submitted to the Administrator for appropriate action.

(d) When the State highway agency provides supportive services by contract, formal advertising is not required by the FHWA, however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with contractors, unions (if appropriate), minority and women groups, minority and women trainees, and other persons or organizations whose cooperation and assistance will contribute to the successful performance of the contract work.

(e) In the selection of contractors to provide supportive services, State highway agencies shall make conscientious efforts to search out and utilize the services of qualified minority or women organizations, or minority or women business enterprises.

(f) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women, and the disadvantaged on Federal-aid highway projects;

(2) A clear and complete statement of the services to be provided under the contract, such as services to construction contractors, subcontractors, and trainees, for recruiting, counseling, remedial educational training, assistance in the acquisition of tools, special equipment and transportation, followup procedures, etc.;

(3) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in FHWA Form PR-1273, and a statement of non-discrimination in employment because of race, color, religion, national origin or sex;

(4) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(5) Reporting requirements pursuant to which the State highway agency will receive monthly or quarterly reports containing sufficient statistical data and narrative content to enable evaluation of both progress and problems;

(6) A requirement that the contractor keep track of trainees receiving training on Federal-aid highway construction projects for up to 6 months during periods when their training is interrupted. Such contracts shall also require the contractor to conduct a 6 month followup review of the employment status of each graduate who completes an on-the-job training program on a Federal-aid highway construction project subsequent to the effective date of the contract for supportive services.

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to contractor and subcontractor records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract;

(12) A termination clause.

(g) The State highway agency is to furnish copies of the reports received under paragraph (b)(5) of this section, to the division office.

[40 FR 28053, July 3, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

**§ 230.115 Special contract requirements for "Hometown" or "Imposed" Plan areas.**

Direct Federal and Federal-aid contracts to be performed in "Hometown"

## § 230.117

or "Imposed" Plan areas will incorporate the special provision set forth in appendix G.

### § 230.117 Reimbursement procedures (Federal-aid highway construction projects only).

(a) *On-the-job special training provisions.* State highway agencies will be reimbursed on the same pro-rata basis as the construction costs of the Federal-aid project.

(b) *Supportive services.* (1) The State highway agency must keep a separate account of supportive services funds since they cannot be interchanged with regular Federal-aid funds. In addition, these funds may not be expended in a manner that would provide for duplicate payment of Federal or Federal-aid funds for the same service.

(2) Where a State highway agency does not obligate all its funds within the time specified in the particular year's allocation directive, the funds shall revert to the FHWA Headquarters Office to be made available for use by other State highway agencies, taking into consideration each State's need for and ability to use such funds.

### § 230.119 Monitoring of supportive services.

Supportive services procured by a State highway agency shall be monitored by both the State highway agency and the division office.

### § 230.121 Reports.

(a) Employment reports on Federal-aid highway construction contracts not subject to "Hometown" or "Imposed" plan requirements.

(1) Paragraph 10c of the special provisions (appendix A) sets forth specific reporting requirements. FHWA Form PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report, (appendix C) and FHWA Form PR 1392, Federal-Aid Highway Construction Summary of Employment Data (including minority breakdown) for all Federal-Aid Highway Projects for month ending July 31st, 19—, (appendix D) are to be used to fulfill these reporting requirements.

(2) Form PR 1391 is to be completed by each contractor and each subcontractor subject to this part for every

month of July during which work is performed, and submitted to the State highway agency. A separate report is to be completed for each covered contract or subcontract. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month. The State highway agency is to forward a single copy of each report to the FHWA division office.

(3) Form PR 1392 is to be completed by the State highway agencies, summarizing the reports on PR 1391 for the month of July received from all active contractors and subcontractors. Three (3) copies of completed Forms PR 1392 are to be forwarded to the division office.

(b) Employment reports on direct Federal highway construction contracts not subject to "Hometown" or "Imposed" plan requirements. Forms PR 1391 (appendix C) and PR 1392 (appendix D) shall be used for reporting purposes as prescribed in § 230.121(a).

(c) Employment reports on direct Federal and Federal-aid highway construction contracts subject to "Hometown" or "Imposed" plan requirements.

(1) Reporting requirements for direct Federal and Federal-aid highway construction projects located in areas where "Hometown" or "Imposed" plans are in effect shall be in accordance with those issued by the U.S. Department of Labor, Office of Federal Contract Compliance.

(2) In order that we may comply with the U.S. Senate Committee on Public Works' request that the Federal Highway Administration submit a report annually on the status of the equal employment opportunity program, Form PR 1391 is to be completed annually by each contractor and each subcontractor holding contracts or subcontracts exceeding \$10,000 except as otherwise provided for under 23 U.S.C. 117. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month of July.

(d) [Reserved]

(e) Reports on supportive services contracts. The State highway agency is

to furnish copies of the reports received from supportive services contractors to the FHWA division office which will furnish a copy to the regional office.

[40 FR 28063, July 3, 1975, as amended at 43 FR 19386, May 5, 1978; 61 FR 14616, Apr. 3, 1996]

#### APPENDIX A TO SUBPART A OF PART 230—SPECIAL PROVISIONS

##### SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

1. *General.* a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract, Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to section 140 of title 23 U.S.C., as established by section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b. The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 6, chapter 4, section 1, subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment,

without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

3. *Equal Employment Opportunity Officer.* The contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.* a. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity

## Pt. 230, Subpt. A, App. A

policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. **Recruitment.** a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. **Personnel Actions.** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities

do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

7. **Training and Promotion.** a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. **Unions.** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the State highway agency.

9. *Subcontracting.* a. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. *Records and Reports.* a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and non-minority group members and women em-

ployed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

c. The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.

[40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

#### APPENDIX B TO SUBPART A OF PART 230—TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes subparagraph 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities," (Attachment 1), and is in implementation of 23 U.S.C. 140(a).

As part of the contractor's equal employment opportunity affirmative action program training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under the special provisions will be \_\_\_\_\_ (amount to be filled in by State highway department).

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training

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special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the State highway agency and the Federal Highway Administration. The State highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Further-

more, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length

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of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor

or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

[40 FR 28063, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]



125 East 11th Street, Austin, TX 78701  
(512) 416-4750

**Produced by the Office of Civil Rights**  
**Texas Department of Transportation**  
[www.txdot.gov](http://www.txdot.gov)

February 7, 2013

**EXHIBIT 6**

**FORM OF MAINTENANCE PERFORMANCE BOND**

**IH 35E Managed Lanes Project**

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

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to \_\_\_\_\_, a \_\_\_\_\_ (“Principal”), a Capital Maintenance Agreement for the IH 35E Managed Lanes Project, duly executed and delivered as of \_\_\_\_\_, 20\_\_ (the “CMA”), on the terms and conditions set forth therein; and

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

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

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

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

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

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the CMA Documents, as they may be amended and supplemented, including but not limited to, its liability for payment in full of all Liquidated Damages as specified in the CMA Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive the expiration or termination of the Maintenance Term with respect to those obligations of Principal under the CMA Documents which survive such expiration or termination.

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the CMA Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

- 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:

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

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 \_\_\_\_\_, 201[ ]

Principal:

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

Surety:

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

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

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

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

**EXHIBIT 7**

**FORM OF MAINTENANCE PAYMENT BOND**

**IH 35E Managed Lanes Project**

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

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to \_\_\_\_\_, a \_\_\_\_\_ (“Principal”), a Capital Maintenance Agreement for the IH 35E Managed Lanes Project, duly executed and delivered as of \_\_\_\_\_, 20\_\_ (the “CMA”), on the terms and conditions set forth therein; and

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

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

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

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

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

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

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

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

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

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

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

Principal:

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

Surety:

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

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

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

**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)

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

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

\*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").

**RECITALS**

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

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

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

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

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

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

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  
Dallas District Office  
4777 US Highway 80 E  
Mesquite, TX 77007  
Attention: Mr. Varuna Singh, P.E.  
Telephone: (214) 320-6629  
Facsimile: (214) 320-6130  
E-mail: [varuna.singh@txdot.gov](mailto:varuna.singh@txdot.gov)

With copies to: Texas Department of Transportation  
Office of General Counsel  
125 East 11<sup>th</sup> Street  
Austin, TX 78701  
Attention: Claire McGuinness, Esq.  
Telephone: (512) 463-8630  
Facsimile: (512) 475-3070  
E-mail: [claire.mcguinness@txdot.gov](mailto:claire.mcguinness@txdot.gov)

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

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

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (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 12.2 of the Capital Maintenance Agreement, without diminishing any rights TxDOT may exercise pursuant to Section 12.3.1 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 or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site; (ii) unless covered by commercial general liability insurance pursuant to Section 2 of this Exhibit 10, all existing property and improvements that are within the construction work zone or are or will be affected by the construction work, provided however that the policy may include a sublimit of not less than \$2,500,000 for the property of others ; and (iii) valuable papers and restoration of data, plans and drawings .

(c) The policy shall provide coverage per occurrence of \$10,000,000 without risk of co-insurance; provided, however, that Maintenance Contractor must purchase additional limits covering the value of the Project in excess of \$10,000,000. In addition, the policy may include the following sublimits (i) for earth movement and flood an amount of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate, (ii) for the peril of named windstorm, not less than \$10,000,000, (iii) for existing property and improvements an amount of not less than \$2,500,000, (iv) for building ordinance compliance an amount of not less than \$5,000,000, (v) for "soft cost expense," not less than \$5,000,000; (vi) for professional fees, not less than \$1,000,000, and (vii) for demolition and debris removal, sublimits acceptable to TxDOT.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds on the policy as their corresponding interests apper. 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);
- (v) Broad form property damage, providing the same coverage as ISO form CG 00 01 10 93 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 provided through 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 Exhibit 10 stipulates may be similarly included.

(d) TxDOT and the Indemnified Parties shall be named as additional insured's, using ISO form CG 20 10 11/85 or equivalent. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

(e) The policy shall provide for a deductible or self-insured retention not exceeding \$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 comprehensive, business, or commercial automobile liability insurance as specified below.

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

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

(c) Maintenance Contractor's policy shall have a combined single limit per policy period of not less than \$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 shall be named insured and the Indemnified Parties shall be the additional named insureds under such policy. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other additional insureds. The insured vs. insured exclusion shall be deleted, so that the policy will insure Maintenance Contractor against, and respond to, pollution liability claims and actions of TxDOT against Maintenance Contractor.

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

(d) The policy shall provide a deductible or self-insured retention not exceeding \$100,000 per occurrence.

## 6. Professional Liability Insurance

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

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

(b) Each policy shall have a limit of not less than \$10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

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

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

## 7. Workers' Compensation Insurance

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

(a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act;

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement; and

(d) An endorsement extending coverage to all states operations on an "if any" basis.

## 8. Employer's Liability Insurance

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

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

(b) Maintenance Contractor shall be the named insured.

(c) The policy shall have a limit of not less than \$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 Maintenance Contractor upon operating railroad property. In the event any agreement between TxDOT and a railroad includes railroad protective insurance requirements applicable to the work, Maintenance Contractor shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements.

#### 10. Subcontractors' Insurance

(a) At all times during the performance of the Maintenance Services and during the Maintenance Term, Maintenance Contractor shall cause each Subcontractor that performs work on the Site to provide 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. 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) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act;
- (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 \$5,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 10 stipulates may be similarly included.

**EXHIBIT 11**

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

Page 1 of 2

**IH 35E Managed Lanes Project – 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

A	Month #		Maintenance Year #		Escalated Monthly Maintenance	
		(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**

Page 2 of 2

**IH 35E Managed Lanes Project – Capital Maintenance Agreement  
Texas Department of Transportation**

Draw Request	1	Date	month/day/year
--------------	---	------	----------------

month/day/year

Developer Authorized  
Representative

Date

Request for Payment:

Review and Final Approval by TxDOT

Draw Request Approved for Payment:  Yes  No

\_\_\_\_\_  
TxDOT Authorized Representative      Date

## **MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

Page 1 of 1

### **IH 35E Managed Lanes Project – 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**

Draw Request, Developer 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**

Page 1 of 1

**IH 35E Managed Lanes Project – Capital Maintenance Agreement  
Texas Department of Transportation**

Draw Request #

Date:   
month/day/year

Texas Department of Transportation

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

# Days to End of Month (A) = \_\_\_\_\_

---

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

(D) = 100 (E) = 100

\$0.00 (C) = (B x (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 (E) = 100

\$0.00 (H) = (G) x (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**

**Page 1 of 1**

**Grand Parkway Connector 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 (2/4/200__)							
Date Change Order Work Completed - example format (4/20/4/200__)							
1 Previous C.O. Amount Earned	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2 C.O. Earned This Month	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3 C.O. Earned to Date (A +B)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
4 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							

**MAINTENANCE FORM OF DRAW REQUEST AND CERTIFICATE**

Page 1 of 1

**IH 35E Managed Lanes Project – Capital Maintenance Agreement  
Texas Department of Transportation**

Draw Request #

Date:   
month/day/year

Texas Department of Transportation  
[Add Address]

**Liquidated Damages for Lane Closures**

Hours of Lane Closure  (A)	Directional Traffic Volume (Hourly)  (B)	Liquidated Damage per hour for a partial lane closure (2012\$)  (C)	Liquidated Damages Fee  (A x C)
[ ]	< 1,900	\$ 0	
	1900 to 1999	\$100	
	2000 to 2099	\$200	
	2100 to 2199	\$300	
	2200 to 2299	\$400	
	2300 to 2399	\$500	
	2400 to 2499	\$700	
	2500 to 2599	\$800	
	2600 to 2699	\$1,000	
	2700 to 2799	\$1,100	
	2800 to 2899	\$1,300	
	2900 to 2999	\$1,500	
	3000 to 3099	\$1,700	
	3100 to 3199	\$1,900	
	3200 to 3299	\$2,100	
	3300 to 3399	\$2,300	
	3400 to 3499	\$2,500	
	3500 to 3599	\$2,800	
	3600 to 3699	\$3,000	
	3700 to 3799	\$3,300	
	3800 to 3899	\$3,500	
	3900 to 3999	\$3,800	
	4000 or more	\$4,100	

**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:**

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

\_\_\_\_\_  
**MaintenanceManager**

**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 Development Agreement? Yes \_\_\_\_\_/No \_\_\_\_\_

If yes, state reason:

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

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

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

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

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

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

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

\_\_\_\_\_  
**O&M Manager**

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

**Comments:**

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



**EXHIBIT 13**

**AUTHORIZED REPRESENTATIVES**

**TxDOT Authorized Representative(s)**

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

Phil Wilson

Russell Zapalac

Ed Pensock

Bill Hale

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

R. Joe Lee, P.E.

Gary Geppert

## EXHIBIT 14

### LIST OF REFERENCE INFORMATION DOCUMENTS (RID)

#### RFQ

##### General

- DRAFT IH 35E Managed Lane Level II Study Report; October, 2009
- Signed NTTA Primacy Waiver; September 21, 2011
- R12-01 IH 35E-SB1420: RTC Resolution
- IH 35E Right of Entry Process
- IH 35E Project Overview
- Level II T&R Tables 7.1 7.2 and 7.3
- Environmental Assessments (EAs) and Appendices
- Finding of No Significant Impacts (FONSIs)
- Environmental Permits, Issues and Commitments (EPICs)
- IH 35E Data Collection Report; February, 2009
- Traffic and Revenue Data Collection Files

##### P3A Related Information

- Executed Interlocal Agreement for Interoperability of Toll Collection Systems; December 13, 2007
- LBJ Sample Tolling Services Agreement
- NTE Sample Tolling Services Agreement
- RTC Managed Lane Policies; September 13, 2007
- TIFIA Package, Submitted; December, 28, 2011

##### Design-Related Information

- IH 35E Construction Costs
- IH 35E Design Guidelines; October 25, 2011
- IH 35E Master Plan; October 25, 2011
- KCS Railroad Exhibit A; November 28, 2011
- Preliminary Hydrology and Hydraulics Overall Report; October 2011
- GeoTechnical Report: Corporate Blvd to Lake Lewisville
- Subsurface Utility Exploration
- Schematics – Design Files & PDF's
- IH 35E Pavement Design Report (PGBT-2181)
- Dickerson Pkwy 60 % Plans; December 31, 2011
- Dallas District Master General Notes

#### ROW

- Existing R.O.W. Maps
- Proposed R.O.W. Maps

## RFP

### General

- Texas Toll Agreement signed September 30, 2009
- Toll (Systems) Integrator Contract
- Survey Compliance Review Form
- Use of Official TxDOT Logos Guidance
- As-builts
- USACE Beach Complex Guidelines
- Limited Phase 1 Hazmat Report
- Sample DCTA Public Road Crossing License Agreement
- DCTA Joint Use Agreement
- Railroad Operations Volume, Feb 2000, Manual Notice 98-1
- Municipal Maintenance Agreements
- Utility Maintenance Agreements
- IH-35E/FM 407 General Notes

### Aesthetics

- Green Ribbon Overview
- IH 35E Aesthetics
- Letter from City of Denton to TxDOT Regarding IH 35E Aesthetics
- LBJ Aesthetics Guidelines
- FM 407 Decorative Specifications

### Design

- Subsurface Utility Exploration (S.U.E.) PDF's
- S.U.E. Data Displayed over Draft Interim Schematic
- IH 35E Utility Data not Displayed in S.U.E. PDF's
- IH-35E Draft Phase 1 Stick Diagram
- Oncor Transmission Line
- IH 35E Draft Interim Schematic – Design Files & PDF
- IH 35E Signing Schematics – Design Files & PDF
- Ultimate Schematic (North)
- IH 35E Pavement Coring Report 2012
- IH 35E Boring Logs
- CTL Thompson Geotechnical Report from PGBT to FM 2181
- IH 35E Hydrology and Hydraulics
- Hydrologic Data for Timber Creek
- 2012 National Bridge Inventory for IH 35E (IH 635 to SH 380)
- 2012 Bridge Condition Summary
- IH 35E 2030 Traffic Volumes
- IH 35E Traffic Noise Modeling
- IH 35E Noise Wall Design File
- IH 35E Traffic Analysis
- IH 35E Proposed Improvements at Garden Ridge Blvd.

- IH 35E Proposed Improvements at UP Railroad Crossing
- IH 35E Proposed Improvements at KCS Railroad Crossing
- Proposed Cottonbelt and BNSF Railroad Improvements at Beltline Rd.
- Proposed Improvements at DART Crossings: Beltline Rd and Dickerson Pkwy
- Design Information/Specifications at DART Crossings
- IH-35E Hutton Branch Bridge Plans
- IH-35E at Bonnie Brae Design Files and Plans
- LBJ Structural Guidance Exhibits
- LBJ Utility Exhibits
- KCS Railroad Plans and Design Files
- IH 35E Design Manual References
- Exhibit A – Baseline Option
- IH 35E - UNT Pedestrian Bridge: Plans
- Sample DCTA Highland Village – Lewisville CADD Files
- FM 407: 95% Plans
- FM 407: 100% Plans
- FM 407: CAD Data
- Anticipated Daily Traffic Volumes and Movements along IH 35E (2040)
- Plan ITS Overview for IH 35E
- Belt Line: Profiles
- Belt Line: Pump Stations
- Belt Line: Package 3 & 4
- Traffic Control Plans
- Dallas District Master General Notes
- Design Exceptions
- IH 35E managed lanes (Phase 1) Conceptual Cost Estimate
- Vehicle Arresting Barrier (VAB) Locations-Implementation

#### Environmental

- Summary of Section 404 Features
- Middle: Environmental Assessment (EA), re-evaluation approved by FHWA on April 18, 2013
- North: EPIC, FONSI, EA, re-evaluation approved by FHWA on March 11, 2013
- South: EA, Appendices D, E, F & H, FHWA concurrence dated February 15, 2013

#### ROW

- Existing R.O.W. Maps
- Proposed R.O.W. Maps
- IH 35E Corridor Overall Acquisition Status
- IH35E Department of the Army (DoA) Lake Lewisville Easement
- USACE Easement for ROW
- ROW Files for Access Control
- ROW Parcel Exhibits
- FM 407 Acquisition Status Report

## EXHIBIT 15

### DISPUTES BOARD AGREEMENT

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

#### RECITALS

A. TxDOT and Maintenance Contractor are parties to that certain Capital Maintenance Agreement for the IH 35E Managed Lanes Project, dated as of the Effective Date (the “**CMA**”).

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

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

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

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

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

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

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

The sole purpose of the Disputes Board is to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision (as defined in Section 5.5 below). The Disputes Board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in this Agreement and in Section 16.3 of the CMA. Notwithstanding that each Disputes Board Member will have been engaged by a Party under a Disputes Board Member Joinder Agreement (as defined in Section 3.1.2 below), none of the Disputes Board Members shall consider themselves an appointee, representative, agent or advocate of the Party who engaged him or her. Disputes Board Members are charged with

discharging their responsibilities hereunder in an impartial, objective, independent and professional manner without regard to the particular interests of either Party. Upon completion of the remainder of procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

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

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

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

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

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

Disputes Board Chair appears and the individual selected to serve as the Disputes Board Chair on the Disputes Board shall enter into a Disputes Board Member Joinder Agreement.

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

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

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

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

supplement any such incomplete Disclosure Statements) or failure by the Nominating Party or its proposed candidate to fully respond to the Evaluating Party's written inquiry shall constitute a basis for the Evaluating Party to disapprove the proposed candidate during the Disputes Board Member Candidate Evaluation Period. If the Evaluating Party notifies the Nominating Party of its approval, or does not notify the Nominating Party of its disapproval, of a proposed candidate within the Disputes Board Member Candidate Evaluation Period, such candidate shall be approved or deemed approved by the Evaluating Party.

3.2.3 During the course of the Nominating Party replacing five consecutive potential candidates on its Disputes Board Member Candidates List on a cumulative basis over time, the Evaluating Party may, upon notice to the Nominating Party, disapprove up to two proposed candidates for any or no reason. The Evaluating Party may, upon notice to the Nominating Party, only disapprove all subsequently proposed candidates of the Nominating Party based on any such candidate's failure to satisfy the Disputes Board Member Qualifications (which failure shall be described in detail in the Evaluating Party's notice of disapproval).

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

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

### 3.3 Removal of Disputes Board Member; Appointment of Replacement.

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

(a) Any two members of the Disputes Board may terminate the third Disputes Board Member's appointment For Cause;

(b) TxDOT and Maintenance Contractor may, upon mutual agreement, terminate any Disputes Board Member's appointment For Cause or without cause; and

(c) TxDOT or Maintenance Contractor may unilaterally terminate the appointment of any Disputes Board Member For Cause.

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

3.3.2 In the event that one or more Disputes Board Members needs to be replaced due to removal, death or resignation of one or more Disputes Board Members, replacement Disputes Board Members shall be appointed in the same manner as the predecessor Disputes Board Members(s) until the Disputes Board is reconstituted as a three person board. The appointment of each replacement Disputes Board Member will begin as soon as notice of removal, death or resignation is given or received and shall be completed as soon as possible, but in no event more than 30 days thereafter.

#### **Section 4. Qualifications and Conduct of Disputes Board Members.**

**“Disputes Board Member Qualifications,”** as they pertain to each Disputes Board Member or proposed candidate for inclusion on a Party's Disputes Board Member Candidate List, consist of the requisite experience described in Section 4.1 below and the absence of grounds for disqualification as described in Section 4.2 below.

4.1 Requisite Experience. All Disputes Board Members shall be attorneys who (a) are retired judges with at least ten years prior experience as a sitting judge or (b) are active members of the State Bar of Texas or any other state bar with at least ten years prior experience acting as mediators, arbitrators or dispute board members for commercial disputes, in either case who have not been subject to disciplinary action within the past ten years. Preference shall be given to attorneys who, in addition to meeting the foregoing qualifications, are also experienced in interpreting or adjudicating contract rights and claims involving financing, design, construction, operations and/or maintenance of public infrastructure projects.

4.2 Disqualification. No Disputes Board Member shall have a financial interest in the CMA, in any Contract or the Project or in the outcome of any Dispute decided hereunder, except for payments to that member for services on the Disputes Board.

#### 4.3 Effect of Party's Prior Approval of Disputes Board Member.

4.3.1 An Evaluating Party's approval or deemed approval of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute an irrevocable waiver of any subsequent objection to such individual's lack of qualifications under Section 4.1 (except if such individual's lack of qualifications constitutes Misconduct, as addressed in Section 4.3.2 below).

4.3.2 No approval or deemed approval by the Evaluating Party of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute a waiver of any objection to a Conflict of Interest or Misconduct of such individual

under Section 4.2, except that any matter fully disclosed in an individual's Disclosure Statements prior to inclusion of such individual on the Nominating Party's Disputes Board Member Candidates List with the approval or deemed approval of the Evaluating Party may not be subsequently asserted by the Evaluating Party as a Conflict of Interest or Misconduct constituting grounds for termination and removal of such individual from the Nominating Party's Disputes Board Member Candidates List or from service as a Disputes Board Member on the Disputes Board.

## **Section 5. Procedures and Scope of Work of the Disputes Board.**

5.1 Procedures; Modification of Procedures. The Disputes Board shall conduct its proceedings to resolve a Dispute in accordance with the requirements specified or referenced herein; provided, however, that:

(a) The Parties may jointly modify the procedures applicable to the Disputes Board's proceedings to resolve a Dispute, effective upon the Disputes Board Chair's receipt of the Parties' written notice of the Parties' mutually agreed modification of such procedures describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the CMA or any requirements applicable to modification of the DRP Rules or the Sections of the Code under which the DRP Rules are promulgated); and

(b) Subject to the DRP Rules and the Code, the Disputes Board may modify the procedures applicable to its proceedings to resolve a Dispute so as to be more responsive to the needs of the Parties, provided that (i) the Disputes Board Chair issues written notice to the Parties describing the proposed modification in detail and (ii) both Parties give their written consent thereto, effective upon the Disputes Board Chair's receipt of the Parties' written consent thereto.

5.2 Ineligible Matters. As a preliminary matter prior to consideration of the underlying matter, the Disputes Board shall hear, consider and render a Disputes Board Decision with respect to the responding Party's assertion that a particular claim, demand, dispute, disagreement or controversy is an Ineligible Matter. Resolution of whether a claim, demand, dispute, disagreement or controversy is a Dispute that the Disputes Board has authority to resolve or an Ineligible Matter shall be resolved as a preliminary matter by the Disputes Board, and the Disputes Board Decision shall reflect that the underlying matter is a Dispute eligible for resolution by the Disputes Board unless a majority of the Disputes Board determines with positive assurance that such a determination would not be correct.

### 5.3 Procedures for Disputes Board's Resolution of Disputes.

5.3.1 The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including time periods in which actions by the Disputes Board shall occur. "**Commercial Rules**" means the dispute resolution proceedings set forth in Attachment 2 attached hereto. For Fast-Track Disputes, the time frames provided in the Commercial Rules for Expedited Procedures (as defined in Attachment 2) shall apply in accordance with the Commercial Rules.

5.3.2 Each Disputes Board Member, or the Disputes Board Chair on behalf of the Disputes Board, shall promptly notify the Parties if any circumstances has or is likely to arise

that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A “**Small Claim**” is a Claim or related or similar Claims which arise fairly contemporaneously out of the same set of acts, events or circumstances that the Parties mutually agree to have resolved solely by the Disputes Board Chair. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is \$100,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board Member shall be released from further service. Thereafter, in the context of the Disputes Board Chair’s resolution of a Small Claim hereunder, all references in the dispute resolution procedures established in Section 16.3 of the CMA to the “Disputes Board” or the “Disputes Board Members” shall mean and refer to the Disputes Board Chair. At any time prior to the close of the Disputes Board hearing under R-27 of the Commercial Rules, if, due to amendment of the Dispute as to the amount in controversy, aggregation of the Dispute with other Disputes or other changes that cause a Party to no longer consent to resolution of the Dispute as a Small Claim by the Dispute Board Chair, such Party may, upon notice to the Disputes Board Chair and the other Party, withdraw its assent to resolution of the Dispute as a Small Claim by the Disputes Board Chair and require that a full three-member Disputes Board be empanelled to resolve such Dispute.

(c) The Disputes Board Chair shall have no authority to award compensation or damages in a Disputes Board Decision regarding a Small Claim aggregating more than \$100,000, and TxDOT or Maintenance Contractor as the claiming Party, as the case may be, asserting a Small Claim hereby irrevocably waives any right, at law or in equity, to any damages or award arising out of such Small Claim in excess of \$100,000; provided, however, that the amount of \$100,000 as stated in this Section 5.3.3(c) shall be adjusted on every fifth anniversary of the Effective Date by the percentage increase (if any) in the CPI between the date the CPI was most recently published before the Effective Date and the date most recently published before the date of adjustment.

5.4 Aggregation of Disputes. Either Party shall be entitled to request the Disputes Board to aggregate the consideration of multiple Disputes for resolution by the Disputes Board where common questions of fact, Law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the aggregate consideration of all such Disputes. Upon receipt of such a request, the Disputes Board shall consider the aggregated Disputes in a single proceeding unless, as a preliminary matter, the Disputes Board determines (after considering any evidence presented by the Parties in support of, or in opposition to, the proposed aggregation of such Disputes for resolution in a single proceeding) that there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes and/or the efficiencies to be gained by conducting a single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the proposed aggregated Disputes (as specified in the Disputes Board Decision on this matter) by a separately empanelled Disputes Board in a separate proceeding. A Disputes Board Decision regarding whether Disputes will be aggregated for resolution in a single proceeding before the Disputes Board shall be final, binding and not subject to appeal.

5.5 Issuance of Disputes Board Decision and Any Minority Report. The Disputes Board should make every effort to reach a unanimous decision among the Disputes Board Members. If this proves infeasible, the dissenting Disputes Board Member may prepare a minority report. Within 20 days after the final hearing on an Dispute (other than a Fast-Track Dispute, in which case within 5 days after the final hearing the Fast-Track Dispute), the Disputes Board Chair shall issue the Dispute Board's written decision (each, a "**Disputes Board Decision**"), together with its written findings of fact and conclusions of law in support of the Disputes Board Decision, to the Parties.

5.6 Confidential Materials: Return or Destruction Thereof. "**Confidential Materials**" are all discussions, negotiations, testimony and evidence between the Parties and/or in a proceedings before the Disputes Board that are confidential pursuant to Section 16.3.8 of the CMA. Each Disputes Board Member shall maintain the privacy of Confidential Information pursuant to Section 16.3.8 of the CMA. Within 30 days after issuance of the Final Order Implementing Decision, the Disputes Board Chair shall furnish written notice to each Party listing the Confidential Materials in the Disputes Board's possession and, except for those Confidential Materials that a Party directs the Disputes Board to return to such Party in writing within 15 days after receipt of such notice, the Disputes Board Chair shall destroy all copies of all Confidential Materials in the Disputes Board's possession. Until the time for the Disputes Board Chair's issuance of the foregoing written notice, the Disputes Board shall hold all Confidential Materials in confidence other than making them available for production into evidence in subsequent proceedings.

5.7 Dissolution of Disputes Board. Once the Disputes Board Decision of the Disputes Board becomes final and the Executive Director has issued a Final Order Implementing Decision, the Disputes Board shall be dissolved and the Disputes Board Members serving on such Disputes Board shall be released from further service.

## **Section 6. Necessity of Submission of Dispute to Disputes Board.**

A Party's submission of a Dispute to the Disputes Board for resolution and the Disputes Board's issuance of the Disputes Board Decision shall be conditions precedent to any subsequent proceeding concerning such Dispute, except as otherwise provided in Section 16.3 of the CMA.

## **Section 7. TxDOT and Maintenance Contractor Responsibilities.**

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board Member one copy of the CMA Documents. TxDOT shall also serve upon each Disputes Board Member (and concurrently upon Maintenance Contractor) any other documents which are or may become pertinent to the activities of the Disputes Board, including but not limited to any Change Order, Directive Letter or other written direction, instruction, determination or decision of TxDOT.

7.2 Maintenance Contractor Responsibilities. Maintenance Contractor shall serve on each Disputes Board Member (and concurrently on TxDOT) one set of any documents which are or may become pertinent to the activities of the Disputes Board, except those documents furnished by TxDOT. Such documents may include, but shall not be limited to, any drawings or sketches, calculations, procedures, schedules, estimates or other documents and Submittals which are used in the performance of the Work or in justifying or substantiating Maintenance Contractor's position.

### 7.3 Parties' Responsibilities for Costs and Expenses; Cooperation.

7.3.1 Each Party shall be responsible and make payment for its one-half share of all facilities fees, support services costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. A Party that disputes an invoice for any such cost or expense relating to the Disputes Board's proceedings shall notify the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing under any invoice for such costs and expenses at the time require for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

7.3.2 Each Party shall diligently cooperate with the Disputes Board and the other Party and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure was egregious, the Disputes Board shall take into account such egregious failure to cooperate in its determination of the Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 16.3.4.1 of the CMA.

### **Section 8. Term.**

Consistent with the DRP Rules, the term of this Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the CMA and thereafter for so long as either Party has any obligation originating under the CMA Documents until the applicable statute of limitations on any Dispute in regard to such obligation has expired.

### **Section 9. Payment of Disputes Board Members' Fees, Costs and Expenses.**

9.1 Payment for Services. Payment of fees for work performed and services rendered by each Disputes Board Member and for his or her direct out-of-pocket costs and expenses shall be calculated in accordance with the payment terms set forth for such Disputes Board Member in his or her respective Disputes Board Member Joinder Agreement. The personal services of the Disputes Board Member are a condition to receiving payments hereunder. Such payments shall be full compensation for work performed and services rendered by each respective Disputes Board Member, and for all labor, materials, supplies, equipment and incidentals necessary for such Disputes Board Member's participation in the operation of the Disputes Board.

9.2 Disputes Board Member Invoices. Each Disputes Board Member shall submit invoices on a monthly basis concurrently to TxDOT and Maintenance Contractor for payment for such Disputes Board Member's work performed and services rendered in the prior month. Such invoices shall be in a format approved by TxDOT and Maintenance Contractor, accompanied by an itemization of days and hours billed along with a description of activities performed during each day in that billing period, and an itemization of direct non-salary costs incurred supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. The amount to be paid shall be established from the applicable billing rate set forth in each Disputes Board Member's Disputes Board Member Joinder Agreement plus costs and expenses in accordance with such agreement.

9.3 Payment by Parties. Each Party shall be responsible and make payment for its one-half share of all fees, costs and expenses of the Disputes Board Members' service on the Disputes Board. Each Disputes Board Member will be paid within 30 days of the Parties' receipt and acceptance of invoices therefor. A Party that disputes a Disputes Board Member's invoice shall notify such member and the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing to any Disputes Board Member at the time required for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

9.4 Retention of Cost Records and Accounts. Disputes Board Members shall keep available for inspection by representatives of TxDOT and Maintenance Contractor, for a period of five years after the final payment, the cost records and accounts pertaining to this Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of, in connection with, or related to this Agreement is initiated before the expiration of the five year period, the cost records and accounts shall be retained until such claim involving the records is completed.

9.5 Parties to Bear Own Costs. Each Party shall bear its own costs arising out of or in connection with the Dispute Resolution Procedures.

9.6 Diligent Cooperation. The Parties shall diligently cooperate with one another and the Disputes Board, and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of Disputes submitted to the Disputes Board. If either Party refuses to diligently cooperate, and the other Party, after first giving notice setting forth the Party's basis for its contention of non-cooperation and requesting specific action, incurs additional costs or attorneys', accountants' and expert witness fees solely as a result of such failure to diligently cooperate, then the Disputes Board may award such additional costs and, accountants' and expert witness fees to the Party giving such notice, even if such Party is not the prevailing Party in the Dispute. The Party so entitled to such award shall have the right to pursue and enforce it in any subsequent proceedings.

## **Section 10. Nonassignability.**

Disputes Board Members shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Maintenance Contractor.

## **Section 11. Legal Relations.**

11.1 Disputes Board Member as Independent Contractor. The Parties mutually understand and agree that any Disputes Board Member, in the performance of duties as a Disputes Board Member on the Disputes Board, is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Maintenance Contractor. No Disputes Board Member will be entitled to any employee benefits from either Party nor the benefits of any Laws afforded employees of either Party.

11.2 No Effect on Potential Liabilities Under the CMA Documents or by Law. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth

herein, nothing in this Agreement alters the potential liabilities of either Party as provided under the CMA Documents and, subject to the terms and conditions of the CMA Documents, by Law.

11.3 Damages Waiver. Neither TxDOT nor Maintenance Contractor will hold any Disputes Board Member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board in respect of the Dispute for which it was convened, and the Parties expressly waive any right to the foregoing, except as a result of fraud, willful misconduct or criminal actions of the applicable Disputes Board Member.

## **Section 12. Applicable Law.**

The Disputes for resolution by the Disputes Board shall be governed by and resolved under the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

## **Section 13. Amendment in Writing.**

This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

## **Section 14. Complementary Provisions; Order of Priority.**

The Parties intend for the procedures established in Section 16.3.4 of the CMA and any other relevant provisions of the CMA Documents, and the terms and conditions of this Agreement (except where this Agreement says they shall not apply), to be complementary. In the event of any conflict between this Agreement and Section 16.3 of the CMA or any other relevant provision of the CMA Documents, the CMA or other DRP governed agreement shall control.

## **Section 15. Notices.**

Notices hereunder shall be sent as provided in Section 18.11 of the CMA. The address for each Disputes Board Member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

## **Section 16. Entire Agreement.**

This Agreement, each executed Disputes Board Member Joinder Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

***[signatures on following page]***

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

**Maintenance Contractor:**

**TxDOT:**

**[Name]**

**TEXAS DEPARTMENT OF TRANSPORTATION**

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

By: \_\_\_\_\_  
Phil Wilson  
Executive Director

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

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

## ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

### DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT (this “**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ [Specify TxDOT or Maintenance Contractor] (the “**Appointing Party**”), and \_\_\_\_\_, an individual (the “**Disputes Board Member**”).

#### RECITALS

A. TxDOT and Maintenance Contractor are parties to that certain Capital Maintenance Agreement, for the IH 35E Managed Lanes Project, dated as of the Effective Date (the “**CMA**”).

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

C. The Appointing Party desires to appoint the Disputes Board Member to the Disputes Board to resolve such a dispute and the Disputes Board Member desires to accept such appointment, each on the terms and conditions set forth in CMA Section 16.3, the Disputes Board Agreement and this Agreement, and for that purpose, the parties hereto have agreed to enter into this Agreement pursuant to Section 3.1.2 of the Disputes Board Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Disputes Board Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

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

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

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

#### **Section 2. Appointment.**

2.1 Appointment. The Appointing Party appoints the Disputes Board Member to the Disputes Board to serve thereupon and resolve the applicable Dispute, and the Disputes Board Member accepts such appointment and agrees to perform such service, each in accordance

with the terms and conditions of Section 16.3 of the CMA, the Disputes Board Agreement and this Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through resolution of the Dispute before the Disputes Board and issuance of the Final Order Implementing Decision in respect thereto, except that (a) unless he or she is the Disputes Board Chair, he or she may be earlier dismissed from service pursuant to Section 5.3.3(b) of the Disputes Board Agreement because the dispute to be resolved is a Small Claim; (b) the **Disputes Board Member** may resign for health considerations or other reasons of disability; or (c) the **Disputes Board Member** shall resign if he or she discovers facts or circumstance that would, in such member's reasonable good faith judgment, prevent such member from discharging his or her duties in the resolution of a Dispute in the impartial and objective manner required under the Disputes Board Agreement or facts or circumstances that such member reasonably and in good faith believes would result in a Party terminating such member's appointment For Cause. The **Disputes Board Member** shall endeavor to give 30 days' notice prior to the effective date of his or resignation.

### **Section 3. Representations, Warranties and Covenants.**

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and Maintenance Contractor, under penalty of perjury, that such Disputes Board Member satisfies the Disputes Board Member Qualifications.

3.2 Covenants. The Disputes Board Member covenants to TxDOT and Maintenance Contractor that he or she:

(a) Shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with the procedures established under Section 16.3 of the CMA;

(b) Shall not engage in any conduct, including, but not limited to, having any communications, dealings or interactions with either Party, the Conflicts Group or any other Person in any manner, that would be or result in a Disputes Board Error; and

(c) Shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 16.3.8 of the CMA.

### **Section 4. Compensation.**

4.1 Invoicing and Payment. The Disputes Board Member's hourly billing rate and costs and expenses for service on the Disputes Board or means for calculating same are attached hereto as Annex I. Invoicing and payment of fees, costs and expenses shall take place in accordance with Sections 9.1, 9.2 and 9.3 of the Disputes Board Agreement.

4.2 No Compensation After Termination. If the Disputes Board Member's appointment to the Disputes Board is terminated, whether For Cause or otherwise, the Disputes Board Member will not be entitled to receive payment for any services rendered or costs and expenses incurred after the date of termination of such appointment.

## **Section 5. General Provisions.**

5.1 Third Party Beneficiary. Whichever of TxDOT or Maintenance Contractor that is not the Appointing Party is an express third party beneficiary of this Agreement entitled to enforce the terms and conditions hereof against the Disputes Board Member.

5.2 Nonassignability. The Disputes Board Member shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Maintenance Contractor.

5.3 Disputes Board Member as Independent Contractor. The Disputes Board Member represents that it is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Maintenance Contractor. The Disputes Board Member hereby acknowledges that it is not entitled to any employee benefits from either Party nor the benefits of any Laws afforded employees of either Party.

5.4 Consequential Damages Waiver. In no event shall TxDOT or Maintenance Contractor have any liability to the Disputes Board Member other than for payment of the Disputes Board Member's fees, costs and expenses hereunder. Neither TxDOT nor Maintenance Contractor shall be liable to the Disputes Board Member for any special, consequential, indirect, enhanced, punitive, or similar damages (including lost profits that are not direct damages), including but not limited to attorneys' fees and expenses, arising under or in connection with this Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

5.6 Entire Agreement. This Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

5.7 Amendment in Writing. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

5.8 Survival. This Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of this Section 5 shall survive termination of this Agreement.

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

IN WITNESS WHERE, the parties hereto, intending to be legally bound, have executed this Agreement as of the day and year first set forth above.

**Appointing Party:**

[TxDOT or Maintenance Contractor]

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

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

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

**Disputes Board Member:**

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

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

Address:

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

**Annex I**  
**to**  
**Disputes Board Member Joinder Agreement**

**Fees, Costs and Expenses**

*[to be attached]*

## ATTACHMENT 2 TO DISPUTES BOARD AGREEMENT

### COMMERCIAL RULES

#### R-1. Agreement of The Parties

(a) The "**Expedited Procedures**" means the rules set forth in Sections E-1 through E-6 below. Unless the Parties determine otherwise, the Expedited Procedures shall apply to Fast-Track Disputes in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(b) The "**Procedures for Large, Complex Commercial Disputes**" means the rules set forth in Sections L-1 through L-3 below. Unless the Parties agree otherwise, such procedures shall apply to all cases in which the Dispute is valued at \$500,000 or more, exclusive of claimed interest, fees and costs. The Parties may also agree to use such procedures in cases involving non-monetary Disputes. Such Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(c) All other cases shall be administered in accordance with Sections R-2 through R-43 of these rules.

(d) If there is any inconsistency between these Commercial Rules and Section 16.3 of the CMA, Section 16.3 of the CMA shall control.

#### R-2. Disputes Board

The term "Disputes Board" in these Commercial Rules refers to the three member Disputes Board, constituted for a particular case, or to the Disputes Board Chair, as the context requires.

#### R-3. Assumed Objection

Unless the responding Party states otherwise in its response to the claiming Party's notice of referral of a Dispute to the Disputes Board, all aspects of the Dispute will be deemed to be denied by the other Party (other than any objection to the Disputes Board's authority to resolve the Dispute, which must be affirmatively asserted).

#### R-4. Changes of Claim

After notice of referral of a Dispute to the Disputes Board is given or received, if either Party desires to make any amended, new, or different claim or counterclaim, it shall be made in writing and filed with the Disputes Board. The Party asserting such an amended, new or different claim or counterclaim shall provide a copy to the other Party, who shall have 15 days from the date of such transmission within which to file an answering statement with the Disputes Board.

## **R-5. Jurisdiction**

(a) The Disputes Board shall have the power to rule on its own jurisdiction, i.e., to determine if an alleged Dispute is an Ineligible Matter.

(b) The Disputes Board shall rule on jurisdictional objections as a preliminary matter prior to proceeding with proceedings to resolve the underlying Dispute.

## **R-6. Administrative Conference**

At the request of either Party or upon the Disputes Board's own initiative, the Disputes Board may conduct an administrative conference, in person or by telephone, with the Parties and/or their representatives. The conference may address such issues as the replacement of one or more Disputes Board Members, potential mediation of the Dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

## **R-7. Appointment**

Because the Disputes Board Agreement between the Parties specifies a method of appointing a Disputes Board, that designation or method shall be followed.

## **R-8. Disclosure**

(a) Any person appointed or to be appointed as a Disputes Board Member shall disclose to the Parties any circumstance likely to give rise to justifiable doubt as to such Disputes Board Member's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the Parties or their representatives. Such obligation shall remain in effect throughout the period of such member's service on the Disputes Board.

(b) In order to encourage disclosure by Disputes Board Members and candidates, disclosure of information pursuant to this R-8 is not to be construed as an indication that the disclosing individual considers that the disclosed circumstance is likely to affect impartiality or independence.

## **R-9. Disqualification of Disputes Board Member**

Each Disputes Board Member shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(a) inability or refusal to perform his or her duties with diligence and in good faith, and

(b) any grounds for disqualification provided by applicable law, the Disputes Board Agreement or the CMA Documents.

## **R-10. No Ex Parte Communication with Disputes Board Members**

(a) During the period that any Disputes Board Member is then serving on a Disputes Board, (i) neither Party, including its counsel or designated representatives, shall communicate ex parte with such Disputes Board Member and (ii) no Disputes Board Member shall

communicate ex parte with any Person (other than other Disputes Board Members), including but not limited to, either Party, its counsel or designated representatives, regarding any aspect of the applicable Dispute.

(b) Each Party may communicate with individuals listed on its respective Disputes Board Member Candidates' List for the purposes of (i) ascertaining their availability to serve on a particular Disputes Board and/or (ii) reconfirming such individuals' qualifications under the Disputes Board Member Qualifications and the absence of Conflicts of Interest and Misconduct, provided that the communicating Party simultaneously furnishes copies of all such written correspondence with such individuals to the other Party and gives the other Party advance notice and opportunity to participate in all verbal communication with such individuals. Ex parte communication regarding the substance of any Dispute between a Party and individuals listed on its respective Disputes Board Member Candidates' List is prohibited.

#### **R-11. Hearings After Filling of Vacancies**

In the event of the appointment of a substitute Disputes Board Member, the panel of Disputes Board Members shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

#### **R-12. Preliminary Hearing**

(a) At the request of either Party or at the discretion of the Disputes Board, the Disputes Board may schedule as soon as practicable a preliminary hearing with the Parties and/or their representatives. The preliminary hearing may be conducted by telephone at the Disputes Board's discretion.

(b) During the preliminary hearing, the Parties and the Disputes Board should discuss the future conduct of the case, including clarification of the nature of the Dispute, a schedule for the hearings and any other preliminary matters.

#### **R-13. Exchange of Information; Discovery**

(a) At least five Business Days prior to the hearing, the Parties shall exchange (i) copies of all exhibits they intend to submit at the hearing and (ii) lists of witnesses anticipated to be called at the hearing, in each case except for witnesses or exhibits to be offered for the purpose of impeachment or rebuttal.

(b) The Disputes Board Chair is authorized to resolve any disputes concerning the exchange of information or the Parties' discovery.

#### **R-14. Date, Time, and Place of Hearing**

The Disputes Board Chair shall set the date, time, and place for each hearing at a neutral and reasonably cost-efficient location in Travis County, Texas that is reasonably convenient for the Parties. The Parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The Disputes Board shall send a notice of hearing to the Parties at least 5 Business Days in advance of the hearing date, unless otherwise agreed by the Parties.

#### **R-15. Attendance of Witnesses**

Except for each Party's counsel and other authorized representative, upon the request of either Party or its own initiative, the Disputes Board shall have the power to require the exclusion of any witness or potential witness during the testimony of any other witness.

#### **R-16. Representation**

Each Party may be represented by counsel or other authorized representative. A Party intending to be so represented shall notify the other Party and the Disputes Board of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates or responds for a Party in the course of the Dispute Resolution Procedures, notice is deemed to have been given by the Party represented by such representative.

#### **R-17. Dispute Board Members' Certifications; Witness Oaths**

Before proceeding with the first hearing, each Disputes Board Member shall have entered into a Disputes Board Member Joinder Agreement with a Party in which he or she certifies, under penalty of perjury as to his or her meeting the Disputes Board Member Qualification and the absence of Conflicts of Interest and Misconduct (and a covenant to not engage in Misconduct). The Disputes Board shall require witnesses to testify under oath.

#### **R-18. Stenographic Record**

Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party of these arrangements at least three days in advance of the hearing. The requesting Party shall pay the cost of the record. If the transcript is agreed by the Parties, or determined by the Disputes Board to be the official record of the proceeding, it must be provided to the Disputes Board and made available to the other Party for inspection, at a date, time, and place determined by the Disputes Board.

#### **R-19. Interpreters**

Any Party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

#### **R-20. Postponements**

The Disputes Board may postpone any hearing upon agreement of the Parties, upon request of a Party for good cause shown, or upon the Disputes Board's own initiative for good cause shown.

#### **R-21. Proceedings in the Absence of a Party or Representative**

The Dispute Board's proceedings may proceed in the absence of either Party or representative who, after due notice, fails to be present or fails to obtain a postponement. An Disputes Board Decision shall not be made solely on the default of a Party. The Disputes Board shall require the Party who is present to submit such evidence as the Disputes Board may require for the making of a Disputes Board Decision.

## **R-22. Conduct of Proceedings**

(a) The claimant Party shall present evidence to support its claim. The respondent Party shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the Disputes Board and the adverse Party. The Disputes Board has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The Disputes Board, exercising its discretion, shall conduct the proceedings with a view to expediting the resolution of the Dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The Parties may agree to waive oral hearings in any case.

## **R-23. Evidence**

(a) The Parties may offer such evidence as is relevant and material to the Dispute and shall produce such evidence as they or the Disputes Board deems relevant and necessary to an understanding and determination of the Dispute. Conformity to the Texas Rules of Evidence shall be required, except where these Commercial Rules contain a contrary rule. All evidence shall be taken in the presence of all of the Disputes Board Members and both of the Parties, except where a Party fails to attend the hearing or has waived the right to be present.

(b) Subject to the Texas Rules of Evidence, the Disputes Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Disputes Board to be cumulative or irrelevant.

(c) The Disputes Board shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) Special discovery and evidentiary rules:

(i) The Disputes Board Chair shall, at the request of either Party, issue subpoenas for the attendance of witnesses or the production of books, records, documents or other evidence, whether for deposition or for hearing, in the manner provided by law for issuance of a subpoena in a civil action pending in a state district court. All provisions of the Texas Rules of Civil Procedure for service and response to subpoenas in a civil action pending in state district court shall apply to subpoenas issued pursuant hereto.

(ii) Each Party shall be entitled to take depositions of witnesses and to propound written discovery in the manner, and to the extent, provided by Law for discovery in a civil action pending in a state district court, consistent with Rule 190.3 of the Texas Rules of Civil Procedure. The Disputes Board Chair shall, at the request of either Party, or may, on his or her own initiative, adopt a discovery control plan as contemplated by Rule 190.4 of the Texas Rules of Civil Procedure.

(iii) The disclosure of expert witness information and the depositions of designated expert witnesses shall be conducted as provided by the Texas Rules of Civil Procedure for cases in state district court.

(iv) At the hearing, each Party shall have the right to be heard, to present evidence, including expert witness testimony, and to cross-examine witnesses.

#### **R-24. No Evidence by Affidavit; Post-hearing Filing of Documents or Other Evidence**

(a) The Disputes Board may not receive and consider the evidence of witnesses by declaration or affidavit.

(b) If the Parties agree or the Disputes Board directs that documents or other evidence be submitted to the Disputes Board after the hearing, the documents or other evidence shall be transmitted to each Disputes Board Member. Both Parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

#### **R-25. Inspection or Investigation**

The Disputes Board may find it necessary to make an inspection or investigation in connection with its proceedings and, if so, shall so advise the Parties. The Disputes Board shall set the date and time of such inspection or investigation and notify the Parties thereof. Any Party who so desires may be present at such an inspection or investigation. In the event that one or both The Parties are not present at the inspection or investigation, the Disputes Board shall make an oral or written report to the Parties on the result or findings from such inspection or investigation and afford them an opportunity to comment.

#### **R-26. Interim Measures**

(a) The Disputes Board may take whatever interim measures it deems necessary, including measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim Disputes Board Decision.

(c) A request for interim measures addressed by a Party to a Travis County, Texas district court shall not be deemed incompatible with the agreement to have the underlying Dispute resolved by the Disputes Board or a waiver of the right to have the underlying Dispute resolved by the Disputes Board.

#### **R-27. Closing of Hearing**

The Disputes Board shall specifically inquire of both Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Disputes Board shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of briefs. If documents are to be filed as provided in R-24 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the Disputes Board is required to make the Disputes Board Decision shall commence, in the absence of other agreements by the Parties, upon the closing of the hearing.

### **R-28. Reopening of Hearing**

The hearing may be reopened only upon application of a Party for good cause shown, as determined in the discretion of the Disputes Board, at any time before the Disputes Board Decision is issued. The Disputes Board may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to issue the Disputes Board Decision.

### **R-29. Waiver of Rules**

Any Party who proceeds with the Disputes Board proceedings after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing to the other Party and the Disputes Board shall be deemed to have waived the right to object.

### **R-30. Extensions of Time**

The Parties may modify any period of time in these rules by mutual agreement. The Disputes Board may for good cause extend any period of time established by these rules, except the time for issuance of the Disputes Board Decision. The Disputes Board shall notify the Parties of any extension.

### **R-31. Serving of Notice**

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of Disputes Board proceedings under these rules, for any court action in connection therewith, or for the entry of judgment on any Disputes Board Decision made under these rules shall be given in accordance with Section 16.11 of the CMA.

(b) Unless otherwise instructed by the Disputes Board, any documents submitted by either Party to the Disputes Board shall simultaneously be provided to the other Party.

### **R-32. Majority Decision**

When the panel consists of more than one Disputes Board, a majority of the Disputes Board Members must make all decisions.

### **R-33. Time of Issuance of the Disputes Board Decision**

The Disputes Board Decision shall be issued promptly by the Disputes Board and no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

### **R-34. Form of Disputes Board Decision**

(a) Any Disputes Board Decision shall be in writing and signed by a majority of the Disputes Board Members.

(b) The Disputes Board shall also issue written findings of fact and conclusions of law to accompany the Disputes Board Decision.

### **R-35. Scope of Disputes Board Decision**

(a) The Disputes Board may determine the occurrence of any event that is a prerequisite to a Party's claim for any remedy or relief in the Dispute, and grant any remedy or relief to resolve the Dispute, that the Disputes Board deems just and equitable and within the scope of the agreement of the Parties under Section 16.3 of the CMA, including, but not limited to, specific performance of any obligation under the CMA Documents.

(b) In addition to a final Disputes Board Decision, the Disputes Board may make other decisions, including interim, interlocutory, or partial rulings, orders, and decisions. In any interim, interlocutory, or partial Disputes Board Decision, the Disputes Board may assess and apportion the fees, expenses, and compensation related to such Disputes Board Decision as the Disputes Board determines is appropriate, subject, however, to the limitations of the Disputes Board's authority in Section 16.3.4.1(e) of the CMA.

(c) In the final Disputes Board Decision, the Disputes Board shall assess compensation amounts. The Disputes Board may apportion fees and expenses between the Parties in such amounts as the Disputes Board determines is appropriate in its discretion, subject, however, to the limitations of the Disputes Board's authority under Section 16.3.4.1(e).

### **R-36. Disputes Board Decision upon Settlement**

If the Parties settle the Dispute during the course of the Disputes Board proceedings and if the Parties so request, the Disputes Board may set forth the terms of the settlement in a "consent Disputes Board Decision."

### **R-37. Acceptance of Delivery of Disputes Board Decision**

The Parties shall accept as notice and delivery of the written Disputes Board Decision, together with the written findings of fact and conclusions of law, addressed and provided to them in the manner provided under Section 18.11 of the CMA.

### **R-38. Correction of Errors in Disputes Board Decision**

Within 5 Business Days after the transmittal of a Disputes Board Decision, either Party, upon notice to the other Party, may request the Disputes Board, through the Disputes Board Chair, to correct any clerical, typographical, or computational errors in the Disputes Board Decision. The Disputes Board is not empowered under this R-38 to redetermine the merits of any Dispute already decided. The other Party shall be given 5 Business Days to object to the request on the ground that there is no clerical, typographical, or computational error in the decision. The Disputes Board shall perform the request correction of errors within 10 Business Days after transmittal by the Disputes Board Chair of the request for correction of errors unless the other Party objects. Any unresolved disagreement between the Parties as to the existence of a clerical, typographical, or computational error in the Disputes Board Decision can be subsequently pursued, if at all, under R-28.

### **R-39. Release of Documents for Subsequent Proceedings**

The Disputes Board shall, upon the written request of a Party, furnish to the Party, at the Party's expense, certified copies of any papers in the Disputes Board's possession that may be required in further administrative or judicial proceedings relating to resolution of the Dispute.

#### **R-40. Applications to Court and Exclusion of Liability**

(a) No judicial proceeding by a Party relating to a Dispute shall be deemed a waiver of the Party's right to have the Dispute resolved by Dispute Board proceedings.

(b) Neither any Disputes Board Member nor the Disputes Board in a proceeding under these rules is a necessary or proper Party in judicial proceedings relating to a Dispute.

#### **R-41. Expenses**

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the Dispute Board's proceedings, including required travel and other expenses of the Disputes Board, Disputes Board representatives, and any witness and the cost of any proof produced at the direct request of the Disputes Board, shall be borne equally by the Parties, unless they agree otherwise or unless the Disputes Board in the Disputes Board Decision assesses such expenses or any part thereof against any specified Party or The Parties (in the latter case subject, however, to the limitations of the Disputes Board's authority under Section 16.3.4.1(e)).

#### **R-42. Interpretation and Application of Rules**

The Disputes Board shall interpret and apply these rules insofar as they relate to the Disputes Board's powers and duties to resolve the particular Dispute for which such Disputes Board was empanelled to resolve.

#### **R-43. No Suspension for Nonpayment**

If a Disputes Board Member's compensation or administrative charges have not been paid in full, such Disputes Board Member may so inform the Parties in order that one of them may advance the required payment. If such payments are not made, and the non-paying Party does not within 30 days after its receipt of the unpaid Disputes Board Member's invoice provide notice to such member and the other Party as to such Party's dispute of such member's invoice, the Disputes Board may order the suspension or termination of the proceedings. If a Party disputes a Disputes Board Member's invoice and provides such notice, no suspension or termination of the proceedings shall occur. Ex parte conversations to resolve a fee dispute between the Dispute Board Member whose invoice is disputed and the disputed Party are prohibited during the Dispute Board's resolution of the Dispute, and any such conversations shall be deferred until the Disputes Board Decision is final.

### **EXPEDITED PROCEDURES FOR FAST-TRACK DISPUTES**

#### **E-1. Serving of Notices**

In addition to notice provided pursuant to Section 18.11 of the CMA, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree, a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

## **E-2. Exchange of Exhibits**

At least two Business Days prior to the hearing, the Parties shall exchange copies of all exhibits they intend to submit at the hearing. The Disputes Board shall resolve disputes concerning the exchange of exhibits.

## **E-3. Proceedings on Documents**

Where no Party's claim exceeds \$10,000, exclusive of interest and dispute resolution costs, and other cases in which the Parties agree, the Dispute shall be resolved by submission of documents, unless either Party requests an oral hearing, or the Disputes Board determines that an oral hearing is necessary. The Disputes Board shall establish a fair and equitable procedure for the submission of documents.

## **E-4. Date, Time, and Place of Hearing**

In cases in which a hearing is to be held, the Disputes Board shall set the date, time, and place of the hearing, to be scheduled to take place within 10 days after appointment of the Disputes Board Chair. The Disputes Board will notify the Parties in advance of the hearing date.

## **E-5. The Hearing**

(a) Each Party shall have equal opportunity to submit its proofs and complete its case.

(b) The Disputes Board shall determine the order of the hearing and schedule and control its duration consistent with the objective of expedited resolution of the Fast-Track Dispute, and may require further submission of documents within two days after the hearing. For good cause shown, the Disputes Board may schedule additional hearings within seven Business Days after the initial hearing.

(c) Any Party desiring a stenographic record may arrange for one pursuant to the provisions of R-18.

## **E-6. Time of Award**

Unless otherwise agreed by the Parties, the Disputes Board Decision shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

## **PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES**

### **L-1. Administrative Conference**

Prior to the commencing proceedings to resolve a Dispute, the Disputes Board shall, unless the Parties agree otherwise, conduct an administrative conference with the Parties and/or their attorneys or other representatives by conference call within 7 days after the Disputes Board Chair is appointed. In the event the Parties are unable to agree on a mutually acceptable time for the administrative conference, the Dispute Board shall, upon three Business

Days' advance notice, schedule the administrative conference for 9 a.m. (CST) on the fourth Business Day and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the following purpose of obtaining additional information about the nature and magnitude of the Dispute and the anticipated length of hearing and scheduling and for such additional purposes as the Parties or the Disputes Board may deem appropriate.

## **L-2. Preliminary Hearing**

As promptly as practicable after the appointment of the Disputes Board, a preliminary hearing shall be held among the Parties and/or their attorneys or other representatives and the Disputes Board. If the Parties agree, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

- (a) service of a detailed statement of the Dispute, including damages and defenses, a statement of the issues asserted by each Party and positions with respect thereto, and any legal authorities the Parties may wish to bring to the attention of the Disputes Board;
- (b) stipulations to uncontested facts;
- (c) the extent to which discovery shall be conducted, in light of the special discovery and evidentiary rules set forth above in R-23(d);
- (d) exchange and premarking of those documents which each Party believes may be offered at the hearing;
- (e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;
- (f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;
- (g) the extent to which hearings will proceed on consecutive days;
- (h) whether a stenographic or other official record of the proceedings shall be maintained;
- (i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and
- (j) the procedure for the issuance of subpoenas.

By agreement of the Parties and/or order of the Disputes Board Chair, the pre-hearing activities and the hearing procedures that will govern the Disputes Board's proceedings will be memorialized in a scheduling and procedure order (each, a "**Scheduling and Procedure Order**"). Nothing in any Schedule and Procedure Order shall conflict with the procedures established under Section 16.3 of the CMA.

## **L-3. Management of Proceedings**

(a) The Disputes Board shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases, provided, however, that no action by the Disputes Board under this L-3 shall conflict with the procedures established under Section 16.3 of the CMA.

(b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control if the Disputes Board(s) consider such production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a Large, Complex Commercial Case.

(c) The Parties may conduct discovery, subject to any limitations deemed appropriate and set forth in the discovery control plan and/or the Scheduling and Procedure Order. If the Parties cannot agree on production of documents and other information, the Disputes Board, consistent with the expedited nature of arbitration, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing 10 Business Days prior to the hearing unless the Disputes Board Chair determines otherwise.

(e) The exchange of information pursuant to this rule, as agreed by the Parties and/or directed by the Disputes Board Chair, shall be included within the Scheduling and Procedure Order.

(f) The Disputes Board is authorized to resolve any disputes concerning the exchange of information.

(g) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

## EXHIBIT 16

### LIQUIDATED DAMAGES FOR LANE CLOSURES

1. Liquidated damages (“Liquidated Damages for Lane Closures”) shall be assessed for certain Lane Closures during the CMA Term in accordance with this Exhibit 16.

2. Liquidated Damages for Lane Closures shall be assessed for any period during which one or more lanes in the main lanes, ramps, frontage roads, cross streets and on direct connectors are closed or do not meet the minimum requirements for permitted Lane Closures set forth in Table 18-1 of the Technical Provisions.

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

4. Maintenance Contractor shall not be assessed Liquidated Damages for Lane Closures for rolling lane closures for the purpose of construction and/or maintenance activities above closed lane(s) if the rolling lane closure is less than 15 minutes in duration during Period B and provided that the queued traffic can be dispersed within 10 minutes and returned to the same Level of Service (LOS) as existed prior to the commencement of the Maintenance Services. If the traffic queue resulting from the Maintenance Services cannot be dispersed within 10 minutes, then liquidated damages shall be assessed in accordance with Table 16-1. Liquidated damages for rolling lane closures shall also be assessed in accordance with Table 16-1 if any rolling lane closure, including moving lane closures, is greater than 15 minutes in duration, is for any purposes other than overhead work, or if the traffic queue resulting from a lane closure cannot be disbursed within 10 minutes.

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

6. The amount of the Liquidated Damages for Lane Closures during any period in which all lanes in one direction (including main lanes, ramps, frontage roads, cross streets and direct connectors) are closed shall be based on the increase in road user cost caused by detouring and traffic delay using the directional average hourly volume available from traffic count data for the corresponding time and day(s) of the week (excluding holidays) from the previous full month for the location.

**Table 16-1: Liquidated Damages for partial lane closures by volume per hour**

<b>Directional Traffic Volume (Hourly)</b>	<b>Liquidated Damage per hour for a partial lane closure (2012\$)</b>
< 1,900	\$ 0
1900 to 1999	\$100
2000 to 2099	\$200
2100 to 2199	\$300
2200 to 2299	\$400
2300 to 2399	\$500
2400 to 2499	\$700
2500 to 2599	\$800
2600 to 2699	\$1,000
2700 to 2799	\$1,100
2800 to 2899	\$1,300
2900 to 2999	\$1,500
3000 to 3099	\$1,700
3100 to 3199	\$1,900
3200 to 3299	\$2,100
3300 to 3399	\$2,300
3400 to 3499	\$2,500
3500 to 3599	\$2,800
3600 to 3699	\$3,000
3700 to 3799	\$3,300
3800 to 3899	\$3,500
3900 to 3999	\$3,800
4000 or more	\$4,100