



I-35E PHASE 2 PROJECT

CAPITAL MAINTENANCE CONTRACT TERM SHEET

This document provides background information and summarizes certain major terms of the Capital Maintenance Contract (“CMC”) for maintaining the I-35E Phase 2 Project (“Project”), which may be entered into by the Texas Department of Transportation (“TxDOT”), and a firm (“DB Contractor”). The DB Contractor will be the same entity as the DB Contractor under the Design-Build Contract (“DBC”) for the Project.

This document is intended as a general description of certain anticipated major terms of the CMC, which is comprised of the Capital Maintenance Agreement (“CMA”), the CMA General Conditions Items 1-8 and all exhibits and incorporated documents, as further described below. The terms described in this term sheet are subject to revision by TxDOT in its sole discretion, and this document is not a restatement or interpretation of the CMC requirements. Further, there are numerous details, exceptions and qualifications associated with the anticipated provisions described below that can only be ascertained by reviewing the CMC itself.

CONTRACT FRAMEWORK	
Commencement of CMC and Maintenance Terms	<p>The CMC provides for a five year Initial Maintenance Term (commencing at Final Acceptance) and TxDOT will also have the option to implement two subsequent five year Maintenance Terms, up to a maximum period of 15 years. TxDOT has the right to terminate the CMC, without financial penalty, at the conclusion of the first year of the Initial Maintenance Term, by providing the DB Contractor with 180 days' notice of such termination. The DBC includes a one-year general warranty (materials and workmanship) concurrent with the CMC for all Elements of the Work. The CMC is executed at the same time as the DBC.</p> <p>TxDOT must provide at least 180 days' notice to the DB Contractor prior to the commencement of each of the second and third Maintenance Terms if TxDOT wishes to implement the subsequent Maintenance Term or the CMC will terminate at the end of the then-current Maintenance Term and the parties will have no liability to one another under the CMC.</p>
CMC Documents and Order of Precedence	<p>Portions of the DBC are referenced in the CMC Documents and define requirements for Renewal Work, including the quality assurance and quality control requirements for design and construction work.</p> <p>The CMC Documents and order of precedence are as follows:</p> <ul style="list-style-type: none"> ▪ Amendments and Change Orders to the CMC (except for amendments to the CMA Specification Item 9 (the "CMA Specification")); ▪ CMA and all exhibits and amendments; ▪ CMA General Conditions, Items 1-8 (the "CMA General Conditions"); ▪ Portions of the DBC included by reference; ▪ Change Orders to the CMA Specification and all attachments thereto; ▪ The CMA Specification and all attachments thereto; ▪ Portions of the Design-Build Specifications from the DBC included by reference; and ▪ Proposal commitments exceeding requirements of other CMC Documents. <p>The Reference Information Documents (RIDs) are listed in the CMC. The DB Contractor may rely on the RIDs only to the extent expressly set forth in the CMC.</p>

Contractual Entity Undertaking Maintenance	Although the DB Contractor may subcontract some or all of the Maintenance Services to a Maintenance Firm meeting specified requirements, the entity contractually responsible for maintenance under the CMC is the same entity as the DB Contractor under the DBC.
MAINTENANCE SCOPE, LIMITS, AND RESPONSIBILITIES	
Scope of Maintenance Services	<p>The Maintenance Services include the following elements (Maintained Elements):</p> <ul style="list-style-type: none"> ▪ Embankment and cut slopes; ▪ Drainage facilities; ▪ Pavement and shoulders; and ▪ Structures.
Services to be Provided by Others	<p>The following services are to be provided by TxDOT or third parties:</p> <ul style="list-style-type: none"> ▪ Maintenance of all elements that are not Maintained Elements such as signs, ITS, lighting, and guardrail; ▪ Maintenance of pump stations; ▪ Maintenance of items embedded or attached to pavement such as markings and delineators, unless the need to maintain or replace such items is caused by defects in the Maintained Elements; ▪ Sweeping, mowing, amenity, snow, and ice control; ▪ Incident response, safety patrol, and clearance of debris from the roadway; and ▪ Acting as the primary point of contact with the public.
Maintenance Limits	The DB Contractor is required to maintain the Project within Maintenance Limits. The extent of Maintenance Limits is subject to update by the DB Contractor to be consistent with the Final Design and must be included in the Maintenance Management Plan.
MANAGEMENT PLAN, PERSONNEL, AND RECORDS MANAGEMENT	
Maintenance Management Plan (“MMP”)	No later than 120 days before the scheduled Initial Maintenance Term Commencement Date, the DB Contractor must prepare and submit for approval the MMP governing the Maintenance Services to be performed after Final Acceptance. The MMP must conform to a TxDOT-provided template (set forth in the CMC). The MMP must be updated annually

	and submitted for approval 60 days before each anniversary of the Initial Maintenance Term Commencement Date.
Quality Assurance and Quality Control	As part of the MMP, the DB Contractor must prepare and submit a Maintenance Quality Management Plan. Maintenance Services quality control and quality assurance, including inspections, testing to meet performance requirements, materials testing, and verification of the completeness and accuracy of all maintenance records, is the responsibility of the DB Contractor's Maintenance Quality Manager. All materials and workmanship used in performance of the Maintenance Services is subject to oversight, inspection, and owner verification testing by TxDOT.
Employment of PSQAF and IQF	Where the Maintenance Services require design and construction work, the requirements of the DB General Conditions and Design-Build Specifications in the DBC apply. TxDOT may, at its sole discretion, require the DB Contractor to employ a Professional Services Quality Assurance Firm ("PSQAF") or Independent Quality Firm ("IQF") fulfilling the requirements of the DB General Conditions and Design-Build Specifications in the DBC.
Records and Documentation Including Maintenance Management System	The DB Contractor must maintain all records and documents in accordance with the Texas State Records Retention Schedule. Records must include asset inventory, description, installation date and repair history, the date and time of identification of Defects and their repair and the date and time of inspections. The DB Contractor must implement and make available to TxDOT (using real time dedicated access for TxDOT employees) a Maintenance Management System ("MMS") to record all Maintenance Records. Records stored in the MMS must be updated within specified periods.
Maintenance Personnel	<p>The Maintenance Manager must attend all inspections and quarterly meetings and be available whenever any Renewal Work is undertaken. The Maintenance Manager must be available to respond to TxDOT or TxDOT's Authorized Representatives. The Maintenance Manager has full responsibility for implementing the maintenance obligations and causing the Maintenance Services to be performed in accordance with the CMC Documents. The DB Contractor must designate one or more field representative(s) who have on-site field and office authority to represent and act for the DB Contractor. A field representative must be present on the job site at all times while Maintenance Services are in progress.</p> <p>Subject to TxDOT's approval, the DB Contractor may replace the Maintenance Manager given 30 days' advance notice.</p> <p>Other personnel for whom qualifications, experience and duties are defined within the CMC are:</p>

	<ul style="list-style-type: none"> ▪ Maintenance Safety Manager; and ▪ Maintenance Quality Manager.
PERFORMANCE REQUIREMENTS AND INSPECTIONS	
Performance Requirements	<p>The DB Contractor must meet or exceed specified Performance Requirements for the Maintained Elements throughout the Maintenance Period, for example requirements for pavement ride quality and rutting must be achieved. The DB Contractor must mitigate Category 1 Defects that have an immediate or imminent health or safety hazard, risk of structural failure, damage to property, or damage to environment, including potholes and edge drop-offs, within 24 hours and provide a permanent repair within 90 days. A longer defect repair period of up to six months is provided to repair all other non-hazardous Defects.</p> <p>At the end of the Maintenance Period, the DB Contractor must perform the Maintenance Services so that every Defect, including any Defect first identified within the final six months of the Maintenance Period, has been permanently repaired before the end of the Maintenance Period.</p>
Obligation to Perform Renewal Work	<p>The DB Contractor must perform and complete Renewal Work as necessary to meet the Performance Requirements. DB Contractor shall complete all Renewal Work:</p> <ul style="list-style-type: none"> ▪ Prior to the expiration of each Maintenance Term; or ▪ If the CMC is terminated for any reason prior to the expiration of the applicable Maintenance Term, within 90 days after the effective date of termination. <p>All Renewal Work and permanent repair must address the root cause of any Defect and must be sufficient to prevent recurrence of the Defect.</p>
Inspections and Defects	<p>The DB Contractor must identify and record Defects through inspections, notifications by TxDOT, and reports or complaints by third parties. General inspections (drive-through of all parts of the Project) which TxDOT may attend will be conducted at least monthly.</p> <p>The DB Contractor will conduct certain specialist inspections for drainage elements biennially.</p> <p>The DB Contractor must train its personnel to identify whether a Defect is to be classified as Category 1 (requiring hazard mitigation). TxDOT may at any time notify the DB Contractor of the existence of Category 1 Defects.</p> <p>TxDOT will conduct the routine biennial inspections of structures and bridge class drainage Maintained Elements and the DB Contractor must use these results supplemented by the other inspections to plan and implement Maintenance Services to structures. TxDOT will conduct the annual specialist pavement inspections and provide the results to the</p>

	DB Contractor who will be responsible for analysis of the data and identification of Defects. DB Contractor must promptly request joint inspection for on-site verification of any disputed specialist inspections results.
Discriminatory and Non-Discriminatory Maintenance Changes	The DB Contractor will be entitled to compensation for increases in the costs of Maintenance Services in the event of a Discriminatory Change. Discriminatory Changes will be treated as TxDOT-Directed Changes. The performance of the Maintenance Services in accordance with the latest adopted version of the standards, specifications, manuals and guidelines is a Non-Discriminatory Change for which the DB Contractor shall be entitled to compensation only for additional costs related to Renewal Work where TxDOT directs DB Contractor to implement the Non-Discriminatory Change (or DB Contractor is otherwise obligated by Law to implement such Non-Discriminatory Changes) prior to the date when DB Contractor performs or is scheduled to perform Renewal Work (if any) on the affected Maintained Element.
Maintenance Services Report	For each quarterly period during the Maintenance Period, the DB Contractor must submit to TxDOT a Maintenance Services Report meeting specified requirements. The Maintenance Services Report is submitted to TxDOT on or before the 10th day of the month following the end of the quarterly period.
Transition Plan	At least 60 Days before the end of the Maintenance Period, or upon termination of the CMC, the DB Contractor must prepare and implement a Maintenance Transition Plan to the satisfaction of TxDOT.
PRICE, PAYMENTS, INSURANCE AND SECURITY	
Price and Payment	The Maintenance Price is paid in monthly installments. The annual Maintenance Price will be adjusted based on changes in the Consumer Price Index. The price adjustments will commence on the Initial Maintenance Services Commencement Date and continue annually thereafter.
No Capping or Advancing Payments (except as set forth below under "Pavement Renewal Work Payment")	Except for certain specified Pavement Renewal Work, DB Contractor will be paid according to the Maintenance Price schedule, and scheduled payments will neither be increased or decreased based upon the actual work performed during each payment period.

Pavement Renewal Work Payment	DB Contractor may be entitled to receive Pavement Renewal Work Payments for certain Pavement Renewal Work (Renewal Work required for flexible pavement) that meets the requirements set forth in the CMC Documents. The amount of the Pavement Renewal Work Payments shall be based on the actual quantity of Pavement Renewal Work performed, not to exceed in any year the Cumulative Pavement Renewal Work Amount set forth in the Proposal.
Payment Withholding	TxDOT may withhold from any Maintenance Price payment in the event of Nonconforming Work, including failure to perform repairs to Defects within the specified time periods. TxDOT may also withhold payment for Liquidated Damages for Lane Closures and Lane Rental Charges. TxDOT is entitled to recover its costs from the DB Contractor if TxDOT performs any obligations under the CMC Documents that the DB Contractor has failed to perform.
Retainage	If the Maintenance Bonds expire without renewal or otherwise are no longer in effect during the Maintenance Period, TxDOT shall deduct 10% of the amount owing from each payment to be made to the DB Contractor for the Maintenance Services until (a) replacement Maintenance Security is provided to TxDOT or (b) 60 days after the warranty period.
Payment Obligations	TxDOT's obligations to make any payments are subject to appropriation by the Legislature.
Insurance	The DB Contractor is responsible for maintaining insurance meeting TxDOT standards. Insurance premiums (subject to TxDOT approval) will be reimbursed by TxDOT as a pass-through.
Maintenance Security Amounts	<p>The DB Contractor must provide and maintain Maintenance Security to guarantee its performance of its obligations under the CMC.</p> <p>The DB Contractor may provide either a letter of credit ("Maintenance Letter of Credit") or performance and payment bonds ("Maintenance Bonds"), having a term equal to or greater than the then-current Maintenance Term.</p> <p>A Maintenance Letter of Credit must be in an amount calculated using the same formula as the 5-year Maintenance Bonds.</p> <p>5-year Maintenance Bonds must be for the sum of the five escalated annual Maintenance Price payments for each year in the Maintenance Term.</p>

Maintenance Security Replacement	After issuance by TxDOT of each of Maintenance NTP2 and Maintenance NTP3 and no later than 30 days before expiration of the then outstanding Maintenance Security, the DB Contractor shall deliver (a) replacement Maintenance Security or (b) evidence of renewal, and any necessary adjustment of the amount, of the then outstanding Maintenance Security.
Failure to provide Timely Replacement of Maintenance Security	<p>If the DB Contractor uses Maintenance Bonds and fails to timely replace or renew them (and any required guaranty), TxDOT may draw down as cash collateral on the current Maintenance Bonds:</p> <ul style="list-style-type: none"> ▪ For the Second Maintenance Term the lesser of 20% of the amount of the performance bond or a specified maximum draw down amount. ▪ For the Third Maintenance Term the lesser of 10% of the amount of the performance bond or 50% of the specified Maximum Draw-Down Amount. <p>If the DB Contractor uses a Maintenance Letter of Credit and fails to timely provide replacement or renewal Maintenance Security, TxDOT shall have the right to draw down on the full face amount of the Maintenance Letter of Credit as cash collateral.</p>
Guaranty	One or more guarantees of the DB Contractor's obligations from a Guarantor(s) approved by TxDOT will be required if the DB Contractor (i) identified a guarantor in its QS or Proposal or was required by TxDOT, in its discretion, to include a guarantor during the procurement of the Project, (ii) is a Newly Formed or limited liability entity, or (iii) fails to meet certain net worth requirements.
CHANGE ORDERS AND RISK ALLOCATION	
Change Orders	<p>The DB Contractor is entitled to increased costs for work completed as directed by TxDOT due to:</p> <ul style="list-style-type: none"> ▪ A Force Majeure event; ▪ Certain Damage to the Project caused by third parties and listed perils; ▪ TxDOT-Directed Changes; ▪ Discovery of Hazardous Materials within Project ROW; ▪ Certain Non-Discriminatory Changes, subject to the conditions set forth in the CMA General Conditions; and ▪ Certain additional costs directly attributable to uncovering, removing, and restoring the work.

	TxDOT may issue a unilateral Change Order with price adjustment to be determined later or a Time and Materials Change Order for the directed work.
Limitations on Change Orders	<p>Any increase in the Maintenance Price shall exclude:</p> <ul style="list-style-type: none"> ▪ Costs caused by the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract, or Governmental Approval by any DB Contractor-Related Entity; ▪ Costs to the extent that they are unnecessary or could reasonably be avoided by the DB Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Maintenance Services, or to other activities unrelated to the Maintenance Services; and ▪ Costs for remediation of any Nonconforming Work.
Traffic (ESAL) Risk	The DB Contractor is responsible for designing the pavement for all traffic loads. TxDOT provides its estimates of truck traffic (ESALs) as a Reference Information Document under the DBC which must be used as a minimum for design purposes, but TxDOT does not warrant this information. The DB Contractor is responsible for all maintenance of the pavement to meet the performance requirements regardless of the actual truck traffic loading during the Maintenance Period.
Government Approvals	The DB Contractor is responsible for obtaining and complying with all required Governmental Approvals.
Risk of Loss	The DB Contractor bears the risk of loss, damage, theft and vandalism to materials, parts, equipment, safety devices, components, tools, supplies, and utilities.
Nonconforming Work	TxDOT may oversee, inspect and test all materials and details of the work and may require the DB Contractor to remedy and correct any Nonconforming Work. Alternatively, TxDOT may remedy or cure Nonconforming Work and deduct costs from the amounts due to the DB Contractor.
BUSINESS RISKS	
Termination	<p>TxDOT may terminate for convenience at any time.</p> <p>In the event of a termination for convenience after the first year of the Initial Maintenance Term, TxDOT must pay the DB Contractor amounts owing for services performed through the termination date plus</p>

	<p>reasonable costs to terminate subcontracts not assigned to TxDOT and other reasonable settlement costs.</p> <p>If TxDOT elects not to implement the second or third Maintenance Term, it shall not be considered a termination for convenience and TxDOT shall not incur any termination costs.</p>
Traffic Control Plan and Lane Rental Charges	<p>The DB Contractor must submit a Traffic Control Plan before implementing any Lane Closure. TxDOT has the right to refuse such closure, for example if it would coincide with a closure already planned by TxDOT or another entity. The DB Contractor agrees to pay TxDOT Lane Rental Charges for Lane Closures in an amount that varies by time of day and by number of lanes closed to encourage the DB Contractor to carry out Maintenance Services at times that will be least disruptive. The DB Contractor is excused from charges for matters outside of its control such as Force Majeure Events.</p>
CMC Warranties	<p>The Warranties require that the Maintenance Services and all design and construction work performed in connection with such services must meet all the CMC requirements, be free from Defects and fit for purpose. The Warranty Period for Maintenance Services commences at the conclusion of the Maintenance Period. The Warranties apply to all Maintenance Services for each Maintenance Term during which the Maintenance Services were provided. All Warranties remain in effect until one year after the conclusion of the final Maintenance Term. For Maintained Elements repaired, replaced or corrected under the Warranty, such Elements are warranted for a further period, not to exceed two years after the expiration or termination of this CMC.</p>
Default	<p>The CMC defines and provides for defaults and remedies. Examples of default include failure to continuously and diligently perform the Maintenance Services, failure to provide the required bonds or letter of credit, failure to make payment when due to a Subcontractor or Supplier.</p>
Indemnification	<p>The CMC includes indemnities in favor of TxDOT and the State of Texas.</p>
DISPUTE RESOLUTION	
Dispute Resolution	<p>Informal resolution procedures are prerequisites and conditions to resolution of Disputes under the Dispute Resolution Procedures set forth in the CMC.</p> <p>After the conclusion of the Informal Resolution Procedures, if the Dispute was not resolved to the Parties' satisfaction: (a) the Parties may mutually agree to initiate mediation, or (b) either Party may refer the Dispute to the formal Dispute Resolution Procedures.</p>

	<p>The formal Dispute Resolution Procedures include the contract claims process established pursuant to Texas Transportation Code Section 201.112 and Title 43, Texas Administrative Code, Section 9.2.</p> <p>The Dispute Resolution Procedures do not apply to certain Ineligible Matters.</p>
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