

**SH 249 EXTENSION PROJECT
DRAFT COMPREHENSIVE MAINTENANCE AGREEMENT
TERM SHEET**

This document provides background information and summarizes the major terms of the Comprehensive Maintenance Agreement (“COMA”) for maintaining the State Highway 249 Extension (the “Project”), which may be entered into by the Texas Department of Transportation (“TxDOT”) and the selected Proposer (“Maintenance Contractor”). The Maintenance Contractor will be the same entity or have the same equity participants as the Design-Build Contractor for the Project. This document is intended as a general description of certain major contract terms and is not a restatement or interpretation of the contract requirements. There are numerous details, exceptions and qualifications associated with the provisions described below which can only be ascertained by reviewing the COMA itself.

DESCRIPTION OF SERVICES

The Maintenance Services consist of capital maintenance, routine maintenance, repair, upkeep, renovation and potential renewal work from right of way (“ROW”) to ROW of approximately 24 miles of a new tolled facility consisting of up to four new toll lanes (two in each direction) from FM 1774 in Pinehurst, Texas (Montgomery County) to FM 1774 near Todd Mission, Texas in Grimes County (Segment 1), and two new toll lanes (one in each direction) with periodic passing lanes (Super 2 configuration) from FM 1774 near Todd Mission, Texas to SH 105 near Navasota, Texas in Grimes County (Segment 2). TxDOT intends for this COMA to consist of a mandatory five-year term with up to four five-year options, at TxDOT’s sole discretion, with a lump sum fixed price for each year of an option period obligating the Maintenance Contractor to perform all services necessary to maintain the project in accordance with the conditions set forth in the COMA and in a manner satisfactory to TxDOT, for the Maintenance Price, subject only to certain specified limited exceptions.

CONTRACT OVERVIEW	
Term of Maintenance Agreement	<p><u>Initial Term (NTP1)</u>: Comprehensive maintenance services start upon Substantial Completion of the Project. Term is for 5 years.</p> <p><u>Second Term (NTP2)</u>: Starts at end of Initial Term. Term is for 5 years and ends 10 years after commencement of the Initial Term.</p> <p><u>Third Term (NTP3)</u>: Starts at end of Second Term and ends 15 years after commencement of Initial Term.</p> <p><u>Fourth Term (NTP4)</u>: Starts at end of Third Term and ends 20 years after commencement of Initial Term.</p> <p><u>Fifth Term (NTP5)</u>: Starts at end of Fourth Term and ends 25 years after commencement of Initial Term.</p>
Termination by TxDOT without Liability	<p>TxDOT has the right not to issue any Maintenance notice to proceed (“NTP”). Failure by TxDOT to issue Maintenance NTP1 within 180 days prior to the Scheduled Substantial Completion Deadline of the Project shall be deemed a termination of the COMA. In such event, the COMA will be terminated without any liability on the part of the parties to one another under the COMA.</p>
COMA Documents	<p>The Contract Documents include:</p> <ul style="list-style-type: none"> • Comprehensive Maintenance Agreement and all exhibits and amendments; • Maintenance Specification; and • Proposal to the extent it meets or exceeds requirements of other Contract Documents.
Areas to be Maintained	<p>Maintenance Contractor is required to maintain the Project from ROW to ROW.</p>
Scope of Services	<p>The Maintenance Contractor shall furnish all maintenance services throughout the term of this COMA. Maintenance services shall include, but will not be limited to:</p> <ul style="list-style-type: none"> • Incident response; • Roadway operations; • Pavement damage and/or failures; • Pavement markings, guardrail and signage; • Drainage systems; • Structures; • Mowing, application of herbicides and debris removal; • Slope failure; and • Weather events.

	<p>Prior to the Initial Maintenance Commencement Date, the Maintenance Contractor must prepare and submit for approval a Maintenance Management Plan addressing the comprehensive maintenance to be completed on the Project for the next three years. Such plan shall cover a rolling three-year period and must be updated annually. Not later than 60 days after each anniversary of the Initial Maintenance Commencement Date, Maintenance Contractor shall deliver to TxDOT a written report of the Comprehensive Maintenance performed in the immediately preceding year.</p>
Government Approvals	<p>The Maintenance Contractor is responsible for obtaining and complying with all required Governmental Approvals.</p>
QA/QC	<p>The Maintenance Contractor must prepare and submit a Maintenance Services Quality Control Plan conforming to the Scope of Work. Construction quality control (“QC”) and quality assurance (“QA”), including inspection and materials testing, will be the responsibility of Maintenance Contractor’s Maintenance QC Manager. All materials and each part or detail of the Maintenance Services shall also be subject to oversight, inspection and owner verification testing by TxDOT and other Persons designated by TxDOT.</p>
<p>PRICE, PAYMENTS AND SECURITY</p>	
Price and Payment	<p>The Maintenance Price is paid in monthly installments, payable in arrears pursuant to Draw Requests submitted on the first day of each month of such Maintenance Term year. The annual Maintenance Price (“MP”) will be escalated or reduced based on changes in the Consumer Price Index (“CPI”) and the Engineering News Record Construction Cost Index (“ENR CCI”).</p>
Retainage	<p>The Maintenance Contractor shall provide a retainage bond in the amount of 10% of the Maintenance Price, to be used as a guaranty for the protection of any claimants and TxDOT for overpayments, Liquidated Damages, and other deductions or damages owed by the Maintenance Contractor in connection with the COMA.</p>
Insurance	<p>The Maintenance Contractor is responsible for maintaining insurance meeting TxDOT standards. Additional insurance may be required in the event of any Unplanned Capital Maintenance.</p>
Bonds	<p>Performance and Payment Bonds are required, each having a term equal or greater to the then-current Maintenance Term.</p>
Guaranty	<p>TxDOT may, in its discretion based upon the review of the Financial Information provided in the Request for Qualifications (“RFQ”) and Request for Proposals (“RFP”), specify that an acceptable parent company or other affiliate company act as a Guarantor to the Maintenance Contractor by providing a guarantee with respect to the Maintenance Contractor’s financial capabilities in a form acceptable to TxDOT. In addition, the Maintenance Contractor may be required to provide a guaranty if minimum net worth requirements are not met during the term of the COMA.</p>

STAFFING AND REPORTING	
Key Personnel	<p>Individuals filling Key Personnel roles shall maintain active involvement in the prosecution and performance of the Maintenance Services. The Maintenance Contractor must provide mobile phone numbers and email contact information for TxDOT to contact Key Personnel 24/7.</p> <p>Liquidated damages will be assessed for unavailability of the following key personnel (except due to injury, death, retirement or resignation with TxDOT approval of the replacement):</p> <ul style="list-style-type: none"> • Lead Maintenance Manager <p>The COMA will include restrictions on changes to key maintenance personnel.</p>
DBE	<p>The Maintenance Contractor must comply with TxDOT's disadvantaged business enterprise ("DBE") Program in effect as of the date of Maintenance NTP1, including undertaking good faith efforts to encourage DBE participation in the Maintenance Services and maintaining and submitting documentation as required by the TxDOT DBE program.</p>
Records And Documentation	<p>The Maintenance Contractor must maintain all records and documents in accordance with the Texas State Records Retention Schedule.</p>
CHANGES	
Change Orders	<p>The Maintenance Contractor is entitled to increased costs due to:</p> <ul style="list-style-type: none"> • A Force Majeure event. • TxDOT-Directed Changes. • Discovery of Hazardous Materials within Project ROW <p>TxDOT may issue a unilateral Change Order with price adjustment to be determined later or a time and materials change order.</p>
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 Maintenance Contractor-Related Entity; • Costs to the extent that they are unnecessary or could reasonably be avoided by Maintenance 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.

Non-Conforming Work	TxDOT may oversee, inspect and test all materials and details of the work and may require Maintenance Contractor to remedy and correct any non-conforming work. Alternatively, TxDOT may remedy or cure non-conforming work and deduct costs from the amounts due to Maintenance Contractor.
BUSINESS RISKS	
Termination	TxDOT may terminate for public convenience at any time. TxDOT must pay the Maintenance Contractor amounts owing for services performed through the termination date plus reasonable costs to terminate subcontracts not assigned to TxDOT and other reasonable settlement costs, which in aggregate will not exceed the price to complete services for the remainder of the Maintenance Period.
Liquidated Damages	The Maintenance Contractor agrees to pay TxDOT Liquidated Damages for: <ol style="list-style-type: none"> 1. <u>Lane Rentals</u>: TxDOT anticipates that the Maintenance Contractor will be charged lane rental fees as specified in the COMA; 2. Unavailability of Key Personnel as identified in the Agreement; 3. Failure to meet Performance Standards; and 4. Delays to schedule activities.
Warranties	The Warranty Period for Maintenance Services shall commence at the conclusion of the Maintenance Term during which the Maintenance Services were provided. All Warranties shall remain in effect until one year after the conclusion of the final Maintenance Term. Extended Warranties apply to repaired, replaced or corrected Work, not to exceed two years after the expiration or termination of this COMA.
Handback	The COMA will include requirements for the handback of the maintenance of the Project to TxDOT at the end of the term, including standards and Asset Scores that must be met. The Maintenance Contractor may be required to provide security for its handback obligations.
Transfer Protocol	The Maintenance Contractor, within 60 Days after issuance by TxDOT of Maintenance NTP1, shall submit to TxDOT, for TxDOT's review and approval, a Maintenance Transition Plan. At the expiration of the Maintenance Term, or any earlier termination of the COMA, Maintenance Contractor shall ensure and certify that the Maintenance Elements meet the Asset Condition Score requirements.
Default	The COMA defines and provides for defaults and remedies.
Indemnification	The COMA will include indemnities in favor of TxDOT and the State of Texas.

<p>Design-Build Agreement Provisions Incorporated by Reference</p>	<p>Portions of the Design-Build Agreement (“DBA”) and Technical Provisions are referenced in the COMA Documents for the purpose of defining requirements of the COMA Documents applicable to design and construction. The DBA and Technical Provisions shall be deemed incorporated in the COMA Documents to the extent that they are so referenced, with the same order of priority as the COMA Document in which the reference occurs.</p>
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