

**SH 360 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 360 (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 and renovation of the Project which is approximately 9.2 miles in length, consisting of tolled lanes in each direction from approximately E. Sublett Road/Camp Wisdom Road to US 287, in addition to frontage road and intersection improvements. TxDOT intends for this COMA to compose of three five-year options, 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 First Term. Term is for 5 years and ends 10 years after commencement of the First Term.</p> <p><u>Third Term (NTP3)</u>: Starts at end of Second Term and ends 15 years after commencement of First Term.</p>
TERMINATION BY TxDOT WITHOUT LIABILITY	<p>TxDOT has the right not to issue any Maintenance 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 • 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 right of way to right of way.</p>
SCOPE OF SERVICES	<p>The Maintenance Contractor shall furnish all Maintenance Services throughout the term of this COMA, with the exception of frontage road signals and lighting, including installation, repair, replacement and coordination with Project Cities for which TxDOT shall be responsible.</p> <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 covers 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> <p>For major design or construction work, the Maintenance Contractor must comply with the requirements in the DB Agreement.</p>
GOVERNMENT	<p>The Maintenance Contractor is responsible for obtaining and</p>

APPROVALS	complying with all required Governmental Approvals.
QA/QC	The Maintenance Contractor must prepare and submit a Maintenance Services Quality Control Plan conforming to the Scope of Work. Construction QC and 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.
PRICE, PAYMENTS AND SECURITY	
PRICE AND PAYMENT	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 Engineering News Record Construction Cost Index (ENR CCI).
RETAINAGE	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.
INSURANCE	The Maintenance Contractor is responsible for maintaining insurance meeting TxDOT standards. Additional insurance may be required in the event of any Unplanned Capital Maintenance.
BONDS	Performance and Payment Bonds are required, each having a term equal or greater to the then-current Maintenance Term.
GUARANTY	TxDOT may, in its discretion based upon the review of the Financial Information provided in the RFQ and 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.
UNPLANNED CAPITAL MAINTENANCE	In connection with the performance of any unplanned capital maintenance or Change Orders, the Maintenance Contractor shall procure and maintain (a) the insurance deemed appropriate by TxDOT in its sole discretion and (b) payment and performance bonds all in the full amount of the Unplanned Capital Maintenance or Change Order as determined by TxDOT in its sole discretion; <u>provided, however</u> , that subject to applicable law, TxDOT may, in its sole discretion, lower the level of bonding required.

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"> • Maintenance Manager • Maintenance QC Manager <p>The COMA will include restrictions on changes to key maintenance personnel.</p>
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DBE	<p>The Maintenance Contractor must comply with TxDOT's 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>
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RECORDS AND DOCUMENTATION	<p>The Developer must maintain all records and documents in accordance with the Texas State Records Retention Schedule.</p>
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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>
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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 Contactor-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.
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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. Lane Closures in an amount set forth in the COMA as deemed compensation to TxDOT resulting from the Maintenance Contractor's failure to meet the Lane Closure restrictions in the Contract Documents; 2. Failure to meet Performance Standards; 3. 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.
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.

DB AGREEMENT PROVISIONS INCORPORATED BY REFERENCE	Portions of the DB Agreement 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 DB Agreement 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.
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