

**IH 35E MANAGED LANES PROJECT
PUBLIC PRIVATE PARTNERSHIP AGREEMENT
CAPITAL MAINTENANCE AGREEMENT TERM SHEET**

This document provides background information and summarizes the major terms of the Capital Maintenance Agreement (CMA) for maintaining the I-35E managed lanes project (Project), which may be entered into by the Texas Department of Transportation (TxDOT) and a Maintenance Contractor (Maintenance Contractor) to be selected. 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 CMA itself.

DESCRIPTION OF SERVICES

The Maintenance Services consist of capital maintenance, repair, upkeep and renovation of the Project. The Parties intend for this CMA to be a fixed price, annual lump sum contract obligating Maintenance Contractor to perform all services necessary to maintain the project in accordance with the conditions set forth in the CMA and in a manner satisfactory to TxDOT, for the Maintenance Price, subject only to certain specified limited exceptions.

CONTRACT OVERVIEW

<p>TERM OF MAINTENANCE AGREEMENT</p>	<p><u>Initial Term (NTP1)</u>: Starts 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>
<p>TERMINATION BY TxDOT WITHOUT LIABILITY</p>	<p>TxDOT has the right not to issue any 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 CMA. In such event, the CMA will be terminated without any liability on the part of the parties to one another under the CMA.</p>
<p>CMA DOCUMENTS</p>	<p>The Contract Documents include:</p> <ul style="list-style-type: none"> • Capital Maintenance Agreement and all exhibits and amendments • Maintenance Specification • Proposal to the extent it meets or exceeds requirements of other Contract Documents
<p>AREAS TO BE MAINTAINED</p>	<p>Maintenance Contractor is required to maintain the following areas:</p> <ul style="list-style-type: none"> • embankment and cut slopes • drainage facilities, catch basins and ditches • pavement and shoulders • structures
<p>SCOPE OF SERVICES</p>	<p>Maintenance Contractor shall furnish all Maintenance Services throughout the term of this CMA, as further described in the RFP documents.</p> <p>Maintenance Contractor must prepare and submit for approval a Maintenance Management Plan addressing annual preventive maintenance, and must update the plan 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 Capital Asset Replacement Work performed in the immediately preceding year.</p> <p>Maintenance Contractor shall perform Maintenance Services: (a) when required by Maintenance Contractor's approved Maintenance Management Plan and updates thereto as</p>

	<p>described in the CMA Documents; and (b) when a Performance Requirement is not met and the required level of performance cannot be achieved by means of routine or preventative maintenance.</p> <p>For major design or construction work, the Maintenance Contractor must comply with the requirements and specifications in the DB Agreement.</p>
GOVERNMENT APPROVALS	Maintenance Contractor is responsible for obtaining and complying with all required Governmental Approvals.
QA/QC	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.
RISK OF LOSS	<p>Maintenance Contractor bears the risk of loss, damage, theft and vandalism to materials, parts, equipment, safety devices, components, tools, supplies and utilities.</p> <p>Maintenance Contractor shall not have the authority or responsibility to assert and pursue any claims against any third party for damage to the Project and shall not be obligated to repair such damage as part of the Maintenance Services. However, Maintenance Contractor shall provide reasonable assistance to, and shall reasonably cooperate with, TxDOT regarding such claims.</p>
PRICE, PAYMENTS AND SECURITY	
PRICE AND PAYMENT	The Maintenance Price is paid in equal 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), commencing on the Initial Maintenance Services Commencement Date and continuing annually thereafter.
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 CMA.

PAYMENT OBLIGATIONS	TxDOT's obligations to make any payments are expressly conditioned upon obtaining project financing funds, project operations funds and other appropriated and approved funding.
INSURANCE	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. During each such period, the amount of each bond shall be equal to 75% of the aggregate sum of the remaining annual Maintenance Price for all years of the applicable Maintenance Term, using the current annual Maintenance Price as the annual Maintenance Price for each year remaining in the Maintenance Term. Separate Maintenance Performance Bonds and Maintenance Payment Bonds shall be provided by Maintenance Contractor in the amount of any outstanding Unplanned Capital Maintenance.
PARENT GUARANTY	A guaranty of the Maintenance Contractor's obligations from a Guarantor approved by TxDOT will be required if the Maintenance Contractor is a newly formed or limited liability entity, if the Maintenance Contractor submitted parent company financial statements in response to the RFQ or RFP or if the Maintenance Contractor fails to meet certain net worth requirements.
UNPLANNED CAPITAL MAINTENANCE	In connection with the performance of any Unplanned Capital Maintenance or Change Orders, 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. Maintenance Contractor must provide phone and pager contact numbers available 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
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	The CMA will include restrictions on changes to key maintenance personnel.
DBE	Maintenance Contractor must comply with TxDOT's DBE Program in effect as of the date of 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.
RECORDS AND DOCUMENTATION	Developer must maintain all records and documents in accordance with the Texas State Records Retention Schedule.
CHANGES	
CHANGE ORDERS	<p>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 Contactor-Related Entity; • (b) 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 • (c) costs for remediation of any Nonconforming Work.
OPTION TO DELETE WORK	TxDOT reserves the right to delete work, perform some or all Maintenance Services or enter special contracts, and negotiate price reduction(s) pursuant to same.
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.
LIQUIDATED DAMAGES	Maintenance Contractor agrees to pay TxDOT Liquidated Damages for Lane Closures in an amount set forth in the CMA as deemed compensation to TxDOT resulting from Maintenance Contractor's failure to meet the Lane Closure restrictions in the Contract Documents.
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 CMA.
TRANSFER PROTOCOL	Maintenance Contractor, within 240 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 CMA, Maintenance Contractor shall ensure and certify that the Maintenance Elements meet the Asset Condition Score requirements.
DEFAULT	CMA defines and provides for defaults and remedies.
INDEMNIFICATION	<p>Maintenance Contractor indemnifies TxDOT for:</p> <p>Errors, omissions, negligence, recklessness, willful misconduct or breach of contract by Maintenance Contractor or any member of Maintenance Contractor Group;</p> <p>Breach of the P3A by the Maintenance Contractor;</p> <p>Failure to comply with applicable laws or governmental approvals by any Maintenance Contractor-Related Entity;</p> <p>Maintenance Contractor's patent or copyright infringement or other misappropriation of trade secrets;</p> <p>Maintenance Contractor's failure to pay sales, use, income and gross receipts taxes;</p> <p>Any stop notices and /or liens and costs to discharge them, including attorneys' fees and costs;</p> <p>Release of hazardous substances on the right of way or elsewhere; release due to acts, omissions, negligence, willful misconduct, recklessness or breach by any Maintenance Contractor-Related Entity;</p> <p>Maintenance Contractor's delay, disruption, inconvenience or interference with work performed by other contractors;</p> <p>Breach or failure to perform an obligation owed to a third person, including Governmental Entities, where performance of the obligation is delegated to the Maintenance Contractor under the CMA.</p>

	<p>Inverse condemnation, trespass, nuisance or similar taking or harm to real property by: (i) the failure of any Maintenance Contractor-Related Entity to comply with good industry practices or P3A requirements respecting control and mitigation of construction activities and impacts, (ii) the intentional misconduct or negligence of any Maintenance Contractor-Related Entity, or (iii) the actual physical entry onto or encroachment upon another's property by any Maintenance Contractor-Related Entity.</p>
<p>DB AGREEMENT PROVISIONS INCORPORATED BY REFERENCE</p>	<p>Portions of the DB Agreement and Technical Provisions are referenced in the CMA Documents for the purpose of defining requirements of the CMA Documents applicable to design and construction. The DB Agreement and Technical Provisions shall be deemed incorporated in the CMA Documents to the extent that they are so referenced, with the same order of priority as the CMA Document in which the reference occurs.</p>