

US 181 HARBOR BRIDGE REPLACEMENT PROJECT COMPREHENSIVE MAINTENANCE AGREEMENT TERM SHEET

This document provides background information and summarizes the major terms of the Comprehensive Maintenance Agreement (COMA) for maintaining the US 181 Harbor Bridge Replacement Project (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 Developer 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 (a) capital maintenance, routine maintenance, repair, upkeep and renovation of the New Harbor Bridge and (b) capital maintenance, repair, upkeep and renovation of the remainder of the Project, which extends north-south along US 181 and SH 286 and east-west along I-37, and includes: US 181 at Beach Avenue on the north; SH 286 at Morgan Avenue on the south; I-37 and Up River Road on the west; and I-37 and Shoreline Boulevard on the east. TxDOT intends for this COMA to include one five-year mandatory term and four five-year options, for a total mandatory term of five years and a total potential term of 25 years. The first three five-year options will include the maintenance services described in (a) and (b) above for the New Harbor Bridge and remainder of the Project; and the last two five-year options will include the maintenance services only for the New Harbor Bridge as described in (a) above. The COMA is anticipated to include 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 or portion thereof, as applicable, in accordance with the conditions set forth in the COMA and in a manner satisfactory to TxDOT, subject only to certain specified limited exceptions.

CONTRACT OVERVIEW

TERM OF MAINTENANCE AGREEMENT	<p><u>Initial Term (NTP1)</u>: Starts upon Substantial Completion of the Project. Term is for 5 years. Includes routine and capital maintenance of the New Harbor Bridge and capital maintenance of the remainder of the project.</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 Initial Term. Includes routine and capital maintenance of the New Harbor Bridge and capital maintenance of the remainder of the project.</p> <p><u>Third Term (NTP3)</u>: Starts at end of Second Term and ends 15 years after commencement of Initial Term. Includes routine and capital maintenance of the New Harbor Bridge and capital maintenance of the remainder of the project.</p> <p><u>Fourth Term (NTP4)</u>: Starts at end of Third Term and ends 20 years after commencement of Initial Term. Includes routine and capital maintenance of the New Harbor Bridge only.</p> <p><u>Fifth Term (NTP5)</u>: Starts at end of Fourth Term and ends 25 years after commencement of Initial Term. Includes routine and capital maintenance of the New Harbor Bridge only.</p>
TERMINATION BY TXDOT WITHOUT LIABILITY	<p>Except for Maintenance NTP1, TxDOT has the right not to issue any Maintenance NTP. Failure by TxDOT to issue Maintenance NTP2 – NTP5 within 180 days prior to the end of the preceding term 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 (a) routine maintenance, capital maintenance, preventative maintenance, and incident management services for the New Harbor Bridge throughout the term of this COMA and (b) capital maintenance,</p>

	<p>preventative maintenance and incident management for the remainder of the Project for the first three options of the COMA if such options are exercised by TxDOT.</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 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 Development Agreement.</p>
GOVERNMENT APPROVALS	The Maintenance Contractor is responsible for obtaining and 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.
RISK OF LOSS	The Maintenance Contractor bears the risk of loss, damage, theft and vandalism to materials, parts, equipment, safety devices, components, tools, supplies and utilities.
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 Design-Build Contractor by providing a guarantee with respect to the Design-Builder'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 certain key personnel, including 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 • New Harbor Bridge Maintenance Engineer <p>The COMA will include restrictions on changes to key maintenance personnel.</p>
DBE	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.

RECORDS AND DOCUMENTATION	The Developer must maintain all records and documents in accordance with the Texas State Records Retention Schedule.
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 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.
NON-CONFORMING WORK	<p>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.</p>
BUSINESS RISKS	
TERMINATION	<p>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.</p>
LIQUIDATED DAMAGES	<p>The Maintenance Contractor agrees to pay TxDOT Liquidated Damages for:</p> <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

	<p>restrictions in the Contract Documents;</p> <p>2. Failure to meet Performance Standards; and</p> <p>3. Delays to schedule activities.</p>
WARRANTIES	<p>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.</p>
HANDBACK	<p>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.</p>
TRANSFER PROTOCOL	<p>The 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.</p>
DEFAULT	<p>The COMA defines and provides for defaults and remedies.</p>
INDEMNIFICATION	<p>The COMA will include indemnities in favor of TxDOT and the State of Texas.</p>
DEVELOPMENT AGREEMENT PROVISIONS INCORPORATED BY REFERENCE	<p>Portions of the Development 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 Development 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.</p>