

**I-635 LBJ EAST 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-635 LBJ East Project (“Project”), which may be entered into by the Texas Department of Transportation (“TxDOT”), and the 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 terms 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

<p>CMC Documents and Order of Precedence</p>	<p>Portions of the Design-Build Contract (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"> ▪ Capital Maintenance Agreement and all exhibits and amendments; ▪ Capital Maintenance Agreement General Conditions, Items 1-8; ▪ portions of the DBC included by reference; ▪ the maintenance specification; ▪ portions of the Design-Build General Conditions and Design-Build Special Provisions from the DBC included by reference; ▪ The CMA Special Provisions, if any; ▪ Item 50 of the Design-Build Specifications and all attachments thereto; ▪ portions of the Design-Build Standard Specifications from the DBC included by reference; and ▪ Proposal commitments exceeding requirements of other CMC Documents.
<p>Contractual Entity Undertaking Maintenance</p>	<p>Although the DB Contractor may subcontract 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.</p>

<p>Commencement of CMC and Maintenance Terms</p>	<p>The CMC includes three optional terms:</p> <ul style="list-style-type: none"> ▪ Initial Term (Maintenance NTP1): 5-year term starting on the Initial Maintenance Term Commencement Date. ▪ Second Term (Maintenance NTP2): 5-year term starting at end of Initial Term. ▪ Third Term (Maintenance NTP3): 5-year term starting at end of Second Term. <p>The CMC is executed at the same time as the DBC. TxDOT must provide notice of its intention to implement the Initial Term no later than 180 days before the Initial Maintenance Term Commencement Date. If TxDOT does not issue Maintenance NTP1, the CMC will terminate and the parties will have no liability to one another under the CMC.</p> <p>During the Initial Term and the Second Term, TxDOT must provide at least 180 days' notice to the DB Contractor if TxDOT wishes to implement the subsequent Maintenance Term or the CMC will terminate at the end of the current Maintenance Term and the parties will have no liability to one another under the CMC.</p>
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MAINTENANCE SCOPE, LIMITS, AND RESPONSIBILITIES

<p>Scope of Maintenance Services</p>	<p>The Maintenance Services include the following elements (Maintained Elements):</p> <ul style="list-style-type: none"> ▪ Embankment and cut slopes; ▪ Drainage facilities, catch basins, and ditches; ▪ Pavement and shoulders; and ▪ Structures. <p>A breakdown of the individual maintenance tasks to be performed by the DB Contractor will be set forth in the CMC.</p>
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<p>TxDOT-Retained Responsibilities</p>	<p>TxDOT retains the following responsibilities:</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 items embedded or attached to pavement such as markings and delineators; ▪ 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.
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Maintenance Limits	The DB Contractor is required to maintain the Project within Maintenance Limits defined by TxDOT which are based on the Project Schematic. 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 latest version of the MMP.
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 version 2 of the Maintenance Management Plan (MMP2) governing the Maintenance Services to be performed after Substantial Completion. The MMP must conform to a TxDOT-provided template (set forth in the CMC). MMP2 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 the recording of Defects, is the responsibility of the DB Contractor's Maintenance Quality Manager. All materials and workmanship incorporated into 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 Design-Build General Conditions, Design-Build Special Provisions and Design-Build Standard 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 Design-Build General Conditions and Design-Build Standard 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. 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, Defects and repair status. The MMS must be compatible with TxDOT's systems and permit reporting in accordance with TxDOT's specified reporting format. Records stored in the MMS must be updated within specified periods.

<p>Maintenance Personnel</p>	<p>The Maintenance Manager must be available for TxDOT contact 24/7, 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 Services Quality Manager; and ▪ Maintenance Safety Manager.
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PERFORMANCE REQUIREMENTS, MAINTENANCE STANDARDS, AND INSPECTIONS

<p>Performance Requirements</p>	<p>The DB Contractor must meet or exceed specified Performance Requirements for the Maintained Elements throughout the Maintenance Period, for example targets for pavement ride quality and rutting must be achieved. The DB Contractor must mitigate Defects that have an immediate or imminent health or safety hazard, risk of structural failure, damage to property, or damage to environment. The DB Contractor must mitigate hazardous conditions from these Category 1 Defects such as potholes and edge drop-offs within 24 hours and provide a permanent remedy within 28 days. A longer defect remedy period of up to six months is provided to repair non-hazardous (Category 2) 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>
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<p>Obligation to Perform Renewal Work</p>	<p>The DB Contractor must perform and complete Renewal Work when a Performance Requirement is not met and the required level of performance cannot be achieved by means of routine maintenance. DB Contractor shall complete all Renewal Work:</p> <ul style="list-style-type: none"> ▪ Prior to the expiration of the Maintenance Term; or ▪ If the Capital Maintenance Contract is terminated for any reason prior to the expiration of the Maintenance Term, within 90 days after the effective date of termination.
<p>Inspections and Defects</p>	<p>Immediately following the issue of Maintenance NTP1, DB Contractor and TxDOT shall jointly perform a pre-condition inspection.</p> <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 quarterly.</p> <p>The DB Contractor must conduct more detailed audit inspections on a selected portion of the Maintenance Limits (approximately 10% of the Project's lane miles every year). The DB Contractor will conduct certain specialist inspections for pavement (e.g., ride quality) and drainage elements at least annually.</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.</p>
<p>Maintenance Standards</p>	<p>As part of the MMP and annual updates, the DB Contractor must review the list of the standards, specifications and manuals applicable to the Maintenance Services (the "Maintenance Standards") and provide confirmation that each Maintenance Standard remains current.</p> <p>The DB Contractor is required to perform the Maintenance Services in accordance with Good Industry Practice, the terms of the CMC Documents, all Laws and Governmental Approvals, the MMP, and all applicable Maintenance Standards.</p> <p>Where a new or revised Maintenance Standard comes into effect, the DB Contractor must provide the title, publication date, and link to each document and must perform the Maintenance Services in accordance with the latest published version. For example, if TxDOT has adopted a new version of TMUTCD, the DB Contractor must perform all traffic control according to the new version of this standard.</p>

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, payable in arrears pursuant to Draw Requests submitted on the first day of each month of a Maintenance Term year. The annual Maintenance 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.
Capping or Advancing Payments	Payment to the DB Contractor is not capped based upon the actual work performed – the DB Contractor is paid according to the Maintenance Price schedule even if the amount of Renewal Work actually performed during the month is less than had been anticipated in the Proposal. Likewise, payment is not made to the DB Contractor in advance of the date scheduled for such payment in the Maintenance Price schedule even if the DB Contractor is required to perform Renewal Work earlier than had been anticipated in the Proposal.
Payment Withholding	TxDOT may withhold from any Maintenance Price payment in the event of Nonconforming Work. Other reasons for withholding payment include the failure to perform repairs to Defects within the specified time periods, TxDOT's recoverable costs in performing any obligations under the CMC Documents that the DB Contractor has failed to perform, Lane Rental Charges and Noncompliance Charges.
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) one year after the end of the Maintenance 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 the Maintenance Services.</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 greater of: (a) 0.75 times the sum of the five escalated annual Maintenance Price payments for each year in the Maintenance Term or (b) 100% of the greatest escalated annual Maintenance Price payments in the applicable 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 \$20,000,000. ▪ For the Third Maintenance Term the lesser of 10% of the amount of the performance bond or \$10,000,000. <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	A guaranty of the DB Contractor’s obligations from a Guarantor approved by TxDOT will be required if the DB Contractor (i) identified a guarantor in its QS or Proposal or was required by TxDOT to include a guarantor, (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; ▪ TxDOT-Directed Changes; ▪ Discovery of Hazardous Materials within Project ROW; and ▪ Certain additional costs directly attributable to uncovering, removing, and restoring the work. <p>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.</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 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	<p>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.</p>
Government Approvals	<p>The DB Contractor is responsible for obtaining and complying with all required Governmental Approvals.</p>
Risk of Loss	<p>The DB Contractor bears the risk of loss, damage, theft and vandalism to materials, parts, equipment, safety devices, components, tools, supplies, and utilities.</p>

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	TxDOT may terminate for convenience at any time. TxDOT must pay the DB 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. If TxDOT elects not to issue any of the Maintenance NTPs, including Maintenance NTP1, it shall not be considered a termination for convenience and TxDOT shall not incur any termination costs.
Traffic Control Plan and Lane Rental Charges	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 charges for matters outside of its control such as Force Majeure Events.
CMC Warranties	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.
Default	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 and the Persistent DB Contractor Default referred to under Noncompliance Events.

Indemnification	The CMC includes indemnities in favor of TxDOT and the State of Texas.
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