

**LOOP 1604 WESTERN EXTENSION PROJECT  
CAPITAL MAINTENANCE AGREEMENT  
TERM SHEET**

This document provides background information and summarizes the major terms of the Capital Maintenance Agreement (the "CMA") for maintaining the Loop 1604 Western Extension Project (the "Project," as defined in Part A, Section 1 of this RFQ), to be entered into by the Texas Department of Transportation ("TxDOT") and a Maintenance Contractor (the "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 of the Project which is approximately the area on Loop 1604 from FM 471 (Culebra Road) to SH 16 (Bandera Road) in San Antonio. TxDOT may include in the procurement an option, exercisable by TxDOT in its sole discretion, to expand the Project limits to the south to provide for the design, construction and maintenance of improvements to Loop 1604 at SH 151 (the "Option"). If this Option is exercised, the Maintenance Services would also include capital maintenance of the Option improvements. The Parties intend for this CMA to be a fixed price, annual lump sum contract obligating the 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.

<b>CONTRACT OVERVIEW</b>	
<b>Term of Maintenance Agreement</b>	<p><u>Initial Term (Maintenance NTP1)</u>: The mandatory initial term starts upon Final Acceptance of the Project, and is for 5 years.</p> <p><u>Second Term (Maintenance NTP2)</u>: Issued at TxDOT's option 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 (Maintenance NTP3)</u>: Issued at TxDOT's option at end of Second Term and ends 15 years after commencement of Initial Term.</p>
<b>Termination By TxDOT Without Liability</b>	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.
<b>CMA Documents</b>	<p>The Contract Documents include:</p> <ul style="list-style-type: none"> <li>• Capital Maintenance Agreement and all exhibits and amendments, including Maintenance Specifications</li> <li>• Proposal to the extent it meets or exceeds requirements of other Contract Documents</li> </ul>
<b>Areas To Be Maintained</b>	<p>The Maintenance Contractor is required to maintain the following areas for new construction elements only:</p> <ul style="list-style-type: none"> <li>• embankment and cut slopes</li> <li>• drainage and storm sewer systems, including culverts, pipes, inlets and manholes</li> <li>• pavement structure. Pavement structure will include areas of new pavement construction only by the Developer. Areas receiving only an asphaltic concrete pavement overlay will not be included.</li> <li>• bridges and bridge approach slabs</li> <li>• sound walls and retaining walls</li> <li>• aesthetic treatments, if applicable</li> <li>• overhead sign structures.</li> </ul>

<b>Scope of Services</b>	<p>The Maintenance Contractor shall furnish all Maintenance Services throughout the term of this CMA, as further described in Exhibit 1 (“<u>Summary of Maintenance Services</u>”) hereto. The Maintenance Contractor must prepare and submit for approval a Maintenance Management Plan, and must update the plan annually. Not later than 60 days after each anniversary of the Initial Maintenance Commencement Date, the Maintenance Contractor shall deliver to TxDOT a written report of the Capital Asset Replacement Work performed in the immediately preceding year.</p> <p>For major design or construction work, the Maintenance Contractor must comply with the requirements and specifications in the DBA.</p>
<b>Government Approvals</b>	<p>The Maintenance Contractor is responsible for obtaining and complying with all required Governmental Approvals.</p>
<b>QA/QC</b>	<p>The Maintenance Contractor must prepare and submit a Maintenance Services Quality Control Plan conforming to the Scope of Work. During the maintenance period, construction QC and QA, including inspection and materials testing, will be the responsibility of Maintenance Contractor’s Maintenance QC Manager. TxDOT will provide quality assurance oversight.</p>
<b>Risk of Loss</b>	<p>The Maintenance Contractor bears the risk of loss, damage, theft and vandalism to materials, parts, equipment, safety devices, components, tools, supplies and utilities.</p> <p>The 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, the Maintenance Contractor shall provide reasonable assistance to, and shall reasonably cooperate with, TxDOT regarding such claims.</p>
<b>PRICE, PAYMENTS AND SECURITY</b>	
<b>Price and Payment</b>	<p>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 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.</p>
<b>Retainage</b>	<p>The Maintenance Contractor shall provide a retainage bond in the amount of 4% 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.</p>

<b>Payment Obligations</b>	TxDOT's obligations to make any payments are expressly conditioned upon obtaining project financing funds, project operations funds and other appropriated and approved funding.
<b>Insurance</b>	The Maintenance Contractor is responsible for maintaining insurance meeting TxDOT standards. Additional insurance may be required in the event of any Unplanned Capital Maintenance.
<b>Bonds</b>	Performance and Payment Bonds are required, each having a term equal to or greater than the then-current Maintenance Term. During each such period, the amount of each bond shall be equal to 100% 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 the Maintenance Contractor in the amount of any outstanding Unplanned Capital Maintenance
<b>Parent Guaranty</b>	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.
<b>Unplanned Capital Maintenance</b>	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; provided, however, that subject to applicable law, TxDOT may, in its sole discretion, lower the level of bonding required.
<b>STAFFING AND REPORTING</b>	
<b>Key Personnel</b>	<p>Individuals filling Key Maintenance Personnel roles shall maintain active involvement in the prosecution and performance of the Maintenance Services. The Maintenance Contractor must provide phone numbers, e-mail addresses and pager contact numbers available for TxDOT to contact Key Maintenance Personnel 24/7.</p> <p>Liquidated Damages will be assessed for unavailability of certain Key Maintenance Personnel, including the Maintenance Manager (except due to injury, death, retirement or resignation with TxDOT approval of the replacement):</p> <p>Proposed changes to Key Maintenance Personnel need prior written TxDOT consent.</p>

<b>DBE</b>	The Maintenance Contractor must comply with TxDOT's DBE Program in effect as of the date of Maintenance NTP1 including good faith efforts to reach DBE goals; provided that, TxDOT retains the option to require compliance with the HUB Program in lieu of the DBE program in connection with the Maintenance Services, if TxDOT determines that only state funds will be used to fund such work.
<b>Records and Documentation</b>	The Maintenance Contractor shall transfer to TxDOT at no cost all records after expiration or termination of the CMA.
<b>CHANGES</b>	
<b>Change Orders</b>	<p>The Maintenance Contractor is entitled to increased costs due to:</p> <ul style="list-style-type: none"> <li>• a Force Majeure event.</li> <li>• TxDOT-Directed Changes.</li> <li>• Discovery of Hazardous Materials within Project ROW.</li> </ul> <p>TxDOT may issue a unilateral Change Order with price adjustment to be determined later or a time and materials Change Order.</p>
<b>Limitations on Change Orders</b>	Any increase in the Maintenance Price shall exclude: (a) 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 the 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.
<b>Option to Delete Work</b>	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.
<b>Nonconforming Work</b>	TxDOT may oversee, inspect and test all materials and details of the work and may require the Maintenance Contractor to remedy and correct any Nonconforming work. Alternatively, TxDOT may remedy or cure Nonconforming work and deduct costs to do so from the amounts due to the Maintenance Contractor.
<b>BUSINESS RISKS</b>	
<b>Termination</b>	TxDOT may terminate the CMA 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.

<b>Liquidated Damages</b>	<p><u>Traffic Restrictions</u>: Liquidated damages will be assessed for each violation of specified traffic restrictions.</p> <p><u>Key Personnel</u>: Liquidated damages will be assessed for unavailability of certain Key Maintenance Personnel.</p> <p><u>Delay</u>: Liquidated Damages will be assessed for failure to meet schedule commitments.</p> <p>The amounts for such liquidated damages will be set forth in the RFP.</p>
<b>Warranties</b>	<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 CMA.</p>
<b>Transfer Protocol</b>	<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. At the expiration of the Maintenance Term or any earlier termination of the CMA, the Maintenance Contractor shall ensure and certify that the Maintenance Elements meet the Asset Condition Score requirements.</p>
<b>Default</b>	<p>The CMA defines and provides for defaults and remedies.</p>

<p><b>Indemnification</b></p>	<p>The Maintenance Contractor indemnifies TxDOT for:</p> <ul style="list-style-type: none"> <li>• Errors, omissions, negligence, recklessness, willful misconduct or breach of contract by the Maintenance Contractor or any member of the Maintenance Contractor Group;</li> <li>• Breach of the DBC by the Maintenance Contractor;</li> <li>• Failure to comply with applicable laws or governmental approvals by any Maintenance Contractor-Related Entity;</li> <li>• The Maintenance Contractor’s patent or copyright infringement or other misappropriation of trade secrets;</li> <li>• The Maintenance Contractor’s failure to pay sales, use, income and gross receipts taxes;</li> <li>• Any stop notices and /or liens and costs to discharge them, including attorneys’ fees and costs;</li> <li>• 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;</li> <li>• The Maintenance Contractor’s delay, disruption, inconvenience or interference with work performed by other contractors;</li> <li>• 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.</li> <li>• 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 DBA 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.</li> </ul>
<p><b>DBA Provisions Incorporated By Reference</b></p>	<p>Portions of the DBA, including portions of the Technical Provisions, are referenced in the CMA Documents for the purpose of defining requirements of the CMA Documents applicable to design and construction. The DBA shall be deemed incorporated in the CMA Documents to the extent that it is so referenced, with the same order of priority as the CMA Document in which the reference occurs.</p>

**EXHIBIT 1**

**SUMMARY OF MAINTENANCE SERVICES**

***THE FOLLOWING CHART PROVIDES AN EXAMPLE OF POTENTIAL MAINTENANCE SERVICES AND MUST BE REVISED TO REFLECT SERVICES TO BE PROVIDED FOR THE LOOP 1604 WESTERN EXTENSION PROJECT***

<p><b>Performance Specifications for Pavement</b></p>	<p><u>Asphalt:</u></p> <ul style="list-style-type: none"> <li>• ruts over 1/4 inches deep</li> <li>• patching level within 1/4 inch</li> <li>• potholes and base failures (low severity or more)</li> <li>• all edge drop offs greater than 2 inches</li> </ul> <p><u>Concrete:</u></p> <ul style="list-style-type: none"> <li>• joints greater than ¼ inch in length and greater than 1 inch wide, or faulting more than ¼ inch between:             <ul style="list-style-type: none"> <li>▪ lanes and shoulders</li> <li>▪ entrance ramps and lane or shoulder</li> </ul> </li> <li>• spalls and potholes all pavement failures as follows:             <ul style="list-style-type: none"> <li>▪ punch-outs of low severity or more</li> <li>▪ faulting of ¼ inch or more</li> <li>▪ temporary repairs for safety problems</li> </ul> </li> <li>• all edge drop offs greater than 2 inches</li> <li>• edge drop offs greater than 2 inches</li> </ul>
<p><b>Pavement Maintenance</b></p>	<ul style="list-style-type: none"> <li>• Conduct visual distress evaluation for rutting, cracking, potholes, failures, patching punchouts and spalling quarterly in .10 mile increments.</li> <li>• Measure IRI for each lane and ramp in .10 mile sections, annually. Measure 2 IRI's (one for each wheel track) in travel lanes.</li> <li>• Conduct skid resistance tests using a full scale tire at 50 mph, annually. Corrective action shall be taken when the skid falls below 25 and/or when required by the Wet Weather Accident Reduction Program, areas categorized as high risk.</li> </ul>

<b>Pavement Maintenance</b>	<ul style="list-style-type: none"> <li>• Element Category Asset Condition Score: 4 <ul style="list-style-type: none"> <li>▪ Targets for individual Elements are substantially met (less than 95% compliance and 90% or greater compliance with the relevant Targets for each Element within each Auditable Section), and</li> <li>▪ Is functional and in good condition, meeting Performance Requirement</li> </ul> </li> <li>• IRI: <ul style="list-style-type: none"> <li>▪ Mainlane and Ramps (inches/mile) Average = 95 or less Maximum = 120</li> <li>▪ Frontage Roads (inches/mile) Average = 120 or less Maximum = 150</li> </ul> </li> </ul>
<b>Bridge Maintenance</b>	<ul style="list-style-type: none"> <li>• Inspect all bridges and box culverts/drainage structures with spans ~20 feet.</li> <li>• Bridge inspector shall be Registered Professional Engineer (in Texas) and have prior written approval of TxDOT.</li> <li>• Maintain all bridges to a sufficiency rating of 80 or better.</li> <li>• Maintain structural design load capacity</li> <li>• Immediately establish detours/close lanes when safety question exists as to a damaged bridge structure.</li> <li>• Upon TxDOT written direction, repair bridge damage that causes lane closure. Work continuously until repairs are complete.</li> <li>• Obtain design approval from TxDOT prior to executing repairs (except for emergency shoring or temporary stabilization).</li> </ul>
<b>Sound Walls and Retaining Walls</b>	<p>Conduct annual inspection and take corrective action to maintain safety, operability, and vertical condition.</p>
<b>Embankment and Cut Slopes</b>	<ul style="list-style-type: none"> <li>• Repair all structural failures</li> <li>• Maintain slopes to original grade and cross section. Replace landscaping materials, re-seed and re-vegetate for erosion control.</li> </ul>
<b>Drainage Facilities</b>	<ul style="list-style-type: none"> <li>• Inspect culverts, pipes, inlets, deck drains, catch basins, manholes, ditches, channels, retention ponds and water treatment facilities annually and after major storms (as designated by TxDOT). Repair and correct problems noted on inspections.</li> <li>• Maintain drainage structures to a length with a minimum of 90% of cross-sectional area free of silt</li> <li>• Remove and dispose of dirt, refuse and debris</li> </ul>
<b>Traffic Restrictions and Commitments</b>	<p>Follow TxDOT San Antonio District Standard Operating Procedures for Lane Closures.</p>

<b>Sources of Standards</b>	<ul style="list-style-type: none"><li>• DBA and Capital Maintenance Agreement (including Exhibits and Amendments)</li><li>• Roadway Design Manual</li><li>• Maintenance Manual</li><li>• Vegetation Management Manual</li><li>• Traffic Control Standards</li><li>• Traffic Operations Manual</li><li>• TxDOT 2004 Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges</li><li>• Manual for Testing Procedures</li><li>• Texas Manual on Uniform Traffic Control Devices (TMUTCD)</li></ul>
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