

THE SOUTHERN GATEWAY PROJECT

DRAFT CAPITAL MAINTENANCE AGREEMENT TERM SHEET

This document provides background information and summarizes certain major terms of the Capital Maintenance Agreement (“CMA”) for maintaining the Southern Gateway 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 Agreement (“DBA”) for the Project.

This document is intended as a general description of certain anticipated major terms of the CMA, which terms are subject to revision by TxDOT in its sole discretion, and this document is not a restatement or interpretation of the CMA requirements. Further, there are numerous details, exceptions and qualifications associated with the anticipated provisions described below that can only be ascertained by reviewing the CMA itself.

1 CONTRACT FRAMEWORK	
1.1 CMA DOCUMENTS AND ORDER OF PRECEDENCE	<p>Portions of the DBA and Technical Provisions are referenced in the CMA Documents and define requirements for Renewal Work, including the quality assurance and quality control requirements for design and construction work.</p> <p>The CMA Documents and order of precedence are as follows:</p> <ul style="list-style-type: none"> • CMA and all exhibits and amendments; • portions of the DBA included by reference; • the maintenance specification; • portions of the Technical Provisions from the DBA included by reference; and • Proposal commitments exceeding requirements of other CMA Documents.
1.2 CONTRACTUAL ENTITY UNDERTAKING MAINTENANCE	<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 CMA is the same entity as the DB Contractor under the DBA.</p>
1.3 COMMENCEMENT OF CMA AND MAINTENANCE TERMS	<p>The CMA includes three optional terms:</p> <ul style="list-style-type: none"> ▪ Initial Term (Maintenance NTP1): 5-year term starting one year after Final Acceptance (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 CMA is executed at the same time as the DBA. 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 CMA will terminate and the parties will have no liability to one another under the CMA.</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 CMA will terminate at the end of the current Maintenance Term and the parties will have no liability to one another under the CMA.</p>

2 MAINTENANCE SCOPE, LIMITS, AND RESPONSIBILITIES	
2.1 SCOPE OF MAINTENANCE SERVICES	<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 CMA.</p>
2.2 TxDOT-RETAINED RESPONSIBILITIES	<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.
2.3 MAINTENANCE LIMITS	<p>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.</p> <p>Further, TxDOT shall have the option, in its discretion, to include within the Maintenance Limits (i) solely the reconstructed portions of Section 1 of the Project or (ii) the reconstructed portions of both Sections 1 and 2A of the Project. TxDOT shall provide notice of its election no later than 180 days before the Initial Maintenance Term Commencement Date.</p>
3 MANAGEMENT PLAN, PERSONNEL, AND RECORDS MANAGEMENT	
3.1 MAINTENANCE MANAGEMENT PLAN (MMP)	<p>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. This plan must be consistent with MMP1 that governs Maintenance work during construction. The MMP must conform to a TxDOT-provided template (set forth in the CMA). MMP2 must be updated annually and submitted for approval 60 days before each anniversary of the Initial Maintenance Term Commencement Date.</p>

<p>3.2 QUALITY ASSURANCE AND QUALITY CONTROL</p>	<p>As part of the MMP, the DB Contractor must prepare and submit a Maintenance Services Quality 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.</p>
<p>3.3 EMPLOYMENT OF PSQAF AND CQAF</p>	<p>Where the Maintenance Services require design and construction work, the requirements of the Technical Provisions in the DBA apply. TxDOT may, at its sole discretion, require the DB Contractor to employ a Professional Services Quality Assurance Firm (PSQAF) or Construction Quality Assurance Firm (CQAF) fulfilling the requirements of the Technical Provisions in the DBA.</p>
<p>3.4 RECORDS AND DOCUMENTATION INCLUDING MAINTENANCE MANAGEMENT SYSTEM</p>	<p>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>
<p>3.5 KEY PERSONNEL</p>	<p>The Maintenance Manager is a Key Personnel and must be available for TxDOT contact 24/7, attend all inspections and monthly 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 CMA 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>Key Personnel Change Fees will be assessed for unavailability of the Maintenance Manager (except due to injury, death, retirement, or resignation, with TxDOT approval of the replacement). Subject to TxDOT’s approval, the DB Contractor may replace the Maintenance Manager for any reason within 60 days after issuance of each Maintenance NTP without assessment of Key Personnel Change Fees.</p> <p>Other personnel for whom qualifications, experience and duties are defined within the CMA are:</p> <ul style="list-style-type: none"> ▪ Maintenance Services Quality Manager; and ▪ Maintenance Safety Manager.
<p>3.6 DBE REQUIREMENTS</p>	<p>The DB 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>

4 PERFORMANCE REQUIREMENTS, MAINTENANCE STANDARDS, AND INSPECTIONS	
4.1 PERFORMANCE REQUIREMENTS	<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 6 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 6 months of the Maintenance Period, has been permanently repaired before the end of the Maintenance Period.</p>
4.2 OBLIGATION TO PERFORM RENEWAL WORK	<p>The DB Contractor must perform and complete Renewal Work on or before the date shown in the most recent Renewal Work Schedule. This document must be updated annually and must identify maintenance and repair needs based on the latest condition of Maintained Elements and any deterioration trends. The DB Contractor must perform Renewal work when a Performance Requirement is not met (e.g., the depth of ruts exceeds the target value, potholes develop, drains become silted, or roadway flooding occurs).</p>
4.3 INSPECTIONS AND DEFECTS	<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 monthly.</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 6 months). 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 the DB Contractor must use these results supplemented by the other inspections to plan and implement Maintenance Services to structures.</p>

<p>4.4 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 CMA 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>
<p>4.5 MAINTENANCE SERVICES REPORT</p>	<p>For each monthly 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 monthly period.</p>
<p>4.6 TRANSITION PLAN</p>	<p>At least 60 Days before the end of the Maintenance Period, or upon termination of the CMA, the DB Contractor must prepare and implement a Maintenance Transition Plan to the satisfaction of TxDOT.</p>
<p>5 PRICE, PAYMENTS, INSURANCE AND SECURITY</p>	
<p>5.1 PRICE AND PAYMENT</p>	<p>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 Engineering News Record Construction Cost Index (ENR CCI). The price adjustments will commence on the Initial Maintenance Services Commencement Date and continue annually thereafter.</p>
<p>5.2 CAPPING OR ADVANCING PAYMENTS</p>	<p>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.</p>
<p>5.3 PAYMENT DURING THE FINAL 6 MONTHS OF THE CMA</p>	<p>The payment of the Maintenance Price over the final 6 months of the Maintenance Period is profiled such that the final monthly payment installment is larger than the preceding five monthly payments.</p>

5.4 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 CMA Documents that the DB Contractor has failed to perform, Lane Rental Charges and Noncompliance Charges.
5.5 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 (the “Retainage”) 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.
5.6 PAYMENT OBLIGATIONS	TxDOT’s obligations to make any payments are subject to appropriation by the Legislature.
5.7 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.
5.8 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>
5.9 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.

<p>5.10 FAILURE TO PROVIDE TIMELY REPLACEMENT OF MAINTENANCE SECURITY</p>	<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>
<p>5.11 GUARANTY</p>	<p>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.</p>
<p>6 CHANGE ORDERS AND RISK ALLOCATION</p>	
<p>6.1 CHANGE ORDERS</p>	<p>The DB 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; 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.</p>
<p>6.2 LIMITATIONS ON CHANGE ORDERS</p>	<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.

6.3 TRAFFIC (ESAL) RISK	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 DBA 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.
6.4 REHABILITATED ASSETS	TxDOT will identify rehabilitation areas in the RFP Documents (areas within which the DB Contractor is permitted to leave some of the existing pavement in place). The DB Contractor may not use rehabilitation outside those areas and must use full-depth new construction. Rehabilitation areas will be removed from the Maintenance Limits if the CMA is extended beyond 10 years.
6.5 GOVERNMENT APPROVALS	The DB Contractor is responsible for obtaining and complying with all required Governmental Approvals.
6.6 RISK OF LOSS	The DB Contractor bears the risk of loss, damage, theft and vandalism to materials, parts, equipment, safety devices, components, tools, supplies, and utilities.
6.7 THIRD PARTY DAMAGE	Only as directed by TxDOT, the DB Contractor must repair within the specified periods any damage to Maintained Elements arising from third party actions (e.g., bridge damaged by collision, pavement damaged by fuel spill). The DB Contractor is eligible for a Change Order for damage caused by collisions with the Project or malicious acts of third parties. TxDOT may elect to repair damage to Maintained Elements caused by third parties using its own forces and will advise the DB Contractor if it intends to do so. The DB Contractor has no authority or responsibility to assert and pursue any claims against any third party for damage to the Project. However, the DB Contractor must reasonably assist and cooperate with TxDOT regarding such claims.
6.8 NON-CONFORMING 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 Non-conforming Work. Alternatively, TxDOT may remedy or cure Non-conforming Work and deduct costs from the amounts due to the DB Contractor.
6.9 OPTION TO DELETE OR ADD WORK	TxDOT reserves the right to delete work, perform some or all Maintenance Services or enter into special contracts, and negotiate price reduction(s) pursuant to same. TxDOT may add work including changing the Maintenance Limits, subject to a Change Order, provided that the nature of the additional work is within the general scope of the CMA.

7	BUSINESS RISKS
7.1 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.
7.2 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.
7.3 NONCOMPLIANCE EVENTS	<p>The DB Contractor may be assessed Noncompliance Points for failure to meet specified obligations set forth in the Noncompliance Events Table to the CMA. Typical examples include the failure to remedy a Defect within the required period or the failure to deliver a Submittal within the required time.</p> <p>Upon assessment of the tenth Noncompliance Point and upon assessment of each additional ten Noncompliance Points, TxDOT may deduct Noncompliance Charges from the amounts due to the DB Contractor in an amount to be set forth in the CMA.</p> <p>The persistent accumulation of Noncompliance Points exceeding a specified number within a rolling time period may result in a Persistent Contractor Default.</p>
7.4 CMA WARRANTIES	The Warranties require that the Maintenance Services and all design and construction work performed in connection with such services must meet all the CMA 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 CMA.
7.5 DEFAULT	The CMA 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.
7.6 INDEMNIFICATION	The CMA includes indemnities in favor of TxDOT and the State of Texas.