

MANAGEMENT MANUAL

East End Crossing Tunnel



KENTUCKY TRANSPORTATION CABINET

3/31/2023

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1 GENERAL

1.1 Document Content

This Operation and Maintenance Management Manual (“Manual”) for the East End Crossing Tunnel (the “Project”) generally described and summarizes the Agreement (“Agreement”) between the Kentucky Transportation Cabinet (the “Cabinet”) and Webber Infrastructure Management, Inc. (the “Contractor”) (collectively, the “Parties”) for the Operation and Maintenance of the East End Crossing Tunnel in Louisville, Kentucky. Readers are encouraged to consult the Contract Documents for additional information. All references within this Manual are to Sections, Exhibits, and Attachments in the Agreement.

1.2 Effective Date

The Agreement is effective as of the date last signed by the Parties (the “Effective Date”).

1.3 Scope of Work

The Contractor shall provide Routine Maintenance and Renewal Work for the East End Crossing Tunnel and related transportation facilities along KY 841 (I-265) between approximately MP 35.15 (west of the I-71/KY 841 (I-265) interchange) and approximately MP 37.75 (west of Harrod’s Creek), as more fully described in the Agreement and shown in Attachment B-4 (Project Limits).

1.4 Term

The term of the Agreement includes an initial term and an option to extend the initial term. The maximum term of the Agreement, including the extension thereof, is 10 years.

The initial term shall commence on the date of Notice to Proceed and shall expire seven years from the Notice to Proceed, unless terminated earlier in accordance with the terms of the Agreement.

2 CONTRACT MILESTONES, SUBMISSIONS, CHANGE ORDERS, AND TERMINATION

The table below shows the milestone dates per executed Agreement. The details for each of the milestones are described in the following section.

Date	Description	Comment
3/17/2023	O&M Agreement Execution	Effective Date
6/15/2023	Notice to Proceed	Agreement + 90days
4/16/2023	Mobilization Plan	NTP - 60 days
5/16/2023	Draft O&M Plan	NTP - 30 days
7/15/2023	Final O&M Plan	NTP + 30 days
8/14/2023	Renewal Work Plan	NTP + 60 days

2.1 Pre-Notice to Proceed Milestones and Submissions

2.1.1 Request to Issue Notice to Proceed

Within 90 days of the execution of the Agreement, the Contractor shall submit to the Cabinet a request to issue a Notice to Proceed (“NTP”) that includes a statement indicating the Contractor is prepared to meet all Routine Maintenance Requirements, a suggested Notice to Proceed date, and a list of all

subcontractors and subconsultants on the Project. The Cabinet shall review this information and issue a formal Notice to Proceed within 14 days of receipt of the request.

2.1.2 Mobilization Plan

The Contractor shall submit the Mobilization Plan to the Cabinet 60 days prior to the Notice to Proceed Date. The Mobilization Plan shall be a high-level document of up to ten pages describing the general approach to the Contractor's plan to start the Project. The Mobilization Plan shall clearly identify areas where the Contractor will need input and contribution from the Cabinet to meet the plan requirements. It is expected that this Mobilization Plan will act as a management tool between the Cabinet and the Contractor to assess progress in meeting the pre-NTP activities. The Contractor shall provide updates to the Cabinet in relation to the progress of the Mobilization Plan.

2.1.3 Draft Operations and Maintenance Plan

The Contractor shall submit a draft Operations and Maintenance Plan 30 days prior to the Notice to Proceed issuance date.

2.1.4 Draft Monthly Invoice and Performance Report

The Cabinet shall determine the content of monthly and quarterly performance reports to provide to the Contractor prior to operational commencement. The outputs (reports) from the MMIS will form the bulk of the detail of monthly performance reporting, in addition to the results of the weekly and monthly maintenance inspections and testing, as defined in Attachment B5 "Maintenance Schedule".

The form of the monthly invoice shall be mutually agreed upon by the Contractor and the Cabinet. The Monthly Invoice amount shall be \$244,804.17, as adjusted in accordance with Agreement Section 3.1.1.2 (Payment Escalation) and subject to deductions as provided in Agreement Section 3.1.1.3.

2.2 Post-Notice to Proceed Milestones and Submissions

2.2.1 Final Operations and Maintenance Plan

The Final Operations and Maintenance Plan shall be due 30 days after the Notice to Proceed. The Operations and Maintenance Plan shall be updated annually and submitted to the Cabinet within 30 days prior to the end of the first year of operations and subsequently annually. The annual update shall be used to make changes to work practices affecting the Project, include technological developments, and integrate with relevant elements of the Control Room Operations Plan. The Contractor shall utilize the existing O&M Plan as a basis for the new O&M Plan. Any plan listed therein that does not currently exist, shall be drafted and submitted by the Contractor.

2.2.2 Renewal Work Asset Management Plan

The Renewal Work Asset Management Plan shall be developed by the Contractor in conjunction with the Cabinet. This plan will utilize results of prior inspections and condition reports of equipment and systems. The Renewal Work Asset Management plan shall be a high-level plan for assets nearing the end of their useful life or nearing technical obsolescence. This plan shall be developed within the first two months of the Notice to Proceed issuance date and be submitted to the Cabinet for use in their annual submittal to KPTIA; then annually thereafter.

2.3 Change Orders

During the term of the Agreement, a modification shall not be permitted unless the Contractor receives a written Change Order from the Cabinet.

2.3.1 Routine Maintenance Changes

The Contractor shall be entitled to seek compensation upon the occurrence of any of the following related to Routine Maintenance:

1. Changes to the Performance Standards.
2. Cost incurred for remediation of Hazardous Materials pursuant to Section 2.3.5 (Hazardous Materials).
3. A Force Majeure Event.
4. A Cabinet-Directed Change.

2.3.2 Renewal Work Changes

The Contractor shall be entitled to seek compensation upon the occurrence of any of the following related to Renewal Work:

1. A Cabinet-Directed Change.
2. Unavoidable delays, arising from a suspension order pursuant to Section 2.3.15 (Suspension for Convenience).
3. The discovery of a Differing Site Condition.
4. Cost incurred for remediation of Hazardous Materials pursuant to Section 2.3.5 (Hazardous Materials).
5. Force Majeure Event.
6. The occurrence of any Relief Event as described in an Approved Renewal Project Plan.

2.3.3 Contractor Requested Change

The Contractor shall provide notice to the Cabinet within 30 days of becoming aware of an event that entitles the Contractor to a change to the Agreement. The notice shall include supporting information to allow the Cabinet to make a determination of entitlement to and amount of the change. The Cabinet shall either Approve or deny the change or request additional supporting information. The Parties shall resolve any dispute related to a requested change in accordance with Section 2.3.19 (Disputes).

2.3.4 Cabinet-Directed Changes

If the Cabinet desires to evaluate whether to initiate a Cabinet-Directed Change for a Renewal Project, the Cabinet may, at its discretion, issue a Request for Change Proposal (RCP) to the Contractor. The Contractor shall respond to the RCP within 14 days. The Cabinet and the Contractor shall consult to negotiate the scope of the change. If the Parties agree to the scope of the change, the Cabinet shall issue a Change Order.

3 CABINET RESPONSIBILITIES

3.1 Staffing

The Cabinet shall have the following positions assigned for the Project.

- Point of Contact (POC)
- Deputy Point of Contact
- Review Coordinator

3.1.1 Point of Contact (POC)

The primary POC will be responsible for administering the contract and monitoring the contractor.

3.1.2 Deputy Point of Contact

This person shall be a senior manager with the Cabinet to act as an additional resource to the primary POC, and to assist with any issues that need to be escalated.

3.1.3 Record Coordinator

This person shall oversee the submittal and review process. Responsibilities include capturing comments during the review process, review of each draft, and provide timely responses during the project management submittal timeline as specified in Attachment B2 “List of Required Plans”. Review shall be completed in a timely manner and no later than day one operations.

3.2 Meetings

The following meetings are recommended at a minimum:

Meeting Name	Frequency	Attendees	Objective
Cabinet training session	At Contract award	Cabinet staff assigned to the Project and other Cabinet members	Understand the scope of the Project including but not limited to contract management, performance measures, non-compliance events, roles and responsibilities of all stakeholders involved etc.
Kick-off meeting	At Contractor’s formal mobilization	Cabinet and other stakeholders including but not limited to Cabinet representatives from the Project and Maintenance Division, TRIMARC office staff, Contractor’s staff, and other third-party representatives (Fire, Police, City, and INDOT or East End Crossing Staff)	Ensure that all Stakeholders understand their roles and responsibilities in this Project as well as to understand each party’s responsibility in emergency situations and on-road interactions. This shall be detailed in the Contractors O&M Plan/Communications sub-plan.
Operational meeting			
Informal field meeting	Informal, as needed	Cabinet POC and Contractor	Ensure a day-to-day partnering approach, as the key to operational success will be open lines of communication and collaboration. This approach is effective in identifying any issues before they worsen, and to address active safety issues on the spot versus waiting until a set monthly meeting.
Monthly operations meeting	Monthly (The Cabinet may adjust the frequency based on Contractor’s performance)	Cabinet POC, Cabinet Deputy POC, and Contractor’s Project Manager	Review the progress and performance from the prior month. The meeting shall be collaborative and interactive, discussing performance and ensuring there is a clear path forward to resolve any items of non-performance or concern. Cabinet staff shall review the Contractor’s Monthly Invoice and Performance Report to prepare for monthly meeting with the Contractor to assess

			performance and ensure the requirements of the contract are being upheld. Work plans for the coming month or quarter shall also be reviewed to allow the Cabinet to understand issues that will be addressed and allow the Contractor to demonstrate their proactive approach.
Quarterly meeting	Quarterly (optional as needed)	Senior Cabinet members and Contractor personnel	Performance issues or payment disputes which linger or that cannot be resolved in monthly meetings.

3.2.1 Contractor’s Proposal commitment for meetings between Contractor and Cabinet

The following meetings are the Proposal commitment from the Contractor:

Meeting Name	Frequency	Attendees	Objective
Kickoff Meeting	At Contract award	None Indicated in Proposal	Ensure alignment with the Cabinet’s goals and objectives regarding operational performance, safety, customer service, and asset availability to the public. Additionally, this will allow us to gain a better understanding of current roles and responsibilities of key Cabinet members that will be involved with the project, along with other significant third-party stakeholders that will be operating within the project limits (Cabinet work crews, Cabinet contractors, first responders, law enforcement, etc.) which will be incorporated into the Mobilization Plan. Another important aspect of the kickoff will be to establish communication protocols between the Cabinet and the project team, which will include weekly mobilization update meetings, and other means, methods, and frequencies of communication expected during mobilization.
Operational meeting	“Regular”	None Indicated.	Topics for discussion include: 1. Safety and environmental compliance, highlighting any specific challenges or trends identified. 2. Operational updates and progress by the Ferrovial Services team. 3. Operational reviews and feedback from the Cabinet. 4. Achievements (performance results, compliance, customer service, and third-party stakeholder feedback, etc.). 5. Challenges and lessons learned.
Ongoing meetings	Varies - see next column for details	- Ferrovial Services Project Manager: monthly or more frequently if deemed necessary - Ferrovial Services Contract Manager: quarterly	Ongoing meetings that we commit to include face to face meetings with the Cabinet to discuss operational performance, including work completed, scheduled work, open issues, Key Performance Indicators (KPIs), and other identified topics

		or more frequently if deemed necessary - Ferrovial Services President: annually - Emergency preparedness meetings and crisis simulations at a frequency agreed upon at the third-party stakeholder forums	and will involve the following staff and frequencies identified in the first column.
Third-Party Stakeholder Forum	Quarterly	Cabinet and TRIMARC representatives, Kentucky State Police, local fire departments, other first responders, environmental regulatory agencies, and additional stakeholders identified by the Cabinet.	<ol style="list-style-type: none"> 1. Provide a safety debrief highlighting any specific challenges or safety trends identified. 2. Provide a status of environmental compliance to applicable operating permits. 3. Discuss efficacy of current coordination and lessons learned from preceding three months of operations. 4. Identify key challenges specific to stakeholder coordination (e.g., customer service response and resolution, IR/ER, etc.). 5. Coordinate Fire, Life Safety, and Security (FLSS) and other emergency drills and simulations with first responders. 6. Identify other opportunities to continuously improve operations and interaction between parties.

3.3 Requirements for Work

3.3.1 Access to Site

The Cabinet shall grant access to the right of way identified in Attachment B-4 (Project Limits) to the Contractor for the purpose of carrying out the Contractor’s rights and obligations under the Agreement.

3.4 Routine Maintenance

The Cabinet will provide, at cost to the Cabinet, the following resources, materials, and assistance to the Contractor:

1. Water at existing access points within the Project Limits.
2. Electricity at existing meter locations within the Project Limits.
3. Roadway ice and snow removal in a manner that is consistent with other Cabinet facilities.
4. Incident management resources and coordination as further described in Exhibit B (Routine Maintenance).

The Cabinet shall also be responsible for any third-party coordination related to Routine Maintenance (TRIMARC).

3.5 Renewal Work

To authorize a Renewal Project, the Cabinet shall request the Contractor to submit a Renewal Project Plan in the form described in Exhibit C (Renewal Project Plan Requirements). The Contractor shall submit a Renewal Project Plan to the Cabinet within 30 days of request. The Cabinet may Approve the Renewal

Project Plan or make comments and return the Renewal Project Plan to the Contractor. The Contractor shall address any Cabinet comments and resubmit the Renewal Project Plan to the Cabinet or notify the Cabinet that it declines to perform the Renewal Project requested by the Cabinet. A Renewal Project shall be authorized upon the Cabinet's Approval of a Renewal Project Plan.

The Cabinet may Approve a Renewal Project in phases and authorize Preconstruction Services separately from Construction Services. The Cabinet shall notify the Contractor of the Cabinet's intent to Approve a Renewal Project in phases when requesting a Renewal Project Plan. If a Renewal Project Plan is Approved for Preconstruction Services only, the Contractor shall submit a revised Renewal Project Plan for the Cabinet's Approval prior to commencement of Construction Services. The Cabinet's Approval of a Renewal Project Plan for Preconstruction Services does not obligate the Cabinet to Approve a Renewal Project Plan for Construction Services.

The Cabinet may, in its sole discretion, accept any Nonconforming Work without requiring it to be fully corrected, and shall be entitled to a pay adjustment or reimbursement in an amount determined by the Cabinet.

3.6 Payment

3.6.1 Monthly Invoice and Performance Report

The Contractor shall submit a Monthly Invoice and Performance Report for Work in accordance with Section 3.1 of O&M Agreement. Payments will be made within 30 Business Days after receipt of the Contractor's Monthly Invoice and Performance Report in accordance with KRS 45.453 and KRS 45.454. A penalty payment of one percent (1%) per month shall be added to the amount due to the Contractor for each full or partial month that the payment exceeds 30 Business Days.

In addition to the required components of the Monthly Invoice and Performance Report in Section 3 of O&M Agreement, the Contractor shall include other information reasonably requested by the Cabinet and shall periodically update the form of the Monthly Invoice and Performance Report to make communication of progress more effective.

The Contractor's Monthly Invoice and Performance Report and associated documentation will be reviewed by the Cabinet to assess performance and if NCE points will be applied for the month in question, as detailed in Section 3.6.1.1.3 of this document.

3.6.1.1 Routine Maintenance

During the term of the Agreement, in full consideration for the performance by the Contractor of its duties and obligations under the Contract Documents, the Cabinet shall pay the amounts determined as set forth in Section 3.1.1.1 (Monthly Payments), as adjusted in accordance with Section 3.1.1.2 (Payment Escalation) subject to deductions as provided in Section 3.1.1.3 (NCE Points and Non-Performance Deductions). The term Routine Maintenance Price as used herein shall mean the maintenance price described in Exhibit E (Routine Maintenance Price). The Routine Maintenance Price shall be paid in accordance with Section 3.1.1. Except for escalation as described in Section 3.1.1.2, the Routine Maintenance Price (and the individual components thereof) shall be increased or decreased only by a Change Order issued in accordance with Section 4 (Changes) or by an amendment to the Agreement. No portion of the Routine Maintenance Price shall be payable on account of services provided prior to the Notice to Proceed or after the termination, expiration, or non-renewal of the Agreement.

3.6.1.1.1 Monthly Payments

The Contractor shall be paid for Routine Maintenance provided under the Agreement as described in Exhibit E (Routine Maintenance Price) plus escalation per Section 3.1.1.2 (Payment Escalation). Such amount shall be payable in arrears pursuant to Monthly Invoice and Performance Reports submitted on the first day of each month.

3.6.1.1.2 Payment Escalation

The annual Routine Maintenance Price will be escalated or reduced based on changes in the Engineering News Record Construction Cost Index (ENR CCI) commencing on the Notice to Proceed and continuing annually thereafter during the term of the Agreement. The procedure for determining the escalation or reduction shall be as follows:

1. The average of the ENR CCI for the month three months prior to the month in which the Agreement is executed will establish the Base Index.
2. A Current Index will be created by taking the average of the ENR CCI for the month three months prior to the month in which the term year commences.
3. The annual Routine Maintenance Price for the ensuing term year shall be adjusted by multiplying the annual Routine Maintenance price for such year by the Current Index and dividing such amount by the Base Index.
4. The formula that reflects the foregoing is:

Adjusted annual Routine Maintenance Price = (annual Routine Maintenance Price) x Current Index/Base Index.

3.6.1.1.3 NCE Points and Non-Performance Deductions

The Contractor shall accrue Non-Compliance Event (NCE) Points for failure to comply with Routine Maintenance Performance Requirements. NCE Points are listed in Attachment B-1 (O&M Performance Requirements). Accrual of NCE Points is cumulative and exponential until the nonperformance is cured. Until cured, the NCE Points assessed in month one is equivalent to one times the NCE Point assessment, in month two, it is two times the NCE Point assessment and added to the prior month, in month three it is three times the NCE point assessment and added to the prior months, etc. The Contractor shall self-monitor and include an itemized summary of the accrued NCE Points in each Monthly Invoice and Performance Report.

Example:

- The Contractor accrues 2 NCE Points for a specific non-performance in month 1.
- If the non-performance item is not cured in month 2, the contractor accrues 4 NCE points which are in addition to the 2 NCE points already assessed in month 1 for a total of 6 NCE points.
- If the non-performance item is not cured in month 3, the contractor accrues 6 NCE points which are in addition to the 6 NCE points from months 1 and 2 for a total of 12 NCE points.
- This continues until the non-performance item is cured.

The Cabinet shall have the right to assess Non-Performance Deductions based on accrued NCE Points. The value of Non-Performance Deductions shall be determined by multiplying the value of accrued NCE Points by \$1000.

The responsible Cabinet manager shall inform the Contractor in writing (email) of the final agreed invoice amount, and reasoning for applicable withholding of NCEs for that period. This communication shall also contain an explanation of issues that are ongoing and impacting or have the likelihood to impact future performance.

After NCE points have been calculated, any relief is given by the Cabinet, and the final monthly fee has been determined, an invoice can be processed through the standard Cabinet invoicing procedures.

3.6.1.1.4 Final Payment for Routine Maintenance

The Contractor shall be paid a final payment upon satisfaction of all obligations of the Agreement which shall be subject to inspection and verification by the Cabinet. The final payment shall be equal to 20% of the final year Routine Maintenance Price.

3.6.1.2 Renewal Work

The Contractor shall include in the Monthly Invoice and Performance Report:

1. Amounts payable to the Contractor pursuant to any Approved Renewal Project Plan.
2. Amounts that may be deducted from payments to the Contractor pursuant to any Approved Renewal Project Plan. These may include any liquidated damages, road user charges, or other deductions included in an Approved Renewal Project Plan.
3. All other information required by the Approved Renewal Project Plan.

Each Renewal Project shall be separately itemized in the Monthly Invoice and Performance Report.

3.6.1.3 Penalties Assessed by a Governmental Entity

The Contractor shall include in the Monthly Invoice and Performance Report identification of any fines or penalties that may have been assessed by a Governmental Entity against the Cabinet in connection with any failure to comply with Environmental Laws and Governmental Approvals for which the Contractor is responsible for indemnifying the Cabinet pursuant to Section 2.3.14 (Indemnity by Contractor).

3.6.1.4 Lien Releases

The Contractor shall include lien releases for all work performed by Subcontractors during the reporting period with each Monthly Invoice and Performance Report.

3.7 Inspections

Informal inspections shall be held frequently by the Cabinet during the term of the Project. The identified defects shall be reported to the Contractor for monitoring and cure of the defect. The following are recommended inspections:

3.7.1 Weekly

A weekly drive-through informal inspection to note any new maintenance needs. Examples include, but not limited to, damaged guardrail or fallen trees. Timing of this inspection should vary so observations can be made under different weather conditions and time of day.

The purpose of this inspection is for the Cabinet POC, or a designated representative, to be aware of them and observe how the Contractor responds, as well as how the Contractor reports the issue in the MMIS. The Cabinet shall only alert the Contractor of any major life-safety issues. These shall immediately be brought to the Contractor's attention utilizing the agreed communication protocols. Additional alerts to

the Contract of non-major life-safety issues shall be at the discretion of the Cabinet POC and minimized where possible to avoid dependence from the Contractor.

3.7.2 Monthly

A monthly review shall be performed by the Cabinet POC, or a designated representative, of the Contractor's Monthly Performance Reports, especially to note any open maintenance issues, failed response times, or tunnel inspections which have not occurred.

After review of the Monthly Performance Report, a follow-up visual inspection of the project assets may be needed to track the Contractor's response to known longer term cure items. This shall be an inspection to observe the general condition of the project.

3.7.3 Semi Annual

A semi-annual inspection may be warranted based on the Contractor's performance.

3.8 Technology & Document Management

The Cabinet should provide a document repository for the Contractor to use to upload reporting and maintenance testing and inspection results. This will preclude emailed attachments.

The document repository shall be checked periodically to ensure that it is being populated with the testing and inspections detailed in Attachment B-5 of the RFP.

The documents shall be reviewed quarterly by Cabinet technical personnel to ensure that content is accurate and delivered in accordance with performance timeliness requirements of Attachment B-1.

The Cabinet shall conduct security screening to ensure that Contractor devices are not connected to critical infrastructure networks at the operations center or to the Cabinet network.

4 CONTRACTOR WORK REQUIREMENTS

4.1 General

4.1.1 Traffic Control

The Contractor shall perform the Work in a manner that recognizes the safety of the public, convenience of the traveling public, and providing a safe work environment for all workers are of prime importance. The Contractor shall perform its traffic control and operations in accordance with the Contract Documents and applicable regulations including but not limited to the Manual of Uniform Traffic Control Devices.

4.1.2 Site Security

The Contractor shall provide appropriate security for the Site during the performance of the Work, including securing any buildings from entry, and shall take all reasonable precautions and provide protection to prevent damage, injury or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at the Site, whether owned by the Contractor, the Cabinet, or any other Person.

4.1.3 Environmental Compliance

In performance of the Work, the Contractor shall comply with all requirements of all applicable Environmental Laws and Governmental Approvals issued thereunder, whether obtained by the Cabinet or the Contractor. The Contractor acknowledges and agrees that it will be responsible for all fines and penalties that may be assessed in connection with any failure to comply with such requirements.

4.1.4 Hazardous Materials

The Contractor shall be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and disposal of all Hazardous Materials identified on the Project in accordance with the Applicable Standards. Except for Hazardous Materials introduced on the Project by the Contractor, and Hazardous Materials identified as a Contractor responsibility in a Renewal Project Plan, the Contractor shall be entitled to a Change Order for increased costs incurred to satisfy the requirements of the Section 2.3.5 of the Agreement.

4.1.5 Subcontracting Requirements

All references to the Contractor shall be construed to encompass both the Contractor and any Subcontractors. The Contractor shall provide the Cabinet with Subcontractor information for Approval prior to the Subcontractor performing any Work on the Project. Evidence of Work being performed by any Subcontractor that has not been Approved, shall be considered an Event of Default. The Contractor shall not add, delete, or change the role of Subcontractors without the prior written Approval of the Cabinet.

4.1.5.1 Limitation on Subcontracted Work

The Contractor shall self-perform at least 30% of the Work. The percentage of the Work subcontracted shall be determined by dividing the total dollar value of the Subcontracts for the Work by the total dollar value of the Work as a whole.

4.1.5.2 Assignment of Subcontract Rights

Each Subcontract shall provide that:

1. The Cabinet is a third-party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit; and
2. All guarantees and warranties, express and implied, shall inure to the benefit of the Cabinet as well as the Contractor. Any acceptance of assignment of a Subcontract from the Cabinet, its successors, or assigns shall not operate to make the assignees responsible or liable for any breach of the Subcontract by the Contractor or for any amounts due and owing under the Subcontract included in an invoice paid by the Cabinet.

4.1.5.3 Responsibility for Work by Subcontractors

Notwithstanding any Subcontract or agreement with any Subcontractor, the Contractor shall be fully responsible for all of the Work. The Cabinet shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind the Cabinet.

4.1.5.4 Prompt Payment

The Contractor shall make prompt monthly payment to Subcontractors for satisfactory performance of subcontracted work no later than 7 days after receiving payment from the Cabinet for such work or sooner if required by applicable legal requirements.

The Cabinet may hold disputed funds under a Subcontract with any DBE Subcontractor until the dispute is resolved.

4.1.6 Insurance

The Contractor shall procure and keep in effect the insurance policies required by the Applicable Standards, Standard Specifications Section 107.18 (Insurance Requirements).

4.1.7 Toll Charges

The Contractor acknowledges and agrees that for the term of the Agreement it is responsible for paying all toll charges and any violation charges for use of toll facilities.

4.1.8 Road User Damage

The Contractor acknowledges and agrees that its obligations under the Agreement include the repair, rehabilitation, restoration, and replacement of damage caused by third parties (“Road User Damage”).

No later than 90 days after repairing Road User Damage, the Contractor shall provide the Cabinet the following information to allow the Cabinet to seek recovery from the Person who caused the Road User Damage:

1. Police report if available.
2. Description of damage.
3. Documentation of repair costs.
4. Other reasonably requested information.

4.1.9 Damage to Off-Site Property

The Contractor shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. The Contractor shall restore damaged, injured, or lost property caused by an act or omission of the Contractor to a condition similar or equal to that existing before the damage, injury, or loss occurred.

4.2 Contractor Routine Maintenance Responsibilities

4.2.1 General Responsibilities

The annually updated Operations and Maintenance Plan for the Project shall govern all Routine Work. The Annual Operations and Maintenance Plans shall include:

1. List of skills and resources necessary for the provision of the Work.
2. Plan to optimize resource usage including water, power, and waste disposal.
3. Cooperate and coordinate with the Cabinet, and any other authorized third party to access the Project.
4. Take reasonable steps to preserve the Cabinet’s rights under warranties and insurance policies pertaining to the Project and equipment.
5. Provide specialist technical personnel or Subcontractors to support the operations and maintenance activities of the Project.
6. Respond to alarms reported in the control room in accordance with agreed time frames as defined in Attachment B-1 (O&M Performance Requirements).
7. Perform routine testing of machinery and equipment to relevant Operations and Maintenance Standards as detailed in Attachment B-1.

8. Procedures for record keeping in accordance with NBIS and NTIS requirements.

The Contractor shall provide sufficient detail on the following topics:

1. Tunnel Maintenance Management Plan including:
 - a. Machinery and Equipment Management Plan, with details on Routine Maintenance frequencies and methods.
 - b. Consumable and spare parts list and outline for managing these elements.
2. Operations Plan including:
 - a. Control Room Operations Plan.
 - b. Incident Management/ Emergency Response Plan.
 - c. Disaster Recovery Plan including information on the Business Continuity Plan.
 - d. Risk Management Plan.
3. Annual work plan for roadway assets.
4. Subcontracting Plan.
5. Quality Assurance Plan.
6. Communications Plan.
7. Interface Protocols.
8. Health and Safety and Environmental Plan.
9. Monthly report template.

4.2.2 Specific Topics in Exhibit B

1. Maintenance Management Information System
2. Tunnel Services
 - a. Control Room Monitoring
 - b. Environmental Monitoring System
 - c. Lighting System
 - d. Supervisory Control and Data Acquisition (SCADA)
 - e. Ventilation System
 - f. Fire Protection System
 - g. Drainage System
 - h. Closed-Circuit Television System (CCTV)
 - i. Power Supply System
 - j. Telephone System
 - k. Traffic Surveillance Control System
3. Tunnel Control Room
4. Control Tower and Tunnel Management Building
5. Emergency Response

6. Roadway Operations and Maintenance Services
7. Asset Management and Lifecycle Planning
8. Inspections
9. Performance Management
10. Equipment and Spares Inventory
11. Reporting
12. Environmental Compliance
13. Training Requirements
14. Communications and IT Network

4.2.3 Staffing Requirements

The Contactor shall provide personnel to fill the below positions. The Project is performance-based and unless otherwise noted, the positions may be filled full time, part-time, or by Subcontractors as the Contractor deems necessary to fulfill the requirements of the Project. The Contractor must denote Project personnel considered to be generally on-site or available to the site within 30 minutes from 8:00 am to 8:00 pm, Monday through Friday.

Any position may be combined with other positions as detailed in the Contactor's proposal provided all performance requirements are met; therefore, no position is mandatory except Key Personnel. No position is required to be full-time. Project personnel can include:

1. Project manager
2. Control room manager
3. Control room staff
4. Facility manager
5. Roadway superintendent
6. Roadway foreman and/or technician
7. Electrician
8. HVAC mechanic
9. Carpenter
10. Pipefitter
11. Equipment mechanic
12. Plumber
13. Painter
14. Fire suppression system technician
15. Other specialist technicians and skilled/unskilled labor as needed

Key Personnel Include:

1. Project Manager

2. Tunnel Operations Manager
3. Roadway Manager

Note: Key Personnel require Cabinet approval to be substituted.

4.3 Contractor Renewal Work Requirements

See Exhibit B-3: O&M Performance Requirements for all information related to Renewal Work Performance Requirements, Quality & Timeliness Requirements, and NCE Deduction Points.

4.4 Contractor Inspection Requirements

See Exhibit B-5 for Testing Requirements including Weekly, Monthly, Quarterly, Semi-Annually, Annually, 2 Years, 3 Years, 5+ Years, and before the first Freeze. This Exhibit is meant to be used as a form that the Contractor will complete at each of the intervals and submit to the Cabinet for approval.