

**EAST END CROSSING TUNNEL  
OPERATION AND MAINTENANCE AGREEMENT**

**Contract ID: 22-9001**

**A PROJECT OF THE  
KENTUCKY TRANSPORTATION CABINET**

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- Exhibit A – Definitions and Acronyms**
- Exhibit B – Routine Maintenance**
- Exhibit C – Renewal Project Plan Requirements**
- Exhibit D – Form of Maintenance Payment and Performance Bond**
- Exhibit E – Routine Maintenance Price**

# **1 GENERAL**

## **1.1 Parties**

This Operation and Maintenance Agreement (“Agreement”) for the East End Crossing Tunnel (the “Project”) is entered into by and between the Kentucky Transportation Cabinet (the “Cabinet”) and [Contractor] (the “Contractor”) (collectively, the “Parties”).

## **1.2 Effective Date**

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

## **1.3 Term**

The term of this Agreement includes an initial term and an option to extend the initial term. The maximum term of this 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 this Agreement.

Upon mutual agreement, the Parties may renew the Agreement and extend the term for a three-year period. The Cabinet shall provide the Contractor notice of intent to renew 180 days prior to the expiration of the initial term. The Parties shall negotiate any mutually agreeable changes to the Agreement as part of the renewal process. Changes to the Agreement and agreement to renew shall be documented in writing and signed by both Parties. The renewal term shall commence as of the expiration of the initial term and shall continue for a period of three years, unless terminated earlier in accordance with the terms of this Agreement.

### **1.3.1 Notice to Proceed**

The Parties agree that due to the nature of the Scope of Work, the Contractor will require lead in time to meet their Routine Maintenance obligations pursuant to Section 2.1 (Requirements for Routine Maintenance) and any Renewal Work obligations pursuant to Section 2.2 (Requirements for Renewal Work). Upon the Effective Date, all Cabinet and Contractor obligations shall be in full force and effect except for the Routine Maintenance requirements identified in Section 2 (Scope of Work) and Exhibit B (Routine Maintenance), any Renewal Work obligations identified in Section 2.2 and Exhibit C (Renewal Project Plan Requirements), and any payment obligations identified in Section 3 (Payment). Within 90 days of the Effective Date, the Contractor shall provide a written Request for Notice to Proceed to the Cabinet indicating it is prepared to meet the obligations for the Routine Maintenance and, if necessary, Renewal Work. The Request for Notice to Proceed shall include the following information:

1. An affirmative statement that the Contractor is prepared to meet all requirements of Section 2.1, Section 2.2, Exhibit B, and Exhibit C.
2. A suggested Notice to Proceed date.
3. Identification of all Subcontractors that will perform Work on the Project.

Upon receipt and Approval of the Request for Notice to Proceed, the Cabinet will issue a written Notice to Proceed to the Contractor within 14 days after the suggested Notice to Proceed date. After the Notice to Proceed is issued, the Contractor will be responsible for complying with all requirements of the Contract Documents, including Attachment B-1 (O&M Performance Requirements) with no grace period.

## **1.4 Definitions and Acronyms**

Wherever abbreviations or capitalized terms are used in the Contract Documents, they shall have the meanings set forth in Exhibit A (Definitions and Acronyms).

## **1.5 Order of Precedence**

Each of the documents listed below (collectively, the “Contract Documents”) is an essential part of this Agreement, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and describe and provide for a complete Agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below:

1. Change Orders and amendments to this Agreement;
2. The main body of this Agreement, as executed by the Cabinet and the Contractor;
3. Exhibit A (Definitions and Acronyms);
4. Exhibit B (Routine Maintenance) and its attachments;
5. Any Approved Renewal Project Plan; and
6. Applicable Standards.

## **1.6 Reference Information Documents**

The Contractor understands and agrees that the Cabinet shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost, or cause of action whatsoever suffered by the Contractor by reason of any use of any information contained in the Reference Information Documents or any action or forbearance in reliance thereon. The Contractor further acknowledges and agrees that:

1. if and to the extent the Contractor or anyone on the Contractor’s behalf uses any of said information in any way, such use is made on the basis that the Contractor, not the Cabinet, has approved and is responsible for said information; and
2. the Contractor is capable of conducting and obligated hereunder to conduct any and all studies, analyses, and investigations as it deems advisable to change, recreate, verify, or supplement said information, and that any use of said information is entirely at the Contractor’s own risk and at its own discretion.

## **2 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 this Agreement and shown in Attachment B-4 (Project Limits).

Except as specifically identified as a Cabinet obligation, the Contractor shall provide all resources required for performance of the Work.

Unless specifically identified as applying only to Routine Maintenance or Renewal Work, requirements in this Agreement shall be interpreted to apply to all Work.

### **2.1 Requirements for Routine Maintenance**

The Contractor shall perform Routine Maintenance in accordance with:

1. Good Industry Practice;

2. The requirements, terms, and conditions set forth in this Agreement and Approved Maintenance Management Plan; and
3. Applicable Laws.

Exhibit B (Routine Maintenance) sets out the minimum Performance Requirements for Routine Maintenance. Failure to meet minimum Performance Requirements per Exhibit B will result in Non-Performance Deductions assessed in accordance with Section 3.1.1.3 (NCE Points and Non-Performance Deductions).

The Contractor shall cooperate with the Cabinet in all matters relating to Routine Maintenance, including the Cabinet's monitoring, reviewing, inspecting, testing, reporting, auditing, and other oversight functions for the Project.

The Contractor shall coordinate planning and performance of Routine Maintenance activities with any operation, maintenance, construction, or tolling activities being performed by the Cabinet. The Contractor acknowledges that the Cabinet may deliver projects on or adjacent to the Project Limits and that no actions of the Cabinet shall relieve the Contractor of its obligation to perform Routine Maintenance.

### **2.1.1 Maintenance Management Plan**

The Contractor shall develop and maintain a Maintenance Management Plan as described in Exhibit B (Routine Maintenance).

### **2.1.2 Maintenance Payment and Performance Bond**

The Contractor shall provide to the Cabinet prior to the Effective Date and shall maintain during the term of the Agreement, including the extended three-year term if applicable, a Maintenance Payment and Performance Bond in the form of Exhibit D (Form of Maintenance Payment and Performance Bond).

The amount of the Maintenance Payment and Performance Bond shall equal the total sum of Maintenance Price payments to be made in the applicable term in accordance with Exhibit E (Routine Maintenance Price) and shall be updated when adjustments to such amounts made in accordance with Section 3.1.1.2 (Payment Escalation) cause the Maintenance Price to increase to a sum exceeding 110% of the current amount of the Performance Bond.

The Maintenance Payment and Performance Bond shall be issued by a Surety authorized to do business in the Commonwealth of Kentucky and be rated in the top two categories by two nationally recognized rating agencies or A.M. Best rating of at least A (Excellent) or better, or as otherwise approved by the Cabinet in its discretion.

### **2.1.3 Cabinet Responsibilities for 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).

#### **2.1.4 Third Party Coordination**

The Contractor shall coordinate with Third Parties as further described in Exhibit B (Routine Maintenance).

### **2.2 Requirements for Renewal Work**

Renewal Work includes any Renewal Project the Cabinet authorizes the Contractor to perform.

Renewal Work shall be performed in accordance with this Agreement, including Exhibit C (Renewal Project Plan Requirements). Authorization of a Renewal Project shall be subject to mutual agreement of the Parties to a Renewal Project Plan.

Unless specifically described in an Approved Renewal Project Plan, the Contractor shall not be relieved of Routine Maintenance responsibilities due to the Cabinet's authorization of Renewal Projects.

#### **2.2.1 Renewal Project Plan**

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.

#### **2.2.2 Renewal Project Phases**

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.

#### **2.2.3 Performance Security**

The Contractor shall provide a payment and performance bond equal to 100% of the cost of each Renewal Project meeting the requirements of Section 103.05 of the Standard Specifications unless otherwise approved by the Cabinet in its sole discretion. The payment and performance bond provided under this Section 2.2.3 shall be separate from the form of Maintenance Payment and Performance bond identified in Section 2.1.2 (Maintenance Payment and Performance Bond). If a Renewal Project will be Approved in phases, the Contractor shall provide the payment and performance bond prior to commencement of Construction Services.

#### **2.2.4 Nonconforming Renewal Work**

The Contractor shall correct any Nonconforming Work in the manner and within the time frames required by the Contract Documents.

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.

## **2.3 Requirements for the Work**

### **2.3.1 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 this Agreement.

### **2.3.2 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.

### **2.3.3 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. The Contractor's obligation to provide security for the Site shall, at any given time, only extend to those parts of the Site to which the Contractor has been provided access pursuant to Section 2.3.1 (Access to Site).

### **2.3.4 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.

### **2.3.5 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 this Section 2.3.5.

#### **2.3.5.1 Notification to the Cabinet**

If the Contractor becomes aware of Hazardous Materials, the Contractor shall immediately notify the Cabinet, stop Work, and secure the area. In case of a sudden release of Hazardous Materials, the Contractor shall take minimum action necessary to stabilize and contain the relevant release without prior notice but shall promptly notify the Cabinet of the release. Operations within the area shall be temporarily suspended and shall not be resumed at that location unless and until authorized by the Cabinet.

#### **2.3.5.2 Remediation Coordination**

The Cabinet will confirm whether the discovered condition is in fact a Hazardous Material. The Contractor shall provide support to assist the Cabinet in its determination. The Contractor shall coordinate measures to either remove the Hazardous Material or render the Hazardous Material harmless.



### **2.3.5.3 Generator Status**

As between the Cabinet and the Contractor, the Cabinet will be deemed the sole generator and arranger under 40 CFR Part 262 for all Hazardous Materials presently existing in, under, or on the Project Limits as of the Effective Date. The Cabinet agrees to be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities, or Governmental Entities.

As between the Cabinet and the Contractor, the Contractor will be deemed the sole generator and arranger under 40 CFR Part 262 for all Hazardous Materials attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable legal requirements by the Contractor, and for all Hazardous Materials arranged to be brought onto the Site by the Contractor.

### **2.3.5.4 Obligation to Minimize Impacts**

The Contractor shall ensure that all reasonable activities are undertaken in a manner that will minimize the effect of Hazardous Materials on surrounding property and the public to the maximum extent practicable.

## **2.3.6 Prequalification**

### **2.3.6.1 Routine Maintenance**

The Contractor shall possess a Certificate of Eligibility as provided in regulations published by the Cabinet according to KRS Section 176.140 and as stipulated in Section 102.01 of the Standard Specifications for Road and Bridge Construction, Current Edition. This certificate shall be for any Work items that require prequalification in the State.

All specified certification requirements shall be maintained through the term of the Agreement. Certification shall again be provided upon renewal. For information on the prequalification process please contact the Prequalification Branch Manager in the Division of Construction Procurement at 502-564-3500.

### **2.3.6.2 Renewal Work**

Each Renewal Project Plan shall identify prequalification requirements for the applicable Renewal Project. The Contractor shall obtain prequalification before commencing any Renewal Work for which prequalification is required.

## **2.3.7 Submittals**

### **2.3.7.1 Standards for Review of, Comment on, and Approval of Submittals**

In all cases where approvals, acceptances, or consents are required to be provided by the Cabinet or the Contractor hereunder, such approvals, acceptances, or consents shall not be withheld unreasonably, except in cases where a different standard is specified. In cases where sole discretion of the Cabinet is specified, the decision is in the sole discretion of the Cabinet and shall not be subject to dispute resolution hereunder.

#### **2.3.7.1.1 Approval**

When the Contractor is required to submit an item to the Cabinet “for Approval,” the Contractor shall obtain the Cabinet’s written approval of such item and may not proceed to incorporate that item into the Work or the Project without the Cabinet’s written Approval.

#### **2.3.7.1.2 Review and Comment**

When the Contractor is required to submit an item to the Cabinet “for Review and Comment,” the Cabinet shall have an opportunity to review and comment on such submittal. If the Cabinet does not provide any comments within 7 days, then the Contractor may assume that the Cabinet does not have any comments and the Contractor may proceed.

### **2.3.8 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.

#### **2.3.8.1 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.

#### **2.3.8.2 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.

#### **2.3.8.3 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.

#### **2.3.8.4 Prompt Payment**

All Subcontracts must provide for the payment of 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.

### **2.3.9 Equal Employment Opportunity**

#### **2.3.9.1 Equal Employment Opportunity Policy**

The Contractor confirms that it will maintain in place an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion, sexual orientation, gender identity, disability, or genetic information; and that it maintains no employee facilities

segregated on the basis of race, color, religion or national origin. The Contractor shall comply with the Cabinet's Equal Employment Opportunity Policy.

### **2.3.9.2 Non-Discrimination**

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of the Project, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act, Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability. Such action shall include employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability.
3. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
4. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
5. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
6. The Contractor will include the provisions of paragraphs (1) through (6) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **2.3.10 Insurance**

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

### **2.3.11 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.

### **2.3.12 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.

#### **2.3.12.1 Limitation on Obligation Related to Road User Damage**

If the estimated cost of repairing any single event of Road User Damage exceeds \$100,000, the Contractor shall immediately notify the Cabinet upon becoming aware of the Road User Damage. The Contractor shall not be required to repair any single event of Road User Damage estimated to cost more than \$100,000 unless the Work is authorized by the Cabinet as Renewal Work. The Cabinet may authorize any repair of Road User Damage as Renewal Work. If the repair of Road User Damage is authorized as Renewal Work, costs shall be paid pursuant to the Approved Renewal Project Plan. Costs paid as Renewal Work shall not be considered in determining if the Contractor is entitled to a Change Order as described in Section 2.3.12.2 (Right to Recover).

#### **2.3.12.2 Right to Recover**

Once the Contractor has provided information required by this Section 2.3.12, the Contractor shall be entitled to request a Change Order pursuant to Section 4 (Changes) for costs exceeding \$50,000 in any reporting year that the Contractor incurred repair of Road User Damages. In developing the Change Order, eligible costs shall include documented direct costs plus a mark-up of 10% for the first \$50,000 of recoverable costs and a mark-up of 15% for recoverable costs exceeding \$50,000.

### **2.3.13 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.

### **2.3.14 Indemnity by Contractor**

The Contractor for itself and for all Subcontractors shall release, defend, indemnify, and hold harmless the Cabinet and each of its employees, commissioners, office-holders, agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents and employees from and against any and all claims, disputes, demands, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys', accountants' and expert witness fees and costs, in each case whether actual, prospective, or contingent, whether then-currently ascertainable, and whether asserted, suffered, or incurred, arising out of, relating to or resulting from:

1. Any breach or alleged breach of this Agreement by the Contractor;
2. Any actual or alleged failure of the Contractor to comply with any Applicable Laws or Governmental Approvals in performing the Work;
3. Any actual or alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in the Contractor's performance of the Work;
4. Any actual or alleged negligent act, negligent omission, willful, or intentional misconduct, illegal activities (or inaction), fraud, other criminal conduct, or bad faith of the Contractor;
5. Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of the Contractor;
6. Any spill, release, threatened spill, threatened release, or exacerbation of Hazardous Materials attributable to the negligence, willful misconduct, or breach of contract by the Contractor;
7. Inverse condemnation, trespass, nuisance, interference with use and enjoyment of property or similar taking of or harm to real property by reason of the Contractor's failure to comply with Good Industry Practices, requirements of this Agreement, or Governmental Approvals; negligence, willful misconduct, or breach of contract; or entry onto or encroachment upon another's property;
8. Other defects or Errors in the Work that fail to comply with Good Industry Practice; or
9. The claim or assertion by the any other contractor engaged by the Cabinet that the Contractor interfered with, or hindered the progress or completion of, work being performed by such other contractor, or failed to cooperate reasonably with such other contractor so as to cause inconvenience, disruptions, delay or loss, except where the Contractor was not in any manner engaged in performance of the Work.

### **2.3.15 Suspension for Convenience**

The Cabinet may, at any time and for any reason, by written notice, order the Contractor to suspend all or any part of the Work required under the Agreement for the period of time that the Cabinet deems appropriate for the convenience of the Cabinet. The Contractor shall promptly comply with any such written suspension order. The Contractor shall promptly recommence the Work upon receipt of written notice from the Cabinet directing the Contractor to resume Work. The Contractor shall be entitled to request a Change Order for increased costs incurred as a result of the suspension of Work.

### **2.3.16 Cabinet Right to Request Removal of Personnel**

The Cabinet shall have the right to request the Contractor to remove Project personnel that the Cabinet determines are not performing to an acceptable standard.

### **2.3.17 Oversight, Inspection, and Testing by the Cabinet and Others**

The Contractor shall perform the quality management necessary for the Contractor to comply with its obligations under the Contract Documents.

All materials and each part or detail of the Work shall also be subject to oversight, audit, and testing by the Cabinet. The Contractor hereby consents to such oversight, inspection, and testing by the Cabinet. Upon request from the Cabinet, the Contractor shall furnish information to such Persons as are designated by the Cabinet to perform oversight, audit, inspection, and testing and shall permit such Persons access to the Site and all parts of the Work.

#### **2.3.17.1 No Estoppel**

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its warrant or indemnity obligations, as the result of oversight, spot checks, audits, reviews, tests, or inspections performed by any person, approvals or acceptances made by any person, or failure of any person to take such action. The Cabinet shall not be precluded or estopped, by any measurement, estimate, or certificate made at any time, or by making payment, from showing that any such measurement, estimate, or certificate is incorrectly made or untrue, or from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from showing that the Work does not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate, certificate, or payment made in accordance therewith, the Cabinet will shall not be precluded or estopped from recovering from the Contractor and its Sureties such damages as the Cabinet may sustain by reason of the Contractor's failure to comply or to have complied with the terms of the Contract Documents.

### **2.3.18 Maintenance of Records and Audits**

The Contractor shall maintain a complete set of all records identified in the Approved Maintenance Management Plan. The Cabinet may inspect the place of business of the Contractor or any Subcontractor under the Agreement these records and any additional records related to the Project. The Cabinet may audit the books and records of the Contractor and any Subcontractor at any time until three years from the date of final payment under the Agreement. Books and records shall be maintained by the Contractor and all Subcontractors for a period of three years from the date of final payment under the Agreement. The Contractor shall include this audit requirement in all Subcontracts.

### **2.3.19 Disputes**

The Contractor and the Cabinet shall resolve all disputes pursuant to the requirements of 603 KAR 2:015.

## **3 PAYMENT**

### **3.1 Monthly Invoice and Performance Report**

The Contractor shall submit a Monthly Invoice and Performance Report for Work in accordance with this Section 3.1. 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 this Section 3, 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.

### **3.1.1 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 yearly maintenance costs described in Exhibit E (Routine Maintenance Price). The Routine Maintenance Price shall be paid in accordance with this 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 this 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 this Agreement.

#### **3.1.1.1 Monthly Payments**

The Contractor shall be paid for Routine Maintenance provided under this Agreement, a monthly payment which shall be calculated by dividing the yearly Routine Maintenance Price by twelve. Such amount shall be payable in arrears pursuant to Monthly Invoice and Performance Reports submitted on the first day of each month.

#### **3.1.1.2 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 this 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.

#### **3.1.1.3 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.

#### **3.1.1.4 Final Payment for Routine Maintenance**

The Contractor shall be paid a final payment upon satisfaction of all obligations of this 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.

#### **3.1.2 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.

#### **3.1.3 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).

#### **3.1.4 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.

### **4 CHANGES**

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



#### **4.1 Routine Maintenance Changes**

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

1. Any change to the Performance Standards which are clearly discriminatory to the Project and are not generally applicable to the transportation facilities under the control of the Cabinet.
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.

#### **4.2 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. The occurrence of a Force Majeure Event.
6. The occurrence of any Relief Event as described in an Approved Renewal Project Plan.

#### **4.3 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).

#### **4.4 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.

### **5 DEFAULT AND TERMINATION**

#### **5.1 Default by Contractor**

##### **5.1.1 Events of Default**

Breaches of this Agreement including those identified below shall be considered Events of Default:

1. The Contractor fails to perform the Work with sufficient resources to ensure the prompt completion thereof;

2. The Contractor fails to perform the Work in accordance with the Contract Documents, refuses to remove and replace rejected materials or Nonconforming Work, or fails to remove and replace workers as directed by the Cabinet;
3. The Contractor breaches any other material agreement, representation, or warranty contained in the Contract Documents, or the Contractor fails to perform any other material obligation under the Contract Documents;
4. The Contractor fails to provide and maintain the required insurance, payment bonds, and performance bonds;
5. The Contractor fails to furnish insurance certificates, indicate the contract number on the insurance certificate, or provide an up-to-date copy of insurance certificates upon renewal of the policy.
6. The Contractor assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted under Section 6.18.2 (Assignment by the Contractor);
7. The Contractor fails, absent a valid dispute, to make payment when due for labor, equipment, or materials in accordance with its agreements with Subcontractors and applicable law; fails to comply with any Legal Requirement or Governmental Approval; or fails reasonably to comply with the instructions of the Cabinet consistent with the Contract Documents;
8. The Contractor shall have become insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors;
9. Insolvency, receivership, reorganization, or bankruptcy proceedings shall have been commenced by or against the Contractor and not dismissed within 60 days;
10. The Contractor is a party to fraud;
11. The Contractor has allowed work to commence by any Subcontractor not previously Approved by the Cabinet.

### **5.1.2 Right to Cure**

The Cabinet agrees to allow the Contractor and Surety (for Renewal Projects) a reasonable opportunity to cure Defaults within a 90 day period after the Contractor's receipt of written notice of Default. The Cabinet shall notify the Contractor of the cure deadline when providing notice of Default. Notwithstanding the foregoing, if the Cabinet believes a condition affecting the Work poses an immediate danger to public health or safety, the Cabinet may rectify the condition at the Contractor's cost. The imposition of cost to the Contractor related to the Cabinet's decision to rectify the condition is subject to dispute resolution pursuant to Section 2.3.19 (Disputes).

## **5.2 Remedies**

### **5.2.1 Liability of Contractor**

If an Event of Default has occurred, the Contractor and Surety (for Renewal Projects) shall be jointly and severally liable to the Cabinet for all costs reasonably incurred by the Cabinet or any party acting on the Cabinet's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work and increased financing costs). Upon the occurrence of an Event of Default, the Cabinet shall be entitled to withhold all or any portion of further payments to the Contractor until such time as the Cabinet is able to determine how much (if any) remains owing to the Contractor.

### **5.3 Right to Stop Work if Undisputed Payment is Not Made**

The Contractor shall have the right to stop Work if the Cabinet fails to make an undisputed payment due hereunder within 30 days after receipt of notice of nonpayment. Any such Work stoppage shall be deemed a suspension. The Contractor shall have the right to terminate this Agreement for default if the Cabinet fails to make an undisputed payment due hereunder within 90 days after receipt of notice of nonpayment. In such event, the Contractor's sole and exclusive remedy shall be to receive termination compensation.

### **5.4 Termination For Convenience**

The Cabinet may, at any time and for any reason including for lack of appropriation in accordance with 200 KAR 5:312, terminate this Agreement or any Approved Renewal Project Plan, in whole or in part, if the Cabinet determines, in its discretion, that a termination is in the Cabinet's best interest. The Cabinet shall terminate by delivering to the Contractor a written Notice of termination of all or part of the Agreement specifying the extent of termination and its effective date.

### **5.5 Termination Compensation**

Upon termination, the Cabinet shall deliver to the Contractor a Notice of Termination. The Cabinet shall pay the Contractor for services performed between the last payment to the Contractor and the date of the Notice of Termination. Upon receipt of the Notice of Termination, the Contractor shall take all necessary and reasonable steps to minimize costs associated with the termination. Within 60 days of receipt of a Notice of Termination, the Contractor shall submit a termination settlement proposal to the Cabinet in a form acceptable to the Cabinet. This termination settlement proposal may include all direct costs associated with the termination including demobilization costs. In no event shall the Cabinet be liable for any indirect or incidental costs, special damages, or lost profits. The Cabinet will either Approve the termination settlement proposal, request additional supporting information, or reject it. The Parties shall resolve any dispute related to Approval of a termination settlement proposal in accordance with Section 2.3.19 (Disputes) which shall survive termination of the Agreement.

## **6 MISCELLANEOUS**

### **6.1 Entire Agreement**

The Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the parties with respect to its subject matter.

### **6.2 Interpretations**

In this Agreement, where appropriate:

1. The singular includes the plural and vice versa;
2. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to as of the date of execution of this Agreement;
3. Words such as "herein," "hereof," and "hereunder" refer to the entire document in which they are contained and not to any particular provision or section;
4. Words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;
5. References to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities;

6. Words of any gender used herein include each other gender where appropriate;
7. The words "including", "includes" and "include" mean "including, without limitation", "includes, without limitation" and "include, without limitation", respectively;
8. The captions of the sections of the Agreement and its exhibits are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

### **6.3 Omission of Details; Clarification by the Cabinet**

The Contractor shall not take advantage of any apparent Error in the Agreement. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Agreement, the Contractor shall promptly notify the Cabinet of all Errors and shall obtain specific instructions in writing regarding any such Error before proceeding with the Work affected thereby.

### **6.4 Computation of Periods**

If the date to perform any act or give any notice specified in the Agreement (including the last date for performance or provision of notice "within" a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding Calendar Day that is a Business Day. Notwithstanding the foregoing, requirements contained in the Agreement relating to actions to be taken in the event of an emergency shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

### **6.5 Time is of the Essence**

Time is of the essence with respect to the time periods and limitations with respect to notices and submittals, and the time periods, limitations, and milestones identified under the Contract Documents, and in each case, except where this Agreement expressly provides for extension of time, the Contractor hereby waives any right at law or in equity to tender or complete delivery, response, or performance, as applicable, beyond the applicable time period, or to require the Cabinet to accept such delivery, response, or performance.

### **6.6 Organization**

The Contractor has all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. The Contractor is duly qualified to do business, and is in good standing, in the State, and will remain in good standing throughout the term of the Agreement and for as long thereafter as any obligations remain outstanding under the Agreement.

### **6.7 Authorization**

The execution, delivery, and performance of this Agreement have been duly authorized by all necessary actions of the Contractor, and, if applicable, the Contractor's members, and will not result in a breach or a default under the organizational documents of any such Person or any indenture, loan, credit agreement, or other material agreement or instrument to which any such Person is a party or by which its properties and assets may be bound or affected.

### **6.8 Intellectual Property Rights**

The Contractor acknowledges that all intellectual property rights created as a direct result of the performance of Work under this Agreement shall be the exclusive property of the Cabinet. If the Contractor incorporates existing intellectual property into any system provided to the Cabinet as part of the Work which is intended to have a useful life beyond the termination of this Agreement, the Contractor hereby grants to the Cabinet a paid-up, non-exclusive, world-wide, irrevocable, transferable license, for the Cabinet

to continue to use the system. The Contractor shall have no obligation to support the Cabinet's use of any system beyond the termination of this Agreement.

#### **6.9 Legal, Valid, and Binding Obligation**

This Agreement constitutes the legal, valid, and binding obligation of the Contractor and, if applicable, of each member of the Contractor.

#### **6.10 Counterparts and Electronic Signatures**

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures may be made and delivered electronically.

#### **6.11 Designation of Representatives**

Identified below are representatives of the Cabinet and the Contractor who are authorized to make decisions and bind the parties on matters relating to the Agreement. Such designations may be changed by a subsequent written notice delivered to the other party in accordance with Section 6.13 (Notices and Communications). The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have authority to bind the Cabinet or the Contractor.

The Cabinet's representative is Tracy Nowaczyk, P.E.

The Contractor's representative is [name].

#### **6.12 The Cabinet's Representative to Execute Change Orders**

The only person who can execute Change Orders and other amendments to this Agreement, including any Notice to Proceed, on behalf of the Cabinet is [name]. Such designation may be changed by a subsequent written notice delivered by the Cabinet to the Contractor in accordance with Section 6.13 (Notices and Communications).

#### **6.13 Notices and Communications**

Notices and all other communications under this Agreement shall be in writing and shall be delivered personally, sent by certified mail with return receipt requested, sent by a recognized overnight mail or courier service with delivery receipt requested, or sent by facsimile email communication followed by a hard copy and with receipt confirmed by telephone to the address set forth below.

All notices, correspondence and other communications to the Cabinet shall be marked as regarding the East End Tunnel O&M and shall be delivered to the following address or as otherwise directed by the Cabinet's Authorized Representative:

Kentucky Transportation Cabinet  
200 Mero Street  
Frankfort, KY 40622  
Attn: Tracy Nowaczyk, P.E.  
502-782-5595  
Tracy.Nowaczyk@ky.gov

All notices, correspondence and other communications to the Contractor will be marked as regarding the East End Tunnel O&M and will be delivered to the following address or as otherwise directed by the Contractor's Authorized Representative:

[CONTRACTOR]  
[Address]  
[City, State, Zip]  
Attn: [Authorized Representative]  
[Telephone and fax, if applicable]  
[Email]

#### **6.14 Title**

The Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the Cabinet for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all such materials, equipment, tools and supplies which shall have been delivered to the Site shall pass to the Cabinet, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the Cabinet to the Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, the Contractor shall retain sole care, custody, control, and risk of loss of such materials, equipment, tools, and supplies, and shall exercise due care with respect thereto as part of the Work until termination of this Agreement.

#### **6.15 Compliance with Public Records Laws**

##### **6.15.1 Applicability of Law**

The Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications, and other materials in the Contractor's or the Cabinet's possession directly related to the Project, including materials submitted to the Cabinet by the Contractor, are subject to the provisions of Public Records Laws. If any of the materials submitted by the Contractor to the Cabinet are clearly and prominently labeled trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data by the Contractor, the Cabinet shall provide notice to the Contractor of any request for the disclosure of such materials prior to making any such disclosure and give the Contractor an opportunity to assert, in writing and at its sole expense, a claimed exception under Public Records Laws or other applicable Legal Requirement within the time period specified in the notice issued by the Cabinet and allowed under Public Records Laws.

##### **6.15.2 Confidential Materials**

Under no circumstances will the Cabinet be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake, or negligence on the part of the Cabinet.

##### **6.15.3 Cooperation with the Cabinet regarding Public Records Laws**

In the event the Cabinet receives a public records request for documents that are in the custody and control of the Contractor, the Contractor shall cooperate with the Cabinet in responding to the request in a timely manner under the applicable Public Records Laws.

#### **6.16 Gratuities and Conflicts of Interest**

The Contractor certifies that it will not offer or provide gifts to Cabinet employees in excess of \$25.00 in any single calendar year as defined in KRS 11A.045 (1) and KYTC General Administration and Personnel

Policy GAP-808. Moreover, the Contractor certifies that it will not offer any ticket to a sporting event to a Cabinet employee without being reimbursed the face value amount for said ticket as defined in KRS 11A.045 (2).

It is agreed and understood that non-compliance with the above provisions may result in the suspension of vendor procurement participation, contract termination, and/or debarment.

### **6.17 Independent Contractor**

The Contractor is an independent contractor, and nothing contained in the Agreement shall be construed as constituting any relationship with the Cabinet other than that of Project owner and independent contractor. In no event shall the relationship between the Cabinet and the Contractor be construed as creating any relationship whatsoever between the Cabinet and any of the Contractor's employees. Neither the Contractor nor any of its employees is or shall be deemed to be an employee of the Cabinet. Except as otherwise specified in the Agreement, the Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that the Contractor or any Subcontractor hires or engages to perform or assist in performing the Work.

### **6.18 Successors and Assigns**

The Agreement shall be binding upon and inure to the benefit of the Cabinet and the Contractor and their permitted successors, assigns and legal representatives.

#### **6.18.1 Assignment by the Cabinet**

The Cabinet may assign all or part of its right, title, and interest in and to this Agreement, including rights with respect to the surety bonds required hereunder and any other performance security provided, to any Person with the prior written approval of the Contractor.

#### **6.18.2 Assignment by the Contractor**

The Contractor may assign its rights to receive payment under the Agreement and in compliance with the requirements of the Agreement. The Contractor shall not otherwise sublet, transfer, assign, or dispose of any portion of this Agreement, or delegate any of its duties hereunder, except with the Cabinet's prior written approval, which approval shall be at the Cabinet's sole discretion. The Contractor's assignment or delegation of any of its Work under the Agreement shall be ineffective to relieve the Contractor of its responsibility for the Work assigned or delegated, unless the Cabinet, in its sole discretion, has Approved such relief from responsibility.

### **6.19 Limitation on Third Party Beneficiaries**

It is not intended by any of the provisions of the Agreement to create any third-party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations, and responsibilities of the parties to the Agreement with respect to such third parties shall remain as imposed by law. The Agreement shall not be construed to create a contractual relationship of any kind between the Cabinet and a Subcontractor or any other Person except the Contractor.

## **6.20 Waiver**

### **6.20.1 No Waiver of Subsequent Rights**

Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

### **6.20.2 Mutual Waiver of Consequential Damages**

The Parties hereby waive all claims against each other for all consequential damages arising out of or relating to this Agreement.

### **6.20.3 Custom Does not Constitute Waiver**

No act, delay, or omission done, suffered, or permitted by one party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such party under any Contract Document, or to relieve the other party from the full performance of its obligations under the Contract Documents. No custom or practice between the parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

### **6.20.4 Waivers Must be in Writing**

No waiver of any term, covenant, or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.



**6.21 Signatures**

IN WITNESS WHEREOF, the Parties have executed this Agreement.

[CONTRACTOR]

KENTUCKY TRANSPORTATION CABINET

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
[TITLE]

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_  
[TITLE]

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Date

**Exhibit A**  
**Acronyms and Defined Terms**

As used in the Agreement to which this Exhibit A is attached (unless otherwise specified therein), the following acronyms shall have the meanings set forth below.

<b>ACRONYMS</b>	
<b>Abbreviation</b>	<b>Title or Description</b>
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
DMS	Dynamic message sign
EEO	Equal Employment Opportunity
EMS	Emergency Medical Services
ENR CCI	Engineering News Record Construction Cost Index
EPA	(U.S.) Environmental Protection Agency
FHWA	Federal Highway Administration
ISO	International Organization for Standards
KRS	Kentucky Revised Statutes
KYTC	Kentucky Transportation Cabinet
LCS	Lane control sign (arrows)
LED	Light emitting diode
NCE	Non-Conformance Event
NEPA	National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.)
NFPA	National Fire Protection Association
NTIS	National Tunnel Inspection Standard
O&M	Operations and Maintenance
OJT	On-the-Job Training
OSHA	United States Occupational Safety and Health Administration
PTZ	Pan-tilt-zoom camera
RCO	Request for Change Order
RCP	Request for Change Proposal
RFP	Request for Proposals
RID	Reference Information Documents
ROW	Right of Way
SOQ	Statement of Qualification
TCB	Telecommunications Certification Body
TOMIE	Tunnel Operations, Maintenance, Inspection and Evaluation
U.S.C.	United States Code
USDOT	United States Department of Transportation

As used in the Agreement to which this Exhibit A is attached (unless otherwise specified therein) the following terms shall have the meanings set forth below.

**“Applicable Law”** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding any dispute), (c) any binding judicial or administrative order or decree (other than regarding any dispute), or (d) any written directive or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by the Cabinet within the scope of its administration of the Contract Documents or in the normal course of its adoption of new or revised technical standards), in each case which is applicable to the Project or the Work or any party to this Agreement or affiliated Person, whether taking effect before or after the Effective Date, including Environmental Laws. “Law” includes any federal or State emergency declaration, travel restriction, or other order, decree, directive, or requirement, in each case, having the force of law regarding public conduct in response to COVID-19 or any other epidemic or pandemic. “Laws”, however, excludes Governmental Approvals.

**“Applicable Standards”** All standards, guidelines, manuals, policies, and other Cabinet-published requirements that govern the planning, design, and construction of projects delivered by the Cabinet, subject to exceptions, deviations, or variances included in the Agreement or an Approved Renewal Project Plan. Applicable Standards shall not be used as a basis of payment or the assessment of damages and do not include Division 100 of the Kentucky Standard Specifications, unless specifically identified in the Contract Documents.

**“Approve” or “Approval”** The meaning is set forth in Section 2.3.7.1.1 (Approval) of the Agreement.

**“Authorized Representative”** The applicable Person(s) and/or party(ies) authorized to act on behalf of each of the Cabinet and the Contractor, respectively as specified in the Agreement. All notices, deliveries, responses, Approvals, and other communications among the Cabinet and the Contractor shall be directed to the respective Authorized Representative for each of the aforementioned, unless expressly provided to the contrary in the Agreement.

**“Business Day”** A day that the Cabinet is open for business.

**“Cabinet”** The Kentucky Transportation Cabinet acting directly or through a representative authorized in writing, who is responsible for administrative supervision of the Project, whichever the context requires.

**“Cabinet-Directed Change”** Any changes in the Work (including changes in the standards applicable to the Work) that the Cabinet has directed the Contractor to perform.

**“Change Order”** A written amendment to the terms and conditions of the Contract Documents issued in accordance with Section 4 (Changes) of the Agreement.

**“Construction Services”** Work associated with a phased Renewal Project that includes the construction efforts associated with Renewal Work.

**“Contract Documents”** The meaning set forth in Section 1.5 (Order of Precedence) of the Agreement.

**“Contractor”** The meaning set forth in Section 1.1 (Parties) of the Agreement including their employees, agents, officers, affiliates, Subcontractors, and all other Persons for whom Contractor may be legally or contractually responsible.

**“day”** Each and every day shown on the calendar, including Saturdays and Sundays, beginning and ending at midnight.

**“Differing Site Conditions”** A condition that (i) is a subsurface or latent condition encountered at the exact boring holes identified in the geotechnical reports produced as part of any Preconstruction Services, and (ii) differs materially from those conditions indicated in the geotechnical reports for such boring holes. The foregoing definition specifically excludes Utility facilities, Hazardous Materials, non-contaminated water, and any other conditions that would otherwise constitute a Relief Event.

**“Disadvantaged Business Enterprise”** A contracting firm certified to participate in the U.S. Department of Transportation financial assistance programs as a DBE by the Cabinet.

**“Effective Date”** The latest date of execution of the O&M Agreement by the Parties.

**“Environmental Laws”** All Legal Requirements now or hereafter in effect relating to the environment or to emissions, discharges, releases, or threatened releases of Hazardous Materials into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials or otherwise relating to the protection of public health, public welfare, or the natural environment (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including the statutes listed in the definition of Hazardous Materials; the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.; the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.; and the Eagle Protection Act, 16 U.S.C. § 668, each as amended.

**“Error”** An error, omission, or other defect.

**“Event of Default”** A default as described in Section 5 (Default and Termination) of the Agreement, following notice and opportunity to cure to the extent permitted by Section 5.1.2 (Right to Cure) of the Agreement and issuance by the Cabinet of notice that an Event of Default has occurred.

**“Force Majeure Event”** Any of the following acts, events, conditions, or occurrences to the extent that the same are beyond the Contractor’s reasonable control, which could not have been either foreseen or avoided by the exercise of due diligence, and which has an adverse effect on the Contractor’s ability to perform its obligations hereunder:

- fire, explosion, flood, earthquake, hurricane, windstorm, or tornado, in each case that causes direct physical damage to the Project;
- any pandemic, epidemic, or quarantine restrictions occurring within the vicinity of the Project;
- war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the State;
- any act of terrorism or sabotage that causes direct physical damage to the Project;
- riot and civil commotion on or in the immediate vicinity of the Project that has a direct adverse impact on the Contractor’s ability to perform the Work; and

- Work stoppages, work slowdowns, or other labor disruptions, unless caused by or otherwise under the control or influence of the Contractor occurring within the vicinity of the Project.

**“Good Industry Practice”** The exercise of the degree of skill, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor seeking in good faith to comply with its contractual obligations engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic area as the Project and which complies with applicable Legal Requirements. Good Industry Practice includes, without limitation, taking reasonable steps to assure sufficient personnel are employed and available to perform the work and such personnel are adequately skilled, experienced, and trained to complete the Work.

**“Governmental Approval”** Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling, required by or with any Governmental Person in order to design and construct the Project.

**“Governmental Person”** Any federal, state, local, or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public, or statutory instrumentality, administrative agency, authority, body, or entity. The term includes the Commonwealth of Kentucky and agencies and subdivisions thereof, other than the Cabinet.

**“Hazardous Materials”** Any of the following:

- Substance, product, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect;
- Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;
- Petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles; and
- Asbestos or asbestos-containing materials in structures and or other improvements on or in the site (other than mineral asbestos naturally occurring in the ground).

**“Key Personnel”** The persons identified in Exhibit B (Routine Maintenance) as key personnel, subject to revision in accordance with the Contract Documents.

**“Legal Requirements”** All applicable federal, State, and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders, and decrees of any Governmental Person having jurisdiction over the Project, the practices involved in the Project, any Work, or any Utility

Work being performed by a Utility Owner. The term "Legal Requirements" does not include Governmental Approvals or tax laws.

**“Maintenance Management Information System”** means the system described in Section 2 (Maintenance Management Information System) of Exhibit B (Routine Maintenance).

**“Maintenance Payment Bond”** means the payment bond delivered by the Contractor in the form attached to the Agreement as Exhibit D (Form of Maintenance Payment and Performance Bond).

**“Maintenance Performance Bond”** means the performance bond delivered by the Contractor in the form attached to the Agreement as Exhibit D (Form of Maintenance Payment and Performance Bond).

**“Major Repairs”** means repairs or replacements intended to prolong or extend the life of the asset. It is intended that these repairs or replacements will be made in accordance with Exhibit C (Renewal Work).

**“Minor Repairs”** mean maintenance or repairs intended to allow the asset to continue to function as designed or meet the minimum performance requirements. It is intended that spare parts for minor repairs will either be kept in the Contractor’s inventory or readily available from suppliers to meet the repair timeframes noted in Attachment B-1 (O&M Performance Requirements). The Cabinet may provide relief on timeliness requirements if the Contractor promptly orders parts and, due to supply chain issues beyond the Contractor’s control, the parts are not readily available.

**“Monthly Invoice and Performance Report”** The monthly report required to be submitted by the Contractor in order to receive compensation for the work as further described in Section 3.1 (Monthly Invoice and Performance Report) of the Agreement.

**“Non-Conformance Event Points”** means the points shown in Attachment B-1 to be assessed in the Contractor’s failure to meet the Performance Requirements.

**“Nonconforming Work”** means Work that:

- otherwise does not conform to the requirements of the Contract Documents;
- is not performed in accordance with the Approved Maintenance Management Plan; or
- does not conform the requirements of Governmental Approvals or applicable Laws.

**“Non-Performance Deductions”** Deductions in compensation assessed to the Contractor pursuant to Section 3.1.1.3 (NCE Points and Non-Performance Deductions) of the Agreement for Work not completed in accordance with the Performance Requirements.

**“Notice of Termination”** A notice issued by the Cabinet or the Contractor to terminate the O&M Agreement.

**“Notice to Proceed”** A notice issued by the Cabinet in accordance with Section 1.3.1 (Notice to Proceed) of the Agreement after reviewing the Request for Notice to Proceed provided by the Contractor.

**“Operations”** means Work that does not relate to repairs or maintenance but allows the asset(s) to function. For example: management and administrative work.

**“Operation and Maintenance Agreement”** The O&M Agreement executed by the Cabinet and the Contractor (to which this Exhibit A is attached), and any and all amendments thereto.

**“Parties”** The Cabinet and the Contractor.

**“Performance Requirements”** For each asset type, the quality and timeliness requirements set forth in Attachment B-1 (O&M Performance Requirements).

**“Person”** Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Person, including the Cabinet.

**“Preconstruction Services”** Work associated with a phased Renewal Project that may include the overall planning, coordination, and design efforts associated with Renewal Work.

**“Project”** The performance of Routine Maintenance and Renewal Work within the Project Limits , as described by the Contract Documents.

**“Project Limits”** The extents of the Project as shown in Attachment B-4 (Project Limits).

**“Proposal”** Those documents constituting the Contractor’s proposal in response to the RFP, including any supplements to proposals as may have been requested by the Cabinet.

**“Public Records Laws”** Any applicable law describing the Cabinet’s rights and obligations as related to the disclosure to the public of information in the possession of the Cabinet.

**“Reference Information Documents”** The collection of information, data, documents and other materials that the Cabinet has provided to the Contractor for general or reference information only.

**“Relief Event”** The occurrence of an event included in an Approved Renewal Project Plan describing the Contractor’s right to seek adjustments to the schedule or compensation upon the occurrence of certain events during Contractor’s delivery of a Renewal Project.

**“Renewal Project”** Renewal Work subject to an Approved Renewal Project Plan as described in an Approved Renewal Project Plan.

**“Renewal Project Plan”** The plan submitted by the Contractor and negotiated with the Cabinet for a Renewal Project pursuant to Exhibit C (Renewal Project Plan Requirements).

**“Renewal Work”** Work authorized by the Cabinet that is not Routine Maintenance and is subject to an Approved Renewal Project Plan.

**“Request for Change Proposal”** A proposal issued by the Cabinet to the Contractor in order to evaluate whether a Change Order will be issued.

**“Request for Notice to Proceed”** A request generated by the Contractor after the Effective Date indicating the Contractor is prepared to meet all performance obligations of the O&M Agreement.

**“Request for Proposals”** The Request for Proposals for the Project issued by the Cabinet on October 7, 2022, including all addenda thereto.

**“Request for Qualifications”** The Request for Qualifications for the Project issued by the Cabinet on August 16, 2022, including all addenda thereto.

**“Road User Damage”** The meaning is set forth in Section 2.3.12 (Road User Damage) of the Agreement.

**“Routine Maintenance”** All duties and services to be furnished and provided by the Contractor as required by Section 2.1 (Requirements for Routine Maintenance) of the Agreement.

**“Routine Maintenance Price”** The pro-rated yearly maintenance cost for year one as set forth in Exhibit E (Routine Maintenance Price).

**“State”** The Commonwealth of Kentucky.

**“Statement of Qualifications”** Those documents constituting the Contractor’s qualifications in response to the RFQ, including any supplements as may have been requested by the Cabinet.

**“Subcontract”** Any subcontract to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work between the Contractor and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.

**“Subcontractor”** Any Person with whom the Contractor has entered into any Subcontract, and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.

**“Surety”** A corporate body duly authorized to do business in the Commonwealth of Kentucky, and which has issued one or more of the Maintenance Payment and Performance Bonds.

**“Third Party”** Any Governmental Person, railroad, property owner or other third party having regulatory jurisdiction or property rights over or in any aspect of the Project, Work, or the right of way.

**“Tunnel Operations Center”** means the building located directly adjacent to the tunnel which contains monitoring equipment, fire pumps, administrative office, etc.

**“Work”** Depending upon the placement and context of its use, work shall mean one or more of the Routine Maintenance, Renewal Work, or all of the work. In general, work shall include, in totality, as applicable, all duties and services to be furnished and provided by the Contractor as required by the Contract Documents necessary or appropriate to receive final payment except for those efforts which the Contract Documents specify will be performed by the Cabinet or other Persons. In certain cases, the term is also used to mean the products of the work.



**Exhibit B**  
**Routine Maintenance Work**

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**Attachments**

Attachment B-1: O&M Performance Requirements (Provided in Excel Format)

Attachment B-2: List of Required Plans (Provided in Excel Format)

Attachment B-3: Asset Listing (Provided in Excel Format)

Attachment B-4: Project Limits

Attachment B-5: Maintenance Schedules

This Exhibit B includes requirements for Routine Maintenance authorized by KYTC pursuant to Section 2.1 (Requirements for Routine Maintenance) of the Agreement.

## **1 ROUTINE MAINTENANCE SCOPE**

### **1.1 General Requirements**

The Project consists of a tunnel with an adjacent operations building control room (which houses the life safety and monitoring systems located at 8000 US-42 Prospect, KY 40059), a nearby communications shed in the west quadrant of the I-71 and I-265 Interchange, and included roadway, bridge, and drainage assets as detailed in Attachment B-3 (Asset Listing) and Attachment B-4 (Project Limits).

The Contractor shall:

1. Comply with the relevant performance requirements as detailed in Attachment B-1 (O&M Performance Requirements), as amended from time to time. All references to scheduled or periodic inspection, maintenance, repairs, etc. are detailed in Attachment B-1.
2. Comply with the Operations and Maintenance Plans.
3. Respond to customer (citizen) requests for service in accordance with Attachment B-1. Customer requests outside of the scope of work of Attachment B-1 will be referred back to the Cabinet. The Contractor shall not act as an agent or representative of the Cabinet. A Cabinet representative will accompany Contractor staff to attend onsite meetings, if required, to determine scope and intent of complaint as well as assist in resolution if the issue is Cabinet retained scope. The Contractor is not obligated to provide roadside or truck-mounted signage with Contractor phone number.

### **1.2 Mobilization Planning**

The Contractor shall outline mobilization activities prior to the Effective Date. The Mobilization Plan shall outline all pre-Operations activities to be completed or delivered by the Contractor including all activities, deliverables, commencement dates, completion dates, responsibilities, and dependencies. The Contractor shall attend meetings and coordinate with the Cabinet and all third-party stakeholders in the drafting and implementation of the Mobilization Plan. The plan shall also consider cross-training opportunities working with the existing O&M provider and the Cabinet.

The Mobilization Plan shall be a high-level document of five to 10 pages describing the general approach to the Contractor's plan to start the Project. The Contractor shall submit the Mobilization Plan to the Cabinet 60 days prior to the start of Operations.

The Mobilization Plan shall clearly state the expected participation and contribution from the Cabinet in meeting the plan requirements. It is expected that this Plan will act as a management tool between the Cabinet and the Contractor to assess progress in meeting the pre-Operations activities. The Contractor shall provide updates to the Cabinet in relation to the progress of the Mobilization Plan.

### **1.3 Operation and Maintenance Plans**

The Contractor shall submit a draft Operations and Maintenance Plan within timeframe noted in Attachment B-2 (List of Required Plans). The plans shall consist of the following sub-plans and be updated 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.

## **1.4 Plans & Procedures**

The Contractor shall provide and update the annual Operations and Maintenance Plan for the Project. 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.

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.

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 Project and be submitted to the Cabinet for use in their annual submittal to KPTIA; then annually thereafter.

## **1.5 Personnel**

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 foremen and/or technicians
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

## **2 MAINTENANCE MANAGEMENT INFORMATION SYSTEM (MMIS)**

There is an existing MMIS for tunnel assets. The Contractor shall provide and manage the Maintenance Management Information System (MMIS) for maintenance activities and longer-term planning of asset preservation and replacement strategies, along with the provision of records of maintenance for all assets included within the Project Limits.

The Contractor may use the existing MMIS and modify it to include roadway assets or utilize the Contactor's preferred MMIS for roadway assets if it is not feasible to modify the existing MMIS for this purpose. If using a Contractor-supplied system; the system shall have all exterior Project assets geo-located to an accuracy of +/- 5 feet. Interior (control room) assets shall be detailed in a plan layout format.

The MMIS shall be electronic, web-based, and mobile to allow data entry by field staff on-site at or near the asset's actual location. The Contractor may provide any system which meets the reporting requirements provided the Cabinet shall have read-only access to all modules and have the capability to download data. The MMIS shall be:

1. Capable of transferring data in the format required by the Cabinet.
2. Capable of delivering reports and information, in both electronic and hard copies, that can be accessed by the Cabinet.

The Contractor shall capture data in the MMIS as outlined below:

1. Work planned (to include all tasks and procedures)
2. Work performed, including time, date, location, quantity of work performed, condition of the asset, and address timeliness requirement(s) for the work
3. Spare Parts, consumables, and other items used

### **3 TUNNEL SERVICES**

The Contractor shall operate and maintain the tunnel elements in this Section 3. Specific performance criteria and assets are detailed in the Operations and Maintenance Performance Requirements in Attachment B-1 (O&M Performance Requirements) and Attachment B-3 (Asset Listing).

#### **3.1 Control Room Monitoring**

The Contractor shall monitor all systems and dispatch technicians to address the issues and provide Routine Maintenance. The Contractor shall provide one control room staff person in the tunnel control room during the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding Holidays. Other time periods will be monitored by existing TRIMARC or other Cabinet-provided personnel. The Contractor shall assume reasonable break-periods for the control room staff person; the control room may be unattended during these break periods.

The control room staff person shall monitor and respond to any issues in accordance with Attachment B-1 (O&M Performance Requirements). Any messaging required for variable message signs or other motorist warnings will be coordinated between TRIMARC, Cabinet, or Contractor staff.

#### **3.2 Environmental Monitoring System**

Carbon-monoxide monitors within the tunnels will alert the control room staff person when unacceptable levels are imminent. The Contractor shall ensure that ventilation systems are activated to restore desirable air quality.

#### **3.3 Lighting System**

The tunnel facility has an artificial lighting system which monitors and controls the levels of illumination to ease transition. The Contractor shall monitor lighting systems and provide repairs and replacements in accordance with timeliness and quality metrics specified in Attachment B-1 (O&M Performance Requirements).

#### **3.4 Supervisory Control and Data Acquisition (SCADA) System**

The SCADA system links every tunnel operating system into a main control system. The Contractor shall monitor this system and its sub-systems, ensuring Routine Maintenance items that need to be addressed are performed in a timely manner. In accordance with Attachment B-1 (O&M Performance Requirements), the

Contractor shall perform work required for software releases and upgrades; cost for these upgrades, if any, will be considered Renewal Work.

### **3.5 Ventilation System**

Ventilation fans are used to maintain acceptable air quality levels in the tunnels. They also remove smoke or fumes from the tunnels in the event of an incident. The Contractor shall monitor this system. Maintenance requirements for this system are detailed in Attachment B-1 (O&M Performance Requirements).

### **3.6 Fire Protection System**

The control room staff shall monitor the fire protection system. Additionally, the Contractor shall be responsible for the maintenance and repair of the system that consists of smoke detectors, pull stations, and linear heat detectors installed within the tunnels. Multiple water tanks with pump systems are in the portal control room equipment room. The Contractor shall be responsible for portal buildings that house standpipe and sprinkler systems. The Contractor shall provide periodic visual inspections of valve stations located within the tunnel for fire-fighting purposes. Maintenance requirements of this system are detailed in Attachment B-1 (O&M Performance Requirements).

### **3.7 Drainage System**

The Contractor shall be responsible for maintenance of roadway drainage within the tunnel. Water is recycled to a roadway drainage treatment facility which contains, holds and filters effluent from rainwater, fire suppression, or Hazardous Material response. The Contractor shall be responsible for proper disposal of runoff, including Hazardous Material, collected within the drainage treatment facility. Cost for Hazardous Materials removal may be a cost reimbursable item pursuant to Section 2.3.5 (Hazardous Materials) of the Agreement.

### **3.8 Closed-Circuit Television System (CCTV)**

Tunnel CCTV cameras will be utilized by control room staff. The Contractor shall be responsible for Routine Maintenance, repairs, diagnostics, and CCTV replacement if functionality cannot be restored. The Contractor shall manage an inventory of CCTV spares and component parts as detailed in Attachment B-1 (O&M Performance Requirements). Outside of the tunnel, camera equipment is maintained by others.

### **3.9 Power Supply System**

The Contractor shall monitor and maintain the power supply system. This system consists of an uninterruptible power supply and a standby generator. The Contractor shall perform inspections and testing in conformance with Performance Requirements described in Attachment B-1 (O&M Performance Requirements) and Attachment B-5 (Maintenance Schedules).

### **3.10 Telephone System**

The telephone system includes dial-up data and emergency phones along the tunnel corridor. The Contractor shall conduct periodic visual inspections and functionality tests to ensure functionality and performance compliances detailed in the Performance Requirements specified in Attachment B-1 (O&M Performance Requirements).

### **3.11 Traffic Surveillance Control System (TSCS)**

The TSCS consists of the electronic and computer systems that monitor and control traffic via the TRIMARC office in downtown Louisville. Live video feeds and other data from the TSCS are made available on multiple monitors in the tunnel control room. It provides the Contractor's control room staff with information to manage traffic incident responses as see general roadway information and conditions.

Operators shall use the TSCS to monitor traffic, detect incidents, identify the type of incident, and implement the response strategy

The Contractor shall liaise with TRIMARC and other third-party service providers as necessary if there are issues with TSCS performance and availability.

#### **4 TUNNEL CONTROL ROOM**

The Contractor shall provide all general office stationery such as pens, notepads, etc. for its everyday use. The Contractor shall be responsible for the cleaning and trash removal services in the Tunnel Operations Center.

The Cabinet will provide the existing office furniture for the Contractor or Subcontractor employees in the tunnel control room.

The Contractor shall furnish and equip any necessary maintenance workshop(s) and/or storage or laydown yard(s) they require.

If the Contractor or any of its Subcontractors carries out any material modification to the control room, the Contractor shall prepare and provide to the Cabinet as-built drawings showing such amendments as are necessary to reflect the modification of the asset.

#### **5 CONTROL ROOM & TUNNEL BUILDING MANAGEMENT**

System performance specifications, inspection procedures, repair frequencies, etc. are detailed in Attachment B-1 (O&M Performance Requirements) and Attachment B-5 (Maintenance Schedules). The Contractor shall provide the following core facility management services:

1. Required inspections “walk throughs” of all interior and exteriors of the control room to determine any defects, repairs, or replacement requirements including common repair items such as plumbing or carpentry maintenance repair items.
2. Replacement of consumables (for example light bulbs, minor fixtures, and fittings).
3. Repairs to doors, furniture, and other hardware.
4. Internal and external areas of the building or facility where crack-sealing or “touch-up” painting is required.
5. Removal of bugs and insects.
6. Litter and debris removal from the interior and perimeter of the building and grounds.
7. Repairs of any requirements identified above.
8. Undertaking ground keeping, arboriculture, and landscaping requirements.
9. Conduct inspections to determine the need for HVAC, plumbing, and other maintenance.
10. Provide fire sprinkler system monitoring and repair.
11. HVAC systems and subsystems inspection and repairs.
12. Mechanical and electrical system maintenance, inspection, and repair.
13. UPS/PDU monitoring and repairs.
14. Janitorial services including all aspects of cleaning and refuse removal.
15. Parking lot snow removal including sidewalks.



16. Provide 24/7 on-call services to the facility, responding to issues as they arise.
17. On-site response for third party maintenance service providers.
18. Review and manage an inventory of common maintenance commodity items such as filters, light bulbs, cleaning, and janitorial products.
19. Manage an inventory of consumables to ensure sufficient quantity to meet the needs of the facility staff and users.
20. Provide written email correspondence and reports to the Cabinet as they relate to the services detailed herein.
21. Fire extinguishers located throughout the control room and tunnel shall be fully functional and not missing parts or in any way damaged.
22. Refilling and recalibration of fire extinguishers in accordance with all applicable National fire Protection Association specifications.
23. Ensure all inspections and vendor service and maintenance procedures are completed in compliance with all local, State, and federal laws.

Systems will generally be based on assets included in Attachment B-3 (Asset Listing) as detailed in the Control Room Plans and existing O&M manuals and records.

## **6 EMERGENCY RESPONSE**

The Contractor shall be responsible for managing tunnel-related emergencies from the control room and on-site by dispatching all appropriate response personnel, in conformance with the Incident Management Plan.

The Contractor, in coordination with the Cabinet, shall secure agreements with all authorities having jurisdiction required to obtain assistance and implement the Incident Management Plan in emergency response. Existing agreements will be reviewed and utilized to the extent possible. Under no conditions shall these agreements require tunnel emergency response equipment or personnel to be absent from the tunnel facility. The Contractor shall provide Incident Response Services in conformance with Attachment B-1 (O&M Performance Requirements).

1. Provide all necessary equipment and labor resources required for Incident Response Services to be delivered 24 hours a day, seven days a week in accordance with the Levels of Service and KPIs outlined at Attachment B-1.
2. Assist the TRIMARC control room operator for the management of large incidents (including evacuation support, customer welfare, etc.).
3. Assist emergency services/first responders and/or Contractor-dispatched Hazardous Materials contractors with the management and containment of hazardous and non-hazardous spills on the Project and where required take appropriate action to render the situations safe and operational.
4. The Contractor shall:
  - a. Report all major incidents to the Cabinet through the TOC as detailed in the Communication Plan/Incident Management Plan.
  - b. Provide information to the TOC to assist in the documentation of all aspects of incidents including type, response time, actions taken, and other necessary information as required.
  - c. Provide appropriate support to emergency response personnel.

- d. Participate in post incident reviews and debriefs with the Cabinet and other interested authorities having jurisdiction when requested by the Cabinet.
5. Provide all services within the time limits and Performance Requirements as noted in Attachment B-1.
6. All Contractor personnel and relevant Subcontractors shall be trained in the following areas and updated per each training modules requirements:
  - a. National Traffic Incident Manager Responder Training Program (Hazard Communication - Right to Know (29CFR 1910.1200)
  - b. Personal Protective Equipment (29CFR 1910.132)
  - c. Blood Borne Pathogens (29 CFR 1910.1030)
  - d. Fire Extinguishers and Hazardous Materials (29 CFR 1910.157 and 29CFR 1910.106)
  - e. Traffic Control - Highway Safety
  - f. First Aid/CPR
  - g. Basic Hazard Awareness

## **7 ROADWAY OPERATIONS AND MAINTENANCE SERVICES**

The Contractor shall maintain and repair all assets in accordance with Attachment B-1 (O&M Performance Requirements).

The Contractor shall maintain all assets under the Agreement in accordance with the quality and timeliness performance criteria specified in Attachment B-1, Attachment B-3 (Asset Listing), and Attachment B-4 (Project Limits).

The Contractor shall adhere to all lane closure restrictions. The Contractor may:

1. Close a single lane or ramp with a detour between:
  - a. Weekdays: Monday through Friday 9:00 a.m. to 3:00 p.m. and 7:00 p.m. to 6:00 a.m.
  - b. Weekends: Anytime.
2. Close two lanes with a detour:
  - a. With 14 day's advance notice and concurrence from the Cabinet.
  - b. Between 7:00 p.m. to 6:00 a.m. weekday or weekend.

No lane closures shall occur between 3:00 p.m. the day before and 6:00 a.m. the day after all major national holidays.

The Contractor shall abide by and utilize the existing communications protocol for public notification of pending lane closures.

## **8 ASSET MANAGEMENT & LIFECYCLE PLANNING**

The Contractor shall work with the Cabinet to provide the following lifecycle planning.

1. Assist the Cabinet to optimize the effective life of the Project.
2. Assist the Cabinet to optimize the long-term reliability and efficiency of the Project.

3. Demonstrate the benefits of capital expenditure recommendations to the Cabinet.
4. Assist the Cabinet in establishing an effective capital expenditure budgeting and approval processes.
5. Assist the Cabinet to establish a process to ensure that assets of no further use are identified and disposed of appropriately.
6. Establish a system for the measurement, recording, and reporting of machinery and equipment asset history and condition.
7. Identify projects, including improvements and expansions, for further investigation and/or action for the Cabinet's approval.

## **9 INSPECTIONS**

The Cabinet reserves the right to inspect the Project at any time and for any reason; any issues found will be reported directly to the Contractor who shall enter the issue into the MMIS and proceed with repairs as noted in Attachment B-1 (O&M Performance Requirements).

The Contractor shall plan and implement a program of routine inspections of the Project that:

1. Prioritizes defects requiring immediate and urgent attention because they are likely to create a danger or serious inconvenience to drivers.
2. Identifies defects or replacements outside of the scope of services for inclusion within the annual Maintenance Plan.
3. Is responsive to reports or complaints received from stakeholders and citizens.
4. Monitors the effects of extreme weather conditions.
5. Collates data to monitor performance of the Project and to establish priorities for future maintenance operations.
6. Conduct inspections after extraordinary events such as severe weather or major incident.
7. Undertake an asset condition analysis of the material Project assets (e.g., pavements, ventilation systems, safety systems, drainage, and lighting) so that:
  - a. The condition profile is updated annually.
  - b. An ongoing update to the condition profile is maintained between the annual updates.
8. The Contractor shall establish inspection procedures and carry out inspections so that:
  - a. All defects that present a hazard or could cause serious driver inconvenience are identified and repaired such that the hazard is mitigated within the timeliness requirements set out in Attachment B-1 (O&M Performance Requirements) and Attachment B-5 (Maintenance Schedules)
  - b. All other defects are identified and repaired within the timeliness requirements set out in Attachment B-1 and Attachment B-5

## **10 PERFORMANCE MEASUREMENT**

The Contractor shall undertake performance monitoring against the agreed set of performance indicators included in Attachment B-1 (O&M Performance Requirements) that satisfy the relevant requirements of the O&M Plans.

## **11 EQUIPMENT AND SPARES INVENTORY**

The Contractor shall be responsible for maintaining a sufficient inventory of spare parts and equipment to ensure minimum delays in repairs or maintenance. See Exhibit A (Acronyms and Defined Terms) for details on spares relating to Minor Repairs and Major Repairs.

Any existing spare parts will be turned over to the Contractor, at no charge for use in operating and maintaining the Project. The Contractor shall be responsible for ensuring storage facilities are adequate to store spare parts and conduct necessary repairs.

## **12 REPORTING**

The Contractor shall:

1. Provide reports relating to the operations and maintenance; details of the layout and format will be determined during the mobilization phase of the Agreement.
2. Provide other reports as reasonably requested by the Cabinet.
3. Provide reports in accordance with the O&M Plans that provide indicators as to the maintenance effectiveness and condition of the Project assets.
4. Provide reports that satisfy the requirements in accordance with Attachment B-1 (O&M Performance Requirements).
5. Provide advice and reports that a good practice operator would reasonably provide on required Major Repairs, Improvement and Expansion, or additional works required for upgrades to the Project.
6. Provide reports in relation to replacement of Spare Parts that detail the need for the spares containing, when relevant, a failure mode analysis of the defect, or fault and justification that spares are required to be procured due to equipment defect, and not maintenance deficiencies.

## **13 ENVIRONMENTAL COMPLIANCE**

The Contractor shall provide all information to the Cabinet to manage environmental compliance in accordance with the Project environmental management system, and as a minimum, meet or exceed relevant legislative and regulatory requirements.

## **14 TRAINING REQUIREMENTS**

The Contractor shall:

1. Provide training and familiarization associated with high voltage systems including managing failure events.
2. Provide training to all new staff and twice-yearly continuing training for all employees responsible for control room operations.
3. Train tunnel control room operator staff on new equipment installed / and procedures developed by the Contractor in delivering the Services required in this Agreement.
4. Safety training for maintenance staff on safe working procedures, equipment handling, and use as detailed in the Health and Safety and Environmental Plan.
5. Training in KYTC work area protection standards and placement of traffic control devices in accordance MUTCD standards.

6. The Contractor shall ensure all staff are fully trained prior to the Commencement Date. Specific attention should be given to training and familiarization associated with operation and maintenance of tunnel safety critical systems outlined in Attachment B-1 (O&M Performance Requirements).
7. The Contractor shall provide the required continuing education and re-certification training for the above listed programs as required The Incident and Emergency Management Plan shall outline a course of action and designate the personnel, equipment, and materials expected to be used in confronting incidents resulting from traffic accidents, systems failures, Hazardous Materials exposure, medical emergencies, and natural causes.

## **15 COMMUNICATIONS AND IT NETWORK**

The Cabinet will provide the land line and telephone usage within the Tunnel Operations Center telephones for the Contractor's use. Mobile telephones and/or mobile data services shall be the Contractor's responsibility.

The Contractor shall not connect Contractor computers or similar devices to the Cabinet or tunnel networks. The use of mobile hotspots or similar will be permitted.

## **16 ADDITIONAL SERVICES**

The Contractor may be requested to provide or may suggest additional works outside those identified within the Services specified in Attachment B-1 (O&M Performance Requirements). Such additional services may be provided as Out of Scope Services in accordance with Exhibit C (Renewal Project Plan Requirements), including:

1. Improvement and Expansions (including capital expenditure Renewal Work with the intent of creating new assets.
2. Increasing the capacity of existing assets beyond their original design capacity or service potential.
3. Increasing the capability and value of the asset.
4. Major Repairs (being any repairs that are not Minor Repairs) in accordance with Cabinet direction. In accordance with clause [X], the Cabinet retains absolute discretion in respect of Out-of-Scope Proposals.

### **16.1 Excluded Services**

The following are specifically excluded from the scope of Services to be provided by the Contractor, however if any issues with the below items occur, the Contractor shall notify the Cabinet:

1. Maintenance of communications and public utilities on the Project right of way.
2. Maintenance of fiber trunk.
3. Project wide snow and ice removal.

**Exhibit C**  
**Renewal Project Plan Requirements**

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This Exhibit C includes a framework for development of and potential requirements for a Renewal Project Plan. Each Renewal Project Plan shall be tailored to the complexity of the applicable Renewal Project. The Cabinet has no obligation to include any of the content described below in an Approved Renewal Project Plan and reserves the right to apply any requirement it considers appropriate for a Renewal Project. If the Cabinet desires to authorize Preconstruction Services separately from Construction Services for a Renewal Project, the Contractor shall submit the Renewal Project Plan in phases.

**1 SCOPE OF WORK**

The Contractor shall describe the Renewal Project to a level of detail that indicates the scope of services provided, location, and project goals.

**2 APPLICABLE STANDARDS**

All Renewal Work shall be in compliance with the current editions as of all applicable KYTC and AASHTO Design Standards, KYTC Standard Specifications for Road and Bridge Construction and Supplemental Specifications, KYTC Standard Drawings and Sepias, KYTC Guidance Manuals, KYTC Special Notes and Special Provisions, and KYTC Design, Construction, and Technical Memos. Where there are conflicts between AASHTO design requirements and KYTC design requirements, the KYTC requirements shall govern.

The Renewal Project Plan shall include a list of Applicable Standards that will be used for the Renewal Work Project and shall describe any proposed exceptions, deviations, or modifications to Applicable Standards.

**3 THIRD PARTY COORDINATION**

The Contractor shall identify all required coordination with third parties including utilities, railroads, local governments, and other stakeholders and shall describe its approach to third-party coordination in the delivery of the Renewal Project.

**4 ENVIRONMENTAL**

The Contractor shall include a list of Hazardous Materials expected to be encountered during Construction Services.

**5 SCHEDULE**

The Contractor shall provide a working day schedule that shows the various activities of Renewal Work in sufficient detail to demonstrate a reasonable and workable plan to complete the Renewal Project. The Renewal Project schedule shall show the order and interdependence of activities and the sequence for delivering the Renewal Project.

**6 SUBCONTRACTING**

The Contractor shall describe any planned use of Subcontractors for the Renewal Project.

**7 QUALITY MANAGEMENT**

The Contractor shall describe its approach to quality management and how it will coordinate with the Cabinet in the Cabinet's performance of oversight and acceptance of the Renewal Project.

## **7.1 Nonconforming Work**

The Contractor shall describe processes and procedures for the identification of Nonconforming Work and the procedures that the Contractor shall take when Nonconforming Work is discovered.

## **7.2 Design Quality**

The Contractor shall describe the approach for design quality management. The approach shall incorporate processes to resolve disagreement, correct errors or omissions, resolve comments, and make the resulting appropriate modifications to the design documents.

## **7.3 Construction Quality**

The Contractor shall describe the approach for construction quality management. This shall include processes to control the Contractor's production operations by developing processes, procedures, tests, inspections, checks, and control points to be implemented by Contractor to control the quality of the Construction Work.

## **8 RELIEF EVENTS**

The Renewal Project Plan shall include an itemized list of all events that may trigger an extension of time or payment of additional costs.

## **9 INSURANCE**

The Contractor shall include Certificates of Insurance required by the Cabinet as an attachment to the Renewal Project Plan.

## **10 PREQUALIFICATION**

The Contractor shall identify Renewal Work that is subject to Cabinet prequalification requirements. The Contractor shall obtain required prequalification prior to commencing Work that is subject to prequalification.

## **11 RENEWAL PROJECT COST AND PAYMENT METHOD**

The Contractor shall detail the Renewal Project costs.

### **11.1 Unit Price**

If the Renewal Project uses a unit price bid, the Contractor shall supply standard KYTC bid item codes whenever possible. Any non-standard bid items used shall be thoroughly explained in the cost breakdown.

### **11.2 Lump Sum**

If the Renewal Project uses a single "all-inclusive" lump-sum bid item, the Contractor shall provide supplemental cost information and supporting documentation of the costs for each component of the Renewal Project. In order to document how the lump-sum bid price was determined, the Contractor shall supply, using standard KYTC bid item codes whenever possible, all work items, quantities, units, and prices to support the lump sum bid submitted. Any non-standard bid items used shall be thoroughly explained in the cost breakdown. The breakdown shall include all materials to be used in the Renewal Work and shall be in sufficient detail to provide the Cabinet with a means to check partial payment requests.



**Exhibit D**  
**Form of Maintenance Payment and Performance Bond**

Maintenance Payment and Performance Bonds No. \_\_\_\_\_

Principal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Surety: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Owner: Commonwealth of Kentucky  
Kentucky Transportation Cabinet  
Division of Purchases 4h Floor East  
200 Mero Street  
Frankfort, Kentucky 40622

**MAINTENANCE PAYMENT AND PERFORMANCE BONDS**

We, \_\_\_\_\_ [Principal] as “Principal” and \_\_\_\_\_ [Surety] duly authorized to transact the business of suretyship in the Commonwealth of Kentucky, as “Surety”, jointly and severally bind themselves, their heirs, executors, administrators, successors, and assigns to the Commonwealth of Kentucky, Kentucky Transportation Cabinet, as “Owner”, for performance of the Operation and Maintenance Agreement – East End Crossing Tunnel (the “O&M Agreement”), which is incorporated herein by reference, and to pay for all labor, materials, equipment, and services furnished for use in the performance of the O&M Agreement, again incorporated herein by reference.

**CONDITIONS OF THIS OBLIGATION:**

The Principal has entered into the O&M Agreement with the Owner dated \_\_\_\_\_ [Date], for the performance of routine and corrective maintenance as stated in the O&M Agreement for a period of 7 years that may be extended pursuant to the O&M Agreement to a total of 10 years for the East End Crossing Tunnel, including but not limited to, all roadway, bridge, drainage, and ITS systems 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). (the "Project"), CID No. 22-9001.

The Surety hereby waives notice of any change, including any changes in time, alterations, omissions, or modifications to the O&M Agreement, including any incorporated or referenced documents, or to the related subcontracts, purchase orders, or other obligations.

The Payment Bond shall inure to the benefit of Subcontractors and suppliers with respect to the work performed pursuant to the O&M Agreement so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

This obligation shall remain in effect until the Principal fully and faithfully performs all of the following:

Complete all requirements and execute the Routine Maintenance Work for the Project and all obligations pursuant to the provisions of said O&M Agreement, as may be amended, and the incorporated plans, specifications, and any O&M Agreement modifications made, which may be made without notice to or consent of the surety;

Perform all Project operations agreed to by the Principal pursuant to the O&M Agreement; and

Pays all indebtedness incurred for supplies, materials, equipment, labor furnished, services furnished, and all other costs incurred used in the delivery and completion of the Project and services required in the O&M Agreement.

The Principal's and Surety's responsibilities shall expressly include 1.) the correction of all defective or incomplete work pursuant to the O&M Agreement, 2.) all legal, design professional, and delay costs resulting from the Principal's actions or failures to act, as well as 3.) all liquidated damages and actual damages arising from the Principal's actions and failures to act pursuant to the O&M Agreement.

The Surety's total obligation shall not exceed the amount of the O&M Agreement.

The guarantees contained herein shall survive the expiration or termination of the O&M Agreement with respect to those obligations of Principal pursuant to the O&M Agreement that survive such expiration or termination.

These Bonds and any dispute shall be governed by the laws of the Commonwealth of Kentucky. Any proceeding, legal or equitable, under these Bonds shall be instituted in Franklin Circuit Court in the Commonwealth of Kentucky.

Signed and Sealed this date: \_\_\_\_\_.

\_\_\_\_\_  
**Principal**

\_\_\_\_\_  
Name and title

\_\_\_\_\_  
Address

Signed and Sealed this date: \_\_\_\_\_.

\_\_\_\_\_  
**Surety**

\_\_\_\_\_  
Name and title

\_\_\_\_\_  
Address

[Corporate Seal]

(Note: Certified copy of Resolution or Power of Attorney authorizing the execution of this instrument on behalf of the Surety must be attached.)

**Exhibit E**  
**Routine Maintenance Price**

[NTD: As provided in the Proposal.]