

STATE OF MICHIGAN

Contract No. 591B6600135

Bascule Bridge Operation in MDOT Bay Region (Bay County)

EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES

Background

MDOT owns and operates two bascule bridges located within Bay County, Michigan, which cross the Saginaw River. M-13/M-84 over the Saginaw River (the Lafayette bridge), and M-25 over the Saginaw River (the Veteran's bridge) will hereinafter be referred to as the "bridges".

The work specified in this Contract consists of providing contract services for operations and custodial services for two bascule bridges owned by the State of Michigan (the State), Michigan Department of Transportation (MDOT). These bridges are M-13/M-84 over the Saginaw River, or the Lafayette Bridge, and M-25 over the Saginaw River, or Veteran's Memorial Bridge. The Contractor must operate these bridges as necessary and as required by law, and to provide custodial services at the bridges.

The Contractor must begin its mobilization activities and services upon execution of a Contract and, in any event, begin operating the bridges on April 1, 2016.

Requirements

The Contractor must provide all personnel, equipment, tools, materials, supervision, and other items and services necessary to perform the services described in this Contract, including, but not limited to:

- Open and closing operations as required by law during the navigational seasons per the Operations manuals for both bridges.

The NAVIGATION SEASON is that portion of the calendar year, which is defined in the "United States Coast Pilot 6" as the period from April 1 through December 31, where commercial shipping traffic may traverse the waterways as regulated by the United States Coast Guard. During the Navigation Season, 24 hour per day coverage of the bridges is mandated by the United States Coast Guard.

The OFF-CALL Season is that portion of the calendar year where 24 hour per day coverage of the bridge operation activities is not mandated by the United States Coast Guard; however, bridge operations, with twelve-hour notice, are mandated. During the period from January 1, through March 31, it is the responsibility, of MDOT to operate the bridges unless otherwise agreed to by MDOT and the Contractor. As part of the Contract, MDOT requires the Contractor to be on-call during the OFF-CALL season and to provide operators within a twelve hour notice and shall bid per day on the Location Specification Sheet (LSS).

- Perform visual inspections of all electrical, mechanical and hydraulic equipment at the start of each shift
- Furnish all supplies and labor required for routine custodial duties.
- Appoint a Project Manager who has the responsibility of handling all Contract related issues and obligations and whose duties must include, but not be limited to, the preparation and submittal of

billings to MDOT; assurance that all required insurance remain in effect and that the Contractor has sufficient personnel and supplies to perform the bridge operating activities.

- Appoint an On Site Supervisor of bridge operations on the job site for the assignment of operators to work shifts, the summarizing of daily activities in the log book and the notification of the MDOT Program Manager or his representative if any mechanical or electrical abnormalities occur.
- Provide trained personnel to operate the bridges twenty-four hours a day, seven days a week during the NAVIGATION SEASON. The Contractor must be responsible to schedule all regular and back-up personnel for all work shifts, as determined by the Contractor and in accordance with United States Coast Guard regulations.
- Establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under the Contract, and said records to be hereinafter referred to as the "records". Separate accounts must be established and maintained for all costs incurred under the Contract.
- Maintain the records for at least three years from the date of final payment made by MDOT under the Contract. In the event of a dispute with regard to the allowable expenses or any other issue under the Contract, the Contractor must thereafter continue to maintain the records at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
- Permit MDOT, or its representative, to inspect, copy, or audit the records at any reasonable time after giving reasonable notice. The Contractor must provide a final accounting, which MDOT may audit. Any audit will be for information only and will not affect the lump sum payments made under the Contract.

In the event of Contract termination, MDOT must receive all daily work logs, records and any other documentation produced by the Contractor under the Contract prior to the Contractor being reimbursed.

NOTE: Subcontracting is permitted providing Prime Contractor will perform no less than 40% of the original Contract amount.

Contractor must provide Deliverables/Services and staff, a detailed work plan, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

- Operate the bridges using certified bridge operators. (certified means documented training and testing provided by the Project Manager)
- Post the Acknowledgment Forms
- Provide MDOT Program Manager with complete bridge operator's competency certification form
- Provide proper supervisory personnel

- Update and provide to the MDOT Program Manager all bridge opening logs
- Inform the MDOT Program Manager of mechanical/electrical malfunction and/or failure to correct malfunction
- Inform the MDOT Program Manager of malfunctioning navigation lights
- Inform the MDOT Program Manager of events that may have jeopardized bridge structural integrity, such as hits from vehicular traffic, vessel collision, etc.
- Inform the MDOT Program Manager any time bridge operation is limited or stopped
- Project Manager or a designee must respond within 15 minutes to any telephone call made to the Contractor by MDOT
- Project Manager or a designee must respond in person within 30 minutes when requested
- Advise the MDOT Program Manager when the Project Manager serves as a bridge operator
- Inform the MDOT Program Manager of any complaints from citizens or public agencies
- Notify the U.S. Coast Guard and the MDOT Program Manager within thirty 30 minutes of any restriction to waterborne traffic
- Update and provide to the MDOT Program Manager all forms as required by MDOT and the U.S. Coast Guard

Resolve discrepancies noted on the Contractor's Operations Inspection Form within five calendar days

- Perform **VISUAL** inspections of all electrical, mechanical, and hydraulic equipment at the start of each shift. Contractor must inform MDOT of any irregularities found immediately upon the completion of the inspection.
- Contractor personnel must be dressed in shirts sleeves, long pants, and safety shoes when on MDOT property.
- Issue a photo identification card to all Contractor personnel, which must be worn on MDOT property. This card must include the individual's photo, name, job title and company's name and must be approved by the MDOT Program Manager.
- Provide signs identifying the Contractor as the operator of the bridges. These signs will be affixed to the door of the bridge houses.

- Cost for attire, identification cards and providing and affixing the signs must be included in the unit price for mobilization.

Training

1. The training of bridge operators must be accomplished through a training program mutually developed by MDOT and the Contractor. The Contractor must comply with all provisions of the "Bridge Operator Qualifications"(Attachment A-IV) as adopted by MDOT. The training program should include minimum operating procedures for each bridge, and contain information on Coast Guard Regulations, MDOT and Coast Guard authority, and emergency procedures. All training shall be completed by April 1 of each year.
2. The Contractor must provide sufficient competent personnel trained as bridge operators in accordance with the Contract. MDOT will train the Contractor's Project Manager in the operations of the bridges.
3. The Contractor will be responsible for all training of the Bridge Operator Candidates (minimum of eight hours Classroom training and additional on-site training on the bridges to be operated). Training must include but not limited to: normal operational procedures, emergency operational procedures, communications procedures for telephone and marine radio, form preparation, and contact procedures. The on-site training must be conducted between 10:00 PM EST and 6:00 AM EST. Openings of the bridges for training purposes must be coordinated to minimize traffic disruption. The Contractor will be responsible for the classroom testing, grading and verification of all other requirements. All training must be conducted by the Contractor's personnel. All classroom and on-site training and materials may be monitored by MDOT. The Contractor's training personnel will be responsible for training and performance testing of all bridge operators. MDOT reserves the right to verify the competency of any Contractor's personnel at any time.
4. The Contractor must implement the final written and operational tests. Final written and operational tests must not be given to any bridge operator candidate unless and until the Contractor has certified in writing to MDOT that the Candidate has received all training that is required by the Contract.

Control of the Work

1. Authority of the MDOT Program Manager: All work must be done to the satisfaction of the MDOT Program Manager or designated representative who may elect to inspect/observe any work done by the Contractor.
2. Contractor Supervision: The Contractor must provide a Project Manager or a designee, who must be available locally, 24 hours a day, seven days a week, for immediate contact for the purpose of supervising, training, scheduling and coordinating the Contract with the MDOT Program Manager. This employee will be MDOT'S contact person for day-to-day operations and emergency situations. The Project Manager may serve as a bridge operator. Should the Contractor elect to utilize pager devices for initial contact, response time of no more than 15 minutes will be expected by telephone. The MDOT Program Manager must be advised at all times as to identification and means of contacting the Project Manager. The Contractor's Project Manager or his/her designee must have the authority to take immediate action to correct conditions determined by MDOT to be unsafe or not in compliance with the Contract.
3. MDOT reserves the right to temporarily and/or partially staff the Bascule bridges with State employees in lieu of Contracted employees. At least 28 days' notice will be given to the Contractor before replacement of Contract employees. Any cost adjustments to the Contract would be addressed when notice is given for use of State employees.

Inspections

1. Weekly inspection of all shifts must be conducted by the Contractor's Project Manager or On Site Supervisor using the "Contractor Operator's Inspection" form to insure continued compliance with this specification. This form is to be signed, dated as to day and time, and submitted to the MDOT Program Manager at the first of each month.
2. MDOT may make inspections at various times, and shifts, using the "Contractor's Operations Inspection" form. The Contractor must immediately resolve any and all discrepancies. Failure to resolve noted discrepancies within five calendar days will result in a determination of non-conformance and assessment of liquidated damages as detailed in Article 2.
3. At the beginning of the Contract, the Contractor must inventory the bridges for all the equipment on the "Monthly Equipment Check List" form and sign the form as receiving the equipment. At the first of each month the Contractor must survey this equipment and fill out this form, sign it and submit it to the MDOT Program Manager's office. The Contractor must replace any missing or damaged equipment at his cost. If such discrepancies are not resolved within five calendar days and MDOT has to correct the deficient items, the Contractor will be billed for the entire cost incurred by MDOT to correct such items. A determination of non-conformance and assessment of liquidated damages will be added to MDOT'S cost as stated in the General Bridge Operating Contract Specifications.

Record Keeping

1. The Contractor must establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under the Contract. Separate accounts must be established and maintained for all costs incurred under the Contract.
2. The Contractor must also establish and maintain bridge operator's reports, unnecessary bridge openings, Contractor's/operator's inspection logs, equipment checklists, and accident incident reports.

Miscellaneous

1. General: Only materials conforming to the requirements of the attached approved materials list (Attachment A-I) will be used in the work. The MDOT Program Manager or a designated representative can reject any material not up to specifications. It will be the Contractor's responsibility to remove and replace all rejected materials. Said rejected material will be taken off the bridge property at once and not used on this project. Costs for removing and replacing rejected materials will be at the Contractor's expense.
2. Custodial Duties/Supplies: The Contractor must furnish all supplies required for routine custodial duties including, but not limited to: changing light bulbs in the bridge house and catwalks, toilet paper, brooms, mops, buckets, hoses, towels, cleaning solutions, hand soap, trash cans, trash can liners, de-icing chemical for sidewalks, snow shovels, window squeegees and extensions, etc. A power washer with hose for washing catwalks and railings should be a minimum one and a half Horsepower, 1000 pounds per square inch (PSI) operating pressure, two gallons per minute, 120 volt.
3. Painting of the bridge house interior walls may be performed at the request of the MDOT Program Manager. MDOT shall provide the required materials for painting; paint, application tools, etc. This work shall be performed by the on shift bridge operator.
4. Forms: MDOT has attached copies of all needed forms (Attachment A-II) as part of this Contract. The Contractor must supply all other copies needed during the length of the Contract. Completed forms must be legible.

5. Utilities: MDOT will pay utility charges required for the operation of the bridges.
6. Preservation of Property: The Contractor must take reasonable effort to protect MDOT property from damage. Negligence by the Contractor may require payment to correct these damages.
7. Employee Safety: The Contractor must have a safety program in compliance with all safety policies/regulations/standards and practices of MIOSHA. The Contractor must provide all employees, the appropriate personal protective equipment to safely accomplish each task assigned. (a partial list of safety equipment needed at various locations on the bridge sites include life preservers, safety vests, hard hats, safety shoes, safety glasses, latex gloves for cleaning, six foot step ladder).
8. Start-up Conference: The MDOT Program Manager in charge of the project will call a conference after the award of the Contract. The purpose of this conference is to review the proposed work, as defined in this Contract, with the Contractor and with others involved.

Damages

The Contractor shall at his/her own expense, preserve and protect from injury all property, either public or private, along and adjacent to the roadway, and he/she shall be responsible for and repair, at his/her own expense, any and all damage and injury thereto, arising out of or in consequence of any act or omission of the Contractor or his/her employees in the performance of the work covered by the contract prior to completion and acceptance thereof.

The Contractor shall immediately repair all damages to MDOT property to the satisfaction of the MDOT Program Manager. Damage to traffic control devices (signs) shall be reported to the Program Manager immediately.

Deletion of Work

The Department may delete all or any portions of the contract that cannot be completed in conformity with the progress schedule or a reasonable extension. The Department may also delete portions of the contract that show no need for bridge operations. If the contract is terminated, or portions thereof deleted, payment will be made for all satisfactorily completed work at the contract unit price.

The Contractor shall provide bridge operating services for (MDOT) to the satisfaction of the State. Should there be a conflict as to what is considered to be satisfactory, the State's opinion shall prevail.

The Contractor shall hold the State of Michigan harmless from damage or claims arising out of any injury or damage that may be sustained by any person or persons as a result of the work under the Contract.

Multiple Contracts Awarded to the Same Vendor

If Contractor gets awarded more than one Contract, including subcontracts with local units of government, the Contractor shall demonstrate that sufficient resources be available for each Contract as described above. The Contractor must therefore provide a detailed list that includes all employees, materials, and equipment to be used on Contracts with MDOT. This documentation must be furnished to Purchasing Operations and/or MDOT prior to the Contract start date. MDOT reserves the right review this list prior to this Contract start date and at any time throughout the duration of this Contract.

Purchasing Operations, in junction with MDOT, reserves the right to restrict the number of Contracts awarded to a single Contractor based on the ability of the Contractor to satisfactorily perform Contract work within Contract time limits.

OFF CALL Season

Volume of service for this Contract is identified as estimates only on the LSS's. The MDOT Program Manager will determine when OFF CALL services are needed.

Detailed Progress Schedule

The first failure to complete work as defined in the progress schedule without prior approval to adjust the schedule from the CCI shall result in a Vendor Performance being issued and a meeting with the Contractor to insure corrective action. The second such failure will result in termination of this Contract.

The progress schedule must address all work to be completed when multiple Contracts are awarded to the same Contractor, including work performed as a Sub Contractor for a local unit of government.

1.2 Transition

A pre-maintenance meeting will be scheduled within 30 days of the Effective Date, The Contractor shall be notified by the Program Manager each year of the date of this meeting. The Contractor is responsible to notify the Program Manager via e-mail or phone before starting work.

1.3 Training

The Contractor will provide documentation and training materials, and complete training by April 1, of each year.

1.4 Reserved

2.0 Acceptance

2.1 Acceptance, Inspection and Testing

The State will use the acceptance process defined in Section 16, Acceptance of the Standard Contract

2.1 Final Acceptance

The Contractor agrees to accept all conditions and adhere to all terms of the contract.

3.0 Staffing

3.1 Contractor Representative

The Contractor must appoint one (1) Project Manager, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative")

The Contractor must notify the Program Manager at least ten (10) calendar days before removing or assigning a new Project Manager.

The Contractor Program Manager is:

*Dependable Tree and Maintenance Service LLC
8555 Vergennes Road SE Ada, MI 49301]]
Elmer31grand@yahoo.com
616-890-9507
Elmer Dalton*

3.2 Customer Service Toll Free Number

The Contractor must specify its toll-free number or cell phone number for the State to make contact with the Project Manager. The Project Manager must be available for calls 24 hours per day, 7 days per week during the NAVIGATION SEASON and OFF CALL SEASON.

3.3 Technical Support, Repairs and Maintenance

The Contractor will provide all the technical support repairs and maintenance required for the contract.

3.4 Work Hours

The Contractor must provide Contract Activities 24 hours per day, 7 days per week during the NAVIGATION SEASON. OFF CALL SEASON hours will be determined by the Program Manager.

3.5 Key Personnel

The Contractor must appoint one (1) On Site Supervisor per contract who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). The On Site Supervisor must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 1 hour.

The Contractor's On Site Supervisor shall be on site at each bridge at a minimum of one (1) time per week per shift.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Program Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 5-calendar day training period for replacement personnel.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.

It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit).

- (i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$250.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 5 calendar days before the Key Personnel's removal.
- (ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 5 calendar days, in addition to the \$250.00 credit specified above, Contractor will credit the State \$500.00 per calendar day for each day of the 5 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$4,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 5 calendar days of shadowing will not exceed \$4,250 per individual.
- (iii) Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract.
- (iv) The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide chronological resumes. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required

removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

3.6 Organizational Chart

The Contractor will provide an organizational chart listing all staff members by name and title. Note, will not use sub-contractors.

3.7 Disclosure of Subcontractors

The Contractor will not utilize subcontractors.

3.8 Security

The Contractor will be subject to the following security procedures: Each contractor employee working on this project must have a badge or I.D. card clearly visible and identifying the person as an employee of the Contractor. If the employee cannot produce a contractor's badge or I.D. card the employee will be asked to leave the work site.

The Contractor will not allow non-authorized persons access to the bridge house and perform walk through inspections of the job site on a regular basis. Note, will train and explain the importance of security measures and conditions.

The Contractors staff may be required to enter other State facilities. The Contractor must notify the Program Manager. The Program Manager or a representative will escort the Contractor while at the State Facility.

4.0 Project Management

4.1 Project Plan

The contractor shall propose a project plan. Project plan should identify items such as the required contact personnel; a detailed progress schedule to be delivered to MDOT at the pre-maintenance meeting; mechanisms for updates or progress reviews; process for addressing issues or changes; and individuals responsible for receiving or reacting to the requested information.

The Contractor will carry out this project under the direction and control of the Program Manager. Within 30 calendar days of the Effective Date, the Contractor must submit a project plan to the Program Manager for final approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, and resources required.

4.2 Meetings

The Contractor must attend the following meetings:

Pre-maintenance meeting within 30 calendar days of the Effective Date. Must meet in person or by phone with the Program Manager at least once per month while bridge operations are ongoing.

The State may request other meetings, as it deems appropriate

4.3 Reporting

The Contractor must submit, to the Program Manager, the following written reports: Progress Schedule and list of materials and equipment used to provide services for this contract.

5.0 Ordering

5.1 Authorizing Document

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Program Manager, to order any Services / Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work.

The Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period.

6.0 Invoice and Payment

6.1 Invoice Requirements

Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor is solely responsible for payment of any applicable taxes.

The invoicing period will be considered as the first day of the month through the last day of the month. The Contractor shall furnish a numbered invoice in duplicate, for services rendered for each month for services rendered. The invoice shall not be prorated for incomplete cycles. Work performed previous to September 30 of each year must be invoiced by October 3 of the same year for MDOT fiscal year ending purposes.

The invoice shall be sent to the Bill to Address specified on the Purchase Order issued by MDOT.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid. Each invoice shall be numbered and signed by the Contractor.

6.2 Payment Methods

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

6.3 Procedure

The billing shall reference the appropriate purchase order number and shall contain, if applicable, adjustments for addition, deletions or changes in service. MDOT shall pay the billed amount in accordance with the bid rate, and the payment terms specified in the purchase order which is net 30 days after the later of the invoice date or the date the Program Manager certifies the invoice indicative of satisfactory completion of services.

7.0 Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$2,500 and an additional \$500 per day for each day Contractor fails to remedy the late or improper completion of the Work.

In the event the bridges are left unattended (*unattended means not on the bridge site*) by a bridge operator or if the Contract Compliance Inspector or representative finds it necessary to remove a bridge operator due to his inability to perform the duties listed in the Contract as determined by the Program Manager, the Contractor must replace the bridge operator within one hour. After the third incident, an assessment shall be made of \$200.00 per hour for each continuous whole hour the bridges are left unattended.

For purposes of this section, if the bridges are left unattended, the Program Manager shall assume that the bridge operator abandoned the bridge at the time of the last entry in the bridge opening log unless other compelling evidence can be presented to show otherwise.

All other cases of non-conformance may result in an assessment of up to \$500.00 per occurrence after the third written warning as determined by the Contract Compliance Inspector/Program Manager, until conformance is achieved.

MAINTENANCE, REPAIR & OPERATIONS (MRO)
Bascule Bridge Operation in MDOT Bay Region (Bay County)
Contract #: 591B6600135
LOCATION SPECIFICATION SHEET (LSS) REVISED

Consideration for award will be based on Work Plan/Price Quotation in accordance with the specifications, terms and conditions as stated within this solicitation.

PART I – PLACE OF SERVICES REQUESTED

CONTRACTOR NAME: [DEPENDABLE TREE AND MAINTENANCE SERVICE LLC](#) LOCATION: [8555 VERGENNES SE](#)
[ADA, MI 49301](#)

CONTRACT INFORMATION			
ESTIMATED CONTRACT START DATE:	03/15/2016	CONTRACT END DATE:	3/14/2020
PREVIOUS BPO #:	071B2200119		
CONTRACT INFORMATION:	Approximately 4 Year Contract with 2, 1 Year Options		
CONTRACTING AGENCY NAME:	Department of Transportation		
BUILDING NAME AND NUMBER:	MDOT Bay City TSC		
BUILDING ADDRESS:	2590 E. Wilder Road, Bay City, MI 48706		
REGION / COUNTY:	Bay Region / Bay County		
PROCUREMENT CONTACT INFORMATION			
PROCUREMENT OFFICE NAME:	MDOT		
PROCUREMENT OFFICE CONTACT NAME:	Laura Dotson	CONTACT PHONE #:	517-373-2134
PROCUREMENT OFFICE CONTACT E-MAIL:	Dotsonl2@michigan.gov	CONTACT FAX #:	517-373-3707
CONTRACT COMPLIANCE INSPECTOR (CCI) / FACILITY MANAGER (FM) NAME:	Danny Senske	CONTACT PHONE #:	989-233-1053
CCI / FM CONTACT E-MAIL:	Sensked@michigan.gov	CONTACT FAX #:	989-754-9250
LOCATION INFORMATION			
OFFICIAL WORKING DAYS OF BUILDING OCCUPANTS:	N/A	OFFICIAL WORKING HOURS OF BUILDING OCCUPANTS:	N/A
ESTIMATE OF AREA TO BE SERVICED: (IF APPLICABLE)	N/A	(FILL IN IF NEEDED)	N/A

IDENTIFY DAYS OF SERVICE:	7 Days per Week During Navigation Season	IDENTIFY HOURS OF SERVICE: [EXAMPLE: 5:30 A.M. TO 5:30 P.M.]	24 Hours per Day During Navigation Season
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PART II – PRICING SHEET SUMMARY

Bascule Bridge Operation in MDOT Bay Region (Bay County)

Check all that apply	DESCRIPTION OF SERVICES	Monthly Billing	PER YEAR	UNIT PRICE PER LINE ITEM <i>(Vendor Complete)</i>	ANNUAL PRICE <i>(Vendor Complete)</i>
X	Mobilization (Lump Sum)	1	1	\$85,000	\$85,000
X	Operation of Bascule Bridges: NAVIGATION SEASON	1	9	\$42,395	\$381,555
X	Operation of Bascule Bridges: OFF CALL SEASON	As Needed	10 (Estimate Only)	\$50	\$500
SUBTOTAL					\$467,055
4 YEAR TOTAL					\$1,868,220,000

Quantities are estimates only; actual quantities will determined by Program Manager.

Payment Term=1% - 10 Net 45



STATE OF MICHIGAN

STANDARD CONTRACT TERMS (REVISED)

Contract # 591B6600135

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) Dependable Tree And Maintenance Service LLC, Michigan Limited Liability Company. In good standing. This Contract is effective on March 15, 2016 (“**Effective Date**”), and unless terminated, expires on March 14, 2020.

This Contract may be renewed for up to two (2) additional one (1) year period(s). Renewal must be by written agreement of the parties.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Laura Dotson 425 W. Ottawa	<i>Dependable Tree And Maintenance Service LLC 8555 Vergennes Road SE Ada, MI 49301]]</i>

Lansing, MI 48933 Dotson2@michigan.gov (517) 373-2134	Elmer31grand@yahoo.com 616-890-9507 Elmer Dalton
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

If to State: Laura Dotson 425 W. Ottawa Lansing, MI 48933 Dotson2@michigan.gov (517) 373-2134	If to Contractor: <i>Dependable Tree And Maintenance Service LLC</i> 8555 Vergennes Road SE Ada, MI 49301 Elmer31grand@yahoo.com 616-890-9507 Elmer Dalton
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

If to State: Danny Senske 2590 East Wilder Road Bay City, MI 48706 sensked@michigan.gov (989) 233-1053	If to Contractor: <i>Dependable Tree And Maintenance Service LLC</i> 8555 Vergennes Road SE Ada, MI 49301 Elmer31grand@yahoo.com 616-890-9507 Elmer Dalton
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5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.

6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds.
Automobile Liability Insurance	
<u>Minimal Limits:</u>	Contractor must have their policy: (1)

\$1,000,000 Per Occurrence	endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under the Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

7. Administrative Fee and Reporting-Reserved

8. Extended Purchasing Program- Reserved

9. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

10. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. Background Checks. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.

14. Change of Control. Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

- 15. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.
- 16. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Termination for Cause.
- Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.
- If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.
- 17. Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance.
- 18. Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
- 19. Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
- 20. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor is solely responsible for payment of any applicable taxes.
- The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.
- The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.
- Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.
- 21. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Exhibit A.
- 22. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 23. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach

within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

24. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

25. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 30 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

26. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. Infringement Remedies. If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against

Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

- 28. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 29. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 30. State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
- 31. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
 - b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
 - c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
 - d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
 - e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which

are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

32. Data Privacy and Information Security. *Reserved*

33. Payment Card Industry Data Security Standard. *Reserved*

34. CEPAS Electronic Receipt Processing Standard. *Reserved*

35. Records Maintenance, Inspection, Examination, and Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

36. Warranties and Representations. Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.

37. Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

38. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

39. Prevailing Wage. *Reserved*

40. Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

41. Unfair Labor Practice. Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

42. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham

County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

43. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
44. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
45. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
46. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
47. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
48. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
49. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
50. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
51. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
52. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").

ATTACHMENT A-I

APPROVED MATERIALS LIST

MATERIAL	USE	SPECIFICATION
Toilet Paper		Toilet tissue rolls, 2 ply wrapped 4½" x 4½", 1000 sheets/roll, 96 rolls/case
Liquid Hand soap		Soap must be mild, liquid and remain viscous at temperatures of 40 degrees F. or higher.
Plastic Bag Barrel and Bag Liners		33 gallon capacity, minimum liner size, 33x40, .43 mil. thickness
Sanitary Napkin Disposal Bag	Sanitary Napkin Receptacles	Approved dispenser liner that fits properly
Glass Cleaner	All glass and mirrored surfaces	Liquid spray formula designed for cleaning glass surfaces and mirrors, non-abrasive
Toilet Bowl Cleaner	To clean inside of bowls and flushing cavities	E.P.A. approved 9% HCl acid base bowl cleaner
Liquid Synthetic Detergent	To clean tiles, floor, walls, partitions, sink tops, sinks, outside of toilets, toilet seats and sanitary napkin containers	E.P.A. registered disinfectant, detergents shall be quaternary ammonium compounds
Stainless Steel Cleaner	To clean metal surfaces	Safe for metals non-scouring product
De-icing Chemical	Use on sidewalks near entrances	Calcium Chloride or product approved by the Contract Compliance Inspector

MATERIAL	USE	SPECIFICATION
Latex Gloves	Shall be used when cleaning	
Quality latex glove Cotton Mops	Mop tile floors	Cotton blend, banded loop
Mop Handle	Hold mop	Plastic grip or speed change heads
Mop Bucket & Wringer	Hold solution and drain mop	Bucket must be on rollers, wringer must match bucket and mop size
Brooms	Sweep dirt and debris from floor and catwalks	Heavy duty natural corn broom and heavy duty (stiff bristles) push broom
Window Squeegees & Extensions	To clean windows	Squeegee designed for window washing with extension as needed
Toilet Bowl Mop	To clean inside toilet bowl	Cotton or synthetic mop - no bristles
Spray Bottles	Hold various cleaning supplies	Clean plastic, trigger style bottles
Sponges and cloths	Clean surfaces	Cotton cloths and absorbent sponges
Hose	Wash catwalks and railings	Quality rubber hose with proper fittings
Step Ladder	General housekeeping	OSHA approved, 6 foot fiberglass mechanic ladder
Florescent bulbs		40 watt T12 cool white, 4' florescent

MATERIAL	USE	SPECIFICATION
Toilet Plunger		
Navigational Lights		100 watt, 120v rough service, incandescent
Hand Towels		2 ply tri-fold paper hand towels
Power Washer	Wash catwalks and railings	minimum 1½hp, 1000psi operating pressure, 2 gal./min. 120 volt

ATTACHMENT A-II

FORMS

1. BRIDGE OPERATOR'S REPORT
2. UNNECESSARY BRIDGE OPENINGS
3. CONTRACTOR/OPERATOR'S INSPECTION
4. EQUIPMENT CHECK LIST
5. ACCIDENT INCIDENT

UNNECESSARY BRIDGE OPENINGS

(M•DOT 6-4-96)

BRIDGE NAME: _____ BRIDGE No. _____

BRIDGE LOCATION: _____

• NUMBER OF VESSEL (IF NUMBERED): _____

• NAME OF VESSEL: _____

• HOME PORT (IF SHOWN): _____

• NAME & ADDRESS OF OWNER: _____

MONTH: _____ DAY _____ YEAR _____ TIME _____ AM _____ PM _____

DIRECTION OF PASSAGE: UP STREAM _____ DOWN STREAM _____

CAUSE OF UNNECESSARY BRIDGE OPENING

APPURTENANCES UNESSENTIAL TO NAVIGATION:

ANTENNA _____ OUTRIGGER _____ DECORATIVE MAST _____

FLAGPOLE _____ FALSE STACK _____ CANVAS TOP _____

OTHER _____

CLEARANCE GAUGE: _____ FEET

ESTIMATED CLEARANCE OF VESSEL'S HIGHEST FIXED POINT: _____ FEET

REMARKS: _____

BRIDGE OPERATOR: _____

(VIOLATION CANNOT PROCEED WITHOUT THIS INFORMATION)

CONTRACTOR/OPERATOR'S INSPECTION

BRIDGE NAME _____

INSPECTOR _____ TIME: _____ DATE: _____

EVALUATION	GOOD	FAIR	POOR
A. Bridge Operators Overall Knowledge Of Functions			
1. Knowledge of routine operations procedures			
2. Knowledge of emergency operating procedures			
3. Knowledge of administrative requirements			
4. Knowledge of Coast Guard Regulations			
B. Bridge Operators Overall Operational Ability			
1. Ability to operate bridge			
2. Bridge logs (Completeness)			
C. Bridge Navigation And Safety Conditions			
1. Navigation lights (daily checks)			
2. Fender systems			
3. Other safety devices			
D. Bridge Operators Appearance			
E. Housekeeping Overall			
1. Operators bridge house floors			
2. Bridge house windows			
3. Control console and switchgear			
4. Walkways and platforms			
5. Commode			
F. Overall Bridge Condition			

EQUIPMENT CHECK LIST

BRIDGE NAME _____

1. FIRST-AID KIT - 2 ea.
 - a. In a readily accessible place?
 - b. Has it been used?
 - c. Has it been replenished?

2. LIFE JACKETS - 2 ea. and LIFE RINGS - 2 ea.
 - a. Is the required number accounted for?
 - b. Ripped, torn, or cracked?
 - c. General Condition: New_____ Good_____ Fair_____ Poor_____

3. ROPE, 150 lineal feet 1/4 inch (plus vertical distance of the draw span to water)
 - a. Is it in a readily accessible condition?
 - b. General Condition: New_____ Good_____ Fair_____ Poor_____

4. FIRE EXTINGUISHERS - 6 ea. Vets Bridge - 5 ea. Lafayette Bridge
 - a. Are they type ABC?
 - b. Date filled?
 - c. Has the pin been broken?

5. BIG RED FLAG FOR EMERGENCY SHIP WARNING

- a. Is the required number accounted for?
- b. Are they properly stored?

6. FLASHLIGHTS - 2 ea.

- a. Is the required number accounted for?
- b. Are they in working condition?
- c. Are the batteries good?

7. ARE THE FOLLOWING AVAILABLE?

- a. Cones - 6 ea.
- b. Vests (Reflectorized) - 2 ea.

8. ARE THE FOLLOWING WORKING SATISFACTORILY?

- a. Commode
- b. Fan/air conditioner
- c. Door locks
- d. Telephone
- e. Intercom (if available)

9. COMMENTS:

PROJECT MANAGER _____

DATE _____

ACCIDENT INCIDENT

LOCATION _____

TIME OF ACCIDENT _____ DATE _____ HOUR _____ AM ___ PM ___

WEATHER CONDITIONS _____ (CLEAR, RAIN, FOG, ETC.)

<u>OPERATOR'S NAME, ADDRESS & PHONE NUMBER</u>	<u>VEHICLE/BOAT IDENTIFICATION NUMBER</u>	<u>DRIVERS LICENSE NUMBER</u>	<u>INSURANCE COMPANY</u>

MDOT PROPERTY DAMAGED: _____

DESCRIPTION OF ACCIDENT: _____

POLICE AGENCY REPORT NUMBER: _____

SKETCH IF NECESSARY

ATTACHMENT A-III
CUSTODIAL DUTIES OF BRIDGE OPERATORS

The Contractor must:

1. Wash all windows in the bridge house weekly or more often as needed.
2. Sweep all floors throughout the bridge house daily.
3. Wet mop all floors throughout the bridge house daily.
4. Wax all floors throughout the bridge house monthly.
5. Sweep all stairwells throughout the bridge house daily.
6. Wet mop all stairwells throughout the bridge house daily.
7. Remove spider webs, cobwebs and other debris throughout the bridge house daily.
8. Each operator must empty wastebaskets throughout the bridge house after working his/her shift.
9. Each operator must remove any newspapers and magazines from the bridge house after working his/her shift.
10. The contents throughout the bridge house should be dusted daily.
11. The bathroom toilet and sink must be cleaned and scoured daily.
12. Check water level of counterbalance pits daily, and pump them if there is any water accumulation.
13. Clean walkways, horizontal tread plates and surrounding areas weekly or more often if needed.
14. Power wash walkways, catwalks, and piers underneath the bridge deck monthly or more often if needed
15. Remove any debris on the bascule spans.
16. Remove snow from sidewalks of bascule spans, around bridge house, and far side entrance doors.
17. Change burned out light bulbs throughout the bridge house, motor rooms, catwalks, and navigation lights.
18. The control panel is to be kept clean and orderly at all times.

ATTACHMENT A-IV

DRUG AND ALCOHOL TESTING

The Omnibus Transportation Testing Act was signed into law on October 28, 1991. The Secretary of Transportation subsequently published Regulations for alcohol and controlled substance testing of persons in the transportation industry who **perform safety sensitive functions** as described by the Act.

Since MDOT considers this as a safety sensitive function, the Contractor must establish a drug and alcohol program for his/her employees that includes the following types of drug and alcohol testing:

1. Pre-Employment
2. Random
3. Reasonable Suspicion
4. Post accident
5. Return to Duty/Follow-Up

Any employee who tests positive must be immediately suspended and/or dismissed. No employee will be allowed to return to work without the approval of the Contract Compliance Inspector.

The Contractor will not be reimbursed for any drug or alcohol testing. Pre-Employment testing must be considered included in the item for Mobilization. All other testing must be considered included in the item: "Bridge Operation, In Season".

ATTACHMENT A-V

BRIDGE OPERATOR QUALIFICATIONS

A. PURPOSE AND SCOPE

- a.1 The purpose and scope of this attachment is to set forth standards for employment of persons who operate the bascule bridge. These standards are established to protect the public safety, and promote efficiency in land and water transportation.

B. QUALIFICATIONS FOR EMPLOYMENT AS A BRIDGE OPERATOR

b.1 Physical Requirements

- b.1.a. Corrected vision 20/40 or better.

- b.1.b. Be able to distinguish red, yellow and green colors.

- b.1.c. Must be able to hear frequencies from 500 to 6,000 Hertz + 15 Db and the overall hearing sensitivity must be able to resolve no less than - 50 Db in a normal situations. A voice communication test must be used for screening. A hearing test must be required when the screening test is failed.

- b.1.d. Must be able to climb bridge stairs and ladders (on-site test).

- b.1.e. Must be drug free (in accordance with Federal Drug Free Work Place Act of 1988, PL 100-690).

- b.1.f. Must be capable of hand cranking bridge gates (on-site test).

- b.1.g. Must be capable of carrying and placing traffic control devices (approximately 30 pounds).

- b.2 Must have a local telephone for emergency contact.

- b.3 Must be at least 18 years old.

C. SKILLS, EDUCATION AND ABILITY

- c.1 Must be able to read and comprehend Commission and United States Coast Guard manuals, rules, regulations and procedures (classroom and on-site testing).
- c.2 Must be able to keep logs and records in accordance with MDOT procedures in correct, legible English.
- c.3 Must be able to effectively communicate in English on the VHF marine radio.
- c.4 Must be able to follow instructions.
- c.5 Must be able to perform minor maintenance on structures (on-site test).
- c.6 Must have certification as Trained Bridge Operator. Operators working on more than one bridge must be trained on each structure. Training is valid for 24 months for a specific bridge.