

**MICHIGAN DEPARTMENT OF TRANSPORTATION**

**CITY OF SAULT STE. MARIE**

**CONTRACT**

This Contract is made and entered into this date of \_\_\_\_\_ by and between the Michigan Department of Transportation (MDOT) and the City of Sault Ste. Marie (CITY), with principal offices located at 225 East Portage Avenue, Sault Ste. Marie, Michigan 49783, for the purpose of providing reimbursement to the CITY for the demolition phase of the Carbide Dock project.

**Recitals:**

The CITY desires financial assistance from MDOT to support the demolition phase of the Carbide Dock project in the City of Sault Ste. Marie, Michigan (PROJECT); and

MDOT is willing to provide funding to the CITY to assist in financing the PROJECT; and

This Contract will provide one-time Comprehensive Transportation Funds for the PROJECT pursuant to Section 1002 of Public Act 66 of 2019.

The Parties agree as follows:

**1. SCOPE OF WORK**

The PROJECT will include excavation of a stable slope along the back (land) side of the dock, removal of the dock's concrete cap, and removal of the timber piles presently supporting the structure, as outlined in the scope of work attached hereto as Exhibit A.

**2. PERFORMANCE OF WORK**

The CITY agrees to be fully responsible for the performance of all of its contractors, subcontractors, and designated representatives. MDOT recognizes only the CITY as a party to this Contract and views the CITY as the prime contractor responsible for carrying out all aspects of the PROJECT. Therefore, this Contract makes the CITY responsible for the PROJECT, and the CITY accepts this responsibility.

- a. Project Management and Construction Engineering. The CITY, at its own expense, will provide or arrange for project management, construction engineering, and all other tasks necessary for the construction of the Carbide Dock project.

- b. Competitive Bidding. Competitive bidding or competitive proposals are required for all PROJECT-related expenses in excess of Twenty-Five Thousand Dollars (\$25,000.00). The CITY will seek at least three bids for eligible work items associated with the PROJECT. Selection of the lowest responsive bidder is required unless the justification for a best value selection is provided to and approved by MDOT.

### 3. **REIMBURSEMENT**

MDOT agrees to reimburse the CITY for actual eligible PROJECT costs up to a maximum amount of One Million Dollars (\$1,000,000.00) (the Reimbursable Amount).

- a. The CITY will initially fund the cost of the PROJECT.
- b. Upon substantial completion of the PROJECT, MDOT will reimburse the CITY in accordance with the following procedure:
  - i. The CITY will invoice MDOT for any and all costs incurred by the CITY for the MDOT portion of the PROJECT, up to the Reimbursable Amount.
  - ii. MDOT will pay the CITY the invoiced amount(s) within thirty (30) calendar days of receipt of such invoice.

### 4. **COST CERTIFICATION**

The CITY agrees that the costs reported to MDOT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The CITY also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.

### 5. **RECORD-KEEPING**

- a. The CITY will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract (RECORDS). Separate accounts will be established and maintained by job number and/or phase for all costs incurred under this Contract.
- b. The CITY will maintain the RECORDS for at least three (3) years from the date of final payment made by MDOT under this Contract. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the CITY will 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.

- c. MDOT or its representative may inspect, copy, scan, or audit the RECORDS at any reasonable time after giving reasonable notice.
- d. If any part of the work is subcontracted, the CITY will assure compliance with subsections (a), (b), and (c) above for all subcontracted work.

## 6. **AUDIT**

In the event that an audit performed by or on behalf of MDOT indicates an adjustment to the costs reported under this Contract or questions the allowability of an item of expense, MDOT will promptly submit to the CITY a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the CITY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the CITY will (a) respond in writing to the responsible Bureau or Office of MDOT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to MDOT a written explanation as to any questioned or no opinion expressed item of expense (RESPONSE). The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the CITY may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the Contract. The CITY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to finally disallow any items of questioned or no opinion expressed cost.

MDOT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If MDOT determines that an overpayment has been made to the CITY, the CITY will repay that amount to MDOT or reach agreement with MDOT on a repayment schedule within thirty (30) days after the date of an invoice from MDOT. If the CITY fails to repay the overpayment or reach agreement with MDOT on a repayment schedule within the thirty (30) day period, the CITY agrees that MDOT will deduct all or a portion of the overpayment from any funds then or thereafter payable by MDOT to the CITY under this Contract or any other agreement or payable to the CITY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by MDOT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The CITY expressly consents to this withholding or offsetting of funds under

those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest MDOT's decision only as to any item of expense the disallowance of which was disputed by the CITY in a timely filed RESPONSE.

7. **PUBLIC DISCLOSURE**

All documents provided to MDOT are subject to public disclosure in accordance with the Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.233, for routine purposes, MDOT may disclose PROJECT data. MDOT also compiles and reposts data in a manner that does not directly identify the CITY.

8. **NOTICES**

Any notices required by this Contract by either party will be in writing and will be directed to the officials identified herein electronically, by personal delivery, or by deposit in the United States mail, certified first class delivery. The representatives and/or addresses set forth herein may be changed at any time by either party upon written notice to the other party.

To the CITY:

City of Sault Ste. Marie  
225 East Portage Avenue  
Sault Ste. Marie, MI 49783  
Attn: Brian Chapman, City Manager

To MDOT:

Michigan Department of Transportation  
425 West Ottawa Street  
P.O. Box 30050  
Lansing, MI 48909  
Attn: Brooke Allison, Public Transportation Program Budget Specialist

9. **COMPLIANCE WITH LAWS**

The CITY specifically agrees that in the performance of the PROJECT herein enumerated, by itself, or by an approved subcontractor, or by anyone acting on its behalf, it will comply with any and all state, federal, and local statutes, ordinances, and regulations and will obtain all permits that are applicable to the entry into and the performance of this Contract.

10. **ASSIGNMENT**

This Contract is personal to the parties and cannot be assigned. The CITY will not sublet any portion of the SERVICES without MDOT's written approval.

11. **ENTIRE CONTRACT**

This Contract constitutes the entire agreement of the parties with respect to the PROJECT and supersedes any prior agreements or understandings between the parties with respect to the PROJECT. This Contract may only be modified by award of a written amendment to this Contract by the parties.

12. **SEVERABILITY**

If any part of this Contract is determined to be invalid, illegal, or unenforceable, such determination will not affect the validity, legality, or enforceability of any other part of this Contract, and the remaining parts of this Contract will be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

13. **NONDISCRIMINATION**

In connection with the performance of the PROJECT under this Contract, the CITY (hereinafter in Appendix A referred to as the “contractor”) agrees to comply with the State of Michigan provisions for “Prohibition of Discrimination in State Contracts,” as set forth in Appendix A, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.

14. **TERM**

This Contract will be in effect from the date of award until the last obligation between the parties under this Contract has been fulfilled

15. **AWARD**

This Contract will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the CITY and MDOT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective representative(s) of the CITY, a certified copy of which resolution will be sent to MDOT with this Contract, as applicable.

CITY OF SAULT STE. MARIE

By: \_\_\_\_\_  
Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Title: Department Director



# Exhibit A

## **Carbide Dock**

The Carbide dock is an historic docking structure along the St. Marys River, just east of the lower approach of the Soo Locks in Sault Ste. Marie, Michigan. The dock is approximately 1,100 feet in length and is the northern edge of Alford park which is a public park. The Carbide Dock Port is a regulated facility as mandated by the US Coast Guard Maritime Security Act. The regulated zone of the Carbide Dock is the last 300 feet of the docks eastern reach.

In the mid-2000's the City found evidence that the dock had settled, voids spaces had opened, and soil was being lost along the reach of the dock. In 2016, the City hired a firm to perform an inspection of the Carbide Dock to determine its condition and to make recommendations regarding the ability of the dock to continue to perform as a docking facility and as a public access along the river.

A conclusion was reached as a result of the inspection that the dock was in poor condition, and the dock area and its adjacent space should be closed to public access. The city closed the dock to public access and has allowed very limited docking along the dock.

On July 19, 2018 the City submitted a Build Grant requesting National Infrastructure Funds be allocated for the repair of the Carbide Dock and the rehabilitation of the Truck Route serving as the land side access to the dock to allow better material distribution through a designated truck route serving the dock.

The City was awarded the Grant Fund at the end of 2018.

The Grant calls for the removal and replacement of the dock. A portion of the dock will be constructed to allow side docking of maritime vessels, allowing commerce and the ability for Soo Lock bound vessels to side tie temporary during poor weather or when the locks are backed up during the height of the shipping season. Other areas of the dock may include soft shore, or habitat friendly design and construction as possible, and will be once again opened to the public.

The City of Sault Ste. Marie, Michigan issued a Qualifications Based Submittal process in the beginning of 2019 and has selected SmithGroup as its design and engineering firm as its design partner.

The first phase of construction will include the demolition of the dock. Prior to demolition, the site will be secured, proper erosion control and turbidity curtains placed to protect the adjacent lands and the river. Demolition will include the excavation of a stable slope along the back (land) side of the dock, the removal of the concrete cap of the dock, and the removal of the timber piles supporting the existing dock. There may be the ability to salvage piles in portions of the dock, or perhaps leave piles in place. The final details will be determined once the discovery, assessment and development of a preferred design is in place for the dock. In addition to the dock demolition, the existing bulk materials, handling slab, and storage building that are part of the overall dock facility will also be demolished.

Once demolition is complete, and the final assessment of the conditions have been made as to any adjustments to the dock design based on unknown conditions below the dock, construction will begin to reconstruct a dock to allow for the shipping and public access to once again occur along this reach of the St. Marys River.

## **APPENDIX A**

### **PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS**

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, 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, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any 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 a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor shall, 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, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.
6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.



7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011