

Operations and Maintenance Agreement

THIS OPERATIONS AND MAINTENANCE AGREEMENT (the “**Contract**”), is entered into on June __, 2020, BETWEEN the CITY OF BAY CITY, a Michigan Municipal Corporation, of 301 Washington Avenue, Bay City, Michigan 48708 (“**City**”), and UBP Bay City, LLC, a Delaware limited liability company, doing business as Bay City Bridge Partners of 7800 E. Union Ave., Suite 525, Denver, Colorado 80237 (“**BCBP**”, and together with the City, the “**Parties**” or each individually a “**Party**”).

BACKGROUND

- A. On or about January 1, 2020, the Parties entered into that certain Acquisition and Development Agreement (the “**ADA**”). The ADA is referenced generally for providing context for the obligations hereunder, except as specifically referenced in this Contract.
- B. The Project is: Operation and Maintenance of Bascule Bridges. “**Bascule Bridges**” as used in this Agreement shall mean the Liberty Bridge and Independence Bridge. Bridge as more specifically described in the ADA.
- C. This Contract is effective on May 30, 2020, (“**Effective Date**”), and unless terminated, expires on the earlier of (i) Conveyance of the Bascule Bridges as defined in or contemplated in the ADA or (ii) Termination of the ADA. The Contract may be renewed for up to one (1) additional one (1) year period by agreement of the Parties.
- D. This Contract incorporates the specific sections of the ADA referenced in this Contract, which, with the other documents listed in this Agreement and Modifications issued after execution of this Agreement, form the Contract. This Contract represents the entire and integrated agreement between the Parties hereto with respect to the subject matter contained herein and supersedes prior negotiations, representations or agreements, either written or oral. No change or amendment shall be made hereto except by a writing signed by the Parties hereto.

AGREEMENT

1. **Duties of the City.** The City shall perform the Services. Services shall mean the reasonable performance of operations and maintenance performed by the City in relation to the Bascule Bridges, as more particularly described in the Operational Plan attached as Exhibit A, as may be amended from time to time by agreement of the parties. If this Contract continues for more than 18 months from the Effective Date, upon the City’s request, BCBP and the City will discuss BCBP’s plan (including funding) to meet the major O&M obligations projected for the estimated remaining term of the ADA. The City may utilize outside vendors to perform the Services; *provided, however*, that the City shall provide to BCBP upon request copies of all current contracts with any such outside vendors. BCBP shall provide the City with its insurance requirements for outside vendors promptly after the date hereof and the City will include such insurance requirements in all requests for proposals and bid packages for outside vendors prepared after the date hereof.

BCBP shall reimburse the City within thirty (30) calendar days of the City submitting such invoices for all costs not otherwise reimbursed to the City and related to the Services for

Operations and Maintenance of the Bascule Bridges as provided in Section 12. The City shall use reasonable efforts to include in each invoice the information and supporting documentation described in **Exhibit B** hereto.

City shall: (a) perform the Services in a timely and safe manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; and (c) provide all Services in good quality.

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 City:	If to BCBP
Dana Muscott City of Bay City 301 Washington Avenue Suite 408 Bay City, MI 48708 dmuscott@baycitymi.org (989) 894-8146	Kevin Bischel UBP Bay City, LLC 7800 East Union Avenue Suite 525 Denver, CO 80237 kbischel@unitedbridgepartners.com
With a copy to: William Lentine Warner Norcross + Judd LLP 2000 Town Center Suite 2700 Southfield, MI 48075 wlentine@wnj.com	Melody Pickett UBP Bay City, LLC 7800 East Union Avenue Suite 525 Denver, CO 80237 mpickett@unitedbridgepartners.com

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 City:	If to BCBP:
Dana Muscott City of Bay City 301 Washington Avenue Suite 408 Bay City, MI 48708 dmuscott@baycitymi.org (989) 894-8146	Kevin Bischel UBP Bay City, LLC 7800 East Union Avenue Suite 525 Denver, CO 80237 kbischel@unitedbridgepartners.com

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 City:	If to BCBP:
Joe Ledesma City of Bay City 301 Washington Avenue Suite 408 Bay City, MI 48708 jledesma@baycitymi.org (989) 894-8307	Kevin Bischel UBP Bay City, LLC 7800 East Union Avenue Suite 525 Denver, CO 80237 kbischel@unitedbridgepartners.com

5. **Contract Compliance Inspector.** The Contract Compliance Inspector for the City of Bay City is Kurt Hausbeck, or his designee.
6. **Insurance Requirements.** BCBP agrees to maintain the insurances identified in Section 20 of the ADA and is responsible for all deductibles. All required insurance must: (a) protect BCBP from claims that may arise out of, are alleged to arise out of, or result from BCBP’s performance under this Agreement; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the City; 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.
7. **Intentionally deleted.**
8. **Assignment.** BCBP may not assign this Contract to any other party except in connection with an assignment of the ADA and in compliance with Section 30 of the ADA.
9. **Change of Control.** BCBP will notify, at least 90 calendar days before the effective date, the City of any change in control of BCBP. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of BCBP’s equity (b) a sale of substantially all of BCBP’s assets; (c) a change in a majority of BCBP’s members or managers; (d) consummation of a merger or consolidation of BCBP with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the equity holders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of BCBP, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, BCBP must require the successor to assume this Contract and all of its obligations under this Contract.
10. **Acceptance.** Services are subject to inspection and testing by BCBP within 30 calendar days of the City’s performance of the Services (“**BCBP Review Period**”). If BCBP identifies any deficiencies in the City’s performance, BCBP will notify the City as soon as reasonably possible and the City will have a reasonable opportunity to cure the deficiencies, not to exceed 30 days. BCBP may withhold payment for deficient services until such cure has been satisfactorily completed.
11. **Risk of Loss.** At all times, risk of loss or damage to the Bascule Bridges remains with BCBP. BCBP is responsible for filing, processing, and collecting all damage claims. The City will record and report to BCBP any evidence of visible damage.

12. **Terms of Payment.** All undisputed amounts on an invoice submitted to BCBP by the City for reimbursement for the Services performed are payable within thirty (30) calendar days of BCBP's receipt of such invoice for the Services. In the event of a dispute relating to all or any portion of an invoice, BCBP shall pay the City for all undisputed amounts on such invoice and the Parties shall work together in good faith to resolve the dispute. If the Parties are unable to resolve a dispute within fifteen (15) days after BCBP's decision to withhold payment for such disputed invoice, the dispute shall be resolved in accordance with the dispute resolution provisions set forth in Section 29 hereof. The City is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under the Contract are for the City's exclusive use.

BCBP will disburse payments under this Contract through check or wire transfer, or any other means reasonably requested by the City and agreed to by BCBP.

13. **Stop Work Order.** The City may suspend any or all Services under the Contract at any time after giving BCBP 10 calendar days' written notice, unless such suspension is due to a force majeure event described in Section 28 below, in which case the City may immediately suspend any or all Services. If suspension is for City's convenience (without cause), BCBP may immediately obtain replacement Services at BCBP's expense. If such suspension continues for 30 days, BCBP may terminate this Agreement as though City has elected to terminate pursuant to Section 15 below.

14. **Termination of Cause.** Either Party may terminate this Contract for cause, in whole or in part, if the other party: (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 Party 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, which shall be not less than 10 business days. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If this Contract is terminated under this Section, (y) the party requesting the termination will issue a termination notice to the other Party which shall state a termination date not less than 10 business days from the issuance of the termination notice, and (z) BCBP will obtain replacement vendor(s) to provide the Services.

15. **Termination for Convenience.** The City may upon sixty (60) days' written notice to BCBP terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. If the City terminates this Contract for convenience, it will provide BCBP with a termination notice as determined by the City which shall state a termination date not less than 60 days from the issuance of the termination notice, and BCBP will obtain replacement vendor(s) to provide the Services.

BCBP may upon sixty (60) days' written notice to the City terminate this Contract in whole or in part in order to outsource some or all of the Services being performed by the City to outside vendors.

16. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, City must, for a period of time specified by BCBP (not to exceed 30 calendar days), provide all reasonable transition assistance requested by BCBP, to allow for the Services to continue without interruption or adverse effect. Such transition assistance may include, but is not limited to: (a) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services, training, equipment, software, leases, reports and other documentation, to BCBP or BCBP's designee as necessary to replace the City for performance of the Services; (b) taking all necessary and appropriate steps, or such other action as the City may direct, to preserve, maintain, protect, or return to the City all materials, data, property, and confidential information provided directly or indirectly to BCBP by any entity, agent, vendor, or employee of the City; and (c) preparing an accurate accounting from which the City and BCBP may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period and BCBP shall pay the City for the Transition Responsibilities in the same manner as the Services, as described in Section 1 above.
17. **General Indemnification.** The Parties rights of indemnification are as set forth in Section 25 of the ADA and are incorporated by reference into this Contract, including the rights of each Party to defend and to be held harmless. For purposes of this Section 17 and the indemnification rights and obligations herein, the "City" includes the City and its departments, divisions, agencies, offices, commissions, officers, and employees, and "BCBP" includes BCBP and its employees, officers and agents, and any other party for whom BCBP is liable. Additionally, to the fullest extent allowed by law, BCBP must defend, indemnify and hold the City harmless 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), relating to any claims of any third party arising out of or related to the City's performance of the Services under this Contract. If any third party alleges any claim or damages arising out of the City's performance of the Services, BCBP shall have the right to immediately terminate the obligations for the City's performance of the Services under this Contract. To the extent this indemnification obligation arises due to death, bodily injury or personal injury caused by the City in the performance of the Services, BCBP's liability under this Section 17 shall be limited to the City's deductible under its applicable insurance coverage, which is \$1,000 for property damage and currently \$500,000 SIR for liability. If BCBP obtains general liability insurance coverage at its cost for the City as the named insured party, City agrees to accept such coverage as the primary insurance for City's performance obligations under this Contract and BCBP's indemnity obligation due to death, bodily injury or personal injury caused by the City in the performance of the Services will be limited to the deductible under such liability insurance coverage.

If the term of this Contract is extended past 18 months after the Effective Date, BCBP must promptly after a request from the City, provide reasonable assurance to the City regarding BCBP's continued funding commitment and ability to perform its O&M obligations under this Contract.

The City 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 City deems necessary. BCBP will not, without the City'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 City employee, official, or law may be involved or challenged, the City may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the City, must be coordinated with the City Attorney.

18. **Infringement Remedies.** If, in either Party's opinion, any piece of equipment, software, commodity, or service supplied by BCBP or City, as the case may be, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, the providing party must, at its expense: (a) procure the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to the other Party, (b) replace or modify the same so that it becomes non-infringing.
19. **Limitation of Liability.** Neither the City nor BCBP shall be liable for consequential, incidental, indirect, or special damages, including, without limitation, lost profits or opportunity, or loss of reputation, except as set forth in Section 17 above regarding BCBP's indemnification obligations.
20. **Disclosure of Litigation, or Other Proceeding.** BCBP and the City must notify the other Party within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving BCBP or the City, as the case may be, or an officer or director of BCBP in such capacity (and not in an individual capacity) that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a Proceeding under the Sarbanes-Oxley Act; (c) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect BCBP's or the City's viability or financial stability to perform under this Contract or the ADA; or (2) a governmental or public entity's claim or written allegation of fraud; or (d) a Proceeding involving any license that BCBP or the City is required to possess in order to perform under this Contract.
21. **City Data.** All data and information provided to BCBP by or on behalf of the City, and all data and information derived therefrom, is the exclusive property of the City ("**City Data**"); this definition is to be construed as broadly as possible. Upon request, BCBP must provide to the City, or a third party designated by the City, all City Data within 10 calendar days of the request and in the format provided to BCBP by the City. BCBP will assume all costs incurred in compiling and supplying City Data. No City Data may be used for any marketing purposes without City's prior written approval in its sole discretion.
22. **Non-Disclosure of Confidential Information.** The Parties acknowledge that, in connection with the Services provided pursuant to this Agreement, 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 (the "**Disclosing Party**") that: (i) has been marked "confidential" or with words of

similar meaning, at the time of disclosure by such party; (ii) 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, (iii) 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 (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, City 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: (i) use of a subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (iii) the Party engaging the subcontractor obligates the subcontractor in a written contract to maintain the other Party’s Confidential Information in confidence.
- (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, at the sole election of the other Party, the immediate termination, without liability to the terminating Party, of this Contract.

(e) Surrender of Confidential Information upon Termination. Upon termination of this Contract, 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 BCBP must return City Data to the City following the timeframe and procedure described further in this Contract. Should BCBP or the City determine that the return of any non-City Data Confidential Information is not feasible, such Party must destroy the non-City Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other Party.

23. Records Maintenance, Inspection, Examination, and Audit. Either Party or its designee may audit the other Party's records to verify compliance with this Contract. The Parties must retain, and provide to the other Party or its designee 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, the Parties must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the Party requesting the audit and its authorized representatives or designees have the right to examine, copy, and audit all records related to this Contract. The Party being audited must cooperate and provide reasonable assistance to the auditing party. 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.

24. Warranties and Representations. The City represents and warrants: the Contract signatory has the authority to enter into this Contract but the City does not provide any express or implied warranties for the Services rendered by or through the City or its agents.

25. Compliance with Laws. The City must comply with all federal, state and local laws, rules and regulations.

26. 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.*, and Article III of Chapter 66 of the Bay City Code of Ordinances, BCBP agrees 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.

27. 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 directly or indirectly from this Contract must be resolved in the Circuit or

District Court for Bay County, Michigan. BCBP consents to venue in Bay County, and waives any objections, such as lack of personal jurisdiction or forum non conveniens. BCBP must appoint agents in Michigan to receive service of process.

28. **Force Majeure.** Neither Party will be in breach of this Contract because of any failure arising from or related to any disaster or acts of god that are beyond their control and without their fault or negligence including, but not limited to, the COVID-19 pandemic, and the impacts of related governmental action and compliance therewith on either Party. Each Party will use commercially reasonable efforts to resume performance. If performance cannot be achieved through such commercially reasonable efforts, the nonperforming party shall be excused from liability for any resulting loss or damage. If immediate performance is necessary to ensure public health and safety, the City or BCBP may immediately contract with a third party.
29. **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.

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 either Party's termination rights as set forth elsewhere in this Contract.
30. **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.
31. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
32. **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.
33. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the Parties for the Services. This Contract may not be amended except by signed agreement between the Parties (a "**Contract Change Notice**").

Signatures Appear on the Following Page

The Parties have executed this AGREEMENT effective as of the date first written above.

CITY OF BAY CITY

UBP BAY CITY, LLC, doing business as
BAY CITY BRIDGE PARTNERS

By: Kathleen Newsham, Mayor

By: Doug Witt
Its: Chief Executive Officer

By: Tema J. Lucero, Clerk

EXHIBIT A
Operational Plan



MAY 21, 2020

BAY CITY, MI
INDEPENDENCE & LIBERTY BRIDGES
OPERATIONS & MAINTENANCE PLAN
150 DAY TRANSITION PERIOD



1. Plan Purpose

This plan is intended to be a working document that will be used by Bay City (City) and United Bridge Partners (UBP) as a roadmap for accomplishing what needs to occur to operate and maintain the Liberty and Independence bridges during the term of this Contract (the “O&M Period”).

2. O&M Period

The Acquisition and Development Agreement (ADA) between the City and UBP outlines a period where the City will continue to perform the operation and maintenance (O&M) activities at the Liberty and Independence bridges (see article 2). UBP will reimburse the City for O&M costs incurred during the O&M Period per the terms of this Contract.

During the O&M Period, UBP intends to further examine the structures and implement a more formalized O&M program, and transfer institutional knowledge and expertise from City staff to the UBP team. The City’s and UBP’s shared goal is to ensure the bridges remain safe and fully operational to the traveling public 24/7 during this O&M Period.

3. Communication Plan

It is critical that the City and UBP maintain open communication (24/7) where the City can immediately contact UBP or UBP can immediately notify the City when a bridge may fail to open or close or to address any other potential emergency situation. The City’s and UBP’s primary point of contact(s) and two secondary contacts, as well as other governmental agencies in times of an emergency action will be developed and shared by City and UBP. The City and UBP will work together to identify the appropriate third party and agency contacts related to the bridge operations and maintenance.

4. Bridge Failure to Open/Close

If for whatever reason, the Liberty Bridge and / or Independence bridge fail to open or close during the O&M Period, the City will: (1) immediately notify UBP of the incident and outline the corrective action plan, and (2) follow the current in-place protocols on the timely notification to proper authorities e.g., the United States Coast Guard; city, county and state police and sheriff departments; appropriate fire and emergency services including adjacent hospitals; City Mayor and Commissioners, and city personnel; local news agencies, and appropriate public announcement to the Bay City residents and traveling public.

The City’s existing procedure in the event of a closure is to immediately call 911 dispatchers. Information provided to 911 will then be sent out via the Bay Alerts system.

5. Bridge Collision

For the purposes of this document, two types of bridge collisions have been identified; (1) an automobile or truck that strays off the travel lanes and impacts the bridge i.e., guard rail, warning gates, tender house, etc., and (2) a recreational watercraft or commercial vessel that while passing under the bridge impacts an in-water pier or bridge fender.

If the City is or becomes aware of either event, the City will: (1) immediately notify UBP of the incident and corrective action plan, (2) provide a written report prepared by the bridge tenders that documents the date, time on when the event occurred and any details associated with said event, (3) if possible, collect names and telephone numbers from the individuals or companies that were involved with the event, and (4) copies of any police reports filed.

6. Operation and Maintenance

This section outlines the planned approach to how O&M activities will be performed and reimbursement of the City costs during the O&M Period.

6.1. Normal Maintenance Activities

City staff will continue to perform the normal ongoing maintenance activities that are currently being completed at the existing Liberty and Independence bridges. The City staff and vendors are responsible for their own safety and will follow their existing safety policies and procedures. UBP will compensate the City in accordance with the following items:

- Labor. UBP will reimburse the utilization of City staff on an hourly basis per the fully-burdened hourly rates as set-forth in the ADA (a copy is attached as **Attachment A**). The fully burdened rate includes the actual hourly rate plus approximately 55% for fringe benefits.
- Materials and Supplies. UBP will reimburse the City for any materials and supplies utilized by the City staff to complete the normally planned O&M activities.
- On-call subcontractor(s)/sub-consultant(s). UBP will reimburse the City for the use of on-call (or outside) subcontractors that are necessary to complete the normally planned O&M activities.

NBI inspection activities are scheduled to occur during the O&M Period. The most recent inspection for Liberty occurred in November 2019 (the City will provide a draft copy of the report) and will be due for reinspection in November 2021. An underwater inspection for Liberty was conducted last year (date?) and is required every 2 years. Independence is due for inspection by November 2020 and is on a 5-year cycle for underwater inspections. If Bay City experiences extreme weather event(s) during the O&M Period, the City and UBP shall reasonably agree upon

additional inspections of the Bridges outside of the Bridges' scheduled inspection cycles that are required by MDOT or other governmental agency.

6.2. Unplanned O&M Activities

The City and UBP have a shared objective and that both the Liberty and Independence bridges; (1) remain in safe working condition, and (2) operationally the bridges open and close in accordance with the USGC navigational requirements for recreational and commercial vessels that pass under the bridges during the O&M Period.

In the course of completing normally planned maintenance activities, if the City encounters an issue that may impact the safety of the bridges or the bridges ability to open or close, the City will immediately notify UBP within 12-hours of discovering the situation. The City will contact the UBP point-of-contacts (primary and two secondary) by telephone and email about the situation. UBP will mobilize the necessary resources and expertise to further investigate the issue in coordination with the appropriate City staff to further (1) quantify the problem, and (2) identify the appropriate corrective action going forward. UBP will communicate with the City about its findings and facilitate a discussion on the recommended corrective action once identified.

6.3. Dependable Tree and Maintenance Service - Bridge Tenders

The City has an existing "Operation and Maintenance of Bascule Bridges" contract with Dependable Tree and Maintenance Service, dated March xx, 2019. During the O&M Period, this contract will remain in effect, the City agrees to maintain and administer this contract, and Dependable Tree will continue to provide the scope of services as outlined within such contract during the O&M Period. UBP agrees to reimburse the City for the Dependable Tree costs as outlined within the contract and any time expended by City staff to manage and administer the Dependable Tree contract on behalf of UBP.

Dependable Tree will continue to complete the required reporting documentation outlined within its contract and this information will be provided to UBP.

6.4. Snow and Ice Removal

The City will continue to perform the necessary snow and ice removal activities across both the Liberty and Independence bridges during the O&M Period. The City also performs snow and ice removal on the state-owned bridges. The City typically pre-treats all four bridges with de-icing chemicals prior to a snow event. The City noted that there is a two-hour labor minimum when snow and ice removal is needed after normal business hours. UBP will reimburse the City for providing these services based upon a yet to be determined methodology.

6.5. Trash and Litter Collection

The City will continue to perform the necessary street sweeping, graffiti removal, and trash and litter collection activities across the top and underneath both the Liberty and Independence bridges during the O&M Period. UBP will reimburse the City for providing these services based upon a flat month/quarterly rate for the pick-up and disposal of trash and debris.

6.6. Hazardous Materials

If the City should happen to discover potentially hazardous materials while performing normal O&M activities or during the collection of trash and debris, the City will immediately notify UBP, and UBP and the City will work collaboratively on the proper identification of the material (to the extent possible) and eventually the safe handling and proper disposal of the material on a case-by-case basis. The City currently notifies the fire department if hazardous materials are encountered or suspected.

6.7. Long-term Preventative and Proactive O&M program

Based upon a more thorough examination of the existing bridge conditions and O&M knowledge gained during the transition period, UBP will likely develop and implement a more formalized preventative and proactive O&M program. This O&M program will be put in place following the transition period. For Liberty Bridge, this O&M program will remain in effect until the Liberty bridge has been rehabilitated, and for the Independence bridge, this O&M program will remain in effect until the new Independence bridge is open to traffic and existing bridge is closed. UBP may request that City staff participate with the development of the program and the City will be compensated on an hourly basis.

During the O&M Period, the City will make available to UBP all existing bridge documentation. UBP will provide a list of requested documents and will include the original design drawings, as-built drawings, O&M equipment manuals, historic operation and maintenance records, and other similar documents and records. UBP requests the City's assistance with development of a summary of the existing suppliers, consultants, and contractors that are used for normal maintenance activities. UBP (through its consultant TranSystems) will make available an electronic file transfer site.

6.8. Other Reimbursable Items

TBD. Equipment rental rates, bridge lighting, emergency generator fuel oil, below deck navigational lighting and signage, landscaping (Parks department), signal contracts, etc.

7. UBP’s Reimbursement of City’s Costs

The City will submit a monthly invoice to UBP for any work completed by the City as outlined in Sections 6.1 (Normal Maintenance Activities), 6.2 (Unplanned O&M Activities), 6.3 (Dependable Tree), 6.4 (Snow and Ice Removal), 6.5 (Trash and Litter Collection), 6.6 (Hazardous Materials) and 6.7 (Preventative and Proactive O&M program), 6.8 Other Reimbursable Items above. The City invoice will be provided to UBP by the 10th day of the following month and UBP will reimburse the City within 45 calendar days thereafter.

The City’s invoice will include the supportive backup documentation including but not limited to: itemization and summary of labor hours and hourly billing rates by City individual, necessary receipts or sufficient back-up to support materials and supplies utilized by the City, and invoices (if any) from on-call subcontractors or subconsultants used during the month including an explanation of services provided. UBP will reimburse the City for the Dependable Tree costs per the pricing outlined with the contract with the City.

While the actual level of effort will vary, for budgeting purposes, it is estimated that the city will spend the following level of effort on operating and maintenance activities.

Activity	Level of Effort	Estimated Monthly Cost
Normal Maintenance Activities	Xx hours / %FTE1 Xx hours / %FTE2	
Unplanned O&M Activities	As needed	
Dependable Tree and Maintenance Service - Bridge Tenders	24-hour coverage for both bridges. On call from Jan 1 to March 31.	\$68k for annual mobilization + \$32.2k monthly (April to December). Minimal charges from Jan. to March
Snow and Ice Removal	Truck/driver, deicing materials	
Trash and Litter Collection	As needed	
Hazardous Materials	n/a	
Long-term Preventative and Proactive O&M program	Meetings, document review	

8. O&M Progress Meetings

The City and UBP will conduct bi-monthly or periodic (i.e., via conference call or face-to-face) status meeting during the O&M Period. The purpose of the meeting is to facilitate the exchange of information noted below;

- an overview of recently completed maintenance activities
- an overview of any upcoming significant planned maintenance activities
- identification of any bridge operational concerns
- any unplanned maintenance activities the City recommends to be completed by UBP
- UBP's recommended or likely path forward to resolve any outstanding, unplanned maintenance activities

9. USCG , Railroad and MDOT Coordination

It's critical that the City and UBP maintain the same open and working relationship with the USCG, Railroads and MDOT during the O&M Period. Furthermore, UBP wants to build off of that relationship as it takes on the full responsibility for O&M activities during the O&M Period. The City will work with UPB on setting up an introduction meeting with the USCG, Railroads and MDOT and City staff will attend and participate in any future meetings as required.

End of Bay City Transition Period O&M Plan

EXHIBIT B
INVOICE REQUIREMENTS

Each invoice submitted by the City to BCBP for reimbursement pursuant to Section 1 of this Agreement shall include the following information and documentation related to and supporting the amount of each invoice (“**Invoice Amount**”):

1. Invoice number;
2. Period of time covered by the invoice (each, an “**Invoice Period**”);
3. Itemized summary of the City employees who provided Services during the applicable Invoice Period, including the number of hours worked by each employee and each employee’s hourly rate;
4. Invoices from any subcontractors, consultants, or other service providers whose services are included in the Invoice Amount;
5. Receipts supporting each City expenditure over \$100 arising out of or related to the Services that is included in the Invoice Amount (expenditures of \$100 or less may be included in an invoice without a supporting receipt); and
6. Copy(ies) of any utility bills included in the Invoice Amount.