

CONTRACT #14
RFS # 451.00-00709
FA # Pending
Edison # Pending

Transportation

VENDOR:
River Marine Services, Inc.



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

COMMISSIONER'S OFFICE
SUITE 700, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402
(615) 741-2848

JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

February 14, 2013

Leni Chick, Contract and Audit Coordinator,
Fiscal Review Committee
8th Floor, Rachel Jackson Bldg.
320 Sixth Avenue North
Nashville, TN 37243

RE: Non-Competitive Contract Request
River Marine Service, Inc.
Cumberland City Ferry, Stewart County, Tennessee

Ms. Chick,

The referenced contract provides for the Ferry Service for the Tennessee Department of Transportation at Cumberland City, Stewart County, Tennessee. The Contractor has operated this ferry since 1988. The purpose of this contract request is to obtain approval for the Non-Competitive contract negotiation with a total cost of \$3,350,000.00 negotiated with River Marine Service.

This package contains the following materials as required by your office:

1. Supplemental Documentation form
2. Special Contract Request – Non-Competitive Type of Contract
3. A copy of the proposed Contract with River Marine Service

Please advise if you have any questions or comments.

Sincerely,

John C. Schroer
Commissioner

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Lyn Brown	*Contact Phone:	532-3552		
*Original Contract Number:		*Original RFS Number:			
Edison Contract Number: <i>(if applicable)</i>	Will be setup when approved to do Non-Competitive Contract	Edison RFS Number: <i>(if applicable)</i>	N/A		
*Original Contract Begin Date:	07/01/2013	*Current End Date:	06/30/2018		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Department of Transportation				
*Division:	Maintenance Division				
*Date Submitted:					
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	River Marine Service, Inc.				
*Current Maximum Liability:	3,350,000.00				
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY:2014	FY:2015	FY:2016	FY:2017	FY2018	FY
\$670,000.00	\$670,000.00	\$670,000.00	\$670,000.00	\$670,000.00	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Difference allocated for possible repairs and have not been spent.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			Excess State funding from each year was rolled into the following fiscal year. Therefore, the remaining fund at 6/30/13 will be in utilized in the proposed contract.		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		
*Contract Funding	State:	3,350,000.00	Federal:	0.00	

Supplemental Documentation Required for
Fiscal Review Committee

Source/Amount:			
Interdepartmental:		<i>Other:</i>	
If “ <i>other</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A		N/A	
Method of Original Award: <i>(if applicable)</i>		RFP 451.00-007-09, FA-09-25357-00	
*What were the projected costs of the service for the entire term of the contract prior to contract award?		3,350,000.00	

Supplemental Documentation Required for
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY:	FY:	FY:	FY:	FY:

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY:	FY:	FY:	FY:	FY:

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Special Contract Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.
Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

APPROVED

Chief Procurement Officer

Request Tracking #	-
1. Contracting Agency	Department of Transportation (TDOT)
2. Type of Contract	<input checked="" type="checkbox"/> Non-Competitive <input type="checkbox"/> No Cost <input type="checkbox"/> Revenue
3. Requestor Contact Information	Charles King Maintenance Division Suite 400 JKP Bldg 615.532.3454
4. Date Requested	
5. Brief Service Caption	Ferry across Cumberland River (Cumberland City Ferry, Stewart County, SR-46)
6. Proposed Contractor	River Marine Services, Inc.
7. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months
8. Maximum Contract Cost – with ALL options to extend exercised	\$ 3,350,000.00
9. Office for Information Resources Endorsement – information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
10. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Support – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Has the contracting agency procured the subject service before?	
<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by... <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Non-Competitive Negotiation <input type="checkbox"/> Another Competitive Method	
13. Will the State incur any substantial cost as a result of the subject agreement? (For No Cost or Revenue Contracts <u>only</u>)	<input type="checkbox"/> NO <input type="checkbox"/> YES <input checked="" type="checkbox"/> Not Applicable

Request Tracking #	-
14. Will the State also contract with other parties interested in entering substantially the same agreement?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
15. Description of Product/Services Contractor Will Provide Ferry service for the Cumberland City Ferry across the Cumberland River, Stewart County SR-46.	
16. Is this product/service currently available on a statewide contract?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
If YES, please explain why the current statewide contract is not being used for this procurement.	
17. Summary of State Responsibilities Under Proposed Contract (For No Cost and Revenue Contracts <u>only</u>)	
18. Explanation of Need for or Requirement Placed on the State to Acquire the Service This contract will replace the current contract due to expire 6/30/13.	
19. Proposed Contract Impact on Current State Operations	
20. Justification – Specifically explain why the procurement method being requested is required. TDOT does not believe that there is a company in the State of Tennessee interested in operating this ferry nor has the experience that this company has in operating this ferry.	
21. Contractor Selection Process and Efforts to Identify Reasonable, Competitive, Procurement Alternatives In an internet search for ferry companies in Tennessee, only three (3) names were found. River Marine Services, In., Shelby County Port Commission and Stam Marine Enterprises. The Shelby County Port Commission does not operate a ferry such as what is currently being operated by River Marine Service, Inc. at this location. Stam Marine Enterprises is an inland water passenger transportation company that has been in business for only thirteen (13) years.	
22. Name & Address of the Contractor's Principal Owner(s) – NOT required for a TN state education institution H. Paul Ritchie P.O. Box 3524, Clarksville, TN 37043	
23. Evidence of Contractor's Experience & Length Of Experience Providing the Service The State has another contract with River Marine Services, Inc. Contract Number 30738, Benton-Houston Ferry. River Marine Services, Inc. has operated the Benton-Houston Ferry since 1988 on the Tennessee River. Mr. Ritchie also operated the Clifton Ferry from 1992 to 1998 on the Tennessee River. The ferry was closed upon completion of the Lt. Governor John S. Wilder Bridge. River Marine Services, Inc. also has operated the Cumberland City Ferry in Stewart County since 1988.	
24. Was there an initial government estimate?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
25. Cost Determination Used- How did agency arrive at the price?	
26. Documentation of Discussions with Contractor- How did agency document discussions with Contractor?	
27. Explanation of Fair and Reasonable Price- Explain why price is fair and reasonable under the circumstances	

Request Tracking #	-
Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i>	

**CONTRACT**

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date 07/01/2013	End Date 06/30/2018	Agency Tracking #	Edison Record ID		
Contractor Legal Entity Name River Marine Service, Inc.			Edison Vendor ID 42600		
Service Caption (one line only) Operation of Cumberland City Ferry across the Cumberland River					
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	670,000.00				670,000.00
2015	670,000.00				670,000.00
2016	670,000.00				670,000.00
2017	670,000.00				670,000.00
2018	670,000.00				670,000.00
TOTAL:	3,350,000.00				3,350,000.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Ownership/Control					
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.			
<input type="checkbox"/> Competitive Negotiation		The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input checked="" type="checkbox"/> Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.			
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>OCR USE - FA</i>	
Speed Chart (optional) 78874		Account Code (optional) 70899000			

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
RIVER MARINE SERVICE, INC.

This Contract, by and between the **State of Tennessee, Department of Transportation** hereinafter referred to as the "State" and **River Marine, Service, Inc.** hereinafter referred to as the "Contractor," is for the provision of **the operation of the Cumberland City Ferry across the Cumberland River in Stewart County Tennessee,** as further defined in the "SCOPE OF SERVICES."

The Contractor is a: **Corporation**
 Contractor Place of Incorporation or Organization: **Tennessee**
 Contractor Edison Registration ID # **42600**

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

A.2. The contractor shall provide operation of the Cumberland City Ferry across the Cumberland River. The ferry (tug and barge) are owned by the State of Tennessee. It is located in Cumberland City, Stewart County, Tennessee on State Route 46.

A.3. The Contractor shall operate the ferry as follows:

Monday thru Friday – 5:30 a.m. to 6:00 p.m. local time
 Saturday and Sunday - 6:00 a.m. to 6:00 p.m. local time

The Contractor shall operate the ferry 365 days per year.

A.4. The Contractor shall operate on a daily crossing schedule that ensures that users of the ferry services are not required to wait in excess of one-half (1/2) hour for service.

A.5. The State reserves the right to increase or decrease the hours of operations based upon the service usage pattern.

A.6. In order to provide for continuous service, the State reserves the right to request the Contractor to furnish substitute ferry equipment (tug and barge) during the time the State's ferry is out of service for repairs or dry docked for U.S. Coast Guard (USCG) inspection and repairs. The substitute ferry equipment shall meet all necessary USCG, Federal and State requirements associated with Ferry Boat operations.

A.7. The Contractor may repair or replace any mechanical equipment in the tug and barge, as needed, and only upon approval by the Regional Engineering Director (or his designee) by telephone at 615-350-4300. The State shall reimburse Contractor for actual cost of these repairs.

A.8. The Contractor shall transport the State's ferry equipment (tug and barge) to the closest possible USCG certified marine repair and return to the Benton-Houston ferry work location. The ferry equipment (tug and barge) requires USCG certification once every five year interval with the next scheduled certification required in 2018.

A.9. The Contractor shall perform all preventative maintenance related to the ferry operation including, but not limited to the following:

- a. Check fluid level
- b. Perform all required lubrication
- c. Maintain the vessel in a clean and orderly state

d. Maintain record showing date and type of preventative maintenance performed

- A.10. The Contractor shall provide all lubricants and diesel fuel necessary for the operation of the tug. Notwithstanding the forgoing, the State, at its sole discretion may opt to provide diesel fuel for the operation of the ferry, provided that the State gives the Contractor thirty (30) days notice of such a determination.
- A.11. The Contractor shall maintain all safety equipment, as required by the USCG, in order to ensure operational readiness at all times of operation. In the event that such equipment requires repair or replacement, such repair or replacement shall be the responsibility of the Contractor.
- A.12. The Contractor shall furnish, install and maintain a radar unit acceptable for river navigation. The Captain on duty during hours of operation shall have proper USCG radar license and/or certification. Contractor will retain ownership of the radar unit at all times.

The contractor shall furnish, install and maintain two VHF radio units and necessary wiring acceptable for river navigation. The Captain on duty during hours of operation shall have proper USCG radio license and/or certification. The Contractor will retain ownership of the radio units at all times.

- A.13. During hours of operation, the Contractor shall furnish a minimum crew of two (2), a Captain and a Deckhand, who have the required State, Federal and USCG certifications and licenses to perform their duties.
- A.14. The Contractor shall post in a conspicuous location and shall maintain all signs associated with the operation. These signs include, but are not limited to the following:
- a. A three (3) foot by four (4) foot sign on the ferry showing the name of the operating company (the Contractor), operation on duty, address and telephone number of the operating company. This sign shall be provided by the Contractor and shall require the prior approval of the State before posting.
 - b. The Contractor shall not install or display any additional signs without the prior approval or the direction of the State.
- A.15. In the event that the contractor should cease operations or interrupt scheduled operations for any reason, the Contractor shall immediately notify the Regional Engineering Director (or his designee) of the Tennessee Department of Transportation – TDOT by telephone at 615.350.4300 that services have been halted or interrupted and give the reason services were halted and when services will resume.
- A.16. In the event of an occurrence affecting the safe operation of the vessel, an injury to the general public, a serious injury to the crew, vandalism or serious accident involving the crew and/or vessel, the Contractor shall immediately notify the Regional Engineering Director (or his designee) of the Tennessee Department of Transportation – TDOT by telephone at 615-350-4300. Incidents of a lesser nature may be reported during the next business day.
- A.17. The Contractor and his personnel shall be polite, well mannered and shall present a clean and neat appearance to the general public at all times.
- A.18. The Contractor shall ensure that the Captain, Crew and other persons associated with the operations of the Ferry Service have the necessary USCG certifications.
- A.19. In the event the Contractor elects to replace the Captain(s) of the vessel, the Contractor shall notify the State. The State reserves the right to approve such replacement.
- A.20. The Contractor shall comply with all Federal, State and Local Laws and ordinances addressing the operation, licensing and certification requirements associated with the operation and maintenance of a Ferry Boat and it's crew.

- A.21. The contract shall be responsible for collecting all fees associated with the operation of the Ferry Service. Fees collected shall be deposited to the State's account on a daily basis. The State will provide the Contractor with the account information no later than July 1, 2012.

The Contractor shall maintain a count on the basis of the fee schedule below: i.e. number of passengers, cars, trucks, cycles or trailers. The State's Finance Division shall verify the revenue collected agrees with the count.

The State shall advise the Contractor of the fee schedule and a sign will be provided for posting on the Ferry to reflect the current rates.

The maximum rate allowed to be charged is as follows:*

Automobile, passengers and driver	\$ 2.00
Person, each on foot	\$ 0.50
Truck or bus (one (1) ton capacity and under) and driver	\$ 2.00
Truck or bus (one (1) ton capacity and over) and driver	\$ 4.00
Automobile trailer*	\$ 1.50
Truck trailer or bus trailer*	\$ 3.00
*Trailer fee will be in addition to the fee for the towing vehicle	
Motorcycle and driver	\$ 2.00

Residents of Houston, Benton, Stewart and Henry Counties \$ 0.75

All official governmental vehicles are exempt from paying any crossing fee,

*TCA 54-13-317 (a) established the rate above; TCA 54-13-317 (b) allows the Commissioner establish a higher maximum. Any such rate revision shall be effected by contract amendment.

- A.22. The Contractor shall comply with all applicable state statues and all applicable Federal Codes, Rules, and Regulations regarding the operation of passenger ferries.
- A.23. The State shall provide the following commodities or services to the Contractor:
- The State shall maintain roadways, ramps, lights and provide all necessary permanent signs and pavement markings.
 - The State shall furnish the Contractor with necessary signs for temporary closure of the ferry operation.
 - The State shall provide all repairs and maintenance not specifically identified as the contractor's responsibility.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2013 and ending on June 30, 2018. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Million Three Hundred Fifty Dollars and no cents (\$3,350,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or

any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:
 - (1) For service performed from July 1, 2013 through June 30, 2014, the following rates shall apply.

Service Description	Amount (per compensable increment)
Ferry Boat Operation (Hourly Rate)	\$ 121.50 per hr
Substitute Ferry Tug – provided in accordance with Contract Section A.6., during the time the State's ferry tug is out of service for repairs or dry docked for emergency repairs for U.S. Coast Guard (USCG) inspection and repairs (Rate Per Day)	\$ 150.00 per day
Substitute Ferry Barge – provided in accordance with Contract Section A.6., during the time the State's ferry tug is out of service for repairs or dry docked for emergency repairs for U.S. Coast Guard (USCG) inspection and repairs (Rate Per Day)	\$ 100.00 per day
Transport of State Ferry Tug (including all incidental travel expense) – provided in accordance with Contract Section A.8. for repair or required certification.	The Contractor shall be paid the same rate as stated in the hourly rate above for Ferry Boat Operation
Transport of State Ferry Barge (including all incidental travel expense) – provided in accordance with Contract Section A.8. for repair or required certification.	The Contractor shall be paid the same rate as stated in the hourly rate above for Ferry Boat Operation
Repairs	Reimburse at actual cost. Documentation must be provided with invoices

- (2) For service performed from July 1, 2014 through June 30, 2015, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, all items expenditure category, not seasonally adjusted, index based period: 1982-84=100 published by the United States Department of Labor, Bureau of Labor Statistics in May, 2014 and that figure published in the same month, 12 months prior, up to a maximum of three percent.

(3) For service performed from July 1, 2015 through June 30, 2016 the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, all items expenditure category, not seasonally adjusted, index based period: 1982-84=100 published by the United States Department of Labor, Bureau of Labor Statistics in May, 2015 and that figure published in the same month, 12 months prior, up to a maximum of three percent.

(4) For service performed from July 1, 2016 through June 30, 2017, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, all items expenditure category, not seasonally adjusted, index based period: 1982-84=100 published by the United States Department of Labor, Bureau of Labor Statistics in May, 2016 and that figure published in the same month, 12 months prior, up to a maximum of three percent.

(5) For service performed from July 1, 2017 through June 30, 2018, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, all items expenditure category, not seasonally adjusted, index based period: 1982-84=100 published by the United States Department of Labor, Bureau of Labor Statistics in May, 2017 and that figure published in the same month, 12 months prior, up to a maximum of three percent.

- c. The Contractor shall not be compensated for travel to the primary location of service.
- d. A "day" shall be defined as a minimum of twelve and one half (12-1/2) hours of service on Monday through Friday and shall be defined as a minimum of twelve (12) hours of Service on Saturday and Sunday. The Contractor shall bill only for portions of a day if the Contractor provided fewer than twelve hours of service in a standard twenty-four hour day. The Contractor shall not bill more than the daily rate even if the Contractor works more than twelve and one half (12-1/2) hours Monday through Friday or twelve (12) hours Saturday or Sunday.
- e. In the event that operations are halted due to equipment breakdown other than maintenance or required repairs as defined in paragraph A.6., high water, fog, or some other force or major factor, the Contractor shall be compensated at a Standard-by Unit Rate of 50% of the hourly rate for the normal hours of operations during the first forty eight (48) continuous hours subsequent to the start of the cessation of operations. After the initial forty eight (48) hour period, the Contractor shall not be due any additional compensation until operations are resumed.
- f. The State shall reimburse the Contractor for the actual cost of:
 - (1) all lubricants and diesel fuel necessary for the operation of the tug provided in accordance with Contract Section A.10.
 - (2) repairs provided in accordance in Contract Section A.8., which are necessary for the operation of the tug and barge and the maintenance of USCG Certification, provided that all such repairs are pre-approved by the State.

Provided that such purchases were competitive or otherwise made in accordance with Contract Section A.8. and A.10. and the associated costs were reasonable, necessary, and the actual. The State will employ all reasonable means and will require all such documentation that it seems necessary to audit and ensure that such purchases were competitive or otherwise made in accordance with this contract and the associated costs were reasonable necessary and actual. The Contractor shall provide reasonable assistance and access related to such interview.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Tennessee Department of Transportation
 Maintenance Division
 1920 Wilma Rudolph Blvd.
 Clarksville, TN 37040

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Department of Transportation Maintenance Division
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or

regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Charles King, Transportation Manager 2 or
 Alan Durham, Executive Administrative Assistant 2
 Tennessee Department of Transportation
 505 Deaderick Street, Suite 400
 James K. Building
 Nashville, TN 37243
Charles.King@tn.gov
Alan.Durham@tn.gov
 Telephone # 615-741-2027
 FAX # 615-532-5995

The Contractor:

Captain H. Paul Ritchie
 River Marine Service, Inc.
 P.O. Box 3524
 Clarksville, TN 47043
 Telephone # 931-801-2306
 Emergency Phone # 931-801-2307
 FAX # 931-28-2643

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract.

Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- (1) Marine Employers Liability Insurance under the Jones Act as described by Maritime law.
 - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.5. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the State Agency Head's Title, for such decision and non-competitive procurement.
- E.6. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.7. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
 - b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - d. any technical specifications provided to proposers during the procurement process to award this Contract;
 - e. the Contractor's proposal seeking this Contract.

IN WITNESS WHEREOF,

River Marine Service, Inc.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TRANSPORTATION:

JOHN C. SCHROER, COMMISSIONER

DATE

ATTACHMENT 1

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	River Marine Service, Inc,
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	54-2080003

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION