

SPECIAL TRUNKLINE
UTILITY WORK
BY LOCAL AGENCY

COM

Control Section	HSIP 81072
Job Number	110172A
Federal Project	HSIP 1281(029)
Federal Item	KK 2996
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract	12-5473

THIS CONTRACT is made and entered into this date of _____, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF ANN ARBOR, a Michigan municipal corporation, hereinafter referred to as the "CITY"; for the purpose of fixing the rights and obligations of the parties in agreeing to construction engineering work by the CITY construction improvements on Highway I-94BL within the corporate limits of the CITY.

WITNESSETH:

WHEREAS, the DEPARTMENT is planning construction work on Highway I-94BL (Huron Street) between Thayer Street and Ingalls Street within the corporate limits of the CITY; and

WHEREAS, the CITY is planning construction work within the general vicinity of the DEPARTMENT'S construction; and

WHEREAS, the DEPARTMENT and the CITY agree that it is in the public interest for the CITY to construction engineering and oversight work for the DEPARTMENT'S construction, said work being hereinafter referred to as the PROJECT, is further described as follows:

Construction engineering work for the installation of a pedestrian refuge island on Highway I-94BL (Huron Street) between Thayer Street and Ingalls Street; together with necessary related work, located within the corporate limits of the CITY; and

WHEREAS, the DEPARTMENT'S participation in the PROJECT will include all phases of the work excluding the construction engineering; and

WHEREAS, the PROJECT COST is estimated to be \$6,400; and

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto approve of and shall undertake and complete the PROJECT in accordance with the terms of this contract. The term "PROJECT COST", as herein used, is hereby defined as the costs of Construction Engineering.

2. The CITY shall cause to be performed all the PROJECT work. The performance of the PROJECT work is subject to the following conditions:

- A. The DEPARTMENT authorizes the CITY to proceed with the performance of the PROJECT upon execution of this contract. Any costs incurred by the CITY for the PROJECT work prior to the execution of this contract will not be reimbursed by the DEPARTMENT.
- B. No PROJECT work is to be performed by the CITY until authorization in writing has been given to the CITY by the DEPARTMENT which specifies that such work may commence.
- C. The PROJECT work shall be performed in accordance with plans and specifications reviewed by the DEPARTMENT. No changes will be made to the plans and specifications reviewed by the DEPARTMENT which affect the PROJECT without the same being re-reviewed by the DEPARTMENT.
- D. The CITY will comply with all applicable State, Federal and local statutes, ordinances and regulations, and obtain all permits that are required for the performance of the PROJECT work.
- E. The CITY shall provide all construction engineering and inspection necessary for the PROJECT; however, the DEPARTMENT may, at its own expense, provide a competent inspector, together with necessary assistance, to assist the field representative of the CITY in completing the PROJECT. Said inspector of the DEPARTMENT, acting through the CITY'S engineer, shall have the right to reject any or all portions of the work which are not executed pursuant to the plans and specifications.
- F. No portion of the work included in this contract shall be subcontracted, assigned, or otherwise disposed of except with the written consent of the DEPARTMENT.

- G. The PROJECT work shall be performed in accordance with the requirements and guidelines set forth in Federal Aid Policy Guide (FAPG) Chapter I, Subchapter G, Part 645, Subpart A: Utility Relocations, Adjustments and Reimbursement and such other pertinent Directives and Instructional Memoranda of the FHWA as may be applicable.
- H. Accounts relative to the PROJECT work shall be subject to review and audit by the FHWA and billings shall be prepared in accordance with pertinent directives of the FHWA.

3. The DEPARTMENT will administer all phases of the PROJECT

4. The PROJECT COST is presently estimated to be \$6,400 and shall be paid by agencies of the Federal Government and the DEPARTMENT. Federal Funds shall be applied to the eligible items of PROJECT COST at a federal participation ratio equal to 90 percent. The balance of the PROJECT COST shall be paid by the DEPARTMENT. In the event that the CITY determines the PROJECT COST will exceed the estimate as set forth herein, the CITY will advise the DEPARTMENT in writing and receive approval prior to the performance of such work.

The PROJECT COST and the respective shares of the parties after Federal-aid is estimated to be as follows:

<u>TOTAL ESTIMATED COST</u>	<u>FEDERAL AID</u>	<u>DEPT'S SHARE</u>
\$6,400	\$5,760	\$640

In the event that the CITY determines the PROJECT will exceed the estimate as set forth herein, the CITY shall advise the DEPARTMENT in writing and receive approval prior to the performance of such work.

5. In order to fulfill the obligations assumed by the DEPARTMENT under the terms of this contract, the DEPARTMENT shall make prompt payment to the CITY for the PROJECT COST upon execution of this contract and receipt of billing from the CITY for work performed.

All billings submitted to the DEPARTMENT, for reimbursement for items of work performed under the terms of this contract, shall be prepared in accordance with the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than \$1,000.00 shall be submitted unless it is a final or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____" or "Final Billing".

Final billing under this contract shall be submitted in a timely manner but not later than twelve months after completion of the work. Billings for work submitted later than twelve months after completion of the work will not be paid.

6. The CITY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

The CITY shall maintain the RECORDS for at least three (3) years from the date of final payment made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the CITY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

If any part of the work is subcontracted, the CITY shall assure compliance with the above for all subcontracted work.

Final settlement of costs shall be made upon completion of all PROJECT work and final audit by the DEPARTMENT. In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the CITY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the CITY at the completion of an audit.

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

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the CITY, the CITY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the CITY fails to repay the overpayment or reach agreement with

the DEPARTMENT on a repayment schedule within the thirty (30) day period, the CITY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the CITY under this contract or any other agreement, or payable to the CITY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The CITY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the CITY in a timely filed RESPONSE.

7. The CITY agrees to comply with all applicable requirements of Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended by 1995 PA 60, MCL 324.9101 et. seq., for all PROJECT work performed under this contract, and the CITY shall require its contractors and subcontractors to comply with the same.

8. This contract is not intended to increase or decrease either party's liability or immunity from tort claims.

9. All work performed in connection with the PROJECT will be subject to the provisions of 1925 P.A. 17, Subsection 2, MCLA 250.62, but any reference to State Highway Commission shall be deemed to be the DEPARTMENT for the purposes of this section.

10. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

11. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the CITY and for the DEPARTMENT; upon the adoption of a resolution approving said contract and authorizing the signatures thereto of the respective officials of the CITY, a certified copy of which resolution shall be attached to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF ANN ARBOR

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By _____
Department Director MDOT

By _____
Title:



APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

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

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

Revised June 2011

**APPENDIX B
TITLE VI ASSURANCE**

During the performance of this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:
 - a. Withholding payments to the contractor until the contractor complies; and/or
 - b. Canceling, terminating, or suspending the contract, in whole or in part.

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

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- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.