

**AGREEMENT BETWEEN
DOAN CONSTRUCTION COMPANY
AND THE ANN ARBOR DDA
FOR CONSTRUCTION SERVICES**

The Ann Arbor DDA, a Michigan municipal corporation, having its offices at 150 S. Fifth Ave., Ann Arbor, Michigan 48104 ("DDA"), and Doan Construction Company ("Contractor"), a Public Corporation with its address at 3670 Carpenter Road, Ypsilanti, Michigan, 48197. DDA and Contractor agree as follows:

The Contractor agrees to provide services to the DDA under the following terms and conditions:

I. DEFINITIONS

Contract Administrator means DDA Capital Projects and Planning Manager, acting personally or through any appropriate staff member.

Project means: DDA Sidewalk Amenity Zone Repair Project.

II. DURATION

The contract term is for the period of July 1, 2024 through December 31 2024, with the option for two additional one-year renewals (January 1 – December 31st).

III. SERVICES

A. The Contractor agrees to furnish all of the materials, equipment, and labor necessary; and to abide by all the duties and responsibilities applicable to it for the Project in accordance with the requirements and provisions of the following documents, including all written modifications incorporated into any of the documents, which are incorporated as part of this Contract:

- This Contract
- Specifications included in the City of Ann Arbor "2024 Annual Sidewalk Repair Project, RFP 24-05"
- Exhibit A and Exhibit B

The DDA retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. The documents intend to include all labor and materials, equipment, and transportation necessary for the proper execution of the Project. Materials or work described in words that so applied have a well-known technical or trade meaning have the meaning of those recognized standards.

B. Quality of Services under this Agreement shall be of the level of professional quality performed by experts regularly rendering this type of service.

Determination of acceptable quality shall be made solely by the Contract Administrator.

- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the DDA except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONTRACTOR

The Contractor shall be paid on the basis of the bid price in the manner set forth in the Exhibit B. The total fee to be paid the Contractor for the services shall not exceed \$450,000 annually. Payment shall be made within 30 days of acceptance of the work by the Contract Administrator. It is understood and agreed between the parties that the compensation stated above is inclusive of any and all remuneration to which the Contractor may be entitled.

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be on the basis of reasonable time spent and reasonable quantities of materials used, according to the schedule of rates in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered “reasonable” under this provision.
- C. The Contractor shall keep complete records of time spent and materials used on the Project so that the DDA may verify invoices submitted by the Contractor. Such records shall be made available to the DDA upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract, including the guarantee period and during any warranty work, such insurance policies, including those set forth below, as will protect itself, the City and the Ann Arbor DDA, and their officers, employees, and agents from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
 - 1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be

obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 04 13 or current equivalent. The Ann Arbor DDA and City of Ann Arbor shall be added as additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground Coverage or Pollution. The following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Project General Aggregate
\$1,000,000	Personal and Advertising Injury
\$2,000,000	Products and Completed Operations Aggregate

3. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 10 13 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The Ann Arbor DDA and City of Ann Arbor shall be named as additional insured. There shall be no added exclusions or limiting endorsements that diminish the DDA's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
4. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

B. Insurance required under V.A.2 and V.A.3 of this contract shall be considered primary as respects any other valid or collectible insurance that the City or DDA may possess, including any self-insured retentions the City or DDA may have; and any other insurance the City or DDA does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City or DDA.

C. In the case of all contracts involving on-site work, the Contractor shall provide to the DDA, before the commencement of any work under this contract, documentation demonstrating it has obtained the above-mentioned policies. Documentation must provide and demonstrate an unconditional 30-day written notice of cancellation in favor of the Ann Arbor DDA. Further, the documentation

must explicitly state the following: (a) the policy number; the name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the DDA, in its sole discretion; (c) that the policy conforms to the requirements specified. The Contractor shall furnish the DDA with satisfactory certificates of insurance and endorsements prior to the commencement of any work. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the DDA. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the DDA at least ten days prior to the expiration date.

D. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the DDA.

D. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, the Contractor shall indemnify, defend and hold the City, DDA, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Contractor or its employees and agents occurring in the performance of this Agreement.

VI. COMPLIANCE REQUIREMENTS

A. Nondiscrimination. The Contractor agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code.

B. Living Wage. The Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code.

VII. WARRANTIES BY THE CONTRACTOR

A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by businesses regularly rendering this type of service. The Contractor warrants that the work performed shall be free of defects and guaranteed for a period of one year.

B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.

C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.

D. The Contractor warrants that it is not, and shall not become overdue or in default to the DDA for any contract, debt, or any other obligation to the DDA.

VIII. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. Breach under the terms of this Agreement shall include but not be limited to the failure to deliver service on time, poor quality materials or workmanship, failure to follow specifications identified in Article III above or the unauthorized substitution of articles other than those quoted and specified in the bid documents.
- B. The DDA may terminate this Agreement if it decides not to proceed with the Project by notice pursuant to Article XII. If the Project is terminated for reasons other than the breach of the Agreement by the Contractor, the Contractor shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the DDA to effect continued payment under this Agreement are not appropriated or otherwise made available, the DDA shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The Contract Administrator shall give the Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

IX. OBLIGATIONS OF THE DDA

- A. The DDA shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the DDA. Notwithstanding any consent by the DDA to any assignment, the Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises, and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the DDA.

- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. NOTICE

All notices and submissions required under this Agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this Agreement when personally delivered to the Contract Administrator or placed in the U.S. mail, postage prepaid to the Administering Service Area/Unit, care of the Contract Administrator.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Doan Construction
3670 Carpenter Rd 3670, Ypsilanti, Michigan, 48197, United States

If Notice is sent to the DDA, it shall be addressed and sent to:

Ann Arbor DDA
150 S 5th Ave Suite 301
Ann Arbor, Michigan 48104

XII. CHOICE OF LAW

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XIV. CONFLICT OF INTEREST

The contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. The contractor further certifies that it presently has no personal or financial interest and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

XV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XVI. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules, or other documentation, constitutes the entire understanding between the DDA and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended, or modified only by a written amendment signed by the Contractor and the DDA.

XVII. ELECTRONIC TRANSACTION

The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement.

FOR DOAN CONSTRUCTION

By _____

Name: _____

Title: _____

Date: _____

FOR ANN ARBOR DDA

By _____
Maura Thomson, DDA Executive Director

By _____
Amber Miller, Capital Project Manager

Date: _____

EXHIBIT A - SCOPE OF WORK

The goal of this project is to repair or improve the sidewalks and sidewalk amenity zone at various locations throughout the Ann Arbor Downtown Development Authority (DDA). The method of repairs to be made through this program will mimic the City of Ann Arbor's Ramp and Sidewalk Repair Program. Locations will be identified by DDA staff.

SPECIFICATIONS- ALL OPERATIONS

The Contractor(s) will perform the work with due care taking precautions against injury to persons, damage to public/private property, and interference with vehicular or pedestrian traffic. The Contractor(s) shall take necessary precautions to ensure the safety of all persons engaged in the work of this Contract.

All equipment to be used and all work to be performed must comply with provisions outlined in all applicable industry standards and regulations. Equipment must not be left unsecured at any time. All equipment and tools must be stored in such a manner to ensure that residents and the public do not have access to them.

The Contractor shall notify the DDA Representative and personnel directly affected by the work of any potentially dangerous situations. In the event of an emergency affecting the safety of persons or property, the Contractor shall act immediately to prevent threatened loss or damage. The Contractor shall immediately stop any activity or operation affecting safety until the situation(s) is corrected.

Work shall be in accordance with the Specifications of the City of Ann Arbor's "2021 Annual Sidewalk and Ramp Project, ITB No. 4677"

Where work is conducted in streets or other public thoroughfares, the Contractor(s) shall so plan and schedule work as to cause as little interference as possible with general public traffic, both vehicular and pedestrian. Street surfaces shall be maintained and kept clean. Access to Fire, Police, ambulance, and other emergency vehicles shall be maintained at all times.

Work on State Trunklines (Huron St. and Main Street) must occur between 9 a.m. and 3 p.m.; work is not permitted on these roads outside these times. Additional schedule details should be coordinated with the DDA to limit the impact on downtown businesses and events.

Blocking of public streets shall not be permitted unless prior arrangements have been made by submitting a permit application for Traffic Detour or Lane Closure for each job. The form is available online at the city website www.a2gov.org or through [MDOT](#) on Trunklines; Government; Public Services; Project Management; Private Development; Working in the Right-of-Way.

Whenever working in the street the Contractor must provide the required traffic control signage and flaggers as described in the Michigan Manual of Uniform Traffic Control Devices.

Upon Contractor request, parking meter bags may be obtained by contacting PCI Municipal Services. Costs for the bags will be waived by the DDA. The Contractor shall provide at least 2 working days notice of the need for each parking meter bag.

The DDA shall inspect work periodically to insure that all specifications are adhered to.

Payment; Retainage

- A. The Contractor shall be paid on the basis of the bid prices in Exhibit B. The total fee to be paid the Contractor for the services will be a not to exceed dollar amount. The Contractor shall submit each month an invoice covering work performed for which it believes payment, under the Contract terms, is due.

The submission shall be to the Ann Arbor DDA's Contract Administrator. The Contract Administrator will, within 21 days following submission of the invoice, prepare a certificate for payment for the work in an amount to be determined by the Contractor Administrator as fairly representing the acceptable work performed during the period covered by the Contractor's invoice. Following the receipt of the Contract Administrator's Certificate, and subject to the DDA retaining a percentage of the estimate as provided in this paragraph, the DDA will make payment to the Contractor as soon as feasible, which is anticipated will be within 30 days. To ensure the proper performance of this Contract, the DDA will retain a percentage of the estimate in the same manner as is done for construction contracts under Act 524, Public Acts of 1980. If the DDA fails to retain a percentage from one or more of the estimates it pays, the DDA reserves the right to retain the amount from a subsequent payment. *Final payment shall be made after the close of the one-year guarantee period.* In no case shall the final payment be made until the Contractor has complied with all requirements set forth and the DDA and City have made a final inspection of the entire work and is satisfied that the entire work is properly and satisfactorily complete per plans, specifications, and ready for DDA acceptance.

- B. If the Contract Administrator decides it is inexpedient to correct work that has been damaged or that was not done in accordance with the Contract, an equitable deduction from the Contract price shall be made.
- C. The Contractor shall promptly remove from the premises all materials determined by the Contract Administrator as failing to meet Contract requirements and the Contractor shall promptly replace and re-execute the work in accordance with the Contract and without expense to the DDA.
- D. The inspection or lack of inspection of any material or work pertaining to this Contract shall not relieve the Contractor of its obligation to fulfill this Contract, and defective work shall be made good. Unsuitable materials may be rejected by

the Contract Administrator notwithstanding that the work has been previously overlooked by the Contract Administrator and accepted or estimated for payment or paid for. If the work or any part shall be found defective at any time before the final acceptance, the Contractor shall forthwith make good the defect in a manner satisfactory to the Contract Administrator. The judgment and the decision of the Contract Administrator as to whether the materials supplied and the work done under this Contract comply with the requirements of the Contract shall be conclusive and final.

Final Inspection and Acceptance

At the end of the guarantee period for each project and within 14 days after receipt of written notice from the Contractor that the work is ready for final inspection and acceptance, the DDA and City shall inspect all guaranteed work for final acceptance. When the Contract Administrator finds the work acceptable under the Contract and the Contract fully performed, including completion and re-inspection of all repairs and replacements necessary in the judgment of the Contract Administrator, the Contract Administrator will issue a final certificate stating that the work required by this Contract has been completed and is accepted by the DDA under the terms and conditions of the Contract. Subject to the requirements below, the entire balance found to be due the Contractor, including the retained percentage, shall be paid to the Contractor by the DDA within 30 days after the date of the final certificate.

In case the Affidavit or consent is not furnished, the DDA may retain out of any amount due the Contractor, sums sufficient to cover all lienable claims. The making and acceptance of the final payment shall constitute a waiver of all claims by the DDA except those arising from:

- (1) unsettled liens;
- (2) faulty work appearing within 12 months after final payment;

The making and acceptance of the final payment shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

EXHIBIT B

Doan Construction, FY25 Pricing

Item Number	Description	Unit	Unit Price
1000.00	General Conditions, Max. \$25,000	LS	\$ 0.01
1021.00	Erosion Control, Inlet Protection, Fabric Drop	Ea	\$ 100.00
1040.70	Minor Traffic Control, Max. \$7,500	LS	\$ 0.01
2000.01	Tree, Rem, 5 In. - 10 In.	Ea	\$ 500.00
2020.00	HMA, Any Thickness, Rem	Syd	\$ 0.01
2030.00	Curb, Gutter, and Curb and Gutter, Any Type, Rem	Ft	\$ 0.01
2040.00	Sidewalk, Sidewalk Ramp, and Driveway Approach, Any Thickness, Rem	Sft	\$ 0.01
3002.70	Sidewalk Grading	Syd	\$ 1.00
3021.00	Subgrade Undercutting, Type II	Cyd	\$ 50.00
3022.00	Subgrade Undercutting, Type III	Cyd	\$ 50.00
8000.00	Subbase, CIP	Cyd	\$ 15.00
8060.00	Hand Patching	Ton	\$ 100.00
8110.70	Conc, Curb or Curb & Gutter, All Types	Ft	\$ 100.00
8111.70	Conc, Curb or Curb & Gutter, All Types, High Early	Ft	\$ 101.00
8130.71	Conc, Sidewalk, 4 In.	Sft	\$ 13.70
8131.71	Conc, Sidewalk, Drive Approach, or Ramp, 6 In.	Sft	\$ 20.10
8132.71	Conc, Sidewalk, Drive Approach, or Ramp, 6 In., High Early	Sft	\$ 20.35
8133.71	Conc, Fibermesh Reinforced, Sidewalk, Drive Approach, or Ramp, 8 In., High Early	Sft	\$ 28.15
8135.71	Conc, Integral Sidewalk Retaining Wall (6" or less)	Sft	\$ 25.00
8135.72	Conc, Integral Sidewalk Retaining Wall (7"-18")	Sft	\$ 25.00
8135.73	Conc, Integral Sidewalk Retaining Wall (19" - 36")	Sft	\$ 250.00
8140.00	Brick Pavers, Sidewalk, Rem and Reinstall	Sft	\$ 25.00
8150.00	Detectable Warning Surface	Ft	\$ 40.00
8301.70	Monument, Valve, Curb Box, Adjust	Ea	\$ 250.00
8302.70	Handhole, Adjust	Ea	\$ 250.00
8303.70	Storm Structure Cover, Adjust	Ea	\$ 250.00
8304.70	Storm Inlet Cover, Adjust	Ea	\$ 250.00
9055.70	Foundation, Pedestrian Signal Pole	Ea	\$ 750.00
10060.70	Turf Restoration	Syd	\$ 20.00