

MURAL  
SPECIAL TRUNKLINE  
MAINTENANCE

DA  
Control Section 81101  
Permit Reference Number 100514  
Contract 24-5123

THIS CONTRACT is made 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 "AGENCY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the maintenance and operation of a mural to be installed by the AGENCY, under Structure X01 of 81101 which carries Ann Arbor Railroad over Highway I-94BL (Huron Street).

WITNESSETH:

WHEREAS, the AGENCY is proposing the installation of a mural within the trunkline roadway right-of-way (ROW); and

WHEREAS, the DEPARTMENT has determined it to be acceptable to have the AGENCY construct the proposed work which is hereinafter referred to as the "PROJECT" and are further described and located as follows:

Mural painting work on steel fascia beams and abutments of Structure X01 of 81101 which carries Ann Arbor Railroad over Highway I-94BL (Huron Street); together with necessary related work, located within the corporate limits of the AGENCY; and

WHEREAS, the AGENCY will be responsible for the entire cost of the PROJECT; and

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and the maintenance and operation of the facility to be constructed as the PROJECT 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 AGENCY will construct the PROJECT at no cost to the DEPARTMENT.
2. The AGENCY shall cause to be performed all the PROJECT work as defined in the permit obtained from the DEPARTMENT. It is understood that portions or all of the PROJECT work will be placed under contract by the AGENCY. The performance of the PROJECT work will be subject to the conditions established in PERMIT REFERENCE NUMBER 100514.

3. Upon completion of construction, the AGENCY will, at its sole cost and expense, inspect, maintain and operate the facility constructed as the PROJECT. All future maintenance activities will require a permit from the DEPARTMENT. The AGENCY shall conform with all DEPARTMENT permit requirements for any work to be performed within the state trunkline ROW. As built plans will be provided to the Brighton Transportation Service Center.

- A. The AGENCY agrees that the PROJECT location will be maintained so as to assure that any Trunkline facilities, structures and the area within the Trunkline ROW boundaries will be kept in good condition, both as to safety and appearance. The PROJECT shall be maintained so that the original integrity of the PROJECT is such that there is no peeling or chipping paint and the original DEPARTMENT approved mural is intact at no cost to the DEPARTMENT. All unauthorized drawings, graffiti and vandalism shall be removed by the AGENCY at no cost the DEPARTMENT. The maintenance of the facilities by the AGENCY will be accomplished in a manner so as not to cause interference with the reconstruction, maintenance or operation of the Trunkline facility and ROW.
- B. The DEPARTMENT reserves the right to enter the PROJECT location for the purpose of inspection, maintenance or reconstruction of the Trunkline facility when necessary. Additionally, the DEPARTMENT reserves the right to access the PROJECT location as deemed necessary for inspection relating to the DEPARTMENT'S interests. Such inspections are made for the DEPARTMENT'S own purposes and shall not relieve the AGENCY of its duties and obligations under the terms of this agreement. Any deficiencies discovered will be corrected or repaired by the AGENCY at no cost to the DEPARTMENT.
- C. Prior to occupancy and/or use of the PROJECT location, the DEPARTMENT will inspect and approve the construction of the PROJECT.
- D. It is understood that the structure is owned by Ann Arbor Railroad. Prior to performing the PROJECT work, the AGENCY has met, or will meet, any obligations to obtain the agreement of the Ann Arbor Railroad to paint the mural. The AGENCY shall not perform any work until all necessary agreements have been obtained from Ann Arbor Railroad.

4. The parties hereto agree to comply with all applicable requirements of the Natural Resources and Environmental Protection Act, 1994 P.A., 451, MCL 324.01 et. Seq. for all

PROJECT work performed under this contract and future maintenance work, and the AGENCY shall require its contractors and subcontractors to comply with the same.

5. The AGENCY will not store, allow the storage of or discharge of any radioactive, toxic, flammable, poisonous, explosive or other dangerous, hazardous materials, or waste on the said premises. In addition, the AGENCY will not permit objectionable smoke, fumes, vapors, or odors to rise above the grade line of the Trunkline. No signs, displays or devices may be erected on the ROW for the PROJECT unless specified herein or approved by the DEPARTMENT.

6. It is expressly understood and agreed that in case of non-performance of any of the covenants herein made by the AGENCY and after said AGENCY has been furnished written notice of same by the DEPARTMENT and has been granted a reasonable period of time as determined by the DEPARTMENT for performance or correction thereof, this agreement shall be terminated and said AGENCY shall lose and be barred from all rights, remedies, and actions both at law and in equity upon or under this agreement.

7. It is expressly understood that use of the trunkline ROW is subject to the paramount right of the DEPARTMENT and that upon a determination by the DEPARTMENT that such ROW is required for the construction, operation, and/or maintenance of any present or proposed trunkline or trunkline use, this contract may be terminated at the discretion of the DEPARTMENT and the facility constructed as the PROJECT may be removed without reimbursement to the AGENCY.

8. Upon termination of this agreement, the AGENCY will peacefully yield up said PROJECT in as good order and condition as when delivered to the AGENCY at no cost to the DEPARTMENT. In the event this agreement is terminated and if the DEPARTMENT deems it necessary to request the removal of any facility occupying the premises, such removal shall be accomplished by the AGENCY in a manner as prescribed by the DEPARTMENT, at no cost to the DEPARTMENT or the Federal Highway Administration.

9. Any removal or modification of the facilities of the AGENCY, when necessary for Trunkline purposes, shall be performed by the AGENCY at no cost to the DEPARTMENT. Upon failure to so perform, the DEPARTMENT at its discretion may perform such work at the cost of the AGENCY or terminate this agreement.

10. The AGENCY recognizes and acknowledges that private and/or public utility companies may require the modification of the AGENCY'S facilities and it shall cooperate with the utility when requested by the DEPARTMENT at no cost to the DEPARTMENT, or interference with the Trunkline ROW and Trunkline facility.

11. It is understood that if the AGENCY discontinues, abandons or changes the usage of the PROJECT ROW, then this agreement shall be terminated and the DEPARTMENT shall have the right to immediately remove the facility constructed as the PROJECT without reimbursement to the AGENCY.

12. Each party to this Contract will remain responsive for any and all claims arising out of its own acts and/or omissions during the performance of the Contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party's liability for or immunity from tort claims. This Contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this Contract.

13. 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 AGENCY and for the DEPARTMENT and upon the adoption of a resolution approving said contract and authorizing the signatures thereto of the respective officials of the AGENCY, 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:

