

AGREEMENT  
BETWEEN  
THE CITY OF ANN ARBOR  
AND  
ANN ARBOR TRANSPORTATION AUTHORITY  
REGARDING WASHTENAW AVENUE EAST BOUND BUS TURNOUT IMPROVEMENTS

This Agreement (“Agreement”) is made and entered into this 4th day of April, 2011, by and between the Ann Arbor Transportation Authority, a Michigan public corporation, hereinafter referred to as “AATA,” and the City of Ann Arbor, a Michigan municipal corporation, hereinafter referred to as “City,” for the purpose of fixing the rights and obligations of the parties relative to the Washtenaw Avenue East Bound Bus Turnout improvements that are part of a project that includes constructing a pavement widening along the south side of Washtenaw Avenue immediately east of Pittsfield Boulevard to accommodate a turnout lane and stop location for buses traveling in the east bound direction. The project is hereinafter referred to as the “Project.” Relevant details of the Project are set forth on Exhibit A, which is attached hereto and incorporated herein by reference.

Whereas, effective July 1, 2009, an agreement between the Arborland shopping center management and AATA, which provided for a bus stop and transfer location at the shopping center was terminated;

Whereas, the AATA, in an effort to maintain service to the shopping center for its patrons, located bus stops near Arborland at the intersection of Washtenaw Avenue and Pittsfield Boulevard as a short term solution;

Whereas, the AATA contacted the City and the Michigan Department of Transportation (MDOT) about developing a long term solution utilizing bus turnouts along the south side of Washtenaw Avenue between Pittsfield Boulevard and Yost Boulevard;

Whereas, the City and the MDOT agreed that the long term solution proposed by the AATA is in their best interest and worked together with AATA to establish the Project, recognizing it will improve traffic flow, reduce delays, and increase safety for both motorists and transit patrons;

Whereas, the City supports the AATA and fully promotes its efforts to maintain and further develop a vibrant transit system for the community while also advancing the transportation system;

Whereas, it is understood that the Project is located within multiple jurisdictions with Washtenaw Avenue being under the authority of the MDOT and the Washtenaw Avenue Service Drive being under the authority of the City, and that permits from both the MDOT and the City will be required for construction;

Whereas, it is understood that the Project will be constructed in accordance with the permits issued by both the MDOT and the City for the work being performed in each of the respective jurisdictions that they control;

Whereas, the AATA acknowledged that it is not staffed to manage construction projects, and requested that the City perform these necessary services to facilitate construction of the Project;

Whereas, the City and the AATA have reached an understanding with each other regarding the performance of and payment for the Project and desire to enter into this Agreement.

Therefore, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, the City and the AATA agree:

1. The City and the AATA shall undertake and complete the Project in accordance with the terms of this Agreement. The AATA will be responsible for any and all costs associated with the Project and each Project component, including all costs incurred by the City to perform work on the Project as described in this agreement. Exhibit A to this Agreement lists the Project components and the estimated cost for each. The Project costs, including construction, street light relocations, construction engineering, construction materials testing and all other costs required for the City to administer and manage the Project are estimated, but not guaranteed, at \$237,107.31 as set forth on Exhibit A.
2. The AATA's contractor, Orchard, Hiltz and McCliment, Inc. (OHM), under a separate contract has prepared detailed construction drawings, specifications, and a final opinion of probable construction cost for the Project. The City has prepared the contact documents for bidding the Project, and has provided the AATA with an updated final opinion of probable construction cost for the Project. This updated cost is shown as the "Construction Contract" Project component in Exhibit A.
3. The City will select the construction contractor and enter into a construction contract with the contractor for construction of the Project. The City will administer the construction contract and related work, including construction engineering, inspection and materials testing services necessary for the completion of the Project.
4. The AATA is responsible for funding the Project and proposes to finance portions of it with assistance from the Federal Government and the American Recovery and Reinvestment Act (ARRA) of 2009 through a grant from the Federal Transit Administration (FTA). The AATA is responsible for funding the Project whether or not it receives an FTA grant and regardless of whether any such grant is sufficient to cover in full the costs of the Project.
5. The AATA will be the sole signature party with the Federal Government on the FTA grant and will be the sole signature party on any other grant it might obtain.
6. For purposes of payment, the parties agree to the City establishing an account into which the AATA will deposit funds that can be drawn on by the City (the "Deposit Drawdown Account"). The parties agree to use the Deposit Drawdown Account to cover the Project costs. The AATA will deposit into the Deposit Drawdown Account funds sufficient to cover Project costs, as set forth in Exhibit A. The AATA agrees to and shall deposit and maintain, for the life of the Project, sufficient funds at all times in the Deposit Drawdown Account to cover the estimated draws for the next 45 days. The City will give the AATA notice of the amount

required as provided in Paragraph 7. If the AATA fails to deposit the required amount, the City reserves the right to stop work on the Project and the AATA agrees that it will be responsible for any claims for additional costs due to the work stoppage.

7. As the City pays for construction and related services and incurs costs on the Project, the City will withdraw funds from the Deposit Drawdown Account. The City will report to the AATA each month, within 15 days from the end of the previous month, the amounts withdrawn and the purpose for which the funds were withdrawn. The City will give notice to the AATA of the additional dollar amounts the AATA must deposit into the Deposit Drawdown Account to cover the next ninety (45) days of estimated draws. When the Project is finished and final costs have been determined and paid, the City will return to the AATA any balance that remains in the Deposit Drawdown Account.

8. Notwithstanding the AATA's funding of the Project, the parties agree that responsibility and control for managing the construction contract and overseeing the Project rests with the City.

9. The parties understand and agree that the dollar amounts in Exhibit A are engineer's estimates of Project costs and that the actual costs may differ. The City will promptly inform AATA of any circumstance which is likely to affect the Project cost, and the City will present to AATA for approval any proposed change order that increases the Project cost, which approval will not be unreasonably withheld. The AATA's obligation to fund the Project includes the obligation to fund change orders for the Project. The parties agree that any change order that affects the Project will be paid by the AATA, including both increases and decreases in Project costs.

10. In the event any claims are brought against the City and/or the AATA by the contractor, subcontractors, vendors or suppliers as a result of the City's award of the construction contract for the Project or arising out of the construction or related work on the Project, costs incurred by the City in defending or resolving such claims shall be considered Project costs and will be funded in the same manner as the work to which the claims pertain. The City will promptly inform AATA of any claims and will provide AATA a reasonable opportunity to participate in settlement discussions regarding such claims. Any change orders that result from claims shall be funded as provided in Paragraph 9.

11. The City will provide AATA with copies of the following documents: Bid specifications, bid tabulation, executed contracts, weekly progress meeting minutes, executed change orders, certified payrolls for contractor and all subcontractors, final project cost determination, and as-built drawings.

12. The City will maintain Project records for a minimum of three (3) years after Project completion, and with reasonable notice provide AATA with access to such records to inspect and make copies as required. If the AATA receives an FTA grant or other grant, the AATA will notify the City of any requirements the grant imposes relative to the Project that the City and/or its contractors must comply with.

13. Each of the persons signing this Agreement represents and warrants that he or she has authority to sign this Agreement on behalf of the City of Ann Arbor or the Ann Arbor Transportation Authority, respectively.

CITY OF ANN ARBOR, a Michigan  
municipal corporation

ANN ARBOR TRANSPORTATION  
AUTHORITY, a Michigan public corporation

By: \_\_\_\_\_  
John Hieftje, Mayor

By: \_\_\_\_\_  
Michael G. Ford, CEO

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

Approved as to substance:

By: \_\_\_\_\_  
Roger Fraser, City Administrator

By: \_\_\_\_\_  
Sue F. McCormick, Public Services  
Area Administrator

Approved as to form:

By: \_\_\_\_\_  
Stephen K. Postema, City Attorney

EXHIBIT A

Washtenaw Avenue East Bound Bus Turnout Project  
Engineer's Estimate of Probable Project Costs

Construction Contract .....	\$159,107.31
*Street Light Relocations.....	\$15,000.00
Construction Engineering and Inspection.....	\$26,500.00
Construction Materials Testing.....	\$5,500.00
Contingencies.....	\$17,500.00
Miscellaneous Expenses .....	\$13,500.00
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<b>TOTAL .....</b>	<b>\$237,107.31</b>

\*Provisional contract cost. All, or a portion, of the costs associated with this work may be invoiced directly to AATA by DTE Energy, and performed independent of the contracted project work.