

AGREEMENT BETWEEN THE CITY OF ANN ARBOR AND THE DOWNTOWN  
DEVELOPMENT AUTHORITY OF THE CITY OF ANN ARBOR REGARDING  
RESPONSIBILITIES AND COST ALLOCATION FOR  
THE SOUTH UNIVERSITY STREETScape IMPROVEMENTS PROJECT

This Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ date of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Ann Arbor, a Michigan municipal corporation with its principal offices at 301 E. Huron Street, Ann Arbor, Michigan 48104 (“City”), and the Downtown Development Authority of the City of Ann Arbor, a public corporation organized and existing pursuant to the authority of Act 197, Public Acts of Michigan, 1975, MCL 125.1651 *et seq.* with its principal offices at 150 South Fifth Avenue, Suite 301, Ann Arbor, Michigan 48104 (“DDA”), for the purpose of fixing the rights and obligations of the parties relative to the construction of the South University Streetscape Improvements Project. The construction of this project is hereinafter referred to as the “Project.” Relevant details and scope of the Project are set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Whereas, the DDA and the City have expressed interest in working cooperatively on the South University Streetscape Improvements Project to abandon an existing City-owned water main;

Whereas, the City and the DDA have agreed that the DDA should award a contract to Fonson Company, Inc., hereinafter referred to as “Contractor,” to perform construction work for the Project;

Whereas, the City will be responsible for funding a portion of the Project as established in Exhibit B; and

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

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

1. The City and the DDA shall undertake and complete the construction phase of the Project in accordance with the terms of this Agreement. Exhibit A to this Agreement refers to and incorporates by reference the Project design, which details the complete scope of the construction work. Exhibit B to this Agreement lists the estimate for each cost sharing category and the allocation of costs between the DDA and the City for each category. As set forth in Exhibit B, the total dollar amount estimate of the City’s share of the Project is \$310,687.36.

2. The DDA will enter into a contract with the Contractor for the Project. The DDA will administer the contract and related work necessary for the completion of the Project. In its contract with the Contractor, the DDA must require that the Contractor indemnify the City for any claims or lawsuits by third parties arising from the Contractor's work, and must require the Contractor to cover the City as additionally insured on its general liability policy. In the contract between them, the DDA and the Contractor also must recognize the City as a third party beneficiary of the contract.

3. The City is responsible for funding its identified share of each cost sharing category of the Project as defined in Exhibit B.

4. For payment of the Project costs, the DDA will contract directly with the Contractor, and finance the complete cost of the construction, including the City's portion of these costs. The City will reimburse the DDA for the City's share of amounts paid by the DDA. Exhibit B provides the estimated cost breakdown of construction costs and the allocation of costs due the DDA from the City for its share of the costs.

5. As the DDA pays for construction services and incurs costs on the Project, the DDA will invoice the City at a frequency no more than monthly. The City shall reimburse the DDA for the City's portion of incurred costs within 30 days of receipt of an invoice from the DDA.

6. Notwithstanding the City's funding of a share of the Project, the parties agree that responsibility for management of the Project, including all aspects of the contract with the Contractor, rests with the DDA.

7. The parties understand and agree that the dollar amounts in Exhibit B are estimates of Project costs and that the actual costs may differ. However, the percentages for each category of costs identified in Exhibit B are agreed to between the parties and cannot be changed except by Amendment to this Agreement. The City's obligation to fund its share of the Project includes the obligation to fund change orders, authorized in writing prior to the work being performed, for its share of the Project. The parties agree that any change order that affects shares of the Project of both parties will be paid in proportion to those percentages agreed to by the DDA and the City and identified in Exhibit B, including both increases and decreases in Project costs.

8. In the event any claims are brought against the City and/or the DDA by the Contractor, or a subcontractor, vendor or supplier for the construction phase of the South University Streetscape Improvements Project and arising out of the construction or related work on the Project, costs incurred by the DDA in defending or resolving such claims shall be considered Project costs and will be funded in the same manner and proportion as the work to which the claims pertain. Any change order that results from a claim shall be funded as provided in Paragraph 7.

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

CITY OF ANN ARBOR, a Michigan  
municipal corporation

ANN ARBOR DOWNTOWN  
DEVELOPMENT AUTHORITY, a public  
corporation

By: \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Susan Pollay, DDA Executive Director

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

By: \_\_\_\_\_  
\_\_\_\_\_, DDA Clerk

Approved as to substance:

\_\_\_\_\_  
Howard S. Lazarus, City Administrator

\_\_\_\_\_  
Craig Hupy, Public Services Area Administrator

Approved as to form:

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

## **EXHIBIT A**

Attached as Exhibit A is the Project design, detailing the scope of the construction work for the South University Streetscape Improvements Project.

## **EXHIBIT B**

Attached as Exhibit B are the cost summary and the funding responsibilities of the DDA and the City for each cost sharing category of the South University Streetscape Improvements Project.