

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 S. MAIN STREET WATER MAIN REPLACEMENT AND RESURFACING PROJECT

This Agreement (“Agreement”) is made and entered into this _____date of _____, 2023, 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 S. Main Street Water Main Replacement and Resurfacing Project (the “Project”). Relevant details and the scope of the Project are set forth in Exhibit A.

Whereas, the City and the DDA have expressed interest in working cooperatively on the S. Main Street Water Main Replacement and Resurfacing Project;

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

Whereas, the DDA 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 their respective responsibilities for the payment of the construction costs 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 describes generally the scope of the construction phase of the Project. Exhibit B to this Agreement lists the work items for the construction phase, with the allocation of costs between the City and the DDA for each. As set forth in Exhibit B, the estimated total dollar amount for the work the Contractor will perform, plus testing and engineering oversight work related to the Contractor’s work, is Five Million, Seven Hundred Forty-Two Thousand, Seven Hundred Ten, 73/100 Dollars (\$5,742,710.73), of which the estimated total dollar amount of the DDA’s share is One Hundred Nineteen Thousand, 00/100 Dollars (\$119,000.00).

2. The City will enter into a contract with the Contractor for the Project. The City will administer the contract and related work necessary for the completion of the Project. In its contract with the Contractor, the City must require that the Contractor indemnify the DDA for any claims or lawsuits by third parties arising from the Contractor's work, and must require the Contractor to cover the DDA as additionally insured on its general liability policy.
3. The DDA is responsible for funding its identified share of each work item of the Project as defined in Exhibit B.
4. For payment of the Project costs, the City will contract directly with the Contractor, and finance the complete cost of the construction, including the DDA's share of the costs. The DDA will reimburse the City for the DDA's share of amounts paid by the City according to the allocation of costs for each cost category in Exhibit B.
5. As the City pays for construction services and incurs costs on the Project, the City will invoice the DDA at a frequency no more than monthly. The DDA shall reimburse the City for the DDA's share of incurred costs within 30 days of receipt of an invoice from the City.
6. Notwithstanding the DDA'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 City.
7. The parties understand and agree that the dollar amounts in Exhibit B are based on bid prices and that the actual costs may differ. However, the percentages for cost allocation between the City and the DDA for each work item identified in Exhibit B are agreed to between the parties and cannot be changed except by Amendment to this Agreement. The DDA'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 any work item of the Project that the DDA is funding in whole or in part. All change orders that relate to a work item whose cost is covered in whole or in part by the DDA must be approved by the DDA prior to the work being done. The DDA's approval shall not be unreasonably withheld, and the DDA shall respond promptly to requests for approval. The parties agree that any change order that affects one or more work items of the Project will be paid by the City and the DDA in proportion to the percentages identified in Exhibit B for the work item(s), including both increases and decreases in Project costs.
8. In the event a claim is brought against the DDA and/or the City by the Contractor, or a subcontractor, vendor or supplier for the construction phase of the S. Main Street Water Main Replacement and Resurfacing Project and 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 and proportion as the work to which the claim pertains. 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: _____
Maura Thomson, DDA Interim Executive Director

By: _____
Jacqueline Beaudry, City Clerk

By: _____
_____, DDA Board Chair

Approved as to substance:

Milton Dohoney Jr., City Administrator

Brian Steglitz, Public Services Area Administrator

Approved as to form:

Atleen Kaur, City Attorney

EXHIBIT A

Scope of the S. Main Street Water Main Replacement and Resurfacing Project

As detailed in the work items listed in Exhibit B, and as shown on the attached map, the S. Main Street Water Main Replacement and Resurfacing Project will reconstruct South Main Street from E. William Street to E. Huron Street, includes the following elements and (funding sources):

- Replacement of water main and related appurtenances (Water Supply System Funds)
- Selected stormwater system improvements (Stormwater Funds)
- Road resurfacing, intermittent curb replacements, selected bump-out additions, sidewalk and ramp replacements, and APS-ready pedestrian signal improvements (Street, Bridge, and Sidewalk Millage Funds)
- Sanitary sewer extension and repairs (Sanitary Sewer Funds)
- Sanitary service to connect 353 South Main Street Project (AAHC Funds)
- Irrigation meter pits and related improvements (DDA Funds)

Additional services associated with the Project include field inspection of all elements and operations related to construction; surveying services for field layout; and testing services for quality assurance of all construction items.

EXHIBIT B
Estimated Costs and Cost Allocations

Attached as Exhibit B are the cost summary for the construction phase work items to be performed by the Contractor, the funding responsibilities of the DDA and the City for each of those work items, and the funding responsibilities of the DDA and the City for each of the other work items that are part of the S. Main Street Water Main Replacement and Resurfacing Project, including engineering and testing costs.

EXHIBIT B

SOUTH MAIN STREET WATERMAIN AND RESURFACING PROJECT

Construction Contract Work Item Categories	% of const contract	DDA Share %	City Share %	DDA Cost Based on Bid Pay Items	City Cost Based on Bid Pay Items	Total Cost based on Bid Pay Items
STORM SEWER*		0%	100%	\$ -	\$ 311,200	\$ 311,200
¹ SANITARY SEWER*		0%	100%	\$ -	\$ 64,500	\$ 64,500
WATERMAIN*		0%	100%	\$ -	\$ 3,274,300	\$ 3,274,300
ROADWAY*		0%	100%	\$ -	\$ 2,007,800	\$ 2,007,800
DDA WORK (IRRIGATION)		100%	0%	\$ 85,000	\$ -	\$ 85,000
CONSTRUTION CONTRACT				\$ 85,000	\$ 5,657,800	\$ 5,742,800
Contingency	10%			\$ 8,500	\$ 565,800	\$ 574,300
TOTAL				\$ 93,500	\$ 6,223,600	\$ 6,317,100
Other Construction Related Services:						
Design	10%			\$ 8,500	\$ 565,800	\$ 574,300
Construction Engineering & Inspection	15%			\$ 12,800	\$ 848,700	\$ 861,500
Material Testing	5%			\$ 4,200	\$ 282,900	\$ 287,100
CONSTRUCTION AS-BID TOTAL				\$ 119,000	\$ 7,921,000	\$ 8,040,000
CONSTRUCTION BUDGET TOTAL				\$ 119,000	\$ 7,921,000	\$ 8,040,000

*Project-wide costs including General Conditions, Maintenance of Traffic, and Incentives are included by percentage in each of these work item categories.

1. A portion of sanitary sewer costs will be covered by the Ann Arbor Housing Commission for a new private service lead