

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 FIRST AND ASHLEY STREETS IMPROVEMENT PROJECT

This Agreement (“Agreement”) is made and entered into this _____ date of _____, 2020, 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 First & Ashley Streets Improvement 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 First & Ashley Streets Improvement Project;

Whereas, the City and the DDA have agreed that the DDA should award a construction 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 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 \$10,203,475, of which the estimated total dollar amount of the City’s share is \$2,334,383.

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.

3. The City 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 DDA will contract directly with the Contractor, and finance the complete cost of the construction, including the City's share of the costs. The City will reimburse the DDA for the City's share of amounts paid by the DDA according to the allocation of costs for each cost category in Exhibit B.

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 share 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 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 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 any work item of the Project that the City 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 City must be approved by the City prior to the work being done. The City's approval shall not be unreasonably withheld, and the City 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 DDA and the City 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 City and/or the DDA by the Contractor, or a subcontractor, vendor or supplier for the construction phase of the First & Ashley Street Improvement 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 claim pertains. Any change order that results from a claim shall be funded as provided in Paragraph 7.

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: _____
Keith Orr, DDA Board Chair

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

Scope of the First & Ashley Streets Improvement Project

As detailed in the work items listed in Exhibit B, and as shown on the attached map dated January 21, 2020 the First & Ashley Streets Improvement Project will restore two-way traffic on First Street and Ashley Street, install a two-way protected bike lane on the east side of First Street, upsize water main on First Street from Kingsley Street to Liberty Street, resurface First Street from Kingsley Street to William Street, resurface Ashley Street from Washington Street to Liberty Street, and resurface Kingsley Street from Main Street to First Street. Additional work will include abandoning a small aging water main and transferring service leads to an existing larger (12") main in Ashley Street between Washington and Liberty Street. In addition, the project includes streetscape, new streetlights, and stormwater improvements. 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 First & Ashley Streets Improvement Project, including engineering and testing costs. In addition, the City's responsibility for the design portion of the road resurfacing elements of the project is \$68,057.50 which will be reimbursed to the DDA in accordance with paragraph 5 of this agreement.

EXHIBIT B

	DDA		City Road		City Water		Allen Creek Watershed		City IT		City Signal Cost		TOTAL EST COSTS
Construction Contract Work Items:													
SITE PREPARATION & MANAGEMENT	80%	\$587,746	13%	\$94,040	1%	\$3,795	6%	\$41,659	1%	\$2,478	1%	\$6,190	\$735,909
TRAFFIC CONTROL	77%	\$286,570	8%	\$30,658	1%	\$3,811	11%	\$41,837	1%	\$2,489	2%	\$6,217	\$371,582
WATERMAIN UTILITY WORK	92%	\$861,384	0%	\$0	8%	\$72,894	0%	\$0	0%	\$0	0%	\$0	\$934,278
STORMWATER MANAGEMENT	18%	\$152,240	10%	\$81,975	0%	\$0	72%	\$618,691	0%	\$0	0%	\$0	\$852,906
ROADWAY RECONSTRUCTION	73%	\$1,687,472	19%	\$440,910	0%	\$0	8%	\$181,525	0%	\$0	0%	\$0	\$2,309,907
BIKEWAY CONSTRUCTION	100%	\$763,090	0%	\$0	0%	\$0	0%	\$0	0%	\$0	0%	\$0	\$763,090
STREETScape & LIGHTING	96%	\$1,074,618	0%	\$0	0%	\$0	0%	\$0	4%	\$47,600	0%	\$0	\$1,122,218
SIGNALS & SIGNAGE	84%	\$640,027	0%	\$0	0%	\$0	0%	\$0	0%	\$0	16%	\$118,911	\$758,937
CONSTRUCTION CONTRACT		\$6,053,147		\$647,583		\$80,500		\$883,712		\$52,567		\$131,318	\$7,848,827
Other Construction Related Services:													
Field Engineering, Inspection, Staking	12%	\$726,378		\$77,710		\$9,660		\$106,045		\$6,308		\$15,758	\$941,859
Construction Admin & Engineering	3%	\$181,594		\$19,428		\$2,415		\$26,511		\$1,577		\$3,940	\$235,465
Material Testing	3%	\$181,594		\$19,428		\$2,415		\$26,511		\$1,577		\$3,940	\$235,465
Construction Contract contingency	12%	\$726,378		\$77,710		\$9,660		\$106,045		\$6,308		\$15,758	\$941,859
CONSTRUCTION TOTAL		\$7,869,091		\$841,859		\$104,650		\$1,148,825		\$68,337		\$170,713	\$10,203,475

*Percentages and dollar amounts are rounded