

AGREEMENT
REGARDING RESPONSIBILITIES AND COST ALLOCATION FOR THE LINING
PROJECT FOR A PORTION OF THE COUNTY FARM PARK BRANCH OF THE
MALLETTS CREEK DRAIN

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Ann Arbor, a Michigan municipal corporation ("City"), 301 E. Huron Street, and Malletts Creek Drainage Board ("Drainage Board") on behalf of the Malletts Creek Drain Drainage District ("Drainage District"), by and through the Washtenaw County Water Resources Commissioner ("Commissioner"), whose address is 705 N. Zeeb Rd., Ann Arbor, MI 48103, for the purpose of establishing and allocating the rights and responsibilities of the parties relating to the Lining Project for the County Farm Park Branch of the Malletts Creek Drain (the "Project"). Relevant details and scope of the Project are set forth in Exhibit A.

A. WHEREAS, the Malletts Creek Drain ("Drain") is a county drain established pursuant to Chapter 20 of Act 40 of the Public Acts of 1956, as amended (the "Drain Code");

B. WHEREAS, a portion of the County Farm Park Branch of the Malletts Creek Drain, located entirely within the City, is in need of maintenance and infrastructure improvements, and the Commissioner and City agree the Project will address these needs and will mutually benefit the City and Drainage District;

C. WHEREAS, the City and Drainage District agree that completing the Project is a high priority and desire to complete it as soon as possible;

D. WHEREAS, the Drainage District has competitively bid the Project, and based on the bids received, the City and Drainage District agree the bid submitted by SAK Construction, LLC in the amount of \$2,727,372.00 represents the best value and that the Drainage District should enter into contract with SAK Construction, LLC for completion of the Project;

E. WHEREAS, the City acknowledges that the cost of the Project would be assessable to the City pursuant to Chapter 20 of the Drain Code, and to enable the Project to proceed and be completed as soon as possible, the City is willing to reimburse the Commissioner for the costs of the Project as it is completed;

F. WHEREAS, the City and Drainage District have reached an understanding regarding their respective responsibilities for completion of the Project and the allocation, reimbursement and payment of Project Costs, and desire to enter into this Agreement to memorialize their understanding.

NOW THEREFORE, the City and Drainage District agree:

1. The Drainage District will enter into a construction contract with SAK Construction LLC ("Contractor") in the amount of \$2,727,372.00 for completion of the Project. The Drainage District will administer the construction contract and related work necessary to complete the Project in accordance with the contract and agreed upon and approved Project plans.
2. Subject to and consistent with consultation with the City, the Drainage District shall complete, or have completed, the Project in accordance with this Agreement and the approved Project

plans, which may be revised and updated from time to time and are incorporated into this Agreement by reference.

3. The City agrees to and shall reimburse the Drainage District all Project Costs, including the amounts contractually-owed and paid by the Drainage District to the Contractor for the Project as set out in Exhibit B. As used in this Agreement, "Project Costs" means all costs of the Project, including (a) the cost of constructing and acquiring the facilities, structures, devices, and equipment required for the Project, including any lands or rights of way; (b) the administrative and other expenses of the Drainage District, the Drainage Board, and Commissioner including the cost of service and publication of any required notices; (c) all engineering, inspection, construction administration, legal, and other professional fees; (d) permit, license, and inspection fees; (e) any and all other costs arising out of the Project. The parties agree the amounts set forth in Exhibit B are the currently estimated costs and that the actual costs may vary, and that City's obligation to reimburse Project Costs under this Agreement relates to actual Project Costs. The parties further agree Exhibit B, including the amounts to be reimbursed by the City, may be revised and updated as and when needed to reflect actual amounts contractually owed and paid by the Drainage District to the Contractor for the performance, construction, and completion of the Project. The Drainage District may invoice the City for those and all other Project Costs and amounts owed under this Agreement no more frequently than monthly. The City shall pay amounts properly invoiced within 30 days of receipt of the invoice. If the City fails to pay properly invoiced amounts when due, the Drainage District may recover the unpaid amounts, together with any resulting costs, by assessment against the City under Chapter 20 of the Drain Code, and the City consents to that assessment and waives any objection to the amount assessed or to the proportion of the cost of the Project assessed to it.

4. All change orders to the Project or construction contract must be approved by the Drainage District and 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.

5. The Drainage District and the City shall each identify a project manager as the point of contact for the other party on the Project. Each such project manager shall have the authority to provide written approvals required under this Agreement, or shall obtain any written approval that is needed from a person with the authority to provide that approval if the project manager does not have that authority.

6. In the construction contract with the Contractor, the Drainage District must require that the Contractor indemnify, defend, and hold harmless the City, the Drainage District, the Drainage Board, the Commissioner, and Washtenaw County, and their respective officers, employees, and agents, for any claims or lawsuits by third parties arising from the Contractor's work or the Project.

7. Notwithstanding the City's funding of the Project, the parties agree that responsibility for administration and management of the Contractor and Project, including all aspects of the construction contract with the Contractor, rests entirely with the Drainage District. Nothing in this Agreement shall obligate the City to complete or have completed the Project or to administer or manage the construction contract.

8. The parties agree to mutually cooperate with one another in good faith to effectuate the intent and purposes of this Agreement and to avoid unduly hindering one another in connection with the performance and completion of the Project.

9. This Agreement may be amended and/or supplemented by written agreement signed by both parties.

10. Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties or circumstances.

11. This Agreement, including Exhibit A and Exhibit B and the approved Project plans incorporated by reference under Paragraph 2, constitutes the entire agreement between the parties with respect to the Project and supersedes all prior and contemporaneous negotiations, representations, understandings, and agreements between them, whether written or oral, relating to its subject matter. No party has relied on any representation, promise, or inducement not set forth in this Agreement. This Agreement may be modified only as provided in Paragraph 9.

12. Nothing in this Agreement is intended to, and nothing in it shall be construed to, waive, limit, or otherwise affect any governmental immunity, defense, limitation of liability, or other protection available to the City, the Commissioner, the Drainage Board, the Drainage District, or Washtenaw County, or to their respective officers, employees, and agents, under the governmental immunity act, 1964 PA 170, MCL 691.1401 to 691.1419, or under any other statute or common law. This Agreement is not intended to create, and does not create, any right, claim, or cause of action in any person or entity that is not a party to it. Nothing in this paragraph relieves either party of its obligations under this Agreement or limits either party's remedies against the other for breach of this Agreement.

13. The parties agree that signatures on this Agreement may be delivered electronically or by facsimile in lieu of a physical signature and agree to treat electronic or facsimile signatures as binding.

14. Each person signing this Agreement represents and warrants that he or she has authority to sign it on behalf of the Drainage District or the City, respectively.

15. This Agreement will become effective when all parties have signed it, and the effective date of this Agreement will be the date this Agreement is signed by the last party to sign it.

CITY OF ANN ARBOR

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, Clerk

Date: _____

WASHTENAW COUNTY WATER
RESOURCES COMMISSIONER, by and on
behalf of the Malletts Creek Drainage Board
and Malletts Creek Drain Drainage District

By: _____
Gretchen Diskell,
Washtenaw County Water Resources
Commissioner

Date: _____

Approved by:

Milton Dohoney Jr, City Administrator

Jordan Roberts, Public Services Area
Administrator

Atleen Kaur, City Attorney

EXHIBIT A
LINING PROJECT FOR A PORTION OF THE COUNTY FARM PARK BRANCH
OF THE MALLETT'S CREEK DRAIN

General Project Description - SIPP (Geopolymer)

The following is a general outline of the SIPP activities for rehabilitating the County Farm Park Drain.

1. Completion of pipe preparation including cleaning, pre CCTV inspection and documentation of lateral connection locations and removal of all intruding obstructions.
2. Pressure wash of the full interior wall surface of the pipe to remove any debris or loose material.
3. Materials are ordered based on the designed calculated using the specific variables of each segment that were obtained during the measurement phase.
Based on current information the SIPP liner would be approx. 76" dia. Circular equivalent and 50mm in wall thickness.
4. Installation / application will be performed via access to the existing manholes. Access to all manholes on the drain within the perimeter of the project is required for operational success and safety.
5. The installation of the SIPP is completed in a daily shift orientated operation. Should wet weather be encountered, the operations would be suspended until flows became safe to re-enter the pipeline. During daily operations flows in the drain will require diversion, retention or bypass pumping. We have not accounted for full bypass of wet weather flows.
6. Material samples for testing will be taken and post CCTV inspection will be performed to ensure product quality. Copies will be provided for your records.
7. All disturbed / damaged surface areas will be restored to like condition or better including any pavement.
8. Project Time are as follows:

Pipe Preparation Phase – 2 weeks

Material delivery – 1 week

Installation – 9 to 11 weeks (weather pending)

Restoration & Demobilization – 1 week

Total on site project activity would be approximately 65 to 75 days over 13 to 15 week period.

EXHIBIT B

Geopolymer Spray in Place Pipe (SIPP)

Item	Description	Quantity	Unit Price	Total Price
1	Mobilization	1 LS	\$35,000.00	\$35,000.00
2	58"x91" 49mm (SIPP)	1,890 FT	\$1,384.00	\$2,615,760.00
3	Lateral Reinstatement	22 EA	\$1.00	\$22.00
4	30 day Post CCTV Inspection	1,890 LS	\$6.00	\$11,340.00
5	Bypass Pumping	1 LS	\$28,250.00	\$28,250.00
6	Traffic Control Allowance	1 LS	\$29,500.00	\$29,500.00
7	Clean Up & Seeding	1 LS	\$7,500.00	\$7,500.00
Total				\$2,727,372.00