

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 STATE STREET RECONSTRUCTION PROJECT

This Agreement (“Agreement”) is made and entered into this _____ date of _____, 2022, 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 State Street Reconstruction 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 South State Street Reconstruction Project;

Whereas, the City and the DDA have agreed that the City should award a construction contract to Fonson Company, 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 \$8,270,509, of which the estimated total dollar amount of the DDA’s share is \$4,218,283.

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 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, excluding project-wide costs, 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 City and/or the DDA by the Contractor, or a subcontractor, vendor or supplier for the construction phase of the South State Street Reconstruction 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.

CITY OF ANN ARBOR, a Michigan
municipal corporation

ANN ARBOR DOWNTOWN
DEVELOPMENT AUTHORITY, a public
corporation

By: _____
Christopher Taylor, Mayor

By: _____
Jeffrey Watson, DDA Executive Director

By: _____
Jacqueline Beaudry, City Clerk

Approved as to substance:

Milton Dohoney Jr., Interim City Administrator

Brian Steglitz, Interim Public Services Area Administrator

Approved as to form:

Atleen Kaur, City Attorney

EXHIBIT A

Scope of the South State Street Reconstruction Project

As detailed in the work items listed in Exhibit B, and as shown on the attached map, the South State Street Reconstruction Project will reconstruct South State Street from E. William Street to E. Washington Street, including water main replacement, installation of stormwater infiltration system, sidewalk replacement, construction of new road with flush curb, streetlight replacement, and streetscape improvements. The project also includes asphalt resurfacing between E. Washington Street and E. Huron Street.

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

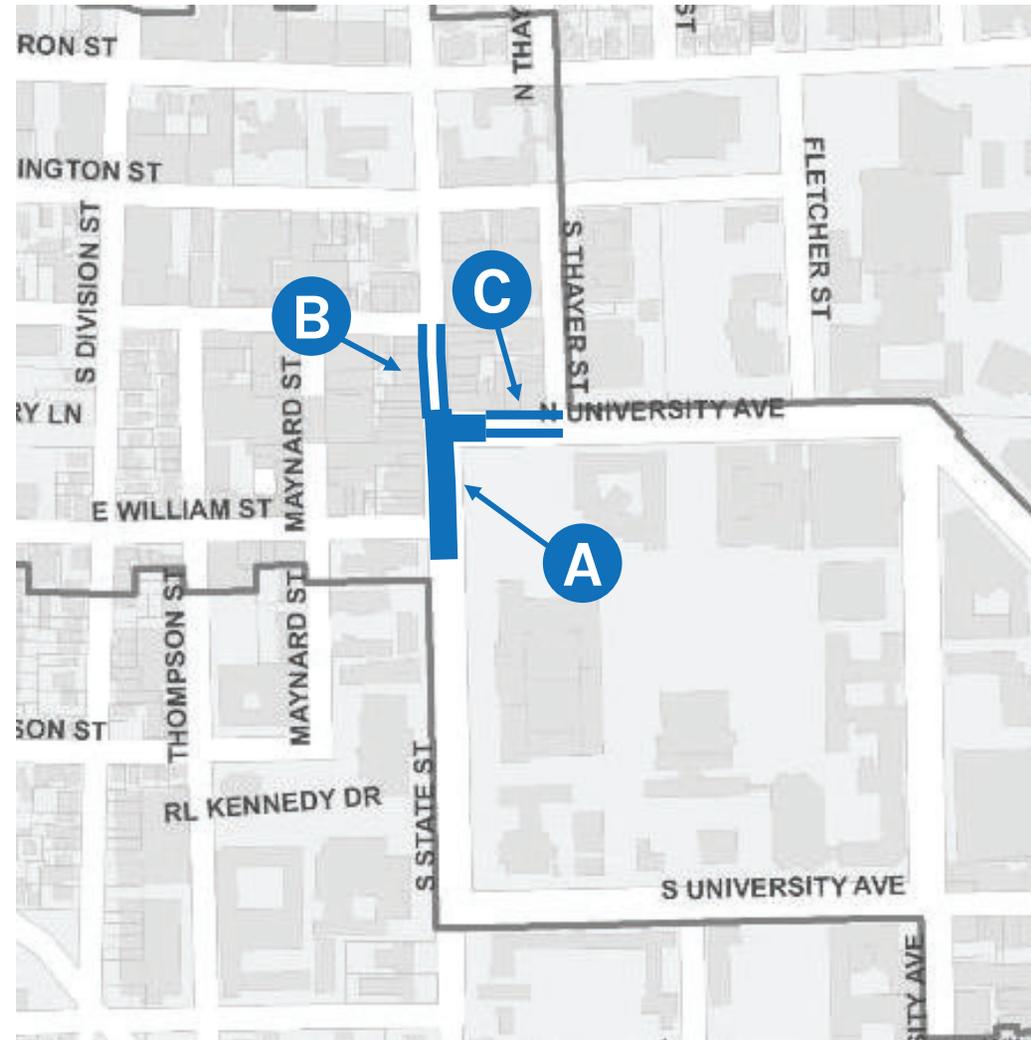
Attached as Exhibit B are the cost summary for the construction phase work items to be performed by the Contractor, the funding responsibilities of the DDA and the City for each of those work items, and the funding responsibilities of the DDA and the City for each of the other work items that are part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

CONSTRUCTION SEQUENCING

STATE STREET

PHASE 1A: 2022

- A. Full reconstruction of street, streetscape, and intersections with curbless design from William to North U
- B. Watermain from William to Liberty with temporary re-surfacing from North U to Liberty.
- C. Bicycle improvements on North U to Thayer St.



CONSTRUCTION SEQUENCING

STATE STREET

PHASE 1B: 2023

- A. Full reconstruction with curbless design and streetscape from North U to Washington. Watermain work continues from Liberty to Washington.
- B. Street resurfacing on State from Washington to Huron Street.



EXHIBIT B

SOUTH STATE STREET RECONSTRUCTION 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
*GENERAL CONDITIONS		50%	50%	\$ 274,550	\$ 274,550	\$ 549,100
*MAINTENANCE OF TRAFFIC		50%	50%	\$ 132,701	\$ 132,701	\$ 265,403
STORM INFILTRATION		0%	100%	\$ -	\$ 605,005	\$ 605,005
WATERMAIN		0%	100%	\$ -	\$ 1,202,274	\$ 1,202,274
ROADWAY		50%	50%	\$ 987,987	\$ 987,987	\$ 1,975,974
PAVEMENT MARKINGS - ROAD		0%	100%	\$ -	\$ 22,658	\$ 22,658
PAVEMENT MARKINGS - BIKEWAY		100%	0%	\$ 33,306	\$ -	\$ 33,306
SIDEWALK & AMENITY ZONE		100%	0%	\$ 953,993	\$ -	\$ 953,993
STREETLIGHTS		100%	0%	\$ 844,355	\$ -	\$ 844,355
PEDESTRIAN SIGNAL		100%	0%	\$ 149,245	\$ -	\$ 149,245
SIGNAL UPGRADES		100%	0%	\$ 126,045	\$ -	\$ 126,045
CONSTRUCTION CONTRACT				\$ 3,502,182	\$ 3,225,176	\$ 6,727,358
Contingency	10%	item-specific		\$ 350,200	\$ 322,500	\$ 672,700
TOTAL				\$ 3,852,382	\$ 3,547,676	\$ 7,400,058
Other Construction Related Services:						
*Construction Engineering & Inspection	12%	50%	50%	\$ 403,650	\$ 403,650	\$ 807,300
*Material Testing	3%	50%	50%	\$ 100,900	\$ 100,900	\$ 201,800
CONSTRUCTION AS-BID TOTAL				\$ 4,356,932	\$ 4,052,226	\$ 8,409,158
**Change Order 1 - Eliminated Items				\$ (138,650)		
CONSTRUCTION BUDGET TOTAL				\$ 4,218,283	\$ 4,052,226	\$ 8,270,509
<p>* These project-wide costs are initially estimated as a 50/50 split between DDA & City. Final cost share percentages will be based on final cost of construction work items.</p> <p>** Signal Upgrades and associated contingency</p>						