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**EASEMENT AGREEMENT BETWEEN  
THE REGENTS OF THE UNIVERSITY OF MICHIGAN  
AND  
THE CITY OF ANN ARBOR**

**Water Main**

**Service Location: Ross Athletic Campus (South)**

2323 S. Main Street

2240, 2600, and 2500 S. State Street

This EASEMENT AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between **The Regents of The University of Michigan**, a Michigan Constitutional corporation, whose address is 326 E. Hoover Street, Ann Arbor, MI 48109-1002, referred to in this instrument as "**Grantor**," and the **City of Ann Arbor**, a Michigan municipal corporation, with its address at 301 East Huron Street, Ann Arbor, Michigan 48104, referred to in this instrument as "**Grantee**."

Grantor owns or controls the real property ("Grantor's Property") located in the City of Ann Arbor, Washtenaw County, Michigan, described on **Exhibit A** attached to and made part of this Agreement.

For good and valuable consideration less than \$100.00, the receipt and adequacy of which is hereby acknowledged, and in consideration of the mutual covenants set forth in this agreement, Grantor grants to Grantee a perpetual (except as provided in the Section 6 below) easement (the "**Easement**") , which Easement is non-exclusive in, under, through, on, over and across that portion of the Grantor's Property which is described and depicted on **Exhibit B**, **Exhibit C**, **Exhibit D**, and **Exhibit E** attached to and made part of this agreement (the "**Easement Area**").

The Easement is granted subject to any easements and restrictions of record, on and subject to the following terms, conditions and limitations:

1. Access and Use.

a. Use by Grantee. Grantee shall use the Easement solely for the purpose of constructing, altering, repairing, maintaining, and replacing water mains and all necessary laterals/piping or other appurtenances thereto ("**Permitted Facilities**"). In connection with its permitted use of the Easement Area, but only to the extent reasonably necessary to accomplish the purpose for which the Easement is granted, Grantee may:

1. have access to the Easement Area and use it for the construction, alteration, maintenance, repair, and replacement of Permitted Facilities, with any specific restrictions or requirements for access being as follows:

“None”

2. use the Easement Area for the temporary storage of appropriate materials and equipment during construction, alteration, maintenance, repair, and replacement of Permitted Facilities;
3. make all desirable or appropriate excavations, install any components, whether temporary or permanent, within the Easement Area;
4. as reasonably necessary, trim, cut down, and clear away any and all trees and brush now or subsequently growing within the Easement Area; provided, however, that no "significant" or "landmark" trees, as defined in the Grantor's database, shall be removed or damaged without the written permission of Grantor.

Except in the event of a public health or safety emergency, Grantee shall provide reasonable notice prior to any entry onto the Easement Area. Notice shall include a description of the proposed work. In the case of a public health or safety emergency, Grantee shall provide such notice as may be practicable under the circumstances.

All of Grantee's work within the Easement Area shall be performed (i) in accordance with good engineering practices, (ii) with as little inconvenience to Grantor as reasonably possible, (iii) in accordance with all applicable governmental laws, regulations and ordinances ("**Applicable Law**"), (iv) in a good and workman like manner, and (v) in compliance with the requirements of "Miss Dig," as set forth in MCL 460.721 through MCL 460.733, and any rules, regulations and restrictions Grantor establishes regarding the Easement Area, provided that the rules, regulations, and restrictions do not materially and adversely interfere with the Grantee's use of the Easement Area for the use permitted by this Agreement. Any such rules, regulations, and restrictions governing the Easement Area shall be provided to Grantee upon execution of this Agreement to the extent they exist and, in any event, prior to the commencement of work by Grantee in the Easement Area. Grantee shall have the right to request the waiver of any rule, regulation, and/or restriction based on the specific nature of the work to be undertaken.

Grantee is responsible for supervising the activities of its officials, officers, employees, servants, contractors, agents, guests and invitees, and others with whom it contracts to work in the Easement Area or it permits to be present on the Easement Area and for their compliance with the terms of this Agreement. Grantee shall take precautions adequate to protect the public and for the safety of any persons working within the Easement Area.

Grantee understands and agrees that the Easement Area cannot be subject to liens, and Grantee will take all steps necessary to remove any liens that anyone places on the Easement Area as a result of Grantee's activities.

Grantee shall not use PCBs in the Easement Area, shall not allow any waste to be committed within the Easement Area, and shall comply with all applicable federal, state, and local environmental laws and regulations ("**Applicable Environmental Law**") in all activities undertaken pursuant to this Agreement. Grantee shall not permit the use, storage, or presence of hazardous materials (except in lawful quantities used properly) or generation of hazardous waste on or within the Easement Area. If

there is spillage or discharge, as a result of Grantee's activities, of paint, oil, gasoline or other toxic or potentially hazardous materials, or any other contamination within the Easement Area, Grantee shall provide all necessary clean-up and remediation at Grantee's expense. Further, Grantee agrees that if it disturbs any contaminated soil while performing work in the Easement Area, after notice by Grantor of the existence of or the potential existence of such contamination, and as a result is required to dispose of the contaminated soil, Grantee shall, be responsible for the costs of sampling, analysis, handling and disposing of the contaminated soil. Grantor shall approve of the disposal of any soil removed from the Easement Area and the disposal location of such soil. Grantor shall be deemed the generator of the contaminated soil and shall provide Grantee necessary and timely assistance in profiling the contaminated soil and executing required paperwork (including but not limited to waste profiles, manifests, or other shipping papers) for disposal of the contaminated soil as required by Applicable Environmental Law. If Grantee discovers, but does not disturb, any contaminated soil on Property owned by Grantor, Grantor shall be responsible for the costs of sampling, analysis, handling and disposing of the contaminated soil to the extent reasonable and necessary to permit Grantee to utilize the Easement Area for the use permitted by this Agreement. Grantee shall notify Grantor as promptly as reasonably possible after discovery of any suspected contaminated soil (but no more than (5) business days after discovery).

Grantee is responsible for all construction, alteration, maintenance, repair, or replacement activity undertaken pursuant to this Agreement.

b. Rights Retained By Grantor. To the extent the Easement Area is at or above grade, Grantor shall have the right to utilize the Easement Area, and to grant others the right to use the Easement Area, for any purpose that does not materially interfere with the use of the Easement Area by Grantee for the purpose permitted by this Agreement. However, Grantor shall not conduct any activities thereon that might damage Permitted Facilities without prior notification to and written permission from Grantee. In any case where Grantor receives written permission from Grantee to conduct activities within the Easement Area, Grantor shall be responsible for any repair or replacement costs in respect of Permitted Facilities, should they be damaged as a result of the activities of Grantor in the Easement Area. Grantor acknowledges and agrees that Grantee shall not be liable for any injury that may occur to any person, or for any damage that may occur to any property, as a result of any act, decision, or other consequence or occurrence arising out of the acts or omissions of the Grantor, or any person or entity acting on behalf of Grantor (other than Grantee itself) or the approval by Grantee of the acts or omissions of the Grantor.

In the case of Permitted Facilities that are placed underground, Grantor specifically retains the right to later install, replace, repair, and maintain at or above grade improvements such as roads, bus shelters, lighting, landscaping, to pave the surface of the Easement Area and park motor vehicles on the Easement Area, and to install fiber optic communication lines, so long as Grantor's doing so will not interfere with Grantee's rights under this Agreement. If Grantor disturbs, damages, or destroys any Permitted Facilities in connection with the installation, maintenance or repair of any such improvements, the cost of restoring the Permitted Facilities shall be borne by Grantor. Similarly, if Grantee reasonably anticipates possible damage to any such installation in connection with the maintenance, repair or replacement the Permitted Facilities, it shall first provide notice to Grantor of that potential and, if possible, permit Grantor to take preventative steps. Following notice reasonable under the circumstances, any restoration of such installations shall be at the sole cost of Grantor, and Grantee shall not be responsible for any damage caused so long as its work is carried out in a reasonable and

prudent manner.

Grantor shall notify Grantee when it grants another easement, on, under, over, through, or across the Easement Area.

2. Due Care; Restoration. Grantee shall use due care to avoid disturbing, damaging or destroying the property of Grantor and others (except to the extent reasonably necessary to accomplish the purpose for which the Easement is granted), and Grantee shall at its expense rectify any disturbance it creates, repair any damage it causes and replace any property it destroys. Grantor acknowledges that Grantor has constructed conduit within the Easement Area and that any excavation in the Easement Area may result in possible damage to the conduit. If Grantee damages or disturbs the conduit in connection with the maintenance, repair or replacement of the Permitted Facilities, Grantee shall provide notice to Grantor and take reasonable steps to avoid further damage or disturbance. Grantor acknowledges that in responding to an emergency, such as a water main break, damage to the conduit may be unavoidable. Following notice reasonable under the circumstances, any restoration of such conduit shall be at the sole cost of Grantor, and Grantee shall not be responsible for any damage caused so long as its work is carried out in a reasonable and prudent manner. Following completion of its work in the Easement Area, Grantee shall, to the extent reasonably possible, by cleaning, restoration, repair, or replacement return the Easement Area to the condition in which it was prior to the commencement of Grantee's work. For example, if lawn or landscaping was removed, it should be replaced; if pavement was destroyed or damaged, the area should be repaved.

3. Insurance. Grantee will at all times maintain appropriate levels and types of insurance commercially prudent for the types of activities Grantee is undertaking and the responsibilities Grantee is assuming under this Agreement. Such insurance may be maintained through a "captive" insurer and may be subject to reasonable deductibles or self-retained limits. Grantee will promptly provide evidence of such insurance upon the written request of Grantor.

4. Relocation.

(a) If the Permitted Facilities conflict with a proposed Grantor use of the Easement Area after the date of this Agreement, the Grantor will, prior to any design work on a solution to the conflict, notify Grantee of the conflict and Grantee agrees to work with the Grantor to design a solution to the conflict. Grantor and Grantee agree to work together in good faith to develop a solution that is optimal for both parties.

(b) If the parties cannot reach agreement on a solution under Section 4(a) above, then if Grantor deems it necessary to relocate the Permitted Facilities due to the Grantor's intended future use of the Easement Area or the immediately surrounding property, or for other reasons determined by the Grantor, Grantor may relocate the Permitted Facilities, if it is operationally feasible and after submitting complete plans for the proposed relocation for review and approval by Grantee, provided that such approval shall not be unreasonably withheld, delayed, or conditioned. All work shall be performed in accordance with current Grantee standards. Any relocating of the Permitted Facilities for Grantor shall be at Grantor's sole expense.

(c) Timeframes of reviewing agencies shall not be the basis for a claim of delay.

(d) All relocation shall be performed only when permitted by and in accordance with Applicable Law and the requirements of any state or federal grant through which the Permitted Facilities were constructed.

5. Claim Resolution Process. If either party believes it has a claim for property damage or personal injury against the other, it shall notify the other party of its claim promptly, and the parties shall attempt to resolve the claim within the then current claim resolution process in place, if any, between them.

6. Nature; Expiration; Termination. This Agreement shall run with the land and bind and benefit the Grantor and Grantee and their respective successors, including successor governmental entities; provided, however, that:

(a) If the interest of Grantor in the Easement Area is of such a nature that it may be terminated by operation of law, then the Easement shall expire upon any such termination; and

(b) upon such time as (i) the Permitted Facilities solely serve Grantor's property and Grantee no longer needs or uses the Permitted Facilities; (ii) Grantee has failed to commence construction of the Permitted Facilities within two (2) years after execution of this Agreement and diligently pursue the work to completion, unless delayed by Grantor or force majeure; (c) Grantee abandons the Easement Area or ceases to use the Easement Area for its intended purposes for a period of five (5) consecutive years; (d) the entirety of the Permitted Facilities are relocated pursuant to Section 4; (e) the parties mutually agree it is no longer desirable or necessary to maintain this Agreement; or (f) Grantee has breached the Agreement and failed to cure the breach after being given written notice specifying the claimed breach and a reasonable opportunity to do so by Grantor, Grantor may terminate this Agreement, effective twelve (12) months after written notice. This twelve month period (the "**Removal Period**") is not intended to be an additional cure period, but instead, subject to the provisions of Section 7, to provide Grantee with adequate time to remove the Permitted Facilities (unless they are to be abandoned in place) and its other property from the Easement Area. Grantor's recording an affidavit following the Removal Period indicating that this Agreement has terminated will be conclusive evidence of termination. When this Agreement is terminated, all rights and responsibilities cease, except the restoration obligations provided in Sections 2 and 7, which survive indefinitely. If a Grant prohibits termination of this Agreement on account of a Grantee default, Grantor shall be entitled to (i) cure the default and recover the cost of doing so from Grantee, or (ii) have specific performance of this Agreement.

7. Removal of Permitted Facilities. If this Agreement expires or is terminated for any reason, Grantee shall either (a) remove the Permitted Facilities and any other property belonging to it from the Easement Area at Grantee's cost and restore the Easement Area as nearly as practical to the condition it was in immediately prior to the installation of the Permitted Facilities or (b) abandon the Permitted Facilities in place if that would be less intrusive to the Easement Area, provided that abandonment must be consented to by the Grantor. Any Permitted Facilities or other property belonging to Grantee remaining on, in, or under the Easement Area after the Removal Period shall automatically become the property of Grantor, but Grantor shall nevertheless be permitted to remove and dispose of all such property at Grantee's cost except where they are to be abandoned in place.

8. Ownership. Ownership of all Permitted Facilities will remain with Grantee, except as otherwise provided in Section 7.
9. Third Party Beneficiary. There are no third party beneficiaries to this Agreement, and nothing contained in this Agreement shall be construed as conferring the rights of a third party beneficiary upon any party. Only the parties to this Agreement may enforce it for their benefit or have any claim or remedy for its breach.
10. Mutual Cooperation; Consent. The parties agree to mutually cooperate with one another in good faith to effectuate the intents and purposes of this Agreement and to avoid unduly hindering one another in connection with the construction, alteration, maintenance, repair, and replacement of Permitted Facilities. When consent of a party is required under this Agreement, that consent shall not be unreasonably withheld, delayed, or conditioned.
11. Meaning of "Grantee." Whenever the word "Grantee" or "Grantee's" is used in this Agreement it shall, to the extent permitted by the context, be read to include the Grantee's officials, officers, employees, servants, contractors, agents, guests and invitees.
12. Recordation. This Agreement shall be recorded in the office of the Washtenaw County Register of Deeds within 10 business days of its having been fully executed. This grant is exempt under MCL 207.505(a) and MCL 207.526 (a).

**GRANTOR:**

**THE REGENTS OF THE UNIVERSITY OF MICHIGAN**  
**A Michigan constitutional corporation**

By: \_\_\_\_\_  
 Kevin P. Hegarty  
 Its: Executive Vice President and Chief Financial Officer

**STATE OF MICHIGAN**  
**COUNTY OF WASHTENAW**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2017, by Kevin P. Hegarty, Executive Vice President and Chief Financial Officer, The Regents of The University of Michigan, a Michigan constitutional corporation, as grantor.

\_\_\_\_\_  
 Washtenaw County, Michigan Notary Public

Acting in Washtenaw County  
My Commission Expires:

**GRANTEE:**

**THE CITY OF ANN ARBOR,  
A Michigan municipal corporation**

By: \_\_\_\_\_  
Christopher Taylor  
Its: Mayor

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

**STATE OF MICHIGAN  
COUNTY OF WASHTENAW**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
2017, by Christopher Taylor and Jacqueline Beaudry, Mayor and City Clerk, respectively, of The City  
of Ann Arbor, a Michigan municipal corporation, as grantee.

\_\_\_\_\_  
Notary Public  
Washtenaw County, Michigan  
Acting in Washtenaw County  
My Commission Expires:

Prepared By and When Recorded Return To:  
Ciara Comerford  
Associate General Counsel  
Office of the Vice President and General Counsel  
University of Michigan, 503 Thompson Street, Room 5010, Ann Arbor, MI 48109-1340

Tax ID No: 09-12-05-100-079 (2323 S. Main St.)  
09-12-05-100-010 (2240 S. State St.)  
09-12-05-400-024 (2600 S. State St.)

09-12-05-400-029 (2500 S. State St.)



