

MASTER AGREEMENT

THIS MASTER AGREEMENT (“Agreement”), made this ____ day of _____, 2019, by and between the City of Ann Arbor, a Michigan Municipal Corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48104, hereinafter called the CITY, 115 Depot, LLC, a Michigan limited liability company, with principal address at 115 Depot, Ann Arbor, MI 48104, hereinafter called 115 DEPOT and 201 Depot, LLC, a Michigan limited liability company, with principal address at 115 Depot, Ann Arbor, MI 48104, hereinafter called 201 DEPOT, witnesses that:

WHEREAS, 115 DEPOT is the fee simple owner of land commonly known as 115 Depot Street described on the attached Exhibit A (the “115 Depot Property”), and

WHEREAS, 201 DEPOT is the fee simple owner of land commonly known as 201 Depot Street described on the attached Exhibit B (the “201 Depot Property”), and

WHEREAS, the CITY, under grants from the Federal Emergency Management Agency, Federal Highway Administration, and Michigan Department of Natural Resources, wishes to construct a project (the “Project”) that will (A) provide flood relief by the construction of a culvert underneath the Michigan Department of Transportation railroad northeast of 115 Depot Property connected to a storm sewer pipe for which the CITY requires temporary and permanent easements through the 115 Depot Property and the construction of a weir, open drain, and appurtenances (including bollards, a support wall, and warning signage) on the 201 Depot Property for which the CITY requires temporary and permanent easements through the 201 Depot Property and (B) that will provide a pedestrian path through the same culvert to allow public access under the railroad, along with necessary appurtenances, for which the CITY requires temporary and permanent easements through 201 Depot Property, and

WHEREAS, each of 115 DEPOT and 201 DEPOT (each an “Owner” and both collectively the “Owners”) has agreed to grant to the CITY the easements required by the CITY over its property (each a “Property” and both collectively the “Properties”) on the terms and subject to the conditions stated in this Agreement.

THE OWNERS HEREBY AGREE:

(O-1) Subject to the fulfillment by the CITY of its commitments to 115 DEPOT in this Agreement, 115 DEPOT agrees to grant to the CITY the temporary and permanent easements to the 115 Depot Property required for the Project (the “115 Depot Easement”) on the terms and subject to the restrictions and conditions stated in the 115 DEPOT EASEMENT AGREEMENT between 115 DEPOT and the CITY and dated as of the date of this Agreement (the “115 Depot Easement Agreement”).

(O-2) Subject to the fulfillment by the CITY of its commitments to 201 DEPOT in this Agreement, 201 DEPOT agrees to grant to the CITY the temporary and permanent easements to

the 201 Depot Property required for the Project (the "201 Depot Easement") on the terms and subject to the restrictions and conditions stated in the 201 DEPOT EASEMENT AGREEMENT between 201 DEPOT and the CITY and dated as of the date of this Agreement (the "201 Depot Easement Agreement").

(O-3) 115 DEPOT and 201 DEPOT agree to promptly review the plans and specifications for the Project that are prepared by the CITY and not unreasonably withhold or delay their approvals of those plans and specifications.

THE CITY HEREBY AGREES:

(C-1) To exercise its rights and fulfill its obligations under each of the 115 Depot Easement Agreement and the 201 Depot Easement Agreement (each an "Easement Agreement") in strict compliance with the terms of that Easement Agreement.

(C-2) To submit to the Owners for review and approval pursuant to Section C-3 the plans and specifications for all proposed improvements in the Project on or adjacent to the Properties (the "Improvements") and not to commence construction of those Improvements until those plans and specifications are approved in writing by the Owners (the "Project Plans & Specifications"). The CITY acknowledges that the approved Project Plans & Specifications must specifically address concerns raised by the Owners with respect to the location of the pedestrian walkway, fences and weir structure included as Improvements, any increase in the flow of storm water over either Property as a result of the Improvements and the design and composition of the fencing and the lighting of the Project.

(C-3) To construct all Improvements in the Project at its sole expense in strict accordance with Project Plans & Specifications approved by the Owners and all applicable laws and regulations; after construction of any Improvements on either Property to properly restore the Property (including, without limitation, adequately compacted backfill and restored vegetation) to a condition that is equal to or better than the condition that existed prior to the commencement of construction of the Improvements in accordance with the restoration plan included in the Project Plans & Specifications and to repair all defects in the improvements that are detected or occur within one year from the date of completion of the Improvements. If the CITY fails to construct the Improvements, the Owners may send notice via first class mail to the CITY at the address listed above requiring it to commence and complete the Improvements in the notice within the time set forth in the notice.

(C-4) To furnish, within 30 days of completion of the Project, an engineer's certificate that the construction of the Improvements has been completed in accordance with the Project Plans & Specifications.

(C-5) To maintain, repair and replace the Improvements so that the Improvements are at all times in good operating condition and appearance. If the CITY fails to maintain, repair and replace the Improvements as required by this Section, and if the CITY does not remedy that failure within thirty (30) days after the Owners deliver written notice to the CITY identifying that failure and demanding that remedial action, then the Owners may elect to complete the necessary maintenance, repair and replacements and invoice the CITY for its actual costs in doing so and the CITY shall pay each such invoice within forty (40) days after receipt.

(C-6) Unless with the prior written consent of the Owners, which consent can be given or not given in their respective discretions, to refrain from making any modifications to, additions

to or removals of any Improvements if, as a result of such action, the Improvements are no longer in strict accordance with the Project Plans & Specifications.

(C-7) To maintain and operate the Project, and all Improvements in the Project, in a safe, and sanitary manner and appearance.

(C-8) Acknowledging the concern of the Owners that the configuration Improvements and location of the Project create the opportunity for loitering and for criminal and other conduct detrimental to properties proximate to the Project, (a) to install, maintain, repair and replace fences separating the Project from the 115 Depot Property and the 201 Depot Property as shown in the Project Plans and Specifications and (b) to take appropriate steps as necessary, including monitoring and surveillance of the pedestrian walkway and pedestrian tunnel in the Project, to prevent unlawful loitering and criminal or other illegal activities.

(C-9) In both the initial construction of the Improvements and the later maintenance, repair and replacements of those Improvements, to limit entrance onto the 115 Depot Property and 201 Depot Property to the minimum extent reasonably possible; where entrance to a Property is required, to provide notice to the Owner of that Property at least ten (10) business days in advance of that entry and unless otherwise approved by the Owner, during hours that are outside of normal business hours, in each regard except in cases of emergency; when entrance to a Property is required, to conduct all activities on that Property at times and in a manner that, to the maximum extent possible, avoids interfering with the normal use of that Property; and when entrance to a Property is required, if the activities required will interfere with auto parking on that Property to make available at the CITY's parking area at 721 North Main Street (or another location approved by the Owner) at no cost a sufficient number of those parking spaces reserved for use by the employees and visitors to the business on that Property to replace the parking spaces made unavailable on that Property during those activities (the CITY acknowledges that 12 spaces are available at 115 Depot Property, 90 parking spaces are available at 201 Depot Property and that alternate users are assigned to those spaces on a day-by-day basis). If 721 North Main is not available for replacement parking after the initial construction, the CITY and the Owner shall work together to identify mutually acceptable replacement parking arrangements, which the City shall provide at no cost to the Owner.

(C-10) To not remove any Improvement constructed on a Property without the prior written consent of the Owner of that Property and, in the event of any such removal, the CITY, promptly and at its sole expense, shall restore the affected Property to the condition that existed prior to the construction of that Improvement.

(C-11) To the extent permitted by law, to indemnify, defend and hold each Owner, and that Owner's members, managers, employees and other agents and their respective heirs, successors and assigns (each an "Owner Party"), harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by that Owner based upon or resulting from (a) any acts or omissions of the CITY, its employees, agents, subcontractors, invitees, or licensees, (b) the design, construction, maintenance or repair of any of the Improvements permitted under this Agreement or (c) any breach by the CITY of any of its obligations under this Agreement or either Easement Agreement, including, without limitation its commitments in this Agreement in the design, construction, maintenance or repair of any of the Improvements permitted under this Agreement. The CITY acknowledges that the indemnification of the Owners under this agreement is contractual. If any Owner, or any of its officers, directors, agents, or employees receives notice of any matter that may result in a claim for indemnification against the CITY under this agreement, Owner shall promptly notify the CITY describing the nature of the matter and allow the CITY to participate in handling any defense, negotiation, or

settlement of the matter. Nothing in this Agreement or either Easement Agreement shall be construed to waive the CITY's governmental immunity.

(C-12) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$3,000,000 per occurrence and naming each Owner as additional insured to protect and indemnify each Owner against any claims for damage due to public use of the Improvements in the development prior to final completion of the Improvements by the CITY, with each Owner designated as an "additional insured". Evidence of such insurance shall be produced prior to any construction of the Improvements and a copy filed with the Owners and shall remain in full force and effect during construction of the Improvements.

(C-13) During the period when the Improvements are being constructed, to remove all discarded building materials and rubbish from the site of the Project at least once each week and within one week after completion of construction. After construction of the Improvements is completed, establish and implement a regular maintenance program approved by the Owners to ensure that the Improvements are maintained in a sanitary and sightly condition.

(C-14) Failure to construct, maintain, repair and replace the Improvements as required in this Agreement or required under either or both of the Easement Agreements shall constitute a material breach of the Agreement and the Owners shall have all remedies in law and/or in equity necessary to ensure that the CITY complies with the approved the terms and conditions of this Agreement and the Easement Agreements. The CITY shall be responsible for all costs and expenses including reasonable attorney fees incurred by the Owners in enforcing the terms and conditions of this Agreement and the Easement Agreements if it is determined that the CITY is in breach by a final decision of court with jurisdiction and such decision is not subject to appeal or the CITY elects not to appeal it.

(C-15) To record this Agreement and the Easement Agreements with the Washtenaw County Register of Deeds within five (5) business days after the date of execution and pay the costs of recording.

(C-16) In consideration of the grant by 115 DEPOT of the 115 Depot Easement and the grant by 201 DEPOT of the 201 Depot Easement, to do the following:

(a) The CITY, as part of the Project and at the CITY'S sole expense, will (i) permanently place a bulkhead and a check valve in the storm sewer pipeline that runs along Depot Street east of the Allen Creek pipeline and (ii) connect the storm sewer pipeline that runs along Depot Street to the new storm sewer line that the CITY is constructing as part of the Project in accordance with the Project Plans and Specifications. CITY shall inspect the check valve at least once every 5 years or in accordance with current industry best practices, whichever timeframe is more frequent. If an Owner identifies an issue indicating that the bulkhead or check valve is not working properly and requests that the City inspect the check valve or bulkhead, the City shall conduct an inspection and report the condition to the Owner as soon as possible and in no case more than seven days, and if the bulkhead or check valve is not working properly, the City shall make repairs at the City's cost as soon as possible and in no event more than 30 days.

(b) The CITY will not at any time take or permit any action that will require the removal of any part of the 115 Depot Property or the 201 Depot Property from the flood plain established by FEMA, whether in the course of or as a result of the construction of the Improvements or otherwise.

(c) The CITY, in its assessment of the 115 Depot Property and the 201 Depot Property for property tax purposes, (i) will acknowledge all Improvements that the CITY has constructed on each Property as owned by the City and, to the extent permitted by law, will not include in the assessed value of that Property any increase in the taxable value attributable to any Improvements that the CITY constructed on that Property and (ii) consistent with applicable law, take into account in determining the assessed value of each Property any diminution in the value of that Property as a result of the legal burdens on and the restrictions on the use and development of each Property as a result of the provisions of the Agreement.

(C-17) Either Owner may, consistent with applicable law, connect private storm water leads from their Property to the underground storm water pipes constructed by the City as part of the Project. All costs and expenses, including permits, shall be borne by the Owner. Prior to commencement of such a connection, the Owner shall obtain written approval from the City and all necessary permits.

GENERAL TERMS

THE CITY AND EACH OWNER AGREE AS FOLLOWS:

(T-1) This Agreement is not intended to create a contractual right for third parties.

(T-2) This Agreement and any of its terms, conditions, or provisions cannot be modified, amended, or waived unless in writing and unless executed by the CITY and each of the Owners or their respective successors and assigns (each a "Party"). Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on any Party.

(T-3) Except as provided in Section T-4, this Agreement and any of its terms or conditions shall not be assigned or transferred by any Party to any other individual or entity unless prior approval of the other Parties is received. Such approval shall not be withheld unreasonably.

(T-4) The rights and obligations of the CITY in this Agreement and each Easement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the CITY to the property owned by the CITY that is the "benefitted property" in the Easement Agreements. The rights and obligations of 115 DEPOT in this Agreement and the 115 Depot Easement Agreement shall be binding upon and inure to the benefit of the successors and assigns of 115 DEPOT to the 115 Depot Property. The rights and obligations of 201 DEPOT in this Agreement and the 201 Depot Easement Agreement shall be binding upon and inure to the benefit of the successors and assigns of 201 DEPOT to the 201 Depot Property.

(T-5) In addition to any other remedy in law or in equity failure to comply with all of the above paragraphs on the part of the CITY, in part or in whole, shall give the Owners adequate basis and cause to seek and secure a stop work order until the CITY has satisfactorily corrected the item(s) the CITY has failed to perform.

(T-6) Any notice required by this Agreement shall be sent or delivered to the registered business address (or current street address, if no registered business address exists) of the respective Parties or their successors, which the Parties shall make reasonable efforts to confirm.

At the time of this agreement, the respective addresses are:

City of Ann Arbor
Attn: Public Services Area Administrator

**MASTER AGREEMENT
EXHIBIT A**

115 Depot Property

Real property located in the City of Ann Arbor, Washtenaw County, Michigan, commonly known as 115 Depot Street, described at Liber 5257, Page 609 of Deeds, Washtenaw County Records and as:

Commencing at the monumented intersection of the centerlines of E. Summit Street (66 feet wide) and N. Fifth Ave. (formally Fifth Street) (66 feet wide) as shown in "Map of Ormsby and Page's Addition Ann Arbor Village (now City)", as recorded in Liber M of Deeds, Pages 191 and 192, Washtenaw County Records, Washtenaw County, Michigan; thence N29°04'36"E 203.96 feet along the centerline of said N. Fifth Avenue to a monument located in Depot Street (66 feet wide); thence continuing N29°04'36"E 28.04 feet to the intersection of the Northerly Right-of-Way line of said Depot Street and the centerline of vacated N. Fifth Avenue (66 feet wide); thence N63°56'30"W 377.96 feet along the Northerly Right-of-Way line of said Depot Street and the Southerly line of Block XII of said "Map of Ormsby and Page's Addition Ann Arbor Village (now City)" to the centerline of vacated Fourth Avenue (formally Fourth Street) (66 feet wide), said Northerly Right-of-Way line for Depot Street is parallel to and 28.00 feet North of monumented Depot Street; thence N64°06'15"W 151.53 feet along the Northerly Right-of-Way line of said Depot Street and the Southerly line of Block XI of said "Map of Ormsby and Page's Addition Ann Arbor Village (now City)" to a **PLACE OF BEGINNING**; thence continuing along the Northerly Right-of-Way line of said Depot Street and the Southerly line of said Block XI N64°06'15"W 235.26 feet; thence N10°49'55"E 22.35 feet; thence S79°10'05"E 137.22 feet along the Northerly line of Lots 5 & 7 of said Block XI; thence N10°49'55"E 21.49 feet along the Westerly line of said Lot 7 of Block XI; thence S70°52'05"E 71.81 feet; thence S11°02'29"E 71.08 feet; thence S25°38'45"W 29.64 feet to the Point of Beginning, being a part of said Block XI of said "Map of Ormsby and Page's Addition Ann Arbor Village (now City)", containing 0.30 acres of land, more or less.

AS-SURVEYED LEGAL DESCRIPTION
201 DEPOT STREET BY SMITHGROUP
August 1, 2017
C.A.L.
Project No. 79500

**MASTER AGREEMENT
EXHIBIT B**

201 Depot Property

Real property located in the City of Ann Arbor, Washtenaw County, Michigan, commonly known as 201 Depot Street, described at Liber 4490, Pages 936 and 937 of Deeds, Washtenaw County Records and as:

Commencing at the monumented intersection of the centerlines of E. Summit Street (66 feet wide) and N. Fifth Ave. (formally Fifth Street) (66 feet wide) as shown in "Map of Ormsby and Page's Addition Ann Arbor Village (now City)", as recorded in Liber M of Deeds, Pages 191 and 192, Washtenaw County Records, Washtenaw County, Michigan; thence N29°04'36"E 203.96 feet along the centerline of said N. Fifth Avenue to a monument located in Depot Street (66 feet wide); thence continuing N29°04'36"E 28.04 feet to a PLACE OF BEGINNING being the intersection of the Northerly Right-of-Way line of said Depot Street and the centerline of vacated N. Fifth Avenue (66 feet wide); thence N63°56'30"W 377.96 feet along the Northerly Right-of-Way line of said Depot Street and the Southerly line of Block XII of said "Map of Ormsby and Page's Addition Ann Arbor Village (now City)" to the centerline of vacated Fourth Avenue (formally Fourth Street) (66 feet wide), said Northerly Right-of-Way line for Depot Street is parallel to and 28.00 feet North of monumented Depot Street; thence N64°06'15"W 151.53 feet along the Northerly Right-of-Way line of said Depot Street and the Southerly line of Block XI of said "Map of Ormsby and Page's Addition Ann Arbor Village (now City)"; thence N25°38'45"E 29.64 feet; thence N11°02'29"W 71.08 feet; thence N70°52'05"W 71.81 feet; thence N10°49'55"E 225.32 feet along the Westerly line of Lots 4, 6, 7 and 8 of said Block XI and the Northerly extension thereof; thence 394.06 feet along the arc of a 1366.22 foot radius non-tangential circular curve to the left, with a central angle of 16°31'34", having a chord which bears S38°30'43"E 392.70 feet along the Southerly line of the Michigan Central Railroad corridor (100 feet wide) to a point on the Easterly line of said vacated N. Fourth Avenue.; said point lies S24°29'40"W 2.00 feet from a capped iron rod marking Reference Point "A"; thence continuing along said Southerly line of the Michigan Central Railroad corridor 358.45 feet along the arc of a 1700.14 foot radius compound non-tangential circular curve to the left, with a central angle of 12°04'48", having a chord which bears S53°11'53"E 357.79 feet; thence S29°04'36"W 59.41 feet along the centerline of said vacated N. Fifth Avenue to the Point of Beginning, being a part of said Block XI, all of said Block XII, part of said vacated N. Fourth Avenue and said vacated N. Fifth Avenue of said "Map of Ormsby and Page's Addition Ann Arbor Village (now City)", containing 1.88 acres of land, more or less.

AS-SURVEYED LEGAL DESCRIPTION
201 DEPOT STREET BY SMITHGROUP
August 1, 2017
C.A.L.
Project No. 79500