

**AGREEMENT BETWEEN
THE GREENWAY COLLABORATIVE, INC.
AND THE CITY OF ANN ARBOR
FOR PROFESSIONAL SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 East Huron Street, Ann Arbor, Michigan 48107 ("City"), and The Greenway Collaborative, Inc. ("Consultant") a Michigan Corporation with its address at 205 Nickels Arcade, Ann Arbor, Michigan 48104-2409 agree as follows on this __ day of ____, 2014.

The Consultant agrees to provide professional services to the City under the following terms and conditions:

I. DEFINITIONS

Administering Service Area/Unit means Public Services Area/Systems Planning Services Unit.

Contract Administrator means Cresson Slotten, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all facilitation services and other work plan components developed for or delivered to City by Consultant under this Agreement

Project means facilitation consulting services for the Pedestrian Safety and Access Task Force;

II. DURATION

This Agreement shall become effective on June 16, 2014, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement.

III. SERVICES

- A. The Consultant agrees to provide professional facilitation services ("Services") in connection with the Project as described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.
- B. Quality of Services under this Agreement shall be of the level of professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Consultant shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Consultant may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONSULTANT

- A. The Consultant shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Consultant, and approved by the Contract Administrator. Total compensation payable for all Services performed during the term of this Agreement shall not exceed \$7,222,002.
- B. The Consultant will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be payable according to the fee schedule in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered “reasonable” under this provision.
- C. The Consultant shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Consultant. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

- A. The Consultant shall procure and maintain during the life of this contract, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Consultant or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation demonstrating it has obtained the policies required by Exhibit C.
- B. Any insurance provider of Consultant shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company’s Key Rating Guide of “A-“ Overall and a minimum Financial Size Category of “V”. Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result from any acts or omissions by the Consultant or its employees and agents occurring in the performance of or breach in this Agreement.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Consultant agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209) The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

- B. Living Wage. The Consultant is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Consultant agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VII. WARRANTIES BY THE CONSULTANT

- A. The Consultant warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Consultant warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Consultant warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Consultant warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

VIII. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to the Consultant except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Consultant acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Consultant. The Contract Administrator shall give the Consultant written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The remedies provided in this Agreement will be cumulative, and the assertion by

a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

IX. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Consultant access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Consultant of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

- A. The Consultant shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Consultant shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Consultant shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

The Greenway Collaborative, Inc.
205 Nickels Arcade
Ann Arbor, Michigan 48104-2409
Attn: Norman D. Cox, President

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
301 E. Huron
Ann Arbor, Michigan 48107
Attn: Connie Pulcifer

XII. CHOICE OF LAW

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XIII. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., deliverables) prepared by or obtained by the Consultant as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Consultant as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Consultant.

Unless otherwise stated in this Agreement, any intellectual property owned by Consultant prior to the effective date of this Agreement (i.e., preexisting information) shall remain the exclusive property of Consultant even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

IV. CONFLICT OF INTEREST

Consultant certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Consultant further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

XV. SEVERABILITY OF PROVISIONS

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 and circumstances.

XVI. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Consultant with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Consultant and the City.

FOR CONSULTANT

By _____
Norman D. Cox, President
The Greenway Collaborative, Inc. .

FOR THE CITY OF ANN ARBOR

By _____
John Hieftje, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Steven D. Powers, City Administrator

Craig Hupy, Public Services Administrator

Approved as to Form and Content

Stephen K. Postema, City Attorney

EXHIBIT A

The Consultant shall provide all items listed in the ‘City of Ann Arbor Pedestrian Safety & Access Task Force- Proposed Work Approach’ and the The Greenway Collaborative, Inc.. ‘Pedestrian Safety and Access Task Force Facilitation Scope of Work.’

CITY OF ANN ARBOR PEDESTRIAN SAFETY & ACCESS TASK FORCE – PROPOSED WORK APPROACH

At their meeting on November 18, 2013, City Council approved Resolution R-13-367, which called for the Council to appoint a Pedestrian Safety and Access Task Force that will explore strategies to improve pedestrian safety and access within a framework of shared responsibility through community outreach and data collection, and will recommend to Council improvements in the development and application of the Complete Streets model, using best practices, sound data and objective analysis.

The resolution notes that developing a task force such as this is “one of the tools recommended for implementing the Complete Streets to consider steps toward the creation of a comprehensive Pedestrian Safety Action Plan.” The work of the Task Force will inform the subsequent development of a Pedestrian Safety Action Plan (PSAP) using the Federal Highway Administration (FHWA) guidebook titled *How to Develop a Pedestrian Safety Action Plan* as a guide. The City’s Non-motorized Transportation Plan, and ADA Plan are other important resources that will facilitate Task Force considerations.

The task breakdown for the work approach follows:

Task A. IDENTIFY GOALS & OBJECTIVES

Task B. DEVELOP COMMUNITY OUTREACH & ENGAGEMENT PLAN

1. Pedestrian Safety and Access Task Force
2. Resource Group (staff and others)
3. Stakeholders
4. Public/Community

Task C. ONGOING COMMUNICATIONS

1. Audiences
2. Key Messages
3. Communication Methods

Task D. DETERMINE DATA TYPES & ISSUES IDENTIFICATION

1. Understanding Data Types
2. Project Types & Issues Identification
3. Community Outreach & Engagement—First Round

Task E. ANALYSIS & PRIORITIZATION

1. Understanding Countermeasures
2. Categorizing Safety Concerns & Solution Types
3. Development of Prioritization Systems

Task F. SAFETY SOLUTION ALTERNATIVES & FUNDING OPTIONS

1. Engineering & Planning Solutions
2. Education-Related Solutions
3. Enforcement & Legislative Solutions
4. Funding Options
5. Community Outreach & Engagement—Second Round

Task G. PEDESTRIAN SAFETY ACTION PLAN ELEMENTS

1. Checklist for Pedestrian Safety Action Plan Elements
2. Draft Recommendations
3. Community Outreach & Engagement—Third Round
4. Final Documentation

PEDESTRIAN SAFETY AND ACCESS TASK FORCE FACILITATION SCOPE OF WORK

The City's RFP provides a very detailed scope of work based on FHWA's How to Develop a Pedestrian Safety Action Plan. The Greenway Collaborative, Inc. have included all of those elements in the proposed work plan to be completed between July 2014 and August 2015. The following provides additional details on the scope of work.

- A. **Identify Goals and Objectives** – Participate in Kick-off Meeting with City Staff. Participate in Resource Group Meeting #1 to review the topics to be covered. Prepare agenda for and facilitate Task Force Meeting #1, provide a summary of the meeting discussion and key decisions, and monitor all action items.
- B. **Develop Community Outreach and Engagement Plan** – Participate in Resource Group Meeting #2 to review the topics to be covered. Prepare agenda for and facilitate Task Force Meeting #2, provide a summary of the meeting discussion and key decisions, and monitor all action items.
- C. **Ongoing Communications** – Prepare Project informational and education materials. Prepare press releases as required. Set-up and maintain a Cloud Based Project Management Site and other public engagement tasks as directed by the City's Project Manager and as the budget allows.
- D. **Develop Data Type and Issue Identification** – Participate in Resource Group Meeting #3 and #4 to review the topics to be covered. Prepare agenda for and facilitate Task Force Meeting #3 and #4, provide summaries of the meeting discussions and key decisions, and monitor all action items. Prepare agendas for and facilitate Stakeholder focus group meetings and document meeting discussions. Prepare agenda for and facilitate Public Meeting #1 and provide meeting summary. Provide follow-up and facilitate other public engagement tasks as directed by the project manager and as the budget allows.
- E. **Analysis and Prioritization** – Participate in Resource Group Meetings #5, 6 and 7 to review the topics to be covered. Prepare agenda for and facilitate Task Force Meetings #5, 6 and 7, provide summaries of the meeting discussions and key decisions, and monitor all action items.. Provide follow-up and facilitate other public engagement tasks as directed by the City's Project Manager and as the budget allows.
- F. **Safety Solution Alternatives and Funding Options**– Participate in Resource Group Meetings #8, 9, 10 and 11 to review the topics to be covered. Prepare agenda for and facilitate Task Force Meeting #8, 9, 10 and 11, provide summaries of the meeting discussions and key decisions, and monitor all action items. Prepare agendas for and facilitate Stakeholder focus group meetings and document meeting discussions. Prepare agenda for and facilitate Public Meeting #2 and provide meeting summary. Provide follow-up and facilitate other public engagement tasks as directed by the City's Project Manager as the budget allows.
- G. **Pedestrian Safety Action Plan Elements** - Participate in Resource Group Meetings #12 and 13 to review the topics to be covered. Prepare agenda for and facilitate Task Force Meetings #12, provide summaries of the meeting discussions and key decisions, and monitor all action items. Prepare agendas for and facilitate Stakeholder focus group meetings and document meeting discussions. Prepare agenda for and facilitate Public Meeting #3 and provide meeting summary. Provide follow-up and facilitate other public engagement tasks as directed by the City's Project Manager and as the budget allows.

Other public engagement tasks as directed by the City's Project Manager may include the following: developing on-line surveys, establishing and managing an interactive web map with public input, event or location-based public engagement and walking workshops.

EXHIBIT B

PROFESSIONAL FEE

Compensation will be provided on an hourly basis billed monthly. The total amount authorized is **\$75,000.00** including reimbursable expenses.

ESTIMATED HOURS, COSTS & SCHEDULE BY TASK provides an estimate of staff hours and staff costs for each of the tasks outlined in Exhibit A and summary of reimbursable expenses.

The City and the Consultant recognize that the Scope of Work may be modified as the project progresses to better suit the needs of the project and the Task Force. The Consultant will keep the City apprised of the impact of any requested efforts from the City's Project Manager that will likely require more hours for the task than is budgeted. The Consultant will not proceed with the effort unless authorized in writing by the City's Project Manager.

The City and the Consultant also recognize that the distribution of costs between staff members is not precise and may change depending on the needs of the project and the Task Force.

EXHIBIT C
INSURANCE REQUIREMENTS

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Consultant shall have the insurance required below and shall provide certificates of insurance to the City on behalf of itself and, when requested, any subcontractor(s).

A. The Consultant shall have insurance that meets the following minimum requirements:

1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Consultant and its employees in an amount not less than \$1,000,000.

2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or
Property Damage Liability, or both combined
\$2,000,000 Per Job General Aggregate
\$1,000,000 Personal and Advertising Injury

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.
- B. Insurance required under A.3 and A.4 above shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Consultant agrees to waive any right of recovery by its insurer against the City.
 - C. Documentation must demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. A certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Consultant supplies a copy of the endorsements required on the policies. Upon request, the Consultant shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Consultant shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.