

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 DESIGN OF THE
S. STATE STREET – NORTH UNIVERSITY IMPROVEMENTS PROJECT

This Agreement (“Agreement”) is made and entered into this _____ date of _____, 20____, 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 design of the S. State Street – North University Improvements Project. The design of this project is hereinafter referred to as the “Project.” Relevant details and scope of the Project are set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Whereas, the DDA and the City have expressed interest in working cooperatively on the Project;

Whereas, the City and the DDA have agreed that the DDA should award a contract to SmithGroupJJR, Inc. and their consulting team, hereinafter referred to as “Consultant,” as part of a joint RFQ process to perform engineering design work and streetscape design for the Project;

Whereas, the City 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 the performance of and payment 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 design phase of the Project in accordance with the terms of this Agreement. Exhibit A to this Agreement refers to and incorporates by reference the Consultant’s design proposal, which details the complete scope of the design work. Exhibit B to this Agreement lists the estimate for each cost sharing category and the allocation of costs between the DDA and the City for each category. As set forth in Exhibit B, the total dollar amount estimate of the City’s share of the Project is \$360,684.00 plus \$36,068.00 contingency.

2. The DDA will enter into a contract with the Consultant for the Project. The DDA will administer the contract and related work necessary for the completion of the Project. In its contract with the Consultant, the DDA must require that the Consultant indemnify the City for any claims or lawsuits by third parties arising from the Consultant’s work, and must require the Consultant to cover the City as additionally insured on its general liability policy. In the contract

between them, the DDA and the Consultant also must recognize the City as a third party beneficiary of the contract.

3. The City is responsible for funding its share of the Project as defined in Exhibit B.

4. For payment of the design costs, the DDA will contract directly with the Consultant, and finance the complete cost of the design engineering services, including the City's portion of these costs. The City will reimburse the DDA for the City's share of amounts paid by the DDA. Exhibit B provides the estimated cost breakdown of engineering costs and the amount due the DDA from the City for its share of the costs.

5. As the DDA pays for design services and incurs costs on the Project, the DDA will invoice the City at a frequency no more than monthly. The City shall reimburse the DDA for the City's portion of incurred costs within 30 days of receipt of an invoice from the DDA.

6. Notwithstanding the City'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 Consultant, rests with the DDA.

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 each category of costs identified in Exhibit B are agreed to between the parties and cannot be changed except by Amendment to this Agreement. The City'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 its share of the Project. The parties agree that any change order that affects shares of the Project of both parties will be paid in proportion to those percentages agreed to by the DDA and the City and identified in Exhibit B, including both increases and decreases in Project costs.

8. In the event any claims are brought against the City and/or the DDA by the Consultant and/or its consulting team arising out of the design engineering or related work on the Project, costs incurred by the DDA 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 claims pertain. Any change order that results from a claim shall be funded as provided in Paragraph 6.

9. In the event any claims are brought against the City and/or the DDA by a contractor, subcontractor, vendor or supplier for the construction phase of the North Fifth Avenue Improvements Project and arising out of the design engineering or related work on the Project, costs incurred by the DDA 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 claims pertain. Any change order that results from a claim shall be funded as provided in Paragraph 6.

10. Each of the persons signing this Agreement represents and warrants that he or she has authority to sign this Agreement on behalf of the DDA or the City of Ann Arbor, respectively.

CITY OF ANN ARBOR, a Michigan
municipal corporation

ANN ARBOR DOWNTOWN
DEVELOPMENT AUTHORITY, a public
corporation

By: _____
Christopher Taylor, Mayor

By: _____
Susan Pollay, DDA Executive Director

By: _____
Jacqueline Beaudry, City Clerk

By: _____
_____, DDA Clerk

Approved as to substance:

Tom Crawford, Interim City Administrator

Craig Hupy, Public Services Area Administrator

Approved as to form:

Stephen K. Postema, City Attorney

EXHIBIT A

Attached as Exhibit A is the Scope of Services for the North Fifth Avenue Improvements Project.

EXHIBIT B

Attached as Exhibit B are the cost summary and funding responsibilities for the Project.