

AGREEMENT BETWEEN THE CITY OF ANN ARBOR
AND ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C. FOR LEGAL SERVICES
RELATIVE TO CITY PROJECTS REQUIRING THE ACQUISITION OF EASEMENTS OR OTHER
PROPERTY INTERESTS

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron, P.O. Box 8647, Ann Arbor, Michigan 48107 (“City”), and ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C. having its offices at 27555 Executive Drive, Suite 250, Farmington Hills, Michigan 48331-3550 (“Firm”) enter into an Agreement for the provision of legal services as follows:

1. Services

A. The Firm agrees to perform diligently the services in accordance with the conditions contained in this Agreement.

B. The Firm agrees to provide the City with professional legal services as described in Exhibit A.

C. The Firm shall perform and carry out the services described in Exhibit A in compliance with all applicable laws and regulations.

2. Personnel and Administration

A. The Firm warrants that all attorneys assigned to the performance of the legal services are members in good standing of the State Bar of Michigan.

B. Each employee or consultant employed by the Firm in the performance of this Agreement shall devote such time, attention, skill, knowledge and professional ability as is necessary to perform most effectively and efficiently the services in accordance with the level of professional quality performed by attorneys regularly performing these legal services in the State of Michigan; provided, however, it is recognized that the Firm may engage in legal services for other clients to the extent that the rendering of such services does not conflict with the services to be performed under this Agreement.

3. Compensation of the Firm

A. The Firm shall be paid by City as specified in Exhibit B. Payment shall be made following receipt of monthly invoices submitted by the Firm. The invoices shall include a detailed report of the Firm’s activities for the month stating the task performed, the attorney or staff performing the task, the amount of time spent on the task, and the resulting charge.

B. The Firm will be compensated by City for services performed in addition to the services described in Exhibit A only when those additional services have received prior written approval from the City Attorney or Managing Attorney identified in Exhibit A. The Firm is being retained because of its experience.

C. The Firm shall keep complete records of time spent and expenditures made in performing the services so that the City may verify invoices submitted by the Firm.

4. Insurance

A. During the term of this Agreement, the Firm agrees to procure and maintain in effect a policy or policies of professional liability insurance protecting the Firm and its employees in an amount of no less than \$1,000,000.

B. During the term of this Agreement, the Firm agrees to procure and maintain in effect a policy or policies for general liability in the amount of \$1,000,000 per occurrence and \$2,000,000 in aggregate.

C. Certificates showing the Firm has the required insurance shall be filed with the City through City-approved means (currently myCOI). Certificates shall provide for not less than 30 days prior written notice to the City of cancellation, non-renewal, reduction in the amount of insurance, or material change of terms of the policy to the extent possible.

5. Hold Harmless

A. The Firm agrees to save harmless the City against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable fees and expenses for consultants, expert witnesses and other consultants at the prevailing market rate for such services) which may be imposed upon, incurred by or asserted against the City by reason of any negligent or tortious act committed by the Firm or any of its employees, consultants, or agents, during the course of providing services.

B. The Firm agrees that it is the responsibility of the Firm and not the responsibility of the City to safeguard the property and material that are used in performing this Agreement. Further the Firm agrees to hold the City harmless for costs and expenses resulting from any negligent loss of such property and material used pursuant to the Firm's performance under this Agreement.

C. The relationship of the Firm to the City is and shall continue to be that of an independent contractor and no relationship other than that of an independent contractor shall be implied between the parties, or either party's agent, or employee. The Firm agrees to hold the City harmless from any such claims, and any costs or expenses related thereto.

D. The Firm shall not hold the City liable for any personal injury incurred by its employee(s), agents or consultants while providing services under this Agreement and the Firm agrees to hold the City harmless from any such claims.

6. Termination of Agreement

A. The City has the right to terminate the services at any time, with liability to pay fees and expenses incurred to the date the Firm receives notice of termination. The Firm has the right to terminate services at any time, subject to its ethical obligations under the Michigan Rules of Professional Conduct and shall be paid for services and expenses rendered to the date of the Firm's

resignation. The City or Firm shall provide notice of such termination by first-class mail to the other party at the address stated herein.

B. The City or the Firm may terminate this Agreement in the case of a breach of this Agreement by another party, if the breaching party has not corrected the breach within 15 days after notice of termination is provided to it by first class mail at the address stated herein.

7. Obligations of the City

A. The City agrees that the City Attorney and/or Managing Attorney identified in Exhibit A shall serve as co-counsel for the City and will give the Firm access to City records as required to perform the necessary services under this Agreement.

B. The City shall notify the Firm of any defects in the services of which the City Attorney has actual notice.

C. The City shall pay the Fees and Costs described in Exhibit B.

D. The City warrants that this Agreement has been duly executed by its authorized representative, and in accordance with the City Charter and Code.

8. Assignment

This Agreement may not be assigned or subcontracted by the Firm, in whole or in part, without the written consent of the City Attorney or the Managing Attorney identified in Exhibit A. If the Firm subcontracts or assigns any portion of the services, including but not limited to expert services, the Firm shall require the subcontractor or assignee to enter into a subcontract or other agreement which incorporates all the same terms as this Agreement.

9. Conflict of Interest

A. The Firm covenants that the Firm presently has no interest and shall not during the pendency of the services, assume a representation nor acquire any interest, direct or indirect, which does or would conflict in any manner or degree with the performance of the services under this Agreement. The Firm further covenants during the pendency of the services, no person having any such interest or conflicting representation shall be employed by the Firm.

B. The Firm further covenants that no officer or employee of the City and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Agreement has any personal or financial interest, direct or indirect, in this Agreement or in the proceeds thereof.

10. Confidentiality

A. The services to be performed by Firm shall be at the direction of the City regarding the services performed.

B. In order that the Firm may effectively fulfill its obligations to the City under this

Agreement, it may be necessary or desirable for the City to disclose confidential and proprietary information pertaining to the City's past, present, and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Firm and all Firm employees shall regard all information gained from City during the term of this Agreement or provided by the City prior to agreement, and as a result of the services to be performed hereunder as information which is proprietary to the City and confidential and not to be disclosed to any organization or individual without the prior written consent of the City, or as required by law. If the Firm receives a subpoena or other legal process seeking disclosure from the Firm of information gained from City during the term of this Agreement and as a result of the services, the Firm shall immediately notify the City of same, and the City, at its expense, shall undertake such opposition to the legal process as the City shall deem appropriate, or in the alternative, the City shall provide the Firm with its written approval to disclose the information sought by the process.

C. The Firm shall take appropriate action to ensure that all employees comply with this policy of nondisclosure.

D. The Firm also shall take appropriate action to ensure that all employees protect from improper disclosure all information obtained or produced, all communications made or received, and all work under this Agreement which are covered by the attorney-client privilege or attorney work product doctrine.

E. The Firm shall retain its files relative to the services for a reasonable period of time after completion of the services, and shall then have the right to destroy its files after providing sufficient notice to the City of any planned document destruction and giving the City the opportunity to retrieve the files prior to their destruction.

11. Amendments

A. The City may consider it in its best interests to change, modify, or extend a term or condition of this Agreement, or the City may request the Firm to perform additional services. Any such change, extension or modification, which is mutually agreed upon by the City and the Firm shall be incorporated by written amendments to this Agreement. Such amendments shall not invalidate this Agreement nor relieve or release the City or the firm from any of their obligations under this Agreement.

B. No amendment to this Agreement shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, is signed by duly authorized representatives of both parties and is executed in accordance with the City's Charter and Code.

C. The parties acknowledge that the amount payable for the services under this Agreement is an estimate which may be increased or decreased by the parties pursuant to this Article.

12. Notices

All notices and communications under this Agreement shall be given in writing, signed by the Firm, mailed by first-class mail and addressed as follows:

If to the Firm:

If to the City:

ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C. 27555 Executive Drive, Suite 250 Farmington Hills, MI 48331-3550	City Attorney's Office City of Ann Arbor 301 E. Huron P.O. Box 8647 Ann Arbor, MI 48107-8647
Attn: Steven P. Joppich	Attn: Atleen Kaur City Attorney

13. General Provisions

A. No failure by a party to insist upon the strict performance of any term of this Agreement or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any breach of this Agreement. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach.

B. If any provision of this Agreement or its application to any person or circumstances shall be judicially determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

C. This instrument, including Exhibits A and B attached hereto and made a part hereof, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. No party has made any representation except those expressly set forth herein, and no rights or remedies are or shall be acquired by either party by implication unless expressly set forth herein.

D. Unless the context otherwise expressly requires, the words "herein," "hereof" and "hereunder," and other words of similar import, refer to this Agreement as a whole and not to any particular article, section or other subdivision.

E. The headings of the articles in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of this Agreement or in any way affect the same.

F. The rights and remedies set forth herein are not exclusive and are in addition to any of the rights or remedies provided by law or equity. This Agreement, and all actions arising hereunder, shall be governed by the laws of the State of Michigan. The Firm submits to the

personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. The Firm agrees that service of process at the address and in the manner specified in this Agreement will be sufficient to put the Firm on notice. The Firm also agrees that no action will be commenced against the City because of any matter arising of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be had in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

G. The Firm covenants that it is not and will not become in arrears to the City upon any obligations to the City, including real property, personal property, and/or income taxes.

H. As used herein, the singular shall include the plural, the plural shall include the singular.

I. Press releases or interviews with the press in connection with the Firm's representation of the City must be authorized by the City, as applicable, and the City Attorney in writing prior to any action on the Firm's part. The Firm shall not use the name "City of Ann Arbor" or any of its departments in connection with publicity releases, articles, advertising or listings without prior written consent of City, as applicable, and the City Attorney. City may be listed as a client of Firm only with their prior approval. The City may be listed as hiring Firm only with the prior approval of the City Attorney.

J. For purposes of the hold harmless provisions contained herein, the term "City" shall be deemed to include the City of Ann Arbor and all other associated, affiliated or subsidiary entities, now existing or hereafter created and their agents and employees.

K. The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement.

[Signatures appear on following page.]

**ROSATI, SCHULTZ, JOPPICH &
AMTSBUECHLER, P.C.**

CITY OF ANN ARBOR

By: _____

Name: Steven P. Joppich

Title: Shareholder

Date: _____

By: _____

Name: Milton Dohoney Jr.

Title: City Administrator

Date: _____

Approved as to form:

By: _____

Name: Atleen Kaur

Title: City Attorney

Date: _____

(Signatures continue on following page)

CITY OF ANN ARBOR

By: _____

Name: _____

Title: Mayor _____

Date: _____

By: _____

Name: _____

Title: City Clerk _____

Date: _____

EXHIBIT A

Scope of Services

General

The Firm shall provide the City of Ann Arbor with professional legal services and act as the City's outside legal counsel relative to the acquisitions of needed rights of way and easements, including handling condemnation thereof, as necessary and related litigation, for the following the matters specified below:

- Lyn Anne Arbana Sewer Project (Huron West Park)
- South Boulevard Water Looping New Construction Project and South Boulevard Lift Station Elimination and Gravity Sewer New Construction and Replacement Project (Woodbury Gardens)
- Nixon Road Corridor Improvement Project
- South Main Street Sidewalk Gap Elimination Project
- Other easement acquisition projects as directed by the City Attorney.

Conflicts of Interest

The Firm will advise the City when the Firm has been asked to handle a matter in which its representation is or would be adverse or potentially adverse to the City. The City will not consent to the Firm's representation of other clients in matters or waive a potential or actual conflict of interest where, as the result of the Firm's representation of the City, the Firm has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Firm's, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case-by-case basis.

EXHIBIT B

Schedule of Fees and Costs

General

The Firm shall be paid a total amount not to exceed \$150,000.00 for those services performed pursuant to this Agreement, inclusive of all fees and reimbursable expenses, in accordance with the terms and conditions herein and with Exhibit A in particular. The Fee Schedule below states the rates and reimbursable expenses the Firm may charge the City for the services.

Fee Schedule

\$325.00 per hour for shareholders and senior attorneys
\$275.00 per hour for associate attorneys
\$125.00 per hour for paralegal/legal assistants

Reimbursable Expenses

Normal and customary expenses necessary to perform the services are eligible for reimbursement, including charges for out-of-subscription searches and materials approved in advance. Charges for monthly subscription computerized legal research are not a normal and customary expense and are not eligible for reimbursement.

Billing Policies and Instructions

Failure to follow these policies and instructions may result in non-payment for part or all of the fees associated with work that does not comport with these policies. The City will not pay for work outside the scope of work and assignments approved by the Managing Attorney.

All invoices must be submitted with a remittance page. If your firm has a change of address, you must notify the Managing Attorney immediately and update your registration. If the Principal Counsel move(s) to a different firm, you must indicate in writing: the Principal Counsel's final date with the firm, submit a final invoice from the firm, and indicate the Principal Counsel's start date with the new firm. The continuation of this engagement and whether the matter will move to the Principal Counsel's new firm must be approved in writing by the City Attorney.

A. Billing Requirements

1. Itemized bills must be submitted on Firm letterhead on a monthly basis.
2. Itemized bills must include a remittance page.
3. The Firm shall bill time in 1/10th of an hour increments.
4. The negotiated hourly rates on the attached Rate Schedule include all overhead and internal charges associated with your firm's practice. The City expects that work for the City will be done at a substantial discount from the firm's general billing rates. The City

- will not separately pay for overhead or law firm costs associated with services of assistants, secretaries, word processors, librarians, investigators, or other support staff.
5. The City will not pay for time spent preparing, discussing, or correcting a billing statement.
 6. The City will not pay for opening routine correspondence which does not require a response or impact the merits of the case.
 7. The City expects inefficiently spent time to be shown on the bill and written off in the sound exercise of billing judgment.
 8. Any attorney work product for which the City is billed, e.g., legal research memoranda, **shall be provided to the City, either electronically or as a paper copy at the time it is completed.**
 9. If the Firm requests attorney fees in a contested motion and fees are awarded, the draft should be made payable to the City of Ann Arbor, or the amount of the award must be specifically credited on the next billing statement.
 10. A copy of all invoices, bills, and receipts for expenses shall be attached to the monthly bill.
 11. Expenses over and above the limits set forth herein shall be borne solely by the Firm and shall not be reimbursed under this Agreement.

B. Billing Statement Requirements

All billing statements must contain the following information:

1. IRS taxpayer identification number of the firm or attorney.
2. Style of case or Matter description.
3. A remittance page with the monthly statement.
4. Dates of service and a detailed description of service. Vague descriptions, such as “review,” “update,” “attention to file,” “research,” and “trial preparation” without more specifics are not acceptable.
5. Name, classification (e.g., “partner,” “principal,” “associate,” “legal assistant”), billing rate for the person doing the task, and specific time for service to a tenth of an hour.
6. Detailed listing of all expenses with supporting documentation for all third party and travel expenses.

C. Consultations

1. The City will not pay for inefficient conferences among outside attorneys or support staff. The City expects the matter to be leanly staffed.
2. The City will not pay for time involved educating an attorney on a particular matter when it has previously been handled by another attorney in the Firm.

D. Court Proceedings Attendance

1. Attendance of more than one attorney at depositions or court proceedings, including trials, is not reimbursable without prior approval by the Managing Attorney. Generally, one attorney is expected to handle matters.
2. Time involved for clerks, junior associates, or paralegals to accompany counsel to depositions, hearings, or trials for training purposes is not reimbursable.

E. Outside Consultants – Approval Required

The Firm must evaluate the need to engage experts, investigators, visual aid companies, or other outside consultants on a case by case basis and must obtain approval of the Managing Attorney before retaining any such services.

F. Travel

The City **will not** pay:

1. For time spent traveling unless productive work is done during that time or a specific arrangement is agreed to in writing with the City Attorney in an amendment to this agreement.
2. For air travel expenses in excess of standard coach or economy fares. Counsel is expected to take advantage of special fares or discounts whenever possible and will check with the Managing Attorney for information on City vendor discounts.
3. For alcoholic beverages.
4. For charges from in room hotel bars.
5. For meals that exceed the then-applicable per diem amounts authorized for travel by City employees.

The City **will pay** for automobile mileage not to exceed the amount permitted as a business expense under the Internal Revenue Code.