

AGREEMENT BETWEEN
THE CITY OF ANN ARBOR AND THE UNIVERSITY OF MICHIGAN
REGARDING RESPONSIBILITIES AND COST ALLOCATION FOR
THE SOUTH UNIVERSITY AVENUE PAVEMENT AND
UTILITY IMPROVEMENTS PROJECT

This Agreement (“Agreement”) is made and entered into this ____ date of _____ 2019, by and between the City of Ann Arbor, a Michigan municipal corporation (“City”), and the Regents of the University of Michigan, a Michigan constitutional entity (“University”), for the purpose of establishing the rights and obligations of the parties related to the design and construction, including all appropriate inspection and testing services, of the South University Avenue Pavement and Utility Improvements Project (the “Project.” Relevant details and scope of the Project are set forth in Exhibit A.

Whereas, the City and the University desire to improve underground utilities and infrastructure, storm water management, and the pavement along the South University Avenue corridor, between South State and East University;

Whereas, the City and the University recognize the mutual benefits in completing a joint South University Avenue Pavement and Utility Improvements Project;

Whereas, the University has contracted with OHM Advisors (“Consultant”) to provide professional services for the Project, as described in Exhibit A and, with the City’s written approval, may enter into other contracts with other consultants for professional services for the Project (“Other Consultants”);

Whereas, the City and the University 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 University agree:

1. Subject to and consistent with the City’s consultation, input and approval, the University shall complete, or have completed, the Project’s design and construction in accordance with this Agreement and its attachments.
2. The University shall competitively bid the contract (this contract being the “Contract”) for construction of the Project, but the University’s selection of the contractor (“Contractor”), is subject to the written approval of the City.
3. The University shall contractually require the Consultant, Other Consultants, and the Contractor to indemnify and defend the City for and from all claims or lawsuits by third parties arising from or related to the Consultant’s, Other Consultants’, and Contractor’s work, and shall require the Consultant, Other Consultants and Contractor to add the City as an additional insured on Consultant’s, Other Consultants’ and Contractor’s insurance to the same extent as the University. In addition, the University shall, and shall require the Consultant, Other Consultants, and the Contractor to name the City as a third party beneficiary under the contracts between the

Consultant, Other Consultants, and the Contractor and the University regarding their work under those contracts.

4. In consideration of the City being named a third party beneficiary as described in Section 3 above, the City releases the University from any claims regarding work performed by the Consultant, Other Consultants, and the Contractor on the Project under their respective contracts with the University, and from other claims related to or based on those contracts, and City shall raise any such claims directly with the Consultant, Other Consultants, or the Contractor. This release does not apply to other claims the City might have arising from or related to the Project.

5. The City shall reimburse the University, in the proportions stated in Exhibit B, for the amounts contractually-owed and paid by the University to Contractor, Consultant, and Other Consultants pursuant to their respective contracts with the University. The City also shall reimburse the University for other costs for the Project, as described in Exhibit A, in the proportions stated in Exhibit B. The University may invoice the City for those and all other amounts owed under this Agreement no more frequently than monthly. The City shall pay amounts properly invoiced within 30 days of receipt of the invoice.

6. The University and the City agree that while the proportions reflected in Exhibit B are binding under this Agreement, the costs upon which they are based are estimates only. Actual costs may vary.

7. The University shall not agree to any change order or amendment over \$25,000 (per change order or amendment) to the Contract, or to any contract with Consultant or Other Consultants, unless the City first agrees in writing to the change order or amendment. The City shall reimburse the University for any monies contractually-owed to Contractor, Consultant, or Other Consultants based upon final invoices with time and material, bid unit prices, and as-built quantity invoice support, as applicable, from Contractor, Consultant, or Other Consultants.

8. The City and the University shall each identify a project manager as the point of contact for the other party on the Project. Each such project manager shall have the authority to provide written approvals required under this Agreement, or shall obtain any written approval that is needed from a person with the authority to provide that approval if the project manager does not have that authority.

9. Nothing in this Agreement shall be construed to obligate the City to complete or have completed the design or construction of the Project, or to administer or manage any contracts to which it is not a party.

10. The City and the University agree they will enter into the standard "Agreement between the City of Ann Arbor and Regents of the University of Michigan for Right-of-Way Occupancy" for each type of installation ("RoW Agreements") to allow the University to construct and maintain University-owned installations on, in and under the City's rights-of-way (the "City's Property"), including access to and use of the City's Property by the University, the Consultant, Other Consultants, and the Contractor to perform work for the Project. Neither the University, the Contractor, the Consultant, nor Other Consultants may perform any work on, in, or under the City's Property before both the City and the University agree to and execute the RoW Agreements.

11. The City and the University understand and agree that the Project, as described in Exhibit A, includes work to remove, replace, modify, and/or install City-owned facilities. The University agrees the design and construction of these City-owned facilities by the Consultant, Other Consultants, and the Contractor, must comply with City and contract specifications for those facilities, and that ownership of a new, modified, or repaired City-owned facility will not be accepted by the City unless and until it meets all City and contract specifications. The City agrees that if the Contractor obtains all City permits required to perform the foregoing work, the City will not require any additional permits or permissions for the work.

12. The City and the University may provide or contract for unique or special services related to the Project, each at their own expense.

13. Each person signing this Agreement represents and warrants that he or she has authority to sign this it on behalf of the University or the City, respectively.

14. Except as explicitly provided in this Agreement, this Agreement shall not be construed to require the City to pay any amounts more for Project costs than those described in Exhibit B.

CITY OF ANN ARBOR, a Michigan
municipal corporation

UNIVERSITY OF MICHIGAN, a Michigan
constitutional corporation

By: _____
Christopher Taylor, Mayor

By: _____
Hank Baier, Associate Vice President for
Facilities and Operations

By: _____
Jacqueline Beaudry, City Clerk

Approved as to substance:

Howard S. Lazarus, City Administrator

Craig Hupy, Public Services Area Administrator

Approved as to form:

Stephen K. Postema, City Attorney