

## **FUNDING AGREEMENT**

### **LOWER EAST SIDE FLOOD MITIGATION**

**THIS FUNDING AGREEMENT** (the “Agreement”) made and executed this 22nd day of February, 2024, by and between the CITY OF DETROIT, a Michigan municipal corporation organized and existing under the laws of the State of Michigan acting by and through its GENERAL SERVICES DEPARTMENT (hereinafter the “City”) and the CITY OF DETROIT BUILDING AUTHORITY, a public authority and body corporate of the State of Michigan, organized and existing under the authority of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended (hereinafter the “AUTHORITY”), each referred to individually as a “Party” and occasionally referred together as the “Parties”.

### **RECITALS**

WHEREAS, the Authority has been incorporated in accordance with the provisions of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended (the “Act”), for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating and maintaining buildings, automobile parking lots or structures, recreational facilities, stadiums and the necessary site or sites therefor, together with appurtenant properties and facilities necessary or convenient for the effective use thereof, for the use of any legitimate public purpose of the City; and

WHEREAS, the City desires to engage the assistance of the Authority to provide the design, engineering, and construction to repair, renovate, or install new seawalls and engineered berms on City-owned properties. Additionally, this funding will also provide a flood mitigation study for removing the Lower East Side from the floodplain (the “Project”); and

WHEREAS, the City has advised the Commissioners of the Authority that the Project is necessary and advisable to meet the needs of the citizens of the City and others; and

WHEREAS, the Authority desires to assume management responsibility for the Project; and now

IT IS THEREFORE, AGREED BY AND BETWEEN THE PARTIES HERETO, for and in consideration of the mutual covenants hereinafter contained as follows:

### **SECTION 1**

#### **Engagement of Authority**

1.01 By this Agreement, the City, acting by and through its General Services Department, engages the Authority, and the Authority agrees to serve as the Construction Owner to provide the design, engineering, and construction to repair, renovate, or install new seawalls and engineered berms on City-owned properties. Additionally, this funding will also provide a flood mitigation study for removing the Lower East Side from the floodplain as specified in Exhibit A and provide services in accordance with the Funding Agreement General Terms and Conditions contained in Exhibit B attached hereto.



3.02. All Notices shall be deemed given on the day of mailing. Any Notice given by a party to this Agreement must be signed by an authorized representative of such party.

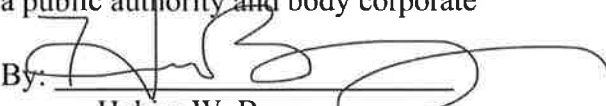
3.03 Either party to this Agreement may change its address for the recipient of Notices at any time by giving notice of the address change to the other party.

3.04 The Authority agrees that service of process at the address, and in the manner specified in this Section III, shall be sufficient to put the Authority on notice of such action, and there Authority hereby waives any claims relative to such notice.

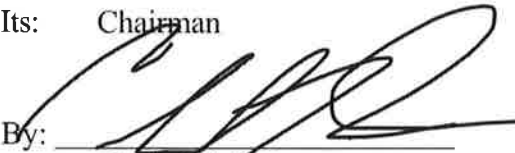
[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the CITY and the AUTHORITY by and through their duly authorized officers and representatives have executed this Agreement on the day and year first above written, to be effective as of the Effective Date.

**CITY OF DETROIT BUILDING AUTHORITY,**  
a public authority and body corporate


By:   
Hakim W. Berry

Its: Chairman

By:   
Christopher T. Jackson

Its: Treasurer

**CITY OF DETROIT,**  
a Michigan municipal corporation,  
by and through its General Services Department

By:   
Crystal Perkins

Its: Director

APPROVED AS TO FORM:

*Floyd Allen*

\_\_\_\_\_  
General Counsel, City of  
Detroit Building Authority

APPROVED AS TO FORM:

OFFICE OF CONTRACTING AND  
PROCUREMENT

\_\_\_\_\_  
Corporation Counsel for  
the City of Detroit

\_\_\_\_\_  
Chief Procurement Officer

This Agreement was approved by City Council on:

\_\_\_\_\_  
Date

## EXHIBIT A

### PROJECT AND PROJECT SITE

The Authority will provide the design, engineering, and construction to repair, renovate, or install new seawalls and engineered berms on City-owned properties. Additionally, this funding will also provide a flood mitigation study for removing the Jefferson Chalmers area of the City of Detroit, which consists of the properties located along the canals on Ashland Street, Scripps Street, Manistique Street, Harbor Island, Klenk Island, Alter Road, Conner Creek Canal, Mariner's Park, and A.B. Ford Park from the floodplain. Services to be performed under this contract are including but not limited to the following:

- Civil Engineering Services
- Structural Engineering
- Architectural/Landscape Design
- Environmental Consulting Services
- Property/Land Survey Services
- Utility Coordination
- GIS Mapping
- Hydraulic/Hydrologic Engineering
- Community Outreach and Engagement
- Construction Administration and Support

### FEE SCHEDULE

DESCRIPTION	SUBTOTAL NOT TO EXCEED
Replace 151 LF of existing seawalls Remove existing fencing Sawcut & remove existing pavement Clear Trees, Brush & grade to Berm Install 533 LF of new seawalls Install 113 LF of new seawall extension Install approved material earth berm Install 380 LF of chain link fence Site restoration	\$2,010,051.00
Civil Engineering	\$303,100.00
Flood Mitigation Study	\$257,250.00
Detroit Building Authority Fee	\$128,572.00
<b>TOTAL NOT TO EXCEED</b>	<b>\$2,700,000.00</b>

EXHIBIT B

FUNDING AGREEMENT

GENERAL TERMS AND CONDITIONS

**ARTICLE I**

Duties of the City

1.01. The recitals are incorporated into this Agreement as if fully set out word for word.

1.02. The City shall use the Funds to pay the Authority for all vouchers received from the Authority for work performed or work to be performed on the Project as set forth and specified in Article 9.01 hereof. The Authority shall use such the Funds to pay for all work contained in contracts entered into by the Authority for the benefit of the City with respect to the Project.

1.03. The City shall execute such other documents and provide such other information, plans and specifications that may be reasonably required for completion of the Project.

**ARTICLE II**

Duties of the Authority

2.01. The Authority shall serve as the Project Manager on the Project. The Authority shall be responsible for all progress and final inspections, for all general administrative functions, and for maintaining all documentation and all reports in relation to the Project. The Authority shall require and secure from its contractors, subcontractors, grantees, borrowers, and consultants engaged pursuant to this Agreement (individually, a "Contractor", and collectively, the "Contractors") undertaking work on the Project (i) all necessary and proper bonds to guarantee the performance of said Project, (ii) all necessary affidavits and resolutions required to contract with the City, and (iii) all workers' compensation, employer's liability, commercial general liability (Broad Form Comprehensive), automobile liability, and pollution liability insurance policies (as required) in such amounts, with such features, and in such form as set forth and specified in Article VI hereof, or as may be required by law. To the extent permitted by law and commercially available, the City and the Authority shall be named as additional insured on all such insurance.

2.02. The Authority shall maintain full and complete books, ledgers, journals, accounts, documents, other collected data, and records in auditable form (the "Records"), wherein are kept all entries reflecting all actions taken pursuant to this Agreement. The Authority shall make available all such Records for audits, inspections, and examinations by the City during normal business hours. All such Records shall be maintained and kept in accordance with generally accepted accounting principles by the Authority during the term of this Agreement, plus an additional period of four (4) years following the later of the completion of the Project or the

termination of this Agreement, or for such longer period as may be required. The provisions of this Paragraph shall survive the termination of this Agreement.

**ARTICLE III**  
Access to Site

3.01. In consideration for the management of the Project as herein specified, the City agrees to grant the Authority such access to the site upon which the Project is to be conducted, as more particularly described in Exhibit A to this Agreement (the "Project Site"), for such period of time commencing on the date of City of Detroit City Council ("City Council") approval and ending no later than three (3) years from such date, subject to the provisions of Article VIII and Article IX hereof.

**ARTICLE IV**  
Compliance with Law

4.01. The City and the Authority covenant and agree that they will not permit the use of the Project in any manner inconsistent with local, state, or federal laws, rules, or regulations now or hereafter in force and applicable hereto. The City further covenants and agrees that it will promptly, and at its own expense, make and pay for any and all changes and alterations to the Project which, during the term of this Agreement, may be required at any time by reason of local, state, or federal laws.

**ARTICLE V**  
Insurance

5.01. During the term of this Agreement, the Authority shall require the Contractors to maintain insurance, at a minimum and at their expense, in the amounts outlined below:

<u>TYPE</u>	<u>AMOUNT NOT LESS THAN</u>
(a) Worker's Compensation	Michigan statutory minimum
(b) Employer's Liability	\$500,000.00 minimum, each disease \$500,000.00 minimum, each person \$500,000.00 minimum, each accident
(c) Commercial General Liability Insurance (Broad Form Comprehensive)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
(d) Automobile Liability Insurance (covering all owned, hired, and non-owned vehicles with personal and property protection insurance,	\$1,000,000.00 combined single limit for bodily injury and property damage



including residual liability insurance  
under Michigan no fault insurance  
law)

5.02 Any commercial general liability insurance policy required herein shall include an endorsement naming the "City of Detroit", and the "Detroit Building Authority" as additional insureds. The additional insured endorsement shall provide coverage to the additional insured with respect to liability arising out of the named insured's ongoing work or operations performed for the additional insured under the terms of this Agreement. The commercial general liability policy shall state that the Contractor's insurance is primary and not excess over any insurance already carried by the City of Detroit and shall provide blanket contractual liability insurance for all written agreements, contracts.

5.03 Each such policy shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

5.04 All insurance required by this Agreement shall be written on an occurrence-based policy form, if the same is commercially available.

5.05 All commercial general liability policies shall be endorsed to have the general aggregate apply to the services provided under this Agreement only.

5.06 If during the term of this Agreement changed conditions or other pertinent factors should, in the reasonable judgment of the City, render inadequate the insurance limits, the Contractor shall furnish on demand such additional coverage or types of coverage as may reasonably be required under the circumstances. All such insurance shall be affected at the Contractor's expense, under valid and enforceable policies, issued by insurers licensed to conduct business in Michigan and are otherwise acceptable to the City.

5.07 All insurance policies shall name the Contractor as the insured and shall provide a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior written notice to the City. Certificates of insurance evidencing the coverage and endorsements as required by this Article VI shall be in a form acceptable to the City, and shall be submitted to the City prior to the commencement of the services at least fifteen (15) days prior to the expiration dates of expiring policies. In the event that any Contractor receives notice of a policy cancellation, the Contractor shall immediately notify the City in writing.

5.08 If any work is subcontracted in connection with this Agreement, the Contractor shall require each subcontractor to effect and maintain the types and limits of insurance set forth in this Article VI and shall require documentation of same, copies of which documentation shall be promptly furnished the City.

5.09 The Contractors shall be responsible for payment of all deductibles contained in any insurance required under this Agreement. The provisions requiring the

Contractors to carry the insurance required under this Article VI shall not be construed in any manner as waiving or restricting the liability of the Contractors under this Agreement.

## **ARTICLE VI**

### **Assignment**

6.01. The rights, duties and obligations of the City and the Authority, as specified in this Agreement, shall not be assigned, in whole or in part, during the term of this Agreement.

## **ARTICLE VII**

### **Term of Agreement**

7.01. This Agreement shall be effective upon the later of the date of execution of this Agreement or the approval of the City Council (the "Effective Date") and shall terminate three (3) years from that date (the "Term"), and shall remain in full force and effect until the end of this Term unless otherwise terminated pursuant to Article IX.

7.02 The Authority shall have no authority to start work, no payments shall be authorized by the Finance Department of the City of Detroit, and the City shall not be liable for reimbursement for any material or service purchased, or payment for any cost incurred by the Authority, or any Service rendered by the Authority which are purchased, incurred or rendered prior to the term of this Agreement.

## **ARTICLE VIII**

### **Default**

8.01. In the event that a Party hereto defaults or materially breaches the terms and conditions of this Agreement, the non-defaulting Party may terminate this Agreement upon thirty (30) days prior written notice. The Party claiming the right to terminate hereunder shall specify in its written notice the reason(s) underlying the alleged default, and the defaulting Party shall have thirty (30) days after delivery of said written notice to cure or commence to cure said default. Failure to cure said default within the thirty (30) days shall be considered a material breach of this Agreement.

8.02 Upon the occurrence of a material breach by the Authority, the City may assume and perform on behalf of the Authority all of the Authority's duties provided for in Article II hereof.

8.03. This Agreement may be terminated at any time prior to completion of the Project by the City for convenience, or by the mutual written consent of the parties hereto.

8.04. If the Agreement is terminated, the City shall pay the Authority for services rendered prior to the effective date of termination, and any Funds held by the Authority for the Project shall be returned to the City.

**ARTICLE IX**  
Project Invoicing, Payment of Work

9.01           Invoices. All invoices submitted against this Agreement shall be in a form acceptable to the City and approved by both Parties (“Invoices”). It is the Authority’s responsibility to ensure the creation of Invoices, items not properly invoiced will be considered invalid and not be paid.

9.02           Payment of Work. Upon execution of the Agreement, the City agrees to authorize vouchers to pay all valid Invoices and requests for payment submitted to it by the Authority for all work performed, and to be performed, pursuant the terms and conditions of this Agreement. Payment shall include a 5% administrative fee to the Authority, which is included in the Funds and is paid to the Authority compensation for the services rendered hereunder. Neither the City’s review, approval, nor payment for any of the services provided by the Authority shall be construed to operate as a waiver of any rights under this agreement.

9.03           City Employees. The Authority shall reimburse the City for the cost and expense of the City personnel, including but not limited to, the wages paid, proper allowance for vacation, sick time and the City's contribution to the pension system, and the City's cost or expense for compensation, insurance, or benefits when such costs and expenses for City employees are budgeted for and assigned to the Authority.

9.04           Direct Costs. Except as provided for by this Agreement, the Authority shall not charge under this Agreement direct costs which have been or will be paid from another source, or have been or will be submitted to another source.

9.05           Reimbursement. Any payment by the City for reimbursement to the Authority of the cost and expense of City personnel may be reduced by the reimbursement owed by the Authority to the City.

9.06           Third Parties. The City and the Authority expressly acknowledge their mutual understanding and agreement that there are no third party beneficiaries to this Agreement, and that this Agreement shall not be construed to benefit any person other than the City and the Authority.

**ARTICLE X**  
Fair Employment Practices

10.01          Compliance with State and Federal Laws. In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal opportunity, including but not limited to, Titles VI and VII of the Civil Rights Act of 1964 (P.L. 88-352, 78 STAT. 252), and United States Department of Justice Regulations issued pursuant to those Titles (28 C.F.R. Part 42), and in accordance with the Michigan Constitution and all state laws and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, the Michigan Civil Rights Act (P.A. 1976 NO. 453) and the Michigan Handicappers Civil Rights Act (P.A. 1976 NO. 220), the Authority agrees that it will not discriminate against any person, employee, consultant, or applicant for employment with respect to his (or her) hire, tenure, terms, conditions or privileges of employment or hire because of his (or her) religion, race, color, national origin, age, sex, height, weight, marital status, or

handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. The Authority recognizes the right of the United States and the State of Michigan to seek judicial enforcement of the foregoing covenants against discrimination against itself or its Contractors. Notwithstanding the foregoing, the Authority shall comply with, and shall require any Contractor to comply with, all federal, state, and local laws and regulations, including but not necessarily limited to (i) all laws governing fair employment practices and equal employment opportunities; and (ii) all applicable property maintenance code provisions.

10.02. Compliance with City Laws. The Authority agrees to comply with all rules and procedures adopted by the City, including but not necessarily limited to the City Human Rights Department, and shall not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of the Agreement with respect to his (or her) hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, public benefit status, sex, or sexual orientation. The Authority shall promptly furnish any information required by the City Human Rights Department pursuant to this Section 14.02.

10.03. Compliance of Contractors. The Authority agrees that it shall notify any of its Contractors of their obligations relative to nondiscrimination and legal compliance under this Agreement when soliciting the same, and shall include the provisions of this Article XIV in any contract, as well as provide the City with a copy of any such contract upon request. With respect to any contract for the procurement of goods and services for the Project, the Authority further agrees to take such action as the City may lawfully direct as a means of enforcing such provisions.

10.04 Anti-Kickback Laws. The Authority shall require that each of its Contractors comply with all anti-kickback laws, including the Copeland Anti-Kickback Act (18 USC §874), and shall prohibit such Contractors from inducing, by any means, any person employed in connection with the Project to give up any part of the compensation to which he/she is otherwise entitled. All Contractors shall be required to insert in their subcontracts substantially similar language to the language in this Section to ensure compliance by subcontractors with the terms of this Section.

10.05 Anti-Bribery. The Authority, and all its Contractors, and each of their subcontractors are prohibited from paying or accepting any bribe in connection with securing a contract entered into pursuant to this Agreement or in connection with performing under the terms of such a contract. Contractors of the Authority shall insert in their subcontracts substantially similar language to the language in this Section to ensure compliance by subcontractors with the terms of this Section.

10.06. Material Breach. Breach of the covenants in this Article XIV shall be deemed to be a material breach of this Agreement.

## **ARTICLE XI** Amendments

11.01. The City and the Authority may, from time to time, consider it in their best interest to change, modify or extend a term, condition, or covenant of this Agreement or require changes in the scope of the Project as set forth in Exhibit A which result in an increase of the City's obligation hereunder. Any such change, addition, deletion, extension, or modification, including any increase in the amount of the Authority's compensation, which is mutually agreed upon by and between the City and the Authority shall be incorporated in written amendments to this Agreement ("Amendments"). Such Amendments shall not invalidate this Agreement nor relieve or release the Authority or the City from any of its obligations under this Agreement unless so stated therein.

11.02. No Amendment to this Agreement which increases the financial obligation of the City as stated in Article X hereof shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, is signed and acknowledged by duly authorized representatives of both parties, and is approved by the City Council.

## **ARTICLE XII**

### **Force Majeure**

12.01 No failure or delay in performance of this Agreement, by either Party, shall be deemed to be a breach thereof when such failure or delay is caused by an event or circumstance that is beyond the reasonable control of that party, absent such party's fault or negligence, and which by its nature could not have been foreseen by such party, or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). A Force Majeure Event includes, but is not limited to, any Act of God or the public enemy, strikes, lockouts, wars, acts of terrorism, riots, epidemics, pandemics, explosions, sabotage, the binding order of any governmental authority, or any other cause, whether the kind herein enumerated or otherwise, which is not within the control of a party. Neither the Authority's economic hardship nor changes in market conditions are considered a Force Majeure Event.

12.02 Upon the occurrence of a Force Majeure Event, the Authority shall (i) give prompt written notice to the City that the Force Majeure Event has occurred, the anticipated effect on the Authority's performance, and the expected duration of that anticipated effect; (ii) use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized, (iii) keep the City apprised of the Authority's progress in remediating the effects of the Force Majeure Event; and (iii) promptly resume performance under the Agreement.

12.03 If a Force Majeure Event prevents the Authority from performing under the Agreement for a continuous period of at least thirty (30) business days, the City may terminate this Agreement immediately by giving written notice to the Authority as required herein.

## **ARTICLE XIII**

### **Additional Provisions**

13.01 Nothing contained herein shall be construed to or be permitted to operate as any restriction upon the power granted to the City Council by the City Charter to audit and allow all accounts chargeable against the City.

13.02. This Agreement shall inure to the benefit of and be binding upon the respective parties hereto and their successors and assigns.

13.03. This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any prior agreements, promises, negotiations or representations relating to the subject matter of this Agreement which are not expressly set forth herein, are void.

13.04. If any provision or part of this Agreement contravenes or is invalid under the laws of the State of Michigan and/or federal law, such contravention and invalidity shall not invalidate the whole of the Agreement, and this Agreement shall be construed as if it does not contain such provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

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

13.06. This Agreement shall be governed by the laws of the State of Michigan, and the rights and remedies set forth herein are not exclusive and are in addition to any of the rights and remedies provided at law or in equity.

13.07 The relationship of the Authority to the City is and shall continue to be that of an independent contractor. It is not intended for this Agreement to create any relationship of principal and agent or establish any partnership, joint venture, association or other entity.

13.08 This Agreement may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Agreement. Promptly after the execution of this Agreement, the City shall provide a copy to the Authority.