

AGREEMENT

This Agreement is made and entered into this 6th day of AUGUST, 2010, by and between the City of Detroit, acting through its Department of Public Works referred to as the City and Land Assembly for Neighborhood Development (LAND, Inc), a Michigan non-profit tax exempt organization with a place of business at 4401 Conner, Detroit, MI 48215.

1. Statement of Purpose

- 1.1 The City has agreed to permit certain infrastructure improvements (Bioswale) as an encroachment on the City-owned right of way located at the 13300 block of Mack Avenue, as detailed in the plan attached as Exhibit A. These infrastructure improvements, all together with necessary related work, described herein as the improvement ("Improvement").
- 1.2 The Parties desire to set forth in writing their respective obligations for the maintenance and repair of the improvements.
- 1.3 It is the general intent of the parties to enhance the physical character of the Mack Avenue corridor to test best practices in stormwater management and open space alternative land uses.

2. Term

- 2.1 The term of this Agreement shall commence upon the final completion of the construction of the improvements and shall continue as long as the infrastructure improvements remain.

3. Maintenance and Repair of Improvements

- 3.1 The Parties hereby agree that LAND, Inc. shall be responsible, at its sole expense for the maintenance and repair of the following Improvements
 - i) Bioswale located in the right of way at 13300 Mack.
- 3.2 The terms "*maintenance and repair*" shall include repair of any damage which takes place to the Covered Improvements. Notwithstanding the foregoing, however, the City shall be solely responsible for any damages it causes to the Covered Improvements. LAND, Inc. shall perform its obligations under this Agreement in accordance with applicable local and state laws, regulations and ordinances.
- 3.3 LAND, Inc. shall maintain an account for maintenance and repair of the above listed Improvements.

4. Liability

4.1 LAND, Inc. agrees to indemnify, defend and hold the City harmless against and from any and all liabilities, obligations, penalties, costs, charges, losses, damages or expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by, or asserted against the City or its departments, officers, or employees as a result of any negligence or misconduct of LAND, Inc. in the performance of its obligations under this Agreement.

4.2 LAND, Inc. shall maintain, at its sole cost and expense, during the term of this Agreement:

Commercial General Liability Insurance (broad form comprehensive) in the amount of \$1 Million per occurrence and \$1 Million in the aggregate. Such a policy shall name the "City of Detroit" as an additional insured and shall provide that LAND, Inc.'s insurance is primary and not excess over any insurance already carried by the City. Such policy shall provide a commitment from the insured that the policy shall not be canceled or reduced without at least 30 days' prior written notice to the City. A certificate of insurance evidencing such coverage shall be in a form acceptable to the City. This certificate of insurance shall be submitted to the appropriate office in the City's Finance Department, Coleman A. Young Municipal Center, prior to the commencement of performance under this Agreement and at least 15 days prior to the expiration dates of the expiring policies. LAND, Inc. shall be responsible for payments of all deductibles. The provision requiring LAND, Inc. to carry such insurance shall not be construed in any manner as waiving and restricting the liability of LAND, Inc. under this Agreement.

5. Miscellaneous

5.1 LAND, Inc. may assign its rights and obligations under this Agreement to any successor entity or other entity under LAND, Inc.'s control, provided the City gives its prior written consent. Such assignment shall not relieve LAND, Inc. of its obligations hereunder.

5.2 This Agreement shall be governed in all respects by the laws of the State of Michigan.

5.3 This Agreement shall be binding upon the Parties' successors and assigns. This Agreement is for the exclusive benefit of the parties hereto and shall not be deemed to give any legal or equitable right, remedy or claim whatsoever to any other person.

5.4 This Agreement constitutes the entire agreement between the Parties.

- 5.5 All disputes under the terms of this Agreement shall be resolved through binding arbitration under the rules and procedures of the American Arbitration Association. Such arbitration shall be held in Detroit, Michigan.
- 5.6 This Agreement has no impact on the ownership of the Mack Avenue or the infrastructure improvements.
- 5.7 The City agrees to notify LAND, Inc. of scheduled work, construction or improvement plans that fall within the boundaries of the Improvement area.

The City and LAND, Inc., by and through their duly authorized officers and representatives, have executed this Contract as of the date above written.

Witnesses:

1. Charles P. Baily
Name

[Signature]
Name

LAND, Inc.

By: [Signature]
Jacqueline Bejma

Its: EXEC. DIRECTOR
Executive Director

Witnesses:

1. _____
Name

2. _____
Name

City of Detroit
Department of Public Works

By: _____
Name

Its: _____
Title

APPROVED BY LAW DEPARTMENT
PURSUANT TO § 6-406 OF THE CHARTER
OF THE CITY OF DETROIT

Corporation Counsel Date

The City and LAND, Inc., by and through their duly authorized officers and representatives, have executed this Contract as of the date above written.

Witnesses:

1. _____
Name

2. _____
Name

LAND, Inc.

By: 
Jacqueline Bejma

Its: EXEC. DIRECTOR
Executive Director

Witnesses:

1. 
Name James Krull

2. 
Name


City of Detroit

Department of Public Works

By: 
Name

Its: City Engineer
Title

APPROVED BY LAW DEPARTMENT
PURSUANT TO § 6-406 OF THE CHARTER
OF THE CITY OF DETROIT

 10/20/10
Corporation Counsel Date

CONTRACTOR ACKNOWLEDGMENT

STATE OF Michigan)
)SS.
COUNTY OF Wayne)

The foregoing contract was acknowledged before me the 6th day of AUGUST,
2014, by JACQUELINE BEJMA,
(name of person who signed the contract)
the EXECUTIVE DIRECTOR,
(title of person who signed the contract as it appears on the contract)
of LAND, INC.,
(complete name of the corporation)

on behalf of the Corporation.

Nicole Pesly

Notary Public, County of Wayne

State of Michigan

My commission expires: June 23, 2021

