

AGREEMENT BETWEEN
WASHTENAW COUNTY, BY THE WASHTENAW COUNTY PARKS AND
RECREATION COMMISISON, AND THE CITY OF ANN ARBOR REGARDING
RESPONSIBILITIES AND COST ALLOCATION FOR THE TRAIL CONSTRUCTION
PHASE OF THE BANDEMER-BARTON TRAIL AND UNDERPASS PROJECT

This Agreement (“Agreement”) is made and entered into this _____ day of _____, 2023, 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 (the “City”), and Washtenaw County, a Michigan municipal corporation with its principal offices at 220 N. Main Street, Ann Arbor, Michigan 48104 (the “County”), by the Washtenaw County Parks and Recreation Commission, existing pursuant to Public Act 261 of 1965 (“WCPARC”), for the purpose of establishing the rights and obligations of the parties relative to the Trail Construction Phase of the Bandemer-Barton Trail and Underpass Project (the “Trail Construction Phase”). Relevant details and scope of construction work for the Trail Construction Phase are set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

- A. Whereas, the County, Huron Waterloo Pathway Initiative, and the City previously signed a Letter of Intent dated May 2, 2018 (“LOI”) to collaborate on an update to the Bandemer-Barton Pedestrian Tunnel 2005 Feasibility Study, which update was completed in 2020 (Bandemer-Barton Trail and Underpass Study dated November 13, 2020 prepared by Bergmann and OHM Advisors) and sets forth preferred design options for use in the Design Phase for the project;
- B. Whereas, in late 2021 the County and City entered into a Cost Sharing Agreement for the Design Phase of the Bandemer-Barton Trail and Underpass Project;
- C. Whereas, in early 2023 the County and City entered into a Memorandum of Understanding (“MOU”) for the purposes of setting forth their mutual objectives, understandings regarding and desire to cooperate to advance the Bandemer-Barton Trail and Underpass Project;
- D. Whereas, the MOU contemplates the parties entering into other agreements for each phase of the Project as necessary;
- E. Whereas, the County and City expressed interest in working cooperatively to complete the Trail Construction Phase of the Bandemer-Barton Trail and Underpass Project and share the costs thereof;
- F. Whereas, in consultation with the County and WCPARC, the City has solicited, received and evaluated proposals for the construction of the Trail Construction Phase, and having shared and discussed the proposals with the County and WCPARC, the parties agree the City should award a contract for the Trail Construction Phase work to Erie Construction, LLC (the “Contractor”), which submitted the best value proposal in the amount of \$1,287,382.00;

- G. Whereas, the City will enter into a construction contract with the Contractor and administer the completion of the Trail Construction Phase work in accordance with this Agreement and its exhibits and attachments;
- H. Whereas, the County and City will each be responsible for funding and paying for a portion of the Trail Construction Phase work as established in the Contractor's cost proposal contained in Exhibit A (County 66.66% / City 33.34%); and
- I. Whereas, the County and City have reached an understanding regarding the performance of and payment for the Trail Construction Phase work and desire to enter into this Agreement to memorialize that understanding.

Therefore, in consideration of the promises and mutual undertakings of the parties and in conformity with applicable law, County and City agree:

1. The County and the City shall undertake and complete the Trail Construction Phase of the Bandemer-Barton Trail and Underpass Project in accordance with the terms of this Agreement. Exhibit A to this Agreement refers to and incorporates by reference the Trail Construction Phase design and construction proposal titled "RFP No. 23-54 Barton Nature Area Border to Border Trail" which details the complete scope of the construction work for the Trail Construction Phase. As set forth in the cost proposal in Exhibit A, the total project cost estimate is \$1,287,382.00, and the of County's estimated share of the Trail Construction Phase cost is \$858,168.84 and City's estimated share is \$429,213.16 provided these amounts may change as provided elsewhere in this Agreement.
2. The City will enter into a construction contract with the Contractor for the Trail Construction Phase. The City will administer the construction contract and related work necessary for the completion of the Trail Construction Phase. In its contract with the Contractor, the City must require that the Contractor indemnify the City and County for any claims or lawsuits by third parties arising from the Contractor's work, and must require the Contractor to cover the City and County as additional insureds on its general liability insurance policy. The construction contract between the City and Contractor must also recognize the County as a third party beneficiary of the contract.
3. The County is responsible for funding its identified 66.66% share of the Trail Construction Phase costs.
4. For payment of the Trail Construction Phase costs, the City will contract directly with the Contractor and pay to the Contractor the complete cost of the work, including the County's portion of these costs. The County will reimburse the City for the County's share of amounts paid by the City.
5. As the City pays the Contractor for services and work completed and incurs costs on the Trail Construction Phase, the City will invoice the County no more frequently than

on a monthly basis. The County shall reimburse the City for the County's portion of incurred costs within 30 days of receipt of an invoice from the City.

6. Notwithstanding the County's funding of its share of the Trail Construction Phase, the parties agree the City may consult with the County regarding the project and its management, but that responsibility for management of the Trail Construction Phase, including all aspects of the construction contract with the Contractor, rests with the City.

7. The parties understand and agree that actual Trail Construction Phase costs may differ from the Contractor's cost proposal. However, the parties agree the County is responsible for 66.66% and the City is responsible for 33.34% of the Trail Construction Phase costs, and those percentages cannot be changed except by Amendment to this Agreement. The County's obligation to fund its share of the Trail Construction Phase includes the obligation to fund change orders, authorized in writing prior to the work being performed after consultation with the County and/or WCPARC, for its share of the Trail Construction Phase. The parties agree that any change order that affects shares of the Trail Construction Phase of both parties will be paid in proportion to those percentages set forth herein and agreed to by the County and the City, including both increases and decreases in Trail Construction Phase costs.

8. In the event any claims are brought by the Contractor, or a subcontractor, vendor or supplier for the Trail Construction Phase work and arising therefrom against the City and/or County or WCPARC, costs incurred by the City in defending or resolving such claims shall be considered Trail Construction Phase 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 7.

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

WASHTENAW COUNTY,
a Michigan municipal corporation,

By Washtenaw County Parks
and Recreation Commission,

By: _____
Coy Vaughn, Director

Dated: _____
—

CITY OF ANN ARBOR,
a Michigan municipal corporation

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Dated: _____
—

Approved as to form:

Michelle Billard, Corporation Counsel

Attested to:

Lawrence Kestenbaum, Washtenaw
County
Clerk/Register

Approved as to substance:

Milton Dohoney Jr., City Administrator

Derek Delacourt, Community Services
Area Administrator

Approved as to form:

Atleen Kaur, City Attorney

EXHIBIT A

Attached as Exhibit A is the proposal for construction prepared and submitted by Erie Construction, LLC detailing the scope of the construction work for the Trail Construction Phase of the Bandemer-Barton Trail and Underpass Project:

EXHIBIT B

Attached as Exhibit B is the cost summary and the funding responsibilities of City and County for each cost sharing category for the Trail Construction Phase of the Bandemer-Barton Trail and Underpass Project: