

AGREEMENT BETWEEN
THE CITY OF ANN ARBOR AND WASHTENAW COUNTY, BY THE WASHTENAW
COUNTY PARKS AND RECREATION COMMISSION REGARDING RESPONSIBILITIES
AND COST ALLOCATION FOR DESIGN AND ENGINEERING SERVICES FOR THE
BANDEMER-BARTON TRAIL CONNECTION PROJECT

This Agreement (“Agreement”) is made and entered into this _____ day of _____, 2021, 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 (“City”), and the Washtenaw County, a Michigan municipal corporation with its principal offices at 220 N. Main Street, Ann Arbor, Michigan 48104 (“County”), by the Washtenaw County Parks and Recreation Commission, existing pursuant to Public Act 261 of 1965 (“WCPARC”), for the purpose of fixing the rights and obligations of the parties relative to the Design and Engineering Services for the Bandemer-Barton Trail Connection Project (the “the Design Phase”). Relevant details and scope of work for the Design Phase are set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

- A. Whereas, County, Huron Waterloo Pathway Initiative, and 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 & 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, the LOI also contemplated County and City would enter into further agreements as necessary to advance the project;
- C. Whereas, County and City expressed interest in working cooperatively to complete the Design Phase of the Bandemer-Barton Trail Connection Project and share the costs thereof;
- D. Whereas, County has solicited, received and evaluated proposals for the Design Phase, and having shared and discussed the proposals with the City, the parties agree County should award a contract to Bergmann, hereinafter referred to as “Consultant,” to perform the services and work needed to complete the Design Phase;
- E. Whereas, County will enter into a contract with Consultant and administer the completion of the Design Phase work in accordance with this Agreement and its exhibits and attachments;
- F. Whereas, County and City will each be responsible for funding and paying for a portion of the Design Phase as established in Exhibit B (County 55% / City 45%); and
- G. Whereas, County and City have reached an understanding regarding the performance of and payment for the Design Phase 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. County and City shall undertake and complete the Design Phase of the Bandemer-Barton Trail Connection Project in accordance with the terms of this Agreement. Exhibit A to this Agreement refers to and incorporates by reference the proposal titled "Design Services for Bandemer-Barton Trail Connection Project" prepared and submitted by Bergmann, OHM Advisors, and proposal from Soil & Material Engineers dated June 2, 2021 which details the complete scope of the services and work for the Design Phase. Exhibit B to this Agreement lists the estimate for each cost sharing category and the allocation of costs between County and City for each category. As set forth in Exhibit B, the total dollar estimate of City's share of the Design Phase cost is \$199,702.08 and County's estimated share is \$244,081.20 provided these amounts may change as provided elsewhere in this Agreement.
2. County will enter into a contract with Consultant for the Design Phase. County will administer the contract and related services and work necessary for the completion of the Design Phase. In its contract with Consultant, County must require that Consultant indemnify County and City for any claims or lawsuits by third parties arising from Consultant's services and work, and must require the Consultant to cover County and City as additional insureds on its general liability insurance policy. The contract between County and Consultant must also recognize City as a third party beneficiary of the contract.
3. City is responsible for funding its identified share of each cost sharing category of the Project as set forth in Exhibit B.
4. For payment of the Design Phase costs, County will contract directly with the Consultant and pay to Consultant the complete cost of the work, including City's portion of these costs. City will reimburse County for City's share of amounts paid by County. Exhibit B provides the estimated cost breakdown and the allocation of costs due County from City for its share of the costs.
5. As County pays Consultant for services and work completed and incurs costs on the Design Phase, County will invoice City no more frequently than on a monthly basis. City shall reimburse County for City's portion of incurred costs within 30 days of receipt of an invoice from County.
6. Notwithstanding City's funding of its share of the Design Phase, the parties agree that responsibility for management of the Design Phase, including all aspects of the contract with the Consultant, rests with County.
7. The parties understand and agree that the dollar amounts in Exhibit B are estimates of Design Phase costs and that the actual costs may differ. However, the percentages for each category of costs identified in Exhibit B are agreed to between the parties and cannot be changed except by Amendment to this Agreement. City's obligation to fund its share of the Design Phase includes the obligation to fund change orders, authorized in writing prior to the work being performed, for its share of the Design Phase. The parties agree that any change order that affects shares of the Design Phase of both parties will be paid in proportion to those percentages agreed

to by County and City and identified in Exhibit B, including both increases and decreases in Design Phase costs.

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

WASHTENAW COUNTY,
a Michigan municipal corporation,

CITY OF ANN ARBOR,
a Michigan municipal corporation

By Washtenaw County Parks
and Recreation Commission,

By: _____
Christopher Taylor, Mayor

By: _____
Coy Vaughn, Director

By: _____
Jacqueline Beaudry, City Clerk

Dated: _____

Dated: _____

Approved as to form:

Approved as to substance:

Curtis Hedger, Corporation Counsel

John Fournier, Acting City Administrator

Attested to:

Derek Delacourt, Community Services Area
Administrator

Lawrence Kestenbaum, Washtenaw County
Clerk/Register

Approved as to form:

Stephen K. Postema, City Attorney

EXHIBIT A

Attached as Exhibit A is the proposal prepared and submitted by Bergmann and its subconsultant team detailing the scope of the services and work for the initial design and engineering phase of the Bandemer-Barton Trail Connection Project (the “the Design Phase”):

EXHIBIT B

Attached as Exhibit B is the cost summary and the funding responsibilities of County and City for each cost sharing category of the initial design and engineering phase of the Bandemer-Barton Trail Connection Project (the “the Design Phase”):

EXHIBIT B				
DESIGN PHASE - TOTAL PROJECT COST BREAKDOWN				
BANDEMER-BARTON TRAIL CONNECTION PROJECT				
DATED 9-1-21				
			Funding	
PROJECT COMPONENT	ESTIMATED COST	County 55%	City 45%	
CS -JN Tunnel & Bandemer Trail	\$334,514.00	\$183,982.70	\$150,531.30	
Barton Trail	\$79,470.00	\$43,708.50	\$35,761.50	
Canoe Launch	\$19,981.00	\$10,989.55	\$8,991.45	
Parking Lot at HRD	\$9,819.00	\$5,400.45	\$4,418.55	
	\$443,784.00	\$244,081.20	\$199,702.80	