

MEMORANDUM OF UNDERSTANDING

between

CITY OF ANN ARBOR and COUNTY OF WASHTENAW

For the purpose of setting forth the understanding of the undersigned parties with regard to a project known as the Bandemer-Barton Trail and Underpass Project _____, 2022

This MOU is intended to describe in general terms the anticipated stages through which the Bandemer-Barton Trail and Underpass Project (Project) will proceed and the relative anticipated roles, efforts, obligations and responsibilities that the City of Ann Arbor (City) and the County of Washtenaw (County) expect to undertake in conjunction with those efforts and phases.

1. Purpose. The undersigned parties intend to work together to achieve the following goals: (1) extend the Border-to-Border (B2B) trail on City of Ann Arbor Park land through Barton Nature Area to the north end of Bandemer Park; (2) improve universal accessibility to nature areas identified in **Exhibit A**; and (3) create a safe, non-motorized connection between Bandemer Park and Huron River Drive and the surrounding natural areas, without the need to traverse North Main Street or illegally cross the MDOT-owned railroad. This collaboration is intended to benefit the citizens of Ann Arbor, Washtenaw County, and the surrounding region as part of the statewide Iron Belle Trail.
2. Scope of Effort. It is anticipated that the parties will jointly pursue the Project in stages. The parties acknowledge that the feasibility study has been completed and that the parties have entered into a Cost Allocation Agreement for the design and engineering phase. Depending upon the outcome of this phase and the engineer's estimate of the cost of construction, the parties will then decide whether to proceed with the construction phase. If the parties agree to proceed to construction, the parties would then jointly draft and then enter into a Cost Allocation Agreement outlining their respective responsibilities for the construction phase. If the parties proceed to construction, Washtenaw County through the Washtenaw County Parks and Recreation Commission (WCPARC) in conjunction with its nonprofit partner the Huron Waterloo Pathways Initiative (HWPI) and City will contribute to and pay a share of the costs of construction as set forth in a cost allocation agreement. Additionally, all parties will cooperate in seeking additional federal or state funding assistance as needed and agreed upon.
3. Parties' Roles and Responsibilities. In conjunction with these efforts, the parties' roles and responsibilities shall be as follows:
 - i. The City shall be responsible for and contribute the following:
 - a) Allow and facilitate the B2B trail on City parkland including Barton Nature Area and Bandemer Park in accordance with the resolution passed by the Ann Arbor Park Advisory Commission in December 2020, ~~and~~

- b) Collaborate with County in seeking federal or state funding opportunities for the Project as needed,
- c) Contribute funding to the Project's various stages as agreed to by the parties,
- d) Secure easement permits and right of ways as may be needed for purposes of carrying out the purpose of the Project.
- d)e) ~~If the parties agree to proceed to the construction phase, solicit bids and proposals for construction of the Project.~~
- e)f) ~~Execute necessary contract(s) for and administer the construction phase of the Project,~~
- f) ~~Follow City's procurement process for soliciting bids or proposals and awarding a construction contract, and execute necessary contracts for the construction phase, and~~
- h) Provide invoices to County for payments undertaken by City as the Project proceeds which invoices shall include detailed information regarding the services rendered and the costs incurred,
- i) Promptly reimburse County for payments made by County which are partly or entirely the obligation of City.
- j) Be responsible for owning, operating, maintaining, and repairing the trail and appurtenant structures in accordance with City standards and applicable permit requirements upon completion of the Project.

ii. The County shall be responsible for and contribute the following:

- a) Contract for and administer the design and engineering phase of the Project,
- b) Involve and inform City project manager with regard to progress and status of the Project as it proceeds,
- c) Assist City in securing the required easement permits and right of ways for the Project,
- d) Contribute funding to the Project's various stages as further agreed to by the parties,
- e) Provide invoices to City for reimbursement of payments undertaken by County as the Project proceeds which invoices shall include detailed information regarding the services rendered and the costs incurred,
- f) Collaborate and coordinate with HWPI regarding financial and other support and contributions to complete the Project.
- g) Promptly reimburse City for payments made by City which are partly or entirely the obligation of County.

4. Term and Termination. This MOU will take effect on the date it is signed by the last party to sign it and shall remain in effect for three (3) years or until the completion of the Project whichever is earlier. The parties may extend the term of this MOU by mutual written agreement. The MOU may be terminated at any time for any reason by either party by providing written notice of termination to the other at the address set forth below.

5. General Provisions. Notices, invoices, and other communications shall be deemed given when mailed by first-class mail postage prepaid, emailed, or personally delivered as follows:

For County: Washtenaw County Parks & Recreation Commission
Attn: Coy Vaughn, Director
2230 Platt Road
Ann Arbor, MI 48104
Email: vaughnc@washtenaw.org

For City: City of Ann Arbor
Attn: Derek Delacourt, Community Service Area Administrator
301 E. Huron St.
Ann Arbor, MI 48104
Email: ddelacourt@a2gov.org

6. Further Supporting Documents. It is anticipated that the undersigned parties will enter into further binding agreements with regard to each phase of the Project as it proceeds. Those agreements will delineate the parties' rights and obligations and address specific components such as source and amount of funding from each. Those agreements will be signed independently and will then be enforceable. This MOU is intended to confirm in a general manner the relationship of the parties and various stages of the Project that are involved while it seeks to establish a framework for cooperation and the allocation of effort. It is subject to specific Agreements between the undersigned parties regarding each stage.
7. Severability. If it is determined by a court of competent jurisdiction that any provision of this Agreement is contrary to law the remaining provisions of this Agreement shall continue in full force and effect.
8. Governing Law. This Agreement shall be interpreted and construed in all respects in accordance with the laws of the State of Michigan.
- ~~8.~~ Joint Participation. This Agreement has been jointly drafted by the parties and, therefore, shall be construed and interpreted accordingly.
10. Force Majeure. Failure or delay in performance of this Agreement by any party shall not be deemed to be a breach thereof when such failure or delay is occasioned by or due to any act of God, labor strike, lock-out, war, riot, epidemic, explosion, terrorism, breakage or accident to machinery or equipment, the binding order of any court or governmental authority or any other cause, whether of the kind enumerated here or otherwise, not within the control of the party claimed to be responsible for such failure or delay or other similar alleged breach of this Agreement.
11. Authorization. Without the prior written consent of the governing body of either party, neither this Agreement, any interest created by this Agreement, nor any claim arising under this Agreement shall be transferred or assigned by either party.

12. Third-Party Beneficiary. This Agreement does not create nor vest any rights or privileges in any third party not a party to this Agreement. Notwithstanding any other provision of this Agreement, this Agreement and actions taken by the parties under this Agreement shall not be construed by any third party or any court of law as vesting any rights or privileges in any third party under any circumstances.
13. Relationship. Nothing in this Agreement shall be construed by any party, contractor, agent, or assign to create a joint venture or partnership between the parties.
14. Amendment. This Agreement may be modified or amended only by written agreement, duly authorized and executed, of the parties hereto.

[signatures on next page]

DRAFT

WASHTENAW COUNTY,
a Michigan municipal corporation,

By Washtenaw County Parks
and Recreation Commission,

By: _____
Coy Vaughn, Director

Dated: _____

Approved as to form:

Michelle Billard, Corporation Counsel

Attested to:

Lawrence Kestenbaum, Washtenaw County
Clerk/Register

CITY OF ANN ARBOR,
a Michigan municipal corporation

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Dated: _____

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

