

STATE ROAD NON-MOTORIZED PATHWAY AGREEMENT

This Agreement ("**Agreement**"), is entered into as of the ____ day of _____, 2021, and memorializes and confirms certain verbal commitments and understandings previously made by the Board of County Road Commissioners of the County of Washtenaw, a public body corporate ("**WCRC**") and Pittsfield Charter Township, a Michigan municipal corporation (the "**Township**").

STATEMENT OF FACTS

A. WCRC and the Township (the "**Parties**") desire to cooperate in the funding, design, construction and development of the State Road Non-Motorized Pathway ("**Pathway**") to be approximately 1.0 mile in length running generally adjacent to State Road from Avis Drive/Morgan Road to Ellsworth Road in Pittsfield Township, Washtenaw County (the "**Project**").

B. State Road is a public roadway under the jurisdiction of WCRC.

C. WCRC in coordination with the Township has been awarded a Southeast Michigan Council of Governments FY2023 Transportation Alternatives Program ("**TAP**") grant in the amount of \$1,017,625 for construction of the Project.

D. The Project will be located within portions of the State Road right-of-way and parcels of land owned by private property owners and the City of Ann Arbor. Easements and/or permits are required for the construction and use of the Project.

E. After the Project is completed, the Township shall be responsible for operating, maintaining, and repairing the Pathway.

NOW, THEREFORE, in consideration of their mutual promises as set forth herein the parties agree as follows:

ARTICLE 1 PROJECT COSTS AND ADMINISTRATION

1.1 Funding. The Township shall be responsible for all Project costs in excess of the TAP grant funds.

1.2 Project Design. The Township has entered into a contract with Stantec for preliminary engineering services consisting of the Project design, all Michigan Department of Transportation ("**MDOT**") bid documents including plans, specifications and engineer's estimate, right-of-way acquisition drawings & legal descriptions, securing the required Project permits, and performing the project administration of the Project up to the construction phase in accordance with WCRC and MDOT guidelines and standard practices and procedures. The Township may terminate the Project design at any time and provide written notice to WCRC. If the Township so terminates the Project design, the Township shall reimburse WCRC for any and all costs and expenses incurred by WCRC up to the date of termination. In such case, WCRC shall have no further responsibilities to the Township under this Agreement.

1.3 Right-of-Way Acquisition. WCRC will acquire all right-of-way easements or grading permits at fair market value required to construct the Project. All costs and expenses to obtain such right-of-way easements or grading permits shall be paid by the Township.

1.4 Construction Contract.

1.4.1 The Project shall be bid through MDOT. As part of the preliminary engineering, an engineer's estimate of the construction costs of the Project (the "**Engineer's Estimate**") will be prepared. Based on the Engineer's Estimate and prior to the MDOT bid-letting process of the Project, the Township will advise WCRC in writing whether it will move forward with the Project and thereby commit to funding a construction budget for the Project equal to the Engineer's Estimate plus an additional ten percent (10%) contingency (the "Project Budget"). The lowest qualified bid obtained during the MDOT bid letting will be awarded so long as the bid price is within ten percent (10%) of the Engineer's Estimate. Should the lowest qualified bid exceed the Engineer's Estimate by more than ten percent (10%) the Township shall have the option to fund the increased cost or reject all bids. If all bids are rejected, the Project will be cancelled and the Township will be responsible for payment of all Project costs to date including the cost of any WCRC efforts necessary to close out the Project due to cancellation.

1.4.2 WCRC may enter into a Contract with an MDOT pre-qualified engineering consultant to serve as the Project Engineer and perform all construction engineering services the Project. These services for the Project may include without limitation inspection, office technician, construction surveying, materials testing and inspection, generating contractor pay estimates, and providing other construction contract documentation to MDOT in accordance with WCRC and MDOT guidelines and standard practices and procedures.

1.4.3 During the construction of the Project, the Project Engineer shall consult with the Township and WCRC regarding any items which may result in an increase to the estimated construction cost. The Township will be responsible for any and all actual and necessary Project costs to complete the scope of the Project which the Township approved during the design phase. The Township shall also pay any additional construction costs incurred due to unforeseen field conditions or payment of field measured unit priced contract items.

**ARTICLE 2
RESPONSIBILITIES OF THE PARTIES**

2.1 WCRC Responsibilities.

2.1.1 WCRC will serve as the MDOT Local Agency for purposes of TAP grant and MDOT requirements for the Project.

2.1.2 In cooperation with the Township, WCRC will oversee the Project in accordance with MDOT standards and requirements. WCRC will enter into any necessary contract(s) with MDOT relating to the Project, coordinate the preparation of construction

documents with the Township and MDOT, secure the required easements or right-of-way for the Project, authorize MDOT to advertise and let bids, execute the necessary construction contract(s) for the Project, and administer the Project during construction in accordance with WCRC and MDOT guidelines and standard practices and procedures.

2.1.3 WCRC will periodically issue invoices to the Township for payment of Project costs as they are incurred. Project costs may include without limitation any costs of design, easements/right-of-way or grading permits, construction, construction engineering, and/or project administration expenses, whether incurred or performed by WCRC personnel or independent contractors. WCRC shall provide documentation of all costs incurred for the Project.

2.2 Township Responsibilities.

2.2.1 The Township shall be responsible for administering its contract with Stantec for preliminary engineering services for the Project.

2.2.2 The Township shall promptly make payment upon receipt of invoices issued by WCRC as described herein.

2.2.3 The Township shall be responsible for all post-construction operating, maintaining, and repairing the Project in accordance with MDOT and the TAP grant requirements.

ARTICLE 3 GENERAL PROVISIONS

3.1 Notices. All notices and invoices under this contract are deemed given when mailed by first class mail, postage pre-paid, e-mailed, or personally delivered as follows:

For Pittsfield Charter Township

Pittsfield Charter Township
Attn: Mandy Grewal, Supervisor
6201 W. Michigan Ave.
Ann Arbor, Michigan 48108
E-mail: GrewalM@pittsfield-mi.gov

For the Board of County Road Commissioners of the County of Washtenaw

Washtenaw County Road Commission
Attn: Sheryl Soderholm Siddall, Managing Director
555 N. Zeeb Road
Ann Arbor, MI 48103
E-mail: siddalls@wcroads.org

3.2. Binding Agreement. This Agreement constitutes the entire Agreement between the Parties and all previous communications between the Parties, whether written or oral, with

reference to the subject matter of this Agreement are hereby superseded. This Agreement is binding upon the Parties, their successors, members, employees, and assigns.

3.3 Governing Law. This Agreement shall be interpreted and construed in all respects in accordance with the laws of the State of Michigan. 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.

3.4 Construction of Agreement. This Agreement has been jointly drafted by the Parties and, therefore, shall be construed and interpreted accordingly.

3.5 Time of Performance. 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.

3.6 Modification. This Agreement may be modified or amended only by written agreement, duly authorized and executed, of the Parties hereto.

3.7 Third Parties. 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.

3.8 Relationship of the Parties. Nothing herein shall be construed to constitute a joint venture, partnership, or agency relationship of any kind between or among any of the Parties to this Agreement or their members, contractors, agents or assigns. This Agreement does not and shall not (1) confer upon WCRC, MDOT, and/or the Township any right, title or interest in the Project, nor (2) confer upon MDOT or the Township any jurisdiction, right, title or interest in or over any improvements to roadways under the jurisdiction of WCRC.

3.9 Execution in Counterparts. This Agreement shall be effective and binding on the date on which the last of the Parties signs this Agreement. This Agreement may be executed in counterpart originals, one of which shall be retained by each Party and each of which may serve as the original of this Agreement.

IN WITNESS WHEREOF, the Parties have set their hands to this Agreement the day and year here written.

PITTSFIELD CHARTER TOWNSHIP

Dated: _____, 2021

By: Mandy Grewal
Its: Supervisor

Dated: _____, 2021

By: Michelle L. Anzaldi
Its: Clerk

**BOARD OF COUNTY ROAD COMMISSIONERS OF THE
COUNTY OF WASHTENAW**

Dated: _____, 2021

By: Sheryl Soderholm Siddall
Its: Managing Director

Dated: _____, 2021

By: Barbara R. Fuller
Its: Board Chair