

STATE OF NORTH CAROLINA
CITY OF ASHEVILLE

AGREEMENT

THIS AGREEMENT is entered into this 1st day November, 2019, by and between the City of Asheville (hereinafter called the "City") and Asheville on Bikes (or "AOB") for the Southslope/Coxe Avenue Tactical Urbanism Project.

WITNESSETH:

WHEREAS, the City is dedicated to improving active transportation on its streets; and

WHEREAS, the City has funding in place to begin an engineering and design process for Coxe Avenue that will aim to reconstruct Coxe Avenue in the near future that will seek to improve mobility and safety for all modes of transportation along the corridor;

WHEREAS, AOB is a 501(c)(3) organization whose mission it is to cultivate the culture of urban and commuter riding through advocacy and celebration; and

WHEREAS, AOB has received \$150,000 private grant funds and donations for the purpose of designing and installing a demonstration project on Coxe Avenue, from Hilliard Avenue to Southside Avenue, to showcase active transportation opportunities; and

WHEREAS, the City and AOB have negotiated this agreement for the public purposes of implementing a temporary "Tactical Urbanism" project on Coxe Avenue between Hilliard and Southside Avenue in order to demonstrate multimodal enhancements that could be implemented on the corridor as part of the future construction project, or along other corridors in the future; and

WHEREAS, the City and AOB agree to be mutually accountable to carry out this agreement; and

WHEREAS, the Asheville City Council approved this Tactical Urbanism Project via Resolution No. 18-255 at its regularly scheduled meeting on October 9, 2018 and authorized the City Manager to execute a Memorandum of Understanding Agreement with AOB; and

WHEREAS, the City and AOB desire to set forth the terms and conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, the parties agree as follows:

1. Description: This agreement establishes a cooperative arrangement between the City and AOB, which is acting on behalf of the Street Tweaks Partnership (or "STP"), which also includes the Blue Ridge Bicycle Club (or "BRBC") and the American Association of Retired Persons (or "AARP"), for the purpose of developing, installing, and maintaining a temporary "tactical

urbanism" project entirely within the City's public right of way on Coxe Avenue between Hilliard Avenue and Southside Avenue as depicted in **Exhibit A**, to include but not limited to:

- Painted pavement enhancements meant to simulate expanded and enhanced bicycle and pedestrian spaces on-street;
- The addition of pavement markings such as crosswalks to facilitate safer pedestrian crossings;
- Painted markings to simulate the narrowing of oversized driveways to rationalize access points and enhance safety for all users (such markings shall occur entirely within the City's public right of way and shall not effect a private property owner's ability to utilize his or her driveway to its full, curb-cut width) ;
- Planters to improve corridor aesthetics and visual separation of vehicle and bicycle/pedestrian spaces;
- Vertical bollards or delineators to provide geometric guidance consistent with professional traffic engineering standards; and
- Wayfinding and/or interpretive signage along the corridor to describe the purpose and objectives of the project.

It is intended that the Tactical Urbanism project remain in place through the engineering and design of Coxe Avenue and until the ultimate reconstruction of the street begins. The City has funding in place for the engineering and design phase of Coxe Avenue reconstruction and expects to complete this in Spring/Summer 2019. Capital funding has not yet been secured, therefore the total duration of the Tactical Urbanism project is unknown. However, the Tactical Urbanism project will be maintained in good condition and will be monitored and evaluated throughout its duration. City staff intends for the Tactical Urbanism project to inform the engineering and design of Coxe Avenue reconstruction, as well as assist the City in evaluating and determining best-practices in maintaining similar future facilities.

2. Responsibilities: The City and AOB hereby agree to the following:

The City will:

- a. Representation - The Transportation Director or designee is the point of contact for the City as it relates to this agreement.
- b. Data Collection - The City will, as able, use existing equipment to measure vehicle counts and speeds on Coxe Avenue to provide before and after data for the project.
- c. Maintenance - Maintenance of the Tactical Urbanism project will primarily be conducted by the City. The City will continue to provide routine public services within the project area, including trash and recycling pick up, snow plowing, street sweeping, etc. to the extent that those services are able to be provided due to public space amenities (i.e. planters) that will limit services on some portions of the project area.

AOB will:

- a. Representation - The Executive Director of Asheville on Bikes will serve as the primary point of contact for the City and represents the STP.
- b. Installation - AOB will be responsible for the initial installation of the project, including the following:

- i. AOB will provide funding for the project installation.
 - ii. AOB will provide all necessary volunteers and/or staff to prepare for and install the project. Volunteers shall sign the City of Asheville Volunteer Waiver and Release form.
 - iii. AOB will apply for an Event Permit from the City prior to installation, which is anticipated to take place between November 1st and 4th of 2018.
- c. Maintenance - AOB will provide additional maintenance services for the duration of the project to supplement the City's routine maintenance, including the following:
 - i. AOB will regularly maintain and care for streetscape elements, including (but not limited to) planters and their contents, interpretive signage (if any), etc. to ensure that they are kept attractive and in good condition.
 - ii. AOB will conduct quarterly inspections of the project area and will remove litter and debris as necessary from storm drains, gutters, and the on-street painted bicycle/pedestrian spaces. AOB will also observe and report other maintenance needs to the City during quarterly inspections and will report on the condition of pavement markings and other painted pavement surfaces.
 - iii. AOB will respond to requests from the City for additional maintenance as warranted between quarterly inspections.
- b. Data Collection - AOB will provide volunteers to conduct bicycle, pedestrian and vehicle turning movement counts on at least one occasion prior to the installation of the project and at least one occasion during the project. Volunteers shall sign the City of Asheville Volunteer Waiver and Release form.

Both parties will:

- a. Modification of project components - In the event that, during the course of the project, either party wishes to modify or alter project components that fail to meet City goals based on their observed function, notification and concurrence from the other party will be obtained and the party responsible for enacting the modification will be determined. Approval of any such modification shall be in writing and signed by both parties.
- b. Reapplication of pavement markings and painted pavement surfaces - On an annual basis (at a minimum) the City and AOB will evaluate the condition of painted pavement markings and surfaces and will determine when and if larger-scale reapplication is necessary. Minor instances of needed paint re-application will be provided by the City as necessary.
- c. Monitoring and Evaluation - Both parties will monitor and evaluate the function and performance of the project throughout its duration, as well as outcomes (quantitative and qualitative) of the project, including, but not limited to:
 - i. Changes in vehicle, bicycle, and pedestrian volumes along the corridor, including turning movement counts at intersections (before and after);
 - ii. Changes in vehicle speeds (before and after)
 - iii. Business and/or property owner surveys/feedback;
 - iv. General public surveys
 - v. Crash data comparison (before and after)

d. Communications - Both parties will participate in developing and providing communication about the purpose and intent of the project via various means of outreach, including social media. Questions and/or concerns from area business and property owners and the general public will be directed to Asheville Transportation Department staff, who may request assistance from AOB as necessary.

3. Payment: No payments will be made between the City and AOB.

4. Total Estimated Value: Considering the term of the agreement, an estimate of the sum of the monetary value of all known costs of the project arising out of the agreement is approximately \$190,000, which includes in-kind donations of staff time from the City (estimated at \$20,000); and includes in-kind donations of materials, volunteers, maintenance, and public outreach from AOB and its partners, AARP and BRBC.

5. Term/Renewal/Extension/Termination: The term of this Agreement shall begin on the day and year first above written, and shall conclude on November 1, 2020. The agreement may be extended for up to three one-year periods or for an alternative agreed upon length of time depending on the schedule for Coxe Avenue reconstruction. The agreement may be terminated by either party for cause and /or violation of the Agreement upon sixty (60) days written notice.

This Agreement may also be terminated by the City without cause upon one hundred and twenty (120) days written notice, if, in its sole discretion, it determines that the project is no longer in the best interest of the City.

6. Improvements and Removal: All personal property and improvements installed, constructed or placed within the public right of way by AOB as part of this Project, shall be considered the property of AOB during the term of this Agreement and following its termination. Any property provided by the City would remain City property during and following the Agreement. Upon termination, AOB shall have the right to remove any of its property or improvements within the public right of way at its cost; if AOB does not remove such property or improvements within 30 days after termination of the Agreement, the City shall have the right to remove such improvements and may, at its sole discretion, charge AOB for the cost of such removal.

7. Remedy to Return Agreement to Compliance: In the event that a remedy is necessary for either party to ensure that the outcome measures described in Section 2 are realized, the City and AOB agree to meet and agree to an Action Plan that describes the necessary actions to be taken by each party in order to bring the agreement into compliance.

8. Insurance: AOB shall maintain the following insurance for the duration of this Agreement including but not limited to \$1,000,000 commercial general liability, and workers' compensation, if AOB retains three or more Full Time Equivalent (FTE) staff. AOB shall furnish the City with certificates of insurance for each type of insurance described herein, with the City listed as Certificate Holder and as an additional insured under AOB's general liability policy. In the event of bodily injury or property damage loss caused by AOB or their volunteers' acts or omissions related to AOB's services performed under this agreement, AOB's liability insurance shall be primary with respect to any other insurance which may be available to the City, regardless of how the "Other Insurance" provisions may read. In the event of cancellation, substantial changes or nonrenewal, AOB and their insurance carrier shall give the City at least thirty (30)

days prior written notice. No work shall be performed by AOB until they have furnished to the City the above referenced certificates of insurance, in a form suitable to the City.

9. Hold Harmless and Indemnification: AOB shall indemnify, defend, and hold harmless the City and all of its officers, agents, employees from and against any and all liability for personal injury and property damage arising out of or resulting from the negligent acts or omissions of AOB, its employees, its volunteers, and/or its agents, in the performance of this Agreement.

10. Independent Contractor: Employees and volunteers of AOB shall not be deemed to be employees, agents or representatives of the City and therefore are not entitled to any benefits of any kind, including, but not limited to, unemployment, workers' compensation or retirement from the City.

11. Permits: AOB shall be responsible for obtaining all necessary permits, paying required permit fees, and ensuring compliance with all applicable Federal, State, and local government regulations.

12. Damages: The City shall not be responsible for any damage, theft, and/or vandalism of AOB materials, equipment and supplies.

13. Amendments: This Agreement along with the attached Exhibit "A," constitutes the entire Agreement between the City and AOB. This agreement may be amended, supplemented or modified only by duly executed written instruments as an amendment to this agreement.

14. Compliance with Laws: AOB shall comply with all state, federal, or local laws, or ordinances, codes, rules or regulations governing performance of this Agreement.

15. Assignability: This agreement is not assignable by either party without the prior written consent of the other party.

16. Waiver: AOB agrees to inform their volunteers that volunteers are solely responsible for their health and safety, and made aware of the risks and dangers inherent in participating in this volunteer service. All volunteers shall sign the attached City of Asheville Volunteer Waiver and Release (**Exhibit "B"**) to cover their participation.

17. Budgetary Limitations: Nothing stated in this Agreement shall be construed as requiring the City to make any budgetary appropriations.

18. Non-Discrimination: In accordance with State and Federal laws, AOB shall not discriminate against any person on the basis of sex, national origin, race, ethnic background, color, religion, age or disability in its program activities related to this Agreement.

19. E-Verify Employer Compliance: Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired

employees pursuant to federal law. E-verify can be accessed via this link:
<http://www.uscis.gov/e-verify/employers>

20. Governing Law: This Agreement is entered into in North Carolina and shall be construed under the statutes and laws of North Carolina.

21. Severability: Should any provision or provisions contained in this agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.

22. Notices: In the event either party hereunder desires or is required to provide any notice to the other party, the party desiring or requiring to provide such notice shall provide it in writing, by hand delivery or regular United States mail, postage prepaid, to the other party at the address listed below:

The City: City of Asheville
Transportation Department
Jessica Morriss, Assistant Director
P.O. Box 7148
Asheville, NC 28802
Phone: 828-232-4528 email: jmorriss@ashevillenc.gov

Asheville on Bikes: Asheville on Bikes
Mike Sule, Executive Director
Address:
Phone: 828-582-4705 email: mike@ashevilleonbikes.com

CITY OF ASHEVILLE

Cathy Ball
Print Name

Cathy W. Ball
Signature

Interim City Manager
Title

11/1/18
Date

ASHEVILLE ON BIKES

Michael Sule
Print Name

M. Sule
Signature

Executive Director, AOB
Title

10/31/18
Date

Exhibit A



