

SOUTH END RAIL TRAIL/I-277 BRIDGE PROJECT
INTERLOCAL COOPERATION AGREEMENT

THIS SOUTH END RAIL TRAIL/I-277 BRIDGE PROJECT INTERLOCAL COOPERATION AGREEMENT (the “Agreement”), dated as of _____ 2020, is entered into by and between **MECKLENBURG COUNTY**, a political subdivision of the State of North Carolina (“County”), and the **CITY OF CHARLOTTE**, a municipal corporation (“City”, and along with County, each a “Party”, and together, the “Parties”).

WITNESSETH:

WHEREAS, under Article 20 of Chapter 160A of the North Carolina General Statutes, as amended, cities and counties are authorized to jointly enter into interlocal cooperation undertakings for the contractual exercise by one unit of local government, on behalf of the other unit of local government, of any power, function, public enterprise, right, privilege, or immunity of local government;

WHEREAS, in 2004, the City removed the pedestrian crossing component from the LYNX Blue Line Extension Project as a cost savings measure. The removal of the crossing left behind a critical link in the multi-use trail known as the Rail Trail, which runs between South End and Uptown;

WHEREAS, this funding proposal meets City goals that include promoting transportation choices through adopted plans including: Center City 2020 Vision Plan; Transportation Action Plan; Charlotte WALKS and BIKES plans; Center City Transportation Plans; Rail Trail Master Plan, Mecklenburg County Greenway Plan, and South End Vision Plan;

WHEREAS, the South End Rail Trail/I-277 Bridge project will be funded through a combination of City, Mecklenburg County, NCDOT, private, non-profit and grant monies;

WHEREAS, the total estimated cost of the South End Rail Trail/I-277 Bridge project is \$11 million with funding commitments of following amounts: City - \$3,103,953; NCDOT - \$3,288,105; Mecklenburg County - \$3,100,000; and, private, non-profit and grants - \$1,507,942;

WHEREAS, the rail trail is a key pedestrian and bicycle transportation corridor averaging nearly two thousand (2000) users daily with over five hundred thousand (500,000) pedestrians and cyclists over the last year; however, the trail currently abruptly ends near I-277 creating a critical missing link in the infrastructure and disconnect between the South End, Uptown and surrounding neighborhoods;

WHEREAS, on June 11, 2018, the Charlotte City Council adopted a budget ordinance appropriating \$11,000,000 from public funds and private contributions to the General Community Investment Fund for the South End Rail Trail/I-277 Bridge project;

WHEREAS, on June 19, 2018 with the adoption of their FY2019 Budget, Mecklenburg County allocated 3.1 million dollars to capital reserves to contribute to the pedestrian bridge project as part of its contribution;

WHEREAS, the South End Rail Trail/I-277 Bridge project is 650 feet long and will provide a nearly 300 foot long bridge which will provide a bicycle and pedestrian connection as part of the South End Rail Trail that, when complete, will provide a continuous route from Clanton Road to Uptown; and

WHEREAS, on May 13, 2019, City Council approved a contract with Thomas & Hutton Engineering Inc. for planning and design services associated with the construction of the South End Rail Trail/I-277 Bridge project.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, the mutual covenants and conditions hereinafter set forth, the Parties agree for themselves, their successors and assigns, as follows:

1. Purpose. The purpose of this Agreement is to define the Parties' rights, liabilities, and obligations with respect to the South End Rail Trail/I-277 Bridge project and the County Contribution.
2. County Obligations. County shall contribute \$3,100,000 to the project and be represented on the project team. City will provide County with an Invoice at the start of construction for the above stated amount. County will remit the County Contribution within thirty (30) days after County's receipt of the Invoice. This contribution shall be used for the planning, design, right of way acquisition and construction of the project. The County shall have no additional obligation if project costs exceed the \$11 million estimate cost. If the project is completed under the estimated \$11 million dollars, the City shall return the corresponding prorated share of the County contribution. This prorated share would be equal to the percentage of the County contribution to the overall project cost, in proportion to the funds obligated.
3. City Obligations. City shall manage the design and construction of the South End Rail Trail/I-277 Bridge project. The City will be responsible for maintenance and inspection of the South End Rail Trail/I-277 Bridge project upon completion of the project.
4. Schedule and Term. The Parties agree to use their best efforts to coordinate and communicate any issues that arise from this Agreement in a timely manner, so as not to impact the project design and construction project schedule. The City shall complete construction within five (5) years of the execution of this Agreement. Notwithstanding the foregoing, the Parties may agree in writing to extend the date of completion if circumstances beyond the City's control impact this date.
5. Meetings. The Parties agree to (i) take such other and further steps as reasonable to accomplish the purposes of this Agreement, and (ii) conduct meetings semi-annually (or more frequently as necessary) to review the other's performance and/or improve delivery of services hereunder.
6. Force Majeure. Neither Party shall be deemed in default with respect to any of the terms, covenants and conditions of this Agreement if such party fails to perform and its failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal, and except for such events which are caused by that Party's own employees), civil disorder, inability to procure material, failure of power, restrictive governmental laws and regulations, riots, insurrections, war or civil strife, fuel shortages, accidents, casualties, Acts of God, acts caused directly or indirectly by the other Party (or the other Party's

agents, employees or invitees), or any other cause beyond the commercially reasonable control of the non-performing Party.

7. Amendment/Termination. This Agreement may be amended or terminated only by written agreement authorized by the governing bodies of each Party and signed by authorized representatives of each Party. This Agreement may also be terminated by court order upon the finding that there has been substantial breach of this Agreement by the non-complaining party so as to entitle the complaining party to be relieved of its obligations hereunder.

8. Notices. All notices required or permitted to be given hereunder shall be deemed given if e-mailed or hand-delivered, or mailed in a sealed wrapper and deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, properly addressed as follows:

If to County: Mecklenburg County
Charlotte-Mecklenburg Government Center
600 East Fourth Street
Charlotte, North Carolina 28202
Attention: Michael A. Bryant, Assistant County Manager
Phone: 980-314-2925
Email: Michael.Bryant@mecklenburgcountync.gov

If to City: City of Charlotte
Charlotte-Mecklenburg Government Center
600 East Fourth Street
Charlotte, North Carolina 28202
Attention: Tracy Dodson, Assistant City Manager
Phone: 704-336-1300
Email: Tracy.Dodson@charlottenc.gov

Either Party may change its notice address by giving written notice of the change to the other Party in the manner specified above no less than ten (10) days prior to the effective date of such change.

10. Dispute Resolution. The Parties agree that any disputes which cannot be resolved by City and County managers (or their designees) will first be attempted to be resolved by mediation, and if not resolved by mediation, then by binding arbitration. If the Parties cannot agree upon an arbitrator and a process for arbitration, disputes between the Parties arising out of or in connection with this Agreement (or the performance or breach thereof) shall be resolved by binding arbitration in accordance with the then-applicable Commercial Arbitration Rules of the American Arbitration Association, or other arbitration rules agreed to by the Parties (the "Rules"). The Rules will apply except as specified in this Section. All arbitration proceedings will be held in Charlotte, North Carolina, before a single arbitrator. The Parties agree to submit to the enforcement of any award resulting therefrom by any court of competent jurisdiction. Judgment upon the award rendered in any such arbitration proceeding may be entered into any court having competent jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

11. Applicable Law. This Agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.

12. Enforcement of Agreement. The Parties agree that the remedy of specific performance would be an appropriate remedy, among others, for the enforcement of this Agreement.

13. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the I-277 Rail Trail Bridge Project and the County Contribution. There are no other agreements, either oral or written, between the Parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written by authority duly granted by their respective governing bodies.

COUNTY:

MECKLENBURG COUNTY,
a political subdivision of the State of North Carolina

By: _____
Name: Dena R. Diorio
Title: County Manager

Approved as to Form:

County Attorney

CITY:

CITY OF CHARLOTTE,
a municipal corporation

By: _____
Name: Marcus D. Jones
Title: City Manager