

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF BISBEE AND ECOTOPIA D/B/A BISBEE BIKEWAYS
FOR THE COORDINATION OF THE IMPLEMENTATION OF THE BISBEE AREA
MOBILITY MASTER PLAN AND LAVENDER PIT FEASIBILITY STUDY**

This MEMORANDUM OF UNDERSTANDING (“MOU”), is entered into this 3rd day of November, 2021, by and between the CITY OF BISBEE, an Arizona municipal corporation (the “City”) and ECOTOPIA, an Arizona non-profit corporation d/b/a Bisbee Bikeways (“BB”). The City and BB may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the City of Bisbee is a rural Arizona former mining town that has blossomed into a well-known artist and tourist community that attracts more than 300,000 tourists each year; and,

WHEREAS, the City is comprised of various neighborhoods and districts that are separated by distinct geological formations and mining land ownership, linked by state and county roadways; and,

WHEREAS, the City desires to promote and encourage the use and expansion of non-motorized mobility for area residents and visitors, including working with BB towards advancing the Bisbee Area Mobility Master Plan (the “BAMMP”) and Lavender Pit Feasibility Study (the “LPS”) (collectively the “Plans”); and,

WHEREAS, Ecotopia was established as a non-profit corporation to enhance the public health and sustainability of Cochise County; and,

WHEREAS, BB is an advocate for the creation of a safe network of shared-use pathways throughout the Bisbee area; and,

WHEREAS, the City and BB desire to work together toward a common goal to design, build and operate high quality bike and shared-use paths, non-motorized trails and pathways throughout the Bisbee area; and,

WHEREAS, pursuant to the terms of this MOU, the City and BB desire to set forth the terms and conditions for the mutual cooperation and obligations towards the advancement of their shared goals.

NOW, THEREFORE, for and in consideration of these premises and the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

AGREEMENT

1. *Purpose.* The purpose of this MOU is to outline and establish a framework for a high degree of cooperation between the City and BB towards the advancement of the establishment of a cohesive public bikeway and recreational trail system in the Bisbee area. This MOU is intended to act as a guide for future cooperation between the City and BB towards the planning and implementations of the pathways and trails as outlined in the BAMMP and LPS, as such Plans are currently composed; provided, however, that BB and the City may determine that it is necessary to alter to the Plans for optimum user mobility and comfort following public comment and ultimate approval by the City Council.

2. *Responsibilities.*
 - a. By The City.
 - 1) The City will appoint a City official to act as the main point of contact to coordinate the activities between the City and BB, including the goal of conducting a monthly meeting to coordinate activities and projects related to the Plans, which meeting shall include a BB board member or staff member. When necessary for overall implementation oversight, the City Manager, Mayor or other City Staff and the BB Project Manager may be included in these meetings.

 - 2) The City will work collaboratively with BB to identify programming opportunities and pursue grants, sponsorships and other funding for the physical development of the trails and pathways identified in the Plans.

 - 3) If possible, and in its sole discretion, the City will designate City employees or volunteers to assist BB as may be necessary from time to time to further the purpose of this MOU. BB shall have no control or supervision responsibilities or rights over any City employees, board members, volunteers or elected officials.

 - 4) If possible, and in its sole discretion, through grants and other funding sources, the City will endeavor to pay for the construction and maintenance of the anticipated trails and pathways identified in the Plans. However, nothing in this MOU shall be construed as a requirement for the City to expend any funds towards the development and construction of the infrastructure identified in the Plans and any funding provided by the City shall be subject to City Council appropriations.

 - 5) In accordance with State statute and City Code, the City will coordinate and manage all procurements sought or purchased through the use of City funds or any grants obtained through the City, including the final selection and management of any associated contracts. The City may coordinate and consult with BB on the implementation of such procurements and contracts, but the ultimate and final decision will be in the City's sole discretion. BB may be included as a participant in studies, implementation and planning of the pathways.

6) The City shall have fiscal management and control of any grants, donations etc. accepted by the City on behalf of the planning and construction of the pathways.

b. By BB.

1) BB will work with the City to identify, support, plan, fund, and implement select improvements within the City to ensure the development and maintenance of high-quality shared use, non-motorized trails and pathways.

2) BB will organize board members, staff members and/or volunteers to collect monetary donations and submit grant applications for the engineering, construction and maintenance of the trails and pathways identified in the Plans and will work in conjunction with the City to jointly pursue such projects, contingent upon availability of funds and personnel and the approval of City Council.

3) BB will prepare, maintain, and submit to the City any reports and/or records only relating to the services performed by BB under this MOU, when and as requested by the City, upon reasonable notice. Failure to prepare, maintain, and/or submit to the City said records or reports, or failure to prepare, maintain, or submit to the City any other reports or information specifically required by this MOU, may constitute a material breach of this MOU and grounds for immediate termination. All costs and charges incurred by BB pursuant to this MOU shall be supported by properly receipted checks, payrolls, timecards, invoices, contracts, vouchers, orders, or other accounting documents.

4) As time and funding permit, BB will implement and direct a public outreach program to inform the community of goals and objectives of the Parties and the implementation of the Plans. The City, at its sole discretion may assist as needed, including posting announcements and project information on the City website and through the library newsletter.

5) BB will assist the City in the writing and submission of grant applications or other funding requests for the implementation of the Plans. However, BB acknowledges that all grant applications and funding requests must be approved by the City Council and the City will have sole discretion on which grants to seek.

6) BB may seek grants, donations and other funding sources without the approval of the City so long as there are no financial or other obligations imposed upon the City by way of such grants, donations or funding sources.

7) BB will in good faith, use funds raised to purchase goods and services for the benefit of the Plans. BB agrees that it shall not charge the City for any goods purchased or services rendered pursuant to this MOU, unless otherwise mutually agreed upon in writing by the Parties.

3. Term. The term of this MOU shall commence upon approval of the City Council and last through September 30, 2026, unless terminated sooner in accordance with the terms of this MOU.

4. Reporting and Records. All books, accounts, reports, files, and other records relating to this MOU shall be kept by BB for five (5) years after termination of this MOU. The Parties recognize and acknowledge that records may be subject to Arizona Public Records laws.

5. Termination. Either Party may terminate this MOU with or without cause upon providing the other Party with at least 60 days' written notice of such termination, each party to bear its own costs.

6. Employment Status. Except as otherwise provided by law, in the performance of this MOU, all Parties will be acting in their individual governmental, corporate or agency capacities and not as agents, employees, partners, joint venturers, or associates of each other. The employees, agents, or subcontractors of one Party shall not be deemed or construed to be the employees or agents of the other Party.

7. Non Fund-Obligating or Legally Enforceable Document. This MOU is not intended to be a legally binding or enforceable document, and does not create any legal, financial, funding or other fiscal obligations of any kind on the Parties. The intent of this MOU is to express mutual understanding in the areas outlined herein, and nothing in this MOU will be construed as affecting the legal authority of the Parties or to require the Parties to obligate or expend funds or commit any acts of any kind that could be construed as legally enforceable.

8. Severability. The Parties agree that should any part of this MOU be held invalid or void, the remainder of the MOU shall remain in full force and effect.

9. Conflicting Provisions. Nothing in this MOU is intended to conflict with existing laws and/or regulations, with any contractual responsibilities and obligations imposed by third-party contracts or agreements, or with any agency directive of the City. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.

10. Governing Law. This MOU shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce, or construe any provision of this MOU shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Cochise (or, as may be appropriate, in the Justice Courts of Cochise County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

11. Non-Discrimination Laws. The Parties shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 99-4 and 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The

Agencies shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.

12. Dispute Resolution. If there is a dispute, the Parties agree to negotiate in good faith to resolve the matter.

13. A.R.S. § 38-511. The Parties acknowledge that this MOU is subject to cancellation pursuant to A.R.S. § 38-511.

14. Immigration Laws. The Parties warrant, and represent to each other, that they are in compliance with A.R.S. §§ 41-4401 and 23-214, the Federal Immigration and Nationality Act, and all other federal immigration laws and regulations.

15. Notices. All notices, demands or other communications relative to this MOU must be in writing and are deemed duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid as follows:

CITY: City of Bisbee
Attn: City Manager
76 Erie Street
Bisbee, Arizona 85603

BB: Bisbee Bikeways
Attn: Meggen Connolley
100 Black Knob View
Bisbee, Arizona 85603

With a copy to:
Gust Rosenfeld, P.L.C.
Attn: Joseph Estes, City Attorney
One E. Washington St., Suite 1600
Phoenix, Arizona 85004

If either Party changes address, they must give written notice to the other Party. Notice of change of address is deemed effective five (5) days after mailing by the Party changing address.

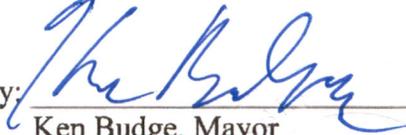
16. This MOU can be revised or modified only by written amendment signed by both Parties.

17. Headings and Counterparts. The headings of this MOU are for purposes of reference only and shall not limit or define the meaning of any provision of this MOU. This MOU may be executed in any number of counterparts, and when each Party has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete original contract between the Parties. An electronic transmission or other facsimile of this MOU shall be effective and binding upon the Parties as if such signatures were originals, and shall be admissible as evidence of the document.

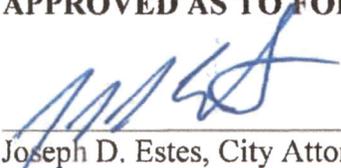
[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have entered into this Memorandum of Understanding on the date first written above.

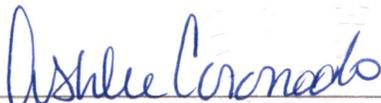
CITY OF BISBEE

By: 
Ken Budge, Mayor

APPROVED AS TO FORM:


Joseph D. Estes, City Attorney

ATTEST:


Ashlee Coronado, City Clerk

ECOTOPIA d/b/a BISBEE BIKEWAYS

By: 
Meggen Connolley, Director