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SPECIAL MEETING of the PAINT CREEK TRAILWAYS COMMISSION
Paint Creek Cider Mill
4480 Orion Road, Rochester, MI 48306

CALL TO ORDER: The Thursday, September 26, 2019 meeting was called to order by Chairperson Becker at 7:00 p.m.

Voting Members Present: Rock Blanchard, Frank Ferriolo, Linda Gamage, Kim Russell (*enter 7:08 p.m.*), Jeff Stout,

Voting Alternates Present: Robin Buxar, David Walker

Non-Voting Alternates Present: David Becker, Clara Pinkham

Village of Lake Orion Non-Voting Member Present: None

Voting Members Absent: Susan Bowyer, Donni Steele, Hank Van Agen

Alternates Absent: Chris Barnett, Ben Giovanelli, Chris Hagen, Martha Olijnyk

Village of Lake Orion Non-Voting Member Absent: Brad Mathisen

Village of Lake Orion Non-Voting Alternate Absent: Vacant

Others Present: Melissa Ford, Trail Manager, Brian Marzolf, Interim Trail Manager, Chris Gray, Assistant Trail Manager, Sandi DiSipio, Recording Secretary

PLEDGE OF ALLEGIANCE: All rose and recited the Pledge.

APPROVAL OF AGENDA: Chairperson Becker recommended two safety concerns, Trail Slope Restoration and the Gap in Fencing at Bridge 33.7, be added before the Manager's Report. **MOTION** by Gamage, seconded by Blanchard, ***Moved***, to approve the September 26, 2019 agenda as amended.

Ayes: All Nays: None

MOTION CARRIED.

PUBLIC COMMENT: Mr. Larry Lavanway, 1275 Sunniwood Place, Oakland Township, complimented everyone on the great job done on the bridge replacement. Some people in the audience were not present a few months ago when citizens who lived in Oakland Township and had access to the trail were asked to come to a meeting to express concerns. He asked for an explanation of the due diligence used to come up with a well constructed bridge, and the thought processes brought up at this meeting. Mr. Becker explained the Commission was advised by engineers that there was undercutting of the abutment on the bridge and it was becoming unsafe. It was decided to replace the bridge as soon as possible. We wanted to keep costs reasonable, and have a bridge that was functional and met all legal requirements including ADA compliance and emergency vehicle access. The Commission wanted something nice, safe and compliant. The engineers were boxed in by requirements of when construction could take place to make sure no environmental damage would occur to fish spawning. Mr. Blanchard added there were several

meetings and discussions with this board as well as Oakland Township Parks Commission, the project was originally put out to bid, came back very high and out of budget. It was re-bid removing some of the items from the project, and came back lower the second time, but still out of our budget. Through staff's efforts, we received a large grant to help pay for part of the project. We were seeking other funding opportunities other than taxpayer money, to get the best bridge work for the cost. Mr. Ferriolo commented all the minutes from the joint meetings are available on Oakland Township's website. Mr. Jim Komendera, 1260 Sunniwood Place, stood and indicated his lot backs up to the bridge. There are many people in the area who access the trail through his lot and he welcomes them, but before the bridge was rebuilt there was a stairway and now it's gone. It's now difficult for everyone to get up on the trail and he asked if there were plans for a stairway, as a lot of people used this access. Mr. Becker indicated there were no plans in the original bridge construction to replace the stairs in the same place. The Commission has been alerted of this concern. The Trail Manager contacted Trout Unlimited today because those stairs were access to a fishing access point on the creek, to see if they would be interested in helping or constructing a new access point to the creek. Stairs might not be practical as they may need to be ADA compliant. Mr. Komendera indicated this was brought up at a previous meeting by a parent who had a special needs child, and asked about handicap access to the creek. Mr. Becker stated the Commission is always supportive of ADA compliant construction. There is a call into Trout Unlimited; they have a meeting tonight, and he recommended this issue be placed on the October agenda for discussion. This is important as a lot of people use this one access point – this avoids having multiple access points, which is what the Commission prefers to preserve the natural beauty of the trail. If Trout Unlimited provides an access, they would probably appreciate any volunteers interested or any funding provided. Ms. Russell suggested that Homeowner's Association contact information for all involved neighborhoods be provided to staff. Mr. Komendera will contact Ms. Ford with contact information. Ms. Gamage asked that photos and a topo map from the survey of the stair area be provided to the members for the October meeting. Ms. Ford also indicated two emails have been received relative to this issue – copies were provided to the members tonight.

CONSENT AGENDA:

- a. Minutes – August 20, 2019, Regular Meeting, approve and file
- b. Treasurers Report – August 2019, receive and file

MOTION by Buxar, seconded by Stout, *Moved*, to approve the Consent Agenda as presented.

Ayes: All Nays: None

MOTION CARRIED.

APPROVAL OF INVOICES: Ms. Ford presented the list of invoices totaling \$491.94. In addition to the recorder's fee, this amount includes Oakland Mounted Patrol services for July. Estimated unrestricted fund balance is \$53,136.

MOTION by Blanchard, seconded by Gamage, *Moved*, that the invoices presented for payment are approved in the amount of \$491.94 and orders be drawn for payment.

Ayes: All Nays: None

MOTION CARRIED.

DISCUSSION/APPROVAL: Moutrie Garden Project: Mr. Blanchard indicated the information contained in the packet has been updated and revised invoices and estimates were passed out tonight. He put together a spreadsheet outlining the budget and funding for the project. He thanked Mr. Louis Carrio of the Friends Group for all his work and support on this project. There are two invoices - one from Wiegand's Nursery describing the whole project cost, and one from SiteScape which will be doing the bed preparation and building the pathway work and boulder walls. The SiteScape work will take place in the fall, and the planting will take place in the spring. The goal is to have the Commission approve these tonight to be able to go forward with the project. The spreadsheet shows the project expenses including the 10% contingency,

totaling \$18,072. A site sign to promote the upcoming project, a water storage tank, and a cedar trellis not included in the original estimate, has been added. All of the costs are covered with donations or money from the Friends Groups – outlined in the bottom of the spreadsheet. Funding will come from the Moutrie Family, Rochester Junior Woman’s Club, Audubon Bird donation, a grant application to the Community Foundation of Greater Rochester that has been submitted by Mr. Carrio (unknown at this time if the grant will be received), a donation from Wiegands, an anonymous donor pledge, and the Friends Group agreed to fund the additional costs out of one of their funds. If the grant is not received, the Friends Group has also agreed to fund up to another \$2,700 for the project. Mr. Marzolf asked WCI contractors, and they agreed to donate the crushed limestone for the pathway, which was about a \$1,500 cost. Benches for the project will be donated. The cedar trellis will be built and donated by Mr. Blanchard. A sign at the site is proposed that announces the project and location, and also asks for further donations. This request will also be put on the website. This is an opportunity to secure further donations, to lessen the Friends Group donation, especially if we don’t secure the grant from the Community Foundation. The sign will be about \$125.00 and he asked that the Commission fund this cost. He’s glad to see this go forward, and by making it smaller and doable, it will get done. He feels there are more opportunities for educational things with the garden by bringing in community groups. He was at Wiegands when they had a sale on birdhouses, and saw a bug house with bamboo reeds for bug access. This could be a great project for Girl or Boy Scouts to do. Birdhouses could also be put in the project. There is also a men’s group at the OPC wood shop that may be able to build birdhouses. Possibly something could be done as an intergenerational thing with kids working with the seniors. Mr. Blanchard and Mr. Carrio were thanked for their efforts in this project. Ms. Russell thanked them for their work, funding, and bringing so many groups together. She likes the intergenerational idea, and commented there needs to be a vehicle to accomplish this – what is the plan? Mr. Blanchard said he hasn’t thought the plan that far ahead, but some of the schools have nature clubs, or Boy/Girl Scouts could be a vehicle. Ms. Russell suggested a discussion about how this will work at a future meeting, because there has to be a format to put it together. Ms. Buxar agreed, but we need to set out a concept on how to get it done. Mr. Blanchard asked for a few more members to serve on the subcommittee. Mr. Carrio has had contact with Ms. Trent of the Rochester Pollinators, and they have done some of these things. They would be a good resource for advice. It was suggested Ms. Ford contact the OPC. Ms. Chris Lavanway, 1275 Sunniwood Pl., suggested Dinosaur Hill be contacted as they do a lot of activities. Ms. Buxar indicated Oakland Township’s Parks works with Dinosaur Hill to do programs, we just need a plan. Chairperson Becker indicated we need to sign the contracts, and approve the two proposals. The motion should include permission for the Chair to sign both proposals. Mr. Blanchard indicated a change was made to the plan. Instead of putting the dirt path through the garden, this path will be rerouted reducing the cost by \$500. Mr. Stout asked if both contracts will be signed, as the SiteScape quote of \$8,390 is included in Wiegands costs. If SiteScape is a subcontractor for Wiegands, why do we need to sign a contract with them? Mr. Blanchard explained SiteScape does all Wiegands’ work, and said we need to sign a separate contract with them. The cost on Wiegands invoice for \$12,095.17 is the total combined cost. Mr. Stout just wants to make sure the \$8,390 is not paid twice. Ms. Gamage understands how the dirt path has been rerouted, but she does not see access from the dirt path to the garden. This is a concern as the dirt path connects to the trail quite a distance from the garden, and people will access the garden somewhere. Should we see where people are accessing the garden and eventually put limestone down there or if we should be proactive and provide the limestone from the dirt path? Mr. Blanchard will discuss this with the landscape planner. Mr. Carrio added there is a path a few feet away from the garden entrance that people use now to get to the trail. **MOTION** by Ferriolo, seconded by Russell, **Moved**, that the Commission authorizes the Chairperson of the Trailways Commission to make two payments, one in the amount of

\$3,705.17 to Wiegands Nursery per an invoice dated 8/27/19, and one to SiteScape, Inc., in the amount of \$8,390.00 per an invoice date 8/22/19.

It was suggested a “not to exceed” amount be included. Ms. Ford asked who is going to manage the project and who will be paying the bills. Chairperson Becker said the Commission will handle the project and disburse the funds. Mr. Ferriolo said the motion can be changed to indicate payment of Wiegands invoice not to exceed \$3,900, and the SiteScape invoice, not to exceed \$8,600. Ms. Russell asked to make an amendment to add that the Chairperson can sign both of the contracts.

Mr. Ferriolo withdrew the original motion, the seconder agreed.

MOTION by Ferriolo, seconded by Russell, **Moved**, that the Commission authorizes the Chairperson of the Commission to approve the two contracts and authorizes the Chair to sign on behalf of the Trailways Commission, the Wiegands Nursery invoice dated 8/27/19 not to exceed \$3,800, and the SiteScape, Inc. invoice dated 8/22/19 not to exceed \$8,500.

Ayes: All Nays: None

MOTION CARRIED.

The Commission commended Mr. Carrio and Mr. Blanchard for all their hard work.

DISCUSSION/APPROVAL: Attorney Transition:

MOTION by Ferriolo, seconded by Buxar, **Moved**, to remove the motion that was tabled at the last meeting. The motion was to request that Lisa J. Hamameh represent our interests in our legal matters. We authorize Foster Swift to release and deliver to Lisa Hamameh and to Rosati Schultz Joppich & Ambuechler, PC all open file materials. We understand that Lisa Hamameh will assume responsibility for our legal representation upon receipt of this authorization and that her rate of pay will be \$125 per hour. Mr. Becker indicated this motion is just to consider the motion again, not the merits of the motion.

Ayes: All Nays: None

MOTION CARRIED.

Discussion: Mr. Ferriolo indicated Ms. Hamameh practices primarily municipal law and earned her bachelor’s degree in criminal justice from Wayne State University. She has been recognized by Michigan Super Lawyers for seven consecutive years, in 2011 and 2012 she was recognized as a “Rising Star” and from 2013-2018 she was included as a “Super Lawyer” for government, cities and municipalities. She was also selected for Best Lawyers in America 2016-2020 in municipal law and as a Top Lawyer by DBusiness Magazine in 2014, 2017-2020. In 2014, she was selected for the 2014 class of “Women in the Law” by Michigan Lawyers Weekly. Additionally, in 2011, she was awarded the Frances R. Avadenka Memorial Award by the Oakland County Bar Association, for her contributions to the community outside of the legal profession. The SBM Board of Commissioners provide oversight to the State Bar on finance and Ms. Hamameh was elected to serve on that State Bar and that Board. SBM is the governing body for the 42,000-plus lawyers in the State of Michigan. Who we have represent this Commission has been a super star. He thinks her integrity is demonstrated with an incredible amount of due diligence. This is a lawyer who, in spite of some resistance, told us what this Commission needed to hear, not what some wanted to hear. One of the things she did back in November when this was turned over to allow someone else from her law firm to pick up and carry on at her direction after she had an illness and was taken out of the job for some time, was to put all of the details down to 10 points, and this Commission passed unanimously, that those points of concern she had should be answered in order to move forward. We allowed those that were interested to deal with those issues, and they did, and it passed. It had a lot to do with her due diligence and the nature of the person to do right by the Commission. He is very proud to make this motion for her to continue

to represent the Commission. She has the knowledge and demonstrated that knowledge, and he feels she will continue to serve us well going forward. Ms. Buxar agreed, and believes the Trail's attorney has supported this Commission, not only with the historical knowledge that she's brought forward to carry on, and by switching attorneys, we are losing that historical reference and knowledge that she brought forward and the opinions that she has read, and being at meetings where she was before the Commission, Ms. Hamameh brought not necessarily what was required, but Ms. Buxar is not the attorney. When you hire an attorney, they are supposed to look out and represent the best interests of the Commission, and that's what the attorney has been doing. She feels keeping a knowledgeable person that's currently doing the job, instead of going to someone else not located locally, is the way to go - we already have someone who is well qualified and does an outstanding job. Ms. Russell also agreed. Mr. Becker indicated he is not allowed to vote on this issue, but commented he completely disagrees with the previous comments made. He recommends postponing hiring an attorney until the Commission can do a search to see if we can procure the services of a pro bono attorney or explore the possibility of a lower cost attorney. With regard to Ms. Hamameh's service, our experience indicates that she does not fully understand the mission of the Commission and is unwilling or unable to explore the higher flexibility that exists in the law in order to help the Commission achieve its civic goals. There is a lot of flexibility because the law is not black and white, there are many ways to look at the law and interpret it and understand it. Ms. Hamameh's rigidity of legal interpretation hampers us in trying to accomplish our mission. He is not comfortable having her as the Commission attorney. Our previous attorney, Mr. Makris, always looked for routes to help the Commission achieve goals, while he hewed faithfully to the law. It's his feeling that Ms. Hamameh hewed to the law and did not understand our goals, mission or need to provide community service. Mr. Hogan did an excellent job - he's done new and creative work for us. Mr. Becker believes there is no urgency right now to make this choice, and suggested the Commission look around. He feels that Ms. Hamameh's opinions are written for lawyers, and feels they are unreadable and non-understandable, as he has to go through them multiple times. If he were voting, he would not support retaining her. Mr. Stout doesn't have a problem with interviewing additional candidates. Ms. Gamage feels it is important to vote on this issue tonight, as in the past we have gone without an attorney, had a pro bono attorney for a time and we didn't have confidence in that either, and things can come up. We have an established relationship with Ms. Hamameh and she has done work for us. It's important we maintain an attorney. Mr. Ferriolo would like those that were present at the last meeting to remember the point of bringing this forward, and the Chair thought it was urgent since we have issues we have to deal with, that we really have to make a decision on legal counsel as soon as possible. That was one of the reasons it was put on tonight's agenda. It's important to remember that. Mr. Becker doesn't remember saying that. Mr. Blanchard asked if the proposal is to contract with Ms. Hamameh for one year. Mr. Ferriolo said we'd leave the contract open until it's time to explore other options. The motion infers that. Mr. Blanchard said he would be inclined to vote for the motion if it was for a limited time. Mr. Ferriolo stated it could be for five years; Mr. Blanchard indicated that's too long and suggested we hire her for a year, so we don't go without an attorney. This will allow us to see time to see if she works out, and if not, we can go out for bids and interview other attorneys. Mr. Ferriolo does not want to change his motion.

MOTION by Blanchard, *Moved*, to amend the motion to limit the contract to one year.

MOTION FAILED FOR LACK OF A SECOND.

Mr. Ferriolo called the question. The Chair called for the vote on the motion.

Motion as voted on:

MOTION by Ferriolo, seconded by Bowyer, *Moved*, to request that Lisa J. Hamameh represent our interests in our legal matters. We authorize Foster Swift to release and deliver to Lisa

Hamameh and to Rosati Schultz Joppich & Amtbuechler, PC all open file materials. We understand that Lisa Hamameh will assume responsibility for our legal representation upon receipt of this authorization and that her rate of pay will be \$125 per hour.

Ayes: Buxar, Ferriolo, Gamage, Russell, Stout, Walker

Nays: Blanchard

MOTION CARRIED.

SLOPE RESTORATION AND THE GAP IN FENCING AT BRIDGE 33.7:

Slope Restoration – Upon her return, Ms. Ford went out to check out the bridge and resurfacing projects. Trail users also commented about the projects. One concern received by both staff and Parks and Rec was about the resurfacing – portions of the edge of the limestone is higher and drops off one or two inches to the ground. They were concerned this could cause accidents. She has spoken with Mannik Smith and WCI about this issue. It is like this because when we eliminated items from the budget to reduce costs, we eliminated some of the slope restoration. That would entail putting backfill or dirt along the sides to make it a gradual slope. Mannik Smith has spoken to WCI about this issue. There is some slope restoration funding in the project, and we've also had reduced quantities of aggregate, so there are some cost savings. It is hoped that will account for the costs to fix the problem areas. WCI is planning to correct these areas next week. If the cost reductions don't fund the restoration, Ms. Ford has spoken to the DNR about the contingency funding we received and the DNR would support the Commission using that funding to pay for the slope restoration correction if it continues to be an issue on the trail. At this time no action or motion is necessary, but if we need to do a change order to pay for the rest of the slope restoration, action will be necessary at that time. Mr. Blanchard asked if over time, the limestone would settle. Ms. Ford indicated the contractors have said that, but there is a problem with the drop off the side, sometimes even three inches. Ms. Pinkham has noticed this issue along the trail and also noted deep hoof prints on the new surface; she wonders about the longevity of the resurfacing. Ms. Ford has pointed this out to the contractors. Mr. Becker commented that as time goes on, the surface will get more solid. Ms. Ford just wanted to make the Commission aware of this issue in case the funds aren't there and a change order is necessary. This is disappointing to Ms. Russell as we asked specifically if there were any safety issues that would occur with the items removed from the project. There is no accountability for these companies that say one thing, and do another. She appreciates staff putting the funding together. Mr. Becker believes it's an engineering problem, and not the construction company. Mr. Stout is disappointed as well; you don't take out slope restoration as it's there for a reason.

Gap in Fencing at Bridge 33.7 – Ms. Ford passed around photos of the gap at the bridge. A concerned citizen contacted staff about the approach railings on the bridge. The photos show a big gap to the side where someone could go down the embankment or end up in the creek. She is proposing adding some kind of additional railing to prevent this from happening. Right now, Oakland Township Parks and Rec put up cones to make this more visible, but it is a concern. The engineer is reviewing the situation. Ms. Ford indicated there will be a design cost associated with this. She has also been discussing the stair issue with the engineer, and he told her it would be \$3,000 for the stairs and railing approach design work and management of it. Mr. Becker asked if the grant money can be used for this cost. Ms. Ford believes so because it is part of the bridge and resurfacing projects, and the Wilson Foundation grant funding is not as rigidly tied as some of the other funding. Mr. Becker indicated since the cones are up, the safety issue is taken care of, but we wanted the Commission to know these issues have come up. Mr. Blanchard suggested putting up snow fencing. Ms. Ford indicated there is snow fencing in the office if necessary. Mr. Blanchard feels we should not have to pay a designer to add another section – whoever built the bridge should be told we want to add another section of fence on each side, he does not want to pay an engineer to design it. Ms. Ford said the bridge contractor is out of the picture as they are done with the project, and in talking with Mannik Smith, they said WCI could add the railing installation to their contract. Ms. Russell asked if someone reviewed the original design to see if

this is correct because this does not look like what she recalls from the drawings. Mr. Marzolf said the design was straight, but they angled them out like they should be. Ms. Ford indicated the fence is cemented into the ground, so they can't be moved. Mr. Stout said a simple fix would be just to add another section of fence, it does not need a design cost. Ms. Russell agrees we don't need to pay an engineer's design, and feels it should be done as a courtesy. Mr. Becker said Oakland Township could possibly look at this situation. Ms. Buxar asked that Ms. Ford talk to Ms. Milos-Dale to see if she can send out someone to review the issue and agrees no engineering design costs are necessary. Mr. Marzolf agrees that some wings or a fence extension is a good idea in this area to prevent accidents. Eventually, there will be vegetation on the side of these slopes. Ms. Ford will talk to Oakland Township to see what can be done. Mr. Blanchard requested that WCI also be asked for a cost.

MANAGER'S REPORT: Mr. Marzolf summarized his report, and added Mr. Bob Ford will be in attendance at the October meeting to present design concepts for signage. He talked to Dillman & Upton who will clean up the edge of their property, and the City of Rochester is supposed to plant some trees, which will make this area look better. Ms. Russell will follow up with the City. Mr. Marzolf thanked the Commission for the opportunity to serve as Interim Trail Manager; he had a lot of fun. He is now working for Six Rivers Conservancy. Ms. Gamage asked that before Mr. Marzolf leaves, if he and staff could develop a list of potential issues and lessons learned with the resurfacing project so we have it for the next time. The Commission thanked Mr. Marzolf for his assistance during this time.

COMMISSIONERS REPORTS: Ms. Russell reported the resurfacing in Rochester looks great. Vandals hit the bathrooms in Rochester Municipal Park – they had to be shut down for a few days. She suggested in the Master Plan, a list of accomplishments completed since the last Plan be included. Zoning changes along parts of the trail in Rochester will take place soon. Ms. Buxar reported that Oakland Township will need to remove dead and fallen trees behind the Cider Mill. This will involve a crane taking them out over the creek from the trail probably in November. Chairman Becker introduced and welcomed Mr. Dave Walker, the new Rochester Hills' Council Alternate. Mr. Stout reported that OHM will be conducting bridge inspections of Orion Township's three bridges in the next few weeks. Trees will be removed soon for the Clarkston connector. He suggested a ribbon cutting be held for the new bridge. Mr. Becker feels a ribbon cutting ceremony should also be held for the trail once resurfacing has been completed.

ADJOURNMENT OF REGULAR MEETING:

MOTION by Gamage, seconded by Buxar, *Moved*, to adjourn the Special Meeting at 8:35 p.m.
Ayes: All Nays: None

MOTION CARRIED.

NEXT MEETING: October 15, 2019 at 7:00 p.m. – Paint Creek Cider Mill

Respectfully submitted,

MELISSA FORD, Trail Manager

HANK VAN AGEN, Secretary