

City of Rochester
Charter Township of Avon
Townships of Oakland and Orion
Agreement to Establish Trailways Commission

THIS AGREEMENT is entered into by and between the City of Rochester, the Charter Township of Avon, the Township of Oakland and the Township of Orion, for the purpose of establishing and providing for the powers and duties of the Trailways Commission, hereinafter COMMISSION, pursuant M.C.L.A. 124.501 et.seq.

SECTION 1: PURPOSE

The COMMISSION is hereby created as a separate public corporation, with the powers, functions and duties provided in this agreement, for the purpose of owning, exercising right of dominion over, developing, providing, maintaining and operating certain non-motorized public trails for recreational use within the jurisdiction of MEMBER UNITS.

SECTION 2: MEMBERSHIP

MEMBER UNITS to the COMMISSION shall be those local governments who are signatories to this agreement. The COMMISSION shall be considered an established public corporation when two local governments of the local governments named above have entered into this agreement. Subsequent to the effective date of the COMMISSION, other local governments, whether or not named above, may become MEMBER UNITS by entering into this agreement. The COMMISSION may require, as a condition of membership, a fair share contribution agreement between the COMMISSION and any proposed MEMBER UNIT, if the COMMISSION determines that such agreement is necessary to provide fair allocation of costs among present and proposed MEMBER UNITS. All local governments who are signatories to this agreement shall have full MEMBER UNIT status in accordance with this agreement. This agreement and any agreement entered into or obligation incurred by any MEMBER UNIT in accordance with this agreement, shall be binding upon that MEMBER UNIT'S successor in interest, if any.

12-23-81
Amended 12-14-82

TRAILWAYS COMMISSION

SECTION 3: GOVERNANCE**A. COMMISSION**

1. The COMMISSION shall be composed of two (2) commissioners from each MEMBER UNIT. The governing board of each MEMBER UNIT shall, by resolution, appoint its two commissioners, one of which shall be a member of the appointing governing board.
2. At least once every four years, each MEMBER UNIT shall certify to the COMMISSION the persons appointed pursuant to paragraph 1.
3. Commissioners shall serve at the pleasure of their MEMBER UNIT and may be removed by resolution of their MEMBER UNIT governing board at any time with or without cause. Commissioners who are members of a MEMBER UNIT governing board shall not serve beyond their term on the governing board, unless the other commissioner from that MEMBER UNIT is then a member of that MEMBER UNIT'S governing board.
4. Any vacancy on the COMMISSION arising for any reason shall be filled by appointment of the MEMBER UNIT governing board that made the original appointment, within forty-five (45) days of the vacancy, for the remainder of the unexpired term.
5. Each MEMBER UNIT governing board may also appoint alternate commissioners who shall serve with full privileges and duties in the absence of the regular commissioners.

12-23-81
Amended 12-14-82

TRAILWAYS COMMISSION

B. Officers

1. The COMMISSION shall elect from its membership a Chairperson, Vice Chairperson, Secretary, Treasurer and such other officers as it may deem appropriate, who shall serve terms of one (1) year commencing January 1st, except for the officers first elected who shall serve that fraction of the calendar year between COMMISSION election and November 30th.
2. Officers shall serve at the pleasure of the COMMISSION and may be removed by resolution at any time.
3. Vacancies in any office shall be filled by COMMISSION election within thirty (30) days of the vacancy, for the remainder of the unexpired term.
4. The Chairperson shall preside at all meetings of the COMMISSION and shall have all privileges and duties of a commissioner. The Vice Chairperson shall preside at all meetings of the COMMISSION at which the Chairperson is absent. The Secretary shall keep or cause to be made all non-financial reports, records and minutes required by this agreement or applicable law and shall be charged with assuring compliance with the Michigan Open Meetings Act and the Michigan Freedom of Information Act. The Treasurer shall have custody of all COMMISSION funds that shall be deposited, invested, and/or disbursed by the Treasurer as directed by the COMMISSION. The Treasurer shall be charged with assuring complete financial records and reports as required by this agreement or applicable law or contract provisions.

12-23-81
Amended 03-25-86
Amended 11-04-98

TRAILWAYS COMMISSION

SECTION 4: MEETINGS**A. SCHEDULE/CALL OF MEETINGS**

1. The COMMISSION shall meet at least quarterly and shall annually establish a regular meeting schedule which shall be posted at the offices of the MEMBER UNIT governing boards in similar form and within similar times as required by law for governmental meeting schedules.
2. Special meetings of the COMMISSION may be called by the Chairperson, or in the absence of the Chairperson, by the Vice Chairperson.

B. NOTICE

Each Commissioner shall receive five (5) days written notice of all regular meetings and two (2) days written notice of all special meetings. All notices of all meetings shall also be posted as required by the Michigan Open Meetings Act.

C. VOTING

A majority vote of the Commission shall be necessary to take any official action at a regular or special meeting, provided that only those items on the agenda may be acted upon, and provided that only bills which represent budgeted expenses may be approved. A majority of the COMMISSION, i.e., five members, shall constitute a quorum in such cases.

Bills which represent expenses not previously included in the budget may only be approved by a quorum including at least one member of each governmental unit.

12-23-81
Amended 12-14-82

TRAILWAYS COMMISSION

D. MINUTES

Complete written minutes of all COMMISSION meetings shall be kept in compliance with applicable provisions of the Michigan Open Meetings Act. Copies of minutes shall be sent to all commissioners and chairpersons of MEMBER UNIT governing boards as soon as reasonably possible following a COMMISSION meeting.

E. RULES

Roberts Rules of Order, when not in conflict with this agreement or written standing rules the COMMISSION may adopt, shall govern all meetings.

SECTION 5: POWERS

A. GENERAL POWERS

The COMMISSION shall have the following powers, authority and obligations:

1. Purchase, lease, receive, acquire, hold title in, trade, sell, lease or rent to others, dispose of, divide, distribute, own or exercise right of dominion over, all or part of any land, and any improvements thereon, within the railroad right of way described in Appendix A which is hereby incorporated and made part of this agreement. The COMMISSION may exercise the aforesaid powers over other land only upon consent of the governing board of the MEMBER UNIT in whose jurisdiction such land lies. The disposition of land acquired with aid from state or federal funds shall have the approval of the state or federal agency involved, if required by the agency. All property of the COMMISSION shall be used solely for the purposes stated in this agreement.

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Amended 12-14-82

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2. Improve, build, maintain and operate public trails, access sites and appropriate structures on COMMISSION land.
3. Contract or cooperate with other governmental units, public agencies, or private parties, as appropriate to carry out COMMISSION functions or fulfill COMMISSION obligations.
4. Hire a Director and such other personnel as it may determine necessary who shall serve at the pleasure of the COMMISSION subject to applicable law.
5. Accept funds, voluntary work, or other assistance to carry out COMMISSION functions or obligations, from any source, public or private, including, but not limited to, local governmental funding of specific projects, state or federal grants, and private donations. A complete record of all funds received from any source shall be maintained and made part of the annual financial report.
6. Establish policies or rules governing use of COMMISSION land or facilities not inconsistent with state or local law.
7. Recommend local ordinance provisions to MEMBER UNITS, as necessary to provide for the safety of the public utilizing COMMISSION land or facilities.
8. Make claims for federal or state aid payable to the individual or several MEMBER UNITS or the COMMISSION as may be available and appropriate to carry out the COMMISSION functions.

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Amended 12-14-82

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B. LIABILITY COVERAGE

Either each MEMBER UNIT or the COMMISSION shall purchase public liability insurance covering any cause of action, claim, damage, accident, injury or liability that may arise as a result of the ownership, construction, maintenance or operation of the land, public trails, access sites or other facilities of the COMMISSION. Each party purchasing such insurance shall name the COMMISSION and the other MEMBER UNITS as well as itself as the named insured. Each MEMBER UNIT shall hold harmless and indemnify the other MEMBER UNITS from any and all causes of action, including reasonable attorney's fees, arising within that MEMBER UNIT'S jurisdiction and for which that MEMBER UNIT would be responsible.

C. REPORTS

The COMMISSION shall, at least annually, make a full and complete report of all of its activities to the governing boards of all MEMBER UNITS.

D. LIMITATIONS

The COMMISSION shall have no power or authority to:

1. Levy any tax or issue any bonds in its own name.
2. Indebt any MEMBER UNIT in any way except as provided in this agreement.
3. Condemn any land for any purpose.

12-23-81
Amended 12-14-82

TRAILWAYS COMMISSION

SECTION 6: FINANCES**A. FISCAL YEAR**

The fiscal year of this COMMISSION shall be from January 1st to December 31st.

B. OPERATIONAL BUDGET

- (i) The COMMISSION shall each year develop an operational budget which shall be limited to meeting, postage, document or accounting costs, and similar basic costs. This budget shall not include engineering, legal, land purchase or lease, or any development or maintenance costs incurred or to be incurred by the COMMISSION.
- (ii) The Bike Patrol Program expenses shall be included in the operational budget.
- (iii) Each MEMBER UNIT shall pay an equal share of the operational budget except that portion of the operational budget that supports the Bike Patrol Program. The cost of the Bike Patrol Program is apportioned to each community according to the percentage of the entire trail that is located in that community.

C. PROJECT BUDGETS

The COMMISSION shall develop separate project budgets, as it deems appropriate, for all other costs and may recommend and contract with member units or other parties as necessary to pay such costs. For the purpose of initial acquisition, the allocation of costs shall be as set forth in Appendix B.

D. COMMISSIONER REIMBURSEMENT

Each Commissioner may be paid a flat fee of thirty-five dollars (\$35.00) for Commission meetings actually attended.

E. FINANCIAL AUDITS/REPORTS

The treasurer shall make or cause to be made a full and complete financial report to MEMBER UNITS of all the COMMISSIONS financial transactions and affairs at the end of each financial year. Said report shall include a complete audit by a certified public accountant. State and federal audit requirements shall be fully met as applicable.

12-23-81
Amended 12-14-82
Amended 06-14-83
Amended 05-24-95
Amended 11-13-01

TRAILWAYS COMMISSION

SECTION 7: TERMINATION/DISSOLUTION

A. **MEMBER UNIT TERMINATION**

A MEMBER UNIT may terminate its membership only upon ninety (90) days written notice to the COMMISSION and termination shall be effective only upon the elapse of the ninety (90) days. If a MEMBER UNIT terminates its membership, all COMMISSION land and improvements thereon within that jurisdiction shall remain property of the COMMISSION. A MEMBER UNIT terminating its membership shall remain liable for all obligation incurred by it pursuant to this agreement and prior to actual termination.

B. **COMMISSION DISSOLUTION**

If all or all but one of the MEMBER UNITS terminates their membership, the COMMISSION shall be considered dissolved.

1. Upon dissolution, the trailways property and any improvements thereon located within the boundaries of each former MEMBER UNIT shall revert to ownership by that unit of government, upon such terms and conditions as are to be agreed upon by the MEMBER UNITS. Each unit of government shall be responsible to uphold the following provisions:

- (a) The trailways property and the improvements thereon shall remain open for public recreational use in perpetuity;
- (b) No prohibitions, impediments or blockages shall be made to the free passage of the trailways of legitimate trail users;
- (c) The use of the trailways and improvements thereon shall remain subject to all applicable deed restrictions and all applicable state provision by law or contract.

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Amended 12-14-82

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2. After dissolution, if any former MEMBER UNIT fails to uphold any of the provisions named in Section 7 (B) (1) above, any of the other former MEMBER UNITS shall have cause to enforce compliance with said provision(s), provided however that failure to seek enforcement of any provision shall not constitute a waiver.

SECTION 8: AMENDMENTS

This agreement may be amended in whole or in any part by written agreement of the governing boards of all MEMBER UNITS.

SECTION 9: STATE APPROVAL

As soon as reasonably practicable after the effective date of this agreement, this agreement shall be officially submitted to the Office of the Governor for approval pursuant to the Urban Cooperation Act of 1967.

SECTION 10: APPLICABLE LAWS

The COMMISSION shall fully comply in all activities with applicable local, state and federal laws and regulation and with applicable grant conditions or contract provisions.

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Amended 12-14-82

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SECTION 11: EFFECTIVE DATE

This agreement shall be in full force and effect and the COMMISSION shall be considered in effect as an operating public corporation as of the second date in time, indicated below.

IN WITNESS WHEREOF, the authorized representatives of the MEMBER UNITS have signed this agreement of the date indicated below.

Date: January 6, 1982

By: Thomas L Werth
Mayor, City of Rochester

By: Maxine Ross
Clerk, City of Rochester

Effective

Date: December 23, 1981

By: Earl E. Borden
Supervisor, Avon Charter Township

By: Betty Adamo
Clerk, Avon Charter Township

Date: January 7, 1982

By: Stuart Braid
Supervisor, Township of Oakland

By: Carolyn L. Phelps
Clerk, Township of Oakland

Date: December 21, 1981

By: JoAnn Van Tassel
Orion Township Supervisor

By: Katherine E. Jacobs
Orion Township Clerk

TRAILWAYS COMMISSION

APPENDIX A

ALL THAT PROPERTY situated in the Township of Shelby, in the County of Macomb; in the Village of Rochester, the Township of Avon, Oakland and Orion in the County of Oakland, all in the State of Michigan, being parts of Section 18 in Township 3 North, Range 12 East; Sections 13, 14, 11, 10, 3 and 4 in Township 3 North, Range 11 East, Sections 33, 28, 21, 20, 19, and 18 in Township 4 North, Range 11 East; and Sections 13 and 12 in Township 4 North, Range 10 East, and being all the right, title and interest of The Michigan Central Railroad Company of, in and to all those certain pieces or parcels of land and premises, easements, rights-of-way and any other right of any kind whatsoever appurtenant thereto or used in conjunction therewith on and along that portion of the railroad of said Railroad Company known as the Mackinaw Branch, said portion being described as follows:

BEGINNING in said Township of Shelby and County of Macomb at the Northwesterly line of the land and right-of-way which was conveyed to Consolidated Rail Corporation by deed dated March 29, 1976 and recorded in the Office of the Register of said Macomb County in Liber 3005 at page 318, said line being at right angles to the centerline of said railroad at valuation survey station 1372+80 therein; and extending thence in a general Northwesterly direction, following along the right-of-way of Mackinaw Branch, approximately 11.52 miles to the Southerly line of the Village of Lake Orion, the place of ending, said line passing through a point in said centerline of railroad at valuation survey station 1981+30 therein.

TOGETHER with all bridges, culverts, tiles, drainage facilities and all other railroad appurtenances located on the premises hereinabove described.

12-23-81

TRAILWAYS COMMISSION

APPENDIX B

Purchase Offer Budget

Acquisition of Penn Central Right-of-Way

Michigan Land Trust Fund	\$225,000.00
Orion Township	18,500.00
Avon Charter Township	84,110.00
Oakland Township	98,640.00
City of Rochester	23,750.00

12-12-82
Amended 06-14-83