

AGREEMENT
FOR PAYMENT OF CERTAIN ENGINEERING SERVICES FOR
THE WILEY TO M-89 SECTION OF THE BLUE STAR TRAIL

This AGREEMENT (“Agreement”) is entered into by and among Saugatuck Township, 3461 Blue Star Hwy. P.O. Box 100, Saugatuck, MI 49453, the City of the Village of Douglas, PO Box 757, 86 W. Center St., Douglas, MI 49406-0757 (collectively the “Municipalities” and individually a “Municipality”), and the Friends of the Blue Star Trail (“FOTBST”), a 501(c)(3) non-profit organization incorporated in the State of Michigan.

RECITALS

WHEREAS the mission of the FOTBST is the charitable purpose of advocating for the development and continuance of the Blue Star Trail from South Haven to Saugatuck (“Trail”); and

WHEREAS the Municipalities have supported the Trail and in 2019-20 each passed a Joint Resolution that reaffirmed their support for the Trail and for pursuing construction of the Trail through their territories (the “Project”), including creation of a Joint Tri-community Study Committee (“TCC”); and

WHEREAS the Municipalities have entered into an interlocal agreement, pursuant to Act 7, MCL 124.501 et seq., to jointly pursue the Project through the authority granted by Act 7, wherein the Municipalities appointed Daniel DeFranco (Saugatuck Township Manager) as Project Liaison; and

WHEREAS the Municipalities have selected the engineering firm of Prein&Newhof of Holland, MI (“PN”), to perform the engineering work on the Project, and the Municipalities have negotiated a contract with PN for the first phase of the Project, a copy of which has been provided to FOTBST; and

WHEREAS the FOTBST has agreed to pay the reasonable engineering fees of PN related to the first phase of the Project and the Municipalities shall not be obligated to pay PN; and

WHEREAS the Municipalities have agreed to pay the reasonable fees of PN related to grant applications to the Natural Resource Trust Fund and Transportation Alternative Programs; and

WHEREAS each Municipality, pursuant to resolution of its governing body, is authorized to execute and deliver this Agreement.

CORE TERMS

NOW, THEREFORE, the parties agree as follows:

1. **Payments.** Upon execution by the Municipalities of their approved contract with PN, attached as Exhibit A, FOTBST agrees to pay the reasonable engineering fees of PN for the scope of work described in that contract, according to the terms set forth in that contract and consistent with this Agreement. The Municipalities agree to pay reasonable fees of PN for application preparation for the Natural Resource Trust Fund and Transportation Alternative Programs, with each Municipality being responsible for paying half of such fees
2. **Work Changes.** Subject to 4.c., any changes in the scope of work to be provided by PN or any additional charges under its contract must be approved in writing by the Project Liason, in consultation with the chief administrative officer for each municipality in which the affected portion of the trial is located. To be eligible for payment by FOTBST such additional work or charges must also be approved by FOTBST.
3. **Processing.** The contract shall be administered and interpreted consistent with the following:
 - a. FOTBST represents that it has sufficient funds on account to pay the amount of the PN contract (\$49,000).
 - b. PN will issue monthly invoices according to the terms of its contract.
 - c. Upon approval by the Project Liaison and the FOTBST, the FOTBST will authorize payment of invoice to PN.
 - d. Subject to the terms of the contract with PN, the Project Liaison in consultation with the Municipalities and the FOTBST may determine to suspend or halt the work of PN at any time.
4. **Participation of FOTBST.** In consideration of its role in funding the Project, the FOTBST shall be entitled to:
 - a. Provide to PN relevant information about past efforts to build the Trail;
 - b. Receive adequate notice of and the right to attend all substantive meetings with PN, its consultants or subcontractors, or any stakeholder regarding the Project;
 - c. Approve any change in the scope of work that would increase the amount owed to PN;
 - d. Review and comment upon all grant applications a reasonable time before submission; and
 - e. Evaluate and approve all conceptual designs.
5. **Municipalities' Obligation to Cooperate.** The Municipalities agree to cooperate in a timely fashion with PN and FOTBST regarding the scope of work, including the provision of information as requested, prioritization of staff time for this project, and making of decisions.
6. **Termination.** FOTBST may terminate this agreement at any time, for any of the reasons enumerated in paragraph O of the Municipalities' contract with PN.

7. Miscellaneous

- a. Entire Agreement. This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter hereof, except as expressly stated herein.
- b. No Presumption. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.
- c. Severability of Provisions. If any provision of this Agreement, or its application to any Person or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other Persons or circumstances is not affected but will be enforced to the extent permitted by law.
- d. Governing Law. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan without regard to the doctrine of conflict of laws. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.
- e. Captions. The captions, headings, and titles in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement. They are solely for convenience of reference and do not affect this Agreement's interpretation.
- f. Terminology. All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and any other gender as the context may require.
- g. Cross-References. References in this Agreement to any Article include all Sections, subsections, and paragraphs in the Article; references in this Agreement to any Section include all subsections and paragraphs in the Section.
- h. Jurisdiction and Venue. All claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or breach thereof first shall be submitted for nonbinding mediation to any one of the following, as agreed to by the parties: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution, Inc., Endispute, or Judicate. Any party hereto may initiate mediation within the time allowed for filing per State law and the parties hereto agree to fully cooperate and participate in good faith to resolve dispute(s). The cost of

mediation shall be shared equally by the parties involved. If mediation fails to resolve the claim or dispute, the matter shall be submitted to a court of competent jurisdiction.

- i. Amendment. The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement of all Parties. In the event that an amendment to this Agreement or alternative form of Agreement is approved by less than all Parties, any Party which has not approved of the amendment or alternative form of Agreement may withdraw from the Agreement.
- j. Execution of Agreement; Counterparts. Each Party shall duly execute three (3) counterparts of this Agreement, each of which (taken together) is an original but all of which constitute one instrument.

(Remainder of page left intentionally blank.)

IN WITNESS WHEREOF, this Agreement is executed by each Party on the date hereafter set forth.

CITY OF THE VILLAGE OF DOUGLAS

DATE: _____

By: _____

Its: _____

SAUGATUCK TOWNSHIP

DATE: _____

By: _____

Its: _____

FRIENDS OF THE BLUE STAR TRAIL

DATE: _____

By: _____

Its: _____