



**Michigan Natural Resources Trust Fund
Development Project Agreement**

Project Number : TF17-0086

Project Title : Allen Creek Railroad Berm Opening Trail

Development

This Agreement is between the Michigan Department of Natural Resources for and on behalf of the State of Michigan ("DEPARTMENT") and the City of Ann Arbor - Washtenaw IN THE COUNTY OF Washtenaw County ("GRANTEE"). The DEPARTMENT has authority to issue grants to local units of government for the development of public outdoor recreation facilities under Part 19 of the Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended. The GRANTEE has been approved by the Michigan Natural Resources Trust Fund (MNRTF) Board of Trustees (BOARD) to receive a grant. In PA **165 of 2018**, the Legislature appropriated funds from the MNRTF to the DEPARTMENT for a grant-in-aid to the GRANTEE. As a precondition to the effectiveness of the Agreement, the GRANTEE is required to sign the Agreement and return it to the DEPARTMENT with the necessary attachments by **08/04/2018**.

1. The legal description of the project area (APPENDIX A); boundary map of the project area (APPENDIX B); and Recreation Grant application bearing the number **TF17-0086** (APPENDIX C) are by this reference made part of this Agreement. The Agreement together with the referenced appendices constitute the entire Agreement between the parties and may be modified only in writing and executed in the same manner as the Agreement is executed.
2. The time period allowed for project completion is **06/05/2018 through 06/30/2020**, hereinafter referred to as the "project period." Requests by the GRANTEE to extend the project period shall be made in writing before the expiration of the project period. Extensions to the project period are at the discretion of the DEPARTMENT. The project period may be extended only by an amendment to this Agreement.
3. This Agreement shall be administered on behalf of the DEPARTMENT through Grants Management. All reports, documents, or actions required of the GRANTEE shall be submitted through the MiRecGrants website unless otherwise instructed by the DEPARTMENT.
4. The words "project area" shall mean the land and area described in the attached legal description (APPENDIX A) and shown on the attached boundary map (APPENDIX B).
5. The words "project facilities" shall mean the following individual components, as further described in APPENDIX C.
 - Trail 6' wide or more
 - Fence
 - Lighting
 - Signage
 - Pedestrian Bridge
 - Pedestrian Tunnel
 - Storm water tunnel
6. The DEPARTMENT agrees as follows:

- a. To grant to the GRANTEE a sum of money equal to **Seven (7%) Percent of Four Million Four Hundred Eighty Nine Thousand Nine Hundred (\$4,489,900.00) dollars and Zero Cents**, which is the total eligible cost of construction of the project facilities including engineering costs, but in any event not to exceed **Three Hundred Thousand (\$300,000.00) dollars and Zero Cents**.
- b. To grant these funds in the form of reimbursements to the GRANTEE for eligible costs and expenses incurred as follows:
 - i. Payments will be made on a reimbursement basis at **Seven (7%) Percent** of the eligible expenses incurred by the GRANTEE up to 90% of the maximum reimbursement allowable under the grant.
 - ii. Reimbursement will be made only upon DEPARTMENT review and approval of a complete reimbursement request submitted by the GRANTEE through the MiRecGrants website, including but not limited to copies of invoices, cancelled checks, and/or list of force account time and attendance records.
 - iii. The DEPARTMENT shall conduct an audit of the project's financial records upon approval of the final reimbursement request by DEPARTMENT staff. The DEPARTMENT may issue an audit report with no deductions or may find some costs ineligible for reimbursement.
 - iv. Final payment will be released upon completion of a satisfactory audit by the DEPARTMENT and documentation that the GRANTEE has erected an MNRTF sign in compliance with Section 7(j) of this Agreement.

7. The GRANTEE agrees as follows:

- a. To immediately make available all funds needed to incur all necessary costs required to complete the project and to provide **Four Million One Hundred Eighty Nine Thousand Nine Hundred (\$4,189,900.00) dollars and Zero Cents** in local match. This sum represents **Ninety-Three(93%) Percent** of the total eligible cost of construction including engineering costs. Any cost overruns incurred to complete the project facilities called for by this Agreement shall be the sole responsibility of the GRANTEE.
- b. With the exception of engineering costs as provided for in Section 8, to incur no costs toward completion of the project facilities before execution of this Agreement and before written DEPARTMENT approval of plans, specifications and bid documents.
- c. To complete construction of the project facilities to the satisfaction of the DEPARTMENT and to comply with the development project procedures set forth by the DEPARTMENT in completion of the project, including but not limited to the following:
 - i. Retain the services of a professional architect, landscape architect, or engineer, registered in the State of Michigan to serve as the GRANTEE'S Prime Professional. The Prime Professional shall prepare the plans, specifications and bid documents for the project and oversee project construction.

- ii. Within 180 days following execution of this Agreement by the GRANTEE and the DEPARTMENT and before soliciting bids or quotes or incurring costs other than costs associated with the development of plans, specifications, or bid documents, provide the DEPARTMENT with plans, specifications, and bid documents for the project facilities, sealed by the GRANTEE'S Prime Professional.
 - iii. Upon written DEPARTMENT approval of plans, specifications and bid documents, openly advertise and seek written bids for contracts for purchases or services with a value equal to or greater than \$10,000 and accept the lowest qualified bid as determined by the GRANTEE'S Prime Professional.
 - iv. Upon written DEPARTMENT approval of plans, specifications and bid documents, solicit three (3) written quotes for contracts for purchases or services between \$2,500 and \$10,000 and accept the lowest qualified bid as determined by the GRANTEE'S Prime Professional.
 - v. Maintain detailed written records of the contracting processes used and to submit these records to the DEPARTMENT upon request.
 - vi. Complete construction to all applicable local, state and federal codes, as amended; including the federal Americans with Disabilities Act (ADA) of 2010, as amended; the Persons with Disabilities Civil Rights Act, Act 220 of 1976, as amended; the Playground Equipment Safety Act, P.A. 16 of 1997, as amended; and the Utilization of Public Facilities by Physically Limited Act, P.A. 1 of 1966, as amended; the Elliott-Larsen Civil Rights Acts, Act 453 of 1976, as amended.
 - vii. Bury all new telephone and electrical wiring within the project area.
 - viii. Correct any deficiencies discovered at the final inspection within 90 days of written notification by the DEPARTMENT. These corrections shall be made at the GRANTEE'S expense and are eligible for reimbursement at the discretion of the DEPARTMENT and only to the degree that the GRANTEE'S prior expenditures made toward completion of the project are less than the grant amount allowed under this Agreement.
- d. To operate the project facilities for a minimum of their useful life as determined by the DEPARTMENT, to regulate the use thereof to the satisfaction of the DEPARTMENT, and to appropriate such monies and/or provide such services as shall be necessary to provide such adequate maintenance.
- e. To provide to the DEPARTMENT for approval, a complete tariff schedule containing all charges to be assessed against the public utilizing the project area and/or any of the facilities constructed thereon, and to provide to the DEPARTMENT for approval, all amendments thereto before the effective date of such amendments. Preferential membership or annual permit systems are prohibited on grant assisted sites, except to the extent that differences in admission and other fees may be instituted on the basis of residence. Nonresident fees shall not exceed twice that charged residents. If no resident fees are charged, nonresident fees may not exceed the rate charged residents at other comparable state and local public recreation facilities.
- f. To adopt such ordinances and/or resolutions as shall be required to effectuate the provisions of

this Agreement; certified copies of all such ordinances and/or resolutions adopted for such purposes shall be forwarded to the DEPARTMENT before the effective date thereof.

- g. To separately account for any revenues received from the project area which exceed the demonstrated operating costs and to reserve such surplus revenues for the future maintenance and/or expansion of the GRANTEE'S park and outdoor recreation program.
 - h. To furnish the DEPARTMENT, upon request, detailed statements covering the annual operation of the project area and/or project facilities, including income and expenses and such other information the DEPARTMENT might reasonably require.
 - i. To maintain the premises in such condition as to comply with all federal, state, and local laws which may be applicable and to make any and all payments required for all taxes, fees, or assessments legally imposed against the project area.
 - j. To erect and maintain a sign on the property which designates this project as one having been constructed with the assistance of the MNRTF. The size, color, and design of this sign shall be in accordance with DEPARTMENT specifications.
 - k. To conduct a dedication/ribbon-cutting ceremony as soon as possible after the project is completed and the MNRTF sign is erected within the project area. At least 30 days prior to the dedication/ribbon-cutting ceremony, the DEPARTMENT must be notified in writing of the date, time, and location of the dedication/ribbon-cutting ceremony. GRANTEE shall provide notice of ceremony in the local media. Use of the grant program logo and a brief description of the program are strongly encouraged in public recreation brochures produced by the GRANTEE. At the discretion of the DEPARTMENT, the requirement to conduct a dedication/ribbon-cutting ceremony may be waived.
8. Only eligible costs and expenses incurred toward completion of the project facilities after execution of the Project Agreement shall be considered for reimbursement under the terms of this Agreement. Eligible engineering costs incurred toward completion of the project facilities beginning January 1, **2018** and throughout the project period are also eligible for reimbursement. Any costs and expenses incurred after the project period shall be the sole responsibility of the GRANTEE.
9. To be eligible for reimbursement, the GRANTEE shall comply with the DEPARTMENT requirements. At a minimum, the GRANTEE shall:
- a. Submit a written progress report every 180 days during the project period.
 - b. Submit complete requests for partial reimbursement when the GRANTEE is eligible to request at least 25 percent of the grant amount and construction contracts have been executed or construction by force account labor has begun.
 - c. Submit a complete request for final reimbursement within 90 days of project completion and no later than **09/30/2020**. If the GRANTEE fails to submit a complete final request for reimbursement by **09/30/2020**, the DEPARTMENT may audit the project costs and expenses and make final payment based on documentation on file as of that date or may terminate this Agreement and require full repayment of grant funds by the GRANTEE.

10. During the project period, the GRANTEE shall obtain prior written authorization from the DEPARTMENT before adding, deleting or making a significant change to any of the project facilities as proposed. Approval of changes is solely at the discretion of the DEPARTMENT. Furthermore, following project completion, the GRANTEE shall obtain prior written authorization from the DEPARTMENT before implementing a change that significantly alters the project facilities as constructed and/or the project area, including but not limited to discontinuing use of a project facility or making a significant change in the recreational use of the project area. Changes approved by the DEPARTMENT pursuant to this Section may also require prior approval of the BOARD, as determined by the DEPARTMENT.
11. All project facilities constructed or purchased by the GRANTEE under this Agreement shall be placed and used at the project area and solely for the purposes specified in APPENDIX C and this Agreement.
12. The project area and all facilities provided thereon and the land and water access ways to the project facilities shall be open to the general public at all times on equal and reasonable terms. No individual shall be denied ingress or egress thereto or the use thereof on the basis of sex, race, color, religion, national origin, residence, age, height, weight, familial status, marital status, or disability.
13. Unless an exemption has been authorized by the DEPARTMENT pursuant to this Section, the GRANTEE hereby represents that it possesses fee simple title, free of all liens and encumbrances, to the project area. The fee simple title acquired shall not be subject to: 1) any possibility of reverter or right of entry for condition broken or any other executory limitation which may result in defeasance of title or 2) to any reservations or prior conveyance of coal, oil, gas, sand, gravel or other mineral interests. For any portion of the project area that the GRANTEE does not possess in fee simple title, the GRANTEE hereby represents that it has:
 - a. Supplied the DEPARTMENT with an executed copy of the approved lease or easement, and
 - b. Confirmed through appropriate legal review that the terms of the lease or easement are consistent with GRANTEE'S obligations under this Agreement and will not hinder the GRANTEE'S ability to comply with all requirements of this Agreement. In no case shall the lease or easement tenure be less than 20 years from the date of execution of this Agreement.
14. The GRANTEE shall not allow any encumbrance, lien, security interest, mortgage or any evidence of indebtedness to attach to or be perfected against the project area or project facilities included in this Agreement.
15. None of the project area, nor any of the project facilities constructed under this Agreement, shall be wholly or partially conveyed in perpetuity, either in fee, easement or otherwise, or leased for a term of years or for any other period, nor shall there be any whole or partial transfer of the lease title, ownership, or right of maintenance or control by the GRANTEE except with the written approval and consent of the DEPARTMENT. The GRANTEE shall regulate the use of the project area to the satisfaction of the DEPARTMENT.
16. The assistance provided to the GRANTEE as a result of this Agreement is intended to have a lasting effect on the supply of outdoor recreation, scenic beauty sites, and recreation facilities beyond the financial contribution alone and permanently commits the project area to Michigan's outdoor recreation estate, therefore:
 - a. The GRANTEE agrees that the project area or any portion thereof will not be converted to other

than public outdoor recreation use without prior written approval by the DEPARTMENT and the BOARD and implementation of mitigation approved by the DEPARTMENT and the BOARD, including but not limited to replacement with land of similar recreation usefulness and fair market value.

- b. Approval of a conversion shall be at the sole discretion of the DEPARTMENT and the BOARD.
- c. Before completion of the project, the GRANTEE and the DEPARTMENT may mutually agree to alter the project area through an amendment to this Agreement to provide the most satisfactory public outdoor recreation area.

17. Should title to the lands in the project area or any portion thereof be acquired from the GRANTEE by any other entity through exercise of the power of eminent domain, the GRANTEE agrees that the proceeds awarded to the GRANTEE shall be used to replace the lands and project facilities affected with outdoor recreation lands and project facilities of equal or greater fair market value, and of reasonably equivalent usefulness and location. The DEPARTMENT and BOARD shall approve such replacement only upon such conditions as it deems necessary to assure the replacement by GRANTEE of other outdoor recreation properties and project facilities of equal or greater fair market value and of reasonably equivalent usefulness and location. Such replacement land shall be subject to all the provisions of this Agreement.

18. The GRANTEE acknowledges that:

- a. The GRANTEE has examined the project area and has found the property safe for public use or actions will be taken by the GRANTEE before beginning the project to assure safe use of the property by the public, and
- b. The GRANTEE is solely responsible for development, operation, and maintenance of the project area and project facilities, and that responsibility for actions taken to develop, operate, or maintain the property is solely that of the GRANTEE, and
- c. The DEPARTMENT'S involvement in the premises is limited solely to the making of a grant to assist the GRANTEE in developing same.

19. The GRANTEE assures the DEPARTMENT that the proposed State-assisted action will not have a negative effect on the environment and, therefore, an Environmental Impact Statement is not required.

20. The GRANTEE hereby acknowledges that this Agreement does not require the State of Michigan to issue any permit required by law to construct the outdoor recreational project that is the subject of this Agreement. Such permits include, but are not limited to, permits to fill or otherwise occupy a floodplain, and permits required under Parts 301 and 303 of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts 451 of 1994, as amended. It is the sole responsibility of the GRANTEE to determine what permits are required for the project, secure the needed permits and remain in compliance with such permits.

21. Before the DEPARTMENT will approve plans, specifications, or bid documents; or give written approval to the GRANTEE to advertise, seek quotes, or incur costs for this project, the GRANTEE must provide documentation to the DEPARTMENT that indicates either:

- a. It is reasonable for the GRANTEE to conclude, based on the advice of an environmental consultant, as appropriate, that no portion of the project area is a facility as defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended;
or
 - b. If any portion of the project area is a facility, documentation that Department of Natural Resources-approved response actions have been or will be taken to make the site safe for its intended use within the project period, and that implementation and long-term maintenance of response actions will not hinder public outdoor recreation use and/or the resource protection values of the project area.
22. If the DEPARTMENT determines that, based on contamination, the project area will not be made safe for the planned recreation use within the project period, or another date established by the DEPARTMENT in writing, or if the DEPARTMENT determines that the presence of contamination will reduce the overall usefulness of the property for public recreation and resource protection, the grant may be cancelled by the MNRTF Board with no reimbursement made to the GRANTEE.
23. The GRANTEE shall acquire and maintain insurance which will protect the GRANTEE from claims which may arise out of or result from the GRANTEE'S operations under this Agreement, whether performed by the GRANTEE, a subcontractor or anyone directly or indirectly employed by the GRANTEE, or anyone for whose acts may hold them liable. Such insurance shall be with companies authorized to do business in the State of Michigan in such amounts and against such risks as are ordinarily carried by similar entities, including but not limited to public liability insurance, worker's compensation insurance or a program of self-insurance complying with the requirements of Michigan law. The GRANTEE shall provide evidence of such insurance to the DEPARTMENT at its request.
24. Nothing in this Agreement shall be construed to impose any obligation upon the DEPARTMENT to operate, maintain or provide funding for the operation and/or maintenance of any recreational facilities in the project area.
25. The GRANTEE hereby represents that it will defend any suit brought against either party which involves title, ownership, or any other rights, whether specific or general rights, including appurtenant riparian rights, to and in the project area of any lands connected with or affected by this project.
26. The GRANTEE is responsible for the use and occupancy of the premises, the project area and the facilities thereon. The GRANTEE is responsible for the safety of all individuals who are invitees or licensees of the premises. The GRANTEE will defend all claims resulting from the use and occupancy of the premises, the project area and the facilities thereon. The DEPARTMENT is not responsible for the use and occupancy of the premises, the project area and the facilities thereon.
27. Failure by the GRANTEE to comply with any of the provisions of this Agreement shall constitute a material breach of this Agreement.
28. Upon breach of the Agreement by the GRANTEE the DEPARTMENT, in addition to any other remedy provided by law, may:
- a. Terminate this Agreement; and/or

- b. Withhold and/or cancel future payments to the GRANTEE on any or all current recreation grant projects until the violation is resolved to the satisfaction of the DEPARTMENT; and/or
 - c. Withhold action on all pending and future grant applications submitted by the GRANTEE under the Michigan Natural Resources Trust Fund and the Land and Water Conservation Fund; and/or
 - d. Require repayment of grant funds already paid to GRANTEE.
 - e. Require specific performance of the Agreement.
29. The GRANTEE agrees that the benefit to be derived by the State of Michigan from the full compliance by the GRANTEE with the terms of this Agreement is the preservation, protection and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State of Michigan by way of assistance under the terms of this Agreement. The GRANTEE agrees that after final reimbursement has been made to the GRANTEE, repayment by the GRANTEE of grant funds received would be inadequate compensation to the State for any breach of this Agreement. The GRANTEE further agrees therefore, that the appropriate remedy in the event of a breach by the GRANTEE of this Agreement after final reimbursement has been made shall be the specific performance of this Agreement.
30. Prior to the completion of the project facilities, the GRANTEE shall return all grant money if the project area or project facilities are not constructed, operated or used in accordance with this Agreement.
31. The GRANTEE agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, familial status or disability that is unrelated to the person's ability to perform the duties of a particular job or position. The GRANTEE further agrees that any subcontract shall contain non-discrimination provisions which are not less stringent than this provision and binding upon any and all subcontractors. A breach of this covenant shall be regarded as a material breach of this Agreement.
32. The DEPARTMENT shall terminate and recover grant funds paid if the GRANTEE or any subcontractor, manufacturer, or supplier of the GRANTEE appears in the register compiled by the Michigan Department of Labor and Economic Growth pursuant to Public Act No. 278 of 1980.
33. The GRANTEE may not assign or transfer any interest in this Agreement without prior written authorization of the DEPARTMENT.
34. The rights of the DEPARTMENT under this Agreement shall continue in perpetuity.
35. The Agreement may be executed separately by the parties. This Agreement is not effective until:
- a. The GRANTEE has signed the Agreement and returned it together with the necessary attachments within 60 days of the date the Agreement is issued by the DEPARTMENT, and

b. The DEPARTMENT has signed the Agreement. IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, on this date.

Approved by resolution (true copy attached) of the _____,
date

_____ meeting of the _____.
(special or regular) (name of approving body)

GRANTEE

SIGNED:

By: _____

Print Name: _____

Title: _____

Date: _____

Grantee's Federal ID#

38-6004534

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT

SIGNED:

By: _____
Dan Lord

Title: Manager, Grants Management

Date: _____

SAMPLE RESOLUTION
(Development)

Upon motion made by _____, seconded by _____, the following Resolution was adopted:

“RESOLVED, that the _____, Michigan, does hereby accept the terms of the Agreement as received from the Michigan Department of Natural Resources, and that the _____ does hereby specifically agree, but not by way of limitation, as follows:

1. To appropriate all funds necessary to complete the project during the project period and to provide _____ (\$ _____) dollars to match the grant authorized by the DEPARTMENT.
2. To maintain satisfactory financial accounts, documents, and records to make them available to the DEPARTMENT for auditing at reasonable times.
3. To construct the project and provide such funds, services, and materials as may be necessary to satisfy the terms of said Agreement.
4. To regulate the use of the facility constructed and reserved under this Agreement to assure the use thereof by the public on equal and reasonable terms.
5. To comply with any and all terms of said Agreement including all terms not specifically set forth in the foregoing portions of this Resolution.”

The following aye votes were recorded: _____

The following nay votes were recorded: _____

STATE OF MICHIGAN)

) ss

COUNTY OF _____)

I, _____, Clerk of the _____, Michigan, do hereby certify that the above is a true and correct copy of the Resolution relative to the Agreement with the Michigan Department of Natural Resources, which Resolution was adopted by the _____ at a meeting held _____.

Signature

Title

Date