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**MEMO**

**TO: PAINT CREEK TRAILWAYS COMMISSION\***

**FROM: JOHN G. MAKRIS, Esq.**

**RE: Award of Contract for Boundary Survey Project – Paint Creek Trailways  
Issue: Does there exist an impermissible conflict of Interest in the Award Process?**

**DATE: 1/11/2007**

**\*This memo has been prepared at the request of Trailways Coordinator Kristen Myers to facilitate the placement of the above referenced Project of the Boundary Survey Contract and funding for it on the agenda of the Rochester Hills City Council for consideration and approval on January 17, 2007. It is directed to the RH clerk's office attn: Jane Leslie/Susan Galeczka at fax 248.656.4744.**

**Background:** The Paint Creek Trailways Commission has for some time sought to secure the boundaries of the Paint Creek Trail by have an on ground survey made. An initial exploration brought forth an extremely wide range of proposals that varied greatly in price as well as what work was anticipated to be included. The Commission decided it required expert guidance on what to expect from a well conducted survey, the options available, and the cost effectiveness of selecting among those options for inclusion. James Fraus, a recently retired local surveyor/engineer of excellent reputation and extensive experience was engaged as a consultant for the purpose of advising the Commission, its staff and committee in this area. Mr. Fraus was placed under contract and was compensated for his consulting services on an agreed hourly fee.

**The Request for Proposal (RFP):** I am advised there were 18 surveyors/engineers that submitted a proposal for the Commission's consideration. The committee consisting of staff and Commissioners from each member community independently reviewed the 18 proposals and narrowed the finalists to 6 proposals. The committee considering this matter and evaluating the proposals felt it needed further assistance in evaluating whether each of the finalists, among other qualifications, had the appropriate equipment to perform what the project required to be done, whether each of the proposing companies had established themselves as experienced in this work and as a result had acquired a positive reputation in the field of surveying and for the work that was anticipated to be done, and if each proposing company had the resources to accomplish the task/project within the contemplated time frame (winter-2007). Mr. Fraus was asked to investigate and provide his assistance to the Committee in answering these questions. The Commission's committee members and its Coordinator also independently sought answers to these questions within the community. I am advised that the conclusion reached was that 5 of the six companies appeared to be qualified to do the work and that 4 of those 5 had sufficient experience to have a positive reputation in the community (Southeast Michigan).

**Issue of Appearance of or actual conflict of interest:** Of the 4 fully qualified proposals one was made by the Surveying and Engineering firm of Nowak & Fraus of Royal Oak, Michigan. James Fraus had been

associated with this entity prior to his retirement and had been one of its founders. Mr. Fraus has represented to the Commission that he has no financial interest in Nowak and Fraus since his retirement. That the present owners did fully purchase his interest. Mr. Fraus was not asked to recommend and did not recommend the selection of any one of the companies making a proposal nor did he directly or indirectly influence the selection of the committee or its recommendation to the Commission in the award of the project contract to Nowak & Fraus. By the prior association of the Commission's consultant it may *appear* that a conflict of interest might have existed and therefore this inquiry would be warranted, however, I believe that the Commission, its staff and its committee has been very careful to avoid any actual conflict, to be careful and diligent in making its own independent inquiry and evaluation of each of the proposals and the companies making each proposal and in reaching its own independent decision on the contract award not influenced by the consultants prior relationship with the company receiving the project award. I conclude that there was no actual conflict of interest and no undue, unwarranted, or impermissible influence exerted by Mr. Fraus or experienced by the Commission the decision made.

Respectfully submitted,

John G. Makris