



MEMORANDUM

REGULAR CITY COUNCIL MEETING

June 5, 2023, at 7:00 PM

TO: City Council

FROM: Rich LaBombard, City Manager

SUBJECT: Resolution 19–2023 Intergovernmental Agreement for Blue Star Trail – North Section

The Blue Star Trail Tri-community study committee existed from 2019 – 2020 for the purpose of continuing the Blue Star Trail from the City of Douglas north into the City of Saugatuck and Saugatuck Township to connect to the existing trail in Saugatuck Township. Friends of the Blue Star Trail (FOTBST) worked in coordination with the committee to outline the process to make the continuation of the trail possible. With financial commitment and grants secured for the design and construction of the trail, the City of Saugatuck, Saugatuck Township and FOTBST are at a point to begin the design/bid phase of the trail extension. The committee provided directions to the design engineers on the basic premise of the trail design and route prior to dissolving. FOTBST in coordination with the municipal managers of the City Village of Douglas, Saugatuck Township, and the City of Saugatuck align on the following administrative items to facilitate the construction of the multi-modal path (Blue Star Trail) through the respective jurisdictions:

- Revised Intergovernmental Agreement (with cost commitments from Saugatuck and Saugatuck Township)
- C2AE Phase 2 Contract for final design and construction
 - C2AE Phase 2 Contract Phasing and Costs:
 - Design Phase \$49,010 T&M, not to exceed (NTE)
 - Construction Engineering Phase \$89,896 T&M, Estimated
 - Topographic Survey \$13,500 LS (shared cost)
 - Archaeologic Survey \$12,444 LS (Saugatuck Township sole cost)
 - TOTAL ESTIMATED FEES \$164,900

Attachments included:

- Intergovernmental Agreement
- C2AE Phase 2 Agreement
- Flow Chart for project flow
- Map

The Friends of the Blue Star Trail have provided financial support for connecting the Blue Star Trail to neighboring communities. Design costs to date have been funded by the Friends of the Blue Star Trail.

There is no financial obligation from the City of Douglas for this activity.

The agreement has been reviewed by the City Attorney.

I recommend the City Council approve Resolution 19-2023 the Intergovernmental Agreement to retain engineering services for Phase 2, the north section of the Blue Star Trail.

RESOLUTION 19-2023
INTERGOVERNMENTAL AGREEMENT

TO RETAIN ENGINEERING SERVICES FOR PHASE 2
THE NORTH SECTION OF THE BLUE STAR TRAIL

This INTERLOCAL AGREEMENT is entered into pursuant to Act 7 of PA 1967 (hereinafter defined), by and among Saugatuck Township, 3461 Blue Star Hwy. P.O. Box 100, Saugatuck, MI 49453, the City of Saugatuck, 102 Butler St., Saugatuck, MI 49453, and the City of the Village of Douglas, PO Box 757, 86 W. Center St., Douglas MI 49406-0757 (the "Municipalities"), each of them a "public agency" as defined in Act 7.

RECITALS

WHEREAS, the Friends of the Blue Star Trail (FOTBST) is a 501(c)(3) non-profit organization incorporated in the State of Michigan for the charitable purpose of advocating for the development and continuance of the Blue Star Trail from South Haven to Saugatuck ("Trail"); and

WHEREAS the Urban Cooperation Act of 1967, Act No. 7 of the Public Acts of Michigan, 1967, Ex. Sess., MCL 124.501 et seq. ("Act 7"), permits a public agency to exercise jointly with any other public agency any power, privilege, or authority which such public agencies share in common and which each might exercise separately; 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 desire to enter into an interlocal agreement, pursuant to Act 7, to jointly pursue the Project through the authority granted by Act 7.

WHEREAS each Municipality has the power, privilege and authority to perform various economic development and recreational activities and administrative functions supportive of economic development and recreational activities, and to enter into this Agreement.

WHEREAS the TCC has determined that it is necessary to retain the services of a professional engineering firm to advise it as to how best to proceed with the Project; and

WHEREAS the TCC identified a number of qualified engineering firms, obtained proposals from four firms, selected two finalists, checked their references, conducted interviews of the firms, selected Capital Consultants, Inc. ("C2AE"), and arranged for legal counsel to negotiate the form of a proposed contract with that firm; and

WHEREAS the parties and the FOTBST have agreed to pay the reasonable fees of C2AE related to the Project as set forth below; and

WHEREAS C2AE has provided a proposal for the Phase 2 engineering work for the Project and the Municipalities and the FOTBST desire to retain C2AE to complete Phase 2 engineering; 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. The Municipalities will all execute the phase 2 contract, attached, at a meeting of their respective governing body.
2. To minimize costs and the risk of miscommunication, the parties hereby designate Ryan Heise, Saugatuck City Manager, as their liaison for the project (the "Project Liaison"). The Project Liaison shall be principal contact for the engineering firm. The Project Liaison shall provide regular status reports on the project to the Project/Advisory Team, which consists of representatives of each municipality and the FOTBST. Further, the Project Liaison shall consult with the chief administrative officer (i.e. the municipal manager) for the municipality before making any material decisions regarding the design of a trail segment located in that municipality.
3. Any changes in the scope of work to be provided by C2AE under this contract must be approved in writing by the Project Liaison, in consultation with the Project/Advisory Team and the chief administrative officer for each municipality in which the affected portion of the trail is located. Further, each municipality is free to retain C2AE or another individual or entity to render additional services to it under a separate agreement.
4. The Municipalities and FOTBST agree to share in payment of C2AE's fees as follows:

Party	Commitment Toward Match	% of Total Commitment	Dollar Share for Phase 2
FOTBST	\$205,000	77.3 %	\$48,320
City	50,000	18.8	11,751
Township	10,000	3.7	2, 312

In addition, the Township has agreed to pay the fee for the archeological consultant to perform the services required by MDOT within the boundaries of the Township.

5. The parties expect to follow these procedures for dealing with C2AE's fees (6-12):
6. C2AE will break down its work into appropriate segments.
7. Prior to beginning work on the next segment, C2AE will provide a not-to-exceed estimate of its fee to the Project Liaison and to the FOTBST.
8. The Allegan County Community Foundation, as fiduciary to the FOTBST, will confirm in writing to the Project Liaison that it has sufficient funds on account to pay the fee for Phase 2.
9. The Project Liaison will authorize C2AE to commence work on the next segment absent an objection by a Municipality. Municipalities shall have ten (10) working days to object/challenge the scope of work/estimate prior to the start of each segment.
10. C2AE will issue monthly invoices according to the terms of its contract.
11. Upon approval by the Project Liaison and the FOTBST, the FOTBST will authorize the ACCF to pay the invoice from the FOTBST's account [or from a new account to be set up dedicated to the TCC Project].
12. Subject to the terms of the contract with C2AE, the Project Liaison, in consultation with the Project/Advisory Team, may determine to suspend or halt the work of C2AE at any time.

MISCELLANEOUS

13. 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.
14. 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.

15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. Jurisdiction and Venue. In the event of any dispute between the Parties over the meaning, interpretation or implementation of the terms, covenants or conditions of this Agreement, the matter under dispute, unless resolved between the parties, shall be submitted to the courts of the State of Michigan.
21. 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.
22. 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.

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

CITY OF THE VILLAGE OF DOUGLAS

By: _____

Its: _____

DATE: _____

CITY OF SAUGATUCK

By: _____

Its: _____

DATE: _____

SAUGATUCK TOWNSHIP

By: _____

Its: _____

DATE: _____

April 6, 2023

Mr. Ryan Heise, Manager
City of Saugatuck
347 Water Street
Saugatuck, MI 49453

Re: Master Agreement for Professional Services: Design and Construction Administration Services, Blue Star Trail

Dear Mr. Heise,

C2AE is pleased to provide the City of Saugatuck, City of the Village of Douglas, and Saugatuck Township with our Proposal for professional services for the Blue Star Trail project. We have structured this agreement to include a scope of services and assumptions for the Overall Trail Implementation Plan. Since the project is in the early phases, our fees have been estimated based on current construction costs. As the project progresses and each phase is better defined, we will confirm our assumptions and revise the fees if necessary.

As a reminder, project manager Charles Owens will act as the lead contact for this project and will be responsible for updates to the Master Agreement as the authorized representative for C2AE. His email address is rusti.owens@c2ae.com, his office phone number is 517-371-1200, and his cell phone number is 517-202-4219.

We have assembled a strong project team that will provide expertise in all of the areas required for a successful outcome. Our key subconsultants all have significant experience with aspects of trail development. Our subconsultants include Driesenga and Associates for Topographic Survey and Stantec for Archaeologic Surveys.

We appreciate the opportunity to submit this Proposal and are honored to continue to play a key role in the Blue Star Trail development in lower Michigan. We are committed to working diligently to drive a positive public perception of the initial trail segment and creation of an overall process for raising the project's visibility, engaging the local communities, and sustaining public enthusiasm. Feel free to contact us with any questions regarding this Proposal.

TEAM MEMBERS AND GENERAL DEFINITIONS

1. The following Teams will be connected to the Project:
 - a. Project Team: Blue Star Trail – This will be the core group that will meet to discuss project details for the overall project. Meetings may occur bi-monthly, depending on need.
 - b. Stakeholder Teams: Specific teams will be developed for the trail that will include representatives from local community agencies, organizations and businesses.
 - c. Trail Teams: Representatives supporting the trail planning efforts in each community.

2. The following general definitions apply to this Agreement:

- a. Initial Design (previously completed) The preliminary work to plan and scope routes and evaluate alternatives, develop preliminary costs, conduct public outreach. Determine the final routing plan to the point that fairly accurate cost estimates and grant applications can be completed, and/or updated. Typically, this represents 30% design completion using available mapping resources. It does not typically include detailed field topographic surveys.
- b. Preliminary Design: From completion of the Initial design phase to approximately 65% complete design, such that final trail routing is finalized and approved by the Project and Stakeholder Teams and the Construction Documents phase can commence with certainty.
- c. Construction Documents (CD Phase): from design development through the point where final plans and bid documents are complete and ready for advertisement for bidding by contractors.
- d. Bidding Phase: From bid advertisement through bid opening, tabulations and recommendation for award.
- e. Construction Engineering
 - 1) Construction Administration: Office administration of the Construction Contract, pay request, change orders, and other documentation.
 - 2) Construction Observation and Testing: Field observation and testing services.
- f. Public Outreach: All phases of the work will require various forms of public and community outreach, depending on the project location and property ownership circumstances. This may vary from public information meetings, targeted group meetings to individual property owner meetings.

METHOD OF APPROACH/WORK PLAN

Task I – Design

1. The design process will commence with a kick-off meeting held with Project Team officials, stakeholders and other team members to review past activities, gather existing data for review, explore project goals, identify the stakeholders for the project, review the scope and discuss the critical elements of the proposed improvements, including schedule, hours, and budget, and the Project Team's critical success factors specific to this project.
2. Base plans will be prepared in accordance with MDOT standards using the current version. The plans will be prepared using English units in accordance with Project Team and MDOT requirements at scales approved by the Project Team.
3. At the completion of the topographic and pickup survey, the base plans will be prepared and utility locations received will be placed on the plans.
4. Coordination with the utility companies will continue through the design phase.
5. We will identify potential right-of-way issues (permanent and temporary) based on the City's assessor maps and as-constructed drawings and completed survey. The general information will be provided for the C Project Team it's use in securing the property required.

6. Meet with Project Team staff on a monthly basis during the design phase to update progress and submit a written progress report on a monthly basis, which will identify work that was completed, work to be completed in the next period, budget status and decisions needed from the Project Team.
7. Utility Coordination: From the prepared base mapping prepare a preliminary conflict analysis matrix. Conduct a preliminary utility coordination meeting, if required, to coordinate the potential and known conflicts. Where conflicts cannot be resolved through design mitigation, clearly notify the utility companies of their need to relocate and the required relocation completion date.
8. Preliminary Pathway Design: Prepare preliminary plans and specifications (special provisions) according to MDOT's required format and a preliminary opinion of probable construction cost for submittal to the Project Team. Meet with the Project Team to review the preliminary design package.
9. Preliminary Maintenance of Traffic Design: Prepare preliminary maintenance of traffic (vehicular and pedestrian) plans and specifications (special provisions). Meet with the Project Team to review the preliminary design package.
10. Preliminary Permanent Pavement Marking Design: No pavement marking changes are anticipated.
11. SESC/SHPO/MDOT Permit: Prepare draft Soil Erosion Sedimentation Control, SHPO and MDOT Use of State Trunkline permits for Project Team review and comment. Finalize and submit the permit applications. The City of Saugatuck will sign as the permit applicant and pay directly the required application fee(s).
12. Preliminary Plan (75% +/-)/Grade Inspection Submittal: Prepare a Preliminary Plan package of drawings, special provisions, and preliminary engineer's estimate for C Project Team review. Upon Project Team review and approval, submit the Grade Inspection Package to MDOT LAP.
13. Grade Inspection Meeting: Attend the Grade Inspection meeting with the Project Team and MDOT LAP Engineer.
14. Final Design: Prepare final design package in accordance with MDOT LAP format, including plans, specifications and special provisions, as well as opinion of probable construction cost.
15. Final Plans: Prepare final plans including the necessary information and quantities ready for MDOT LAP review and bidding.
16. Project Design Phase Meetings: Attend the following meetings during the course of the project: (1) project kick-off, (1) preliminary plan review, (2) utility coordination with the Project Team and utility companies, (1) maintenance of traffic review meeting, and (2) Project Team coordination meetings.

Task II – Construction Engineering

We anticipate the construction duration for the projects as follows:

1. Estimated construction time is 7 weeks and is anticipated to be constructed in 2025. A majority of the path construction does not impact motoring public. We assume our on-site representatives will be on the projects for 9 hours/day, five days a week.

2. C2AE will provide engineering staff for project management, office administration, construction surveying, SESC site checks and coordination of material testing including plant inspection, construction observation. The office administrator will be responsible for the preparation of all MDOT required documentation utilizing Field Manager software.
3. PSI will perform on-site and off-site material testing requirements. Specifically, their role will be to provide material gradations, HMA inspection, and compressive strength tests for concrete. PSI or C2AE will perform density checks of the subgrade and aggregate base material, as well as trench backfill.
4. Our inspectors are qualified and have worked on several federally-aided projects in the past. Most importantly, our field representatives will communicate with the property owners and other Contractors during all phases of construction.
5. As-constructed plans showing the final configuration of each project will be prepared for the pathway as constructed. As-built plans will be prepared in accordance with the Project Team's standards in PDF format. Check prints will be submitted 90 days following completion of construction operations.

Work Task Descriptions

1. Schedule and attend pre-construction and bi-weekly construction progress meetings.
2. Provide construction surveying and layout.
3. Provide a full-time resident project representative in conformance with MDOT requirements.
4. Provide office administration for documentation in accordance with MDOT requirements utilizing Field Manager. Schedule materials testing requirements. Complete project closeout in accordance with MDOT Standards.
5. Provide project management throughout the project duration.
6. As-constructed plans depicting the final project configuration will be provided in accordance with Project Team standards in PDF format.

ADDITIONAL SERVICES AND ASSUMPTIONS

Additional services will be performed as requested, upon written approval from the Project Team. These additional services will be scoped and negotiated before performance commences. Additional services are those services not specifically listed in the proposal. These services may include, but are not necessarily limited to the following:

1. Grading easements/right-of-way purchases for construction.
2. Phase I, Phase II, or Baseline Environmental Site Assessments.
3. Mass mailings to local residents, business owners or citizens' groups.
4. The Project Team will provide access/right of entry for any pickup survey, if needed.

6. The City will apply for and pay all regulatory permit fees. The Design Team will prepare the permit(s) for the Project Team's review, signature and submittal.

C2AE will develop and implement an action plan for planning and design engineering of the entire trail corridor. The plan will identify an overall project timeline, public outreach and communication engagement strategy/strategies, roles and responsibilities, a phasing plan with estimated timelines and costs for design, construction, and trail maintenance.

OVERALL TIMELINE

Create an overall project timeline that incorporates established project schedules for all trail segments, including those under design as well as the trail segments not yet designed. Timeline dates will be updated on a monthly basis as part of our Progress Reporting process. Monthly progress reports will be provided by C2AE to provide updates for all current project activities. Timeline will include, but not be limited to, the following key milestone dates:

1. Project Team Meetings
2. Community Stakeholder Meetings
3. Each Trail Segment Kickoff Meeting
4. Public Engagement Events/Property Owner Meetings
5. Duration of Preliminary Design Phase with Deliverable Dates
6. Duration of Construction Documents Phase with Deliverable Dates
7. Permit Submittal Dates
8. Duration for Bidding
9. Duration of Construction
10. Any other key milestones

Timeline deliverables will include the creation and updating of a master Gantt type chart for all segments.

Funding Evaluation/Applications

We will assist the Project Team in updating and resubmitting the MNRTF grant for that portion of the project. In general, the Project Team will be responsible for the development and submittal of funding applications. C2AE will assist by providing exhibits, cost opinions and other supporting documentation as needed. It is understood that revisions to the funding application information may be needed and is a part of the process and project fees. Private fundraising activities will be conducted by the Project Team and supported by C2AE.

Roles and Responsibilities

At the kickoff meeting for each trail segment, we will document the roles and responsibilities of each stakeholder or entity involved in the project. Throughout the project, C2AE will coordinate and track the progress of key assignments to ensure the overall project, as well as each trail segment, remains clearly assigned and on schedule. This effort will also include monitoring the assignments of other Engineering firms involved. Consistent and clear communication will keep the Advisory Committee and Project/Community Stakeholder Teams informed of the project status and commitments to ensure the project is a success.

Trail Maintenance Plan

C2AE will utilize our extensive experience with trail projects and the trail calculators already created to develop costs associated with trail maintenance, operations and replacement. We will also assist in the identification of solutions for trail maintenance approaches along the corridor, which can vary from simple cooperation between units of government to a formal establishment of a recreational authority. Maintenance will play a key role to achieve the expected service life of the trail system and ensure viability for generations to come. Our team will facilitate a series of meetings with appropriate agencies, develop materials and exhibits, and working closely with the Project/Community Stakeholder Teams on developing the outreach plan for this effort. Maintenance of the Blue Star Trail will require a collaborative effort between the State, local municipalities, friends' groups, and the private sector. MDOT and MDNR, depending on property ownership or funding, will require that maintenance agreements be in place as each segment of the project is constructed.

GENERAL SCOPE OF SERVICES –PRELIMINARY DESIGN DEVELOPMENT, CONSTRUCTION DOCUMENTS, BIDDING AND CONSTRUCTION PHASES

C2AE proposes the following general scope of services for each trail segment that will meet AASHTO Guidelines, Americans with Disabilities Act and Accessibility Guidelines (A.D.A.A.G.), and other current Federal, State and local codes and guidelines. MDOT Local Agency guidelines will also be met when state funding is involved.

Topographic Survey

Driesenga & Associates, Inc. will perform topographic surveying services at the above-referenced site.

1. Perform a partial topographic survey of the proposed Blue Star Trail Route located in, Saugatuck, Michigan. It is assumed by Driesenga & Associates, Inc. (D&A) that route will be approximately located as shown on the maps provided in the RFP. Also, the route is approximately 5800+/- feet long, starting at the intersection of Blue Star Highway and Washington Street, then running North to Holland Street, with a gap in the middle where the existing Blue Star Trail is presently located. It is also assumed by D&A that the project does not require a parcel split or surveyor provided wetland delineation services. The survey of the outlined improvement area will provide all relevant site information including existing elevations, contour lines, visible utilities, tree lines, individual trees 6" in diameter and greater outside of heavily wooded areas, and all other existing site improvements within the proposed survey area. Survey limits will extend to include an approximate 50' wide corridor, centered on the proposed route location. There will be a larger topo area for the portion of the route just North of North Street in the low area delineated on the December RFP Map. Boundary corners and property lines will not be shown. However, topo data will be referenced to section corners where applicable.

2. A Miss Dig design ticket will be submitted to obtain maps of the locations of public underground utilities. These underground utilities will be shown on the survey as accurately as the provided maps allow. It will be the responsibility of the client to provide available maps of any private utilities affecting the survey area. All plainly visible surface evidence of underground utilities will be located. Pipe inverts at all accessible structures within the survey limits will be provided. Any further pursuit of utility information is not included within the scope of this proposal and will be performed on a time and materials basis or for a predetermined fee if necessary.
3. Vertical datum will be established per available records or NAVD 88. The survey will be drawn using AutoCAD Civil 3D 2022 and will be provided to you in PDF and DWG format.
4. Program Application and other Funding Information: Assist the Project Team in preparing the MDOT Program Application or other supplementary funding information when required, including environmental and historical clearances and other required elements throughout the course of the project. Specifically, in MDOT funded projects, their NEPA requirements will be met.
5. Utility Coordination: Prepare correspondences and coordination with utility companies to determine and resolve conflicts with existing utilities and the proposed trail design. A preliminary Utility Conflict Matrix will be developed to track areas of concern.
6. Soil Borings: C2AE will identify soil boring locations and work with our subconsultant Soils and Structures to complete the borings and soils report. We have included a budget amount for soil boring work within our contract fee.
7. Preliminary Permit Evaluation: Identify any environmental features – critical dunes, wetlands, streams and buffers and identify permits that will be needed. This is also an outcome of the above referenced NEPA requirements. C2AE and our subconsultants will prepare and submit the required environmental review and NEPA documentation.
8. Easements: C2AE will review and document existing MDOT R.O.W. or other land ownership types (easements and fee simple ownership) and evaluate the impact on the trail design. This will include working closely with MDOT staff on the interpretation and understanding of their ownership as it relates to trail development.
9. Furthermore, we will identify any areas requiring grading permits or easements. This effort will include developing design alternatives that work for the landowner as well as the trail user. We will prepare cost estimates and meet with individual landowners to review available options. C2AE and Ferguson and Chamberlain will prepare and assist in obtaining necessary grading permits or easements outside of the current easement/ownership areas.
10. Preliminary Plans: Provide full plan and profile drawings to a 65% level of the proposed trail route. Provide preliminary typical trail and road/stream crossing construction cross sections and details.
11. Preliminary Quantities and Opinion of Probable Construction Cost: Provide an itemized breakdown of estimated quantities, estimated unit costs and estimated total cost for all project components. The estimate will utilize the MDOT-required MERL software.
12. Funding Applications: Assist with the preparation and submittal of funding applications for the project segment.

Archaeological Survey

Stantec shall furnish the necessary qualified personnel to provide the Services. Stantec represents that it has access to the experience and capability necessary to and agrees to perform the Services with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the Services at the time when and the location in which the Services were performed. This undertaking does not imply or guarantee a perfect Project and in the event of failure or partial failure of the product or the Services, Stantec will be liable only for its failure to exercise diligence, reasonable care, and professional skill. This standard of care is the sole and exclusive standard of care that will be applied to measure Stantec's performance. There are no other representations or warranties expressed or implied made by Stantec. In particular, but not by way of limitation, no implied warranty of merchantability or fitness for a particular purpose shall apply to the Services provided by Stantec nor shall Stantec warrant or guarantee economic, market or financial conditions, Proforma projections, schedules for public agency approvals, or other factors beyond Stantec's reasonable control. Stantec does not warrant the Services to any third party and the Client shall indemnify and hold harmless Stantec from any demands, claims, suits, or actions of third parties arising out of Stantec's performance of the Services performed with reasonable care and professional skill. This provision does not apply to negligence by Stantec.

In performing the Services under this Agreement, Stantec shall operate as and have the status of an independent contractor and shall not act as or be an employee of the Client. Except as specifically described in this Agreement, Stantec's field investigation, laboratory testing and engineering recommendations will not address or evaluate pollution

Task 1: Archaeological Phase I Survey

1. Stantec will conduct an Archaeological Phase I to document archaeological resources in and around the project area. To ensure compliance with state and federal requirements, our review will include, but is not limited to, examination of the following resources:
2. Archaeological Site Files on record at the Michigan State Historic Preservation Office (SHPO) in Lansing;
3. The National Historic Landmarks database;
4. The National Register of Historic Places database;
5. Other readily available resources related to local history, such as historic maps and aerial photography.
6. The Archaeological Phase I will include shovel test survey of approximately 1,500 ft of the proposed trail location. The information gathered during the records check will be appended to the Michigan SHPO's *Application for Section 106 Review* as a standalone "Archaeological Technical Report", in compliance with the new Section 106 application and review process. If the Phase I Survey identifies significant archaeological resources in project area, a Phase II evaluation may be necessary, but is beyond the scope of services at this time.

Assumptions

1. Client will notify landowners of the survey;
2. Reasonable access to the project area is assured;
3. Up to 1,500 ft. of proposed trail will need to undergo shovel test survey; The project boundaries are marked in the field or clearly evident to the field team;

4. Conducive weather conditions, i.e., no heavy rain, snow, or frozen ground;
5. No archaeological sites will be identified;

If an archaeological site is encountered during the survey, then its documentation is beyond this scope of services. Standard site documentation can be completed for \$1,500 per site, including up to 50 artifacts. Cardno would submit a change order prior to completing the additional work.

Stantec will complete a history/architecture records check with the MI SHPO and field investigation to document above-ground resources over 50 years of age within the project's area of potential effects (APE). For the purposes of this proposal, we assume the historic architectural APE will consist of the direct project area, which likely includes sidewalks, curbs, bridges, culverts, and roadway in Sections 1-4 of the proposed Blue Star Trail extension, as defined above. Previously recorded and/or listed NRHP properties directly adjacent to the project area will be documented as part of this effort, as well as any properties within the direct project area. As well, an architectural APE of adjacent parcels will be developed around the proposed areas of expansion.

Stantec will assess each property determined to be over 50 years in age for eligibility for listing on the National Register of Historic Places (NRHP). This will allow for an effects determination to be made under Part VI of the *Application for Section 106 Review*. Further, photographs obtained during the field investigation will be included in the application to satisfy the requirements under Part V of the form.

As part of the history/architecture investigation, Stantec anticipates completing Parts III through VI of the *Application for Section 106 Review*. In addition, Stantec will complete a history/architecture inventory and survey of the APE to conform to Michigan SHPO guidelines. Stantec will complete the necessary survey forms and narratives, summarizing the results of the architectural survey. The application will identify the APE and explain how it was identified, identify any properties considered eligible or listed in the NRHP, and provide information regarding the proposed project's potential effects on any existing or NRHP-eligible resources. Michigan survey forms will be prepared and included, as necessary.

Assumptions

1. A history/architecture records request will be submitted to the Michigan SHPO concurrent with the request for archaeological data.
2. History/architecture inventory will identify up to 10 properties over 50 years in age in the project's APE. Identification and evaluation of additional properties are beyond this scope of services and would be completed for an additional fee to be negotiated with the client.
3. One property will be found eligible for the NRHP.
4. No NRHP districts will be discovered.

The client will provide any detailed information available in their records regarding a description of the project, project plans and mapping previous land use and disturbance, and maps indicating areas of proposed ground disturbance.

Construction Documents

1. Special Provisions: Prepare special provisions to be used in conjunction with the 2012 MDOT (or current version) Standard Specifications for Construction to establish the quality of all materials, equipment, installation and construction.

2. **Grade Inspection/Review Meeting:** Provide the necessary plan submittals, coordinate and participate in an on-site Grade Inspection/Review meeting with representatives of the Project Team, EGLE, DNR, MDOT, affected utility companies and other interested parties.
3. **Permits:** Act as the owner's agent in preparing applicable permits involving the trail for submission to the applicable governmental agencies. Permit fees for such permits (where applicable) shall be paid for by Networks Northwest. Permits shall include Wetlands, Inland Lakes and Streams, MDOT, County Road Commission, Local Units of Government, SESC and other permits required for the trail construction.
4. **Final Plans and Special Provisions:** Prepare final plans and any special provisions applicable for the project. Include maintaining traffic, striping and signing plans in accordance with the Michigan Manual of Uniform Traffic Control Devices.
5. **Final Engineer's Opinion of Probable Construction Cost:** Provide a final itemized breakdown of construction quantities and unit cost for all of the pay items used on the project.
6. **Grant Administration Assistance:** Unless otherwise specifically noted, Blue Star Trail or other member of the Project Team (or Local Unit of Government) will be the designated grant administration agency. C2AE will assist in administering the MDOT TAP Grant, the Michigan Natural Resources Trust Fund (MNRTF) grant, and other grants as applicable to the project phase. C2AE will provide the technical data, mapping, and other related technical requirements to meet the grant requirements. C2AE will also assist in the preparation of periodic reports, reimbursement requests and other grant related documentation to be submitted by the grant recipient. Note that if Michigan Economic Development Corporation funding is obtained, a Certified Grant Administrator is required. The services of a Certified Grant Administrator would be performed or secured by Networks Northwest.

Bidding Phase Services

It is understood that the contract with the construction contractor may be held by a Local Unit of Government (LUG) depending on the funding involved. It is also understood that in some cases the contract may be held by MDOT or the Michigan Department of Technology, Management and Budget (MDTMB). The exact scope of services may be adjusted based on the funding agency(ies).

1. Answer bidders' questions and issue clarifications/addendums as required.
2. Review bidding results and assist Project Team and LUG with contractor selection process.

Construction Phase Services

1. Construction Administration (exact scope of services may be adjusted based on the funding agency(ies):
 - a. Attend and conduct a preconstruction conference to review the project with the Project Team, LUG (as applicable), DNR (as applicable), Contractor, Sub-contractor(s), utility companies, MDOT (as applicable) and other interested parties. Review project schedule. Record meeting minutes and distribute.
 - b. Prepare modifications and supplementary sketches required to resolve actual field conditions encountered.
 - c. Review shop drawings submitted by the contractor. Review product and material certifications. Maintain status of tested materials information.

- d. Issue instructions from the Project/Stakeholder Teams to the contractor; issue necessary interpretations and clarifications of contract documents; and prepare-required change orders.
- e. Prepare biweekly or monthly pay estimates, depending on the funding sources.
- f. Attend monthly (or more frequent) progress meetings.
- g. Attend final project inspection with the involved stakeholders and Contractor representatives. Prepare final punch list for project completion.
- h. All construction documentation will be performed utilizing the current version of Field Manager Software.
- i. Accept, review and maintain Contractor submitted Certified Payrolls in accordance with MDOT or other agency requirements and perform wage rate interviews to verify compliance (when necessary).

2. Construction Observation and Testing:

- a. Provide on-site observation services based upon the type of construction work in progress; prepare daily reports using the current version of Field Book Software; provide appropriate reports to the Project Team and LUG (as applicable) to monitor compliance with plans, specifications and all other contract documents.
- b. Provide survey benchmarks, layout of lines, and grades as required to complete construction.
- c. Provide and/or coordinate field material density testing services for backfill, subgrade, base course and bituminous courses.
- d. Coordinate laboratory testing services for aggregate, HMA and concrete cylinders.
- e. Prepare Record Drawings for the project upon completion of construction.

ENGINEERING FEES

As this is a complex, ever evolving and multi-year, multi-jurisdiction and multi-funding source project, it is not possible to provide a fixed fee basis at this time for all of the services that may be required. However, provided below are estimates of the required fees for each phase of each trail segment. The fees for the phases that currently have a detailed scope are identified as such, and a lump sum fee basis provided. As each phase development becomes better defined, the majority of the estimated fees will be adjusted and converted to lump sum fees through contract amendments.

Additionally, the estimated fees to be provided below will be implemented in phases. To assist in estimating timing and cash flow needs, an estimated fee schedule has been added to this section showing the possible timing of the project phases and expenditures. This schedule will be further developed during the initial project phases, and the schedule will be largely dictated by the ability to raise the necessary construction funding.

The following fee abbreviations are used:

T&M, NTE – Time and Material Basis with a Not to Exceed total amount

LS – Lump Sum (fixed amount)

T&M, Estimated – Estimated amount that will be adjusted by future amendment after the previous phase is completed if the fee basis significantly changes.

Overall Project Planning, Public Outreach Planning, Management and Timeline Development

Design Phase	\$49,010	T&M, NTE
Construction Engineering Phase	\$89,896	T&M, Estimated
Topographic Survey	\$13,500	LS
Archaeologic Survey	\$12,444	LS
TOTAL ESTIMATED FEES	\$164,900	

Construction Testing: In addition to the above-referenced fees, we are recommending \$8,000 for a lump sum contingency allowance be included for materials testing of the trail during construction. These fees will be contracted separately with PSI prior to construction start.

SCHEDULE

A draft initial schedule will be created and presented during the kick-off meeting. As a part of the first phases of work, this overall project implementation schedule will be refined with the Project Team during the Overall Project Planning, Public Outreach Planning, Management and Timeline Development phase, and then continually updated throughout the course of the project. The draft schedule is for illustrative purposes, but requires additional discussion and review with regard to potential funding, which will be the biggest schedule driver.

We have included our Standard Contract Provisions as part of our proposal. If the terms and conditions as stated are acceptable, please countersign and return one (1) copy to our office.

Please let us know if you have any questions or comments. Thank you once again for the opportunity to be of service. We truly value the opportunity to work with the Project Team and we look forward to helping you with the trail implementation.

Sincerely,
C2AE



Roger F. Marks, PE
Client Services Leader

Accepted by:

City of Saugatuck

Date

City of the Village of Douglas

Date

Saugatuck Township

Date

HOURLY BILLING RATES



Classification	Description	Hourly Billing Rate Range
A8	Engineer/Architect/Landscape Architect/Surveyor	\$210 - \$305
A7	Engineer/Architect/Landscape Architect/Surveyor	\$189 - \$268
A6	Engineer/Architect/Landscape Architect/Surveyor	\$163 - \$236
A5	Engineer/Architect/Landscape Architect/Surveyor	\$147 - \$210
A4	Engineer/Architect/Landscape Architect/Surveyor	\$131 - \$184
A3	Engineer/Architect/Landscape Architect/Surveyor	\$116 - \$163
A2	Engineer/Architect/Landscape Architect/Surveyor	\$100 - \$142
A1	Engineer/Architect/Landscape Architect/Surveyor	\$84 - \$116
(T)A-4	Architectural/Engineering Designer	\$121 - \$179
(T)A-3	Architectural/Engineering Designer	\$105 - \$152
(T)A-2	Architectural/Engineering Designer	\$89 - \$126
(T)A-1	Architectural/Engineering Designer	\$68 - \$100
B3	Resident Project Representative/Survey Technician	\$105 - \$137
B2	Resident Project Representative/Survey Technician	\$74 - \$116
B1	Resident Project Representative/Survey Technician	\$47 - \$79
C3	Administrative	\$63 - \$95
C2	Administrative	\$53 - \$74
C1	Administrative	\$37 - \$58

- (1) The foregoing rates include employee fringe benefits, computer time, overhead, other indirect costs and profit. Legal proceedings, including but not limited to case preparation, depositions, interrogatories, court appearances, will be billed at the above hourly rates plus ten (10) percent.
- (2) Rates are effective through the duration of the initially authorized projects. Rate increases may be applied to future authorizations.
- (3) Expenses will be invoiced at cost plus ten (10) percent administrative fee.
- (4) All invoices are due upon receipt.
- (5) This information is confidential and is not to be duplicated, used or disclosed in whole or in part, for any purpose other than for which it has been submitted without written authorization by one of the firm's principals.

The parties to this agreement, Capital Consultants, Inc., a Michigan Corporation doing business as C2AE in the State of Michigan, hereinafter called the A|E CONSULTANT and City of Saugatuck, Michigan, hereinafter called the OWNER, hereby agree to the following conditions:

- A. Limit of Scope: The services provided by the A|E CONSULTANT shall be limited to those described in the Scope of Services.
- B. Changed Conditions: If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the A|E CONSULTANT are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the A|E CONSULTANT may call for renegotiation of appropriate portions of this Agreement. The A|E CONSULTANT shall notify the OWNER of the changed conditions necessitating renegotiation, and the A|E CONSULTANT and the OWNER shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.
- C. Additional Services: Additional services not specifically identified in the Scope of Services shall be paid for by the OWNER in addition to the fees previously stated, provided the OWNER authorizes such services in writing. Additional services will be billed monthly as work progresses and invoices are due upon receipt.
- D. Standard of Care: In providing services under this Agreement, the A|E CONSULTANT will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice to the A|E CONSULTANT and by mutual agreement between the parties, the A|E CONSULTANT will without additional compensation, correct those services not meeting such a standard.
- E. ADA Compliance: The Americans with Disabilities Act (ADA) provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to persons with disabilities. The OWNER acknowledges that the requirement of the ADA will be subject to various and possibly contradictory interpretations. The A|E CONSULTANT, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. The A|E CONSULTANT, however, cannot and does not warrant or guarantee that the OWNER's project will comply with all interpretations of the ADA requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project.
- F. Code Compliance: The A|E CONSULTANT shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of submission to building authorities. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the A|E CONSULTANT to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provision of this Agreement.
- G. Permits and Approvals: The A|E CONSULTANT shall assist the OWNER in applying for those permits and approvals normally required by law for projects similar to the one for which the A|E CONSULTANT's services are being engaged. This assistance shall consist of completing and submitting forms to the appropriate regulatory agencies having jurisdiction over the construction documents, and other services normally provided by the A|E CONSULTANT and included in the scope of Basic Services of this Agreement.
- H. Opinions of Probable Construction Cost: In providing opinions of probable construction cost, the OWNER understands that the A|E CONSULTANT has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the A|E CONSULTANT's opinions of probable construction costs are made on the basis of the A|E CONSULTANT's professional judgment and experience. The A|E CONSULTANT makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from the A|E CONSULTANT's opinion of probable construction cost.

- I. Schedule for Rendering Services: The A|E CONSULTANT shall prepare and submit for OWNER approval a schedule for the performance of the A|E CONSULTANT's services. This schedule shall include reasonable allowances for review and approval times required by the OWNER, performance of services by the OWNER's consultants, and review and approval times required by public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by the OWNER, or for delays or other causes beyond the A|E CONSULTANT's reasonable control.
- J. Ownership of Reports, Drawings and Other Materials: The OWNER agrees that all reports, drawings, letters, work sheets, plans, preliminary material tables, supportive data, documents and other materials produced by the A|E CONSULTANT in the course of and for the purpose of meeting this contract are the property of the A|E CONSULTANT, and shall remain in the possession of the A|E CONSULTANT. The OWNER shall have access to the above named material during normal business hours of the A|E CONSULTANT during and after completion of this contract. The OWNER may obtain copies of any of the above named material. Copies of electronic media may be obtained by the OWNER. (See Alteration and Reuse of CAD Information provision of this Agreement.)
- K. Alteration and Reuse of CAD Information: Because computer aided design/drafting (CAD) information stored in electronic form can be modified by other parties, intentionally or otherwise, without notice or indication of said modifications, the A|E CONSULTANT reserves the right to remove all indications of its ownership and/or involvement in the material from each electronic medium not held in its possession. The OWNER may retain copies of the work performed by the A|E CONSULTANT in CAD form. Copies shall be for information and used by the OWNER for the specific purpose for which the A|E CONSULTANT was engaged. Said material shall not be used by the OWNER, or transferred to any other party, for use in other projects, additions to the current project, or any other purpose for which the material was not strictly intended without the A|E CONSULTANT's express written permission. Any unauthorized modification or reuse of the materials shall be at the OWNER's sole risk, and the OWNER agrees to defend, indemnify, and hold the A|E CONSULTANT harmless, from all claims, injuries, damages, losses, expenses, and attorneys' fees arising out of the unauthorized modification of these materials.
- L. Record Documents: Upon completion of the work, the A|E CONSULTANT shall compile for and deliver to the OWNER a reproducible set of Record Documents based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor. These Record Documents will show significant changes made during construction. Because these Record Documents are based on unverified information provided by other parties, which the A|E CONSULTANT shall assume will be reliable, the A|E CONSULTANT cannot and does not warrant their accuracy.
- M. Payment Terms: Invoices will be submitted by the A|E CONSULTANT monthly, are due upon receipt and shall be considered past due if not paid within forty-five (45) calendar days of the due date. If payment in full is not received by the A|E CONSULTANT within sixty (60) calendar days of the due date, invoices shall bear interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) of the Past Due amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

If the OWNER fails to make payments when due or otherwise is in breach of this Agreement, the A|E CONSULTANT may suspend performance of services upon five (5) calendar days' notice to the OWNER. The A|E CONSULTANT shall have no liability whatsoever to the OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by the OWNER. Upon payment in full by the OWNER, the A|E CONSULTANT shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the A|E CONSULTANT to resume performance.

- N. Disputed Invoices: If the OWNER objects to any portion of an invoice, the OWNER shall so notify the A|E CONSULTANT in writing within ten (10) calendar days of receipt of the invoice. The OWNER shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after receipt of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) shall be paid by the OWNER on all disputed invoice amounts that are subsequently resolved in the A|E CONSULTANT's favor and shall be calculated on the unpaid balance from the due date of the invoice.
- O. Abandonment of Work: If any work is abandoned or suspended, the A|E CONSULTANT shall be paid for services performed prior to receipt of written notice from the OWNER of abandonment or suspension.
- P. Errors and Omissions Insurance: The A|E CONSULTANT maintains an errors and omissions insurance policy as part of normal business practice. The OWNER agrees to limit the A|E CONSULTANT's liability to the OWNER and to all Construction Contractors and Subcontractors on the project due to the A|E CONSULTANT's negligent acts, errors, or omissions, such that the total aggregate liability of the A|E CONSULTANT to all those named shall not exceed **\$164,900.00**.
- Q. Betterment: If, due to the A|E CONSULTANT's negligence, a required item or component of the project is omitted from the A|E CONSULTANT's construction documents, the A|E CONSULTANT shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the A|E CONSULTANT be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the project.
- R. Indemnification: The A|E CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the A|E CONSULTANT's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the A|E CONSULTANT is legally liable.
- The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the A|E CONSULTANT, its officers, directors, employees and subconsultants (collectively, A|E CONSULTANT) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER's negligent acts in connection with the project and the acts of its contractors, subcontractors or consultants or anyone for whom the OWNER is legally liable.
- Neither the OWNER nor the A|E CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
- S. Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the A|E CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the OWNER and the A|E CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
- T. Full-Time Construction Observation: The A|E CONSULTANT will provide full-time project representation in order to observe the progress and quality of the work completed by the Contractor. Such observation is not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather is to allow the A|E CONSULTANT, as an experienced professional, to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the Contract Documents.

The A|E CONSULTANT shall keep the OWNER informed about the progress of the work and shall endeavor to guard the OWNER against deficiencies in the work.

The A|E CONSULTANT shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

The A|E CONSULTANT shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the work, or any agents or employees of any of them. The A|E CONSULTANT does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

- U. Part-Time Construction Observation: The A|E CONSULTANT shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the OWNER and the A|E CONSULTANT, in order to observe the progress and quality of the work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the A|E CONSULTANT, as an experienced professional, to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the Contract Documents.

Based on this general observation, the A|E CONSULTANT shall keep the OWNER informed about the progress of the work and shall endeavor to guard the OWNER against deficiencies in the work.

The A|E CONSULTANT shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

The A|E CONSULTANT shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the work, or any agents or employees of any of them. The A|E CONSULTANT does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

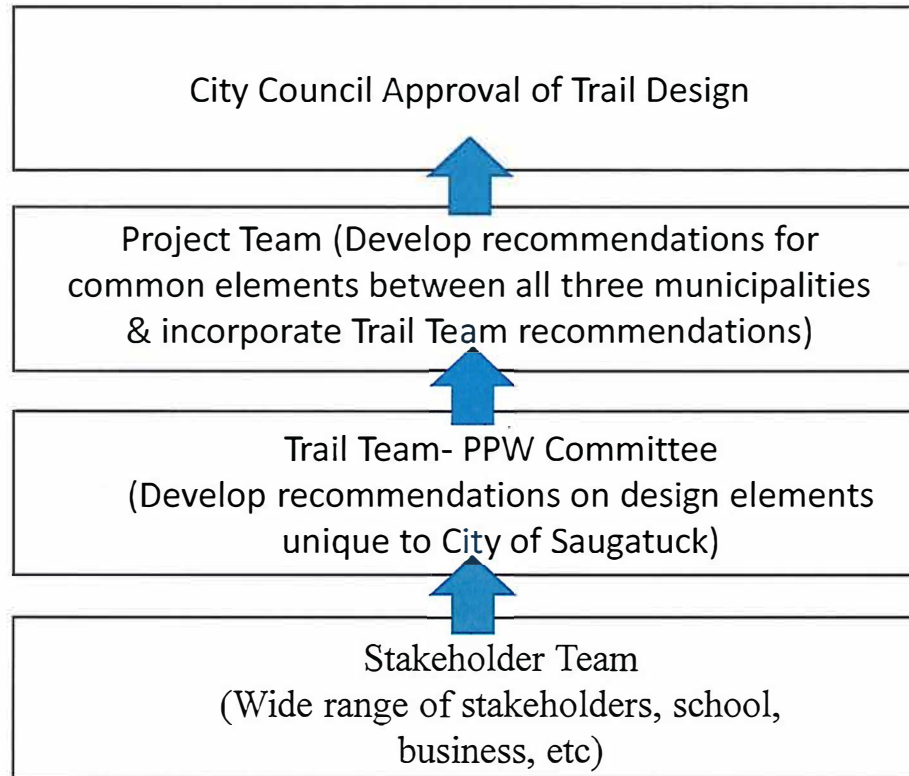
- V. Jobsite Safety: Neither the professional activities of the A|E CONSULTANT, nor the presence of the A|E CONSULTANT or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The A|E CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The OWNER agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the OWNER's contract with the General Contractor. The OWNER also agrees that the OWNER, the A|E CONSULTANT and the A|E CONSULTANT's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance.
- W. Hazardous Materials: As used in this Agreement, the term *hazardous materials* shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the project site.

Both parties acknowledge that the A|E CONSULTANT's Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event the A|E CONSULTANT or any other party encounters any hazardous or toxic materials, or should it become known to the A|E CONSULTANT that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the A|E CONSULTANT's services, the A|E CONSULTANT may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the OWNER retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

The OWNER agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the A|E CONSULTANT, its officers, partners, employees and consultants (collectively, A|E CONSULTANT) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the A|E CONSULTANT.


- X. Change Orders/Stop Work Orders: The A|E CONSULTANT and the OWNER agree that any construction contract change orders or stop work orders must be approved in writing by the OWNER.
- Y. Agreement Not to Claim for Cost of Certain Change Orders: The OWNER recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications and other design documentation furnished by the A|E CONSULTANT or in the other professional services performed or furnished by the A|E CONSULTANT under this Agreement whether caused by professional negligence or by imperfections that are within professional standards ("Covered Change Orders"). Accordingly, the OWNER agrees not to sue and otherwise to make no claim directly or indirectly against the A|E CONSULTANT on the basis of professional negligence, breach of contract or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed 5% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of the A|E CONSULTANT for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that the OWNER would have incurred if the Covered Change Order work had been included originally in the Contract Documents without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Drawings, Specifications and other design documents furnished by the A|E CONSULTANT or in the A|E CONSULTANT's other professional services related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, the A|E CONSULTANT is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order.
- Z. Dispute Resolution: The OWNER agrees that 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 the dispute(s). The cost of mediation shall be shared equally by the parties hereto.


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




LEGEND


 EXISTING BLUE STAR TRAIL:


 Connecting Saugatuck City to Saugatuck Twp. and the Beeline Trail to Holland

 North St. to Old Allegan Rd.

 Main St. to Wiley Rd.

 PROPOSED BLUE STAR TRAIL:

 1 Holland St. to North St. and Blue Star Highway

 2 Old Allegan Rd. to Maple St.

 3 Maple St. to Main St.

