

**COMMERCE, WALLED LAKE & WIXOM (CW2) TRAILWAY
MANAGEMENT COUNCIL
COMMERCE TOWNSHIP HALL
2009 Township Drive
Commerce Township MI 48390**

**AGENDA
Wednesday 8 January 2020
3:00 P.M.**

- 1. Approval of Minutes**
- 2. Public Comment**
- 3. Phase One Construction**
 - a. Construction Update**
 - i. Prep for Ribbon-Cutting Ceremony**
 - ii. Update with adjacent property owner/sprinkler**
- 4. Phase Two Design/Engineering/Route/RFP update**
- 5. Adams Billboard Lease Update**
- 6. Trail Manager Report**
 - a. Friends Group feedback, mile marker update**
 - b. Audit services moving forward**
 - c. Trail Manager 2020 Contract Review/Approval**
- 7. New Interlocal Agreement: copies from locals, next meeting**
- 8. Financials discussion as warranted**
- 9. Other matters and next meeting date**
 - a. Next Friends Group meeting Tues, Feb. 4; WL Library**
 - b. Next Trail Council meeting Weds, Feb. 12; Commerce**
- 10. Approve the Warrants**
 - a. Manager of the Air Line Trail**
 - b. Attorney services for Billboard Lease**
- 11. Adjourn**

**Commerce, Walled Lake, Wixom Trailway Council Meeting
12-11-2019
3 p.m.
Wixom City Offices
Wixom, MI**

Council members

David Scott	Commerce	President	Present*
John Owsinek	Walled Lake	Treasurer	Present
Steve Brown	Wixom	Secretary	Present

John Hensler, Manager of the Michigan Air Line Trail

Also Present: Kristen Wiltfang, Karen Wilmot, Gabriel Costanzo, Bob Robertson, Kevin Schroeder, Van Vanerian, Linda Ackley, Deanna Magee, Sheryl Lucas, Casey Ambrose, Gerard Fertig

*Meeting was called to order by Secretary Steve Brown at 3:04 p.m. Dave Scott took over at 3:08 p.m.

ITEM #	DESCRIPTION	ACTION BY
1	Approval of 11-13-2019 Minutes. Motion by Owsinek, supported by Brown, to approve the Minutes of November 13, 2019. Motion Carried unanimously.	
2	Public Comment. Gabriel Costanzo offered thanks to the Council for the progress to date, said that just about everyone he speaks with about the trail is very excited for it.	
3A (i., ii., iii), 3B, 4	<p>Update on Construction/Engineering & Next Steps.</p> <p>Phase One Construction wrapping up. Road crossing paint and electronics almost done, not quite yet complete. Replacement medallions for the Trail benches and bike racks also due in the next week or two.</p> <p>Ribbon-cutting event suggested date was April 18. That's the Saturday of Rails-to-Trails Conservancy's "Opening Day" event, so we could sort of piggyback on that date. Mayor Ackley expressed concern that weather conditions still could be unpredictable for that time of year.</p> <p>Mr. Owsinek had received feedback that the split-rail fence at the WL trailhead was "ugly." Manager responded that once the area is given a little landscaping, the area's aesthetics will improve.</p> <p>Sprinklers at Hansen's: sprinkler lines and wires cut during trail excavation this past spring at the property owner adjoining the trail. LJ Construction (Contractor) repaired lines as a courtesy but apparently there were wires severed as well, and those need to be repaired to make the system work. Repair estimate from Hansen's sprinkler vendor is \$1200. LJ points to the fact that the lines were in the Trail right of way; that's the responsibility of the property owner (us). Even though the lines were in/under our property, who knows how long they have been there. Council requested a detailed estimate and for Manager to get additional estimates before taking further action.</p>	<p>Phase Two draft engineering RFP to be distributed by Manager after potential route is refined</p> <p>Manager to solicit additional sprinkler repair estimates for the Hansen's property.</p>
4	Phase Two: No updates on route. Wixom has gotten approval to purchase their section of the Phase Two route from the DNR. Still working on exerting some	

	influence with area decision-makers regarding railroad crossing. Some meetings have been re-scheduled with Oakland County.	
5	Adams Billboard Lease Update. Commerce has given Adams the go-ahead to begin installation of the billboard. Investigating whether any additional permits from MDOT are required.	
6	<p>Trail Manager Report.</p> <ul style="list-style-type: none"> - Friends: Past/upcoming: no immediate events. Event registration is open for ride on National Trails Day (June 6), a ride along the MALT and the WBT. Coordinating with Motor City Brew Tours. - Mile Markers: mile markers and aluminum panels have been delivered. Working with vendor to get extensions fabricated with install in the spring. - Website updated with Construction page, FAQ updated, all current. 	Manager to draft Trail Events policy.
6	Re-Writing Interlocal Agreement: Manager has requested council members to send their individual reviews of the proposed IA document, and manager will schedule a meeting to determine review and next steps.	Review meeting to be scheduled after receipt of individual copies.
7	Financials submitted, discussion as warranted. Commerce still looking for a couple of 2019 bank statements, but most have been sent to WL.	
8	<p>Other matters & next meeting date.</p> <ul style="list-style-type: none"> • Boulders: will schedule Wixom DPW (a Saturday job; will need to compensate) and supplier, when all other work has wrapped up. • Next regular CW2 Trail Council meeting is Wednesday, January 8, 2020 at 3pm, at the Commerce Township Hall. • Next MALT Friends Group meeting is Tuesday, Jan, 7, 2020 at 6:30 pm, at the Walled Lake Public Library 	
9	<p>Approve the Warrants. Brown moved, Scott supported payment of the warrant below for payment. Motion Carried unanimously.</p> <ul style="list-style-type: none"> • Invoice for the Manager of the Michigan Air Line Trail • Invoice from Natural Community Services (phragmites cutting) 	Invoices to be paid.
10	Adjourn. Motion by Scott, supported by Owsinek to adjourn. Motion Carried Meeting Adjourned at 4:07 PM	

**Commerce, Walled Lake, and Wixom Trailway Management Council
Trail Manager Consulting Agreement
Calendar Year 2020**

This Commerce, Walled Lake, and Wixom Trailway Management Council Consulting Agreement (“Agreement”) is made as of January 1, 2020, between the Commerce, Walled Lake, and Wixom Trailway Management Council, whose address is 2009 Township Drive, Commerce, Michigan 48390 (“Trailway Council”) and John Hensler, whose address is 5045 Mansfield Avenue, Royal Oak Michigan 48073 (“Consultant”). The Trailway Council and Consultant are referred to collectively as the “Parties”.

The Parties agree as follows:

1. **Services.** Consultant shall, as directed by the Trailway Council or its designee, provide those services related to the acquisition, construction, operation, maintenance, and repair of the Michigan Airline Trail (“Trail”) (acquired or to be acquired) by the Trailway Council, including but not limited to:
 - a. Act as the Trailway Council’s contact with other public agencies involved in, promotion, operation, funding, and management of trails; such as the County of Oakland, the Michigan Department of Natural Resources, the Michigan Department of Transportation, and the Federal Highway Administration.
 - b. Coordinate with Trailway Council members in communicating with and in obtaining necessary approvals from the municipalities constituting the Trailway Council.
 - c. Work with public and private organizations to obtain funding for the improvement, operation, maintenance and repair of the Trail, including preparation, submission, and processing of grant applications.
 - d. Work with public and private organizations to promote the appropriate use of the Trail.
 - e. Propose and implement approved changes to the operation, maintenance, and repair of the Trail.
 - f. Develop a long term plan for a sustainable Trail.
 - g. Implement the plans and objectives developed by the Trailway Council.
 - h. Review all revenue and expenditures of the Trailway Council and provide monthly reports to the Trailway Council or at other times as directed.
 - i. In accordance with Michigan’s Open Meetings Act, post appropriate notices of Trailway Council meetings.
 - j. Prepare an agenda for each Trailway Council meeting, along with the warrants and financial reports.
 - k. Keep the Trailway Council informed of the progress on all matters related to operation, maintenance and improvement of the Trail and matters related to Trail operations within the State of Michigan.
 - l. Maintain all electronic and paper files and all project records, such as change order log, RFP log, meeting minutes, personal logs, and all correspondence and revenue and expenditure reports.

- m. Prepare proposed budgets for specific projects and annual operations.
 - n. Prepare and present fiscal year reports.
 - o. Seek, and at the direction of the Trailway Council, apply for and administer public and private grants for acquisition, maintenance, and improvement of the Trail and related infrastructure.
 - p. As necessary to meet Trailway Council objectives, communicate with: property owners; municipal members of the Trailway Council and their officials and staff; State, County, and Regional governmental entities and their officials and staff; and private organizations.
 - q. Work with the Trailway Council's attorney to negotiate contracts on behalf of the Council, and address legal matters as they arise.
 - r. With approval of the Trailway Council, proceed with Requests for Proposals for operation, maintenance and improvement of the Trail.
 - s. Distribute invoices to each member community for their portion of Trail costs and expenses.
 - t. Attend Trailway Council Meetings.
 - u. Receive and appropriately handle complaints and suggestions regarding the Trail.
 - v. Take other actions as directed by the Trailway Council.
2. **Compliance with laws.** Consultant shall at all times perform the services required under this Agreement in compliance with Federal, State, and local laws and regulations.
3. **Changes in duties.** The Trailway Council may request changes in the services to be provided by Consultant. Any such changes shall be made in writing and shall detail the change and any change in cost to the Trailway Council.
4. **Consultant's employees or sub-contractors.** Consultant shall, in his sole discretion and judgment, provide such qualified professionals necessary to complete those services required in a professional manner to the satisfaction of the Trailway Council, exercising at all times due care and diligence in the performance of his duties hereunder. Consultant shall provide the Trailway Council notice that Consultant has hired an employee within 24 hours of such hiring.
5. **Consultant responsible for performance.** Consultant shall be responsible for the accuracy and quality of the services performed by it, his employees, agents, or sub-contractors under this Agreement, and shall promptly make necessary revisions and corrections to his services resulting from negligent acts, errors or omissions without additional compensation.
6. **Consultant supplies equipment and materials.** Except as noted herein, Consultant shall supply all materials, equipment, supplies, and incidentals necessary for the satisfactory completion of the services required under this Agreement.

7. **Consultant's testimony.** Consultant shall be present to testify at all hearings and legal proceedings arising out of those services required to be performed.
8. **Duty to notify of complaints.** Consultant shall immediately notify the Trailway Council of any oral or written complaints it receives from third parties regarding the Trailway Council or Consultant and shall work with the Trailway Council to resolve such complaints.
9. **Reports.** Consultant shall prepare such periodic, intermediate, and final reports and records as required by the Trailway Council and as are appropriate to the services performed.
10. **Conflict of Interest.** The Consultant warrants that it will promptly notify the Trailway Council if an actual or potential conflict of interest arises or becomes known to the Consultant. Upon such notification the Trailway Council will investigate the matter and determine, in its sole discretion, whether or not it is appropriate for Consultant to continue his work on the matter.
11. **Independent Contractor.** Consultant shall perform the services under this Agreement as an independent contractor. Any provision in this Agreement that may appear to give the Trailway Council the right to direct Consultant as to the details of doing work or to exercise a measure of control over the work means that Consultant shall follow the direction of the Trailway Council as to end results of the work only. The Consultant, and any affiliated officers, directors, employees or subcontractors, shall not be deemed to be employees of the Trailway Council for purposes of payroll deductions, withholding tax, social security, workers compensation, unemployment compensation, disability benefits, vacation, fringe benefits, or any other purpose. Consultant shall be responsible for payment of all taxes incurred while performing services under this Agreement. In the performance of these services, Consultant shall be responsible for all expenses and disbursements incurred by it in the performance of his duties under this Agreement unless specifically approved in writing and in advance by the Trailway Council as an expense of the Trailway Council. Consultant acknowledges and agrees that Consultant is statutorily required to have in place, make available, and provide Workers Compensation insurance for all of his employees and that if Consultant hires employees to perform any work under this Consulting Agreement then Consultant will cover them with workers compensation insurance and will provide the Trailway Council with a certificate of workers compensation insurance before the employees begin work.
12. **Access to Trailway Council Computer System.** Consultant shall be permitted access to the Trailway Council's computer and record file system for performance of his duties under this Agreement only. Consultant shall not use the Trailway Council's computers, data bases, files, or equipment for private purposes or to perform services for any other party. Consultant shall not install or use third party software on the Trailway Council computer system. The Consultant shall take all steps necessary to insure that the

information in the Trailway Council's computer system and files are kept confidential and are accessed only for official purposes.

13. **Term.** The term of this Agreement shall be through the calendar year 2018. Either party may terminate this Agreement, with or without cause, upon 30 days written notice to the other. Any undisputed compensation accrued, but not yet paid to the Consultant upon termination of the Agreement, shall be paid in full after approval by the Trailway Council at its next regularly scheduled meeting.
14. **Compensation.** In consideration for services performed, the Consultant shall be paid Twenty Four Dollars per hour for each hour worked and billed to the Trailway Council as provided herein. This compensation shall be inclusive of all costs associated with Consultants efforts. Services shall be invoiced monthly by the Consultant, one week prior to the scheduled regular meeting of the Trailway Council, for approval by the Trailway Council prior to payment. Each invoice shall be itemized and shall state in detail the work performed, who performed the work, the hourly rate charged, and the number of hours (or fraction of hours) worked.
15. **Indemnification.** To the fullest extent permitted by law, Consultant shall indemnify the Trailway Council, its officers, directors, employees, and representatives, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of Consultant or Consultant's officers, directors, members, partners, agents, employees, or sub-consultants in the performance of services under this Agreement.
16. **Insurance.** Consultant shall, as a condition of this Agreement execute a Mandatory Insurance and Indemnification Rider in the form attached as Exhibit A. Notwithstanding the requirements of Exhibit A, the Parties agree that it shall be the Consultant's obligation to notify the Trailway Council 30 days before the effective date of cancellation of required insurance policies.
17. **Non-Competition.** Consultant shall not, during the term of this Agreement, require that any person, firm, or corporation, as a condition of employment or subcontracting of work to Consultant, enter into a non-competition agreement or similar requirement that would prohibit such employee or contractor from providing the Trailway Council with consulting or other related professional services. This paragraph shall not prevent Consultant from requiring non-competition or similar conditions with respect to his services to other clients or from requiring non-competition clauses in contracts with those who have an ownership interest in his business.
18. **Confidentiality.** During and after the term of this Agreement, Consultant shall not use or disclose to any person or organization, without prior written consent from the Trailway Council, any confidential information relating to the Trailway Council, to the services rendered, or the results or findings of any studies and analyses conducted during the

performance of such services pursuant to this Agreement. All records, documents, notes, data, or other materials required for or resulting from the performance of Consultant's duties hereunder shall be deemed to be the exclusive property of the Trailway Council and shall be used for no other purpose than the performance of his duties.

19. **Records.** Any records or documents (including copies, summaries or media for electronic storage of data) prepared or acquired by Consultant in performing services pursuant to this Agreement shall belong to the Trailway Council and shall be surrendered to its Legal Counsel upon termination of the Agreement.
20. **Assignment.** The Consultant shall not have the right to assign the rights, or duties under this Agreement to any other person or entity, without the prior written consent of the Trailway Council.
21. **No Third Party Beneficiaries.** Nothing in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor, of Consultant. Absolutely no third party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
22. **Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Trailway Council, its officials, employees, contractors, or agents, volunteers or any other person acting on behalf of the Trailway Council.
23. **Legal and Equitable Remedies.** Either party shall have the right to enforce the Agreement and any of its provisions by injunction, specific performance, or other relief appropriate to breach of contract, without prejudice to any other rights and remedies that such party may have.
24. **Force Majeure.** Neither party shall be liable for any delay in, or failure of performance of, any covenant contained in this Agreement if such delay or failure is beyond the control of the party, including, but not limited to, acts of God, acts of war, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes to the extent not caused or aggravated by the non-performing party.
25. **Governing Law.** The Agreement shall be construed in accordance with the laws of the State of Michigan.
26. **Entire Contract.** The Agreement contains the entire contract between the parties. Any contemporaneous contracts, agreements, representations, and warranties, either oral or written, shall be deemed void.
27. **Severability.** If one or more of the provisions of the Agreement are deemed unenforceable by law, then the remaining provisions will continue in full force and effect.

28. **Survival.** The terms of the Agreement shall remain enforceable and shall survive the termination of this Agreement.

**COMMERCE, WALLED LAKE, AND WIXOM
TRAILWAY MANAGEMENT COUNCIL**

By: _____
David E Scott
Its: Authorized Council Member

Date: _____

CONSULTANT

By: _____
John Hensler

Date: _____

TO: CW2 Trailway Council/John Owsinek, L. Dennis Whitt
c/o City of Walled Lake
1499 E. West Maple Rd.
Walled Lake, MI 48390

INVOICE: CW2 Air Line Trail Manager, December 10, 2019—January 7, 2020

INVOICE DATE: January 7, 2020

DESCRIPTION: Support for the following work from December 10, 2019—January 7, 2020:

Marketing:

Monthly maintenance/build-out, posting/updating to social media accounts (Facebook, Instagram, NextDoor, Twitter): 3.5 hrs

Construction updates photo & video development, media follow-up: 6 hrs

Additional refinements & development of website, updating pages, archiving 2 hrs
11.5 hours

Trail Phase One Construction: including consultation, management, follow-up and direction including coordination and consultation (both phone and on-site) with Design and Construction Engineers and Contractors, preparing digital files for equipment fabricators (welcome signage, temporary directional), etc.

Includes following on-site meetings: Dec. 11, 13, 20

24 hours

Meetings/Events:

12.11 Trail Council Meeting

Hours:

1.75

1.7 MAT Friends Group Meeting

2.0

3.75 hours

Misc administrative tasks: email, maintenance for MailChimp service (edits/adds to email list, emails to Friends group and to main email list), general phone meetings/consultation, coordination, etc.

14 hours

TOTAL @ \$24/hour

\$1,278.00

Remit to: John Hensler
5045 Mansfield Ave.
Suite 305
Royal Oak, MI 48073
248.506.0942
SS# on file
Terms: 15 days

Thank You!

invoice sam:JWHT10720

Adkison, Need, Allen, & Rentrop, PLLC
39572 Woodward
Suite 222
Bloomfield Hills, MI 48304
248-540-7400, Fax 248-540-7401
Tax ID Number: 38-3224154

Michigan Air Line Trail
2009 Township Drive
Commerce Township MI 48390

Attn: John Hensler

Page: 1
December 31, 2019
Account No: 3051M

Balance

\$120.00

Credit card payments may be made online through the firm's website at www.anafirm.com. Please note that the firm accepts Visa, Mastercard, American Express and Discover.

Adkison, Need, Allen, & Rentrop, PLLC
39572 Woodward
Suite 222
Bloomfield Hills, MI 48304
248-540-7400, Fax 248-540-7401
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Attn: John Hensler

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December 31, 2019
Account No: 3051-0000M
Statement No: 119311

Fees

		Rate	Hours	
12/22/2019	Review First Amendment to Lease Agreement, create PDF version with all exhibits attached and send to Adams Outdoor Advertising attorney Richard Zecchino for review.	120.00	1.00	120.00
	For Current Services Rendered		1.00	120.00
	Total Current Work			120.00
	Subtotal			<u>\$120.00</u>
	Total Due for this Matter			<u>\$120.00</u>

Credit card payments may be made online through the firm's website at www.anafirm.com. Please note that the firm accepts Visa, Mastercard, American Express and Discover.