

December 14, 2020

Ms. Susan Montenegro
City Manager
City of Leslie
106 East Bellevue Street
Leslie, MI 49251

**Re: Mill Street Reconstruction and Bridge Replacement Project
Final Settlement Agreement**

Dear Ms. Montenegro,

Since construction resumed on the Mill Street project on July 9, 2020 and our field inspection efforts were substantially completed on September 3, 2020, C2AE would like to resolve the remaining open contractual items. The costs for the modifications to lower the roadway and modify the site grading are known and have been completed by the Contractor. The project is in the close-out phase, which includes punch list items, final walkthrough, record drawings, MDOT project file audit, installation of decorative fence on the culvert headwalls, and processing a final pay request.

The City and MDOT approved Davis Construction's project extension through September 9, 2020 to complete the project. Because our total project time exceeds the budgeted duration agreed through our Amendment No. 3, C2AE requests a budget increase for completion of the oversight and closeout in accordance with MDOT requirements. The proposed Amendment No. 4 engineering fees include construction engineering/administration, onsite inspection, material testing and construction staking.

We notified the City that we had exceeded our approved budget on July 10, 2020 and therefore required an amendment. The following is an overview of C2AE's effort that expended our engineering services budget through Amendment No. 3:

- As outlined in our Professional Services Agreement dated September 25, 2017, C2AE provided a budget for construction phase services based on a nine (9) week construction schedule once the contractor mobilized to the site. As previously noted, this schedule was not achieved due to the revised bid letting date, which caused construction activities to span multiple seasons. The project was originally planned to be bid in early winter 2019 to allow sufficient time to review contractor submittals and complete box culvert fabrication prior to the start of construction. With the actual bid letting held on June 7, 2019, the box culverts were not delivered to the site until November 2019, approximately two months after the Contractor mobilized to the site.
- As part of Amendment No. 3 dated October 5, 2019, C2AE provided a proposed fee for construction engineering and inspection to increase the total number of construction weeks up to eighteen (18), which was then subsequently reduced to fifteen (15) weeks and approved by the City.
- C2AE provided sixteen (16) weeks of onsite inspection beginning August 26, 2019 through December 13, 2019 when the Contractor demobilized. In addition to onsite inspection, the mild temperatures and precipitation over the winter of 2019/2020 resulted in frequent soil erosion issues. Soil Erosion and Sedimentation Control (SESC) inspections are required on a weekly basis as a minimum and after each precipitation or run off (snow melting) event. C2AE conducted twenty-six (26) SESC inspections between construction suspension on December 13,

2019 and before work commenced on July 9, 2020. Typically, SESC inspections are performed with field services, however since the Contractor was not on site, inspections required individual site visits.

<u>Amendment No. 4 - Description</u>	<u>Fee</u>	<u>Fee Basis</u>
Construction Engineering, Administration, Inspection & Material Testing	\$70,200	Lump Sum

In light of the two inconsistencies with the design plans of the elevation of the wing walls and slope of the grade from the back of the sidewalk to the drain on the south side of the road being steeper than City staff desired during construction, C2AE (with MDOT's concurrence) proposed a plan to correct these issues by lowering the road. Since this modification was accepted by the City, C2AE is willing to pay for the contractor's costs for rework that are above and beyond the original scope as a condition of this agreement. Table No. 1 is a summary of the additional pay items by contract category that have been added to the project. The participating items are 95% paid by MDOT with 5% City match and the non-participating items are 100% City funded.

Table No. 1

Item Description	Qty	Units	Unit Price	Amount	Category	
					Participating	Non-Part
Riprap R&R	12,089.44	Dlr	\$1.00	\$12,089.44	\$12,089.44	
Dr Structure modification	3	EA	\$457.44	\$1,372.32		\$1,372.33
Stump Removal, 6"-18"	12	EA	\$260.00	\$3,120.00	\$3,120.00	
Erosion Control Maintenance	29	Hr	\$100.00	\$2,900.00	\$2,900.00	
Idle Equipment & related	1	LS	\$10,499.47	\$10,499.47		\$10,499.47
Traffic Control Adjustment	14,602.97	Dlr	\$1.00	\$14,602.97	\$14,602.97	
Northern Conc. Pipe Design	1	LS	\$5,000.00	\$5,000.00		\$5,000.00
R&R Agg base, 204CY @ \$32.70	204	CY	\$32.70	\$6,670.80		\$6,670.80
Excavation 146CY @ \$9/CY	146	CY	\$9.00	\$1,314.00		\$1,314.00
Fence Modification	1	LS	\$5,030.00	\$5,030.00	\$5,030.00	
Totals				\$62,599.00	\$37,742.41	\$24,856.69

While all project pay items will run through the MDOT contract, C2AE proposes to cover the costs shown in Table No. 2:

Table No. 2

<u>Item</u>	<u>Cost</u>
Rip Rap, Remove and Replace	\$604.47 (Local Match of Participating Item)
Traffic Control Due to Extension of Time	\$730.15 (Local Match of Participating Item)
Drainage Structure Modification	\$1,372.32
Northern Concrete Pipe – Headwall and Wing Wall Design	\$5,000.00
Remove and Replace Aggregate Base	\$6,670.80
Excavation	\$1,314.00
Fence Modification	\$251.50
Equipment-Idle & removal/return (50%)	\$5,249.74
Total	\$21,192.98

We note that these are all the costs to the project that are attributable to the inconsistencies in the design plans and the decision to lower the road. All other costs are costs that are added-value to the project and need to be paid as project costs, unrelated to any design discrepancies.

C2AE proposes the remaining items shown in below in Table No. 3 will be the responsibility of the City of Leslie:

Table No. 3

<u>Item</u>	<u>Cost</u>
Stump Removal	\$156.00 (Local Match of Participating Item)
Erosion Control Over Winter	\$145.00 (Local Match of Participating Item)
Equipment-Idle & removal/return (50%)	\$5,249.73
Total	\$5,550.73

Any other item not listed above are work that will be completed on the project and are covered as participating items under the contract. It is C2AE's position that since C2AE did not instruct Davis Construction to mobilize in early March 2020 or suspend work, we are not responsible for the idle equipment cost. On March 9, 2020, C2AE was on site to work through proposed modifications to the plans with Davis, MDOT and the City. C2AE further maintains that on March 10, 2020, we were notified that the City had suspended work and had reversed their decision made the day before. In an effort to settle our contract items with the City, C2AE offers to split equally the Idle Equipment charge.

We understand the City's resistance to additional construction engineering fees, however the duration required to complete this project has exceeded our agreed upon duration and budget. Project oversight, inspection and material testing, in accordance with MDOT guidelines, is required as part of the funding the City has received. Please note that despite the fact that Amendment No. 4 was not executed, we continued to staff the project so that the City's funding was not jeopardized. This was done in accordance with our professional services agreement to protect the City without relinquishing our right to receive payment for the necessary additional work.

The City is disputing a total of \$6,131.71 of our past invoicing, as shown in the Table No. 4 below, that appear to pertain to redesign, grading, coordination with MDOT, and internal communications related to the redesign of the grading or wing/head walls. Even though we remain confident that our effort contained in these invoices benefited the City as a direct effort to construction (not redesign) and were required to meet project requirements, we are willing to consider removing the disputed amounts to bring resolution to our contract.

Table No. 4

City of Leslie				
Mill Street Improvements				
Invoice No.	Date	Invoice Amount	Agreed Amount	Disputed Amount
69510	3/25/2020	\$ 7,153.06	\$ 4,314.57	\$ 2,838.49
69787	5/21/2020	\$ 2,489.62	\$ 1,864.30	\$ 625.32
70073	7/17/2020	\$ 3,150.10	\$ 2,868.28	\$ 281.82
170094-1	8/17/2020	\$ 21,507.88	\$ 19,634.67	\$ 1,873.21
170094-2	9/21/2020	\$ 27,728.37	\$ 27,215.50	\$ 512.87
Total				\$ 6,131.71



C2AE represents that it has also incurred costs totaling \$80,381.56 for design and construction engineering services related to the head wall, wing walls, and grading concerns as well as other project related activities between February 3, 2020 through November 29, 2020 that has yet to be presented to the City and are above and beyond the costs outlined above for Amendment No. 4. C2AE is willing to absorb these additional incurred costs (\$80,381.56), the responsibility for which is denied by the City, as well as pay for the work as described above as our responsibility (\$21,192.98) and remove the disputed amounts (\$6,131.71) from our invoicing with the execution of this settlement agreement as written, which includes approval of Contract Amendment #4 and payment of all outstanding invoices. In exchange, the City agrees to release C2AE and our sub-consultants of claims arising from the original design of the box culvert's head walls, wing walls and associated grading around the box culvert and drain upon the terms set forth in paragraph 5 below.

The following summary represents the negotiated settlement of all existing issues to date:

1. The City of Leslie approves C2AE's Contract Amendment No. 4 as described in this agreement; C2AE will revise and resubmit Invoices 17-0094-1 and 17-0094-2 to remove \$2,386.08 in disputed charges noted in Table No. 4. City will promptly satisfy all invoices submitted by C2AE pursuant to this Amendment, which equals \$59,496.33; A final invoice will be submitted to the City upon approval of this Settlement Agreement in the amount of \$10,700.00 to reach the final lump sum amount for all work to complete the project under Amendment No. 4 of \$70,200.00 and shall be paid within 15 days of receipt.
2. C2AE will remove a total of \$3,745.63 from invoices 69510, 69787, and 70073 as noted in Table No. 4; City will promptly pay all non-disputed amounts of these three (3) invoices that total \$6,028.16; C2AE will not issue further any further invoices under Amendment No.3.
3. Within 15 days of receipt of monies for payment for all invoices described in paragraphs 1 and 2, C2AE will pay the City of Leslie the sum of \$21,192.98 to cover the City's construction cost for the items shown in Table No. 2;
4. Except as set forth below, the City of Leslie will remain responsible and shall pay all other costs of construction beyond the participation of the Michigan Department of Transportation as shown on Table No. 1 subject to C2AE's reimbursement obligation set forth in Table No. 2 and paragraph 3 above;
5. The City of Leslie and C2AE mutually release each other, together with its employees, agents, officers, directors and insurers, from any and all claims, costs, and expenses, whether previously invoiced or not, related in any way to the original design of the culvert's head and wing walls and associated grading around and near the box culvert that has been remedied by our redesign effort to lower the roadway and adjust the site grading. This provision shall not operate to release C2AE from responsibility for the final redesign of the culvert's head and wing walls and associated grading around and near the box culvert as reflected on the final record drawings.

Sincerely,
C2AE

William J. Kimble, PE
Government Leader

Roger F. Marks, PE
Client Services Leader

ACCEPTED:
CITY OF LESLIE, MICHIGAN

By: _____

DATE: _____

cc: Greg Kray, PE, C2AE and Ron Bogart, City of Leslie