
AGENDA ITEM SUMMARY

Subject: Consider approving an agreement with Stantec Consulting Services for Wood Turtle monitoring during the construction of the Charley Western Trail bridge

Recommendation: Approve Resolution No.47-20 approving an agreement with Stantec for wood turtle monitoring

Background Summary:

Stantec Consulting Services was retained during the demolition work of the previous Charley Western Trail bridge to prepare a wood turtle avoidance plan and monitor wood turtle movements during construction activities. The same services are needed during the construction of the new bridge.

The cost to prepare an avoidance plan is a lump sum fee of \$2,000.00. The monitoring is quoted on a per day basis at the rate of \$1,150.00 per day. Monitoring will consist of inspecting the site to make sure there are no wood turtles located within the construction limits. Following the initial review, an exclusion fence will be installed to keep wood turtles from entering the construction area. Monitoring will only be needed when the exclusion fence is removed due to changes in construction and/or progress.

I recommend approval of Resolution 47-20, approving the agreement with Stantec for the preparation of an avoidance plan and monitoring wood turtle activity during the Charley Western Trail bridge construction.

RESOLUTION NO. 47-20

*RESOLUTION APPROVING AGREEMENT WITH STANTEC FOR WOOD TURTLE
MONITORING*

WHEREAS, the Charley Western Trail Bridge construction project will require that a plan be developed to avoid impacts to the wood turtle during construction, and

WHEREAS, Stantec had been retained to perform these services during the demolition of the Charley Western Trail Bridge and the city engineer is recommending retaining their services again, and

WHEREAS, the cost to prepare an avoidance plan is a lump sum of \$2000 and the monitoring is priced at \$1,150 per day as outlined in the scope of work, and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Charles City, Iowa, meeting in regular session on the 2nd day of March, 2020, that the agreement with Stantec for wood turtle monitoring is hereby approved.

COUNCIL MEMBER moved the adoption of the foregoing Resolution;

COUNCIL MEMBER seconded the motion to adopt, and on roll call the voting was as follows:

AYES:

NAYS:

Passed and approved this 2nd day of March, 2020.

Dean Andrews, Mayor

Attest:

Trudy O'Donnell, City Clerk



Stantec Consulting Services Inc.
2300 Swan Lake Boulevard, Suite 202, Independence, IA 50644

February 4, 2020

John Fallis
Charles City Engineer
105 Milwaukee Mall
Charles City, Iowa 50616

**Reference: Proposal for Wood Turtle Monitoring
Charley Western Recreation Trail Bridge Replacement
Charles City, Iowa**

Dear Mr. Fallis:

Stantec Consulting Services Inc. (Stantec) is pleased to provide you with this proposal for environmental services associated with the Charley Western Recreation Trail bridge replacement located in Charles City, Iowa. This proposal includes sections presenting our scope of work, cost estimate and schedule for your consideration.

Scope of Work

Task 1. Avoidance Plan

Stantec will assist the City of Charles City with the development of a plan to avoid impacts to the wood turtle during construction of the new bridge, including, but not limited to, temporary exclusion fencing and biological monitors during construction.

Task 2. Biological Monitor

Stantec will provide on an as-needed basis a trained, permitted on-site biological monitor to be present prior to and during construction to monitor the construction area for the presence of wood turtles, and if necessary, move turtles out of the construction area.

Assumptions

1. Stantec will be furnished in a timely fashion available information needed for the project, all of which Stantec may rely upon without independent verification in performing the services.
2. Stantec staff will have access to the site upon proper and timely notification of such site visit the City of Charles City. The City of Charles City is responsible for acquiring landowner permission to access the site if applicable.
3. Cost assumes an 8-hour day plus mileage other expenses for the biological monitor.



February 4, 2020

Proposal for Wood Turtle Monitoring
Charley Western Recreation Trail
Charles City, Iowa
Page 2 of 3

Cost Estimate

Stantec will complete the specified scope of work on a **time and materials** basis for the following fees:

Task 1. Avoidance Plan	\$2,000
Task 2. Biological Monitor	\$1,150/day

The above-stated fees for this scope of work are valid for 30 days from the date of this proposal. Assumptions associated with this cost estimate are provided in the Scope of Work section. If there are changes to the scope of work that would cause the estimated fees to be exceeded, Stantec will contact the client for approval to proceed. A service agreement for work on this project is attached. If this proposal is acceptable, please sign below and return one copy to the address shown on the letterhead and keep a copy for your records.

Project Schedule

Stantec will begin work on the project upon notice-to-proceed. Upon notice-to-proceed, Stantec will work with the City of Charles City and/or their representative to determine a specific project schedule.

Term and Conditions

Invoices for the services performed will be submitted either upon completion of such services or on a monthly basis. Hourly billing rates are subject to annual adjustments.

Please remit payments for invoices to:

**Stantec Consulting Services Inc.
13980 Collections Center Drive
Chicago, IL 60693**

Stantec greatly appreciates the opportunity to provide you with this proposal for environmental services and we look forward to working with you on this project.

Sincerely,

STANTEC CONSULTING SERVICES INC.

Terry VanDeWalle
Senior Biologist/Principal
Phone: (319) 334-3755
terry.vandewalle@stantec.com

Molly Stephenson
Wildlife Biologist
Phone: (319) 327-0881
molly.stephenson@stantec.com



February 4, 2020

Proposal for Wood Turtle Monitoring
Charley Western Recreation Trail
Charles City, Iowa
Page 3 of 3

By signing this proposal, the City of Charles City, authorizes Stantec to proceed with the services herein described and the Client acknowledges that it has read and agrees to be bound by the attached Professional Services Terms and Conditions.

Proposal Accepted: _____ **Date:** _____
Authorized Representative Signature

Dean Andrews, Mayor
City of Charles City
105 Milwaukee Mall
Charles City, Iowa 50616

The following Terms and Conditions are attached to and form part of the Proposal for Professional Services for the Charley Western Trail Bridge Replacement Project to be performed by STANTEC and together, when the CLIENT authorizes STANTEC to proceed with the services, constitute the AGREEMENT.

DESCRIPTION OF WORK: STANTEC shall render the services described in the Proposal (hereinafter called the "SERVICES") to the CLIENT.

TERMS AND CONDITIONS: No terms, conditions, understandings, or agreements purporting to modify or vary these Terms and Conditions shall be binding unless hereafter made in writing and signed by the CLIENT and STANTEC. In the event of any conflict between the Proposal and these Terms and Conditions, these Terms and Conditions shall take precedence. This AGREEMENT supercedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to the PROJECT. All alterations, additions, or deletions to STANTEC's SERVICES or materials to be furnished by STANTEC shall be set forth in a written change order signed by STANTEC. The Change Order shall clearly set forth the adjustment being made to the Contract Price resulting from the change order. In the event that CLIENT orders additional work to be performed and a change order is not executed by the parties, the CLIENT shall be responsible for all costs including without limitation, labor, material, and equipment (collectively the "total costs").

COMPENSATION: Payment is due to STANTEC upon receipt of invoice. Failure to make any payment when due is a material breach of this AGREEMENT and will entitle STANTEC, at its option, to suspend or terminate this AGREEMENT and the provision of the SERVICES. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest. Unless otherwise noted, the fees in this agreement do not include any value added, sales, or other taxes that may be applied by Government on fees for services. Such taxes will be added to all invoices as required.

NOTICES: Each party shall designate a representative who is authorized to act on behalf of that party. All notices, consents, and approvals required to be given hereunder shall be in writing and shall be given to the representatives of each party.

CLIENT'S RESPONSIBILITIES: The CLIENT shall make available to STANTEC all relevant information or data pertinent to the PROJECT, including PROJECT budget and time constraints, which is required by STANTEC to perform the SERVICES. STANTEC shall be entitled to rely upon the accuracy and completeness of all information and data furnished by the CLIENT, including information and data originating with other consultants employed by the CLIENT whether such consultants are engaged at the request of STANTEC or otherwise. Where such information or data originates either with the CLIENT or its consultants then STANTEC shall not be responsible to the CLIENT for the consequences of any error or omission contained therein. The CLIENT shall give prompt consideration to all documentation related to the PROJECT prepared by STANTEC and whenever prompt action is necessary shall inform STANTEC of CLIENT's decisions in such reasonable time so as not to delay the schedule for providing the SERVICES. When applicable, the CLIENT shall arrange and make provision for STANTEC's safe and secure entry to the PROJECT site as well as other public and private property as necessary for STANTEC to perform the SERVICES.

STANTEC'S RESPONSIBILITIES: In performing the SERVICES, STANTEC will provide and exercise the standard of care, skill and diligence required by customarily accepted professional practices normally provided in the performance of the SERVICES at the time and the location in which the SERVICES were performed. 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. 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. 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. The SERVICES performed by STANTEC shall be subject to the inspection and the review of the CLIENT at all times but such inspection and review shall not relieve STANTEC from its responsibility for the proper performance of the SERVICES.

NO PERFORMANCE GUARANTIES: If the SERVICES include the installation of any equipment, product, materials, or goods of any sort, including plants and vegetation, STANTEC makes no representation or warranty regarding the performance thereof, including any warranty of fitness for a particular purpose or of merchantability.

CONFIDENTIALITY: Confidential information shall mean all information disclosed to STANTEC, which relates to the CLIENT's past, present and future business activities. STANTEC shall hold all such confidential information in trust and confidence for CLIENT, and agrees that it will not, during or after the termination of the Agreement, disclose to any person, firm, corporation or entity, nor use for its own business or benefits, any information obtained by it while in the execution of the terms and conditions of this Agreement without the express permission of the CLIENT, except as required by law, ordinance, regulation or governmental order. This provision does not apply to information that is presently a matter of public knowledge or that becomes known to public in the future via publication or becomes otherwise obtainable from any source available to the public. This confidentiality provision supersedes and supplants any other confidentiality agreement or non-disclosure agreement between CLIENT and STANTEC that pertains to the Project and/or SERVICES.

TERMINATION: Either party may terminate the AGREEMENT without cause upon thirty (30) days notice in writing. If either party breaches the AGREEMENT and fails to remedy such breach within seven (7) days of notice to do so by the non-defaulting

party, the non-defaulting party may immediately terminate the Agreement. Non-payment by the CLIENT of STANTEC's invoices within 30 days of STANTEC rendering same is agreed to constitute a material breach and, upon written notice as prescribed above, the duties, obligations and responsibilities of STANTEC are terminated. On termination by either party, the CLIENT shall forthwith pay STANTEC all fees and charges for the SERVICES provided to the effective date of termination.

SUSPENSION OF SERVICES: If the project is suspended for more than thirty (30) calendar days in the aggregate, Stantec shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the PROJECT is suspended for more than ninety (90) days, Stantec may, at its option, terminate this agreement upon giving notice in writing to the CLIENT.

BUILDING CODES, BYLAWS AND OTHER PUBLIC REGULATIONS: Stantec shall, to the best of its ability, interpret building codes, by-laws and other public regulations as they apply to the PROJECT and as they are published at the time SERVICES commence. Furthermore, Stantec shall observe and comply with all applicable laws, ordinances, codes and regulations of government agencies, including federal, state, provincial, municipal and local governing bodies having jurisdiction over the conduct of the SERVICES ("LAWS"). However, it is expressly acknowledged and agreed by the CLIENT that as the PROJECT progresses such building codes, by-laws, other public regulations and LAWS may change or the interpretation of any public authority may differ from the interpretation of Stantec, through no fault of Stantec, and any extra costs necessary to conform to such changes or interpretations during or after execution of the SERVICES will be paid by the CLIENT.

COST AND SCHEDULE OF CONSTRUCTION WORK: In providing opinions of probable cost and project schedule, it is recognized that neither the CLIENT nor Stantec has control over the costs of labor, equipment or materials, or over the Contractor's methods of determining prices or time. The opinions of probable cost or project duration are based on Stantec's reasonable professional judgment and experience and do not constitute a warranty, express or implied, that the Contractor's bids, project schedules, or the negotiated price of the Work or schedule will not vary from the CLIENT's budget or schedule or from any opinion of probable cost or project schedule prepared by Stantec. Exact costs and times will be determined only when bids have been received for the PROJECT and when the construction work has been performed and payments finalized.

ADMINISTRATION OF CONSTRUCTION CONTRACTS: When applicable, Stantec shall provide field services during the construction of the PROJECT only to the extent that such SERVICES are included and defined in this AGREEMENT. The performance of the construction contract is not Stantec's responsibility nor are Stantec's field services rendered for the construction contractor's benefit.

It is understood and agreed by the CLIENT and Stantec that only work which has been seen during an examination by Stantec can be said to have been appraised and comments on the balance of any construction work are assumptions only.

When field services are provided by Stantec, the authority for general administration of the PROJECT shall reside with Stantec only to the extent defined in this AGREEMENT. In such case, Stantec shall coordinate the activities of other consultants employed by the CLIENT, only to the extent that Stantec is empowered to do so by such other consultants' contracts with the CLIENT.

Stantec shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents nor for the acts or omissions of any contractor, subcontractor, any of their agents or employees, or any other persons performing any of the work in connection with the PROJECT. When field services are provided, no acceptance by Stantec of the work or services of a construction contractor or other consultants, whether express or implied, shall relieve such construction contractor or other consultants from their responsibilities to the CLIENT for the proper performance of such work or services and further, Stantec shall not be responsible to the CLIENT or to the construction contractor or to the other consultants for the means, methods, techniques, sequences, procedures and use of equipment of any nature whatsoever, whether reviewed by Stantec or not, which are employed by the construction contractor or the other consultants in executing, designing, or administering any phases of the PROJECT, or for placing into operation any plant or equipment or for safety precautions and programs incidental thereto.

When field services are provided, Stantec will not be designated as the party responsible for the compliance by others on the construction work site with the purposes or requirements of applicable environmental, occupational health and safety, or similar legislation. The CLIENT shall designate a responsible party, other than Stantec, for the coordination and performance of environmental, occupational health and safety activities on the construction work site as required by applicable legislation and associated regulations.

JOBSITE SAFETY: Neither the professional activities of Stantec, nor the presence of Stantec or its employees and subconsultants at a construction site, shall relieve the CLIENT and any other entity of their obligations, duties and responsibilities with respect to job site safety. Subject only to applicable legislation, Stantec and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

ENVIRONMENTAL: Except as specifically described in this AGREEMENT, STANTEC's field investigation, laboratory testing and engineering recommendations will not address or evaluate pollution of soil or pollution of groundwater.



Where the SERVICES include storm water pollution prevention (SWPP), sedimentation or erosion control plans, specifications, procedures or related construction observation or administrative field functions, CLIENT acknowledges that such SERVICES proposed or performed by STANTEC are not guaranteed to provide complete SWPP, sedimentation or erosion control, capture all run off or siltation, that any physical works are to be constructed and maintained by the CLIENT's contractor or others and that STANTEC has no control over the ultimate effectiveness of any such works or procedures. Except to the extent that there were errors or omissions in the SERVICES provided by STANTEC, CLIENT agrees to indemnify and hold STANTEC harmless from and against all claims, costs, liabilities or damages whatsoever arising from any storm water pollution, erosion, sedimentation, or discharge of silt or other deleterious substances into any waterway, wetland or woodland and any resulting charges, fines, legal action, cleanup or related costs.

LIMITATION OF LIABILITY: The CLIENT releases STANTEC from any liability and agrees to defend, indemnify and hold STANTEC harmless from any and all claims, damages, losses, and/or expenses, direct and indirect, or consequential damages, including but not limited to attorney's fees and charges and court and arbitration costs, arising out of, or claimed to arise out of, the performance of the SERVICES, excepting liability arising from the sole negligence of STANTEC.

It is further agreed that the total amount of all claims the CLIENT may have against STANTEC under these Terms and Conditions or arising from the performance or non-performance of the SERVICES under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and/or breach of contract, shall be strictly limited to the lesser of professional fees paid to STANTEC for the SERVICES or \$500,000. No claim may be brought against STANTEC more than two (2) years after the cause of action arose. As the CLIENT's sole and exclusive remedy under these Terms and Conditions any claim, demand or suit shall be directed and/or asserted only against STANTEC and not against any of STANTEC's employees, officers or directors.

STANTEC's liability with respect to any claims arising out of this AGREEMENT shall be absolutely limited to direct damages arising out of the SERVICES and STANTEC shall bear no liability whatsoever for any consequential loss, injury or damage incurred by the CLIENT, including but not limited to claims for loss of use, loss of profits and/or loss of markets.

DOCUMENTS: All of the deliverables, reports, field data, maps and other documents prepared by or on behalf of STANTEC in connection with the PROJECT are instruments of service for the execution of the PROJECT. STANTEC retains the property and copyright in these documents, whether the PROJECT is executed or not. These documents may not be relied upon by any party other than the CLIENT nor be used for any other purpose without the prior written consent of STANTEC. In the event STANTEC's documents are subsequently reused or modified in any material respect without the prior consent of STANTEC, the CLIENT agrees to defend, hold harmless and indemnify STANTEC from any claims advanced on account of said reuse or modification.

STANTEC cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic format ("Electronic Files"). CLIENT shall release, indemnify and hold STANTEC, its officers, employees, consultants and agents harmless from any claims or damages arising from the use of Electronic Files. Electronic files will not contain stamps or seals, remain the property of STANTEC, are not to be used for any purpose other than that for which they were transmitted, and are not to be retransmitted to a third party without STANTEC's written consent.

INTELLECTUAL PROPERTY: Any work product, inventions, ideas or other original work made, conceived or authored by STANTEC and/or STANTEC's employees, agents or subcontractors, including all input materials and output materials, the media upon which they are located (including cards, tapes, disks and other storage facilities), and all software programs or packages (together with any related documentation, source code or codes, object codes, upgrades, revisions, modifications, and any related materials) which are utilized or developed solely by STANTEC and/or STANTEC's employees, agents or subcontractors, or in cooperation with CLIENT, and which may or may not be either confidential or proprietary, in the course of performance of the SERVICES hereunder, regardless of the stage of completion, shall remain the exclusive property of STANTEC.

FORCE MAJEURE: Any default in the performance of the SERVICES caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: labor strikes, riots, war, acts of governmental authorities, unusually severe weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

FIELD SERVICES: STANTEC shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with work on the PROJECT, and shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents. STANTEC shall not be responsible for the acts or

omissions of any contractor, subcontractor, any of their agents or employees, or any other persons performing any of the work in connection with the PROJECT.

USE OF CLIENT'S EQUIPMENT: If CLIENT provides equipment for STANTEC's use in the performance of the SERVICES, STANTEC shall not be liable for the inaccuracy or incompleteness of any data or results or for delay that is caused by or is the result of the breakage or unavailability of the equipment or as result of CLIENT's failure to calibrate, maintain, operate or schedule said equipment.

GOVERNING LAW/COMPLIANCE WITH LAWS: The AGREEMENT shall be governed, construed and enforced in accordance with the laws of the jurisdiction in which the majority of the SERVICES are performed. STANTEC shall observe and comply with all applicable laws, continue to provide equal employment opportunity to all qualified persons, and to recruit, hire, train, promote and compensate persons in all jobs without regard to race, color, religion, sex, age, disability or national origin or any other basis prohibited by applicable laws.

DISPUTE RESOLUTION: If requested in writing by either the CLIENT or STANTEC, the CLIENT and STANTEC shall attempt to resolve any dispute between them arising out of or in connection with this AGREEMENT by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) calendar days with the mediator, if mutually agreed, the dispute shall be referred to arbitration pursuant to laws of the jurisdiction in which the majority of the SERVICES are performed or elsewhere by mutual agreement.

ATTORNEYS FEES: In the event of a dispute hereunder, the prevailing party is entitled to recover from the other party all costs incurred by the prevailing party in enforcing this AGREEMENT and prosecuting the dispute, including reasonable attorney's and expert's fees, whether incurred through formal legal proceedings or otherwise.

ASSIGNMENT: The CLIENT and STANTEC shall not, without the prior written consent of the other party, assign the benefit or in any way transfer the obligations under these Terms and Conditions or any part hereof.

SEVERABILITY: If any term, condition or covenant of the AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the AGREEMENT shall be binding on the CLIENT and STANTEC.