

April 22, 2022

Curtis Hall  
City of Manitowoc  
3330 Custer Street  
Manitowoc, WI 54220

**Professional Services – Concept Planning, Programming and Rough Order Budget Cost Estimating**  
Lincoln Park Zoo Mountain Lion Exhibit

Dear Mr. Hall,

Thank you for the opportunity to provide planning and design services to the City of Manitowoc for this important project. This letter describes our proposed scope of work and fees to perform a basic planning and program analysis and provide rough order of magnitude budget planning for the proposed Mountain Lion Exhibit at the Lincoln Park Zoo in Manitowoc, Wisconsin.

**PROJECT UNDERSTANDING**

We understand that the existing timber wolf exhibit is at a key location at the entry to the Zoo and that the City would like to renovate this exhibit and repurpose it for mountain lions. We agree that this would be an excellent opportunity to improve the visitor experience and improve animal care for the cats by developing a high-quality exhibit focused on these charismatic animals.

We understand that the total project budget is currently \$300,000 and that this amount is to cover both construction (hard) costs as well as design/survey (soft) costs. The desired scope items and project goals are generally categorized as Building Interior Renovations, Exterior Enclosure Modifications, and Visitor and Viewing Amenities. A complete list of program and scope elements was provided at the site walkthrough on March 4, 2022. This scope list will be the basis for budgetary and planning analysis.

**PROJECT SCOPE AND SERVICES**

For this initial effort we understand that the City would like to engage Ayres Associates to provide professional services to develop a prioritized project program, budget plan and construction procurement plan. This information will be used to identify specific design and engineering efforts that will need to be conducted to develop documents that can be used for competitive bidding to contractors. The goal will be to minimize the extent of bidding documents and design fees to save project costs while providing enough information for contractors to price.

**DELIVERABLES AND PROFESSIONAL SERVICES FEES**

<b>Project Research, Site Visit and Keeper Interviews</b>	\$ 4,500.00
Visit the site, review existing materials, meet with project stakeholders, and provide an overview outline of desired scope elements	
<b>Concept Site Plan and Program Test Fit</b>	\$ 4,900.00
Scaled concept site plan layout and prioritized program elements	
<b>Rough Order of Magnitude Budget Estimate</b>	\$ 1,800.00
Construction cost research and rough order of magnitude budget cost estimate	

**Final Report**

\$ 1,580.00

Package findings, recommended construction procurement approach, and list of construction document efforts required for bidding. Provide professional services fees for the construction documentation

Total Services **\$12,780.00**

Project Schedule

- Site Visit / Stakeholder Meetings Week of May 2, 2022
- Concept Site Plan, Programming and Budget Planning May 9, 2022 - May 20, 2022
- Final Report May 27, 2022

Project Expenses

- Travel and other project expenses will be billed directly and separately from the above fees. We estimate approximately \$1,200 for travel and related expenses.

Assumptions/Exclusions

- This proposal does not include base map, survey or aerial mapping services. We will develop concepts based on an owner provided survey or publicly available aerial information.
- The following services are not included in this proposal but can be provided upon request:
  - Engineering services (civil, structural, electrical, mechanical, etc.)
  - Irrigation design
  - Signage design
  - 3D Renderings
  - Construction or Bidding Documents
  - Architectural Studies or Building Code Evaluation
  - Subsurface utility investigation
  - Construction of proposed improvements
  - Outside consultants not explicitly listed in this proposal

Please contact me if you have questions about this proposal. We look forward to working with your community on this important project. If acceptable, please sign the following sheet authorizing Ayres to begin work on the project.

Respectfully,

Ayres Associates Inc



David Land  
Landscape Architect, Senior Project Manager  
Cell: 303-548-2870  
LandD@AyresAssociates.com



Ben Peotter  
Manager – Development Services  
Cell: 608-443-1206  
PeotterB@AyresAssociates.com



Acceptance

If this proposal and terms and conditions are acceptable to you, a signature on the enclosed copy of this letter will serve as our authorization to proceed.

Proposed by Consultant:

Accepted by City of Manitowoc:



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Ben Peotter, PE

\_\_\_\_\_  
Manager – Development Services  
Title

\_\_\_\_\_  
April 22, 2022

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Justin M. Nickels  
Name

\_\_\_\_\_  
City of Manitowoc Mayor  
Title

\_\_\_\_\_  
Date

Attachments: Contract Terms and Conditions

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Mackenzie Reed-Kadow  
Name

\_\_\_\_\_  
City of Manitowoc City Clerk  
Title

\_\_\_\_\_  
Date



**AYRES ASSOCIATES**  
**CONTRACT TERMS AND CONDITIONS**

**1. Performance of Services:** Consultant shall perform the services outlined in its proposal to Owner in consideration of the stated fee and payment terms.

**2. Billing and Payment:** Invoices for Consultant's services shall be submitted to Owner on a monthly basis. Invoices shall be due and payable within 30 days from date of invoice. If any invoice is not paid within 30 days, Consultant may, without waiving any claim or right against Owner, and without liability whatsoever to Owner, suspended or terminate the performance of services. Accounts unpaid 30 days after the invoice date will be subject to a monthly service charge of 1.5% on the unpaid balance, or the maximum rate of interest permitted by law, if less. The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed on payments shall be added to Consultant's compensation. No deductions or offsets shall be made from Consultant's compensation or expenses on account of any setoffs or back charges.

**3. Access to Site:** Owner shall furnish right-of-entry on the project site for Consultant and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. Consultant will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

**4. Location of Utilities:** Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information or instructions which have been furnished to Consultant by others.

**5. Hazardous Materials:** In the event that unanticipated potentially hazardous materials are encountered during the course of the project, Owner agrees to negotiate a revision to the scope of services, time schedule, fee, and contract terms and conditions. If a mutually satisfactory agreement cannot be reached between both parties, the contract shall be terminated and Owner agrees to pay Consultant for all services rendered, including reasonable termination expenses.

**6. Insurance:** Consultant shall maintain Workers' Compensation, General Liability, and Automobile Liability Insurance during its services for Owner. Consultant shall furnish a Certificate of Insurance to Owner upon written request. Owner agrees that Consultant shall not be liable or responsible to Owner for any loss, damage, or liability beyond the amounts, limits, exclusions, and conditions of such insurance.

**7. Limitation of Professional Liability:** Owner agrees to limit Consultant's professional liability for any and all claims for loss, damage or injury, including but not limited to, claims for negligence, professional errors or omissions, strict liability, and breach of contract or warranty, to an amount of \$50,000.00 or Consultant's fee, whichever is greater. In the event that Owner does not wish to limit Consultant's professional liability to this sum, Consultant agrees to raise the limitation of liability to a sum not to exceed \$1,000,000.00 for increased consideration of ten percent (10%) of the total fee or \$500.00, whichever is greater, upon receiving Owner's written request prior to the start of Consultant's services.

**8. Opinions of Probable Costs:** Consultant's opinions of probable project costs are made on the basis of Consultant's experience, qualifications and judgment; but Consultant cannot and does not guarantee that actual project costs will not vary from opinions of probable cost.

**9. Construction Review:** Consultant does not accept responsibility for the design of a construction project unless the Consultant's contract includes review of the contractor's shop drawings, product data, and other documents, and includes site visits during construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents.

**10. Construction Observation:** On request, Consultant shall provide personnel to observe construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents. This construction observation shall not make Consultant a guarantor of the contractor's work. The contractor shall continue to be responsible for the accuracy and adequacy of all construction performed. In accordance with generally accepted practice, the contractor will be solely responsible for the methods of construction, direction of personnel, control of machinery, and falsework, scaffolding, and other temporary construction aids. In addition, all matters related to safety in, on, or about the construction site shall be under the direction and control of the contractor and Consultant shall have no responsibility in that regard. Consultant shall not be required to verify any part of the work performed unless measurements, readings, and observations of that part of the construction are made by Consultant's personnel.

**11. Standard of Performance:** The standard of care for all professional services performed or furnished by Consultant under this contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant does not make any warranty or guarantee, expressed or implied, nor is this contract subject to the provisions of any uniform commercial code. Similarly, Consultant will not accept those terms and conditions offered by Owner in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

**12. Ownership of Documents:** All documents produced by Consultant under this contract are instruments of Consultant's professional service and shall remain the property of Consultant and may not be used by Owner for any other purpose without the prior written consent of Consultant.

**13. Electronic Files:** Owner and Consultant agree that any electronic files furnished by either party shall conform to the specifications agreed to at the time this contract is executed. Electronic files furnished by either party shall be subject to an acceptance period of 60 days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. Owner is aware that differences may exist between the electronic files delivered and the printed hard-copy documents. In the event of a conflict between the hard-copy documents prepared by Consultant and electronic files, the hard-copy documents shall govern.

**14. Financial and Legal Services:** Consultant's services and expertise do not include the following services, which shall be provided by Owner if required: (1) Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services; (2) Legal services with regard to issues pertaining to the Project as Owner requires, Contractor(s) raises, or Consultant reasonably requests; and (3) Such auditing services as Owner requires to ascertain how or for what purpose any Contractor has used the money paid.

**15. Termination of Services:** This contract may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, Owner shall pay Consultant for all services rendered to the date of termination, all reimbursable expenses incurred prior to termination, and reasonable termination expenses incurred as the result of termination.

**16. Controlling Law:** This contract is to be governed by the law of the place of business of Consultant at the address in its proposal to Owner.

**17. Assignment of Rights:** Neither Owner nor Consultant shall assign, sublet or transfer any rights under or interest in this contract (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this contract. Nothing contained in this paragraph shall prevent Consultant from employing such independent subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

**18. Third Party Benefits:** This contract does not create any benefits for any third party.

**19. Dispute Resolution:** Owner and Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under the following dispute resolution provision. If direct negotiations fail, Owner and Consultant agree that they shall submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this contract or the breach thereof to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association effective on the date of this contract prior to exercising other rights under law.

**20. Exclusion of Special, Indirect, Consequential, and Liquidated Damages:** Consultant shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract.

**21. Betterment:** If, due to Consultant's negligence, a required item or component of the project is omitted from the construction documents, Consultant's liability shall be limited to the reasonable cost of correction of the construction, less what Owner's cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that Consultant will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

**22. Amendments:** This contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument.