

OWNER

15-1264

### AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of December 16, 2015 between City of Manitowoc, 900 Quay Street, Manitowoc WI, 54220 (OWNER) and Ayres Associates Inc, 3376 Packerland Drive, Ashwaubenon, WI, 54115 (CONSULTANT).

OWNER intends to retain CONSULTANT for professional services for creation of DT1078 sanitary sewer design to be incorporated into WisDOT Waldo Boulevard roadway reconstruction plans and as described in Attachment A (hereinafter called the Project).

OWNER and CONSULTANT agree to performance of professional services by CONSULTANT and payment for those services by OWNER as set forth below.

The following Attachments are attached to and made a part of this Agreement.

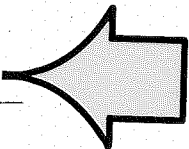
- Attachment A - Scope of Services, consisting of 5 pages.
- Attachment B - Period of Services, consisting of 1 page.
- Attachment C - Compensation and Payments, consisting of 3 pages.
- Attachment D - Terms and Conditions, consisting of 4 pages.
- Attachment E - Insurance, consisting of 2 pages.

This Agreement (consisting of 1 page), together with the Attachments identified above, constitute the entire agreement between OWNER and CONSULTANT and supersede all prior written or oral understandings. This Agreement and said Attachments may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

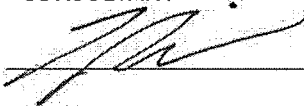
City of Manitowoc  
OWNER

Ayres Associates Inc  
CONSULTANT



Justin M. Nickels, Mayor

(Signature)  
(Typed Name)

  
Troy B. Robillard, PE

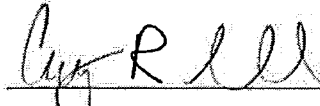
Jennifer Hudon, City Clerk

(Title)  
(Date)

Manager - Transportation East  
12-16-15

(Attest)  
(Typed Name)

(Attest)  
(Typed Name)

  
Craig R. Schuh, PE

(Title)

(Title)

Municipal Engineer

DATE

## **ATTACHMENT A - SCOPE OF SERVICES**

This is an attachment to the Agreement dated December 16, 2015 between City of Manitowoc (OWNER) and Ayres Associates Inc (CONSULTANT).

### **ARTICLE 1 - BASIC SERVICES**

#### **1.1 General**

1.1.1 CONSULTANT shall provide professional services for OWNER in all phases of the Project to which this Agreement applies. These services will include serving as OWNER's professional representative for the Project, providing professional consultation and advice, and performing the duties and responsibilities of CONSULTANT as provided below.

#### **1.2 N/A**

#### **1.3 N/A**

#### **1.4 Final Design Phase**

After written authorization to proceed with the Final Design Phase, CONSULTANT shall:

1.4.1 On the basis of the accepted Preliminary Concept Design documents on existing plan and profile sheets provided by owner, CONSULTANT shall prepare for incorporation in the Contract Documents, WisDOT DT1078 final drawings to show the general scope, extent and character of the sanitary sewer replacement work to be furnished and performed by Contractor(s) (hereinafter called "Drawings") on Waldo Boulevard in the City of Manitowoc for State Project Number 1500-37-72 and 4570-12-72. Sanitary sewer replacement design will include the addition of sanitary sewer plan and profile drawings incorporated into approximately 32 WisDOT plan sheets from Fleetwood Drive to Maritime Drive, 8<sup>th</sup> Street and 9<sup>th</sup> Street, along with appropriate details and schedules.

#### **1.4.2 N/A**

#### **1.4.3 N/A**

#### **1.4.4 N/A**

1.4.5 Furnish five copies of the above documents and of the Drawings and present and review them in person with OWNER.

#### **1.5 N/A**

#### **1.6 N/A**

#### **1.7 N/A**

## **ARTICLE 2 - ADDITIONAL SERVICES**

### **2.1 Services Requiring Authorization in Advance**

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services as provided below. These services are not included as part of Basic Services and will be paid for by OWNER as indicated in Attachment C.

2.1.1 Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2 Preparation of WisDOT supplemental specifications and supporting documents for bid package to meet City of Manitowoc product requirements.

2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3 Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond CONSULTANT's control.

2.1.4 Providing renderings or models for OWNER's use.

2.1.5 Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.6 Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.7 Furnishing services of independent professional associates and subconsultants for other than Basic Services (which include, but are not limited to, customary civil, structural, mechanical and electrical engineering and customary architectural design incidental thereto); and providing data or services of the types described in paragraph 3.4 when OWNER employs CONSULTANT to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.4.

2.1.8 Services resulting from the award of more separate prime contracts for construction, materials or equipment for the Project than are contemplated or if CONSULTANT has been required to prepare Contract Documents on the assumption that more than one prime contract will be awarded for construction, materials and equipment, but only one prime contract is awarded for construction, materials and equipment for the Project, services attributable to the preparation of contract

documentation that was rendered unusable and any revisions or additions to contract documentation used that was necessitated by the award of only one prime contract.

2.1.9 Services during out-of-town travel required of CONSULTANT other than visits to the site or OWNER's office as required by Basic Services.

2.1.10 Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services, except when such assistance is required to complete services called for in Attachment D, paragraph 6.2.2.5.

2.1.11 Providing any type of property surveys or related engineering services needed for the transfer of interests in real property and field surveys for design purposes and engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

2.1.12 Preparation of operating, maintenance and staffing manuals to supplement Basic Services under paragraph 1.7.3.

2.1.13 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services under paragraphs 1.2.3 and 1.4.2).

2.1.14 Additional services in connection with the Project, including services which are to be furnished by OWNER as listed below, and services not otherwise provided for in this Agreement.

## **2.2 Required Additional Services**

When required by the Contract Documents in circumstances beyond CONSULTANT's control, CONSULTANT shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 2.2.1 through 2.2.6, inclusive. These services are not included as part of Basic Services. CONSULTANT shall advise OWNER promptly after starting any such Additional Services which will be paid for by OWNER as indicated in Attachment C.

2.2.1 Services in connection with work change directives and change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.

2.2.2 Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.2.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.2.4 N/A

2.2.5 N/A

2.2.6 Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

## **ARTICLE 3 - OWNER'S RESPONSIBILITIES**

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT:

3.1 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONSULTANT's services for the Project.

3.2 Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all preliminary sketched design and construction standards which OWNER will require to be included in the Project.

3.3 Place at CONSULTANT's disposal all available pertinent information including previous reports and any other data relative to design or construction of the Project.

3.4 Furnish to CONSULTANT, as required for performance of CONSULTANT's Basic Services, the following, all of which CONSULTANT may use and rely upon in performing services under this Agreement:

3.4.1 Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; including appropriate professional interpretations.

3.4.2 Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the site, and adjacent areas.

3.4.3 Property, boundary, easement, right-of-way, topographic and utility surveys.

3.4.4 Property descriptions.

3.4.5 Zoning, deed and other land use restriction.

3.4.6 Other special data or consultations not covered under Basic Services and Additional Services.

3.5 Provide engineering surveys to establish reference points for construction to enable Contractor(s) to proceed with the layout of the work.

3.6 Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform services under this Agreement.

3.7 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor, financial/municipal advisor, and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.

3.8 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.9 Recognizing and acknowledging that CONSULTANT's services and expertise do not include the following services, provide, as required for the Project:

3.9.1 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.

3.9.2 Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor(s) raises, or CONSULTANT reasonably requests.

3.9.3 Such auditing services as OWNER requires to ascertain how or for what purpose any Contractor has used the money paid.

3.10 If OWNER designates a person to represent OWNER at the site who is not CONSULTANT or CONSULTANT's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of CONSULTANT and the Resident Project Representative (and any assistants) will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

3.11 If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

3.12 Furnish to CONSULTANT data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 3.7 through 3.11, inclusive and other costs of the types referred to in paragraph 1.2.6) so that CONSULTANT may make the necessary findings to support opinions of probable Total Project Costs.

3.13 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.

3.14 Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of a hazardous environmental condition or any other development that affects the scope or timing of CONSULTANT's services, any defect or nonconformance in CONSULTANT's services, or any defect or nonconformance in the work of any Contractor.

3.15 Furnish, or direct CONSULTANT to provide, Additional Services as stipulated in paragraph 2.1 or other services as required.

3.16 Bear all costs incident to compliance with the requirements of Article 3.

## **ATTACHMENT B - PERIOD OF SERVICES**

This is an attachment to the Agreement dated December 16, 2015 between City of Manitowoc (OWNER) and Ayres Associates Inc (CONSULTANT).

### **ARTICLE 4 - PERIOD OF SERVICES**

4.1 The provisions of this Article 4 and the compensation for CONSULTANT's services have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. CONSULTANT's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction, and initial operation of the Project including extra work and required extensions thereto. If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided below and if such dates are exceeded through no fault of CONSULTANT, compensation provided herein shall be subject to equitable adjustment.

4.2 N/A

4.3 N/A

4.4 After acceptance by OWNER of OWNER supplied Preliminary Sketch Design documents on existing plan and profile sheets , CONSULTANT shall proceed with the performance of the services called for in the Final Design Phase; and shall deliver Contract Documents and all work associated with sanitary sewer on the Project within 90 days.

4.5 CONSULTANT's services under the Final Design Phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by OWNER or (2) thirty days after the date when such submissions are delivered to OWNER for final acceptance.

## ATTACHMENT C - COMPENSATION AND PAYMENTS

This is an attachment to the Agreement dated December 16, 2015 between City of Manitowoc (OWNER) and Ayres Associates Inc (CONSULTANT).

### ARTICLE 5 - COMPENSATION AND PAYMENTS

#### 5.1 Compensation for Services and Expenses

5.1.1 Basic Services. OWNER shall pay CONSULTANT for Basic Services set forth in Attachment A, except for services of CONSULTANT's Resident Project Representative and Post-Construction Phase services, if any, as follows:

5.1.1.1 An amount equal to the cumulative hours charged to the Project by each class of CONSULTANT's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and charges of CONSULTANT's independent professional associates and subconsultants, if any.

5.1.1.2 CONSULTANT's Reimbursable Expenses Schedule and Standard Hourly Rates Schedule are attached to this Attachment C as Appendices 1 and 2, respectively.

5.1.1.3 The total compensation for services under paragraph 5.1.1 is estimated to be \$35,000.00.

5.1.1.4 CONSULTANT may not exceed the total estimated compensation amount unless approved in writing by OWNER.

5.1.1.5 The total estimated compensation for CONSULTANT's services as noted herein incorporates all labor, overhead, profit, Reimbursable Expenses, and charges of CONSULTANT's independent professional associates and subconsultants.

5.1.2 N/A

5.1.3 Additional Services. OWNER shall pay CONSULTANT for Additional Services, if any, as follows:

5.1.3.1 For services of CONSULTANT's employees engaged directly on the Project pursuant to Attachment A, paragraph 2.1 or 2.2 (except for services as a consultant or witness under Attachment A, paragraph 2.1.13), an amount equal to the cumulative hours charged to the Project by each class of CONSULTANT's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and charges of CONSULTANT's independent professional associates and subconsultants, if any.

5.1.4 Reimbursable Expenses. OWNER shall pay CONSULTANT for all Reimbursable Expenses incurred in connection with services as follows:

5.1.4.1 For Internal Reimbursable Expenses. An amount equal to the Project-related internal Reimbursable Expenses actually incurred or allocated by CONSULTANT based on the rates set forth in Appendix 1 to this Attachment C.



5.1.4.2 For External Reimbursable Expenses. An amount equal to invoiced external Reimbursable Expenses allocable to the Project multiplied by a factor of 1.0.

5.1.5 Amounts Billed. The amounts billed for CONSULTANT's services will be based on the cumulative hours charged to the Project during the billing period by each class of CONSULTANT's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and charges of CONSULTANT's independent professional associates and subconsultants.

5.1.6 Annual Adjustments. The Standard Hourly Rates Schedule will be adjusted annually (as of January) and the Reimbursable Expenses Schedule will be adjusted annually (as of May) to reflect equitable changes in the compensation payable to CONSULTANT.

#### 5.1.7 Other Provisions Concerning Compensation

5.1.7.1 Charges of CONSULTANT's Independent Professional Associates and Subconsultants. Whenever CONSULTANT is entitled to compensation for the charges of CONSULTANT's independent professional associates and subconsultants, those charges shall be the amounts billed to CONSULTANT times a factor of 1.0.

5.1.7.2 Factors. The factors for external Reimbursable Expenses and CONSULTANT's independent professional associates and subconsultants include CONSULTANT's overhead and profit associated with CONSULTANT's responsibility for the administration of such services and costs.

5.1.7.3 N/A

5.1.7.4 Records. Records pertinent to CONSULTANT's compensation will be kept in accordance with generally accepted accounting practices. To the extent necessary to verify CONSULTANT's charges and upon OWNER's timely request, CONSULTANT shall make copies of such records available to OWNER at cost.

## 5.2 Payments

5.2.1 Times of Payments. CONSULTANT shall submit monthly invoices for Basic and Additional Services rendered and for Reimbursable Expenses incurred. OWNER shall make prompt monthly payments in response to CONSULTANT's invoices.

5.2.2 Failure to Pay. If OWNER fails to make any payment due CONSULTANT for services and expenses within thirty days after receipt of CONSULTANT's invoices, the amounts due CONSULTANT will be increased at the rate of 1-1/2% per month (18% A.P.R.), or the maximum rate of interest permitted by law, if less, from said thirtieth day, and in addition, CONSULTANT may, after giving seven days' written notice to OWNER, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services and expenses.

5.2.3 Payments Upon Termination. In the event of termination by OWNER under Attachment D, paragraph 7.5, CONSULTANT will be entitled to invoice OWNER and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. In the event of termination by OWNER for convenience or by CONSULTANT for cause, CONSULTANT also shall be entitled to invoice OWNER and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with CONSULTANT's

independent professional associates and subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in this Attachment C.

5.2.4 Payments for Taxes Assessed on Services. The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed on payments shall be added to the compensation as determined above.

5.2.5 Deductions or Offsets. No deductions or offsets shall be made from CONSULTANT's compensation or expenses on account of any setoffs or back charges.

### **5.3 Definitions**

5.3.1 Reimbursable Expenses. Reimbursable Expenses mean the actual expenses incurred by CONSULTANT, directly or indirectly in connection with the Project, such as expenses for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and mobile phone charges; facsimile transmissions; expenses incurred for computer time, survey and testing instruments, and other highly specialized equipment; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items.



## Reimbursable Expense Schedule (October 1, 2015)

**Policy:** It is the policy of Ayres Associates that costs associated with equipment and supplies identified as having been used on a specific project be charged to that project and not to general overhead. All equipment rates are based on actual cost and are reviewed/updated annually.

### Company-Owned Equipment

**ENVIRONMENTAL SAMPLING, MONITORING, TESTING:**

Confined Space Entry Equipment.....	\$93.15/Use
FID/PID/OVA.....	\$78.85/Day
Groundwater Sampling.....	\$2.20/Sample
Hydrolift Pump.....	\$8.90/Day
Nuclear Density.....	\$42.50/Day
Peristaltic Pump.....	\$35.25/Day
Soil Sampling.....	\$4.25/Sample
Temp/pH Conductivity Meter.....	\$13.60/Day
Water Level Meter.....	\$6.80/Day

**CONSTRUCTION TESTING AND SAMPLING:**

Concrete Air Meter.....	\$16.35/Day
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**PHOTOGRAMMETRIC AND SURVEYING:**

Depth-Sounder Meters.....	\$311/Day
Digital Photogrammetric Workstation.....	\$11.80/Hour
GPS.....	\$73.30/Day
High Precision Digital Level.....	\$36.65/Day
Laser/Automatic Level.....	\$11.70/Day
Total Station (Robotic).....	\$110/Day
TX8 HD LiDAR System.....	\$1,000/Day

**STRUCTURAL ABOVE/UNDER WATER INSPECTION :**

Air Tank.....	\$7.75/Tank
Climbing Gear.....	\$169/Day
Exposure Suit/Diver.....	\$39.45/Day
General Inspection Equipment.....	\$35.85/Day
NDT/Testing Equipment.....	\$23.20/Day
Resistograph.....	\$43.80/Day
Scuba Dive Gear/Diver.....	\$26.20/Day
Surface Supplied Air/Diver.....	\$206/Day
Underwater Camera.....	\$87.90/Day

**TRAFFIC DATA COLLECTION:**

Traffic Counter.....	\$30.50/Day
Miovision Scout VCU.....	\$32.70/Day

**TRANSPORTATION:**

All-Terrain Vehicle (ATV).....	\$47.30/Day
Boat/Motor/Trailer.....	\$193/Day
Company Trucks.....	\$.89/Mile
Personal Auto.....	Current IRS Rate
Rental Bucket Lift Truck.....	\$268/Day

### Meals and Lodging

Traveler reimbursement is dependent upon where the project is located and not the accommodations nor where the office is located. Meal and lodging rates are consistent with rates posted on the US Government's Federal Travel Regulations website at [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem).

The following table shows the breakdown of the Basic (CONUS) rate for lodging, breakfast/continental breakfast, lunch, and dinner. Ayres Associates current CONUS per diem rate is \$135 for lodging and meals (less incidental expenses.)

**Rates effective October 1, 2015**

Rate Description	Explanation	Basic Rate Continental U.S. (CONUS)	
Lodging	Standard Rate	\$89	Project Location Look-up: 1. Meal and lodging rates differ by location. 2. Go to <a href="http://www.gsa.gov/perdiem">www.gsa.gov/perdiem</a> for a map of the continental United States. 3. Search the projects location by City, State, or Zip Code. 4. Cities not appearing on website may be located within a county for which rates are listed. 5. To determine what county a city is in, visit <a href="http://www.naco.org/pages/default.aspx">www.naco.org/pages/default.aspx</a> and click "About Counties".
M & IE	Meals and incidentals as listed on federal website	\$51	
Less incidental expenses (not reimbursed)	Company reimbursement excluding incidentals	(5)	
Ayres Associates daily meals rate	Net reimbursement rate	\$46	
Breakfast/Continental Breakfast	Rates for meals segregated by type	\$11	
Lunch		\$12	
Dinner		\$23	
First & Last Day of Travel (Meals @ 75%)	Ayres "Net meals rate" reimbursed at 75%	\$34.50	

**Reimbursable Expense Schedule** (October 1, 2015)

**Vendor Supplies - Actual Cost**

Aerial mapping	Equipment rental	Models	Shipping fees
Aerial Photography	Fees/permits/licenses titles	Monuments	Shipping/postage (mass mlgs)
55 gallon drums	Fence posts	Multi-spectral scanner	Shuttles and taxis
Airfare	Field books	Mylar	Smoke bombs
Aluminum cap domes	Filler paper	Nail marker tabs	Software – project specific
Aluminum caps	Film/development/photos	Nails	Soil sample liners
Asphalt lab test	Flagging tape	Nuclear Density Meter	Spatulas
All terrain vehicles	Flags	On-line access fees	Spikes
Audience response devices	Flow testing equipment	On-line survey research	Stake chasers
Augering devices	Gaskets	Oxygen meter	Stake tack
Baggage fees	Generator rental	Paper towels	Survey markers
Batteries	Geotechnical testing/lab services	Parking fees	Syringes
Bentonite	GIS data	Permit fees	T posts
Bid notice fees	Gloves (rubber or cloth)	Pipe	Teflon bailers
Binders	GPS equipment	Pipettes	Telephone-(employee reimb)
Binding	Haz Matls Site Database Research	Plan fees	Temporary help agencies
Bluelines/blueprints	Hub flags	Plastic bags	Temporary housing
Bleach	Hubs	Plastic-coated line	Testing kits
Boat rental	Ice	Plats/recording fees	Tide gauges
Boat ramp fees	Interface probing devices	Polyethylene bailers	Toll fees
Camera	Internet services, faxes	Public info meetings/costs	Total station
Car rentals/ fuel	Lab svcs, testing, supplies	Presentation materials	Traffic control/protection
Carbon dioxide tubes	Laser level	Printing/Reproduction	Traffic counting equipment
Casing	Lath	Public notice fees	Traffic data fee
Computer flash drives	Legal document costs	Publications	Tubing
Concrete	Legal notice fees	Rebar	Tyvek Suit
Concrete coring	Light rail fees	Recording fees	Ultrasonic/weld testing
Concrete testing/equipment	Locking caps, caps	Reference materials	Utility exploration trenching
Concrete cylinder molds	Locking well caps, well caps	Research fees	Vapor sampling
Corner marker pipe	Locks	Review Fees	Vellum
Data research/services/matls	Lumber crayons	Robotic survey equipment	Vials
Decontamination materials	Magic markers	Rope	Washers
Disposable bailers	Maps	Safety equipment	Water filters
Disposable cameras	Marking paint	Safety supplies	Water/Sewer testing equip, sup
Disposable gloves	Medical monitoring	Sampling Jars	Water level recording devices
Distilled water	Medical testing	Scans	Well materials
Dividers and tab stock	Meeting room rental	Sediment sampling	Well seals
Drill bits	Methanol	Shelby tubes	Whiskers
Dry-lock fast plugs	Micron filters		
Duct tape			

## APPENDIX 2 - STANDARD HOURLY RATES SCHEDULE

**AYRES ASSOCIATES  
HOURLY RATE SCHEDULE  
JANUARY 1, 2016**

<u>CLASSIFICATION</u>	<u>2016 HOURLY RATE*</u>
Manager	126.15 – 209.40
Engineer 3	122.35 – 204.28
Engineer 2	89.73 – 128.52
Engineer 1	72.67 – 94.63
Architect 3	124.41 – 138.13
Architect 1 and 2	71.05 – 109.53
Interior Designer	80.74 – 87.70
Landscape Architect 3	110.20 – 190.58
Landscape Architect 1	58.73 – 82.03
Planner	104.69 – 139.36
Scientist 3	112.48 – 145.66
Scientist 2	73.60 – 82.72
Scientist 1	66.35 – 78.75
Surveyor	85.55 – 122.06
Geospatial Services Specialist	105.97 – 124.00
Geospatial Services Technician	53.94 – 97.81
Technician 3	66.90 – 113.94
Technician 2	69.17 – 85.05
Technician 1	36.25 – 75.13
Clerical	52.58 – 99.19

\* For each classification, specific rates will depend on the level of experience required to meet project needs and goals.

This rate schedule covers normal and customary services only.  
Rates for environmental classifications and other specialized services are excluded.

## ATTACHMENT D - TERMS AND CONDITIONS

This is an attachment to the Agreement dated December 16, 2015 between City of Manitowoc (OWNER) and Ayres Associates Inc (CONSULTANT).

### ARTICLE 6 - CONSTRUCTION COST AND OPINIONS OF COST

#### 6.1 Construction Cost

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire project designed and specified by CONSULTANT, but it will not include CONSULTANT's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Attachment A, paragraphs 3.7 through 3.11, inclusive. (Construction Cost is one of the items comprising Total Project Costs which is defined in Attachment A, paragraph 1.2.6.)

#### 6.2 Opinions of Probable Cost

6.2.1 Because CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, CONSULTANT's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of CONSULTANT's experience, qualifications and judgment as an experienced and qualified professional, familiar with the construction industry; but CONSULTANT cannot and does not guarantee that proposals, bids or actual Project or Construction Costs will not vary from opinions of probable cost. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to Total Project or Construction Costs, OWNER shall employ an independent cost estimator as provided in Attachment A.

6.2.2 If a Construction Cost limit is established by written agreement between OWNER and CONSULTANT and specifically set forth in this Agreement as a condition thereto, the following will apply.

6.2.2.1 The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Total Project or Construction Costs in excess of the then established cost limit will constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.

6.2.2.2 Any Construction Cost limit so established will include a contingency of ten percent unless another amount is agreed upon in writing.

6.2.2.3 CONSULTANT will be permitted to determine what types of materials, equipment and component systems are to be included in the Drawings and Specifications and to make reasonable adjustments in the general scope, extent and character of the Project to bring it within the cost limit.

6.2.2.4 If the Bidding or Negotiating Phase has not commenced within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on CONSULTANT and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.

6.2.2.5 If the lowest bona fide proposal or bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's general scope, extent or character to the extent consistent with the Project's requirements and with sound practices. In the case of (3), CONSULTANT shall modify the Contract Documents as necessary to bring the Construction Cost within the cost limit. In lieu of other compensation for services in making such modifications, OWNER shall pay CONSULTANT, CONSULTANT's cost of such services, all overhead expenses reasonably related thereto and Reimbursable Expenses, but without profit to CONSULTANT on account of such services. The providing of such service will be the limit of CONSULTANT's responsibility in this regard and, having done so, CONSULTANT shall be entitled to payment for services in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost.

## **ARTICLE 7 - GENERAL CONSIDERATIONS**

### **7.1 Standard of Performance**

The standard of care for all professional services performed or furnished by CONSULTANT under this Agreement 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 Agreement or 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.

### **7.2 Reuse of Documents**

All documents including Drawings and Specifications prepared or furnished by CONSULTANT (and independent professional associates and subconsultants) pursuant to this Agreement are instruments of service and CONSULTANT shall retain an ownership and property interest therein whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to CONSULTANT, or to independent professional associates or subconsultants, and OWNER shall indemnify and hold harmless CONSULTANT and independent professional associates and subconsultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by OWNER and CONSULTANT.

### **7.3 Electronic Files**

7.3.1 OWNER and CONSULTANT agree that any electronic files furnished by either party shall conform to the specifications agreed to at the time this Agreement is executed and listed elsewhere. Any changes to the electronic specifications by either OWNER or CONSULTANT are subject to review and acceptance by the other party. Additional services by CONSULTANT made necessary by changes to the electronic file specifications shall be compensated for as Additional Services.

7.3.2 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.

7.3.3 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.

#### **7.4 Insurance**

CONSULTANT shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. Requirements for insurance are amended and supplemented as indicated in Attachment E.

#### **7.5 Termination**

The obligation to provide further services under this Agreement may be terminated by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

#### **7.6 Controlling Law**

This Agreement is to be governed by the law of the place of business of CONSULTANT at the address hereinbefore stated.

#### **7.7 Successors and Assigns**

7.7.1 OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by paragraph 7.7.2 the assigns of OWNER and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.7.2 Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in this Agreement (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 Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and subconsultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.

7.7.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.



## **7.8 Dispute Resolution**

7.8.1 Negotiation. 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 dispute resolution provision below or other provisions of this Agreement, or under law.

7.8.2 Mediation. 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 Agreement 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 Agreement prior to exercising other rights under law.

## **7.9 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 Agreement.

## **7.10 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.

## ATTACHMENT E - INSURANCE

This is an attachment to the Agreement dated December 16, 2015 between City of Manitowoc (OWNER) and Ayres Associates Inc (CONSULTANT).

### ARTICLE 8 - INSURANCE

#### 8.1 Workers' Compensation

Workers' Compensation insurance covering the CONSULTANT for any and all claims which may arise against the CONSULTANT because of Workers' Compensation and Occupational Disease Acts shall be carried. The Employer's Liability Section shall have limits of not less than the following:

Each Accident:	\$	100,000
Disease, Policy Limit:	\$	500,000
Disease, Each Employee:	\$	100,000

#### 8.2 Commercial General Liability

Commercial General Liability insurance protecting the CONSULTANT against any and all general liability claims which may arise in the course of performance of this Agreement shall be carried. The limits of liability shall not be less than the following:

General Aggregate:	\$	1,000,000
Products-Completed Operations Aggregate:	\$	1,000,000
Personal and Advertising Injury:	\$	1,000,000
Each Occurrence:	\$	1,000,000

Property damage liability coverage shall not exclude explosion, collapse, and underground perils if CONSULTANT is engaged in these activities.

Commercial General Liability coverage shall also protect the CONSULTANT for the same limits of liability for claims which may arise because of the indemnity or contractual liability agreement contained within this Agreement.

#### 8.3 Business Automobile Liability

Business Automobile Liability insurance including Owned, Non-Owned, and Hired vehicles shall be carried with a limit of not less than the following:

Bodily Injury and Property Damage, Combined Single Limit:	\$	1,000,000
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#### **8.4 Umbrella Excess Liability**

Excess liability insurance (umbrella form) over underlying Employer's Liability, Commercial General Liability, and Business Automobile Liability shall be carried. The limits of liability shall be not less than the following:

Each Occurrence:	\$ 1,000,000
Aggregate:	\$ 1,000,000

#### **8.5 Professional Liability (Errors and Omissions)**

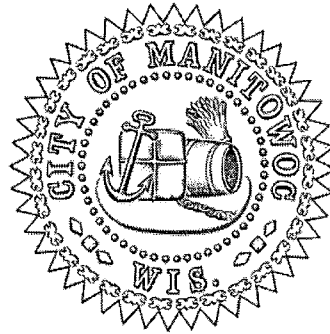
Professional Liability insurance protecting the CONSULTANT against Professional Liability claims which may arise in the course of this Agreement shall be carried. The limits of liability shall be not less than the following:

Each Claim:	\$ 1,000,000
Aggregate:	\$ 1,000,000

#### **8.6 Valuable Papers**

During the life of this Agreement, the CONSULTANT shall maintain in force Valuable Papers and Records insurance in an amount equal to the maximum exposure to loss of written, printed, or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages, and manuscripts as shall be required and/or produced in the completion of this Agreement by the CONSULTANT.

# 15-1264



**Standing Committee:** Public Infrastructure Committee

**Document Name:** Agreement for Professional Services with Ayres Associates for Waldo Boulevard Sanitary Sewer Plan Preparation.

Consent

Non-Consent

Chairman Recommend

**Recommendation:**

*ENTER INTO AGREEMENT SUBJECT TO \$35,000 NOT TO EXCEED LIMIT*

**Attest:**

*[Signature]* *12/07/15*

Chair – Alderperson Dave Soeldner

Date

*[Signature]*

Vice-Chair – Alderperson Jim Brey

*[Signature]*

Alderperson Jill Hennessey

*[Signature]*

Alderperson Al Schema

*[Signature]*

Alderperson Pat Brandel

**Approved:**

*[Signature]* Date

Justin M. Nickels  
Mayor