

**Consulting Services Contract
City of Waukesha – Ayres Associates, Inc.**

Project Name: Construction Site Representation for Private Development Construction 2023-2024

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Ayres Associates, Inc., 20975 Swenson Drive, Suite 200, Waukesha, WI 53186, referred to herein as the Consultant. Together, the City and Consultant are referred to as the Parties.

Recitals

The City published a Request for Proposals, referred to as the RFP, for consulting services in connection with the following Project:

Construction Site Representation for Private Development Construction 2023-2024

The RFP contained a specific Scope of Work to be incorporated into the successful bidder's contract.

The Consultant submitted a proposal in response to the RFP, and was selected by the City to be awarded the contract for the Project.

The Consultant is willing to perform consulting services according to the Scope of Work stated in the RFP and the Consultant's responsive Proposal, as modified by the Parties, and to accept the award of the contract for the Project.

Now, therefore, the City and the Consultant agree and contract as follows:

1. **Scope of Work.** The Consultant shall perform the Work described on Schedule A-Scope of Work and Schedule B-Price, according to the terms and conditions of this Contract. Schedule A and B are incorporated into this Contract by reference.
2. **Standard of Work.** Consultant will perform the Work according to generally-accepted industry practices of the individual employees performing the Work for Consultant.
3. **Payment.** The City shall pay to Consultant the hourly wages in the attached proposals for performance of the Work in compliance with the terms and conditions of this Contract. Consultant shall invoice the City, monthly. All invoices shall be payable net 30 days.
4. **Time.** Consultant shall commence the Work as promptly after execution of this Contract as is possible, and shall complete the Work no later than December 31, 2024, subject only to delays for circumstances beyond Consultant's control, provided Consultant re-commences work promptly in good faith upon the return of normal circumstances.
5. **Ownership of Work Product.** All materials produced in the performance of the Work shall be the sole property of the City, and shall be kept confidential and not disclosed to any third party without the prior written permission of the City.
6. **Changes.** This Contract can only be amended by the written, mutual agreement of the Parties. No change to the scope of the Work, or the total amount to be paid to Consultant, shall be effective unless done by the written mutual agreement of the Parties.
7. **Indemnification.** Consultant shall indemnify, defend, and hold the City and its officials and employees harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind to the extent that they arise out of or in connection with Consultant's performance of the Work, including court costs and actual attorney fees.

8. **Insurance.** Consultant shall maintain insurance of the following kinds and for not less than the following limits, at Consultant's sole expense, at all times during the performance of the Work. Policies shall be occurrence, and not claims-made, policies, except for professional errors and omissions policies. Consultant shall obtain an endorsement making the City an additional insured, and Consultant's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Consultant shall deliver a certificate of insurance to City showing that all requirements of this section are met.
 - a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.
 - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
 - c. Excess liability-umbrella, \$5,000,000.
 - d. Worker compensation, statutory requirements.
 - e. Professional liability-errors and omissions, \$2,000,000, with extended-reporting period endorsement.
9. **Record Keeping.** Consultant shall keep all documents and records generated in the performance of the Work for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. Consultant acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.
10. **Cooperation by City.** The City shall cooperate with the Consultant in the performance of the Work, and shall respond timely to all reasonable requests for information and access.
11. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
12. **Governmental Immunities, Liability Limits, and Notice Requirements Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities, notice requirements, or limitations of liability imposed by Wis. Stats. §893.80 or any other law.
13. **Assignment Prohibited.** This Contract, and the Consultant's responsibility to perform the Work under this Contract, may not be assigned by the Consultant without the City's written consent.
14. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

To the City: Attention: Kristine V. Walker
 City of Waukesha
 201 Delafield Street
 Waukesha WI 53188

To Consultant: Attention: Michael D. Payant, P.E.
 Ayes Associates, Inc.
 20975 Swenson Drive, Suite 200
 Waukesha, WI 53186

15. **Corporate Authorization.** The individuals executing this Contract on behalf of the Consultant warrant and represent that they are duly authorized to bind the Consultant to this Contract. Consultant warrants and represents that the execution of this Contract is not prohibited by the Consultant's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Consultant shall provide proof upon request.
16. **Assistance of Counsel, Voluntary Contract.** The Consultant acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Contract's terms, conditions and provisions, and their effects; and that it has executed this Contract freely and not under conditions of duress.
17. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
18. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
19. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
20. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
21. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
22. **Integration, Construction of Contract.** This Contract constitutes the entire agreement of the Parties formed as a result of the City's RFP and the Consultant's responsive proposal. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable. If there are any conflicts among the terms of this Contract and any documents incorporated into this Contract, including Schedule A, then the terms of this Contract shall control.
23. **Termination.** Either party may terminate this Contract without cause by giving written notice of termination to the other party, with termination to occur no sooner than 20 days after delivery of the notice. Upon termination, Consultant shall be paid for all Work completed as of the date of termination.
24. **Limitation of Liability.** Consultant shall not be liable for incidental or consequential contract damages.
25. **Confidentiality; Public Records.** All documents created pursuant to this Contract, and all documents delivered to the City, are public records and will be subject to disclosure to the public under Wisconsin's Open Records law.
26. **Effective Date.** This Contract shall be effective as of the latest date of execution shown below.

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

To certify that funds are provided for payment:

Joseph P. Ciorro, Director of Finance
Date: _____

Ayres Associates, Inc.

By (print name) _____
Title: _____
Date: _____

By (print name) _____
Title: _____
Date: _____

SCHEDULE A

OVERVIEW

The City of Waukesha is requesting proposals and a statement of qualification for providing on-call or as-needed Construction Site Representation (CSR) / Construction Management services for Private Development construction activities for 2023 and 2024 construction projects.

The City will make the determination and “pre-qualify” individual CSRs from the submitted candidates from each Consultant. A list of Prequalified Consultants and their hourly rates will be provided to Developers upon their request for a CSR to oversee the construction. An example is provided in the Appendix.

The Developer must select the Consultant from the City-provided list. The Consultant will be contracted through the City and invoices shall be paid by the City from funds provided by the Developer in their Developer’s Deposits. Developers will work with selected Consultant to create an estimate of inspection hours. Invoicing will be confirmed by the Engineering Division for hours worked.

The Consultant selected by the Developer as the Construction Site Representative (CSR) may **not** also be a Partner, Owner, Engineer, Surveyor or Designer for the project and shall **not** have any interest or holdings on the project.

The City cannot provide an estimate of hours that a Developer may use an individual Consultant, when or how often a Consultant may be selected by a Developer. Which Consultant the Developer chooses from the prequalified Consultants is entirely the Developer’s option, other than what is indicated in the City’s Development Handbook.

Developers will be required to complete the project using a single Consultant for construction site representation once the construction phase of the project is started unless approved by the City Engineering Division.

Projects involving CSR/Construction Management services include roadway improvements, traffic signal upgrades, bridge maintenance, flood mitigation and park improvement projects. Elements include sanitary sewer installation, lining and adjustments, storm sewer installation and adjustments, concrete curb and gutter, concrete sidewalk, concrete pavement, HMA placement, restoration as well as other general municipal construction activities determined by the City.

The City will make the final determination of when a CSR is required to be on-site CSRs shall be employed by the Consultant and shall not be contract employees, temporary employees, co-op students, interns or prospective employees (contingent upon approval of a contract). CSRs may be seasonal employees.

Specific duties of the CSR are outlined in the current City of Waukesha Development Handbook as well as the City’s current Standard Construction Specifications. These can be found on the City’s website.

Development Handbook:

https://www.waukesha-wi.gov/Document_Center/Government/Public%20Works/Engineering/2022%20Development%20Handbook.pdf

Standard Construction Specifications:

https://www.waukesha-wi.gov/Document_Center/Government/Public%20Works/Construction%20Projects/2022/2022%20Design%20and%20Construction%20Manual.pdf

**Note: It is anticipated that the City will be releasing an updated 2023 Standard Construction Specifications prior to the 2023 construction season*

Record drawing surveying services **shall be included as part of this proposal**. Watermain construction observation will not be required as part of this project.

SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTANT:

- Provide a qualified Construction Site Representative (CSR) for private development projects. Infrastructure improvements may include: sanitary sewer systems, storm sewer systems, street light conduit and bases, EBS, road base installation, concrete curb, flatwork and pavement, hot mix asphalt pavement, and restoration and additional infrastructure as needed or as shown on Plans. Other non-infrastructure observations may include erosion control and traffic control.
- Mass grading, ponds and the associated water quality control measures may be included but are not anticipated at this time.
- Understand and enforce the City of Waukesha Standard Construction Specifications latest edition, Waukesha Standard Details, City of Waukesha Development Handbook, Special Provisions and other Contract Documents and practices. The most recent City Standard Specifications are posted on the City website.
- Attend pre-construction meetings and all project meetings held at the job site or at a location to be determined by the Developer for assigned projects. Meeting facilitation and agenda preparation will not be required for this task.
- The CSR will work with, report to and communicate with the City of Waukesha Engineering Tech Supervisor assigned to the project. The CSR shall be equipped with a phone and survey equipment for acquiring elevations for Record Drawings during construction. Consultant will also work with and communicate with the Developer and the Contractor when needed.
- Review construction materials on-site to determine compliance with the City's current Standard Construction Specifications.
- Conduct on-site observations of the work in progress to determine if the work is proceeding in accordance with the Contract Documents and that completed work conforms to the Contract Documents. Consultant will not supervise, direct, or have control over the Contractor's work, and will not be responsible for the Contractor's means, methods, techniques, sequences, procedures, or health and safety precautions or programs, or for the Contractor's failure to perform the construction work in accordance with the Contract Documents. Consultant will report to the City the Contractor's failure to perform, or observed deviation in its performance of, construction work in accordance with the Contract Documents.
- Confirm that all material and other tests as required by Contract Documents are provided and performed.
- Direct visiting personnel representing the public, news reporting or other agencies having jurisdiction over the project to the Engineering Tech Supervisor. Consultant shall not present opinions, status or schedule updates, provide any documents or make any public statements regarding the project, schedule, cost or any other statement to any media, agency or department.
- Maintain at the job site, files for correspondence, reports of job progress meetings, shop/field drawings and samples, reproductions of original contract documents including all addenda, change orders, field orders, additional drawings, process reports and other project-related documents.

- Keep a daily diary, logbook and daily reports (see below) recording hours on the job, weather conditions, data relevant to questions of extras or deductions, list of visiting officials, suppliers, daily activities, decisions, conversations and general daily observations. Capture multiple digital photos of daily construction progress and log. Include photos, progress and logs on daily reports.
 - Complete **digital** construction Inspection Daily Reports (IDRs) and deliver **digital** document(s) to the Project Manager on a weekly basis, or more frequent as determined by the project team. **IDRs shall be typed; handwritten submittals will not be accepted.** IDRs shall include a reasonable and representative number of construction photos during the progress of the Project to record routine and special construction items, as well as a snapshot of the plan sheet representing where the work took place.
 - Monitor erosion control and traffic control devices to ensure that they are functioning at the beginning and end of each workday.
- Consult with the City in advance of scheduled testing, inspections, milestones or initiation of significant phases of the project.
- Notwithstanding the Contractor's sole responsibility for jobsite safety, immediately report to the City Project Manager any jobsite accident or incident.
- Observe that improvements are installed at proper elevations and locations. Record grades and pipe inverts during construction for record drawings. Report deviations from the Contract Documents to the Contractor and City of Waukesha Project Manager. The City will **not** provide survey equipment.
- Be knowledgeable of concrete and soil compaction testing/sampling procedures and witness testing completed by Contractor. Testing shall not be performed by the CSR.
- Perform subgrade and base course proof rolls with Contractor and provide inspection during completion of the recommended approach for poor soil remediation. Notify the City's Engineering Tech Supervisor of all scheduled proof rolls.
- Consultant shall use all applicable City of Waukesha reports and forms for reporting. Substitutions may be permitted with City approval prior to the commencement of a project. If substitute forms are used, the City shall be granted full access and license for use. Once a project has commenced, no format changes will be allowed.
- Maintain a current working set of Record Drawings (red lines) that indicate current changes to the project.
- Submit to the City a list of observed items requiring completion or correction in accordance with the Contract Documents (Punchlist). Periodic punchlist(s) may be required prior to placing an item or structure in service. Maintain updated punchlists and verify that items are satisfactorily completed.
- The Consultant's Office Project Manager shall be the one point of contact for the scheduling of CSR work and billing / invoicing questions.

Record Drawings

Record Drawings may be an additional project service based on need.

- Prepare Record Drawings of the entire project and include the following information: Invert, size, slope (pitch) and type of material of each span of pipe as installed. Inverts, size, type of material, height of rings (chimney), seals, frame/grate or frame/lid, rim elevations of all installed structures. Thickness and type of all pavements, including base materials. Coordinates (Northing / Easting), and elevations of all exterior corners of all cast-in-place concrete structures based on current City Surveying standards and current City elevation datum listed below.
 - Electronic files of Record Drawings in AutoDesk Civil 3D (2022 format) shall be provided to the City within 60 days after Final Completion for the entire project.
 - The following shall be shown for each structure, appurtenances, and lateral ends or other features that are part of the system. This includes all street lighting, communication and traffic signal equipment:
 - Northing and Easting Coordinates (NAD 1983/2011, State Plane Coordinates Wisconsin South) in CSV (Comma Separated Values) text format including point number, northing, easting, elevation and description of each structure (PNEZD).
 - Elevations (NAVD 1988) of all rims, inverts, catch basins, gutter inlets and outlets shall be given. Invert elevations of pipes shall be documented at the time of installation.

SCOPE OF SERVICES PROVIDED BY THE CITY OF WAUKESHA:

- Provide one electronic copy of the approved plans and Special Provisions in PDF format. One electronic (PDF) copy of the City's Standard Construction Specifications – most recent edition. Additional copies can be obtained by request.
- Schedule preconstruction meetings. Coordinate, or perform the facilitation, prepare agenda and minute preparation for the meetings.
- Provide Daily Reports (IDRs), quantity tabulation worksheets and other reporting forms in electronic PDF and MS-Excel formats. Substitutions may be permitted with City approval prior to the commencement of a project. If substitute forms are used, the City shall be granted full access and license for use. Once a project has commenced, no format changes will be allowed.
- No proprietary software systems will be accepted. Tablets, I-pads or other electronic hardware for preparing the documents may be used. All daily forms and reports shall be digitally completed and submitted to the City in Excel or PDF format. Electronic signatures on the forms will be accepted.
- City staff will review all contractor submittals and will provide copies of the reviewed submittals to the Consultant for information and enforcement.



“No stone is left unturned before and during projects, and you provide excellent engineering support.”

Ron Anderson

Utility Manager, City of Gillett

Rates and Costs

Our fixed hourly rates are as follows:

CONSTRUCTION REVIEW POSITION	RATE PER HOUR
Senior Construction Site Representative & PM (Michael Payant)	\$195
QA/QC & Construction Engineering Support (remote) (Benjamin DeBaker)	\$159
Construction Site Representative Technician II (Brett Glaeser)	\$123
Construction Site Representative Technician II (Austin Johrendt)	\$123
Construction Site Representative Technician I (George Sterner)	\$110
Construction Site Representative Technician I (Matt Schinner)	\$86
Construction Site Representative Technician I (Jim Kerns)	\$102
Construction Site Representative Technician I (David Ranft)	\$100
Construction Site Representative Technician I (Bryce Henning)	\$86

Normal work hours are between 7 a.m. and 5 p.m. If work continues past 5 p.m., payment will be made at the rate quoted for normal work hours. If work continues overnight or on weekends, payment will be made at the same rate quoted for normal hours.