

**Consulting Services Contract**  
**City of Waukesha – Ayres Associates, Inc.**  
**Project Name: Road Management 2017**

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Ayres Associates, Inc., N17 W24222 Riverwood Drive, Suite 310, Waukesha, Wisconsin 53188-1132, 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:

Road Management 2017 Project

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, 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, according to the terms and conditions of this Contract. Schedule A is incorporated into this Contract by reference.
2. **Standard of Work.** Consultant will perform the Work according to generally-accepted industry practices and the ~~highest~~ standards of the professions of the individual employees performing the Work for Consultant. *MDP*
3. **Payment.** The City shall pay to Consultant a total Contract Price not exceeding Twenty-Four Thousand Four Hundred Thirty Dollars (\$24,430.00). Consultant may invoice the City for partial installments as the Work progresses, not more frequently than every 30 days, based upon a per-segment fee of \$6.98. No more than 90% of the Contract Price shall be payable before Consultant's Work is completed and delivered to the City. Invoice payment terms shall be 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 October 13, 2017, subject only to delays for circumstances beyond Consultant's control, provided Consultant recommences 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 upon payment in full of the Contract Price by the City, and shall be kept confidential and not disclosed to any third party without the prior written permission of the City. This does not include materials proprietary to Consultant that were not produced specifically for the City under this Contract, or materials that were copyrighted, trademarked or patented by Consultant or any third party prior to the execution of this Contract.
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.

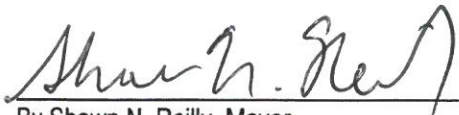
7. **Indemnification.** Consultant shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of Consultant's breach of this Contract or Consultant's negligent performance of 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. Consultant shall obtain an endorsement making the City an additional insured and loss payee, 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 Consultants.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent Consultants. 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 and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
13. **Permits and Licenses.** Consultant shall be responsible, at Consultant's expense, for obtaining all permits and licenses required for the performance of the Work unless expressly agreed by the City.
14. **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.
15. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

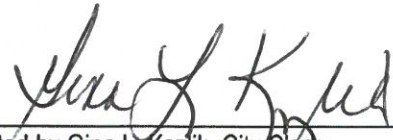
To the City:        Craig Ausen, P.E.  
                          City of Waukesha – Engineering Dept.  
                          130 Delafield Street  
                          Waukesha WI 53188

To Consultant: Michael D. Payant, P.E.  
Ayres Associates  
N17 24222 Riverwood Dr., Suite 310  
Waukesha, WI 53188-1132

16. **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.
17. **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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **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.
23. **Integration.** This Contract constitutes the entire agreement of the Parties formed by the City's RFP and the Consultant's responsive proposal; however, if any ambiguity in this Contract requires resolution, or this Contract is silent on a material point, then reference may be made to the RFP and the Consultant's proposal, in that order of priority, to construe this Contract. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable.
24. **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.

City of Waukesha

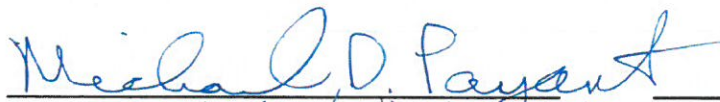
  
By Shawn N. Reilly, Mayor  
Date: 7/17/17

  
Attested by Gina L. Kozlik, City Clerk  
Date: 7/17/17

To certify that funds are provided for payment:

  
Richard L. Abbott, Director of Finance  
Date: 7-17-17

Ayres Associates, Inc.

  
By (print name) Michael D. Payant By (print name) \_\_\_\_\_  
Title: Manager - Engineering Services Title: \_\_\_\_\_  
Date: August 14, 2017 Date: \_\_\_\_\_  
July

## Schedule A

### **Project Description:**

The City has selected VUEWorks for its pavement management software. In order to populate the data and meet Wisconsin Information System for Local Roads (WISLR) Pavement Condition Rating deadlines and objectives, all City maintained streets (approximately 250 miles) need to be evaluated in the field. Consultant will utilize the web-based VUEWorks software. The City will provide web access to the existing VUEWorks database to the Consultant for this project. The Consultant must provide all necessary hardware.

### **Scope of Work**

Each individual block within the approximately 250 miles of streets (including alleys) shall be inventoried for both pavement and curb and gutter. Blocks are defined as intersection to intersection street segments and can be further divided into sub-segments by pavement age and type. Each sub-segment is defined by the offset from the intersection. Each alley will be considered one segment. A unique identification (ID) number identifies each segment and sub-segment. Appendix A contains the City map of streets and alleys to be evaluated.

A copy of the field inspection form and the various distresses that will be evaluated is contained in Appendix B. The City is not requesting that sidewalk information be collected as part of this project.

The Consultant will be provided with VUEWorks software training (up to 8 hours) conducted by the City of Waukesha. The Consultant shall then begin the inventory process and perform data entry and quality control.

The Consultant can utilize automated pavement data collection if they can demonstrate their experience with mobile data collection and can demonstrate that the data populates directly into VUEWorks. The Consultant shall use a downward-facing line scan camera with laser illumination cameras to capture the pavement images to be used during the pavement rating process.

### Manual Field Entry:

- Fieldwork and data entry as required for populating the web-based VUEWorks database, and calculating the segments current PCI within VUEWorks.
- The Consultant shall have a laptop with a wireless connection.
- The Consultant shall provide, at the conclusion of the project, a brief written report describing the project, its results, and recommendations for future re-evaluations.

### Compensation

2017 Unit Price for manual on-site pavement and curb and gutter review and rating for all segments/sub-segments that are maintained by the City for an estimated 3,500 segments/sub-segments = \$6.98 per segment, a total of \$24,430.00.

**COMPLETION:**

The Consultant is required to have all data collection be completed prior to October 13, 2017 and is based on the following key dates:

Proposals returned	May 26, 2017
Recommendation to Board of Public Works	June 8, 2017
Common Council Approval	June 20, 2017

**Consultant Milestones:**

Data Review	25% of Evaluations Complete
Data Review	50% of Evaluations Complete
Final Submittal	October 13, 2017

The City will be performing periodic reviews between each milestone.