

Consulting Services Contract
City of Waukesha – Ayres Associates, Inc.
Project Name: 2023 - 2024 Surveying Services for Municipal Construction Projects

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:

2023 – 2024 Surveying Services for Municipal Construction Projects

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 and provide all construction staking and surveying and construction services as specified by the City in individual work orders and as specified in the Scope of Services in Schedule A.
2. **Standard of Work.** Consultant will perform the Work according to generally-accepted industry practices in the professions of the individual employees performing the Work for Consultant.
3. **Payment.** The City shall pay to Consultant an Hourly Rate for performance of the Work in compliance with the terms and conditions of this Contract. Hourly Rates are inclusive of all labor, materials, stakes, flags, nails, equipment and other costs necessary in completing the Work. Hourly rates are also inclusive of all administrative services, billing preparation, computer charges, mileage, meals, lodging, printing, plotting, copying, faxing, phone bills, and other similar administrative expenses. Consultant shall invoice the City, monthly, and invoices shall include an itemization of per-person hours, or as otherwise directed by the City's Project Manager. All invoices shall be payable net 30 days.

Hourly Rates:

Personnel	2023 -2024 Surveying Services
1-Person Fully Loaded Survey Crew	\$99.00
2-Person Fully Loaded Survey Crew	\$169.00
Office Point/Project Setup	\$98.00
Project Manager	\$130.00

These Hourly Rates shall not be adjusted for the duration of this Contract.

4. **Time.** Consultant shall commence the Work as promptly after receipt of the Request for Construction Staking (Form C103) as is possible. Consultant will be expected to process and stake requested points and provide the Project Manager with completed Construction Staking Cut Sheets (Form C104), subject only to delays for circumstances beyond Consultant's control, provided Consultant recommences work promptly in good faith upon the return of normal circumstances. This contract expires on December 31, 2024.
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 Services for Surveying Services, the personnel as indicated in the Consultant's Proposal Dated January 9, 2023, or the Hourly Rates 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 arising out of, or connected in any way 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. 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 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 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: Attention: Kristine Walker
 City of Waukesha
 201 Delafield Street
 Waukesha WI 53188

To Consultant: Attention: Nathan A. Vaughn, P.L.S.
 Ayles Associates, Inc.
 20975 Swenson Drive, Suite 200
 Waukesha, WI 53186

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, 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.

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.
25. **Limitation of Liability.** Consultant shall not be liable for incidental or consequential contract damages. There shall be no other limitations of Consultant's liability.
26. **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.
27. **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. Ciarro, Director of Finance

Date: _____

Ayres Associates, Inc.

By (print name) _____

Title: _____

Date: _____

By (print name) _____

Title: _____

Date: _____

Schedule A - Scope of Services
2023 – 2024 Surveying Services for Municipal Construction Projects

OVERVIEW

The City of Waukesha is requesting proposals and a statement of qualification for providing on-call or as-needed preliminary engineering construction survey, survey control, project set-up and construction staking for municipal design and construction activities for 2023 and 2024 construction projects.

A fixed hourly rate will be paid for the time required to complete the assigned field surveying, project set-up, establishing project control and construction staking tasks.

The City plans to select multiple firms to supplement City staff for the completion of project survey. The number of projected hours is not estimated at this time and may vary. The City will use a qualification and cost-based selection process to make the selection of the chosen firms. The consultant will be engaged for a term of up to a maximum of twenty-four (24) months commencing with the date of appointment which is expected to be mid to late January. The hourly rate provided by the Consultant for the various tasks shall be fixed for the duration of the Contract.

SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTANT:

- Provide Survey Services using Northing and Easting Coordinates (NAD 1983/2011, State Plane Coordinates Wisconsin South) and Elevations (NAVD 1988) to facilitate design and construction of the City's municipal construction projects. The Consultant is responsible for the quality, technical accuracy, timely completion and delivery of all services to be furnished by the Consultant under this Contract. Anticipated tasks and deliverables may include:
 - Topographic site surveys
 - Establish survey control
 - Project set-up
 - Design drawings – Completed linework
 - Construction Staking
 - Underground Utilities
 - Curb and Gutter
 - Subgrade/base course
 - Pavement/Driveways
 - Pedestrian Ramps
- Establish, verify and maintain project control within industry accepted tolerance.
- Provide construction staking including scheduling and coordination for timely delivery. The City **may** supply PNEZD stakeout point files for field staking or may request the Consultant create the stakeout point file in PNEZD format and then supply a digital copy to the City for record. Construction staking shall be accomplished with either a total station, robotic survey instrument, or with GPS system with vertical and horizontal accuracy equivalency. Staking request will be made using the City's **Staking Request Form C103**, or approved equal, as supplied in the Appendix.
- Schedule field staking based on coordination with the City Project Manager and contractors. Consultant will be expected to process, and stake requested points and provide the Contractors with completed **Construction Staking Cut Sheets Form C104**, or approved equal, as supplied in the Appendix.
- Provide data matching the **Proposed (Stake-Out) Survey Point Numbering** range, or approved equal, as supplied in the Appendix as well as label the data points with appropriate descriptors. A City description list can be provided upon request.
- Complete all necessary line work as needed for the associated collected data and provide deliverable in coordinate system established by the City's Project Manager. File delivery shall utilize the **City of Waukesha Civil 3D 2022 template file**.

- Coordinate and call in all Diggers Hotline tickets necessary to cover the collection of existing utility information within project areas.
- Submit invoices no more frequently than every 30 days. Supporting information containing specific details and proof of completion of the tasks shall be provided with the invoice. Invoice shall separate hours billed on a per-person basis or as directed by the City's Project Manager.
- Attend pre-construction meetings and all applicable project meetings held at the job site or at a location to be determined by the City Engineering office for assigned projects. Meeting facilitation and agenda preparation **will not** be required for this task.
- Supply a Survey Project Manager to act as the one point of contact for scheduling, communications, construction meetings and billing questions.

SCOPE OF SERVICES PROVIDED BY THE CITY OF WAUKESHA:

- Provide one hard copy of the approved plans and special provisions and one electronic copy in PDF format.
- Provide one electronic (PDF) copy of the City's Standard Construction Specifications – most recent edition.
- Provide project electronic design files, in AutoCAD Civil 3D 2022 format, necessary for survey tasks.
- Provide a modified AutoCAD Civil3D 2022, City of Waukesha template
- Schedule preconstruction and other project meetings. The City will facilitate meeting and prepare meeting minutes.
- Provide electronic versions of required forms.