

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of July 10, 2019, between the City of Medford, 639 South Second Street, Medford, WI 54451 (OWNER) and Ayres Associates Inc, 3433 Oakwood Hills Parkway, Eau Claire, WI 54701 (CONSULTANT).

OWNER intends to retain CONSULTANT for professional services for the 2020 Street & Utility Improvement Project as described in Attachment A (hereinafter called the Project).

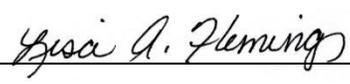
OWNER and CONSULTANT agree to performance of professional services by CONSULTANT and payment for those services by OWNER as set forth below.

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

- Attachment A - Scope of Services, consisting of 4 pages.
- Attachment B - Period of Services, consisting of 1 page.
- Attachment C - Compensation and Payments, consisting of 1 page.
- Attachment D - Terms and Conditions, consisting of 3 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 Medford		Ayres Associates Inc
OWNER		CONSULTANT
	(Signature)	
Michael Wellner	(Typed Name)	Michael C. Stoffel, PE
Mayor	(Title)	Project Manager
	(Date)	July 10, 2019
	(Attest)	
Virginia Brost	(Typed Name)	Lisa A. Fleming, PE
City Clerk	(Title)	Manager, Municipal Services

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

This is an attachment to the Agreement dated July 10, 2019, between The City of Medford (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.

1.1.2 In general the project will consist of the total reconstruction of East Perkins Street from South 4<sup>th</sup> Street east to the previous construction limits of STH 13.

#### **1.2 Not Used**

#### **1.3 Preliminary Design Phase**

CONSULTANT shall:

1.3.1 In consultation with OWNER and on the basis of the accepted Study and Report documents, determine the general scope, extent and character of the Project. In general, Perkins Street will include sanitary sewer, water main, storm sewer and roadway reconstruction from approximately 50 feet west of South 4<sup>th</sup> Street easterly approximately 1,150 feet to the previous construction limits of the STH 13 project. The finished profile will be developed to facilitate a future profile adjustment west of 4<sup>th</sup> Street to the intersection of 2<sup>nd</sup> Street and a future realignment of the north and south legs of 2<sup>nd</sup> Street due to their existing offset skew.

1.3.2 Perform a topographic survey and prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, and written descriptions of the Project.

1.3.3 Advise OWNER if additional data or services of the types described in paragraph 3.4 are necessary and assist OWNER in obtaining such data and services.

1.3.4 Based on the information contained in the preliminary design documents, submit a revised opinion of probable Total Project Costs.

1.3.5 Furnish five copies of the above Preliminary Design documents and present and review them in person with OWNER.

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

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

1.4.1 On the basis of the accepted Preliminary Design documents and the revised opinion of probable Total Project Costs prepare for incorporation in the Contract Documents final drawings to show the general scope, extent and character of the work to be furnished and performed by Contractor(s)

(hereinafter called "Drawings") and Specifications (which will be prepared in conformance with the format of the Construction Specifications Institute).

1.4.2 Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project and assist OWNER in consultations with appropriate authorities. Anticipated permits include, DNR Construction NOI, WDNR Watermain Extension, and WDNR Sanitary Sewer Extension.

1.4.3 Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent or character or design requirements of the Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.

1.4.4 Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which shall be consistent with the forms and pertinent guide sheets prepared by the Engineers Joint Contract Documents Committee), and assist in the preparation of other related documents.

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

## **1.5 Bidding Phase**

After authorization to proceed with the Bidding Phase, CONSULTANT shall:

1.5.1 Assist OWNER in advertising for and obtaining bids for each separate prime contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences and receive and process deposits for Bidding Documents.

1.5.2 Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.

1.5.3 Consult with and advise OWNER as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.

1.5.4 Consult with OWNER concerning and determine the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

1.5.5 Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids and in assembling and awarding contracts for construction, materials, equipment and services.

## **1.6 Construction Phase**

During the Construction Phase:

1.6.1 The City will perform the construction observation and inspection portions of the work.

1.6.2 CONSULTANT shall provide one-time construction staking services for the watermain, sanitary sewer, storm sewer, and curb and gutter (used for street) elements of the project. Bidding specifications will reflect that any restaking due to contractor's actions will be the responsibility of the contractor.

1.6.3 Not Used

1.6.4 Interpretations and Clarifications. CONSULTANT shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.

1.6.5 Shop Drawings. CONSULTANT shall review (and take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions), samples and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.6.6 Substitutes. CONSULTANT shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor.

1.6.7 Not Used

1.6.8 Not Used

1.6.9 Applications for Payment. Based on OWNER's on-site observations, Ayres Associates shall review the amounts owing to Contractor and recommend in writing payments to Contractor in such amounts.

By recommending any payment CONSULTANT will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by CONSULTANT to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to CONSULTANT in this Agreement and the Contract Documents.

1.6.10 Not Used

1.6.11 Inspections will be performed by the OWNER.

1.6.12 Limitation of Responsibilities. CONSULTANT shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor's or supplier's agents or employees or any other persons (except CONSULTANT's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.6.1 thru 1.6.11 inclusive, shall be construed to release CONSULTANT from liability for failure to properly perform duties and responsibilities assumed by CONSULTANT in the Contract Documents.

## **1.7 Not Used**

## **ARTICLE 2 - ADDITIONAL SERVICES**

### **2.1 Services NOT included in this contract**

2.1.1 Permit Fees or application fees.

2.1.2 Soils investigation studies

2.1.3 Wetland Delineations

2.1.4 Construction Observation or Inspection Services

2.1.5 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 Not Used**

## **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 Examine all reports, sketches, Drawings, Specifications, proposals and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor 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.

3.2 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.

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

This is an attachment to the Agreement dated July 10, 2019, between The City of Medford (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 CONSULTANT shall proceed with the performance of the services called for in the Preliminary Design Phase and shall submit preliminary design documents and a revised opinion of probable Total Project Costs on or before December 13, 2019.

4.3 After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Total Project Costs, indicating any specific modifications or changes in the general scope, extent or character of the Project desired by OWNER, and authorization from OWNER, CONSULTANT shall proceed with the performance of the services called for in the Final Design Phase; and shall deliver Contract Documents and a revised opinion of probable Total Project Costs for all work of Contractor(s) on the Project. The Bidding Phase of the project shall be complete on or before March 6, 2020.

4.4 If OWNER has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of CONSULTANT's services shall be adjusted equitably.

4.5 If delays are caused by unpredictable occurrences including, without limitation, terrorism, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of material or services, process shutdowns, acts of God or the public enemy, or acts or regulations of any governmental agency, the costs for services and schedule commitments shall be subject to change.

## ATTACHMENT C - COMPENSATION AND PAYMENTS

This is an attachment to the Agreement dated July 10, 2019, between The City of Medford (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 as follows:

For **East Perkins Street**, a Lump Sum amount of **\$81,500** based on the following assumed distribution of compensation:

a. Topographic Survey	\$ 8,700.00
b. Design Engineering	\$ 53,500.00
c. Construction Engineering	\$ 19,300.00

CONSULTANT may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services rendered but, shall not exceed the total Lump Sum amount per Project unless approved in writing by OWNER.

5.1.2 Not Used

5.1.3 Any additional services requested that are additions to the scope of services or delays greater than 90 days to the period of services outlined above can be obtained as an addendum to this agreement.

5.1.4 Not Used

5.1.5 Amounts Billed. The amounts billed for CONSULTANT's services will be billed based upon CONSULTANT's estimate of the proportion of the total services completed during the billing period to the Lump Sum.

5.1.6 thru 5.1.7 Not Used

#### 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 Not Used

#### 5.3 Not Used

## **ATTACHMENT D - TERMS AND CONDITIONS**

This is an attachment to the Agreement dated July 10, 2019, between The City of Medford (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 Phase OWNER wishes greater assurance as to Total Project or Construction Costs, OWNER shall employ an independent cost estimator.

### **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 State of Wisconsin.

### **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 July 10, 2019, between The City of Medford (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.