

April 16, 2021

Mr. Matt Stieve
Sauk County Parks Department
S7995 White Mound Drive
Hillpoint, WI 53937

Re: Delton Dam Concrete Repairs

Dear Mr. Stieve:

Thank you for the opportunity to submit this proposal for professional services for concrete repairs to the Delton dam. This letter presents our proposed scope of services, time schedule, fee, and contract terms and conditions.

Project Description

During the 2019 inspection of the Delton dam, concrete spalling was observed and recommended for repairs.

Scope of Services

1. Visit the site to measure and locate the areas of concrete spall repair.
2. Prepare drawings and technical specifications for concrete repairs.
3. It is anticipated that contractor costs of this work will be less than \$25,000. The technical specifications and drawings we prepare can be used by the County to solicit bids for the work or self-perform the work.
4. We anticipate the WDNR will consider this maintenance and plan approval is not required.
5. If necessary, we will prepare a Class I notice to advertise the project for bidding.
6. Providing paper or electronic copies to up to three selected contractors and up to three additional paper copies to contractors requesting documents following the Class 1 notice.
7. Additional electronic copies can be provided by Ayres to additional bidder beyond the three paper copies.
8. Answering contractor questions during bidding and preparing addenda if needed
9. Assisting the County reviewing bids

Responsibilities of Owner and Others

Owner will publish Class I notice, coordinate contracting with selected bidder and complete construction inspection to ensure work is completed per specifications.

Additional Services

No additional services are included with this proposal.

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Time Schedule

We will complete the above scope of services with 60 days of notice to proceed.

Fee

We will perform the above services for a lump sum amount of \$3,750.

Contract Terms and Conditions

Attached are "Contract Terms and Conditions" which will apply to the services and which are incorporated into this proposal by reference.

Acceptance

If this proposal and terms and conditions are acceptable to you, a signature on the enclosed copy of this letter will serve as our authorization to proceed.

This proposal is valid until June 1, 2021, unless extended by us in writing.

Proposed by Consultant:

Ayres Associates Inc



Christopher T. Goodwin, PE
Manager – Water Resources
Direct: 715.831.7682
GoodwinC@AyresAssociates.com

Accepted by Owner:

Sauk County

Owner's Name

Signature

Name

Title

Date

Attachments: Contract Terms and Conditions

AYRES ASSOCIATES
CONTRACT TERMS AND CONDITIONS

1. Performance of Services: Consultant shall perform the services outlined in its proposal to Owner in consideration of the stated fee and payment terms.

2. Billing and Payment: Invoices for Consultant's services shall be submitted to Owner on a monthly basis. Invoices shall be due and payable within 30 days from date of invoice. If any invoice is not paid within 30 days, Consultant may, without waiving any claim or right against Owner, and without liability whatsoever to Owner, suspended or terminate the performance of services. Accounts unpaid 30 days after the invoice date will be subject to a monthly service charge of 1.5% on the unpaid balance, or the maximum rate of interest permitted by law, if less. The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed on payments shall be added to Consultant's compensation. No deductions or offsets shall be made from Consultant's compensation or expenses on account of any setoffs or back charges.

3. Access to Site: Owner shall furnish right-of-entry on the project site for Consultant and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. Consultant will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

4. Location of Utilities: Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information or instructions which have been furnished to Consultant by others.

5. Hazardous Materials: In the event that unanticipated potentially hazardous materials are encountered during the course of the project, Owner agrees to negotiate a revision to the scope of services, time schedule, fee, and contract terms and conditions. If a mutually satisfactory agreement cannot be reached between both parties, the contract shall be terminated and Owner agrees to pay Consultant for all services rendered, including reasonable termination expenses.

6. Insurance: Consultant shall maintain Workers' Compensation, General Liability, and Automobile Liability Insurance during its services for Owner. Consultant shall furnish a Certificate of Insurance to Owner upon written request. Owner agrees that Consultant shall not be liable or responsible to Owner for any loss, damage, or liability beyond the amounts, limits, exclusions, and conditions of such insurance.

7. Limitation of Professional Liability: Owner agrees to limit Consultant's professional liability to an amount of \$50,000 or Consultant's fee, whichever is greater. In the event that Owner does not wish to limit Consultant's professional liability to this sum, Consultant agrees to raise the limitation of liability to a sum not to exceed \$1,000,000 for increased consideration of ten percent (10%) of the total fee or \$500, whichever is greater, upon receiving Owner's written request prior to the start of Consultant's services.

8. Opinions of Probable Costs: Consultant's opinions of probable project costs are made on the basis of Consultant's experience, qualifications and judgment; but Consultant cannot and does not guarantee that actual project costs will not vary from opinions of probable cost.

9. Construction Review: Consultant does not accept responsibility for the design of a construction project unless the Consultant's contract includes review of the contractor's shop drawings, product data, and other documents, and includes site visits during construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents.

10. Construction Observation: On request, Consultant shall provide personnel to observe construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents. This construction observation shall not make Consultant a guarantor of the contractor's work. The contractor shall continue to be responsible for the accuracy and adequacy of all construction performed. In accordance with generally accepted practice, the contractor will be solely responsible for the methods of construction, direction of personnel, control of machinery, and falsework, scaffolding, and other temporary construction aids. In addition, all matters related to safety in, on, or about the construction site shall be under the direction and control of the contractor and Consultant shall have no responsibility in that regard. Consultant shall not be required to verify any part of the work performed unless measurements, readings, and observations of that part of the construction are made by Consultant's personnel.

11. Standard of Performance: The standard of care for all professional services performed or furnished by Consultant under this contract 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 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.

- 12. Ownership of Documents:** All documents produced by Consultant under this contract are instruments of Consultant's professional service and shall remain the property of Consultant and may not be used by Owner for any other purpose without the prior written consent of Consultant.
- 13. Electronic Files:** Owner and Consultant agree that any electronic files furnished by either party shall conform to the specifications agreed to at the time this contract is executed. 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. 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.
- 14. Financial and Legal Services:** Consultant's services and expertise do not include the following services, which shall be provided by Owner if required: (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; (2) Legal services with regard to issues pertaining to the Project as Owner requires, Contractor(s) raises, or Consultant reasonably requests; and (3) Such auditing services as Owner requires to ascertain how or for what purpose any Contractor has used the money paid.
- 15. Termination of Services:** This contract may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, Owner shall pay Consultant for all services rendered to the date of termination, all reimbursable expenses incurred prior to termination, and reasonable termination expenses incurred as the result of termination.
- 16. Controlling Law:** This contract is to be governed by the law of the place of business of Consultant at the address in its proposal to Owner.
- 17. Assignment of Rights:** Neither Owner nor Consultant shall assign, sublet or transfer any rights under or interest in this contract (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 contract. Nothing contained in this paragraph shall prevent Consultant from employing such independent subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.
- 18. Third Party Benefits:** This contract does not create any benefits for any third party.
- 19. Dispute Resolution:** 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 following dispute resolution provision. 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 contract 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 contract prior to exercising other rights under law.
- 20. Exclusion of Special, Indirect, Consequential, and Liquidated Damages:** Consultant SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS AND DEFEND SAUK COUNTY AND ITS OFFICIALS, OFFICERS, DEPARTMENTS, AGENCIES, COMMITTEES, BOARD MEMBERS, REPRESENTATIVES, EMPLOYEES, AGENTS, CONTRACTORS AND ATTORNEYS (COLLECTIVELY, "INDEMNIFIED PARTIES") AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, ADVERSE ADMINISTRATIVE LAW VIOLATIONS, RULINGS, OR CONSEQUENCES, COSTS, DAMAGES, FINES, FORFEITURES, PENALTIES, EXPENSES (INCLUDING REASONABLE ATTORNEY FEES OF COUNSEL SELECTED BY SAUK COUNTY AND ALL OTHER COSTS AND EXPENSES OF LITIGATION), of every kind and description, or damage to persons or property, arising out of or in connection with, or occurring during, the course of this Contract where such liability is founded upon or occurring out of, the negligent acts or omissions of Consultant, its agents, assigns, or employees. Consultant agrees to protect itself and Sauk County under this indemnity agreement with the insurance coverages and securities set forth in this Agreement.
- 21. 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.
- 22. Amendments:** This contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument.