

June 14, 2022

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

Re: Redstone Dam
2022 Owner Responsible Inspection Program (ORIP)

Dear Mr. Stieve:

Thank you for the opportunity to submit this proposal for professional services for conducting an inspection the County's Redstone dam as required by the Wisconsin Department of Natural Resources (WDNR). This letter presents our proposed scope of services, time schedule, fee, and contract terms and conditions.

Project Description

Owners of large dams in Wisconsin are required to have a Registered Professional Engineer, with knowledge of dams, conduct an inspection of their structure. This inspection requires review of existing information, a site visit, completion of an inspection checklist, and submittal of an inspection report to the WDNR.

Ayres Associates has inspected over 150 dams since the inception of the WDNR Owner Responsible Inspection Program (ORIP). All of our inspection have been accepted and approved by the WDNR regional engineers almost exclusively on the first submittal.

Scope of Services

Ayres Associates proposes the following scope of services to complete the County's required owner inspection to satisfy WDNR inspection requirements.

1. Contact the WDNR to notify the WDNR Water Management Engineer that we will be conducting an inspection at the Redstone dam.
2. Request from the WDNR electronic copies of available information for the dam (last inspection report, photos, database etc).
3. Review the Emergency Action Plan (EAP), Inspection Operation and Maintenance Plan (IOMP) and dam failure analysis for the dam. We will review these reports during the inspection of the dam.

4. Conduct an on-site dam inspection.
5. Complete the WDNR required checklists, photo documentation, and letter report for each dam and submit to the County for review and approval. Following County's approval of the reports, forward the final reports to the WDNR Regional Engineer. The letter reports will include a description of any dam deficiencies, any recommended remedial actions and a time line for these remedial actions, as required by the WDNR. Reports will be filed both electronically and in paper copy per the WDNR requirements.

Responsibilities of Owner and Others

The owner will provide access to available documentation about the dam at the time of the inspection.

Additional Services

Additional services such as an underwater inspection, setting a benchmark at the dam, and updating reports is not included. If these services are necessary, they would be additional services, and a fee estimate would be prepared.

Time Schedule

We will conduct the inspection in summer/fall of 2022 and submit the report to WDNR within 90 days of inspection.

Fee

We will perform the above services for a lump sum amount of \$2,500.

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 August 1, 2022, 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: SAYK COUNTY

BRENT R. MILLER
Owner's Name

BRENT R. MILLER
Signature

BRENT R. MILLER
Name

ADMINISTRATOR
Title

6/21/2022
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. "Consultant warrants and represents that it is sufficiently experienced and competent to provide, perform and complete all services **in compliance** with and as required by or pursuant to this contract. Consultant represents and warrants that it is financially solvent, and has the financial resources necessary to provide, perform and complete the duties and functions **in compliance** with and as required by this contract. Contractor shall provide, perform and complete all services **included in this contract as outlined in the schedule and in compliance with the Standard of Care.**

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 45 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 45 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. **If others provide information or instructions to the County and are to be relied upon by Consultant, the County shall require the provider of that information to indemnify and defend Consultant in the event of damage or injury arising from damage to and interference with subsurface structures or utilities which result any inaccuracies.**

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. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Controlling Law: This contract is to be governed by the laws of the state of Wisconsin.

14. 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.

15. Third Party Benefits: This contract does not create any benefits for any third party.

16. 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

17. Amendments: This contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

**Proposed additional clause to be added to
Ayres contract terms and conditions.**

2. **Effective Date.** The effective date of this Agreement shall be the date of the last signature.

3. **Standard of Care.** The same degree of care, skill, and diligence shall be exercised in the performance of the of this agreement as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances.

4. **Survival.** The warranties, representations and covenants of this Agreement shall survive completion of the Services under this agreement or any termination of this Agreement.

5. **Delay in Performance.** Neither party shall be considered in default of this Agreement or any Task Order for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, floods, earthquakes, fire, pandemics, epidemics, war, riots, and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage, judicial restraint, and delay in or inability to procure permits, licenses or authorizations from any local, state or federal agency for any of the supplies, materials, accesses, or services required to be provided by either party under this Agreement or any Task Order. The nonperforming party shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.

6. **Notices.** Any legal notice required by this Agreement shall be made in writing to the address specified below:

County: Sauk County Clerk
 505 Broadway
 Baraboo, WI 53913

With a copy to: Matt Stieve
 Sauk County Parks Department
 S7995 White Mound Dr.
 Hillpoint, WI 53937

Consultant: Chris Goodwin
 Ayres Associates
 3433 Oakwood Hills Parkway
 Eau Claire, WI 54701

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the parties.

7. **Termination, General.** This contract may be terminated by either party at any time upon 30 days written notice to the other party. Upon termination, for any reason, County's liability shall be limited to the services authorized and satisfactorily rendered by Provider through the date of termination as reflected by invoices timely submitted.

8. **Termination, Breach of Contract.** In the event of a breach of this contract by Consultation, COUNTY may, in its sole discretion, declare this contract to be terminated. Upon such termination, COUNTY shall provide written notice to the other party within a reasonable amount of time. This right shall be in addition to any and all other rights and remedies hereunder and at law or in equity. Exercise of this right shall not constitute a waiver of any other rights or remedies hereunder or at law or in equity.

9. **Waiver.** A waiver by either of the parties of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

10. **Successors and Assigns.** The parties each bind themselves and their successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, the partners, in the case of an LLC its members, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

11. **No Construction Against Either Party.** This agreement is the product of negotiations between the parties and was either reached with the advice of legal counsel or the opportunity to obtain legal counsel, and shall not be construed against either party.

12. **Multiple Originals.** This contract may be executed in multiple originals, each of which together shall constitute a single agreement.

13. **Captions.** The parties agree that in this contract, captions are used for convenience only and shall not be used in interpreting or construing this contract.

14. **Statutory Protections.** It is agreed by the parties that nothing in this contract, including but not limited to indemnification and hold harmless clauses, shall in any way constitute a waiver on the part of the County of any immunity, liability limitation or other protection available to the County under any applicable statute or other law. To the extent that any provision of this contract is found by any court of competent jurisdiction to conflict with any such legal protection, then whichever protections, either statutory or contractual, provide a greater benefit to the County shall apply unless the County elects otherwise.

15. **Open Records Law Compliance.** Consultant understands and agrees that, because County is a party to this contract, provisions of the Wisconsin Open Records Law and other laws relating to public records may apply to records kept by Consultant and/or the County. Consultant agrees to fully comply with such laws, and to cooperate with County in its compliance with such laws. Cooperation shall include, but not be limited to, the provision of records, or copies of records to County or others upon the request of county. Compliance and cooperation of Consultant shall be at its sole cost and expense.

16. **Integration.** This contract represents the entire and integrated contract between the parties. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this contract.

17. Relationship of Parties. Nothing in, or done pursuant to, this contract shall be construed to create the relationship of employer and employee, principal and agent, partners, or a joint venture between County and Consultant. This contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Consultant will be an independent contractor and not the County's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the state revenue and taxation law, the state workers' compensation law and the state unemployment insurance law. This contract shall not be construed as creating any joint employment relationship between the Consultant and the County, and the County will not be liable for any obligation incurred by Consultant including but not limited to unpaid minimum wages, overtime premiums, unemployment insurance benefits, worker's compensation benefits, health insurance, health benefits, disability benefits, or retirement benefits. Contractor is not entitled to receive any benefits from County or to participate in any County benefit plan.

21. Compliance with Laws. The parties agree to comply with all applicable Federal, State and local codes, regulations, standards, ordinances, and other laws.

22. Electronic Signing. It is agreed by the parties that either party or both may, by email, provide the other party with a copy of this contract, in PDF form or otherwise, showing the signatures of, or on behalf of the sending party, with such signatures being as binding as original signatures, regardless of whether the other party signs in the same fashion, or by using original ink signatures. For the purposes of this section, "signatures" may be original written signatures, photocopies of signatures, or signatures added to a contract or through the addition by a signing party of a typed or electronically added signature.