

AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of September 27, 2017 between the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 (OWNER) and Ayres Associates Inc, N17W24222 Riverwood Drive, Suite 310, Waukesha, Wisconsin 53188 (CONSULTANT). OWNER intends to retain CONSULTANT for professional services for Methane Gas and Groundwater Monitoring at the City of West Allis Landfill, 11241 West Lincoln Avenue, West Allis, Wisconsin and 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.

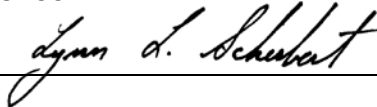
This Project includes services on a site with a recognized potential for the presence of hazardous materials of unknown composition. Because of the inherent risk on the site, provisions contained in Attachment E are hereby incorporated into this Agreement between OWNER and CONSULTANT.

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

- Attachment A - Scope of Services, consisting of 2 pages.
- Attachment B - Period of Services, consisting of 1 page.
- Attachment C - Compensation and Payments, plus Table 1 – Opinion of Probable Project Costs consisting of 3 pages.
- Attachment D - Terms and Conditions, consisting of 3 pages.
- Attachment E - Terms and Conditions for Services Involving Hazardous Substances, consisting of 3 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.

<u>City of West Allis</u> OWNER		<u>Ayres Associates Inc</u> CONSULTANT
_____	(Signature)	<u></u>
_____	(Typed Name)	<u>Lynn L. Scherbert, PE</u>
_____	(Title)	<u>Senior Engineer – Environmental Services</u>
_____	(Date)	<u>September 27, 2017</u>

ATTACHMENT A - SCOPE OF SERVICES

This is an attachment to the Agreement dated September 27, 2017 between the City of West Allis, Wisconsin (OWNER) and Ayres Associates Inc (CONSULTANT).

ARTICLE 1 - BASIC SERVICES

CONSULTANT shall provide professional environmental services for OWNER as described below for the period beginning January 1, 2018 and continuing through December 31, 2020.

Task 1: Groundwater Sampling

CONSULTANT will conduct semi-annual sampling of the ten (10) groundwater monitoring wells in accordance with conditions stated in the WDNR's "Conditional Closure Plan Modification Approval" letter dated June 16, 2004. CONSULTANT will follow the sampling protocols stated in Conditions #1 through #3 of the letter. Sampling activities will typically occur in the months of March and September within the period identified.

Field data collected and results of the laboratory analysis will be submitted electronically to the WDNR (Southeast District) project hydrogeologist and project solid waste engineer following each groundwater sampling event. Additionally, the data will be compiled in a specific format by the laboratory to fulfill the WDNR's Groundwater and Environmental Monitoring (GEMS) Systems online database criteria and submitted to the WDNR Bureau of Waste and Materials Management, Madison, Wisconsin. A total of six (6) rounds of monitoring and database submissions will be completed during this 3-year contract period.

Task 2: Methane Gas Sampling

Ayres will sample the eight (8) perimeter methane gas monitoring wells once per year in accordance with the WDNR's "Conditional Closure Plan Modification Approval" letter dated June 16, 2004.

Data collected from the wells will include: methane gas (% by volume), oxygen (% by volume), carbon dioxide (% by volume), barometric pressure and ambient air temperature. The date and time of sampling, barometric pressure (and trend), ambient air temperature, and surface conditions in the vicinity of the wells is also to be recorded. A total of three (3) rounds of sampling will be conducted during this 3-year contract period.

The data collected during sampling of the methane gas will be tabulated and then submitted to contracted laboratory for conversion to the GEMS format. Upon completion of those activities, the digital data will be forwarded to both the WDNR (Southeast District) Solid Waste Engineer and to the WDNR Bureau of Waste and Materials Management, Madison, Wisconsin.

Task 3: Reporting

Following each monitoring event CONSULTANT will prepare a report for the City of West Allis and the WDNR Southeast District Solid Waste Engineer which includes:

- Tabulated data tables
- WDNR Lab Certification form 4400-231
- Summary report of results

Upon completion of those activities, and electronic and hardcopy version of the report will be forwarded to the WDNR (Southeast District) Solid Waste Engineer and to the City.

ARTICLE 2 - ADDITIONAL SERVICES

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services as provided below. These services are not included as part of Basic Services and will be paid for by OWNER as indicated in Attachment C.

Environmental services other than those described in Article 1 which may include:

- Monitoring well repair or replacement,
- Well abandonment,
- Preparation of WDNR requests for modification of landfill monitoring plans;
- Repairs and/or maintenance activities.

ARTICLE 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT.

- Provide all criteria and full information as to OWNER's requirements.
- Provide access to the site of the Project and provide any required easements for monitoring wells to be installed on or off the site.

ATTACHMENT B - PERIOD OF SERVICES

This is an attachment to the Agreement dated September 27, 2017 between the City of West Allis, Wisconsin (OWNER) and Ayres Associates Inc (CONSULTANT).

ARTICLE 4 - PERIOD OF SERVICES

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. 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.

- The methane gas wells will be sampled in March 2018, March 2019, and March 2020 (weather permitting).
- The groundwater wells will be sampled in March and September 2018, March and September 2019, and March and September 2020 (weather permitting).
- Report submissions will occur within 30 days following the receipt of the laboratory analytical results for each respective sampling period.

ATTACHMENT C - COMPENSATION AND PAYMENTS

This is an attachment to the Agreement dated September 27, 2017 between the City of West Allis, Wisconsin (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:

5.1.1.1 CONSULTANT proposes to complete this project on a time and materials basis. The estimated costs provided are based on the scope of work outlined in this proposal. CONSULTANT will be compensated on the basis of time expended by employees engaged directly on the project in accordance with CONSULTANT's direct labor costs times a factor of 3.2, plus reimbursable expenses and subconsultant charges.

5.1.1.2 The total compensation for services under paragraph 5.1.1 is estimated to be \$37,300.00. CONSULTANT shall not exceed an amount of \$37,300.00 unless approved in writing by OWNER.

5.1.2 Additional Services. OWNER shall pay CONSULTANT for Additional Services, if any, as follows:

5.1.2.1 For services of CONSULTANT's employees engaged directly on the Project pursuant to Attachment A, Article 2, an amount equal to the cumulative hours charged to the Project by each of CONSULTANT's employees in accordance with CONSULTANT's direct labor costs times a factor of 3.2, plus related Reimbursable Expenses and charges of CONSULTANT's independent professional associates and subconsultants, if any.

5.1.3 Other Provisions Concerning Compensation

5.1.3.1 Charges of CONSULTANT's Independent Professional Associates and Subconsultants. Whenever CONSULTANT is entitled to compensation for the charges of CONSULTANT's independent professional associates and subconsultants, those charges shall be the amounts billed to CONSULTANT times a factor of 1.10.

5.1.3.2 Annual Adjustments. The Standard Hourly Rates Schedule will be adjusted annually (as of January) and the Reimbursable Expenses Schedule will be adjusted annually (as of May) to reflect equitable changes in the compensation payable to CONSULTANT.

5.1.3.3 Records. Records pertinent to CONSULTANT's compensation will be kept in accordance with generally accepted accounting practices. To the extent necessary to verify CONSULTANT's charges and upon OWNER's timely request, CONSULTANT shall make copies of such records available to OWNER at cost.

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 Failure to Pay. If OWNER fails to make any payment due CONSULTANT for services and expenses within thirty days after receipt of CONSULTANT's invoices, the amounts due CONSULTANT will be increased at the rate of 1-1/2% per month (18% A.P.R.), or the maximum rate of interest permitted by law, if less, from said thirtieth day, and in addition, CONSULTANT may, after giving seven (7) days' written notice to OWNER, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services and expenses.

5.2.3 Payments Upon Termination. In the event of termination by OWNER, CONSULTANT will be entitled to invoice OWNER and to receive full payment for all services performed or furnished and all Reimbursable Expenses and charges of CONSULTANT'S independent professional associates and subconsultants incurred through the effective date of termination.

5.2.4 Payments for Taxes Assessed on Services. The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed on payments shall be added to the compensation as determined above.

5.2.5 Deductions or Offsets. No deductions or offsets shall be made from CONSULTANT's compensation or expenses on account of any setoffs or back charges.

5.3 Definitions

5.3.1 Reimbursable Expenses. Reimbursable Expenses mean the actual expenses incurred by CONSULTANT, directly or indirectly in connection with the Project, such as expenses for: transportation and subsistence incidental thereto; toll telephone calls and mobile phone charges; facsimile transmissions; expenses incurred for computer time, survey and testing instruments, and other highly specialized equipment; and reproduction of reports, documents, and similar Project-related items.

Table 1 – Opinion of Probable Project Costs

TASK	Opinion of Probable Cost
Task 1 Groundwater Sampling (6 rounds, 2 per year)	\$17,900
Task 2 Methane Gas Sampling (3 rounds, 1 per year)	\$2,900
Task 3 Reporting and Project Coordination	\$8,700
<i>Sub-Total CONSULTANT Services</i>	<i>\$29,500</i>
Outside Hire	
Laboratory Analysis (6 groundwater and GEMS)	\$7,800
<i>Sub-Total Outside Hire Services</i>	<i>\$7,800</i>
TOTAL SERVICES	\$37,300
<p>Notes: CONSULTANT has attempted to define realistic overall project costs, and has provided a good faith cost estimate for this project. Final costs will be based on the actual scope of work performed. Any significant changes to the scope of work as outlined in this proposal will necessarily influence project costs. CONSULTANT will not exceed the estimated project cost without written permission.</p>	

ATTACHMENT D - TERMS AND CONDITIONS

This is an attachment to the Agreement dated September 27, 2017 between the City of West Allis, Wisconsin (OWNER) and Ayres Associates Inc (CONSULTANT).

ARTICLE 6 - OPINIONS OF COST

6.1 Opinions of Probable Cost

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.

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 prepared 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. OWNER may make and retain copies for information and reference in connection with use by OWNER.

7.3 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 Agreement 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.

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 seven (7) 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 place of business of CONSULTANT at the address hereinbefore stated.

7.7 Assignment of Rights

7.7.1 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.

7.7.2 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.

ATTACHMENT E - TERMS AND CONDITIONS FOR SERVICES INVOLVING HAZARDOUS SUBSTANCES

This is an attachment to the Agreement dated September 27, 2017 between the City of West Allis, Wisconsin (OWNER) and Ayres Associates Inc (CONSULTANT).

ARTICLE 8 - SERVICES INVOLVING HAZARDOUS SUBSTANCES

8.1 Standard of Care - Services Involving Hazardous Substances

In accepting this Agreement for professional services, OWNER acknowledges the inherent risk associated with hazardous, oil, radioactive, toxic, irritant, pollutant, or otherwise dangerous substances or conditions as well as with construction activities. In performing the professional services, CONSULTANT shall use that degree of care and skill ordinarily exercised, under similar circumstances, by members of the profession practicing in the same or similar locality. The standard of care shall be judged exclusively at the time the services are rendered and not according to later standards.

8.2 Project Site

8.2.1 OWNER shall furnish to CONSULTANT all documents and information known to OWNER that relate to the identity, location, quantity, nature, or characteristics of any hazardous substances at, on, or under the site. In addition, OWNER shall furnish all data, prior studies, manufacturing or waste disposal histories, and construction documents actually or potentially informative as to the actual conditions at the site for performance of CONSULTANT's services. CONSULTANT shall be entitled to rely upon OWNER-furnished documents and information in performing the services required under this Agreement, however, CONSULTANT assumes no responsibility or liability for their accuracy or completeness.

8.2.2 CONSULTANT shall not supervise, direct, or have control over the work of construction contractors or their subcontractors. CONSULTANT's services do not include a review or evaluation of the contractor's or subcontractor's safety measures.

8.2.3 CONSULTANT shall be responsible only for its activities and that of its employees and subconsultants on the site. Neither the professional activities nor the presence of CONSULTANT or its employees or its subconsultants on the site shall imply that CONSULTANT controls the operations of others, nor shall this be construed to be an acceptance by CONSULTANT of any responsibility for jobsite safety.

8.3 Right-of-Entry

OWNER shall furnish right-of-entry for CONSULTANT to such property as may be necessary for CONSULTANT to perform the services under this Agreement. CONSULTANT shall take reasonable precautions to minimize damage to the property caused by CONSULTANT's equipment, but has not included in CONSULTANT's fee the cost of restoration of damage which may result from CONSULTANT's operations. If OWNER requires CONSULTANT to restore property to its former conditions, the costs associated with restoration shall be added to CONSULTANT's fee.

8.4 Disposal of Contaminated Material

It is understood and agreed that CONSULTANT is not, and has no responsibility as a handler, generator, operator, treater, storer, transporter, or disposer of hazardous or toxic substances found or identified at the site, and that OWNER shall undertake or arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified at the site.

8.5 Indemnification

8.5.1 It is understood and agreed that OWNER is requesting CONSULTANT to undertake, for OWNER's benefit, obligations involving the presence or potential presence of hazardous substances. Therefore, it is expressly understood that OWNER shall in no manner hold CONSULTANT responsible for any existing site condition and the presence or potential presence of hazardous substances.

8.5.2 OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless CONSULTANT, its officers, directors and employees and subconsultants (collectively, CONSULTANT) against all damages, liabilities or costs, including reasonable attorney fees and defense costs, to the extent caused by OWNER's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom OWNER is legally liable.

8.5.3 CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorney fees and defense costs, to the extent caused by CONSULTANT's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom CONSULTANT is legally liable.

8.5.4 Neither OWNER nor CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence. In the event there is joint negligence on the part of OWNER and CONSULTANT, the responsibility and indemnification obligations for such negligence shall be prorated to reflect the relative degree of negligence or fault attributable to OWNER and CONSULTANT. CONSULTANT shall not be liable for any indirect damages.

8.6 Limitation of Liability

8.6.1 OWNER agrees to limit CONSULTANT's liability to and indemnification of OWNER to the dollar amounts listed under paragraph 8.7 Insurance, or recovered by CONSULTANT under the insurance policies, whichever is less.

8.6.2 OWNER shall not be liable to CONSULTANT and CONSULTANT shall not be liable to OWNER for any consequential damages incurred by either due to fault of other, regardless of nature of this fault, or whether it was committed by OWNER or CONSULTANT, their employees, agents or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

8.7 Insurance

CONSULTANT represents that it carries statutorily required Workers' Compensation Insurance, Commercial General Liability Insurance in the amount of \$1,000,000, Business Automobile Liability Insurance in the amount of \$1,000,000, and Professional Liability Insurance, with Pollution Liability coverage, in the amount of \$1,000,000. Certificates of these insurances shall be provided to OWNER upon request. If OWNER requires additional insurance coverage, CONSULTANT shall endeavor to obtain additional coverage at OWNER's expense, payable in advance.

8.8 Precedence

These Terms and Conditions for Services Involving Hazardous Substances shall take precedence over any conflicting provisions elsewhere in the Agreement.

8.9 Severability

If any of these Terms and Conditions are determined to be invalid or unenforceable in whole or part, the remaining provisions of this Agreement shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

8.10 Survival

These Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause.