

CITY OF WEST ALLIS
Agreement for Professional Services

TO: **Ayres and Associates**

PROJECT: **2013 Landfill Monitoring**
11241 West Lincoln Avenue, West Allis, Wisconsin

THIS AGREEMENT is entered into by and between the City of West Allis (the "City") and Ayres and Associates (the "Consultant").

Whereas, in 1994, the Wisconsin DNR (WDNR) approved a closure plan for the former landfill site at 113th Street and Lincoln Avenues; and,

Whereas, following the closure of the landfill, the City is required to conduct ongoing methane and groundwater sampling, as prescribed by the WDNR; and,

Whereas, the Consultant has been the City's long time consultant for these services and has submitted a proposal for 2013 services.

Now, Therefore, Be It Resolved, that the Common Council by Resolution 2013-021 has authorized the Director of Public Works/City Engineer to enter into this Agreement with the Consultant for such services and has authorized the expenditure of funds to pay the liability that will accrue to the City under the Agreement.

Be It Further Resolved, in consideration of these premises the parties hereby mutually agree as set forth in the following pages, exhibits and schedules, which are annexed hereto and made a part hereof.

IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement together with the attachments, which are made a part hereof.

Issued:

Received and Approved:

CITY OF WEST ALLIS

Ayres and Associates

Ayres Associates Inc

By: 

By: 

Title: DPW/City Engineer

Title: Supervisor

Date: 3/19/2013

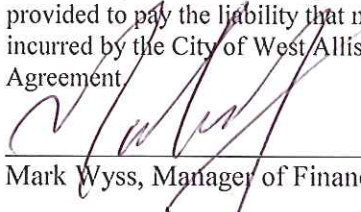
Date: 3-5-13

Approved as to form this
22 day of March, 2013.


City Attorney

COMPTROLLER'S CERTIFICATE

Countersigned this 28 day of March, 2013
and I certify that the necessary funds have been
provided to pay the liability that may be
incurred by the City of West Allis under this
Agreement.


Mark Wyss, Manager of Finance/Comptroller

ATTACHMENTS:

General Conditions of Agreement (Pages 1-9)

Scope of Services (5 Pages)

Insurance Requirements (Pages 1-5)

Certificate of Liability Insurance and Endorsements

CITY OF WEST ALLIS
DEPARTMENT OF PUBLIC WORKS/ENGINEERING
GENERAL CONDITIONS OF AGREEMENT FOR
PROFESSIONAL SERVICES

CONSULTANT: Ayres and Associates, Inc.
N17W24222 Riverwood Drive, Suite 310
Waukesha, WI 53118-1170

DEPARTMENT: Michael G. Lewis, Director of Public Works/City Engineer
Representing the City of West Allis

PROJECT: 2013 Landfill Monitoring Proposal

1.01 BASIC SERVICES

A. Basic Services of CONSULTANT to be provided under this AGREEMENT are listed in the Scope of Services, attached hereto and made a part of this Agreement by reference.

B. Payment for Basic Services shall be made in accordance with Section 3 of this Agreement.

2.01 SERVICES REQUIRING AUTHORIZATION IN ADVANCE

A. Those services listed in the Scope of Services but not identified in Section 1 of this AGREEMENT may be requested by the DEPARTMENT to complete the work, are considered additional services. The DEPARTMENT may request CONSULTANT at a future date to perform any or all of these services by a written authorization to proceed with the Additional Service(s). The written authorization to proceed shall become an Amendment to the Agreement.

B. Payment for the Additional Service(s) shall be in accordance with Section 3 of this AGREEMENT.

3.01 BASIC SERVICES

A. DEPARTMENT shall pay CONSULTANT for Basic Services rendered under Section 1 on the basis of CONSULTANT'S Hourly Rate, plus Reimbursable Expenses and Services of Professional Associates and other Consultants as defined in this Section 3.

B. CONSULTANT estimates that the total cost required to perform Basic Services as enumerated in Section 1 will not exceed ten thousand & one hundred (\$10,100).

Given the assumptions which must be made, the DEPARTMENT recognizes that the

CONSULTANT cannot guarantee the complete accuracy of its estimate of total cost, and, therefore waives any claim against CONSULTANT in this regard, except to the extent that any cost overrun can be attributable to fraudulent conduct, bad faith or inexcusable ignorance or incompetence.

3.02 ADDITIONAL SERVICES

DEPARTMENT shall pay CONSULTANT for Additional Services rendered under Section 2 as follows:

1. For Additional Services of CONSULTANT'S principals and employees engaged directly on the Project and rendered pursuant to Section 2, on the basis of CONSULTANT'S Hourly Rate.
2. For services and Reimbursable Expenses of independent Professional Associates and Consultants employed by CONSULTANT to render Additional services pursuant to Section 2, the amount billed to CONSULTANT therefore.

3.03 REIMBURSABLE EXPENSES

A. As used in this Agreement Reimbursable Expenses mean the actual expense incurred by CONSULTANT or its independent Professional Associates or Consultants, directly or indirectly in connection with the Project, such as expenses for: toll telephone calls and express mailings, reproduction of reports, drawings, specifications, bidding documents, laboratory tests and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by the DEPARTMENT, overtime work requiring higher than regular rates.

B. The Reimbursable Expenses for Basic Services are as set forth in the Consultant's Hourly Rates attached hereto and made a part of this Agreement.

3.04 HOURLY RATES.

As used in this Agreement hourly rates used as a basis for payment mean salaries and wages (basic and incentive) paid to all CONSULTANT'S personnel engaged directly on the Project, including but not limited to other technical and business personnel as set forth in the Consultant's Hourly Rates.

3.05 TIME OF PAYMENT

A. CONSULTANT shall submit monthly statements on or before the twentieth of the month for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The DEPARTMENT shall make prompt payment on or before the twentieth of the month following the date of the CONSULTANT monthly statement.

4.01 COMMENCEMENT OF WORK

A. CONSULTANT shall commence the work to be performed under this Agreement upon receipt of a written Work Order or verbal authorization to proceed from the DEPARTMENT. Each Work Order or verbal authorization shall define by task(s) the scope of services to be performed. Verbal authorizations shall be followed up with written Work Orders.

B. Additional services shall be commenced at within the time agreed to between the CONSULTANT and the DEPARTMENT at the time such services are authorized.

C. The DEPARTMENT shall not be liable to CONSULTANT and/or any of its independent Professional Associates and Consultants and/or subcontractors for claims or damages or monetary claims of any nature caused by or arising out of delays from any cause whatsoever, including but not limited to any time which may be specified for the notice to proceed under this Agreement. The sole remedy against the DEPARTMENT for delays shall be the allowance to claimant of additional time for completion of work, the amount thereof to be reasonable as determined by the DEPARTMENT.

4.02 COMPLETION OF WORK

A. CONSULTANT shall complete the work to be performed under this Agreement within the time specified in the Scope of Services, or if none is specified, then within a reasonable time for the type of work involved.

B. Additional services shall be completed within the time agreed to between the CONSULTANT and the DEPARTMENT at the time such services are authorized.

5.01 APPLICABLE LAW

This AGREEMENT shall be governed by the laws of the State of Wisconsin and venue for any action concerning this Agreement shall be in Milwaukee County, Wisconsin. The CONSULTANT shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this AGREEMENT.

6.01 APPROVALS OR INSPECTIONS

None of the approvals or inspections performed by the DEPARTMENT shall be construed or implied to relieve the CONSULTANT from any duty or responsibility it has for its professional performance, unless the DEPARTMENT formally assumes such responsibility through a letter from the DEPARTMENT expressly stating that the responsibility has been assumed.

7.01 DISPUTE RESOLUTION

In the event a dispute arises under this agreement, which is not resolvable through informal means, the parties agree to submit the dispute to the following resolution mechanism prior to

pursuing other available legal remedies. Upon receipt of a written request by either party to utilize this provision each party shall have five working days to notify the other as to the name and address of the person designated to present the dispute for that party. Upon designation of the dispute resolution representatives, those persons shall have ten working days to appoint a mutually acceptable third person to hear the dispute, and to agree on a time and location to hear the matter in dispute. The representatives shall jointly determine the procedure to be used for gathering information and hearing the dispute. Binding mediation or arbitration shall not be chosen as a dispute resolution method.

8.01 ASSIGNMENT

Neither this AGREEMENT nor any right or duty, in whole or in part, of the CONSULTANT under this AGREEMENT may be assigned, delegated or subcontracted without the written consent of the DEPARTMENT.

Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than the DEPARTMENT and the CONSULTANT, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of the DEPARTMENT and the CONSULTANT and not for the benefit of any of any other party.

9.01 CANCELLATION; TERMINATION

A. The DEPARTMENT reserves the right to cancel this AGREEMENT in whole or in part, without penalty, due to non-appropriation of funds or for failure of the CONSULTANT to comply with terms, conditions, or specifications of this AGREEMENT.

B. The DEPARTMENT may terminate this AGREEMENT for any reason at any time upon not less than 10 days' written notice to the CONSULTANT.

C. In the event of termination the DEPARTMENT shall pay the CONSULTANT for that portion of the work satisfactorily performed prior to the date of termination.

D. If this AGREEMENT is cancelled or terminated by the DEPARTMENT for reasons other than the failure of the CONSULTANT to comply with terms, conditions or specifications of this AGREEMENT, the CONSULTANT shall also be entitled to reasonable cancellation or termination costs relating to costs incurred by the CONSULTANT for commitments, which had become firm prior to the cancellation or termination.

E. Upon cancellation or termination under PARAGRAPH A. or B., above, the CONSULTANT shall promptly discontinue all affected work (unless the notice of termination directs otherwise), and deliver or otherwise make available to the DEPARTMENT all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONSULTANT in performing this AGREEMENT, whether completed or in progress.

F. If any undisputed invoice shall not be paid within the payment terms of this AGREEMENT, CONSULTANT shall have the right, after giving seven (7) days written notice, to suspend all Services on the project until all accounts have been paid. If any overdue invoice shall not be paid within forty-five (45) calendar days after the date of the invoice, CONSULTANT shall have the right to terminate this AGREEMENT.

10.01 DISCLOSURE

If a city official (as defined under section 3.02(1) of the Revised Municipal Code of the City of West Allis), a member of official's immediate family, or any organization in which a city official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this AGREEMENT, and if this AGREEMENT involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this AGREEMENT is voidable by the City unless appropriate disclosure is made according to section 3.5 of the Revised Municipal Code, before signing the AGREEMENT. Disclosures shall be made to the Ethics Board of the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 (Telephone 414-302-8200).

11.01 ENTIRE AGREEMENT; AMENDMENTS

This AGREEMENT, together with the specifications in the proposal and referenced parts and attachments, shall constitute the entire agreement between the parties and previous communications or agreements pertaining to the subject matter of this AGREEMENT are hereby superseded. Any contractual revisions including cost adjustments and time extensions may be made only by a written amendment to this AGREEMENT, signed by both parties prior to the ending date of this AGREEMENT.

12.01 FORCE MAJEURE

No party shall be responsible to the other party for any resulting losses and it shall not be a default of this Agreement if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, unusual adverse weather conditions, or by any other cause not within the control of the party whose performance was interfered with and which by the exercise of reasonable diligence such party is unable to prevent, whether of the class of enumerate causes or not, and the time for performance shall be extended by the period of delay occasioned by any such cause. Upon the occurrence of a force majeure, written notice to the other party shall be given as herein provided. If the period of non-performance exceeds thirty (30) days from the receipt of the notice, the party whose ability to perform has not been so affected may, by written notice, terminate this Agreement.

13.01 INDEMNIFICATION; LIABILITY

A. The CONSULTANT agrees to defend, indemnify and hold harmless the DEPARTMENT and its agents, officers, directors, and employees from and against those claims, suits, damages, or losses incurred by DEPARTMENT, to the extent such claims, suits, damages or

losses are caused by negligent acts of CONSULTANT or its agents, officers, directors or employees. This agreement to indemnify, defend, and hold harmless shall not extend to any claims, suits, damages, or losses caused by the acts, omissions, or conduct of DEPARTMENT or any other person.

B. DEPARTMENT agrees to indemnify, defend and hold harmless CONSULTANT and its subcontractors, consultants, agents, directors, and employees from and against all claims, suits, damages, and losses, including, but not limited to, those claims, suits, damages, or losses caused or arising out of, relating to, or based upon: 1) the acts, omissions, or other conduct of DEPARTMENT; and [2) the actual or threatened dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes acids, alkalis, toxic chemicals, liquids, gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere or on, onto, upon, in or into the surface or subsurface of soil, water or water course, objects, or any tangible or intangible matter, whether abated or not; except to the extent that such damage or loss is caused by the negligent acts or willful misconduct of CONSULTANT or its agents, officers, directors, or employees.] [For environmental services only.]

C. Nothing contained within this AGREEMENT is intended to be a waiver or estoppel of the City or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin Statutes Sections 893.80 and 345.05. To the extent that indemnification is available and enforceable, the City or its insurer shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

14.01 INDEPENDENT CONTRACTOR

The DEPARTMENT agrees that the CONSULTANT shall have sole control of the method, hours worked, and time and manner of any performance under this AGREEMENT other than as specifically provided herein. The DEPARTMENT reserves the right only to inspect the job site or premises for the purpose of insuring that the performance is progressing or has been completed in compliance with the AGREEMENT. The DEPARTMENT takes no responsibility for supervision or direction of the performance of the AGREEMENT to be performed by the CONSULTANT or the CONSULTANT'S employees or agents. The DEPARTMENT further agrees that it will exercise no control over the selection and dismissal of the CONSULTANT'S employees or agents.

15.01 REPORT AND DOCUMENTATION REQUIREMENTS

A. The CONSULTANT'S invoices will be reduced by the sums set forth below for each week that the CONSULTANT fails to submit a report or document required under this AGREEMENT'S time schedule unless the DEPARTMENT determines that such delay is attributable to a force majeure as defined in SECTION 8., above. These reductions shall accrue in the amount of 0% of the Work Order for the first week and 0% of the Work Order for each week thereafter, for each report or document, which is overdue.

B. Assessment of reductions under this SECTION does not preclude the DEPARTMENT from pursuing any other remedies or sanctions because of the CONSULTANT'S

failure to comply with any of the terms of this AGREEMENT, including a suit to enforce the terms of this AGREEMENT.

C. With respect to any individual failure to submit a report or document required under this AGREEMENT'S time schedule, the DEPARTMENT may at its sole discretion, in whole or in part, waive its right to penalties otherwise due under this SECTION.

16.01 NO WAIVER OF CONDITIONS

The failure of either party to insist on strict performance of this AGREEMENT does not constitute a waiver of any of the provisions of this AGREEMENT or a waiver of any default of the other party.

17.01 OWNERSHIP OF DOCUMENTS

A. Upon completion of the services provided for in this AGREEMENT, or upon payment for services as provided for in SECTION 5., all reports, specifications, charts, sketches, drawings and other documents, whether finished or not, shall become the property of the DEPARTMENT.

B. CONSULTANT shall retain one copy of all documents for its file. Any documents generated by CONSULTANT used by the DEPARTMENT beyond the intended purpose shall be at the sole risk of the DEPARTMENT, unless otherwise agreed upon by CONSULTANT in writing. To the fullest extent permitted by law, DEPARTMENT shall indemnify, defend and hold harmless CONSULTANT, its subcontractors, consultants, officers, directors, employees and agents, for any loss or damages arising out of the unauthorized use of such documents by the DEPARTMENT.

18.01 OWNERSHIP OF WASTES [Environmental Contract Only]

The DEPARTMENT acknowledges that the CONSULTANT is not, by virtue of this AGREEMENT, the owner or generator of any waste materials generated as a result of the services performed by the CONSULTANT under this AGREEMENT.

19.01. PERIOD OF AGREEMENT

This AGREEMENT shall commence upon its signing by both parties and shall follow the schedule developed herein, during which period all performance as described in this AGREEMENT shall be fully completed to the satisfaction of the DEPARTMENT.

20.01 RELEASE OF INFORMATION

The CONSULTANT may not issue press releases or provide information to any third party regarding the Project without the prior written approval of the DEPARTMENT, except as required by Federal or State regulations, or court order.

21.01 SAFETY

The CONSULTANT shall initiate, maintain and provide supervision of safety precautions and programs for CONSULTANT'S own employees, and shall require its subcontractors or subconsultants to comply with state and local safety laws and regulations in connection with its services. However, the CONSULTANT is not responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the project site carried on by other persons or firms directly employed by the DEPARTMENT as separate consultants or contractors. The DEPARTMENT agrees to require any such separate consultants or contractors to comply with federal, state and local safety laws and regulations and to comply with all reasonable requests

and directions of the CONSULTANT for the elimination or abatement of any safety hazards at the project site.

22.01 SITE ACCESS; DATA

A. Unless the Scope of Work provides otherwise, the DEPARTMENT shall obtain or provide reasonable access for the CONSULTANT to the project site when necessary and at any reasonable time requested.

B. The DEPARTMENT shall attempt to provide the CONSULTANT with all relevant data and information in its possession regarding the project site. However, in providing such data and information, the DEPARTMENT and the CONSULTANT assumes no responsibility for its accuracy, reliability or completeness.

23.01 STANDARD OF PERFORMANCE

The CONSULTANT'S services shall be performed with the usual thoroughness, skill and competence of the consulting profession, in accordance with the standard for professional services prevailing at the time those services are rendered.

24.01 SURVIVAL

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

25.01 SUCCESSORS AND ASSIGNS

The DEPARTMENT and the CONSULTANT each bind themselves, their partners, successors, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this AGREEMENT.

26.01 TITLES

The headings or titles of SECTIONS of this AGREEMENT are used for convenience and ease of reference and are not intended to limit the scope or intent of the SECTIONS.

27.01 ACCESS TO RECORDS

A. The CONSULTANT and subcontractors to the CONSULTANT if any, agree to maintain for inspection by the DEPARTMENT all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this AGREEMENT and to make such materials available at their respective offices at all reasonable times during the life of the AGREEMENT and for three (3) years from the date of final payment under the AGREEMENT, and to furnish copies thereof if requested.

B. If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the DEPARTMENT.

28.01 ERRORS AND OMISSIONS

The CONSULTANT shall be responsible for the accuracy of the work performed by the CONSULTANT under the AGREEMENT, and shall promptly make necessary revisions or corrections resulting from its negligent acts, errors or omissions without additional compensation.

29.01 CONFLICT OF INTEREST

A. The CONSULTANT warrants it has no public or private interest, and shall not knowingly acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under the AGREEMENT.

B. The CONSULTANT shall not employ any person employed by the DEPARTMENT for any work included under the provisions of the AGREEMENT.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of January 8, 2013 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.

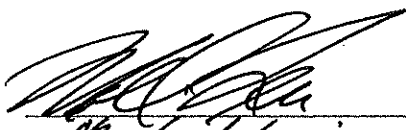
- Attachment A - Scope of Services, consisting of 1 page.
- Attachment B - Period of Services, consisting of 1 page.
- Attachment C - Compensation and Payments, consisting of 2 pages.
- Attachment D - Terms and Conditions, consisting of 3 pages.
- Attachment E - Terms and Conditions for Services Involving 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.

City of West Allis
OWNER

Ayres Associates Inc
CONSULTANT

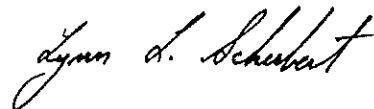

Michael Lewis

(Signature)

(Typed Name)

(Title)

(Date)



Lynn L. Scherbert, PE

Supervisor – Environmental
Services

1-8-2013

DPW/City Engineer
2/26/2013

ATTACHMENT A - SCOPE OF SERVICES

This is an attachment to the Agreement dated January 8, 2013 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.

Task 1: Ayres Associates (Ayres) 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. Ayres will follow the sampling protocols stated in Conditions #1 through #3 of the letter.

Field data collected and results of the laboratory analysis will be submitted electronically to the WDNR (Southeast District) project hydrogeologist following each groundwater sampling event.

Task 2: Ayres will sample the eight (8) perimeter methane gas monitoring wells once per year in accordance with the WDNR Conditional Closure Plan Modification dated March 26, 2003. 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.

The data collected during sampling of the methane gas will be submitted to the WDNR (Southeast District) Solid Waste Engineer.

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.

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 January 8, 2013 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.

- Both the methane gas and groundwater monitoring wells will be sampled in March 2013.
- The groundwater wells will be sampled a second time in September 2013.

ATTACHMENT C - COMPENSATION AND PAYMENTS

This is an attachment to the Agreement dated January 8, 2013 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 Ayres Associates 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. Ayres Associates will be compensated on the basis of time expended by employees engaged directly on the project in accordance with Ayres Associates direct labor costs times a factor of 3.1, plus reimbursable expenses and subconsultant charges.

5.1.1.2 The total compensation for services under paragraph 5.1.1 is estimated to be \$10,100.00. CONSULTANT shall not exceed an amount of \$10,100.00 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 Ayres Associates direct labor costs times a factor of 3.1, 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 1.05.

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.

CITY OF WEST ALLIS

INSURANCE REQUIREMENTS FOR CONSULTANTS

A. INSURANCE REQUIRED.

Consultants shall purchase and maintain for the duration of the contract as required by the City or by Law, insurance indemnifying against claims, suits, personal injury, bodily injury to persons, or damage to property which arises from, or in connection with the negligent acts of the Consultant. Some contracts may require Completed Operations, Professional Liability or other insurance beyond the contract term.

Any deductibles or self-insured retentions shall be identified to the City; those which exceed \$10,000 must be declared to and approved by the City. City may require a review of the latest audited financial statements of the Consultant. At the option of the City, neither the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, agents and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defenses expenses.

All required insurance under this Contract is to be placed with insurers with a Best's rating of no less than A-VII. Said carriers to be admitted status with the State of Wisconsin, unless otherwise approved in advance by the City. City reserves the right to approve non-admitted carriers with a Best's rating of no less than AX.

Work shall not be commenced under the Contract until all insurance required under this paragraph has been obtained and evidence thereof in the form of certificates, with original endorsements effecting coverage, are filed with and approved by the City. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. For Workers' Compensation-related risks, only forms approved by the Insurance Commissioner are to be used.

Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages shall be subject to all of the insurance requirements that are applicable to the Consultant. No subcontractor shall be permitted to commence work until all required coverages have been obtained and certificates and endorsements thereof are filed with the City.

If any part of a loss is not covered because of the application of a deductible or retention, said loss shall be born by the general Consultant and not the City. Failure to maintain the required insurance may result in termination of this Contract at the option of the City.

B. GENERAL ENDORSEMENTS.

The protection afforded by the required insurance policies under this Contract shall include, but shall not be limited to, the following:

1. Occurrence Based Policies. All required Liability insurance under this Contract shall be written on an "occurrence" form, except separately approved Professional Liability Policies.
2. Representation of Coverage Adequacy. By requiring insurance for this Contract, the City does not represent or warrant that coverage and limits will be adequate to protect the Consultant, subcontractor, their agents or any project engineer.
3. Cross-Liability Coverage. If the Consultant's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
4. Cancellation. To the maximum extent possible as judged by the City, the coverages listed in the policy shall not be suspended, voided, canceled or reduced in coverage or in limits except after at least thirty (30) days prior written notice has been given to the City. The Consultant agrees to notify the City immediately if the policy is suspended, voided, canceled or reduced in coverage or in limits.
5. Additional Insureds. The City and the City of West Allis, their officers (elected and appointed), employees, agents and volunteers must be named as additional insureds as their interests may appear on the Consultant's liability insurance policies which insures the City up to the required limits. Additional insured status shall be endorsed onto the respective insurance policy by the appropriate ISO Endorsement Form approved by the City and executed by duly authorized agents of said carrier.
6. Primary Insurance. Consultant's insurance shall provide primary insurance to the City, to the exclusion of any other insurance or self-insurance programs the City may carry. Any insurance or self-insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute to it.
7. Waiver of Subrogation. Consultant waives all rights against the City and the City of West Allis, their officers, employees, agents and volunteers for recovery of damages to the extent these damages are covered by the insurance the Consultant is required to carry pursuant to this Contract.
8. Reporting. Failure to comply with any insurance policy reporting provisions shall not affect coverage provided to the City.

9. Cross Liability. The required insurance coverages shall apply separately to each insured against whom claim is made or suit brought, except with respect to the limits of the insurer's liability.
10. Indemnification. The policies shall contain an acknowledgement by the underwriters that the Consultant shall indemnify and save harmless the City and the City of West Allis against any and all claims resulting from the wrongful or negligent acts or omissions of the Consultant or other parties acting on its behalf under the Contract; and that the hold harmless assumption on the part of the Consultant shall include all reasonable costs necessary to defend a lawsuit including actual reasonable attorney fees.

C. MINIMUM LIMITS AND OTHER PROVISIONS.

1. WORKER'S COMPENSATION INSURANCE.

Workers Compensation Insurance:

Wisconsin statutory limits for all employees of the bidder to whom the award is made.

All subcontractors and materialmen shall furnish to the Consultant and the City certificates of similar insurance for all of their respective employees, unless such employees are covered by the protection afforded by the Consultant.

2. GENERAL LIABILITY INSURANCE.

a. Coverage. Coverages must include, but are not limited to the following:

"Occurrence" Coverage Form must be as broad as 1988 "Commercial General Liability" (form CG 00 01) and include the following:

Premises and Operations

Products and Completed Operations, applicable for at least one year following acceptance of the work

Personal Injury with Employment Exclusion deleted

Unlicensed Mobile Equipment

Explosion, Collapse and Underground Hazard Coverages

Blanket Contractual (Independent Consultant's Protective)

Broad Form Property Damage
Contingent Coverage for Subcontractors

Care, Custody and Control Coverages for City Owned or Purchased
Materials at the Work Site

b. Minimum Limits of Liability:

Per Occurrence Limit:	\$1,000,000
Policy Aggregate:	\$2,000,000
Personal Injury Limit:	\$1,000,000
Fire Damage Limit:	\$ 50,000
Medical Expense Limit:	\$ 5,000

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE.

- a. Coverage. Coverage must be as broad as CA 00 01 Ed. 1992) -
Occurrence Form Code No. 1, "any auto".

Comprehensive Coverage for all Owned, Non-Owned or Hired Motor
Vehicles driven by the employees of the Consultant or Subcontractors,
including vehicles and equipment owned by the City if used exclusively for
the project.

Uninsured or Underinsured Motorists Liability Coverage at full policy limits.

Transportation by insured vehicles of pollutants, or toxic wastes (as
determined by the EPA) shall require a minimum of the Pollution Liability
Endorsement (CA9948) and/or the Motor Carrier Act Endorsement (MCA90)
to address damages and clean-up costs.

b. Minimum Limits of Liability:

Minimum Limits are the same as specifications for General Liability
Insurance.

4. PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

a. Coverage. Standard form; coverage provided on a claims-made basis with at least one year extended reporting period; to include all liability assumed by the Consultant for the Project.

b. Minimum Limits of Liability:

Minimum \$1 Million.

5. UMBRELLA POLICY

Five million dollars (\$5,000,000) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements set forth herein.