

March 20, 2024

Mr. Kevin Boehm
Parks and Recreation Director
City of Whitewater
312 W. Whitewater St.
Whitewater, WI 53190

Re: Old Stone Mill Dam Proposal for Engineering Services for Downstream Wall Repairs

Dear Mr. Boehm:

Thank you for the opportunity to submit this proposal for professional services in support of downstream wall repairs for the Old Stone Mill Dam. This letter presents our proposed scope of services, time schedule, fee, and contract terms and conditions.

Project Description

An inspection of the Old Stone Mill Dam was completed by Ayres in 2022 and identified deterioration of the stone masonry sidewall on the downstream left (west) side of the East Main Street Bridge. The inspection recommended that this wall be repaired by December 31, 2023, and the Wisconsin Department of Natural Resources (WDNR) concurred with this recommendation. Based on recent correspondence from the City, the WDNR granted an extension of the repair directive for the left stone masonry wall until August 1, 2025.

The 2022 inspection of the Old Stone Mill Dam also recommended monitoring ongoing concrete deterioration of the sidewall on the downstream right (east) side of the East Main Street Bridge. While this wall does not appear to be on the verge of failure, its poor condition does indicate that repair will likely be needed within the next few years, therefore the design of repair to this wall is recommended and included in this proposal.

Lastly, based on recent correspondence with the City, the WDNR also extended the directive deadline to update the Emergency Action Plan (EAP) and Inspection, Operation & Maintenance (IOM) Plan for the Old Stone Mill Dam until June 30, 2024. This proposal includes updating both the EAP and IOM.

Scope of Services

Design Phase

1. Visit the site to survey, measure and identify areas in need of repair. This includes both the left and right downstream side walls.
2. Prepare Drawings and Specifications for repairs of both the left stone masonry and right concrete sidewalls.
3. Provide draft Drawings, Specifications, and an opinion of probable construction cost to the City for review. Based on review comments received, revise the draft Drawings and Specifications to produce a final set ready for permit application submittal.
4. Submit a Ch. 31 plan approval application to WDNR for the repairs.
5. Coordinate any review comments with WDNR and obtain Ch. 31 plan approval.

Bidding Phase

1. Prepare a complete project manual for bidding. The repair of the left stone masonry sidewall will be presented as a required base bid item (as repair of this wall is a required directive by the WDNR), and the repair of the right concrete sidewall will be presented as an alternate bid item (as repair is not a directive at this time but may be worth undertaking if it can be accomplished within the City's budget).
2. Let the project for bids using our online QuestCDN plan room.
3. Answer contractor questions and issue addenda, if needed.
4. Host a virtual QuestCDN bid opening via conference line.
5. Assist the City with awarding a construction contract to the selected bidder.

Construction Phase

1. Review Contractor submittals and shop drawings.
2. Make up to three site visits during construction, at times and intervals to be determined based on project schedule, to observe progress and to confirm work conforms with the contract documents. Site visits will be documented by photographs of ongoing work and daily field reports.
3. Review Contractor payment applications.
4. Prepare and issue change orders, if needed and appropriate.
5. Prepare a set of record drawings.
6. Prepare a letter of conformance stating the work was completed according to the approved Drawings and Specifications.
7. File the record drawings and letter of conformance with the WDNR.
8. Assist the City with construction contract closeout.

EAP & IOM Updates

1. Review existing EAP and IOM for the Old Stone Mill Dam.
2. Update the existing EAP and IOM for the Old Stone Mill Dam. The current EAP and IOM on file are from 2015.
3. Submit updated EAP and IOM to the City for review and approval.
4. Upon approval from the City, submit final EAP and IOM to the Regional Water Management Engineer with the WDNR for review and approval.

Responsibilities of Owner and Others

The Owner shall designate in writing a representative authorized to act in the Owner's behalf, and shall furnish required information, approvals, and decisions as expeditiously as necessary for the orderly progress of Ayres' services. The owner will also provide access to the site during visits.

Ayres shall be entitled to rely on the accuracy and completeness of necessary project information supplied by the Owner.

Additional Services

The current scope of services includes repair of both the left and right downstream sidewalls and updating the EAP and IOM for the Old Stone Mill Dam. We did not budget for attendance at an onsite pre-bid meeting. Since the site is publicly accessible and the project is of a relatively small scale, we believe an onsite pre-bid meeting to be unnecessary. If the City is interested in holding a pre-bid meeting, we can provide this as an additional service to be negotiated at that time. Additional repairs, including potential directives as a result of the 2024 WDNR inspection, are also not included in this scope of services. The scope can be amended if additional directives are identified by the WDNR as part of the 2024 inspection. This includes a fee estimate update.

Time Schedule

A draft set of Drawings and Specifications will be completed and sent to the City for review within 90-days of the initial site visit. Upon review and approval from the City, Ayres will submit the Drawings and Specifications to the WDNR for a Ch. 31 plan approval within 10 calendar days.

Bidding-phase services will start upon receipt of the Ch. 31 plan approval from the WDNR and City's authorization to proceed.

Construction-phase services will start upon full execution of a Construction Contract Agreement for the project between the Owner and Contractor.

If the City elects to pursue updating the EAP and IOM, updated drafts of each plan will be completed within 30-days of notice to proceed.

Fee

We will perform the above services for an amount based on a standard hourly rate for each class of employee, plus reimbursable expenses and subconsultant charges. The estimated cost of services is \$40,010. We will not exceed an amount of \$45,000 without your prior approval. The Reimbursable Expenses Schedule and Standard Hourly Rates Schedule are attached as Appendices 1 and 2, respectively. The total estimate cost of services is based on the following assumed distribution of compensation:

Design Phase: \$19,600
Bidding Phase: \$5,500
Construction Phase: \$11,600
EAP & IOM Update: \$3,400

If the City elects to pursue only the repair of the left and right downstream sidewalls, and not update the EAP and IOM as part of this scope of services, the estimated cost is \$36,610.

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 15, 2024 unless extended by us in writing.



Proposed by Consultant:

Ayres Associates Inc.



Anthony Alvarado, P.E., CFM
Vice President



Mike Rogney, P.E.
Water Resources Engineer

Accepted by Owner:

City of Whitewater
Owner's Name

Signature

John Weidl
Name

City Manager
Title

Date

Attachments: Contract Terms and Conditions,
Reimbursable Expenses Schedule
Standard Hourly Rates Schedule



**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, after giving 7 days' notice, without waiving any claim or right against Owner, and without liability whatsoever to Owner, suspend 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. Payment will be credited first to any interest owed to Consultant, then to principal. The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed on payments shall be added to the Consultant's compensation. Owner shall pay all costs of collection, including reasonable attorney's fees and costs incurred by consultant, in collecting any amounts due from Owner. No deductions or offsets shall be made from Consultant's compensation or expenses on account of any setoffs or back charges. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Consultant in writing of the specific basis for doing so, may withhold only the portion so disputed, and must pay the undisputed portion.

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. Owner acknowledges that Consultant is performing professional services for Owner and that Consultant is not and will not be required to become an "owner", "arranger", "operator", "generator" or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the site in connection with Consultant's activities under this agreement.

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 for any and all claims for loss, damage or injury, including but not limited to, claims for negligence, professional errors or omissions, strict liability, and breach of contract or warranty, to an amount of \$50,000.00 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 \$1,000,000.00 for increased consideration of ten percent (10%) of the total fee or \$500.00, 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 and Use of Documents: All documents produced by Consultant under this contract are instruments of Consultant's professional service and Consultant owns the documents including all associated copyrights and the right of reuse at the discretion of the Consultant. Engineer grants Owner a limited license to use the documents on the project, project extension and for related uses of the Owner subject to receipt of full payment due, and such license to Owner shall not create any rights in third parties. Owner shall indemnify and hold harmless Consultant and its officers, directors, employees and Subconsultants from all claims, damages, losses, and expenses, including reasonable attorney fees, arising out of or resulting from any use, reuse, or modification of documents without written verification, completion or adaptation by 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. Consultant shall have no liability to Owner on account of termination for cause by Consultant.

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 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 contract.

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. Severability: To the extent that any provision of this contract is finally adjudged invalid by a court of competent jurisdiction, that provisions shall be deleted or modified, as necessary, to make it enforceable, and the remaining provisions of this contract shall remain in full force and effect and be binding upon the parties hereto.

23. California Privacy Rights Act Employer

24. Entire Agreement: This agreement contains the parties entire understanding and supersedes all prior negotiations or agreements over the services described herein. This contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

25. Notice of Lien Rights: Ayres Associates Inc. hereby notifies owner that persons or companies furnishing labor or materials, including engineering, architectural, and surveying services, for the improvement of or construction on owner's land may have lien rights on owner's land and buildings if not paid. Owner should give a copy of this notice to their mortgage lender, if any. Ayres Associates Inc. agrees to cooperate with the owner and owner's lender, if any, for resolution of POTENTIAL LIEN claims made as part of this contract.

Reimbursable Expense Schedule (Revised May 7, 2023)

Policy: It's the policy of Ayres Associates that costs associated with equipment and supplies identified as having been used on a specific project be charged to that project and not to general overhead. All equipment rates are based on actual costs and are reviewed/updated annually.

Company-Owned Equipment

ENVIRONMENTAL MONITORING, SAMPLING, TESTING:

FID/PID/OVA	\$175.00	Day
FLOW 3D Model Processing	\$0.60	Core hour
Flowmeter	\$220.00	Month
Groundwater Sampling	\$11.65	Sample
Nuclear Density	\$75.40	Day
Peristaltic Pump	\$63.00	Day
Soil Sampling	\$6.60	Sample
Temp/pH Conductivity Meter	\$8.35	Day
Water Level Meter	\$12.00	Day

CONSTRUCTION TESTING AND SAMPLING:

Concrete/Testing Equipment	\$95.00	Day
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PHOTOGRAMMETRIC AND SURVEYING:

Digital Photogrammetric Workstation	\$8.85	Hour
Drone	\$135.00	Day
GPS	\$72.40	Day
High Precision Digital Level	\$25.35	Day
Laser/Automatic Level	\$38.65	Day
Total Station (Robotic)	\$110.00	Day
TX8 HD LiDAR System	\$655.00	Day
360 Camera	29.90	Day

STRUCTURAL ABOVE/UNDER WATER INSPECTION:

Air Tank	\$13.75	Tank
NDT/Testing Equipment	\$380.00	Day
Resistograph	\$320.00	Day



SUBSURFACE UTILITY EQUIPMENT:

Hammer Drill & Accessories	\$40.00	Day
RD Electronic Locating Device	\$110.00	Day
RD Ground Penetrating Radar	\$150.00	Day
VAC Truck	\$1080.00	Day

TRAFFIC DATA COLLECTION:

Miovision Scout VCU	\$48.30	Day
Traffic Counter	\$62.20	Day

TRANSPORTATION:

All-Terrain Utility Vehicle (ATV/UTV)	\$235.00	Day
Boat/Motor/Trailer	\$465.00	Day
Company Trucks	\$1.15	Mile
Personal Auto	Current IRS Rate	

Rented Equipment

Employee-owned Dive Gear	\$15.00	Day
Employee-owned Wet Suit	\$10.00	Day
Rental Bucket Lift Truck	\$800.00	Day



2024 FEE SCHEDULE

Billing Category	(\$)
Principal	\$ 240.00
Senior Project Manager	\$ 210.00
Project Manager II	\$ 190.00
Project Manager I	\$ 160.00
Senior Professional IV	\$ 220.00
Senior Professional III	\$ 200.00
Senior Professional II	\$ 185.00
Senior Professional I	\$ 170.00
Professional IV	\$ 160.00
Professional III	\$ 150.00
Professional II	\$ 140.00
Professional I	\$ 125.00
Engineering Technician	\$ 90.00
Senior Designer	\$ 145.00
SUE/Survey Lead	\$ 140.00
SUE/Survey Technician	\$ 110.00
Field Technician	\$ 85.00
Project Administrator	\$ 120.00
Administrative Assistant	\$ 90.00

DIRECT PROJECT CHARGES

Actual costs incurred. Includes subcontractors, analytical services, printing/graphic services, freight and courier services and use of outside vendors for supplies and materials.

ASSOCIATED PROJECT CHARGES

Associated Project Costs (APC) based on labor fees.....4.85%
APC includes PPE, construction monitoring software, in-house supplies, telecommunications charges, postage (excluding freight costs and courier service), project specific materials and/or small equipment needed, and routine in-house reproduction. Printing and large volume reproduction costs will be invoiced as an outside service.

OTHER COSTS

Ayres Reimbursable Expense Schedule for company owned equipment, vehicles, and software is attached. In addition, reasonable employee's expenses, including meals and lodging incurred during authorized travel, are billed at actual cost or the current CONUS per diem rate. Automobile rental and airfare costs will be invoiced at actual cost.

An administration fee of ten (10) percent will be applied on all direct charges (including subcontractors, travel, direct costs, and service providers).