



January 25, 2010

Mr. Dan Kittleson  
Stoughton RDA  
381 East Main Street  
Stoughton, WI 53589

Re: Proposal for Phase 1 and Phase 2 Environmental Site Assessment  
Property located at 623 8<sup>th</sup> Street, Stoughton, Wisconsin

Dear Mr. Kittleson:

In response to your recent request, we are providing you a proposal to conduct a Phase 1 and Phase 2 Environmental Site Assessments (ESA's) for the above named property. The 623 8<sup>th</sup> Street property is an approximate 2-acres of relatively level land situated in an area of mixed residential and industrial properties on the banks of the Yahara River. The property is being considered for redevelopment. A geotechnical investigation conducted on the site in January 2010 indicated that several feet of fill containing debris such as glass, cinders, and brick existed across the property. During drilling and sampling of geotechnical soil boring #3, possible petroleum odors were noted in the fill by the investigators.

The City of Stoughton Redevelopment Authority is requesting environmental site assessment (ESA) activities, including Phase 1 and Phase 2 ESA, to evaluate possible environmental liabilities to the property prior to redevelopment. This proposal is intended to specify conformance with industry standards, including ASTM E1527-05 3.2.8 – *bona fide prospective purchaser liability protection*. The objective of the Phase 1 ESA is to assess environmental conditions of the property. The Phase 1 ESA would include, among other things, a review of regulatory agency records, interview former owners of the property and other parties knowledgeable about the property, and conduct a site visit to observe environmental conditions of the subject property and adjoining properties. At the conclusion of the ESA, we will provide a report of ESA findings and conclusions. In compliance with ASTM standards for user provided information, we understand that the Client shall identify all obvious uses of the property from the present, back to the 1940's. This information will be provided to Consultant to assist in historical review of the subject property.

The Phase 2 ESA will consist of advancement of several soil probes in areas of concern determined from the findings of the Phase 1 ESA and from observations made in the field during soil probing activities. Because of possible public end use of the property, environmental activities will assess possible risk to human health.

The cost to perform the Phase 1 and Phase 2 ESA's, as described in Attachment A, Scope of Services, will be for a combined fee not to exceed \$15,400.00, including reimbursable and subcontractor expenses. This cost assumes that, during the Phase 2 ESA, 12 soil probes will be advanced to a maximum depth of 10 feet bls, and that laboratory analysis of a total of 12 soil and 6 groundwater samples will be conducted with a normal turnaround by the environmental laboratory.

Ayres Associates proposes to conduct these activities in an expeditious fashion and deliver a DRAFT of the Phase 1 ESA report within 10 business days and the Phase 2 report within 45 days of receiving an executed agreement. If you find our proposal acceptable, please countersign and return one original agreement as soon as possible. The ESA will begin when

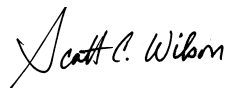
Mr. Dan Kittleson  
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we receive a signed agreement from you; a faxed signature page 608.443.1250 is sufficient to begin the project.

Please call me at 608.443.1258 if you have any questions or concerns. Thank you for requesting this proposal for environmental management services from Ayres Associates.

Sincerely,

Ayres Associates Inc



Scott C. Wilson, PSS  
Vice President - Environmental Services



Kathye Melland  
Project Leader 1

SCW:sem

Enclosure

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of January 25, 2010, between the Stoughton Redevelopment Authority, 381 East Main Street, Stoughton, Wisconsin (OWNER) and Ayres Associates Inc, 1802 Pankratz Street, Madison, Wisconsin (CONSULTANT).

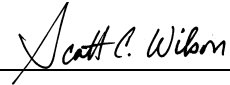
OWNER intends to retain CONSULTANT for professional services for Phase 1 and Phase 2 Environmental Site Assessments on the 623 8<sup>th</sup> Street property and as described in Attachment A (hereinafter called the Project). The 623 8<sup>th</sup> Street property is an approximate 2-acres of relatively level land situated in an area of mixed residential and industrial properties on the banks of the Yahara River. The property is being considered for redevelopment. A geotechnical investigation conducted on the site in January 2010, indicated that several feet of fill containing debris such as glass, cinders, and brick existed across the property. During drilling and sampling of geotechnical soil boring #3, possible petroleum odors were noted in the fill.

OWNER and CONSULTANT agree to performance of professional services by CONSULTANT and payment for those services by OWNER as set forth below.

- Attachment A - Scope of Services, consisting of 2 pages.
- Attachment B - Period of Services, consisting of 3 pages.
- Attachment C - Compensation and Payments, consisting of 1 page.
- 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.

Stoughton Redevelopment Authority <hr/> OWNER	Ayres Associates Inc <hr/> CONSULTANT
<hr/> (Signature)	 <hr/> Scott C. Wilson
<hr/> (Typed Name)	<hr/> Scott C. Wilson
<hr/> (Title)	<hr/> Vice President – Environmental Services
<hr/> (Date)	<hr/> January 25, 2010

## ATTACHMENT A - SCOPE OF SERVICES

This is an attachment to the Agreement dated January 25, 2010, between the Stoughton Redevelopment Authority (OWNER) and Ayres Associates Inc (CONSULTANT).

### ARTICLE 1 - BASIC SERVICES

#### Phase 1 Environmental Site Assessment

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The following tasks shall be performed for a Phase 1 Environmental Site Assessment (ESA) of the Stoughton parcel, 623 8<sup>th</sup> Street, Stoughton, Wisconsin, to be conducted by Ayres Associates, 1802 Pankratz Street, Madison, Wisconsin 53704 (CONSULTANT). The tasks will be consistent with industry standards set forth in ASTM Practice E1527-05 3.2.8 – *bona fide prospective purchaser liability protection*.

Industry standards for Phase 1 ESA provide the following non-exclusive list of non-scope considerations, which typically are not included in a Phase 1 ESA: asbestos-containing materials (ACM), radon, mold, lead-based paint, lead in drinking water, wetlands, regulatory compliance, cultural and historical resources, industrial hygiene, health and safety, ecological resources, endangered species, indoor air quality, and high-voltage power lines. For this particular Phase 1 ESA, Ayres Associates will evaluate the potential for some of these considerations to be present at the property, including, for example, observing for the presence of wetlands and high-voltage power lines and will advise CLIENT if any further assessment and/or evaluation of these considerations is recommended or warranted.

1. Research the history of the property to identify uses of the property. This task includes interviewing property owners and other knowledgeable individuals to identify activities that may have adversely affected the properties. Property records to be reviewed will include assessors' records, building permits, aerial photographs, and/or property deeds. In compliance with ASTM standards for user provided information, we understand that the Client shall identify all obvious uses of the property from the present, back to the 1940's.
2. Contact applicable state and local environmental or other appropriate regulatory staff to identify adverse environmental conditions of the subject property and/or any neighboring property, including the quality of potable water supplies and known releases of hazardous materials. Review applicable federal state and local documents and databases to locate known hazardous waste sites and hazardous waste treatment, storage, and disposal (TSD) facilities within 1.0-mile of the property; registered waste disposal sites and leaking underground storage tanks (LUSTs) within 0.50-mile of the property; and hazardous substance spills, registered underground storage tanks (USTs), and hazardous waste handling facilities on the property or adjoining properties.
3. Review published geological and hydrological reports for information regarding the site and surrounding areas.
4. Contact local, county, or state personnel as appropriate to research recent property history.
5. Perform a review of environmental licenses, permits, or orders issued with respect to the subject property.

6. Conduct a site reconnaissance to observe the environmental conditions of the property, including improvements. During the site reconnaissance, the condition of surface features observed on the property (distressed vegetation, stained surface soil, depressions, etc.) will be examined, noted, and photographed. The site walkover will include a visual inspection and description of property that may contain a hazardous waste or hazardous substance or that has a risk of being discharged.
7. Render a professional opinion of the possible existence of recognized environmental conditions adversely affecting the subject property and offer recommendations for further environmental site assessment activities that may be necessary and appropriate. The collection and analysis of any samples is specifically not included in this scope of work. Should evidence of a discharge or potential for a discharge be evident during the Phase 1 ESA activities, a Phase 2 ESA investigation scope of work and cost estimate will be prepared and submitted for review, at the request of the CLIENT.
8. Document results of the ESA in a report for the subject property. The report will include results, conclusions, color photographs, and other graphics illustrating the property and items of environmental concern, as appropriate. One electronic copy and one paper copy (bound) of the report will be delivered at completion of the ESA.
9. Perform other tasks as necessary to ensure compliance with ASTM E1527-05.

## **Phase 2 Environmental Site Assessment**

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### **Task 1 - Preparation of Management Plans**

#### Work Plan

A workplan, detailing the scope of work to be performed during the course of the project, will be prepared. The workplan will be prepared in accordance with NR 700 Wisconsin Administrative Code and be used as a guide for implementation of field activities.

#### Health and Safety Plan

A site specific Health and Safety Plan (HSP) will be prepared for the project prior to performing field work. The purpose of the HSP is to assign responsibilities, establish personal protection standards and mandatory safety practices and procedures, and provide contingencies for situations that may arise during site operations. The provisions of the plan are mandatory for all employees who are engaged in hazardous material management activities. The plan will be developed under U.S. Environmental Protection Agency guidelines and will comply with applicable regulations, including Occupational Safety and Health Administration (OSHA) standards [29 Code of Federal Regulations (CFR) 1910 and 1926].

### **Task 2 - Field Investigation**

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#### Soil Probes

In order to assess possible subsurface impacts on the site from historical use of the property and from debris fill that exists across the site, 12 soil probes will be advanced on the 623 8<sup>th</sup> Street property. Probes will be advanced in areas of concern, based upon results of Phase 1 ESA activities. These areas may include areas of fill, near storage tanks, storage areas, and

areas of stained soils, or stressed vegetation. Probes will also be advanced in the area of petroleum odors noted in the previous geotechnical soil boring #3.

Each probe will be advanced to a depth of 10 feet below land surface (bls). Soil samples will be collected continuously during probing activities. Each sample collected will be characterized according the Unified Soil Classification System (USCS) and screened for volatile organic vapors using a photoionization detector. One soil sample per probe will be submitted for laboratory analysis. Soil samples will be collected within four feet of ground surface to assess risks to human health from direct contact. Groundwater samples collected from 6 probes will also be submitted for laboratory analysis.

#### Laboratory Analysis

Soil and groundwater samples collected during this assessment will be submitted for laboratory analysis of contaminants of concern including volatile organic compounds (VOC), polycyclic aromatic hydrocarbons (PAH), and heavy metals. The compounds analyzed at each location will be dependent upon the type of contamination suspected in that area, soil screening results, and field observations made during sampling.

It is estimated that 10 soil samples will be analyzed for VOC, arsenic, cadmium, chromium and lead, and 6 soil samples will be analyzed for PAH. Each of the 6 groundwater samples will be analyzed for VOC, PAH and heavy metals.

### **Task 3 - Data Evaluation and Report Preparation**

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Upon completion of assessment activities, a report will be prepared and submitted to the City of Stoughton for review and comment. The report will summarize activities conducted during Phase 2 ESA including a description of site conditions, subsurface geology, and interpretation of laboratory results.

CONSULTANT shall provide professional environmental services for OWNER as provided below.

### **ARTICLE 2 - ADDITIONAL SERVICES**

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services such as installation of monitoring wells and preparation of remedial action plans. These services are not included as part of Basic Services and will be paid for by OWNER as indicated in Attachment C.

### **ARTICLE 3 - OWNER'S RESPONSIBILITIES**

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

Designate a person to act as OWNER's representative.

Provide all criteria and full information as to OWNER's requirements.

Furnish to CONSULTANT all available pertinent information including, but not limited to, property, boundary, easement, right-of-way, and utility surveys, the location of buried tanks,

pipng, and related utilities, and previous reports, all of which CONSULTANT may use and rely upon in performing services under this Agreement.

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 25, 2010, between the Stoughton Redevelopment Authority (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.

<u>Task</u>	<u>Calendar Days After Authorization to Proceed</u>
Phase 1 ESA Draft Report	10
Phase 1 ESA Final Report	30
Phase 2 ESA Report	
Field Investigation	5
Laboratory Analysis	25
Final Report	45



# ATTACHMENT C - COMPENSATION AND PAYMENTS

This is an attachment to the Agreement dated January 25, 2010, between the Stoughton Redevelopment Authority (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:

The cost to perform the scope of services as described above is estimated to be \$15,400, including reimbursable and subcontractor expenses. This cost assumes that 12 soil probes will be advanced to a maximum depth of 10 feet bls. The cost also assumes that laboratory analysis of a total of 12 soil and 6 groundwater samples will be conducted with a normal turnaround. The following outlines estimated project costs.

#### Cost Estimate

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##### Phase 1 Environmental Site Assessment

Investigation and Reporting Cost	\$2,200
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##### Phase 2 Environmental Site Assessment

Project Coordination/Safety Plan	\$ 500
Field Investigation	\$3,750
Reporting	\$3,250
Soil Probe Contractor	\$2,000
Laboratory Analysis	\$3,700

***Estimated Total Project Costs \$15,400***

5.1.1.2 CONSULTANT's Reimbursable Expenses Schedule and Standard Hourly Rates Schedule are attached to this Attachment C as Appendix 1, respectively.

5.1.1.3 The total compensation for services under paragraph 5.1.1 is estimated to be \$15,400.00. CONSULTANT shall not exceed an amount of \$15,500.00 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 times Standard Hourly Rates for each applicable employee for all Additional Services performed on the Project, 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 1.15.

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 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.

## APPENDIX 2 - STANDARD HOURLY RATES AND EXPENSE SCHEDULE

The range of Standard Hourly Rates for each class of CONSULTANT's employees is as follows:

<u>CLASSIFICATION</u>	<u>HOURLY BILLING RATES</u>
Principal	\$135.00 - \$165.00
Project Manager	\$ 79.00 - \$119.00
Project Engineer/Scientist	\$ 66.00 - \$102.00
Geologist	\$ 68.00 - \$ 89.00
Hydrogeologist	\$ 58.00 - \$117.00
Design Engineer	\$ 66.00 - \$ 90.00
Staff Engineer	\$ 57.00 - \$ 85.00
Registered Land Surveyor	\$ 67.00 - \$ 89.00
Surveyor	\$ 45.00 - \$ 75.00
Senior Technician	\$ 63.00 - \$ 85.00
Technician	\$ 44.00 - \$ 64.00
Clerical	\$ 41.00 - \$ 59.00
 <u>Expenses</u>	
Reimbursables	Actual cost
Outside Hire	Actual cost plus 15%
Mileage: Truck	\$0.88/mile
Auto	\$0.50/mile

## **ATTACHMENT D - TERMS AND CONDITIONS**

This is an attachment to the Agreement dated January 25, 2010, between the Stoughton Redevelopment Authority (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 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 January 25, 2010, between the Stoughton Redevelopment Authority (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.