

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, without waiving any claim or right against Owner, and without liability whatsoever to Owner, suspended 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. The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed on payments shall be added to Consultant's compensation. No deductions or offsets shall be made from Consultant's compensation or expenses on account of any setoffs or back charges.
- 3. Access to Site:** Owner shall furnish right-of-entry on the project site for Consultant and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. Consultant will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.
- 4. Location of Utilities:** Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. 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.
- 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 to an amount of \$50,000 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 for increased consideration of ten percent (10%) of the total fee or \$500, 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 of Documents: All documents produced by Consultant under this contract are instruments of Consultant's professional service and shall remain the property of Consultant and may not be used by Owner for any other purpose without the prior written consent of Consultant. See Attachment "A".

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 with or without cause with 90 days written notice by either party. In the event of termination by the Owner, Consultant shall immediately cease providing services (if that is specified by the Owner in the Notice of Termination), and Owner shall pay Consultant for all services rendered to date of notice of termination and for all reimbursable expenses incurred prior to notice of termination. If the Owner does not notify Consultant that services are to be ceased immediately, Consultant shall continue to provide services for the time period specified by the Owner, and if not specified by the Owner, for the full 90 day notice period and Owner shall pay Consultant for services rendered and reimbursable expenses during this period.

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. In the event of court litigation, and if permitted by local laws, case shall be filed in Manatee County.

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

ATTACHMENT "A"

Notwithstanding any other provision of this agreement, the following provisions shall control:

1. The liability of the City of Anna Maria shall be limited as provided in Section 768.28, Florida Statutes.
2. Pursuant to Florida Statutes, Section 119.0701, Ayres Associates (herein sometimes referred to as "Contractor") agrees to:
 1. Keep and maintain public records required by the City to perform the service.
 2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided under City's procedures or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City.
 4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY OF ANNA MARIA CITY HALL
P.O. Box 779
10005 Gulf Drive
Anna Maria, FL 34216-0779
amclerk@cityofannamaria.com**

NOTE: All documents used or prepared by Ayres Associates pursuant to the agreement are public records and subject to these requirements.

City of Anna Maria STANDARD HOURLY RATE SCHEDULE

Principal Engineer	\$215.00
Sr. Professional Engineer	\$190.00
Project Engineer	\$140.00
Structural Engineer	\$140.00
Engineer	\$118.00
Engineer Intern	\$95.00
Project Scientist	\$115.00
Sr. Designer	\$110.00
Designer	\$95.00
Sr. Field Representative	\$115.00
Field Representative	\$105.00
Field Team Leader	\$90.00
Field Technician	\$80.00
Certified Bridge Inspector (CBI)	\$109.00
Assistant Bridge Inspector	\$75.00
Clerical	\$75.00
Dive Lead Inspector	\$109.00
Dive Assistant	\$75.00
PSM/Project Manager	\$243.58
3-Man Hydro Crew	\$424.04
3-Man Topo Crew	\$284.77
Administrative	\$80.00

❖ Travel time and expenses to/from City of Anna Maria will not be billed for engineering staff.

Utility Locating Designating Team Level B-\$1,800.00/day

- This is a process of inducing a signal through a transmitter that is directly coupled to a metallic underground utility, a receiver is used to detect the transmitted signal to give a horizontal location of that utility. The path of the utility will be painted and flagged on the ground surface above the utility using APWA color code standards. The technician will measure the location from a known feature and record information in the field book or GPS. The designating crew will have special tools and equipment on their trucks to perform designating of all known underground utilities except for MOT lane closure equipment, manhole entry equipment. An on-site supervisor will be required throughout the performance of the task and will be billed as an hourly FIELD TEAM Leader. Mileage to and from job sites will be billed as an expense on a per mile basis governed by our IRS reimbursable rates.

Utility Locating Vacuum Truck Level A-\$2,400.00/day

- This is a non-destructive process of exposing underground utilities by using air and vacuum, once the utility is exposed a reference point is set directly above the utility so a measured depth can be taken from the reference point to the top of utility. A size, type, and material will also be recorded at the time of excavation. This pay item includes setup, vacuum truck technician time, and restoration of the excavation site. Depending on ground conditions the vacuum excavation may reach a depth up to 9 ft. An on-site supervisor will be required throughout the performance of the task and will be billed as an hourly FIELD TEAM Leader. Mileage to and from job sites will be billed as an expense on a per mile basis governed by our IRS reimbursable rates.

Ground Penetrating Radar (GPR) Team-Daily Rate \$1,600/Day or \$900/half day

- This pay item includes all travel to and from job site, setup, GPR equipment truck, technician time, electronic designation of the excavation site (limited to 50 LF). A full work day consists of 8 hours. A half day consists of 4 hours maximum. An on-site supervisor will be required throughout the performance of the task and will be billed as an hourly FIELD TEAM Leader.

Ethics Claims / Legal Proceedings

Ayres Associates does not have any ethics claims against the firm. Ayres Associates is named in two current lawsuits pending litigation, and our firm is aware of three potential claims that entities may consider bringing against Ayres Associates. Five previous lawsuits brought against Ayres Associates in the past five years have been settled through negotiation, mediation, or litigation.

Ready to Partner with Anna Maria

We have been selective in the type of information included in proposal to facilitate your complete review and evaluation of our credentials and qualifications. You will find that our submittal is clearly organized and contains specific information requested that confirms our understanding of the work requirements.

Responsibilities of Owner and Others

It is hereby agreed that the Consultant is not responsible for work completed by others on the project or any other services not specifically indicated on this authorization.

Any changes in the project or additional services requested by the Owner in oral or written form shall commit the Owner to payment for additional services.

Fee

We will perform in accordance with the attached City of Anna Maria Standard Hourly Rate Schedule & Ayres Associates' audited reimbursable expense schedule.

Contract Terms and Conditions

Attached are "Contract Terms and Conditions" that will apply to the services and which are incorporated into this proposal by reference.

Thank you for considering Ayres for this important contract; we look forward with great enthusiasm to working with City of Anna Maria staff.

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.

Proposed by Consultant:

Ayres Associates Inc

Jay Saxena, PE
Vice President

Accepted by Owner:

City of Anna Maria

Owner's Name

Signature

Name

Title

Date

Attachments: Attachment "A"
Organizational Chart
City of Anna Maria Standard Hourly Rate Schedule
Reimbursable Expense Schedule
Contract Terms and Conditions
