

June 30, 2023

City of Douglas

Re: Maverik Inc. Store Traffic Impact Analysis Review

Dear: Clara Chaffin (City of Douglas, Community Development Director)

Thank you for the opportunity to submit this proposal for professional services for the review of the Traffic Impact Analysis (TIA) prepared by AWA for the addition of truck fueling positions at the existing Maverik gas station and convenience store located at 1108 West Yellowstone Highway. This letter presents our proposed scope of services, time schedule, fee, and contract terms and conditions.

Project Description

AWA prepared a TIA to identify potential traffic impacts and determine mitigation efforts, if necessary, associated with adding truck fueling positions at the existing Maverik gas station and convenience store located at 1108 West Yellowstone Highway.

The City of Douglas (Client) has requested that Ayres Associates (Consultant) conduct a third-party review of the TIA prepared by AWA, to ensure that the TIA was conducted based on industry standards and practices.

The following Scope of Services summarizes the review approach for the Maverik TIA.

Scope of Services

Task 1: TIA Review

- A. The Consultant will review the Maverik TIA, in its entirety, making note of any potential concerns with the data collection, traffic projections, operational analysis, pedestrian safety review, signal warrant review, and conclusions/recommendations documented in the TIA.
 - 1. As part of the review of the operational analysis, the Consultant will review the Synchro models utilized for the TIA, ensuring that the models appropriately reflect the transportation system, as well as anticipated traffic volumes, and are using the correct analysis methodology.

Task 2: TIA Review Memo

- A. The Consultant will document their review findings in a TIA Review Memorandum and submit this memo to the City of Douglas.

Responsibilities of Client and Others

The Client shall designate in writing a representative authorized to act in the Client's behalf, and shall furnish required information, approvals and decisions as expeditiously as necessary for the orderly progress of Ayres' services.

The Client will provide the Consultant with the original TIA, as well as the supporting Synchro models, for review.

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

Additional Services

Tasks not described in the above Scope of Services will be considered 'Additional Services' and will be mutually negotiated as an amendment to this Agreement. Tasks may include, but are not limited to, the following:

1. The collection of traffic volume counts or speed data.
2. The review of any analyses or conclusions not documented with the Maverik TIA.
3. The completion of independent traffic analyses.
4. Hardcopies of the TIA Review Memo.
5. Meetings with original TIA author.
6. Mileage for site visits or in person meetings.

Time Schedule

The Consultant will commence the TIA Review Memo upon receipt of a written Notice to Proceed (NTP) or signed copy of this agreement. The TIA Review Memo will be submitted to the Client within 10 business days of the NTP.

Fee

We will perform the above services for a lump sum amount of \$2,000.

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 July 31, 2023 unless extended by us in writing.



Proposed by Consultant:

Ayres Associates Inc



Erick Berry, PE, PTOE, RSP1
Traffic Engineer



Eric Sorensen, PE
Vice President

Attachments: Contract Terms and Conditions

Accepted by Client:

Client's Name

Signature

Name

Title

Date



AYRES ASSOCIATES
CONTRACT TERMS AND CONDITIONS

1. Performance of Services: Consultant shall perform the services outlined in its proposal to Client in consideration of the stated fee and payment terms.

2. Billing and Payment: Invoices for Consultant's services shall be submitted to Client 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 Client, and without liability whatsoever to Client, 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 and 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 Consultant's compensation. Client shall pay all costs of collection, including reasonable attorney fees and costs incurred by Consultant in collecting any amounts due from Client. 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: Client shall furnish right-of-entry on the project site for Consultant and, if the site is not owned by Client, 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, Client 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, Client 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 Client agrees to pay Consultant for all services rendered, including reasonable termination expenses. Client acknowledges that Consultant is performing professional services for Client 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 Client. Consultant shall furnish a Certificate of Insurance to Client upon written request. Client agrees that Consultant shall not be liable or responsible to Client for any loss, damage, or liability beyond the amounts, limits, exclusions, and conditions of such insurance.

7. Limitation of Professional Liability: Client 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 Client 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 Client'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 Client 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 Client a limited license to use the documents on the project, project extension and for related uses of the Client subject to receipt of full payment due, and such license to Client shall not create any rights in third parties. Client 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: Client 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. Client 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 Client 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 Client requires, Contractor(s) raises, or Consultant reasonably requests; and (3) Such auditing services as Client 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, Client 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 Client 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 Client.

17. Assignment of Rights: Neither Client 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: Client 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, Client 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 Client'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

25. Notice of Lien Rights: Ayres Associates Inc hereby notifies Client that persons or companies furnishing labor or materials, including engineering, architectural, and surveying services, for the improvement of or construction on client's land may have lien rights on owner's land and buildings if not paid. Client 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.

26. 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.