



February 2, 2022

Kurt Muth, P.E.  
Engineering Division Construction Coordinator  
City of Aurora  
77 S. Broadway Ave.  
Aurora, IL 60505

Re: 2022 Underground Utility CIP Resident Engineer Services  
Professional Services Agreement

Dear Mr. Muth:

We sincerely appreciate this opportunity to offer our services. Enclosed for your review is the engineering services agreement for the referenced project. Please contact us if there are any questions or changes to the listed scope of services. If you would like to proceed with the contract, please sign and return one copy of the agreement.

Sincerely,

TROTTER & ASSOCIATES, INC.

Steve Cieslica,  
Vice President

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January 31, 2022

Kurt Muth, P.E.  
Engineering Division Construction Coordinator  
City of Aurora  
77 S. Broadway Ave.  
Aurora, IL 60505

**Re:** 2022 Underground Utility CIP Resident Engineer Services  
Professional Services Agreement

Dear Mr. Muth,

Trotter and Associates, Inc. (ENGINEER) is pleased to provide professional services to the City of Aurora for the 2022 Underground Utility CIP Resident Engineer Services (hereinafter referred to as the "PROJECT").

### **Project Understanding & Background**

The City of Aurora has requested professional services to provide one senior resident engineer to work with the City of Aurora Engineering Division on underground utility installation and repair. The resident engineer will provide construction engineering and observation services in accordance with the City of Aurora and IDOT standards. As per the City of Aurora RFQ the resident engineer will be expected to provide these services for 40 to 50 hours per week on average.

In addition, the City has requested a second resident engineer (Level I) to assist with additional projects that will require observation and documentation assistance from July 2022 to December 2022.

### **Project Schedule**

The following is the proposed project schedule for the primary resident engineer.

Kick off Meeting	February 18, 2022
Commence with Construction Engineering Services	February 28, 2022
Project Closeout	December 2022

### **Scope of Services:**

Our services will consist of customary civil engineering and surveying services and related engineering services incidental thereto, described as follows;

- The resident engineer(s) will provide daily field reports including daily documentation of contract quantities and direct communication the City of Aurora's Construction Coordinator.
- The resident engineer is to provide construction observation and project management as per the City of Aurora and IDOT construction observation and documentation procedures.
- Provide communication of the contractor's daily/weekly schedules to the City of Aurora, local residents and Business owners.

1) Additional Work as Authorized by Staff will be performed with written authorization.

Changes to the scope of services outlined in this agreement shall be authorized through execution of an Exhibit D - Contract Addendum.

## Compensation

In accordance with the IDOT formula for Cost Plus Fixed Fee = 14.5% (2.3 x Direct Labor + In House Direct Costs), an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees hourly rate. Which equates to \$123.77 per hour for the primary R.E. services performed on the Project(s), plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

An amount equal to \$102.71 per hour for the Resident Engineer- Level II. services performed on the Project(s), plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

The total compensation for services is estimated to be \$390,712.60 based on the following assumed distribution of compensation:

The total compensation for services will not exceed **\$390,712.60** based on the following distribution of compensation:

Resident Engineer/Observation Services for 42 weeks (1930 hours)	\$238,876.10
<u>Project Management</u>	<u>\$3,720.00</u>
Total Contract Value	<b>\$242,596.10</b>
<u>Resident Engineer Level I or II/Observation Services for 25 weeks (1,150 hours)</u>	<u>\$118,116.50</u>
Total Contract Value	<b>\$118,116.50</b>
<u>Additional Work as Authorized by Staff will be performed with written authorization.</u>	<u>\$30,000.00</u>
Total Contract Value with Additionally Authorized work	<b>\$390,712.60</b>

ENGINEER may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered but shall not exceed the total estimated compensation amount unless approved in writing by CLIENT. The total estimated compensation for ENGINEER's services included in the breakdown by phases incorporates all labor, overhead, profit, Reimbursable Expenses and ENGINEER's Consultant's charges. The amounts billed for ENGINEER's services will be based on the cumulative hours charged to the PROJECT during the billing period by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and ENGINEER's Consultant's charges. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually as of January 1<sup>st</sup> to reflect equitable changes in the compensation payable to ENGINEER.

### **Miscellaneous**

This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written representations. This agreement may not be changed, modified, or amended except in writing signed by both parties. In the event of any conflict among the exhibits, the exhibit of the latest date shall control.

ENGINEER may have portions of the Services performed by its affiliated entities or their employees, in which event ENGINEER shall be responsible for such services and CLIENT shall look solely to ENGINEER as if ENGINEER performed the Services. In no case shall CLIENT'S approval of any subcontract relieve ENGINEER of any of its obligations under this Agreement. However, ENGINEER is not responsible whatsoever for any obligations its subcontractors might have to its [subcontractors'] employees, including but not limited to proper compensation of its employees.

In the event CLIENT uses a purchase order form or other CLIENT developed document to administer this Agreement, the use of such documents shall be for the CLIENT's convenience only, and any provisions, terms or conditions within the CLIENT developed document shall be deemed stricken, null and void. Any provisions, terms or conditions which the CLIENT would like to reserve shall be added to Exhibit C – Supplemental Conditions and agreed to by both parties.

ENGINEER acknowledges that this project and the scope of work performed thereto will require ENGINEER and all lower tiered subcontractors of ENGINEER to comply with all obligations under and pursuant to the any applicable local, state and/or federal prevailing wage laws (e.g. Davis-Bacon Act, Illinois Prevailing Wage Act, etc.), including but not limited to all wage, notice and/or record keeping requirements to the extent applicable, necessitated and required by law.

If during negotiations or discussion with a Client it becomes clear that Client has determined prevailing wages are not applicable to the work performed by Trotter & Associates, ENGINEER may request written documentation of such determination from CLIENT

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**Contents of Agreement**

This Letter Agreement and the Exhibits attached hereto and incorporated herein, represent the entire understanding with respect to the Project and may only be modified in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CLIENT:

Trotter and Associates, Inc.:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: Steve Cieslica

Title: \_\_\_\_\_

Title: Vice President

Effective Date: \_\_\_\_\_

Date Signed: February 2, 2022

*Steve Cieslica*

\_\_\_\_\_

Address for giving notices:

Address for giving notices:  
40W201 Wasco Road, St. Charles, IL 60175

Designated Representative

Designated Representative  
Brett Baseley

Title:

Title: Project Manager

Phone Number:

Phone Number: 630.587.0470

Facsimile Number:

Facsimile Number:

E-Mail Address:

E-Mail Address :s.cieslica@trotter-inc.com

**ATTACHMENTS:**

EXHIBIT A – STANDARD TERMS AND CONDITIONS

~~EXHIBIT B – SCHEDULE OF HOURLY RATES AND REIMBURSIBLE EXPENSES~~

EXHIBIT C – SUPPLEMENTAL GENERAL CONDITIONS

EXHIBIT D – CONTRACT ADDENDUM

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CLIENT Initial \_\_\_\_\_

TAI Initial \_\_\_\_\_



## EXHIBIT A - STANDARD TERMS AND CONDITIONS

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### ARTICLE 1 - SERVICES OF ENGINEER

#### 1.01 Scope

- A. ENGINEER shall provide the Professional Services set forth herein and in the Letter Agreement.

- B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Services.

### ARTICLE 2 - CLIENT'S RESPONSIBILITIES

#### 2.01 General

- A. Provide ENGINEER with all criteria and full information as to CLIENT's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which CLIENT will require to be included in the Drawings and Specifications; and furnish copies of CLIENT's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.
- B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:
1. Property descriptions.
  2. Zoning, deed, and other land use restrictions.
  3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
  5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
  6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to ENGINEER whenever CLIENT observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.
- E. Authorize ENGINEER to provide Additional Services as set forth in Exhibit D - Addendum of the Agreement as required.



- F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as CLIENT deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as CLIENT requires, Contractor raises, or ENGINEER reasonably requests.
  3. Such auditing services as CLIENT requires to ascertain how or for what purpose Contractor has used the moneys paid.
  4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by CLIENT to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. Furnish to ENGINEER data as to CLIENT's anticipated costs for services to be provided by others for CLIENT so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.
- L. If CLIENT designates a manager or an individual or entity other than, or in addition to, ENGINEER to represent CLIENT at the Site, the duties, responsibilities, and limitations of authority of such other party shall be disclosed to the ENGINEER and coordinated in relation to the duties, responsibilities, and authority of ENGINEER.
- M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER is to be mutually agreed upon and made a part of this Agreement before such services begin.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of CLIENT, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as CLIENT determines necessary to verify:
1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
  2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.
- Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs 2.01.O and P.

### ARTICLE 3 - TIMES FOR RENDERING SERVICES

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#### 3.01 General

- A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
- B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If CLIENT has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.
- C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

#### 3.02 Suspension

- A. If CLIENT fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to CLIENT, suspend services under this Agreement.
- B. If ENGINEER's services are delayed or suspended in whole or in part by CLIENT, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other

things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

#### ARTICLE 4 - PAYMENTS TO ENGINEER

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##### 4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

- A. *For Basic Services.* CLIENT shall pay ENGINEER for Basic Services performed or furnished under as outlined in the Letter Agreement
- B. *For Additional Services.* CLIENT shall pay ENGINEER for Additional Services performed or furnished as outlined in Exhibit D.
- C. *For Reimbursable Expenses.* CLIENT shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit B.

##### 4.02 Other Provisions Concerning Payments

- A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to CLIENT by ENGINEER, unless otherwise agreed.
- B. *Payment of Invoices.* Invoices are due and payable in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, et. seq., "the Act"). Interest on any late payments will accrue in accordance with the Act. In addition, ENGINEER may, after giving seven days written notice to CLIENT, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.
- C. *Disputed Invoices.* CLIENT will dispute invoices in accordance with the Act.
- D. *Payments Upon Termination.*
  - 1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice CLIENT and will be paid in accordance with Exhibit B for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
  - 2. In the event of termination by CLIENT for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice CLIENT and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit B.
- E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon CLIENT's timely request, copies of such records will be made available to CLIENT at cost.

- F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefore, such new taxes, fees, or costs shall be invoiced to and paid by CLIENT as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

#### ARTICLE 5 - OPINIONS OF COST

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##### 5.01 Opinions of Probable Construction Cost

- A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If CLIENT wishes greater assurance as to probable Construction Cost, CLIENT shall employ an independent cost estimator.

##### 5.02 Designing to Construction Cost Limit

- A. If a Construction Cost limit is established between CLIENT and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit C - Supplemental General Conditions.

##### 5.03 Opinions of Total Project Costs

- A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

#### ARTICLE 6 - GENERAL CONSIDERATIONS

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##### 6.01 Standards of Performance

- A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.
- B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CLIENT shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in CLIENT-furnished information.
- C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as CLIENT's prime

professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

- D. ENGINEER and CLIENT shall comply with applicable Laws or Regulations and CLIENT-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to CLIENT's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.
- E. CLIENT shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.
- F. CLIENT shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.
- G. Prior to the commencement of the Construction Phase, CLIENT shall notify ENGINEER of any other notice or certification that ENGINEER will be requested to provide to CLIENT or third parties in connection with the Project. CLIENT and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and CLIENT shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.
- H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. CLIENT agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.
- I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by CLIENT without consultation and advice of ENGINEER.

- L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions.

#### **6.02 Authorized Project Representatives**

- A. Contemporaneous with the execution of this Agreement, ENGINEER and CLIENT shall designate specific individuals to act as ENGINEER's and CLIENT's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of CLIENT under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

#### **6.03 Design without Construction Phase Services**

- A. Should CLIENT provide Construction Phase services with either CLIENT's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in the Letter Agreement.
- B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by CLIENT, then CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

#### **6.04 Use of Documents**

- A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.
- B. Copies of CLIENT-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by CLIENT to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- C. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the

electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.

- E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.
- F. CLIENT may make and retain copies of Documents for information and reference in connection with use on the Project by CLIENT. Such Documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. CLIENT shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.
- G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates as defined in Exhibit B.

#### 6.05 Insurance

- A. ENGINEER shall procure and maintain insurance as set forth below:
  - 1. Workers Compensation & Employer's Liability
    - a. Each Occurrence: \$1,000,000
  - 2. General Liability
    - a. Each Occurrence: \$1,000,000
    - b. General Aggregate: \$2,000,000
  - 3. Excess or Umbrella Liability
    - a. Each Occurrence: \$5,000,000
    - b. General Aggregate: \$5,000,000
  - 4. Automobile Liability
    - a. Combined Single Limit (Bodily Injury and Property Damage):  
Each Accident \$1,000,000
  - 5. Professional Liability
    - a. Each Occurrence: \$2,000,000
    - b. General Aggregate: \$2,000,000
- B. CLIENT shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by CLIENT which are applicable to the Project.
- C. CLIENT shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project

- D. CLIENT and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverage.
- E. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.
- F. At any time, CLIENT may request that ENGINEER, at CLIENT's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective. If so requested by CLIENT, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by CLIENT.

#### 6.06 Termination

- A. The obligation to provide further services under this Agreement may be terminated:
1. *For cause,*
    - a. By either party upon 30 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.
    - b. By ENGINEER:
      - 1) upon seven days written notice if ENGINEER believes that ENGINEER is being requested by CLIENT to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.
      - 3) ENGINEER shall have no liability to CLIENT on account of such termination.
    - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. *For convenience,*
    - a. By CLIENT effective upon the receipt of notice by ENGINEER.
- B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

#### 6.07 Controlling Law and Venue

- A. This Agreement is to be governed by the law of the state of Illinois, and venue for any legal disputes shall be proper only in the Circuit Court of Kane County, Illinois.

#### 6.08 Successors, Assigns, and Beneficiaries

- A. CLIENT and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of CLIENT and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of CLIENT and

ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

- B. Neither CLIENT nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is 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.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by CLIENT or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
  2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and ENGINEER and not for the benefit of any other party. The CLIENT agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

#### 6.09 Dispute Resolution

- A. CLIENT and ENGINEER 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 provisions of this Agreement, or under law. In the absence of such an agreement, the parties may exercise their rights under law.
- B. If and to the extent that CLIENT and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in Exhibit C, "Supplemental Conditions."

#### 6.10 Hazardous Environmental Condition

- A. CLIENT represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.
- B. CLIENT has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.
- C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify CLIENT and, to the extent of applicable Laws and Regulations, appropriate governmental officials.
- D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until CLIENT: (i) retains appropriate specialist consultant(s) or

contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

- E. CLIENT acknowledges that ENGINEER is performing professional services for CLIENT and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.
- F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

#### **6.11 Allocation of Risks**

##### **A. Indemnification**

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless CLIENT, CLIENT's elected and appointed officials, officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.
2. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CLIENT or CLIENT's officers, directors, partners, employees, and CLIENT's consultants with respect to this Agreement or the Project.
3. To the fullest extent permitted by law, ENGINEER's total liability to CLIENT and anyone claiming by, through, or under CLIENT for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of CLIENT, ENGINEER, and all other negligent entities and individuals.
- 4.
4. The indemnification provision of paragraph 6.11.A.1 is subject to and limited by the provisions agreed to by CLIENT and ENGINEER in Exhibit C, "Supplemental Conditions," if any.

#### **6.12 Notices**

- A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

#### **6.13 Survival**

- A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

#### **6.14 Severability**

- A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### **6.15 Waiver**

- A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

#### **6.16 Headings**

- A. The headings used in this Agreement are for general reference only and do not have special significance.

#### **6.16 Definitions**

- A. Defined terms will be in accordance with EJCDC No. 1910-1 (1996 Edition)

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CLIENT Initial \_\_\_\_\_

TAI Initial \_\_\_\_\_



**EXHIBIT C**  
**SUPPLEMENTAL CONDITIONS**

*NONE AT THIS TIME*



CLIENT Initial \_\_\_\_\_

TAI Initial \_\_\_\_\_



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CLIENT Initial \_\_\_\_\_

TAI Initial \_\_\_\_\_



**EXHIBIT D  
CONTRACT ADDENDUM**

Project Name: 2022 Underground Utility CIP Resident Engineer Services

Project No. \_\_\_\_\_

Addendum No. \_\_\_\_\_

This is an addendum attached to, made part of and incorporated by reference into the Agreement between CLIENT and ENGINEER for modification of scope and compensation for the PROJECT. All other terms and conditions of the original Agreement between CLIENT and ENGINEER are unchanged by this Contract Addendum and shall remain in full force and effect and shall govern the obligations of both CLIENT and ENGINEER, including obligations created by this Contract Addendum.

The contract modifications are described below:

- 1.
- 2.
- 3.

CONTRACT SUMMARY

Original Contract Amount \$ \_\_\_\_\_

Changes Prior to This Change \$ \_\_\_\_\_

Amount of This Change \$ \_\_\_\_\_

Revised Contract Amount: \$ \_\_\_\_\_

For purposes of expediency, ENGINEER and CLIENT agree that an executed electronic version of this Contract Addendum shall suffice. The original of this Contract Addendum shall be returned to ENGINEER after execution.

CLIENT:

ENGINEER:

CITY OF AURORA

TROTTER AND ASSOCIATES, INC.

SIGNED:

\_\_\_\_\_

\_\_\_\_\_

TITLE

TITLE

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